



September 27, 2018

Sheriff Larry Stelma  
Kent County Sheriff Department  
701 Ball Ave NE  
Grand Rapids, MI 49503  
VIA e-mail: larry.stelma@kentcountymi.gov

**RE: Ending Immigration Detainers and the ICE Contract in Kent County**

Dear Sheriff Stelma,

We wanted to thank you and your team for meeting with us earlier this month about the legal issues surrounding Kent County's practice of complying with immigration detainers from Immigration and Customs Enforcement (ICE) and its continuing contract with ICE to get reimbursed for the cost of holding individuals for ICE. We write to clarify a few key points of discussion and again urge you to end the contract and stop the practice of carrying out ICE detainer requests. Here's why.

**ICE detainer requests are completely voluntary and the Sheriff's Office can stop at any time.**

One of the most important concepts to understand about ICE detainers is that detainers are requests from ICE, and are not legally binding orders on the Sheriff's Department to hold individuals for ICE. Your office has the choice to cease the practice of honoring ICE detainers and to end the contract for reimbursement at any time.

While there is disagreement among the courts as to whether detainers are legal, there is broad consensus that jails have the option whether or not to honor ICE detainers. As Judge Paul Maloney explained in a recent Western District of Michigan case, the fact that "cooperation with ICE detainers is discretionary rather than mandatory" is a "well-settled principle." *Lopez-Lopez v. Cty. of Allegan*, -- F.Supp 3d --; 2018 U.S. Dist. LEXIS 116898, \*10; 2018 WL 3407695 (W.D. Mich. July 13, 2018). The court further explained that "[w]hen ICE agents issue valid detainers and administrative warrants to local law enforcement, they are requesting that the local law enforcement 'provide operational support by executing a warrant.' Under ICE's current policy, the detainer satisfies the request element because cooperation by local law enforcement is optional." *Id.* at \* 9 (internal citation omitted).

Other Sheriffs in Michigan – including those in Wayne County, Washtenaw County, and Ingham County – recognize that entanglement with ICE damages both their relationship with immigrant communities and their ability to protect the public, and have chosen not to cooperate with, or severely limit their cooperation with, ICE. There is no legal reason Kent County could not make the same choice.

In sum, detainers are optional. They are simply requests, not mandates, from ICE for a local law enforcement entity to hold an individual beyond the time she or he otherwise would have been released from local custody. Your office has the option to stop this practice at any time.<sup>1</sup>

**Nothing in Michigan state law or the Sheriff’s oath of office requires  
Kent County to hold immigrants for ICE.**

During our conversation, you yourself indicated that you understand ICE detainers to be voluntary, rather than mandatory. However, you indicated at our meeting that your office nevertheless believes that two state laws, MCL § 801.1 or MCL § 801.101, limit your choices about cooperating with ICE. After carefully examining those two statutes, we disagree.

You first cited MCL § 801.1 “County jails; use as prisons,” a statute dating back to 1846 which describes the uses of county jails. The statute explains that jails can be used (1) to detain pretrial prisoners, and (2) to confine people who have been convicted and “all other persons duly committed for any cause authorized by law.” The statute thus simply articulates the types of people who can be detained in county jails.

You emphasized in our meeting the use of the proscriptive “shall” in the first paragraph of this section of the statute prohibits you from choosing not to comply with ICE detainers. However, that is an overly broad reading of the statute. The statute, of course, does not mention any required action with respect to ICE at all, nor does it indicate that the county jail must accept any and all prisoners presented to it for detention, only that jails shall be used in a certain way—for housing certain types of prisoners. For example, the statute allows Kent County to accept prisoners from the City of Grand Rapids, but it does not compel Kent County to have a contract with Grand Rapids to house the City’s prisoners. The same is true for ICE. We have found no cases or other authority suggesting that the statute has ever been interpreted to impose a mandate that a county jail hold federal prisoners. The statute *authorizes* the jail hold federal prisoners, but does not *require* the jail to do so.

You also focused during our meeting on the limiting clause at the end of the statute, which states:

Provided, however, That all persons detained or committed to such jails by the authority of the courts of the United States, or any officer of the United States, shall be received in said county jails only in cases where the cost of the care and maintenance of such

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<sup>1</sup> Article 8 of the Intergovernmental Service Agreement between ICE and the Kent County Jail provides that the Kent County can terminate the contract with 90 days notice.

persons shall be paid by the United States, at actual cost thereof, to be fixed and determined by the Michigan welfare commission upon application of the sheriffs of the respective counties of this state, and not otherwise.

Your office believes that because this section requires the federal government (“the United States”) to pay when it houses a prisoner in a county jail, the Kent County Jail must have a contract with ICE because that is the only way it can get paid. But that analysis presupposes that Kent County is going to hold detainees for ICE in the first place. Because detainers are voluntary, and because Kent County has no legal obligation to hold immigrants for ICE, it can simply stop doing so. And of course if Kent County is not holding immigrants for ICE, there is no need for the federal government to pay Kent County. In other words, MCL § 801.1 comes into play, if at all, only because your Department has elected to hold immigrants for deportation by ICE. If you change that policy, you would no longer be holding individuals for the federal government, and MCL § 801.1 would be irrelevant.

In any event, the limiting clause at the end of that statute also requires that the actual cost of the detention of persons held by the United States must be fixed and determined by the Michigan Welfare Commission upon application of the sheriffs, “and not otherwise.” MCL § 801.1. From what we have been able to determine, the functions of the Michigan Welfare Commission were transferred in 1965 to the Department of Social Services, *see* MCL § 16.553, which has since become the Department of Health and Human Services. We are not aware of any separate application by the Kent County Sheriff’s office to the Department of Health and Human Services to determine the cost of housing ICE detainees, a special population of civil detainees with specific needs set by the national detention standards.<sup>2</sup> So, in fact, this statute places an additional hurdle on Kent County in order to detain individuals for the United States. Kent County is currently not in compliance with the statute because it has not taken the proper steps to determine the reimbursement rate, and the statute permits detention of federal prisoners only if those steps are taken.

Your office also cited MCL § 801.101, entitled “United States prisoners; duty of sheriff to take and keep; compensation,” as a reason why you believe you are required to hold prisoners for ICE. The operative clause of this statute (which likewise dates to 1846) states: “The sheriffs of the several counties of this state shall receive into their respective jails and keep all prisoners who are committed to the same, by virtue of any civil process, *issued by any court of record* instituted under the authority of the United States, until they are discharged by the due course of the laws of the United States...” *Id.* (emphasis added).

Critically, the statute applies only where prisoners are committed by virtue of a civil process *issued by a court*. Prisoners held by ICE are not held by authority of a court; ICE unilaterally decides to issue the detainer – which functions as an administrative warrant – and that decision is not been reviewed by any judge or subject to any judicial process. *See* 8 U.S.C. § 1226(a); 8 C.F.R. 287.5(e)(2) (listing non-judicial officers who issue ICE warrants); *see also Lopez-Lopez*, 2018 U.S. Dist. LEXIS 116898, \*8-9 (“Administrative warrants differ significantly from warrants in criminal cases because

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<sup>2</sup> *See* “The Performance-Based National Detention Standards 2011 (PBNDS 2011)” *available at*: <https://www.ice.gov/detention-standards/2011>.

they do not require a detached and neutral magistrate. Instead, executive officers may issue an administrative warrant upon probable cause to believe a civil infraction has occurred. That is precisely what happens when ICE agents issue administrative warrants charging that there is probable cause to believe that an individual is not legally within the United States.”). This is a highly problematic feature of ICE detainees. If anything, MCL § 801.101 provides a legal reason *not* to detain individuals for ICE: the statute only authorizes detention of federal prisoners who have been adjudicated by a court, and ICE detainees are not being held by virtue of a court process.

Finally, you stated that you understand your oath of office as requiring you to collaborate with ICE. That is simply not the case. MCL § 51.73 requires sheriffs to swear the constitutional oath of office, which provides: “I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of [Kent County Sheriff] according to the best of my ability.” Mich. Const. Art. XI, § 1. There is absolutely nothing in that oath that requires the Sheriff to take on the entirely voluntary option of holding immigrants for potential deportation by ICE.

In sum, nothing in Michigan law or in your oath of office compels Kent County to hold people for ICE, much less to have a contract for this purpose. Instead, you are making an affirmative choice to facilitate the deportation of members of our community. That choice is understandably the source of great public concern.

**Federal funding is not affected by choosing to end the contract and not comply with detainees.**

We understand the county is also concerned that declining to comply with ICE detainees could cause you to lose federal grants. However, ending the contract and declining to carry out ICE detainer requests will not cause you to lose any federal funding.

We have reviewed the two 2018 “Certification Requests” you provided to us, which Kent County is required to sign in order to receive Byrne Justice Assistance Grants (JAG). These Certification Requests in no way require you to detain people for ICE. According to the Department of Justice, which administers those grants, such grants do not include any requirement to hold ICE detainees in your jail. The DOJ’s grant solicitation document explains the immigration-related conditions in detail, and does not mention detainees or detention contracts.<sup>3</sup> Indeed, the National ACLU’s Immigrant Rights Project has reviewed all of the letters the Department of Justice has sent to

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<sup>3</sup> See Dep’t of Justice, *JAG Program FY 2018 Local Solicitation*, at 36-37 (July 20, 2018), <https://www.bja.gov/Funding/JAGLocal18.pdf>.

grant recipients regarding whether specific local policies comply with JAG’s immigration conditions, and not a single letter mentions any requirement to hold ICE detainees in local jails.<sup>4</sup>

The JAG certification documents simply require the jurisdiction to certify that it is not:

- a. Violating or aiding or abetting a violation of 8 U.S.C. § 1324(a).
- b. Impeding the exercise by federal officers of authority under 8 U.S.C. § 1357(a), 8 U.S.C. § 1366(1) and (3), or 8 U.S.C § 1226(a) and (c).
- c. Prohibiting the sharing of information regarding “the citizenship or immigration status, lawful or unlawful, of any individual” with the “Immigration and Naturalization Service” under 8 U.S.C. §§ 1373 & 1644.

As to the first of those requirements, 8 U.S.C. § 1324(a) prohibits concealing, harboring or shielding people from detection in knowing or reckless disregard of the fact that they are unlawfully in the United States. That statute is completely inapplicable to detainers, since the jail is in no way concealing, harboring or shielding anyone from detection when it declines to extend that individual’s detention. No court has ever remotely suggested that declining a detainer could somehow violate the criminal harboring statute.

With respect to the second requirement, the cited statutory provisions speak only to *ICE’s* duties to enforce the immigration laws; they do not even mention local entities like the county. The County must simply certify that it is not “*impeding*” federal officers who seek to question, arrest, and obtain information. But the County does not have to certify – and could not legally be required to certify –that it is *actively assisting* federal officers in those tasks. Again, these provisions are completely inapplicable to detainers. Declining to extend an individual’s detention to facilitate deportation does not prevent federal officers from conducting the activities set out in those statutes.

Finally, with respect to the third requirement, nothing in 8 U.S.C. §§ 1373 & 1644 requires local law enforcement to honor detainer requests. These statutes only apply to the sharing of “*information* regarding . . . citizenship and immigration status” (emphasis added), not detention.

More broadly, no federal law can compel you to detain people for ICE. That would violate the Tenth Amendment’s anti-commandeering principle, as courts have unanimously held and the federal government has agreed. *See, e.g., Galarza v. Szalczyk*, 745 F.3d 634, 643-45 (3d Cir. 2014) (“Settled constitutional law clearly establishes that [immigration detainers] must be deemed requests.”); *Lopez-*

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<sup>4</sup> *See e.g.* Dep’t of Justice, Press Release, Justice Department Demands Documents and Threatens to Subpoena 23 Jurisdictions As Part of 8 U.S.C. 1373 Compliance Review, Jan. 24, 2018, <https://bit.ly/2DDViUr>; Dep’t of Justice, Press Release, Justice Department Sends Letters to 29 Jurisdictions Regarding Their Compliance with 8 U.S.C. 1373, Nov. 15, 2017, <https://bit.ly/2ilQSpM>; Dep’t of Justice, Press Release, Justice Department Provides Last Chance for Cities to Show 1373 Compliance, Oct. 12, 2017, <https://bit.ly/2MkXcxJ>; Dep’t of Justice, Press Release, Department of Justice Sends Letter to Nine Jurisdictions Requiring Proof of Compliance with 8 U.S.C. § 1373, Apr. 21, 2017, <https://bit.ly/2pmCfXU>.

*Lopez*, 2018 U.S. Dist. LEXIS 116898, \*2, n.2 (“If detainees were mandatory, they would likely be struck down on anti-commandeering, Tenth Amendment grounds.”).

You therefore will not lose federal funds if you decline to hold people for ICE. There are hundreds of jurisdictions around the country that have made this choice, and none has lost JAG funds as a result.

**Carrying out ICE’s request to hold individuals on detainers fractures public trust in the Sheriff’s Department and makes our communities less safe.**

We appreciate that you acknowledge that there is a growing distrust of the Kent County Sheriff’s Department among the immigrant communities and communities of color in Kent County. We appreciate your desire to repair that trust, and the fact that you have participated in community meetings on this issue.

Contracting with ICE sows distrust in immigrant communities who are afraid that the Sheriff will turn them or a loved one over to ICE, starting a process that will tear their families apart in devastating and permanent ways. The Sheriff’s Department cannot expect to regain the trust of immigrant communities or repair its broken relationship with those communities so long as it prioritizes the desires of federal officials over the needs of immigrant residents of Kent County. The Sheriff’s Department is making an affirmative choice to hold immigrants for ICE – a choice which has caused great pain in the immigrant community. Ending the contract with ICE and ceasing the entirely voluntary practice of carrying out ICE detainers will go a long way in restoring that trust.

Your decision to hold immigrants on detainers deters immigrant communities from cooperating with your Department, and indeed with other local law enforcement agencies, since such contacts could result in deportation of those individuals, their family members, and friends. When police and sheriffs transfer people to ICE for deportation, it discourages immigrants—along with their U.S.-citizen children, neighbors, co-workers, and friends—from reporting crimes and serving as witnesses. These residents are effectively denied police protection because they understandably fear that any interaction with the police could tear apart their family or lead to their own deportation.

These effects have been well documented. Law enforcement leaders all over the country have explained that attaching immigration consequences to police interactions makes ordinary police work more difficult.<sup>5</sup> In a recent study, a majority of prosecutors, judges, and police officers reported that

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<sup>5</sup> See, for example, Nat’l Imm. Law Ctr., *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement* (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement); Dep’t of Justice, *The President’s Task Force on 21st Century Policing Guidebook*, at 18 (May 2015) (recommending that ICE not issue detainer requests to local jails), <https://bit.ly/2G8S75v>; William J. Bratton, *The LAPD Fights Crime, Not Illegal Immigration*, L.A. Times, Oct. 27, 2009, <https://lat.ms/2LXm8IE>.

ramped-up immigration enforcement makes it harder to protect local communities from crime.<sup>6</sup> Indeed, crime reporting has plummeted amongst Latinos in multiple cities.<sup>7</sup> And academic studies have confirmed that immigrants avoid local authorities who act as a pipeline to the deportation system.<sup>8</sup>

ICE has tried to minimize those disturbing patterns by claiming that its detainers only target people with serious criminal records. But ICE's own data shows that this is false. The vast majority of detainers are issued against people with little to no criminal history.<sup>9</sup> Indeed, *two-thirds* of the people targeted for deportation in recent months have no criminal convictions of any kind.<sup>10</sup> The reality is that ICE detainers are indiscriminately issued against almost anyone who comes into contact with local police, instilling fear in immigrant communities and undermining the trust and cooperation that are essential for effective policing.

Furthermore, current federal deportation practices are inhumane and arbitrary. The ICE contract and the underlying policy of holding immigrants for ICE implicate the Kent County Sheriff's Department in deportation practices that increasingly target immigrants with deeply rooted lives in the United States, right here in Kent County. These are people the United States has often explicitly invited to build families, careers, businesses, and communities in our country—over many years, sometimes decades—and now suddenly face deportation. The cruelty of these policies presents a further reason to disentangle your agency from the ICE detainer system.

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<sup>6</sup> Rafaela Rodrigues et al., *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims*, May 3, 2018, <https://bit.ly/2jvGfAr>; see also Am. Civil Liberties Union, *Freezing Out Justice* (2018) (summarizing the results), <https://www.aclu.org/report/freezing-out-justice>.

<sup>7</sup> See, for example, Rob Arthur, *Latinos in Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight.com, May 10, 2017, <https://53eig.ht/2rjgs40>; Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, N.Y. Times, June 3, 2018, <https://nyti.ms/2Lk35ad>; James Queally, *Fearing Deportation, Many Domestic Violence Victims Are Steering Clear of Police and Courts*, L.A. Times, Oct. 9, 2017, <https://lat.ms/2gqs293>.

<sup>8</sup> See, for example, Marcella Alsan & Crystal S. Yang, *Fear and the Safety Net: Evidence from Secure Communities*, Harvard Law School, May 2018, <https://bit.ly/2kN47QJ>; Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress, Jan. 26, 2017, <https://ampr.gs/2kxOchX>.

<sup>9</sup> Syr. Univ., *Few ICE Detainers Target Serious Criminals*, Sept. 17, 2013 (half of all detainers targeted people with no convictions of any kind; over 80% had either no convictions or non-violent ones only), <http://trac.syr.edu/immigration/reports/330/>.

<sup>10</sup> John Bowden, *ICE Arrests of Immigrants with No Criminal Convictions Rises: Report*, TheHill.com, May 18, 2018, <https://bit.ly/2rSjwmK>; Assoc. Press, *Deportation Officers Are Increasingly Arresting People with No Crime Records*, Feb. 26, 2018, <https://nbcnews.to/2Clh3bn>; Niraj Warikoo, *Michigan Non-Criminal Immigrant Arrests, Deportations Soar Under Trump*, Detroit Free Press, Mar. 20, 2018, <https://on.freep.com/2DEhxxj>.

There are many examples. In July 2017, the administration began trying to deport hundreds of Iraqis, many of them Chaldean Christians and other minority religious and ethnic groups who have lived here in Michigan for decades, despite the threat that they would be killed if deported to Iraq. In September 2017, President Trump rescinded Deferred Action for Childhood Arrivals, a program that allowed 800,000 young people—all of whom came here as children—to live in the United States, go to school, and establish careers and families. Even though they have never known any other country, they now face deportation. Similarly, over the last several months, the administration has ended programs that allowed hundreds of thousands of people whose countries were torn apart by war and natural disasters to live here over the last 20 years. The administration then tore these individuals away from their children, many of whom are U.S. citizens. And we don't even have to recount to you the national family separation crisis that pulled thousands of children away from their parents, without any plan to coordinate their reunification. The suffering these policies are inflicting on families across the United States is hard to overstate.

The Kent County Sheriff's Department should not lend its resources to these efforts. They do nothing to improve public safety or protect our community. The Sheriff's Department should not further these inhumane policies by holding Kent County residents for ICE. Ending the contract and ceasing participation in detainers would be a sign to the community that you will prioritize ensuring public safety and protecting residents in your community over providing support for ICE's deportation machine. These steps are the best – and quite likely the only – way to regain the trust of the community.

### **Let's rebuild community trust and end the entanglement with ICE.**

We urge the Kent County Sheriff's Department to stop the practice of carrying out ICE detainer requests and to terminate the contract with ICE. We encourage you to reach out to the Sheriffs of other counties in Michigan who have also taken proactive steps to limit, or stop altogether, the practice of helping ICE target the immigrant residents of their communities, such as Sheriff Jerry Clayton of Washtenaw County, Sheriff Benny N. Napoleon of Wayne County, and Sheriff Scott Wrigglesworth of Ingham County, among others. Their experience confirms that you have a choice about whether to hold our immigrant neighbors for ICE, and that other Sheriffs have found that it is in the best interests of their communities not to do so.

We also urge you, alongside with the Kent County Commission, to adopt other policies that will help protect immigrants in our community. The ACLU of Michigan and the Michigan Immigrant Rights Center have developed a guide, *How Does Your Community Welcome Immigrants?*, that sets out a wide variety of options<sup>11</sup>. The Immigrant Legal Resource Center also has developed an excellent resource, *Local Options for Protecting Immigrants: A Collection of City and County Policies to Protect Immigrants from Deportation and Discrimination*<sup>12</sup>. Both publications are attached. Some of the options relate to management of the jail, others to policing practices by the Sheriff's Department, and others to policies that the County Commission can adopt.

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<sup>11</sup> Available at: <https://michiganimmigrant.org/sites/default/files/Welcoming%20Immigrants%20PROOF%203.pdf>

<sup>12</sup> Available at: [https://www.ilrc.org/sites/default/files/resources/local\\_options-20170208.pdf](https://www.ilrc.org/sites/default/files/resources/local_options-20170208.pdf).



We encourage you, and the Commission, to work together with members of immigrant communities and identify which of these options are best suited for Kent County. They are the ones who are most attuned to the needs of immigrant community, and best able to speak to what will be effective. At the same time, we emphasize that these options are a supplement to, not a replacement for, ending the contract and compliance with ICE detainers. The contract has come to represent the County's willingness to collaborate in deportations, and we believe it is unlikely that community trust can be repaired so long as the contract remains in place.

In conclusion, there are myriad reasons to end the practice of cooperating with ICE detainers, and no legal barriers to prevent you from doing so. We urge you to make the choice in favor of rebuilding relationships with our immigrant communities in Kent County—end the contract and stop the trust-destroying practice of carrying out ICE's wishes that we hold immigrants in Kent County jails to facilitate their deportation.

Sincerely,

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