



September 18, 2025

RE: Updated Guidance for Law Enforcement on Immigration Enforcement Practices

Dear Sheriff / Chief:

We are writing to share an important issue brief prepared by the American Civil Liberties Union (ACLU) of Michigan and the Michigan Immigrant Rights Center (MIRC) regarding the role of local law enforcement in immigration enforcement. This resource is intended to support your department in navigating the complex legal landscape surrounding Immigration Customs and Enforcement (ICE) detainers, § 287(g) agreements, and other federal immigration enforcement practices. As you know, local law enforcement agencies play a critical role in protecting public safety and maintaining community trust. However, when local resources are diverted to civil immigration enforcement, it can undermine both constitutional protections and core public safety priorities.

This brief outlines recent legal developments, constitutional principles, and practical recommendations to help your department align its policies with public safety goals and legal obligations. We hope it serves as a useful tool in your continued efforts to foster trust and safety for all residents in your jurisdiction.

I. Introduction

Local law enforcement agencies are essential to protect and serve all Michigan residents, regardless of immigration status.¹ Yet when noncitizens perceive that local law enforcement agencies are helping to enforce federal immigration law, rather than prioritizing public safety in their communities, they may be less likely to reach out to police or sheriff's departments when they are witnesses to or victims of a crime, because they fear that they or their loved ones might end up detained and deported. Local law enforcement involvement in federal immigration enforcement can also expose local police or sheriff's departments to significant legal liability and ultimately create massive costs to taxpayers.

In response to these concerns, the ACLU of Michigan and MIRC have updated this Issue Brief, the last version of which was published in 2017, to answer common questions that local law

¹ In this Issue Brief, we use the term *noncitizen* to ensure legal accuracy. This term includes individuals who are not (yet) U.S. citizens—such as those with temporary status, legal presence, or permanent residency. While *immigrant* is commonly used in public discourse as a broad umbrella term, it does not precisely capture the full spectrum of nonimmigrants and other legally present individuals. By using *noncitizen*, we aim to provide clarity in discussions related to local law enforcement and federal immigration policies. Additionally, many of the practices and recommendations outlined here may also apply to individuals who have naturalized, as law enforcement interactions often hinge on perceived status or prior immigration history.

enforcement agencies face in their relationships with noncitizen communities and federal immigration authorities.

II. Police Care About Relationships with Noncitizen Communities

Local law enforcement involvement in federal immigration enforcement can undermine public safety by eroding the hard-earned trust between police and the communities they serve. Noncitizen witnesses and victims—regardless of their immigration status—are less likely to report crimes or provide evidence when they fear that doing so could lead to questioning, detention, or deportation of themselves or their family members.

Many noncitizens understand that any interaction with police—whether during a traffic stop, as part of an investigation, or when seeking help as a crime victim—can trigger immigration enforcement. As a result, fear of immigration consequences discourages people from calling the police, even in emergencies. When local law enforcement agencies choose to collaborate with federal immigration authorities, those fears intensify, further distancing noncitizen communities from public safety institutions.

The erosion of trust harms everyone. The Major Cities Chiefs Association has warned:

“Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard-won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes.”²

The Association has reaffirmed this position in multiple policy statements.³ This chilling effect is especially for crime victims, who must overcome not only fear of their perpetrator but also fear that reporting the crime could lead to immigration consequences for themselves or loved ones.

As immigration enforcement intensifies, studies consistently show that communities of color—including noncitizens—are increasingly fearful of reporting crimes. A 2018 national survey of law enforcement officers found declines in noncitizens willingness to report crimes, participate in investigations, and cooperate with prosecutors, largely due to fears of immigration enforcement.⁴ More recent data reinforces these trends: a 2024 study by the National Bureau of Economic Research found a 30% decrease in crime reporting by Latino victims following the implementation of interior immigration enforcement measures, while victimization rates rose by

² Major Cities Chiefs Immigration Committee, *Recommendations for Enforcement of Immigration Law by Local Police Agencies*, at 6 (adopted June 2006), http://www.houstontx.gov/police/pdfs/mcc_position.pdf.

³ Major Cities Chiefs Association, *Immigration Policy* (2017), <https://majorcitieschiefs.com/wp-content/uploads/2024/11/Revised-2017-Immigration-Policy.pdf>.

⁴ National Immigrant Women’s Advocacy Project, American University, Washington College of Law, *National Survey of Law Enforcement Officers on the Impact of Immigration Enforcement Activities on Access to Justice in Immigrant Communities*, at 43 (2018), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

16%, resulting in approximately 1.3 million additional crimes against Latino victims.⁵ The authors concluded that diminished trust in law enforcement—driven by fear of deportation—was a key factor, and cautioned that trust is easier to lose than to rebuild.⁶

This distrust extends beyond crime reporting. In Michigan, local officials have observed that noncitizen families avoid contact with police at schools, religious gatherings, and community events, fearing that even routine interactions could lead to immigration-related consequences. School officials report that some parents hesitate to bring their children to school.⁷ Healthcare providers note that fear of law enforcement inquiries deters noncitizens from seeking medical care.⁸ Religious leaders have seen declining attendance at services, attributing it to fear of encountering police.⁹ These patterns show that cooperation with federal immigration authorities can lead to broader disengagement from essential public services and compromise community well-being.

Moreover, federal immigration law is among the most complex areas of U.S. law. Training local law enforcement officers to accurately identify violations would be costly and divert resources from core public safety responsibilities. The risk of error is simply too high.

To protect trust and public safety, your department has the right to respectfully decline requests from federal agencies to participate in civil immigration enforcement. Building strong relationships with noncitizen communities makes everyone safer. A more detailed discussion of best practices is included at the end of this brief.¹⁰

III. Immigration Enforcement is a Federal Responsibility

Federal immigration law is one of the most complex areas of U.S. law. When local or state police attempt to enforce immigration laws, they risk violating the Michigan Constitution, the U.S. Constitution, and federal statutes—especially when actions are based on speculation about an individual’s legal status. Even trained officers may inadvertently rely on race, religion, or national origin when attempting to investigate immigration-related matters, leading to serious constitutional and civil rights violations. To avoid these legal risks and potential financial

⁵ Felipe M. Goncalvez, Elisa Jacome & Emily K. Weisburst, *Immigration Enforcement and Public Safety*, Nat’l Bureau of Econ. Rsch., Working Paper No. 32109, at 16 (2024), https://www.nber.org/system/files/working_papers/w32109/w32109.pdf.

⁶ *Id.*

⁷ Danielle James, ‘A Chilling Effect:’ ACLU Says ICE Threats Deter Students from Attending School, MLive (2025), <https://www.mlive.com/news/2025/02/a-chilling-effect-aclu-says-ice-threats-deter-students-from-attending-school.html#:~:text=Recent%20changes%20to%20federal%20immigration,ICE%20and%20other%20law%20enforcement>.

⁸ Kristen Schorsch, *Fearful Amid ICE Crackdowns, Some Immigrants Are Skipping Healthcare*, NPR (Feb. 10, 2025), <https://www.npr.org/sections/shots-health-news/2025/02/10/nx-sl-5290063/migrants-chicago-delayed-health-care-immigration-crackdown-fears>.

⁹ Daren Bower, ‘There’s A Lot of Fear Right Now:’ GR Diocese Reacts to New Immigration Policies, Fox 17 (Jan. 23, 2025), <https://www.fox17online.com/news/local-news/theres-a-lot-of-fear-right-now-gr-diocese-reacts-to-new-immigration-policies>.

¹⁰ See Section VI below.

liabilities, non-federal law enforcement agencies have both the right and the responsibility to leave immigration enforcement to federal officials.¹¹

The ACLU and MIRC have received numerous complaints from across the state about local police agencies allegedly engaging in immigration enforcement. Those complaints often involve targeting drivers of color for minor traffic violations and turning all vehicle occupants over to immigration authorities; prolonging otherwise lawful traffic stops to investigate immigration status; notifying immigration authorities based solely on suspicion that someone is undocumented; and contacting immigration authorities for language interpretation instead of using internal department resources. Each of these practices is unlawful and exposes law enforcement agencies—and taxpayers—to costly litigation and liability.¹²

a. Racial Profiling and Pretextual Stops

Racial profiling by law enforcement is unconstitutional. Targeting minorities based on race or perceived national origin deprives them of equal protection under the law, in violation of the Fourteenth Amendment to the U.S. Constitution, the Michigan Constitution, and Michigan’s civil rights laws.

For example, stopping or citing drivers of color—such as Latino or Arab individuals—based on their race, even when there is probable cause for a citation or arrest, still violates their right to equal protection.¹³ The legality of the stop or citation does not excuse the discriminatory motive behind it. Such practices are unlawful and undermine public trust in law enforcement.

b. Stops May Not Be Based on Suspicion of Unlawful Immigration Status

In 2012, the U.S. Supreme Court reaffirmed the longstanding principle that civil immigration violations do not justify criminal enforcement by local or state police. As the Court explained in *Arizona v. United States*, 567 U.S. 387 (2012), “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.”¹⁴

¹¹ Immigration Hub, *State and Local Authorities & the Military in Immigration Enforcement* (2025), <https://theimmigrationhub.org/wp-content/uploads/2025/01/01.29.25-Fact-Sheet-State-and-Local-Immigration-Enforcement.pdf>.

¹² The Supreme Court’s recent decision in *Noem v. Vasquez Perdomo*, No. 25A169, 606 U.S. __ (2025), does not authorize or permit local or state law enforcement to engage in racial profiling. The issue before the Court was whether to stay a federal district court’s injunction that restricted immigration officers in Los Angeles from conducting investigative stops based on race, ethnicity, language, or perceived employment in undocumented labor sectors. The Court lifted the stay as the litigation continues, but this procedural action does not constitute a ruling on the merits, nor is it focused on state law enforcement agencies.

¹³ See *Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 533 (6th Cir. 2002) (“[U]nequal treatment based upon [] race or ethnicity during the course of an otherwise lawful traffic stop [is] sufficient to demonstrate a violation of the Equal Protection Clause.”); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (Latino ancestry alone cannot create reasonable belief that a person is in the United States unlawfully).

¹⁴ *Arizona v. United States*, 567 U.S. 387, 407 (2012). See also *United States v. Hansen*, 599 U.S. 762, 784 (2023) (“[R]esiding in the United States without lawful status... generally does not carry a criminal sentence.”). *United States v. Meza-Rodriguez*, 798 F.3d 664, 673 (7th Cir. 2015) (“unlawful presence in the country is not, without more, a crime”); *Carcamo v. Holder*, 713 F.3d 916, 922 n.5 (8th Cir. 2013) (quoting *Arizona v. United States* that “[a]s a

Local and state law enforcement officers are authorized to make arrests only when there is reasonable suspicion of a criminal violation.¹⁵ The Supreme Court further clarified, “[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”¹⁶ Because unlawful presence is a civil—not criminal—violation, local officers generally cannot detain or arrest someone solely based on suspected immigration status.¹⁷ The responsibility for enforcing civil immigration laws lies exclusively with federal immigration authorities, not local police.

In addition to these legal limits, officers should understand that there are many lawful pathways for noncitizens to reside in Michigan. Even if someone does not have permanent status, they may be lawfully present under or applying for protections such as asylum, Temporary Protected Status (TPS), U visas, Special Immigrant Juvenile Status, or other forms of relief. Moreover, some individuals may be unaware that they have already obtained lawful status.¹⁸

Given the complexity of immigration law, local law enforcement should avoid making assumptions about a person’s status. Enforcement and assessment of immigration matters are best left to trained federal immigration officials, not local officers.

c. Stops May Not Be Extended to Ask About Immigration Status

Suspecting—or even knowing—of immigration status violations is not sufficient to justify extending a traffic stop or detention.¹⁹ A stop is only lawful so long as inquiries unrelated to the original justification for the stop do not measurably extend its duration.²⁰ The U.S. Supreme

general rule, it is not a crime for a removable alien to remain present in the United States.”); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012) (“mere unauthorized presence in the United States is not a crime”).

¹⁵ See *infra* Section V.B, “No Requirement to Use Local Resources for Immigration Enforcement.”

¹⁶ *Arizona v. United States*, 567 U.S. at 406-407. Lower federal courts have interpreted *Arizona* as precluding local law enforcement officers from arresting individuals solely based on known or suspected *civil* immigration violations. See, e.g., *Santos v. Frederick Cnty. Bd. of Comm’rs*, 725 F.3d 451, 464 (4th Cir. 2013), cert. denied, 134 S. Ct. 1541, 188 L. Ed. 2d 557 (2014) (emphasis added).

¹⁷ The Supreme Court specifically struck down a law that authorized state law enforcement to arrest individuals who they believed to be removable. *Arizona v. United States*, 567 U.S. at 407- 409 (finding “authorizing state officers to decide whether an alien should be detained for being removable . . . violates the principle that the removal process is entrusted to the discretion of the Federal Government”).

¹⁸ For example, an individual may have derived citizenship as a minor through a parent who naturalized, or may have been born abroad to U.S. citizen parent(s) and unknowingly acquired citizenship. The ACLU of Michigan has received complaints from individuals in such situations.

¹⁹ *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 976 (D. Ariz. 2011) aff’d sub nom. *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (finding the practice of holding individuals on the basis of suspected immigration status violated the Fourth Amendment); *Ortega-Melendres v. Arpaio*, 989 F. Supp. 2d 822, 906 (D. Ariz. 2013) adhered to, No. CV-07-02513-PHX-GMS, 2013 WL 5498218 (D. Ariz. Oct. 2, 2013), modified by and clarified by *de Jesus Ortega Melendres v. Arpaio*, 989 F Supp 2d 822, 906 (D Ariz, 2013) (finding “detaining a [vehicle’s] passenger while running his or her identification through [] database is not ‘reasonably related in scope’ to the traffic infraction and therefore requires independent reasonable suspicion”); and *United States v. Alvarado*, 989 F. Supp. 2d 505, 522 (S.D. Miss. 2013), appeal dismissed (Apr. 4, 2014) (holding that a prolonged traffic stop based on an officer’s “hunch” that passengers in the car were in the country illegally violated the plaintiff’s Fourth Amendment rights).

²⁰ *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015).

Court has explained that extending a state-law-based detention for the purpose of awaiting federal verification of immigration status “would raise constitutional concerns.”²¹

The U.S. Court of Appeals for the Sixth Circuit has also held that suspicion of unlawful immigration status is not a valid basis to continue custody, because unlawful presence is a civil violation, not a crime.²² This principle applies equally to passengers, who are not required to provide identification unless there is reasonable suspicion of criminal activity. Refusal to provide identification alone does not justify extending a stop or initiating arrest. As clarified in *People v. Burrell*, 417 Mich. 439 (1983), and *Terry v. Ohio*, 392 U.S. 1 (1968), passengers in a vehicle are not legally required to identify themselves during a traffic stop, and refusal to do so does not constitute reasonable suspicion or probable cause. Extending a stop to investigate immigration status without specific, articulable facts of criminal activity violates constitutional protections and exceeds the scope of lawful detention.²³

IV. Recent Changes to Federal Immigration Enforcement

Concerns about immigration arrests have intensified nationwide following a series of executive orders and agency directives expanding federal immigration enforcement authority.²⁴ These directives have rescinded long standing restrictions on enforcement in previously “protected areas”—such as schools, churches, and hospitals—raising widespread fear and complicating the role of local law enforcement.

However, not all these practices—old or new—stand on firm legal ground. For example, in the context of ICE detainer requests, multiple federal courts have found that local agencies may be held liable under the Fourth Amendment for detaining individuals without a judicial warrant or probable cause.²⁵ Courts have ruled that ICE detainers are non-binding requests, and local

²¹ *Arizona v. United States*, 567 U.S. at 413- 414.

²² See *United States v. Urrieta*, 520 F.3d 569, 578 (6th Cir. 2008) (“Under the Fourth Amendment, even the briefest of detentions is too long if the police lack a reasonable suspicion of specific criminal activity”).

²³ *People v. Burrell*, 417 Mich. 439, 454-55 (1983) (finding that a passenger in a vehicle which had been stopped for defective equipment and whose driver did not possess a driver's license or registration was “under no obligation to identify himself”); *Terry v. Ohio*, 392 U.S. 1, 34 (1968) (White, J. concurring) (noting that while there is nothing in the Constitution that prevents a policeman from addressing questions, “the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest”).

²⁴ See, e.g., Exec. Order No. 14159, *Protecting the American People Against Invasion* (Jan. 20, 2025), 90 Fed. Reg. 8443; Dep’t of Homeland Sec., *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025); U.S. Immigr. & Customs Enf’t, *Common Sense Enforcement Actions in or Near Protected Areas* (Jan. 31, 2025).

²⁵ For example, in *Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340 (D. Ore. Apr. 11, 2014), a federal court in Oregon held that the county had violated the constitutional rights of Ms. Miranda-Olivares and was liable for damages because the county detained her without probable cause when it chose to hold her based on an ICE detainer. Considering *Miranda-Olivares* and similar decisions, any law enforcement agency that holds an individual beyond his or her release date without a judicially administered warrant demonstrating probable cause that the individual is eligible for removal exposes the agency to liability for violating the Fourth Amendment. See also *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 39 (D.R.I. 2014) (concluding that detention pursuant to an immigration detainer “for purposes of mere investigation is not permitted”), *aff’d in part, dismissed in part on other grounds*, 793 F.3d 208 (1st Cir. 2015); *Moreno v. Napolitano*, 2014 U.S. Dist. LEXIS 136965 (N.D. Ill. Sept 29,

jurisdictions that honor them without proper legal authority risk violating constitutional protections.²⁶

Indeed, cities and counties have paid millions of dollars in settlements and judgments to resolve cases brought by individuals unlawfully detained due to ICE detainer requests.²⁷ For example, Suffolk County, NY was recently held liable in a class action lawsuit for detaining hundreds of individuals on ICE requests without accompanying judicial warrants, with potential damages reaching up to \$60 million.²⁸

Some recent changes to immigration enforcement practices are outlined below, along with relevant legal concepts that local law enforcement may consider to avoid litigation and liability for constitutional violations stemming from these policies.

1. **The Trump Administration has shifted priorities in immigration enforcement through Executive Order No. 14159, issued on January 20, 2025.** Under this directive, federal agencies may no longer prioritize only individuals with a criminal history for enforcement—all noncitizens who are deportable are subject to immigration enforcement, regardless of whether they have been charged with or convicted of a crime.²⁹ This broad approach marks a departure from prior policies that focused limited law enforcement resources on individuals with serious criminal convictions.

Importantly, this change in federal enforcement policy does not require local law enforcement to alter its own public safety priorities. For example, if a police department

2014) (denying judgment on the pleadings to the government on plaintiffs’ claim that ICE’s detainer procedures violate probable cause requirements); *Villars v. Kubiakowski*, 45 F. Supp. 3d 791, 807 (N.D. Ill. 2014) (rejecting dismissal of Fourth Amendment claims concerning an ICE detainer issued “without probable cause that Villars committed a violation of immigration laws”); *Uroza v. Salt Lake City*, 2013 U.S. Dist. LEXIS 24640, at *17-20 (D. Utah Feb. 21, 2013) (denying dismissal on qualified immunity grounds where plaintiff claimed to have been held on immigration detainer without probable cause), 2014 U.S. Dist. LEXIS 127110 at *16-24 (D. Utah Sept. 10, 2014) (denying federal government defendants’ motion for summary judgment, finding plaintiff’s claim for declaratory judgment as to whether ICE’s issuance of ‘hold requests’ in the absence of probable cause, “in particular merely to investigate a person’s immigration status...violates the Fourth and Fifth Amendments” is not moot, despite no longer being subject to an ICE hold); *Makowski v. United States*, 27 F. Supp. 3d 901, 918 (N.D. Ill. 2014) (concluding that plaintiff states a plausible false imprisonment claim against the U.S. where he was held on a detainer without probable cause); *but see City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018) (upholding a state law requiring local compliance with ICE detainer requests).

²⁶ *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (holding that ICE detainers are non-binding requests and that local law enforcement may be liable for unlawful detention).

²⁷ Luis Ferré-Sadurní, *New York City to Pay \$92.5 Million to Improperly Detained Immigrants*, N.Y. Times (Dec. 18, 2024), <https://www.nytimes.com/2024/12/18/nyregion/migrants-detention-settlement-deportation.html>; ACLU, *Los Angeles Settles Immigrant Detention Suit for \$14 Million* (Oct. 13, 2020), <https://www.aclu.org/press-releases/los-angeles-county-settles-immigrant-detention-suit-14-million>.

²⁸ Denise Civiletti, *Federal Court Grants Judgement Against Suffolk County in Class Action Lawsuit Over Honoring ICE Detainer Requests*, RiverheadLOCAL (Jan. 9, 2025), <https://riverheadlocal.com/2025/01/09/federal-court-grants-judgment-against-suffolk-county-in-class-action-lawsuit-over-honoring-ice-detainer-requests/>.

²⁹ Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 20, 2025).

has chosen to focus its resources on investigating and preventing serious crimes, it remains free to do so and is not legally obligated to assist federal authorities in detaining individuals solely based on an alleged civil immigration violation.

2. **The Trump Administration has rescinded its policy generally barring immigration enforcement in sensitive locations.** The federal “protected areas” or “sensitive locations” policy—which had, for years, restricted immigration enforcement in places like schools, hospitals, and houses of worship—was rescinded on January 21, 2025.³⁰ Since then, reports of enforcement activity near these spaces have raised alarm in Michigan communities.³¹

Even without federal protections, these institutions remain vital to noncitizen families, and local agencies retain broad discretion to decline participation in civil immigration enforcement at such locations, thereby preserving community trust and public safety.³²

In addition, the rescission of these protections is legally suspect. A federal court granted a preliminary injunction blocking immigration enforcement targeting religious congregations, finding that enforcement at religious institutions substantially burdened free exercise rights and was likely a violation of the Religious Freedom Restoration Act (RFRA).³³ Michigan’s Constitution likewise provides robust free exercise protections, requiring strict scrutiny of any governmental action that burdens religious practice.³⁴ As a result, local officers who assist in immigration enforcement at religious sites risk violating both federal and state constitutional provisions guaranteeing free exercise of religion.

The ACLU of Michigan and MIRC have issued an advisory to Michigan schools outlining their rights and obligations following the rescission of the sensitive-locations policy; we encourage you to consult this resource for further guidance.³⁵

³⁰ U.S. Dep’t of Homeland Sec., *Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole* (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse>.

³¹ See, e.g., Hannah Dellinger, *Michigan Schools, Families Grapple with New Trump Immigration Policies*, Chalkbeat Detroit (Jan. 24, 2025), <https://www.chalkbeat.org/detroit/2025/01/24/michigan-students-and-families-fear-immigration-enforcement-in-schools/>.

³² *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding federal government cannot compel state or local officials to enforce federal regulatory schemes, supporting local discretion to decline immigration enforcement cooperation).

³³ *Philadelphia Yearly Meeting of the Religious Society of Friends v. U.S. Department of Homeland Security*, No. 8:25-cv-00243 (D. Md. Feb. 24, 2025) (order granting preliminary injunction based on RFRA and First Amendment claims).

³⁴ Mich. Const. art. I, § 4.

³⁵ ACLU of Michigan, *Immigrant Rights Groups Send Letter to Michigan School Districts After Federal Government Rescinds Policy Barring Immigration Enforcement at “Sensitive Locations”* (Feb. 5, 2025), <https://www.aclumich.org/en/press-releases/immigrant-rights-groups-send-letter-michigan-school-districts-after-federal>.

3. **ICE continues to rely on immigration detainers, and compliance by local law enforcement remains voluntary.** However, some agencies sometimes mistakenly treat ICE detainer requests—such as Form I-247, Immigration Detainer–Notice of Action, as mandatory. In *Abriq v. Hall*, a federal district court confirmed that detainers are voluntary and must be supported by probable cause to comply with the Fourth Amendment, even where a local agency had previously participated under a 287(g) agreement.³⁶

These rulings are consistent with ICE’s longstanding litigation position that detainers are discretionary requests, not commands that carry legal consequences.³⁷ Moreover, requiring local law enforcement to comply with a detainer would violate the Tenth Amendment to the United States Constitution, which prohibits the federal government from commandeering state and local resources.³⁸

4. **Congress passed the Laken Riley Act.** In January 2025, Congress enacted the Laken Riley Act (LRA), which significantly expands mandatory immigration detention.³⁹ Under the LRA, federal immigration authorities are required to detain noncitizens who have been charged with certain offenses—including theft, shoplifting, burglary, assault of a law enforcement officer, or any crime resulting in serious bodily injury—without the possibility of bond.⁴⁰

While the LRA expands who may be detained, it does not alter the legal boundaries of legal policing. The law does not grant local law enforcement agencies the authority to arrest individuals for federal immigration violations. That responsibility remains exclusively with federal immigration officers.

5. **The federal government is pressuring local agencies to divert resources to immigration enforcement.** Executive Order 14159 instructs the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) to expand the use of § 287(g) agreements, which allow ICE to deputize state or local officers to perform limited civil immigration functions.⁴¹ However, participation in these

³⁶ *Abriq v. Hall*, 295 F. Supp. 3d 874, 879-80 (M.D. Tenn. 2018) (holding that local custody unsupported by probable cause violated Fourth Amendment).

³⁷ See, e.g., *Vargas v. Swan*, 854 F.2d 1028, 1030 (7th Cir. 1988) (INS described the detainer as a mere “request” for release notice, not a mandate); *Galarza v. Szalczyk*, 745 F.3d 634, 640-41 (3d Cir. 2014) (DOJ conceded—and the court held—that detainer compliance is voluntary and county could be liable for holding the plaintiff without probable cause); 8 C.F.R. § 287.7(a), (d) (regulation itself states a detainer “serves to advise” a local agency and “requests” that it hold an individual).

³⁸ *Galarza v. Szalczyk* 745 F.3d 634, 644 (3d Cir. 2014) (finding that it “would violate the anti-commandeering doctrine of the Tenth Amendment” if “a federal detainer filed with a state or local LEA is a command to detain an individual on behalf of the federal government”); *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that the federal government may not compel state officials to administer or enforce a federal regulatory program).

³⁹ U.S. Dep’t of Homeland Sec., *President Trump Signs the Laken Riley Act into Law* (Jan. 29, 2025), <https://www.dhs.gov/news/2025/01/29/president-trump-signs-laken-riley-act-law>.

⁴⁰ *Laken Riley Act*, Pub. L. 119-1, 139 Stat. 3 (2025).

⁴¹ A § 287(g) agreement is a written memorandum of agreement under 8 U.S.C. § 1357(g) that deputizes specially trained state or local officers to perform limited civil-immigration functions under ICE supervision.

agreements remains entirely voluntary, and no legal duty compels any state or locality to enter into them.⁴² Law enforcement leaders in Michigan have raised serious concerns about federal pressure to participate.⁴³ Matt Saxton, Executive Director of the Michigan Sheriffs' Association, stated immigration enforcement is "not a sheriff's responsibility—that's a responsibility of the federal government."⁴⁴ Chippewa County Sheriff Mike Bitnar similarly explained, "We are shorthanded and can't keep up with our own work right now," adding that ICE "has plenty of agents"⁴⁵ and does not need local assistance.

Advocacy groups in Michigan also worry that local law enforcement involvement in immigration enforcement could erode community trust, making victims and witnesses less likely to cooperate with police.⁴⁶ Historically, Michigan had no § 287(g) agreements, but in 2025, seven jurisdictions have voluntarily entered into them—a concerning trend that risks diverting essential resources and undermining public safety.⁴⁷

Crucially, nothing in state or federal law requires municipalities to participate in 287(g) agreements. Under the Tenth Amendment's anti-commandeering principle, the federal government cannot force local agencies into immigration enforcement programs.⁴⁸ Until recently, participating agencies were funded entirely by local tax dollars, including officer time spent in training. With the passage of H.R. 1, DHS has announced new funding for participating agencies.⁴⁹ However, legal challenges may arise regarding the federal government's authority to cover these costs, as ICE has historically been prohibited from funding such agreements.⁵⁰ Additionally, local communities remain responsible for the cost of lawsuits stemming from racial profiling, Fourth Amendment violations, and other civil rights claims.

⁴² Exec. Order No. 14159, *Protecting the American People Against Invasion*, § 11, 90 Fed. Reg. 8443 (Jan. 20, 2025); See also 8 U.S.C. § 1357(g)(9) (2025) ("Nothing in this subsection [referring to 287(g) agreements] shall be construed to require any State or political subdivision of a State to enter into an agreement").

⁴³ Victor Wooddell, *Michigan Sheriffs: We're Too Overwhelmed to Help ICE Round Up Immigrants*, Bridge Michigan (Mar. 19, 2025), <https://www.bridgemi.com/michigan-government/michigan-sheriffs-were-too-overwhelmed-help-ice-round-immigrants>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., *Michigan United Condemns the Taylor Police Department's Agreement with ICE, Citing Community Harm and Legal Risk*, Michigan U nited (May 2025), <https://miunited.org/2025/05/michigan-united-condemns-the-taylor-police-departments-agreement-with-ice-citing-community-harm-and-legal-risk/>.

⁴⁷ See Michigan Immigrant Rights Center, *§ 287(g) Agreements in Michigan*, available at <http://bit.ly/MIRC287g>.

⁴⁸ *Printz v. United States*, 521 U.S. 898, 935 (1997); 8 U.S.C. § 1357(g)(1).

⁴⁹ U.S. Dep't of Homeland Sec., *DHS Announces New Reimbursement Opportunities for State and Local Law Enforcement Partnering with ICE to Arrest the Worst of the Worst Criminal Illegal Aliens* (Sept. 2, 2025), <https://www.dhs.gov/news/2025/09/02/dhs-announces-new-reimbursement-opportunities-state-and-local-law-enforcement>.

⁵⁰ 8 U.S.C. § 1357(g)(1) authorizes the Attorney General to enter into written agreements "with a State, or any political subdivision of a State . . . at the expense of the State or political subdivision and to the extent consistent with State and local law" (emphasis added).

6. ICE added thousands of administrative immigration warrants to the National Crime Information Center (NCIC) database.⁵¹ This action may confuse local law enforcement officers, who do not have legal authority to make arrests for civil immigration violations. When local officers check NCIC or Michigan’s Law Enforcement Information Network (LEIN) for outstanding warrants, it is important to note that an ICE administrative warrant is not equivalent to a criminal arrest warrant. These civil warrants are not supported by probable cause in the criminal sense, are not signed by a federal or state judge, and are not issued by a court.

V. How the Constitution’s Anti-Commandeering Principle Protects Local Control Over Immigration Enforcement

The current administration is threatening to withhold federal funding from states and localities with pro-noncitizen policies that limit local cooperation with federal immigration enforcement.⁵² However, precedent from the first Trump Administration demonstrates that such threats are often legally unfounded, and that local policies limiting cooperation are constitutional and defensible.⁵³

Federal courts have held that, under the Tenth Amendment’s anti-commandeering principle, states and local governments have the constitutional right to decline involvement in immigration enforcement—even if their decision frustrates federal enforcement efforts.⁵⁴

a. Primer on the Tenth Amendment

The Tenth Amendment provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁵⁵ In other words, any powers not explicitly granted to the federal government remain reserved for the states.⁵⁶

In *Printz v. United States*, the Supreme Court held that Congress cannot “commandeer” state officials by compelling them to administer or enforce federal regulatory programs.⁵⁷ Since *Printz*, the federal courts have repeatedly upheld this principle. Thus, the federal government

⁵¹ Md. Police Training & Standards Comm’n, *Guidance for Law Enforcement on Immigration Administrative Warrants*, <https://mpctc.dpscs.maryland.gov/pdf/PTSC%20Immigration%20Administrative%20Warrants%20Guidance.pdf>.

⁵² Executive Order No. 2025-36.

⁵³ See e.g., *United States v. California*, 921 F.3d 865 (9th Cir. 2019) (holding that, pursuant to the anti-commandeering rule, states have a right to decline to assist federal immigration enforcement).

⁵⁴ *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding federal government cannot compel state officials to enforce federal programs).

⁵⁵ U.S. Const. amend. X.

⁵⁶ *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014).

⁵⁷ *Printz v. United States*, 521 U.S. 898, 935 (1997); *Murphy v. NCAA*, 138 S. Ct. 1461, 1478 (2018).

cannot force state or local officials to comply with immigration detainers or submit immigration-related information to federal officials.⁵⁸

Congress may attach conditions to federal funding, requiring state or local compliance to receive those funds. However, such conditions must be directly related to the purpose of the funding and must not be coercive. Conditions on federal grants are permissible if designed to ensure federal oversight of the funded activities. But using federal funds to coerce local governments into changing unrelated policies—by threatening to terminate significant and independent grants—violates the Tenth Amendment.⁵⁹

Thus, while Congress may attach immigration-related conditions to federal grants, those conditions must have a direct nexus to the funded program and avoid coercion.

b. No Requirement to Use Local Resources for Immigration Enforcement

Local governments are free to allocate resources in the manner that best serves their communities. Federal law does not obligate municipalities to sign § 287(g) agreements or to assist with immigration detainers.⁶⁰ Section 287(g) of the Immigration and Nationality Act explicitly states that such agreements “may be entered into” only by written agreement between ICE and a local agency, underscoring their voluntary nature.⁶¹

Moreover, the Tenth Amendment’s anti-commandeering doctrine prohibits the federal government from compelling states or localities to enforce federal regulatory programs. This includes immigration enforcement. Courts have held that the federal government cannot condition unrelated federal funding on local participation in immigration enforcement, as such coercion violates constitutional limits on federal power.⁶²

c. Adoption of Pro-Noncitizen Policies is Permissible

Cities and counties may continue to adopt pro-noncitizen policies—such as declining to inquire about immigration status at local offices or limit data sharing with federal authorities—to enhance public safety and trust. Federal courts have consistently upheld these policies against funding-related challenges.

⁵⁸ See *Cty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 378 n.20 (D.N.J. 2020) (court upheld the New Jersey Immigrant Trust Directive, which restricts state and local law enforcement from sharing information with federal immigration authorities).

⁵⁹ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 575-88 (2012) (holding conditions on federal funding must not coerce states into policy changes).

⁶⁰ 8 U.S.C. § 1357(g)(1) (“The Attorney General may enter into a written agreement”). See also 8 U.S.C. § 1357(g)(9) (“Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement ... under this subsection.”).

⁶¹ *Id.*

⁶² *Id.*

During the first Trump Administration, the federal government threatened to withdraw Edward Byrne Memorial Justice Assistance Grants (“JAG”) from jurisdictions with pro-noncitizen policies. Multiple localities sued, challenging the imposition of immigration-related conditions on these grants.⁶³ A majority of federal courts rejected that administration’s effort, holding that the Executive Branch lacked authority to impose immigration-enforcement conditions not explicitly authorized by Congress.⁶⁴

Most recently, a federal judge dismissed the U.S. Department of Justice’s lawsuit challenging Illinois’ state and local “sanctuary” policies—which bar cooperation with federal immigration enforcement—for lack of standing. This ruling reinforces that the federal government cannot judicially compel local cooperation in immigration enforcement.⁶⁵

These lawsuits reflect ongoing federal efforts to compel cooperation, but strong legal precedent continues to protect cities’ and counties’ noncitizen-supportive policies from similar funding-related retaliation.

VI. Recommendations

As discussed above, trust between local law enforcement and noncitizen communities is essential to ensuring public safety. With this in mind, we offer the following recommendations your office can consider to further strengthen that trust and promote equitable enforcement practices.

- 1. Localities may consider adopting welcoming policies.** In general, welcoming pro-noncitizen policies aim to foster safety, inclusion, and trust for all community members, regardless of immigration status. While these policies vary by locality, many emphasize building strong relationships with noncitizen communities and establishing clear boundaries between local law enforcement and federal immigration enforcement.⁶⁶
- 2. Localities are not required to ask about immigration status unless directly relevant to a criminal investigation.** In most criminal investigations, immigration status is irrelevant and does not impact the outcome or legal process. By adopting policies that limit inquiries into immigration status, localities can foster trust with noncitizen communities, reduce fear, and encourage cooperation with law enforcement.

⁶³ See *San Francisco v. Barr*, 965 F.3d 753, 761 n.3 (9th Cir. 2020) (collecting First, Third, and Seventh Circuit cases); *Colorado v. U.S. Dep’t of Justice*, 455 F. Supp. 3d 1034, 1044-45 (D. Colo. 2020) (collecting cases); *City of Albuquerque v. Barr*, 515 F. Supp. 3d 1163, 1180 (D.N.M. 2021); see also *New York v. U.S. Dep’t of Justice*, 951 F.3d 84 (2d Cir. 2020) (approving conditions).

⁶⁴ *City of Chicago v. Sessions*, 888 F.3d 272, 283 (7th Cir. 2018); *City of Philadelphia v. Att’y Gen.*, 916 F.3d 276, 279-81 (3d Cir. 2019); *City of Los Angeles v. Barr*, 941 F.3d 931, 945 (9th Cir. 2019) (holding executive branch lacked authority to impose immigration-related conditions on grants).

⁶⁵ *United States v. Illinois*, No. 1:25-cv-01285 (N.D. Ill. July 25, 2025) (order granting motion to dismiss for lack of standing).

⁶⁶ See, e.g., *The Welcoming Standard*, Welcoming America, <https://welcomingamerica.org/the-welcoming-standard/>.

3. **Local and state law enforcement may accept multiple forms of identification.** Certain noncitizens may lawfully drive in Michigan with a valid foreign driver's license. Under Michigan law, individuals may operate a vehicle if they hold a valid license from another country, accompanied by a certified translation, in accordance with M.C.L. § 257.302a. Agencies may consider training that clarifies when foreign driver's licenses are valid and reinforces that presenting such a license is not grounds to question someone's immigration status or suspect a violation of federal immigration law.

Similarly, law enforcement agencies may accept a variety of documents as proof of identity, including foreign passports, municipal ID cards, and other non-government-issued identification. Many noncitizens with lawful presence may not possess a domestic or foreign driver's license, and alternative forms of ID should not be used as a proxy for immigration status.

4. **Local law enforcement agencies should not rely on federal immigration officers for interpretation.** When agents from ICE or Customs and Border Protection (CBP) are used as interpreters, encounters often escalate into immigration enforcement actions. This practice can have a chilling effect on community trust, particularly among noncitizens, and may deter individuals from seeking help or cooperating with local agencies.

Telephonic interpretation services are typically faster and more effective, as professional interpreters are trained and certified to provide accurate language support. In contrast, federal immigration officers generally lack formal training or certification in interpretation.

Agencies should rely on their own language access services and avoid practices that could lead to claims of discrimination based on national origin under Title VI of the Civil Rights Act.⁶⁷ If an agency does not yet have a language access policy, developing one is a critical step toward supporting both officers and the public.

5. **Localities should not prolong traffic stops to contact immigration enforcement.** Doing so exposes them to significant legal liability. The scope of permissible stops under *Terry v. Ohio* is clearly established, and courts have consistently held that extending a stop beyond its original purpose without reasonable suspicion violates the Fourth Amendment. As a result, officers who engage in such conduct are unlikely to be protected by qualified immunity.
6. **Use appearance tickets where appropriate, rather than booking individuals on minor offenses.** A major reason that noncitizens and their families fear police is that even the most minor infraction can result in detention and deportation. When police arrest, book, and fingerprint a person, that individual's biometric data is automatically shared with federal immigration authorities, including the FBI and ICE.

⁶⁷ 42 U.S.C. § 2000d.

Michigan law now requires officers to issue appearance tickets rather than make arrests in many cases involving non-assaultive misdemeanors or ordinance violations. Under MCL 764.9c(4), if the offense carries a maximum penalty of no more than one year in jail and is not a serious misdemeanor, assaultive crime, or domestic violence offense, the officer must issue an appearance ticket and release the person from custody.⁶⁸

By using appearance tickets for offenses like driving without a license, local police can help ensure they are not perceived as proxy deportation agents. Moreover, failure to comply with the appearance ticket mandate—especially if motivated by immigration concerns—may expose the locality to legal liability, particularly if the arrest leads to immigration consequences for the individual.

7. **Localities should not prolong detention based on immigration detainer requests.** The safest course for local law enforcement agencies is to never rely on ICE detainers as a basis for holding an individual past their normal release date. Courts have repeatedly found that ICE detainers alone do not constitute probable cause, and holding someone based solely on a detainer may violate the Fourth Amendment.

In Michigan, several counties have adopted policies refusing to honor ICE detainer requests unless accompanied by a judicial warrant or probable cause determination. For example, in April 2017, the Wayne County Sheriff's Office issued a memo stating that his department would not honor ICE detainers unless they were accompanied by a judicial determination of probable cause or a warrant issued by a judicial officer.⁶⁹

Three months later, the Ingham Sheriff's Office instructed officers to require a judicial warrant in order to honor immigration detainer requests.⁷⁰ These policies reflect recognition that complying with ICE detainer requests without judicial oversight exposes localities to legal liability, undermines community trust, and risks unconstitutional detention.

8. **Localities should provide local jails with ICE interview request consent forms to notify incarcerated people that they have a right to decline an ICE interview.** Although ICE interview requests are voluntary, some incarcerated individuals may mistakenly believe that these requests are mandatory. Providing interview request consent forms is a practical way to ensure that individuals are informed of their rights. For example, some states require local law enforcement to provide a written consent form before any ICE interview, explaining that the interview is voluntary and that the individual may decline or request an attorney.⁷¹ These forms must be available in multiple languages and clearly outline these rights. These policies serve as strong models for

⁶⁸ Mich. Comp. Laws § 764.9c(4).

⁶⁹ Memorandum from Benny N. Napoleon, *Immigration Detainer-Notice of Action* (Apr. 28, 2017), <http://justiceandpeaceadvocacy.org/wp-content/uploads/2017/05/DIRECTIVE-COJAC-17-04-Immigration-Detainer-Notice-of-Action.pdf>.

⁷⁰ Ingham County Sheriff's Office General Order No. 268 (July 19, 2017).

⁷¹ See *Cal. Assemb. B. 2792*, 2015-2016 Leg., Reg. Sess. (Cal. 2016) (TRUTH Act); N.J. Att'y Gen. Directive No. 2018-6, *Immigrant Trust Directive*.

jurisdictions seeking to protect due process and prevent coercive or uninformed interactions with immigration enforcement.

9. **Law enforcement agencies should develop and share policies with the public communicating how the agency processes U and T visa certification requests.** U and T visas are critical tools for building trust between noncitizen communities and law enforcement. Authorized with bipartisan support under the Victims of Trafficking and Violence Prevention Act (VTVPA),⁷² these visas offer a pathway to lawful status for victims of certain serious crimes who assist law enforcement in the investigation or prosecution of a crime.⁷³

The willingness of law enforcement agencies to sign certifications indicating that the victim is, was, or remains helpful makes communities safer by encouraging noncitizens to report crimes perpetrated against them. Transparency in certification practices helps ensure consistency, accountability, and public trust.

Some jurisdictions have already adopted public-facing policies. For example, the Chicago Police Department has published its U and T visa certification directive online, and the Detroit Police Department provides guidance on its website.⁷⁴ These examples offer models for other agencies.

10. **Localities may refuse ICE cooperation agreements that divert resources and erode trust.** Local governments should prioritize focusing staffing and resources on local matters and programs. Localities may refuse to commit local resources—officers, jail beds, or training—to federal immigration enforcement through § 287(g) agreements or Intergovernmental Service Agreements (IGSAs) for jail bed-space rentals.

These types of arrangements pull personnel away from core crime-fighting and prevention duties, undermine community policing by deterring noncitizens and their families from reporting crimes or serving as witnesses, and ultimately make everyone less safe. By declining or terminating these contracts, municipalities keep their focus on local public safety priorities and preserve the trust that all residents need to feel secure calling on their local police.

Conclusion

We recognize the vital role your department plays in keeping Michigan communities safe. By aligning local law enforcement practices with constitutional protections and fostering community trust, your office can help prevent unnecessary legal exposure and build stronger relationships with noncitizen residents.

⁷² 22 U.S. Code § 7105.

⁷³ U.S. Citizenship & Immgr. Servs., *Victims of Human Trafficking and Other Crimes*, <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes>.

⁷⁴ See, e.g., *T Visa and U Visa Certification Directive*, Chicago Police Department, <https://www.chicagopolice.org/policy-review/t-visa-and-u-visa-certification-directive/>; *U Visa Information*, Detroit Police Department, <https://detroitmi.gov/departments/police-department/u-visa-information>.

We hope this issue brief serves as a useful resource to guide policy decisions and support your department's commitment to public safety for all. Please don't hesitate to reach out to our offices with any questions or to discuss these recommendations further.

Sincerely,

Loren Khogali
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