

STEPHENSON COUNTY

continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant.” 5 ILCS 805/15(a).

4. In violation of the Illinois TRUST Act, the Sheriff and his deputies “continued to detain” Mr. Tlapa even after he had posted bond for his alleged traffic offenses, “solely on the basis of [an] immigration detainer” from U.S. Immigration and Customs Enforcement (“ICE”). The Defendant’s actions also violated the Plaintiff’s constitutional and common law rights. Mr. Tlapa seeks redress for this willful and wanton violation of his rights.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under Article VI, § 9 of the Illinois Constitution. This Court has personal jurisdiction over the Defendant under 735 ILCS 5/2-209(a) and (b).

6. Venue is proper under 735 ILCS 5/2-101 because the transactions out of which the causes of action arose took place in Stephenson County.

PARTIES

7. Plaintiff Pedro Tlapa Castillo is, and at all times relevant was, a resident of Stephenson County, Illinois.

8. Defendant David Snyder is, and was at all times relevant, the duly elected Sheriff of Stephenson County (“the Sheriff”). The Sheriff’s duties include the operation of the Stephenson County Jail and the training and supervision of those who work there. The Sheriff acts as a county official, not a state official, with respect to the administration of the jail. The deputy sheriffs and any other persons working under the Sheriff were acting in the scope of their employment at all relevant times.

FACTS

The Illinois TRUST Act

9. Communities, advocates, legislators, and some law enforcement officials have long understood that enforcement of immigration laws by state and local law enforcement has multiple adverse consequences, including those listed below.

10. Many immigrants, as well as their U.S. citizen families, friends, teachers, and employers, live in constant fear that an interaction with state or local law enforcement could lead to deportation or other immigration consequences for themselves or for a loved one.

11. Some encounters with state and local law enforcement do in fact lead to deportation or other immigration consequences, especially when officials stop or detain individuals based on immigration status or at the request of immigration authorities.

12. Deportation has severe consequences, not only for the persons deported, but for their families, businesses, and communities, any or all of which may include lawful permanent residents and U.S. citizens.

13. Fear of law enforcement deters immigrants, their loved ones, and associates from reporting crimes of which they were victims or witnesses, and from cooperating with criminal investigations.

14. Thus, allowing state and local law enforcement to arrest or detain individuals for alleged civil immigration violations absent a valid judicial warrant compromises public safety. No federal law requires state or local law enforcement to comply with detainers or otherwise participate in immigration enforcement.

15. To address these issues, after years of negotiation, the Illinois TRUST Act, 5 ILCS 805/1, *et seq.* (the “TRUST Act” or the “Act”), became law on August 28, 2017, effective

immediately.

16. The Illinois TRUST Act provides, in relevant part:

- (a) A law enforcement agency or law enforcement official shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant.
- (b) A law enforcement agency or law enforcement official shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.

5 ILCS 805/15.

17. A "law enforcement agency" is "an agency of the State or of a unit of local government charged with enforcement of State, county, or municipal laws or with managing custody of detained persons in the State." 5 ILCS 805/10. The Stephenson County Sheriff's Department is a law enforcement agency under the Act.

18. A "law enforcement official" is "any individual with the power to arrest or detain individuals, including law enforcement officers, county corrections officer, and others employed or designated by a law enforcement agency." 5 ILCS 805/10. The Sheriff, his deputies, and his employees are law enforcement officials under the Act.

19. An immigration detainer is "a document issued by an immigration agent that is not approved or ordered by a judge and requests a law enforcement agency or law enforcement official to provide notice of release or maintain custody of a person." 5 ILCS 805/10.

20. A "Non-judicial immigration warrant means a Form I-200 or I-205 administrative warrant or any other immigration warrant or request that is not approved or ordered by a judge" 5 ILCS 805/10.

21. Upon information and belief, the Sheriff has made a regular practice of prolonging the detention of persons in his custody who are otherwise eligible for release solely on the basis of

ICE detainers or non-judicial immigration warrants, in violation of the TRUST Act.

22. Upon information and belief, the Sheriff instructed his deputies and employees to comply with immigration detainers in violation of the TRUST Act.

23. On information and belief, the Sheriff did not adequately train his deputies on their duties under the TRUST Act.

Pedro Tlapa Castillo

24. Around 7:30 a.m. on January 1, 2019, Mr. Tlapa was driving from his home in Freeport to his job, about a ten-minute drive. It had snowed recently and the roads were icy. As Mr. Tlapa approached a stop sign at the bottom of a small hill, he realized that he would not be able to stop. He applied his brakes and skidded past the stop sign.

25. A Sheriff's Department squad car carrying two deputies pulled him over almost immediately. One of them approached Mr. Tlapa's car and asked him why he had not stopped at the stop sign. Mr. Tlapa tried to explain, but was not sure that the officer understood him, as Mr. Tlapa speaks Spanish and the deputy spoke English.

26. The deputy then asked Mr. Tlapa for his driver's license and insurance. Although he did not have a driver's license, Mr. Tlapa did provide his insurance card. The deputy said that it was no longer valid because it had expired six months prior. In fact, his insurance card reflected that it had not expired.

27. The deputies called for a tow truck, which towed Mr. Tlapa's truck away.

28. The deputies arrested Mr. Tlapa for driving without a license, driving without insurance, and disregard of a stop sign.

29. When Mr. Tlapa arrived at the Stephenson County Jail, Sheriff's deputies put Mr. Tlapa in a holding cell until approximately 10:00 a.m., when they booked him.

30. Around 10:30 a.m., Mr. Tlapa posted bond of \$150.00.

31. After Mr. Tlapa posted the bond, the Defendant had no legal grounds to detain him.

32. A deputy took Mr. Tlapa back to a holding cell and told him that he had to wait for another hour. Approximately an hour later, the deputy told Mr. Tlapa that he had a phone call.

33. The person on the phone was an ICE officer who spoke to him in Spanish. The officer asked for his name, the names of his parents, his country of origin, and the name of his hometown. Mr. Tlapa answered all of these questions truthfully. The ICE officer notified him, in Spanish, that ICE would be coming to pick him up.

34. Mr. Tlapa remained in the Stephenson County Jail until an ICE official picked him up the following day, January 2, 2019, at approximately noon.

35. The Defendant unlawfully detained Mr. Tlapa for approximately 24 hours after he posted bond and was entitled to release.

36. As a result of Defendant's unlawful detention of Mr. Tlapa and unlawful transfer of custody to ICE, Mr. Tlapa was away from his family for weeks, was unable to work, and suffered extreme emotional distress.

The Sheriff was on notice of the TRUST Act's requirements.

37. At all times that the Sheriff and his deputies unlawfully detained Mr. Tlapa, the Sheriff was on notice of the requirements of the TRUST Act.

38. The TRUST Act provides that "[b]y January 1, 2018, every law enforcement agency shall provide guidance to its law enforcement officials on compliance with Section 15 of this Act." 5 ILCS 805/20.

39. Within weeks of the TRUST Act's enactment, the Illinois Attorney General sent its

own guidance to all law enforcement agencies in Illinois (**Ex. A**), *Guidance to Law Enforcement: Authority Under Illinois and Federal Law to Engage in Immigration Enforcement*, September 13, 2017 (the “2017 Guidance”). The 2017 Guidance advises Illinois law enforcement agencies and officers that they “are in violation of state law and constitutional protections if they detain an individual pursuant to an ICE detainer.” **Ex. A** at 2.

40. The 2017 Guidance further states: “Jurisdictions should understand that Illinois law has not authorized Illinois law enforcement to engage in enforcement of federal civil immigration law and that they may face civil liability for doing so.” **Ex. A** at 8.

41. The Attorney General issued updated guidance on July 12, 2019. Although the 2019 Guidance updates the law and makes other revisions, the update is substantially the same as the 2017 Guidance as to the matters relevant to this case.

42. In addition, several months before Mr. Tlapa’s unlawful detention, attorneys who represented a different person who was held on an ICE detainer faxed a letter to the Sheriff, spoke to deputies at the jail, and filed a motion to compel the Sheriff to release the person. Each of these communications explained that holding a person solely on the basis of an ICE detainer was a violation of the TRUST Act.

43. Neither the Sheriff nor the public at large has any legitimate legal or equitable interest in continuing to violate the TRUST Act.

CLAIMS

COUNT I

Illinois TRUST Act, 5 ILCS 805/15

44. Paragraphs 1-43 are re-alleged and incorporated as if fully set forth herein.

45. Plaintiff was entitled to release from Stephenson County Jail after he posted bond.

46. After the Plaintiff paid the required bond for his alleged offenses, the Sheriff continued to detain him solely based on immigration detainers or non-judicial immigration warrants, in violation of the Illinois TRUST Act.

47. The Defendant's violation of the Plaintiff's rights under the TRUST Act was willful and wanton.

48. The TRUST Act was enacted to protect people like the Plaintiff, who risk ICE detention and deportation when local law enforcement agencies comply with ICE detainers or non-judicial immigration warrants.

49. The TRUST Act was designed to prevent injuries like the Plaintiff's, which arise directly from his prolonged detention on the basis of an ICE detainer or non-judicial immigration warrant.

50. Plaintiff's enforcement of his rights under the TRUST Act in this action is consistent with the underlying purpose of the statute.

51. A private cause of action under the TRUST Act is necessary to provide an adequate remedy for violations of the statute.

52. The Plaintiff suffered economic and other injuries, including emotional distress, as a result of the Defendant's willful and wanton violation of his rights under the TRUST Act.

53. The Plaintiffs have no adequate remedy at law to prevent the Sheriff from continuing to violate the TRUST Act.

Request for Relief

WHEREFORE, the Plaintiff respectfully requests that this Court award him the following relief:

A. Compensatory damages for the injuries the Plaintiff suffered because of the

Defendant's violation of his rights under the TRUST Act;

B. An injunction prohibiting the Defendant from detaining or continuing to detain any person who has posted bond or is otherwise eligible for release, solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant, and/or on the basis of an individual's citizenship or immigration status; and

C. Such other further relief to which the Plaintiff may be entitled as a matter of law or equity, or that the Court determines to be just and proper.

COUNT II

False Imprisonment

54. Paragraphs 1-53 are re-alleged and incorporated as if fully set forth herein.

55. After Plaintiff posted bond, the Sheriff had no reasonable grounds to believe that his continued detention was lawful.

56. The existence of an immigration detainer or a non-judicial immigration warrant for the Plaintiff was not a lawful reason for detaining him after he posted bond. Rather, the TRUST Act expressly prohibited the Sheriff from continuing to detain him on that basis.

57. The Sheriff had no probable cause to believe that the Plaintiff had committed any other offenses that would justify his continued detention after he had posted bond.

58. The Sheriff unreasonably restrained the Plaintiff's liberty against his will.

59. The Sheriff's unlawful restraint of the Plaintiff constituted a common-law tort of false imprisonment.

60. The Sheriff acted willfully and wantonly when he unlawfully continued to detain the Plaintiff after he posted bond.

61. As a result of the Defendant's willful and wanton false imprisonment of the Plaintiff,

the Plaintiff suffered economic and other injuries, including emotional distress.

Request for Relief

WHEREFORE, the Plaintiff respectfully requests that this Court award him the following relief:

- A. Compensatory damages for the injuries the Plaintiff suffered because the Defendant restrained him against his will without reasonable grounds to do so; and
- B. Such other further relief to which the Plaintiff may be entitled as a matter of law or equity, or that the Court determines to be just and proper.

COUNT III Abuse of Process

- 62. Paragraphs 1-61 are re-alleged and incorporated as if fully set forth herein.
- 63. Detention is a process used by a court to acquire or to exercise its jurisdiction over a person.
- 64. The Sheriff continued to detain the Plaintiff after he had posted bond and was entitled to release, for the improper purpose of allowing ICE to take custody of him.
- 65. Holding the Plaintiff for ICE was beyond the purview of the process of pretrial detention.
- 66. In the regular course of prosecution of misdemeanor offenses, arrestees are released after they have posted bond.
- 67. By holding the Plaintiff for the improper purpose of allowing ICE to take custody of him after he had posted bond, the Sheriff abused the process of detention.
- 68. The Sheriff acted willfully and wantonly when he abused the process of detention.
- 69. As a result of the Defendant's willful and wanton abuse of process against the

Plaintiff, the Plaintiff suffered economic and other injuries, including emotional distress.

Request for Relief

WHEREFORE, the Plaintiff respectfully requests that this Court award him the following relief:

A. Compensatory damages for the injuries the Plaintiff suffered because of the Defendant's abuse of process; and

B. Such other further relief to which the Plaintiff may be entitled as a matter of law or equity, or that the Court determines to be just and proper.

COUNT IV

Illinois Constitution, Art. I, §6

70. Paragraphs 1-69 are re-alleged and incorporated as if fully set forth herein.

71. The Plaintiff was entitled to release from custody after he posted bond for his alleged offenses, but the Sheriff and his deputies continued to detain him based on an immigration detainer or non-judicial immigration warrant.

72. The immigration detainer or non-judicial immigration warrant did not constitute "probable cause, supported by affidavit particularly describing . . . the persons . . . to be seized," as required by Article I, section 6 of the Illinois Constitution.

73. Defendant's continued detention of the Plaintiff without a warrant based on "probable cause, supported by affidavit particularly describing . . . the persons . . . to be seized," was an unreasonable seizure violating Article I, section 6 of the Illinois Constitution.

74. Defendant acted willfully and wantonly when he violated Plaintiff's rights under Article I, section 6 of the Illinois Constitution.

75. This violation of the Illinois Constitution entitles the Plaintiff to a remedy,

including but not limited to damages.

76. The Plaintiffs have no adequate remedy at law to prevent the Sheriff from continuing to violate the Illinois Constitution.

Request for Relief

WHEREFORE, the Plaintiff respectfully requests that this Court award him the following relief:

A. Compensatory damages for the injuries the Plaintiff suffered because the Defendant continued to detain him in violation of Article I, section 6 of the Illinois Constitution;

B. An injunction prohibiting the Defendant from detaining or continuing to detain any person who has posted bond or is otherwise eligible for release, solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant, and/or on the basis of an individual's citizenship or immigration status; and

C. Reasonable attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and

D. Such other further relief to which the Plaintiff may be entitled as a matter of law or equity, or that the Court determines to be just and proper.

COUNT V

Declaratory Judgment, 735 ILCS 5/2-701

77. Paragraphs 1-76 are re-alleged and incorporated as if fully set forth herein.

78. After Mr. Tlapa paid the required bond for his alleged traffic offenses, the Defendant continued to detain the Plaintiff on the basis of an immigration detainer or administrative immigration warrant and without a judicial warrant.

79. The Plaintiff's continued detention after he was entitled to release gives him an

interest in the proper construction of the Illinois TRUST Act.

80. The Illinois Declaratory Judgment statute, 735 ILCS 5/2-701, authorizes the Court to “make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute . . . and a declaration of the rights of the parties interested.”

81. The Plaintiffs have a clear right to a declaratory judgment construing the Illinois TRUST Act and declaring the Plaintiffs’ rights.


Request for Relief

WHEREFORE, the Plaintiff respectfully request that this Court enter a declaration that the Defendant’s continued detention of the Plaintiff after he had posted bond solely on the basis of an immigration detainer or non-judicial immigration warrant violated the TRUST Act and Article 1, Section 6 of the Illinois Constitution.

Dated: October 23, 2019

Respectfully submitted,

Pedro Tlapa Castillo

By: 
One of his attorneys

Everett J. Cygal (ARDC No. 6215930)
David Pi (ARDC No. 6313723)
Schiff Hardin, LLP
233 S. Wacker Dr,
Suite 7100
Chicago, IL 60606
(312) 258-5500
ecygal@schiffhardin.com
dpi@schiffhardin.com

Rebecca K Glenberg (ARDC No. 6322106)
Aarón Siebert-Llera (ARDC No. 6300865)
Roger Baldwin Foundation of ACLU, Inc.
150 N. Michigan Ave., Suite 600
Chicago, IL 60601
(312) 201-9740
rglenberg@aclu-il.org
asiebert-llera@aclu-il.org

Joshua Karsh (ARDC No. 6203096)
National Immigrant Justice Center
224 S. Michigan Ave., Suite 600
Chicago, IL 60604
(312) 660-1370
jkarsh@heartlandalliance.org

CH2\22629260.1\03:10

Exhibit A



Guidance to Law Enforcement:
*Authority Under Illinois and Federal Law
to Engage in Immigration Enforcement*

September 13, 2017



Over the past several months, officials at both the federal and state level have implemented changes to immigration enforcement policies and laws. On January 25, 2017, President Donald Trump issued an Executive Order entitled “Enhancing Public Safety in the Interior of the United States.”¹ Further, on August 28, 2017, Illinois enacted the Illinois Trust Act, a statewide law that clarifies and limits the authority of state and local officers to enforce federal civil immigration law or cooperate with federal immigration authorities.²

This guidance is intended to provide a summary of the President’s Executive Order and describe the new Illinois Trust Act. Based on the Executive Order and the Trust Act, this guidance will explain the limitations on the authority of local and state law enforcement to enforce federal immigration law. It also will provide guidance to municipalities and law enforcement about how the Executive Order and the Trust Act may affect any existing policies.

Illinois law enforcement agencies and officers³ are dedicated to protecting the communities they serve. Promoting public safety requires the assistance and cooperation of the community so that law enforcement has the ability to gather the information necessary to solve and deter crime. Law enforcement has long recognized that a strong relationship with the community encourages individuals who have been victims of or witnesses to a crime to cooperate with the police. The trust of residents is crucial to ensure that they report crimes, provide witness statements, cooperate with law enforcement and feel comfortable seeking help when they are concerned for their safety.

Building this trust is particularly crucial in immigrant communities where residents may be reluctant to engage with local police departments if they are fearful that such contact could result in deportation for themselves, their family or their neighbors. This is true of not only undocumented individuals who may be concerned about their own immigration status, but also citizens who may be worried about their parents, their children or other members of their family who immigrated to the United States.

Police officers will be hindered in maintaining public safety if violent crimes go unreported or witnesses withhold information.⁴ For the safety of the community and to effectively carry out their responsibilities, law enforcement have an interest in making sure that their policies and conduct do not create barriers that discourage or prevent cooperation from the immigrant community and their families.

¹ Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).

² Illinois Trust Act, Ill. Public Act 100-0463 (2017).

³ Throughout this guidance, “Illinois law enforcement” is used to describe state, county, and local law enforcement agencies in Illinois such as municipal police departments, county sheriffs’ offices, Illinois State Police and other non-federal law enforcement authorities, including campus police departments of public and private higher education institutions.

⁴ See James Queally, *Latinos Are Reporting Fewer Sexual Assaults amid a Climate of Fear in Immigrant Communities, LAPD Says*, LOS ANGELES TIMES (Mar. 21, 2017), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

Executive Summary

Federal and state law – including the newly enacted Illinois Trust Act – limit the authority of Illinois law enforcement agencies to engage in immigration enforcement activities. All law enforcement agencies and officers must be aware of and stay within these limitations when conducting law enforcement activities. This guidance provides an overview of relevant federal and state law and may be a useful resource to Illinois law enforcement agencies. In summary, based on constitutional protections, federal and state statutes, and policy considerations, Illinois law enforcement officers and agencies:

- Shall not stop, search, or arrest any individual on the sole basis that the individual is undocumented; arrests may be made only when Illinois law enforcement has an arrest warrant or probable cause to believe that a criminal offense has been committed;
- Are in violation of state law and constitutional protections if they detain an individual pursuant to an ICE detainer beyond his or her normal custody release date;
- Are not required to participate in immigration enforcement activities and shall treat a request from federal immigration authorities for access to detention facilities or individuals held by local authorities as a request, rather than an obligation;
- Are not required to inquire or collect information about individuals' immigration or citizenship status;
- Should consider whether any internal policies regarding sharing immigration status information with federal immigration authorities will promote trust and confidentiality in their communities;
- Should consider requiring all officers to identify the jurisdiction they represent when engaging with community members or knocking on doors to encourage transparency and cooperation and to avoid any concern or confusion about whether the officers work for federal immigration authorities.

I. Immigration Enforcement Generally

Immigration is a matter of federal law.⁵ Although some provisions of federal immigration statutes are criminal, deportation and removability are matters of civil law.⁶ The role of Illinois law enforcement in enforcing the civil portions of immigration law is limited.⁷

a. *Immigration enforcement activities.*

Illinois enforcement officers are permitted to enforce federal civil immigration law only in those limited circumstances where state and federal law authorize them to do so. There are only two circumstances where Illinois enforcement has been permitted by *federal law* to engage in immigration enforcement:

- Illinois law enforcement is permitted to arrest and detain an individual who has already been convicted of a felony and was deported, but returned to or remained in the United States after that conviction.⁸
- Illinois law enforcement may enter into a formal working agreement with the Department of Homeland Security (known as a Section 287(g) agreement) to assist in the “investigation, apprehension, or detention of aliens in the United States.”⁹ Pursuant to federal law, a law enforcement agency may enter into any such agreement only to “the extent consistent with State and local law.”¹⁰ **To date, there are no existing 287(g) agreements in Illinois.**¹¹

Even in those instances where federal law allows enforcement of immigration law, there is no express or inherent authority under Illinois law that permits Illinois law enforcement to enforce federal immigration law.¹² Further, as discussed below, Illinois law now expressly *prohibits*

⁵ *Arizona v. United States*, 132 S. Ct. 2492, 2498-99 (2012).

⁶ See *Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).

⁷ *Id.*

⁸ 8 U.S.C. § 1252c.

⁹ 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).

¹⁰ *Id.*

¹¹ This guidance is not intended to address Detention Services Intergovernmental Agreements, or any other contracts for the housing, safekeeping and subsistence of federal detainees, entered into between the U.S. Department of Justice and Illinois law enforcement agencies.

¹² See *People v. Lahr*, 147 Ill. 2d 379, 382 (Ill. 1992) (recognizing that the authority of local police officers to effectuate an arrest is dependent on the statutory authority given to them by the political body that created them); *Gonzalez v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983) (requiring that state law grant local police the “affirmative authority to make arrests” under the specific provisions of the Immigration and Nationality Act that they sought to enforce).

Illinois law enforcement officials from engaging in certain actions to ensure that they do not enforce federal immigration law without proper legal authority.¹³

b. Immigration detainers and administrative warrants.

The Department of Homeland Security and ICE issue “Immigration Detainers” or “Hold Requests” when they have identified an individual in the custody of Illinois law enforcement who may be subject to a civil immigration removal proceeding.¹⁴ An Immigration Detainer is a notice from federal authorities that an individual in the custody of Illinois law enforcement may be subject to civil immigration proceedings, and it asks Illinois law enforcement to detain the individual for up to 48 additional hours past his or her release date to allow federal authorities to assume custody.¹⁵

On March 24, 2017, ICE issued a new policy establishing that all detainer requests (Form I-247A) will be accompanied by one of two forms signed by an ICE immigration officer: either (1) Form I-200 (Warrant for Arrest of Alien) or (2) Form I-205 (Warrant of Removal/Deportation).¹⁶ These forms are administrative warrants signed by ICE officers that authorize other ICE officers to detain an individual. They are not criminal warrants issued by a court and they do not constitute individualized probable cause that an individual has committed a criminal offense. Similarly, Illinois law enforcement is not authorized to arrest or detain an individual based on the previously issued Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) or Form I-247X (Request for Voluntary Transfer). Only federal officers have the authority to arrest an individual for violation of civil immigration law without a criminal warrant.¹⁷ Even if the individual may be subject to removal because he or she was convicted of a criminal offense, the removal proceeding and determination (through an order of removal issued by a civil court) is a matter of civil immigration law.

c. Sharing information with federal immigration authorities.

Under federal law, no state or local law or policy may prohibit any government entity or official from sharing information about the immigration status of an individual with federal authorities.¹⁸ As will be discussed further below, this federal law does not *require* Illinois law

¹³ This guidance contains a review of federal and state law. It is recommended that Illinois law enforcement agencies further consult with any local ordinances that may cover the topics discussed herein.

¹⁴ See 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers,” (March 24, 2017), available at <http://bit.ly/2q0QEJW>.

¹⁵ See *United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006).

¹⁶ U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers,” (March 24, 2017), available at <http://bit.ly/2q0QEJW>.

¹⁷ *Arizona*, 132 S. Ct. at 2505-06; 8 U.S.C. § 1357.

¹⁸ 8 U.S.C. § 1373.

enforcement to share citizenship or immigration status information with federal authorities in any circumstance; all data sharing of this kind by Illinois law enforcement is completely voluntary.

II. Executive Order 13768 of January 25, 2017

Executive Order 13768 (“the Order”) addresses those jurisdictions that have limited the ability of local law enforcement to share information about the citizenship and immigration status of individuals with federal immigration authorities.¹⁹ Specifically, the Order authorizes the Attorney General of the United States and the Secretary of the Department of Homeland Security to “ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes.”²⁰ Under the Order, the Secretary has the authority and discretion to designate a jurisdiction as a “sanctuary jurisdiction.” The Order does not define “sanctuary jurisdictions,” although a memo issued by U.S. Attorney General Jeff Sessions stated that “the term ‘sanctuary jurisdiction’ will refer only to jurisdictions that willfully refuse to comply with 8 U.S.C. 1373” by prohibiting law enforcement or other government employees from sharing information about individuals’ immigration status with federal authorities.²¹ The memo further clarified that the Order is only intended to affect grants from the Department of Justice and Department of Homeland Security that explicitly reference compliance with 8 U.S.C. § 1373 as a condition of the grant. However, on April 25, 2017, a federal court entered a preliminary injunction that applies nationally to the provision of the Executive Order that disqualifies “sanctuary jurisdictions” from receiving federal grants.²² Therefore, the federal government currently may not enforce this particular provision against any jurisdiction.²³

The Order also revokes the Obama Administration’s priorities for enforcement, known as the Priority Enforcement Program (PEP), and revives an earlier program called Secure Communities. Under PEP, U.S. Immigration and Customs Enforcement (ICE) agents were directed to seek a transfer of an undocumented immigrant in the custody of state or local law enforcement only if the alien posed a demonstrable risk to national security or was convicted of specific criminal offenses.²⁴ Under the Secure Communities program reinstated by the Order, the Secretary of Homeland Security will prioritize removal of individuals who: have been convicted

¹⁹ Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).

²⁰ *Id.* at 8801 (Sec. 9(a)).

²¹ Memorandum from The Attorney General, “Implementation of Executive Order 13768 ‘Enhancing Public Safety in the Interior of the United States,’” May 22, 2017, available at <https://www.justice.gov/opa/press-release/file/968146/download>.

²² *Cty. of Santa Clara v. Trump*, No. 17-cv-574, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) (an order denying the federal government’s motion to reconsider the preliminary injunction and to dismiss plaintiffs’ claims was entered on July 20, 2017).

²³ *Id.*

²⁴ Memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, “Secure Communities,” Nov. 20, 2014, available at <http://bit.ly/29oZZk5> (hereinafter “Memo from Jeh Johnson”).

of any criminal offense; have been charged with any criminal offense; have committed acts which constitute a chargeable criminal offense; have engaged in fraud in connection with any matter before a governmental agency; have abused any program for the receipt of public benefits; are subject to a final order of removal; or pose a risk to public safety or national security.²⁵

Illinois law enforcement should anticipate increased enforcement efforts by federal authorities under these broader priorities. This may include an increase in the number of ICE detainer requests issued to Illinois law enforcement following National Crime Information Center (NCIC) background checks for individuals in the custody of Illinois law enforcement. **However, these federal priorities do not create or expand any authority for Illinois law enforcement to enforce federal immigration law.**

III. The Illinois Trust Act, Effective August 28, 2017

The Illinois Trust Act expressly states that Illinois law “does not currently grant State or local law enforcement the authority to enforce federal civil immigration laws.”²⁶ Specifically, the Trust Act prohibits Illinois law enforcement from (1) detaining or continuing to detain any individual *solely* on the basis of an immigration detainer or non-judicial immigration warrant, or (2) otherwise complying with an immigration detainer or non-judicial immigration warrant.²⁷ This means that an Illinois law enforcement agency cannot keep a person in its custody only because it received an immigration detainer or non-judicial immigration warrant. If the Illinois law enforcement agency does not have probable cause or a judicial warrant to continue to hold the person, it must release the person. Probable cause is *not* created by any request from federal immigration authorities. Consequently, Illinois law enforcement must deny any requests from federal immigration authorities – such as ICE or U.S. Customs and Border Protection (CBP) – for assistance to detain an individual solely on the basis of an immigration detainer or non-judicial immigration warrant.

Additionally, pursuant to the Trust Act, an Illinois law enforcement officer shall not stop, arrest, search, detain, or continue to detain a person *solely* based on his or her citizenship or immigration status.²⁸ Therefore, an officer who searches or arrests a person merely because the person is undocumented is committing an unlawful search or arrest.

The Trust Act makes clear that the above prohibitions do not apply if the Illinois law enforcement officer is presented with a valid, enforceable judicial warrant. An officer who releases

²⁵ 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017); *see also* Memorandum from John Kelly, Secretary of the U.S. Department of Homeland Security, “Enforcement of the Immigration Laws to Serve the National Interest,” Feb. 20, 2017, *available at* <http://bit.ly/2miirQd> (hereinafter “Memo from John Kelly”).

²⁶ Ill. Public Act 100-0463, § 5 (2017).

²⁷ *Id.* § 15(a).

²⁸ *Id.* § 15(b).

a person in accordance with the Trust Act is immune from any civil or criminal liability that could result from any acts committed by the person who was released, as long as the officer acted in good faith and did not commit willful or wanton misconduct.²⁹

IV. Limited Authority of Illinois Law Enforcement to Enforce Federal Civil Immigration Law

Even if not explicitly prohibited by the Trust Act, local law enforcement's role in the enforcement of immigration law in Illinois is limited. Specifically, local law enforcement is not required to engage in immigration enforcement; has no authority to detain an individual pursuant to a federal administrative warrant; has no authority to detain an individual pursuant to an ICE detainer request; and is under no affirmative legal obligation to share any information about individuals in its custody with federal immigration authorities. **Importantly, local law enforcement officers cannot arrest an individual for a violation of a federal law without a warrant unless state law has granted them authority to do so.**³⁰ **Illinois law does not authorize Illinois law enforcement officers to arrest an individual for violating federal immigration law. Further, Illinois law now *prohibits* Illinois law enforcement from arresting a person solely based on his or her immigration status.**³¹

a. Federal law does not require Illinois law enforcement agencies to participate in enforcement of federal civil immigration law.

The federal government cannot require Illinois law enforcement to enforce federal law.³² Any requests by the federal government to participate in immigration enforcement activities must be viewed as requests for voluntary cooperation. As a result, Illinois law enforcement agencies bear the responsibility for the consequences of their decision to comply with such a request.³³ Further, any authorization from the federal government for Illinois law enforcement to enforce federal law is only effective if it is accompanied by authority under state law or is not prohibited

²⁹ *Id.* § 15(d).

³⁰ *Arizona v. United States*, 132 S. Ct. 2492, 2509-10 (2012) ("Authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law") (citing *United States v. Di Re*, 332 U.S. 581, 589 (1948)). See also *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017) (finding no authority in Massachusetts common or statutory law that authorizes arrests for federal civil immigration violations and holding that court officers do not have the authority to detain an individual solely on the basis of a civil immigration detainer); Immigration and Naturalization Act, 8 U.S.C. § 1252c (authorizing State and local law enforcement officials to arrest and detain an alien who is illegally present and has been previously convicted of a felony "to the extent permitted by relevant State and local law").

³¹ 725 ILCS 5/107-2 (describing the circumstances for arrest by law enforcement).

³² *Printz v. United States*, 521 U.S. 898, 923-24 (1997) (finding that the 10th Amendment prohibits the federal government from compelling the States to enact or administer a federal regulatory program).

³³ See *Villars v. Kubiowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).

by the Trust Act or other state law.³⁴ Accordingly, any requests from federal immigration authorities for access to individuals held by Illinois authorities should be viewed as requests, rather than obligations.³⁵

As discussed above, federal law permits – but does not require – only two circumstances where Illinois law enforcement may enforce federal immigration law: (1) pursuant to a 287(g) agreement;³⁶ or (2) when an individual has returned to the United States after being convicted of a felony and deported.³⁷ **Jurisdictions should understand that Illinois law has not authorized Illinois law enforcement to engage in enforcement of federal civil immigration law and that they may face civil liability for doing so.**

b. Illinois law enforcement has no authority to arrest an individual solely based on information that the individual is undocumented.

Generally, law enforcement officers cannot arrest an individual for violation of a state or federal law without a warrant unless state law has granted them authority to do so.³⁸ Illinois law permits arrest by Illinois law enforcement only if the officer has an arrest warrant, has reasonable grounds to believe a warrant has been issued or has reasonable grounds to believe that the individual is committing or has committed a criminal offense.³⁹

Being unlawfully present in the United States is not a criminal offense, and thus unlawful presence alone does not establish probable cause to find that an individual has committed an offense under Illinois law.⁴⁰ The fact that a person may be subject to deportation is not a lawful reason for arrest or detention without a court order, even if the person is subject to a deportation order based on the commission of a criminal offense.⁴¹ Further, as discussed above, Illinois law now prohibits the arrest of a person solely based on the person's citizenship or immigration status.

³⁴ *Arizona*, 132 S. Ct. at 2509-10.

³⁵ *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Uribe-Rios*, 558 F.3d 347, 350 n. 1 (4th Cir. 2009); *United States v. Female Juvenile, A.F.S.*, 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992).

³⁶ 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).

³⁷ 8 U.S.C. § 1252c.

³⁸ *Miller v. United States*, 357 U.S. 301, 305 (1958) (noting that the lawfulness of a warrantless arrest for violation of federal law by state peace officers is “to be determined by reference to state law”).

³⁹ 725 ILCS 5/107-2.

⁴⁰ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) (“If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”).

⁴¹ *Id.*; see also *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (“The [INA] does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal.”); *Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015) (new seizures as a result of an ICE detainer must be supported by probable cause).

Thus, without an arrest warrant issued by a judge, Illinois law bars Illinois law enforcement from arresting an individual on the sole basis that the person is unlawfully present in the United States.⁴² This is true even if an officer is aware that ICE has issued an administrative warrant for an individual. **Therefore, Illinois officers do not have legal authority to arrest or detain an individual based solely on the individual's immigration status and are in violation of Illinois law if they do so.**

c. Illinois law enforcement shall not arrest an individual solely based on an ICE administrative warrant.

Federal law does not authorize Illinois law enforcement officers to arrest an individual pursuant to an ICE administrative warrant and Illinois law now prohibits arrest by an Illinois law enforcement officer solely based on an ICE administrative warrant.⁴³ ICE administrative warrants are prepared by ICE employees, but are not approved or reviewed by a judge.⁴⁴ By themselves, ICE administrative warrants do not suggest that an individual has committed a criminal offense, nor do they constitute probable cause that a criminal offense has been committed.⁴⁵ Furthermore, administrative warrants issued by ICE authorize only U.S. Department of Homeland Security (DHS) or ICE agents to arrest the individual, not Illinois law enforcement. **Thus, any arrest by Illinois law enforcement solely based on an administrative warrant issued by ICE is not an arrest pursuant to a criminal warrant or a finding of probable cause and violates Illinois law.**⁴⁶

d. Illinois law enforcement shall not detain an individual pursuant only to a federal immigration detainer request.

Federal courts have concluded that ICE detainers are requests, and state and local law enforcement are not required to honor the requests. In fact, law enforcement agencies may be open to liability if they comply with such requests because ICE detainers do not establish individualized probable cause that would be sufficient justification for local law enforcement to detain an individual.⁴⁷ Furthermore, any detention of an individual after his or her normal release date is

⁴² *Arizona*, 132 S. Ct. at 2505.

⁴³ See *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009) (discussing the sheriff's lack of authority to enforce an ICE administrative warrant).

⁴⁴ 8 U.S.C. § 1357; see also *U.S. v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the process to obtain an ICE administrative warrant).

⁴⁵ *El Badrawi v. Dept. of Homeland Security*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008); *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009).

⁴⁶ Illinois law authorizes peace officers to arrest an individual only when a warrant has been issued for a criminal offense – not a civil offense. 725 ILCS 5/107-2.

⁴⁷ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d. Cir. 2014); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. September 30, 2016) (holding that ICE's practice of issuing detainers without individualized determination of probable cause was unlawful).

considered a new arrest and must be based on probable cause that a crime has been committed.⁴⁸ As discussed above, unlawful presence in the United States alone does not constitute probable cause and is not a criminal offense.⁴⁹

An Illinois law enforcement agency is in violation of the Trust Act if it detains an individual beyond his or her normal release date based only on an ICE detainer request.⁵⁰ Further, an Illinois law enforcement agency must take actions to ensure it does not violate the Illinois and federal constitutional protections against unreasonable searches and seizures.⁵¹ **Any detention of an individual without a judicial warrant – including prolonging an initial detention – must be supported by probable cause that an individual committed a criminal offense, which is not satisfied by the existence of an ICE administrative warrant.**⁵²

e. Illinois law enforcement is permitted, but not required, to share information with federal immigration authorities.

Federal officials may request information from Illinois law enforcement agencies about individuals in their custody in order to enforce federal civil immigration laws.⁵³ This information may include names of individuals in custody, normal release dates, court dates, home address or other identifying information. Illinois law enforcement is not required to respond to these information requests.⁵⁴ Similarly, Illinois law enforcement agencies are not required to inquire about an individual's citizenship or immigration status or to collect this information.⁵⁵

While Illinois law enforcement and other government agencies are not prohibited from sharing or receiving citizenship information,⁵⁶ they are not required to do so.⁵⁷ Moreover, law enforcement policies and practices to share information about individuals in their custody may deter individuals from reporting information about a crime or appearing as a witness

⁴⁸ Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV.

⁴⁹ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

⁵⁰ *Santos v. Frederick Cnty. Bd. Of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013); *see also Villars v. Kubiowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).

⁵¹ *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016).

⁵² *Santos*, 725 F.3d at 464-65; *see also Villars*, 45 F.Supp.3d at 801-03; *Galarza*, 745 F.3d at 645; *see also People v. Hyland*, 2012 IL App (1st) 110966 (finding that investigative alert was not sufficient to support probable cause for arrest).

⁵³ 8 U.S.C. § 1373.

⁵⁴ *Id.*; *see also Arizona v. United States*, 132 S. Ct. 2492, 2508 (2012) (noting that Congress has “encouraged the sharing of information about possible immigration violations”).

⁵⁵ Law enforcement should be aware that all fingerprint information submitted to the FBI for criminal background checks will be provided to ICE for comparison to its records.

⁵⁶ *See* Ill. Public Act 100-0463, § 15(c) (2017).

⁵⁷ *See Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that 10th Amendment prohibits the federal government from commandeering state employees to administer federal scheme).

if these individuals are concerned that their information will be shared with ICE or other federal authorities.⁵⁸ Accordingly, such policies and practices may diminish the relationship between Illinois law enforcement and immigrant communities. Therefore, agencies should carefully consider the impact of sharing information with federal authorities on the community's perceptions of trust and confidentiality.

⁵⁸ See *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (discussing police department interests in confidentiality of information).

Lesson**Topics**

ILLINOIS MAY 2019	Lineups, Showups, Forensic Hypnosis
ILLINOIS APRIL 2019	Burglary, Robbery, Theft
ILLINOIS MARCH 2019	Legal Basis for Searches and Seizures, Investigatory Stops, Reasonable Suspicion, Warrantless Entry, Hot Pursuit, Warrantless Searches of Residential Curtilage
ILLINOIS FEBRUARY 2019	Revised Uniform Unclaimed Property Act, Seizure and Forfeiture Reporting Act, Forfeiture, Forfeiture Procedure
ILLINOIS JANUARY 2019	Custodial Interrogation of Juveniles/Custodial Interrogations by School Personnel/Search and Seizure Involving Students at School
ILLINOIS DECEMBER 2018	New Laws - Alternative to Opioids Act of 2018 - Compassionate Use of Medical Cannabis Pilot Program
ILLINOIS NOVEMBER 2018	Crisis Intervention Team (CIT) Training, Mental Health Awareness and Response, De-Escalation
ILLINOIS OCTOBER 2018	Firearm Concealed Carry Act
ILLINOIS SEPTEMBER 2018	Implicit Bias, Racial Profiling, Unbiased Evidence-Based Policing, New Laws
ILLINOIS AUGUST 2018	Federal CLOUD Act, U.S. Supreme Court Decisions, Illinois TRUST Act
ILLINOIS JULY 2018	Interview and Interrogation
ILLINOIS JUNE 2018	Landlord-Tenant Disputes - Investigating Complaints, Entering and Searching Hotel and Motel Rooms

Lessons of mandatory PLI Training. Trust Act is covered August of 2018