2010 WL 3064578 (Va.A.G.)

Office of the Attorney General

Commonwealth of Virginia
Opinion No. 10-047
July 30, 2010

*1 The Honorable Robert G. Marshall
Member
Virginia House of Delegates
P.O. Box 421
Manassas, Virginia 20108-0421

Dear Delegate Marshall:
I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether Virginia law enforcement officers, under present state law, may conduct investigations into the **immigration** status of persons stopped or arrested by law enforcement and, specifically, whether Virginia officials presently have the same authority as Arizona officers under a recently enacted Arizona statute, and, further, whether that authority extends to Virginia state park personnel and **local** zoning officials.

Response

It is my opinion that Virginia law enforcement officers, including conservation officers, may, like Arizona **police** officers, inquire into the **immigration** status of persons stopped or arrested; however, persons tasked with enforcing zoning laws lack the authority to investigate criminal violations of the law, including criminal violations of the **immigration** laws of the United States.

Background

You note that Arizona recently enacted the "Support Our Law Enforcement and Safe Neighborhoods Act" ("Act").[1] The Act contains a number of provisions and prohibitions concerning illegal aliens. Most germane to your inquiry, the Act directs **police** officers to make a "reasonable attempt, when practicable, to determine the **immigration** status of a person" who is arrested or in custody "except if the determination may hinder or obstruct an investigation."[2] This provision applies only if the person is already lawfully stopped, detained or arrested in connection with the enforcement of some law *other* than **immigration** law.[3] Furthermore, law enforcement officers specifically are directed not to "consider race, color or national origin ... except to the extent permitted by the United States or Arizona Constitution."[4] Under the Act, the **immigration** status of an alien is determined by (1) "a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's **immigration** status;" or (2) an agent of **Immigration** and Customs Enforcement ("ICE").[5]

Applicable Law and Discussion

A prior opinion of this Office addresses whether state and **local** officers in Virginia have the authority to detain and arrest individuals who have violated a criminal law of the United States, including a criminal violation of the **immigration** laws of the United States.[6] The opinion concluded that law enforcement officers in Virginia in fact have the authority to arrest persons for criminal violations of **immigration** laws.[7] Indeed, it would be most surprising if state and **local** officers lacked the authority, where appropriate, to arrest individuals suspected of committing federal crimes such as bank robbery, kidnapping or terrorism. State and **local** officers are not required to stand idly by and allow such criminals to proceed with impunity. The same holds true with criminal violations of the **immigration** laws.

*2 Due to the uncertainty in the law, however, the 2007 opinion counseled against arrests for civil violations of federal **immigration** laws.[8] That uncertainly is present on two levels. As a matter of state law, the authority of **police** officers to arrest for civil violations is restricted by statute.[9] Sheriffs are not so limited, but neither does the Code expressly authorize sheriffs to make arrests for civil violations of federal **immigration** laws.[10] The 2007 opinion further noted that federal law is unclear regarding the authority of state law enforcement to arrest for civil violations of **immigration** laws.[11] The opinion concluded that, absent an agreement between the federal government and a state or **local** law enforcement agency authorizing arrests for *civil*, as opposed to criminal, violations of **immigration** laws, known as a § 287(g) agreement,[12] state officers should refrain from making arrests for civil violations until the law is clarified.[13] There has been no clarification or change in the law since that opinion was issued that would suggest a different conclusion at the present time.

The previous opinion, which dealt with the authority of state and **local** officers to *arrest* for federal **immigration** violations, does not answer your more specific question: whether Virginia officers have the legal authority to *inquire* about the legal status of persons who are stopped or arrested in a manner similar to that contemplated by the Arizona Act. The new Arizona law does not purport to grant new powers to law enforcement officers in Arizona; nor does it suggest the absence of authority by **police** officers in Virginia. The Arizona law expressly leaves the determination of an alien's **immigration** status to ICE or to a federally authorized law enforcement officer. Virginia law enforcement officers have the authority to make the same inquiries as those contemplated by the new Arizona law. So long as the officers have the requisite level of suspicion to believe that a violation of the law has occurred, the officers may detain and briefly question a person they suspect has committed a federal crime.[14] Furthermore, the United States Supreme Court has found that so long as the questioning does not prolong a lawful detention, **police** may ask questions about **immigration** status.[15]

It also should be noted that under Article 36 of the Vienna Convention on Consular Relations, state and **local** officers are *required* to advise foreign nationals of their right to speak with a consular officer when those persons are arrested and held for longer than a short period of time.[16] It is difficult - if not impossible - to effectively provide that advice, mandated by treaty, without making an inquiry into the nationality of a person who is in custody.

*3 You also ask about the authority of state park personnel to conduct inquiries about **immigration** status. The authority conferred on the Director of the Department of Conservation and Recreation does not include the general authority granted to **police** officers to prevent and detect crime, apprehend criminals, safeguard life and property, preserve peace, or to enforce state and **local** laws, regulations and ordinances.[17] On the other hand, conservation officers, appointed by the Director of the Department of Conservation and Recreation, are "law enforcement officers" and are given the authority "to enforce the laws of the Commonwealth and the regulations of the Department."[18] These officers can, like **local** law enforcement officers and officers of the State **Police**, arrest for "any crime" committed in their presence or for felonies not committed in their presence.[19] Nothing in Virginia or United States law prohibits conservation officers from inquiring about criminal violations of the **immigration** laws and, where appropriate, making an arrest.

Local zoning officials, however, are not vested with the same general authority to investigate and enforce violations of the criminal laws.[20] Zoning ordinances are designed to promote the health, safety, convenience or general welfare of the public and to plan for the future development of communities.[21] Zoning ordinances, moreover, are civil in nature and carry civil penalties.[22] Persons who refuse to abate a violation are subject to only misdemeanor punishment.[23] In addition, certain cities may rely on volunteers to enforce zoning requirements, further demonstrating the generally civil nature of zoning enforcement.[24] Therefore, **local** zoning officials lack the authority to investigate criminal violations of federal **immigration** statutes and do not possess the authority to arrest for such violations. Of course, persons tasked with zoning enforcement can, like any responsible citizen, report to the proper authorities any suspected violations of the law, including **immigration** violations, that they encounter while performing their duties.

Conclusion

Accordingly, it is my opinion that Virginia law enforcement officers, including conservation officers, may, like Arizona **police** officers, inquire into the **immigration** status of persons stopped or arrested; however, persons tasked with enforcing zoning laws lack the authority to investigate criminal violations of the law, including criminal violations of the **immigration** laws of the United States.

With kindest regards, I am

Very truly yours,

Kenneth T. Cuccinelli, II
Attorney General

Footnotes

1 Support Our Law Enforcement and Safe Neighborhoods Act, 2010 Ariz. Sess. Laws 211.

2 *Id.* at § 11-1051(B).

3 *Id.*

4 *Id.* at § 11-1051(B).

5 *Id.* at § 11-1051(B).

6 *See* 2007 Op. Va. Att'y Gen. 108, 109.

7 *Id.* at 109-114.

8 *See* 8 U.S.C.S. 1326 (LexisNexis 2010).

9 *See* VA. CODE ANN. § 15.2-1704 (2008).

10 *See* VA. CODE ANN. §§ 15.2-530; 15.2-1609 (2008) (providing general authority of sheriff). Certain Code sections expressly call upon sheriffs to perform civil duties. *See, e.g.*, VA. CODE ANN. § 55-237.1 (sheriffs to oversee removal of personal property from premises pursuant to an eviction).

11 *See* 2007 Op. Va. Att'y Gen. 108, 110-12 (noting conflicting pronouncements on the issue from federal courts and from the United States Department of Justice).

12 *See* 8 U.S.C.S. 1357(g)(1) (LexisNexis 2010).

13 *Id.* at 114.

14 *See, e.g.*, Adams v. Williams, 407 U.S. 143,145-46 (1972). Muehler v. Mena, 544 U.S. 93, 100-01 (2005).

15 Muehler v. Meaa, 544 U.S. 93, 100-01 (2005).

16 Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261. A brief investigative detention would not trigger the right.

17 *Compare* VA. CODE ANN. § 10.1-301 (2006) (establishing duties of the Director of the Department of Conservation and Recreation) *with* § 15.2-1704 (broadly providing that **local police** officers are responsible "for the prevention and detection of crime").

18 Section 10.1-117 (2006).

19 VA. CODE ANN. § 19.2-81(A)(8) and (B) (2008).

20 *See* § 15.2-2299 (2008) (specifying enforcement authority of zoning officers).

21 *See* §§ 15.2-2200, 15.2-2283 (2008).

22 *See* § 15.2-2209 (2008).

23 Section 15.2-2286(A)(5) (Supp. 2008).

24 *See* § 15.2-1132(2008).

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2007 WL 3120673 (Va.A.G.)

Office of the Attorney General

Commonwealth of Virginia
Opinion No. 07-086
October 15, 2007

*1 The Honorable Kenneth W. Stolle
Member
Senate of Virginia
2101 Parks Avenue, Suite 700
Virginia Beach, Virginia 23451

The Honorable David B. Albo
Member
House of Delegates
6367 Rolling Mills Place, Suite 102
Springfield, Virginia 22152

Dear Senator Stolle and Delegate Albo:
I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire concerning the authority of Virginia law-enforcement agencies to detain and arrest individuals based on violations of federal **immigration** law. Specifically, you ask whether there is inherent authority to arrest; and, if so, whether that authority extends both to criminal and civil violations of federal **immigration** law.

Response

It is my opinion that Virginia law-enforcement officers have authority to detain and arrest individuals who have committed violations of the laws of the United States and other states, subject to federal and state limitations. It further is my opinion that such authority extends to violations of federal criminal **immigration** law. Finally, because the federal appellate courts are ambiguous regarding a state's authority to arrest individuals for civil violations of federal **immigration** law, until the law is clarified, it would not be advisable to enforce such violations outside of the scope of an agreement with federal authorities.

Applicable Law and Discussion

The law relating to the authority of state and **local** law-enforcement agencies to enforce violations of federal **immigration** law is complex and, in part, unclear. Although it appears that Virginia possesses authority to make arrests for federal criminal violations, including criminal violations of certain federal **immigration** laws, the authority to enforce civil violations requires clarification by Congress or the federal appellate courts.

I. Inherent Authority

The power to enforce federal law belongs exclusively to the President and his subordinates.[1] However, states may cooperate in the enforcement of federal law.[2] Indeed, such cooperation has taken place since the framing of the Constitution of the United States.[3] Thus, to the extent that state and **local** law-enforcement officers work in cooperation with federal officials, they have inherent authority to enforce federal law.[4] It is not necessary under federal law to have explicit statutory authority for such enforcement.[5]

Although Congress has enacted legislation in the field of **immigration** enforcement and preempted state and **local**

enforcement in certain areas, it has not preempted the field. For example, 8 U.S.C. § 1357 expressly authorizes state and **local** law-enforcement agencies to enter into cooperative agreements with federal agencies for enforcement of federal **immigration** law. These agreements commonly are known as "287(g)" agreements, referring to § 287 of the Illegal **Immigration** Reform and **Immigrant** Responsibility Act.[6]Section 1357 further provides that:

***2** Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the **immigration** status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.[7]

Moreover the federal circuits "have never ruled that the states are preempted from arresting aliens for criminal **immigration** violations"[8] and have recognized the states' authority to make federal arrests, generally.[9] The United States Court of Appeals for the Fourth Circuit has not addressed the specific issue of whether states possess authority to make arrests for violations of federal **immigration** law. However, the United States Courts of Appeals for the Ninth and Tenth Circuits have held that when there is cooperation with federal authorities, the "general rule is that **localpolice** are not precluded from enforcing federal statutes"[10] and "state and **localpolice** officers [have] implicit authority within their respective jurisdictions 'to investigate and make arrests for violations of federal law, including **immigration** laws.'"[11]

The federal circuits are not as clear on the issue of whether the states possess authority to arrest for *civil* violations of federal **immigration** law. Although no federal appellate court has held that state and **local** officials are prevented from doing so, several competing authorities suggest that the authorization is not clear. For example, the Ninth Circuit, has assumed, in *dicta*, "that the civil provisions of the **[Immigration** and Nationalization] Act ... constitute such a pervasive regulatory scheme, as would be consistent with the exclusive federal power over **immigration**,"[12] thereby limiting state authority to arrests for only criminal **immigration** violations. The *Gonzales* court[13] does not adequately explain how the **Immigration** and Nationalization Act is so pervasive that it preempts civil arrests while leaving unscathed the states' authority to arrest for criminal violations.

Further complicating matters is the effect of an opinion letter issued by the Office of Legal Counsel[14] ("OLC") of the United States Department of Justice ("Justice Department") and the subsequent reversal of a portion of the Department's position. In a 1996 opinion, OLC concluded that "state and **localpolice** lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability."[15] The fact that the Attorney General of the United States subsequently reversed the Department's position[16] does little to clarify this area of the law.

***3** While it is important to note that authority exists for Virginia law-enforcement officers to arrest for criminal violations of federal law,[17] there are significant unanswered questions regarding arrest procedures. When acting under the authority of 8 U.S.C. § 1357, federal procedure would apply. Similarly, Virginia law provides a procedure to detain and initially process a limited group of criminal illegal aliens in the Commonwealth until federal authorities can take custody of such aliens or until a specified period of time has elapsed.[18] That process, however, does not apply to the vast majority of aliens who are unlawfully present in the United States and are in violation of federal criminal law pursuant to 8 U.S.C. § 1325.[19] Ostensibly, under their inherent authority to arrest and with the knowledge of sufficient facts, Virginia law-enforcement officers could detain an alien who has unlawfully entered the United States and is present within the Commonwealth. However, without proper training in applicable federal criminal procedure, it would be difficult for such officers to arrest solely on the basis of a federal criminal violation without assistance from federal authorities. Additionally, as explained hereafter in greater detail, there are state law limitations on the exercise of such authority.

II. Express Congressional Authority

In addition to the authority previously discussed, Congress has enacted statutes that expressly permit states and **localities** to enforce certain **immigration** laws.[20]

A. 8 U.S.C. § 1252c

Section 1252c(a) expressly authorizes states and **localities** to arrest and detain individuals provided the individual: (1) is illegally present in the United States; and (2) has previously been convicted of a felony and deported or left the United States after such conviction. Additionally, a state or **locality** must confirm the status of the individual with **Immigration** and Customs Enforcement prior to arrest or detainment. To facilitate cooperation, § 1252c(b) compels the United States Attorney General to share information that would assist state and **local** law-enforcement officials in the performance of these duties.

B. 8 U.S.C. § 1324

Section 1324(c) expressly allows "all ... officers whose duty it is to enforce criminal laws" to arrest for violations of 8 U.S.C. § 1324, the "anti-harboring" statute. Specifically, § 1324(a)(1)(A) mandates punishment for persons who knowingly (or in some instances who demonstrate a reckless disregard): (1) transport an alien into the United States through an undesignated point of entry; (2) transport an alien within the United States; (3) harbor, conceal, or otherwise shield an alien from detection; or (4) encourage an alien to enter the United States in violation of federal law. Because state and **local** law-enforcement officers have the duty to enforce criminal laws, they would encompass the group expressly designated by Congress in § 1324(c) to enforce § 1324.

C. 8 U.S.C. § 1357(g)

*4Section 1357(g)(1) expressly authorizes the Unites States Attorney General to enter into agreements with states and **localities** to permit qualified officers or employees to serve as **immigration** officers in relation to the investigation, apprehension, or detention of aliens. Importantly, § 1357(g)(1) provides authorization beyond any inherent arrest authority or other express authority granted in other federal statutes because it includes both criminal and civil authority for the investigation and apprehension of aliens. Two important caveats to consider are that the state or **local** agency will bear the cost of federal enforcement activities, and such activities must be consistent with both state and **local** law. The rationale behind § 1357(g)(1) is that due to the vast number of aliens in the United States compared to the relatively few federal **immigration** officers, state and **local** law-enforcement officers may be utilized for the detection and the apprehension of aliens. Further, § 1357(g)(10) provides that the express authority granted to states in no way diminishes their inherent authority to assist in **immigration** enforcement.[21]

D. 8 U.S.C. § 1103(a)(10)

Although § 1103(a)(10) contains a mechanism for triggering its application, it also involves an express grant of power to states or **localities**. If the United States Attorney General determines that an actual or imminent influx of aliens requires an immediate federal response, he may authorize any state or **local** law-enforcement officer to perform certain federal **immigration** functions. The head of the state or **local** law-enforcement agency must consent to the "emergency" provision before it may be utilized.

III. Pertinent Virginia Authority

The federal statutes analyzed above outline the basic parameters of the federal **immigration** enforcement power delegated to states and **localities**. Specifically, these statutes and authority delineate the "outer boundaries" of acceptable state enforcement action in the area.[22] However, the delegation of authority from the federal government to states and **localities** is contingent upon the specific limitations of a state's or **locality's** own laws and regulations.[23] Thus, to enforce federal **immigration** laws or to legislate in areas where no federal regulations exist, federal approval coupled with state authorization is required.[24]

The General Assembly of Virginia has enacted several statutes pursuant to federal authority that provide guidelines and parameters for state and **local** action. Although not an exhaustive list, the following statutes detail the major substantive procedures and constraints that Virginia has enacted.

A. VA. CODE ANN. § 15.2-1726

Section 15.2-1726 authorizes **localities** to enter into agreements for cooperation in the furnishing of **police** services, generally. It sets forth a procedure and gives broad discretion for **local** law-enforcement agencies, including the state **police**, to enter into agreements with federal law-enforcement agencies to cooperate in the furnishing of **police** services.[25] However, **local** law-enforcement agencies cannot enforce federal law unless authority is provided by federal statute.[26] In the context of **immigration** enforcement policy, § 15.2-1726 would provide authority to Virginia law-enforcement officers to execute the express federal authorization under 8 U.S.C. § 1357(g).[27]

B. VA. CODE ANN. §§ 19.2-81.6 and 19.2-82(B)

*5 Collectively, §§ 19.2-81.6 and 19.2-82(B) formalize authority for Virginia law-enforcement officers to exercise the express grant of arrest authority given to state and **local** law-enforcement officers by 8 U.S.C. § 1252c. Specifically, §§ 19.2-81.6 and 19.2-82(B) authorize state and **local** law-enforcement officers, in the course of their regular duties, to detain an individual illegally present in the United States who previously has been convicted of a felony and has been deported or left the county upon such conviction. In § 19.2-82(B), Virginia specifically restricted the use of this federal authority by mandating that such a person may only be held for a maximum of seventy-two hours.

C. VA. CODE ANN. § 15.2-1704

Section 15.2-1704 delineates the powers and duties of **local** law-enforcement officers and provides certain constraints. First, under § 15.2-1704(A), **local** law-enforcement officers are vested with the power to prevent and detect crime, apprehend criminals, safeguard life and property, preserve peace, and enforce "state and **local** laws, regulations and ordinances." In limiting the authority of **local** law-enforcement officers to the enforcement of state and **local** laws, regulations, and ordinances, § 15.2-1704(A) ostensibly prohibits such officers from enforcing federal laws and regulations. However, the responsibilities granted to **local** law-enforcement officers "for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, [and] the preservation of peace"[28] appears to provide the necessary authority to cooperate in the enforcement of federal laws and regulations despite the limiting language.[29] Furthermore, this limiting language does not affect the ability of the state or **localities** to enter into agreements with federal authorities, as specifically detailed in § 15.2-1726 and 8 U.S.C. § 1357(g).

Additionally, § 15.2-1704(B) provides that
[a] **police** officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders ..., (ii) to serve an order of protection ..., (iii) to execute all warrants or summons as may be placed in his hands by any magistrate for the **locality** ..., and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine[.]

The bar for **localpolice** officers to participate in civil matters appears to limit the enforcement of federal civil **immigration** violations outside the scope of any agreement under § 15.2-1726 and 8 U.S.C. § 1357(g). The statutory language employed in granting specific exceptions to this general rule may allow such federal civil enforcement by **local** law-enforcement officers to occur.[30] However, in light of the current judicial uncertainty[31] regarding the scope of federal authority granted to **localities** to make arrests based solely on suspicion of a civil violation, coupled with the specific limitations in § 15.2-1704, would make **local** enforcement of federal civil **immigration** laws imprudent at this juncture.

D. VA. CODE ANN. § 15.2-530

*6Section 15.2-530 delineates the powers and duties of sheriffs. Specifically, "[t]he sheriff shall exercise the powers conferred and perform the duties imposed upon sheriffs by general law." Similar to the analysis regarding § 15.2-1704, the ability of sheriffs to enforce federal civil **immigration** law, without a specific statutory grant, is unclear. However, in the absence of specific powers and duties, as in § 15.2-1704 for **local** law-enforcement officers, a stronger argument exists that sheriffs are permitted to conduct such civil enforcement activities. Again, the prudent course of conduct is that sheriffs refrain from enforcement of federal civil **immigration** law outside the scope of § 15.2-1726 and 8 U.S.C. § 1357(g) until such authority is clarified by federal courts or statute. For example, a specific mandate from Congress or direction from the appellate courts would provide such clarification coupled with any necessary amendments to the *Virginia Code*.

E. VA. CODE ANN. § 52-8

Section 52-8 outlines the powers and duties of the Virginia state **police**. In pertinent part, § 52-8 provides that state **police** officers "are vested with the powers of a sheriff for the purpose of enforcing all the criminal laws of this Commonwealth." Because the powers of state **police** officers are tied to those of sheriffs, the previous analysis for § 15.2-530 would apply equally to state **police** officers.

IV. Summary

Virginia, as a sovereign within the constitutional framework of dual sovereignty, has the inherent authority to cooperate with the federal executive branch in the enforcement of criminal violations of federal **immigration**, unless otherwise expressly preempted. Although the Fourth Circuit has not issued a ruling on states' inherent authority, the Ninth and Tenth Circuits have ruled that the states' authority to arrest for criminal violations has not been preempted by federal action.[32] However, it is unclear whether arrest authority extends to civil violations of federal **immigration** law. Absent an express agreement with federal authorities to make arrests for civil violations of federal **immigration** laws, it is my opinion that Virginia law-enforcement officers should refrain from making such arrests for such civil violations until the law is clarified. Additionally, Congress has granted express authority to the states to assist in the enforcement of federal **immigration** law; however, Virginia law limits the ability of Virginia law-enforcement officers to arrest and detain individuals for violations of federal **immigration**.

Conclusion

Accordingly, it is my opinion that Virginia law-enforcement officers have authority to detain and arrest individuals who have committed violations of the laws of the United States and other states, subject to federal and state limitations. It further is my opinion that such authority extends to violations of federal criminal **immigration** law. Finally, because the federal appellate courts are ambiguous regarding a state's authority to arrest individuals for civil violations of federal **immigration** law, until the law is clarified, it would not be advisable to enforce such violations outside of the scope of an agreement with federal authorities.

*7 Thank you for letting me be of service to you.
Sincerely,

Robert F. McDonnell

Footnotes

1 Printz v. United States, 521 U.S. 898 (1997).

2 *See, e.g.*, 8 U.S.C.S. § 1357 (LexisNexis 1997 & Supp. 2007).

3 *Printz*, 521 U.S. at 907-12.

4 United States v. Janik, 723 F.2d 537, 548 (7th Cir. 1983).

5 United States v. Santana-Garcia, 264 F.3d 1188, 1194 (10th Cir. 2001).

6 *See* U.S. **Immigration** & Customs Enforcement, "Fact Sheets," *at*http:// www.ice.gov/pi/news/factsheets/070622factsheet287gprogover.htm (last visited Oct. 5, 2007).

7 8 U.S.C.S. § 1357(g)(10) (LexisNexis (1997).

8 Jeff Session & Cynthia Hayden, *Symposium: Globalization, Security & Human Rights: **Immigration** in the Twenty-first Century: The Growing Role for State & **Local** Law Enforcement in the Realm of **Immigration** Law*, 16 STAN. L. & POL'Y REV. 323, 332 (2005).

9 *Janik*, 723 F.2d at 548 (noting that court has never invalidated such arrest; thus, inferring that "[state] officers have implicit

authority to make federal arrests").

10 Gonzales v. Peoria, 722 F.2d 468, 474 (9th Cir. 1983).

11 *Santana-Garcia*, 264 F.3d at 1194 (quoting United States v. Vasquez-Alvarez, 176 F.3d 1294, 1295 (10th Cir. 1999)).

12 *Gonzales*, 722 F.2d at 474-75.

13 *Id.* at 475 (noting that statutes relating to criminal activities "are few in number and relatively simple in their terms").

14 Mem. Op. Off. Legal Counsel, U.S. Dep't of Justice, for U.S. Att'y, S. Dist. Cal., "Assistance by State and **LocalPolice** in Apprehending Illegal Aliens," *available at*http://www.usdoj.gov/olc/immstopola.htm (Feb. 5, 1996).

15 *Id.* at *10.

16 *See* "Attorney General Prepared Remarks on the National Security Entry-Exit Registration System," p. 5 (June 6, 2002), *available at*http:// www.usdoj.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm (stating that "we are asking state and **localpolice** to undertake voluntarily - arresting aliens who have violated criminal provisions of **Immigration** and Nationality Act or civil provisions that render an alien deportable, and who are listed on the NCIC — is within the inherent authority of the states"); *see also Clear Law Enforcement for Criminal Alien Removal Act of 2003: Hearing on H.R. 2671 Before the H. Comm. On the Judiciary* (Oct. 1, 2003) (statement of Kris W. Kobach, Professor of Law, University of Missouri-Kansas City), p. 2, *available at*http://judiciary.house.gov/HearingTestimony.aspx?ID=238 (last visited Sept. 28, 2007) (noting that Counsel issued "an erroneous 1996 opinion," which was corrected by unpublished opinion in 2002).

17 *See supra* notes 8-9 and accompanying text.

18 *See*VA. CODE ANN. § 19.2-81.6 (2004) (authorizing enforcement of **immigration** laws of the United States); § 19.2-82(B) (2004) (establishing procedure for arrest without warrant and providing limitation of seventy-two hours).

19 Pursuant to 8 U.S.C. § 1325(a)(3), a first offense for improper entry by an alien into the United States is punishable by up to six months imprisonment while a subsequent offense is punishable up to two years.

20 Sessions & Hayden, *supra* note 8, at 341-42 (noting that "[w]hile most sections of the INA do not expressly delineate which law enforcement officers have the authority to enforce them, several sections expressly recognize general state and **local** authority to enforce federal **immigration** law"); *see also*8 U.S.C.S. § 1252c(a) (LexisNexis 1997) (granting authority "to the extent permitted by relevant State and **local** law").

21 *See supra* note 7 and accompanying text.

22 *See generally* Jay T. Jorgensen, Comment, *The Practical Power of State and **Local** Governments to Enforce Federal **Immigration** Laws*, 1997 BYU L. REV. 899, 920-21 (1997). "[T]he only question that remains to be resolved where Congress explicitly grants state and **local** authority to enforce the **[Immigration** and Nationality Act]'s provisions is whether state and **localimmigration** enforcement is authorized by state law." *Id.* at 920.

23 *See Gonzales*, 722 F.2d at 475-77 (requiring that state law grant state **police** authority that is delegated from federal government).

24 *Id.*

25 *See* 2007 Op. Va. Att'y Gen. No. 07-016, *available at*http:// www.vaag.com/OPINIONS/2007opns/07-016-Rust.pdf.

26 *Id.*

27 Such authority exists in the context of "287g" agreements pursuant to 8 U.S.C. § 1357(g)(1) and general agreements to cooperate pursuant to § 1357(g)(10).

28 VA. CODE ANN. § 15.2-1704(a) (Supp. 2007).

29 While authority arguably exists within the existing language of § 15.2-1704, clarification by the General Assembly ultimately may

be necessary.

30 *See* VA. CODE ANN. § 15.2-1704(B)(iii) (authorizing execution of all warrants or summons from magistrates).

31 *See supra* notes 8-13 and accompanying text.

32 *See supra* notes 10-11 and accompanying text.

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FAIRFAX COUNTY
VIRGINIA

Diversion First: Progress and Future Direction

-Update-

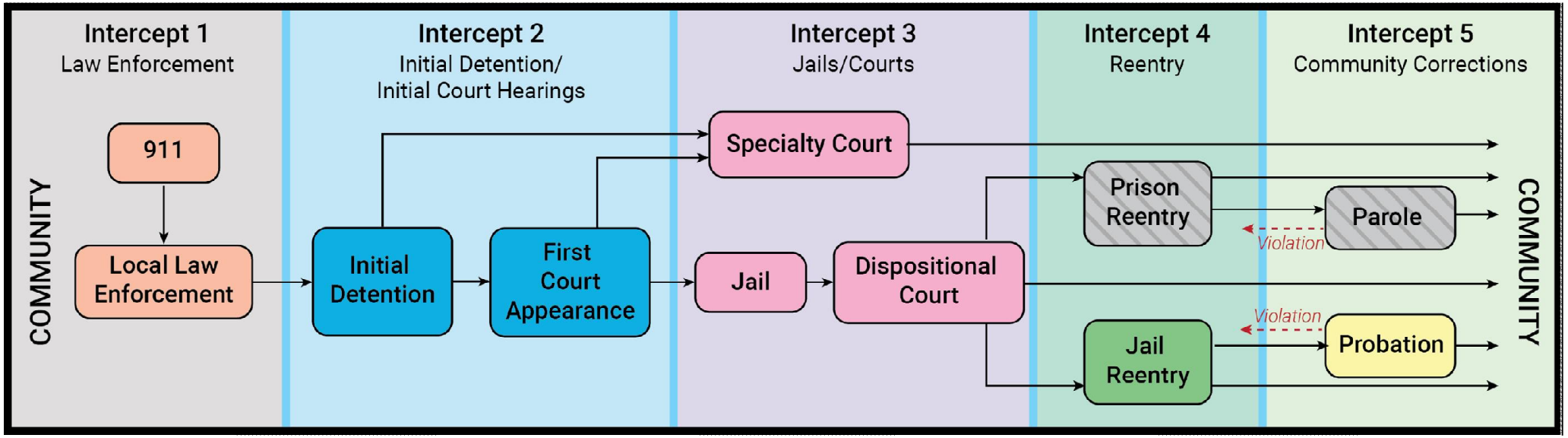
Laura Yager, Director of Systems Transformation, Office of the County Executive
The Honorable Michael Cassidy, Chief Judge, Fairfax County General District Court
Daryl Washington, Deputy Director, Fairfax-Falls Church Community Services Board
Lt. Ryan Morgan, CIT Coordinator, Fairfax County Police Department
The Honorable Thomas Sotelo, Chief Judge, Fairfax County Juvenile and Domestic Relations Court

March 21, 2017

What is Diversion First?

- Diversion First offers alternatives to incarceration for people with mental illness or developmental disabilities who come into contact with the criminal justice system for low level offenses.
- The goal is to intercede whenever possible to provide assessment, treatment or needed supports. People needing diversion may also have a substance use disorder, which often co-occurs with mental illness.
- Diversion First is designed to prevent repeat encounters with the criminal justice system, improve public safety, promote a healthier community and is a more cost-effective and efficient use of public funding.

Sequential Intercept Model Map



SAMHSA's GAINS Center. (2013). *Developing a comprehensive plan for behavioral health and criminal justice collaboration. The Sequential Intercept Model* (3rd ed.). Delmar, NY: Policy Research Associates, Inc.

2016 updates: Focus on Intercept 1

Merrifield Crisis Response Center (MCRC)

- 1,580 police-involved cases brought to MCRC
  - 31% of all CSB Emergency Services (ES) cases
  - 123% increase in Emergency Custody Orders (ECOs) from 2015 to 2016
  - 375 people diverted from potential arrest

Workforce Development

- Crisis Intervention Team (CIT) graduates: 265 law enforcement officers and 42 dispatchers trained
- Mental Health First Aid (MHFA) certification: 248 deputies, 30 magistrates, 908 general
- FRD: 205 trained in mental health awareness (to implement emergency department diversion protocol)

2016 updates

National Initiatives

- *Stepping Up* Summit- 1 of 50 teams selected in the Country
- *Stepping Up* National Justice-Behavioral Health Leadership Summit- 1 of 28 in the country
- National Justice-Behavioral Health Data Initiative

Non-Local Funds

- $630K for CIT LEO staffing (through 6/30/18)
- $1K DCJS CIT operational funds
- Permanent Supportive Housing Funds

Unprecedented Collaboration

- Stakeholders Group
  - Current membership **180 people**
- Leadership Group
- Communications
- Data and Evaluation
- Problem-Solving Team
- Courts Stakeholders meeting
- Multiple Ad Hoc groups: FRD ED Diversion, Medical Clearance

Diversion First Annual Report:

http://www.fairfaxcounty.gov/diversionfirst/documents/2016-diversion-first-annual-report-final.pdf

GDC Criminal Intake

DIVERSION FIRST

Million Dollar Murray

Court Services Collaborative Efforts

- Weekly Courthouse meetings: Sheriff's Office, Courts, CSB
  - Collaboration and combined services with aligned but separate missions
- Staff are coming together around "court time" requirements to:
  - Prepare recommendations at advisement (sometimes within 24 hours) and bond motions (general within 3-4 days)
  - Develop responsive approaches for people returning from Western State to coordinate proper placement prior to a hearing.
- Responding to unique monitoring and treatment needs for people in Supervised Release Program

Pilot Period Results

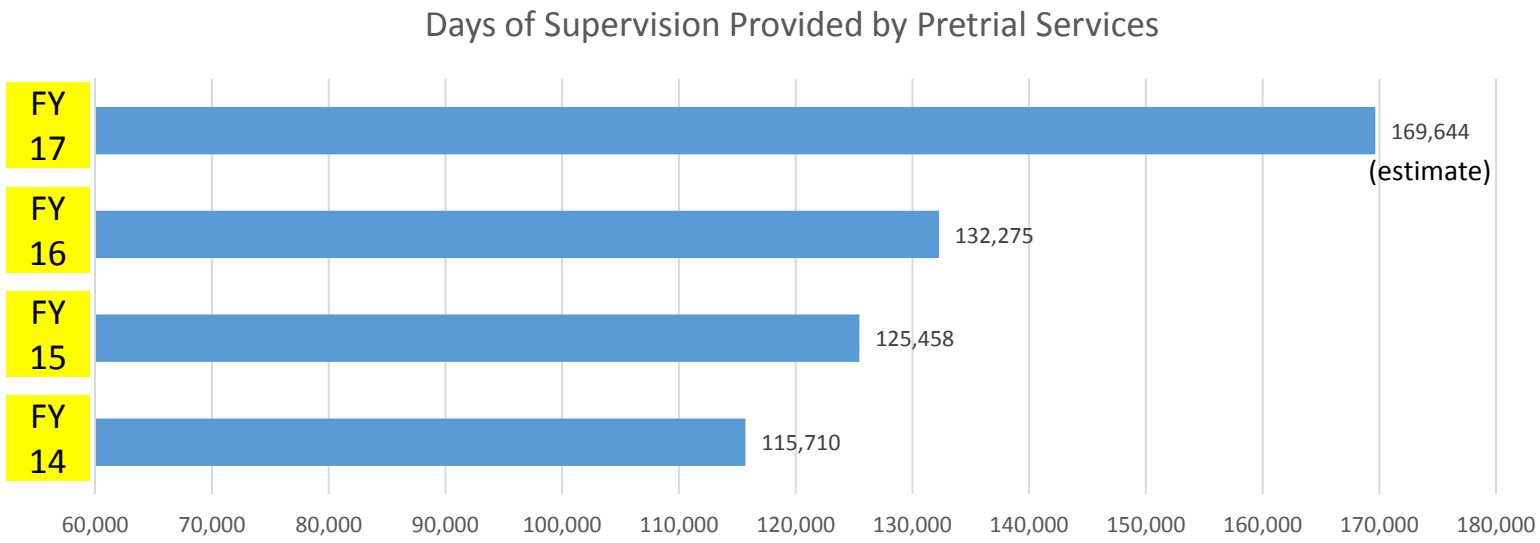
(July 2016 – December 2016)

- **818 defendants** were placed on **pretrial supervision** during the pilot period.

- **95 defendants** were placed on pretrial supervision that indicated a need for further **mental health assessment**.
  - 4 from the Magistrates
  - 17 at advisement (first court appearance)
  - 74 from bond motions

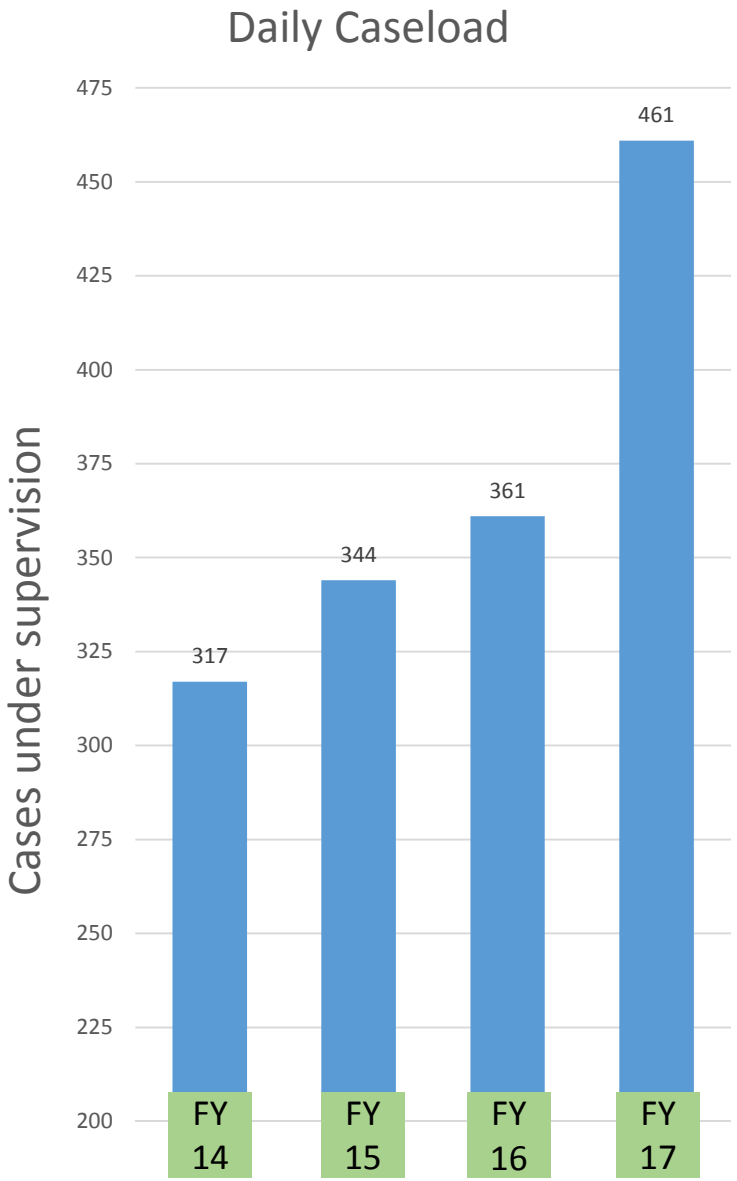
- **48 defendants** placed on pretrial supervision were Court ordered to **undergo a mental health evaluation** and follow any recommended mental health treatment.

Impact on Court Services



Impact on Court Services

The number of defendants on pretrial supervision has increased dramatically since the change in methodology for recommending higher needs defendants for pretrial supervision began. It is noteworthy that the defendants that represent this increase had a **high probability of remaining incarcerated** until their cases were adjudicated and that they typically required a **more intensive level of supervision.**



Case Load Increase

- 422 new Diversion cases estimated
  - Annual estimate based on 6 month pilot
  - 286 GDC & Circuit cases
  - 98 JDR cases (31% of 316 estimated cases)
  - 38 Transfer cases (31% of 120 estimated cases)

- 37% increase in high risk clients
  - Pre-diversion Dec 2015 vs. Post-diversion Dec 2016
  - High Risk Clients - 17.9% to 24.6%
  - Above Average Risk Clients - 9% increase - 19.6% to 21.4%
- Significant annual jail cost avoidance through diversion
  - $192 cost per day to house an inmate (based on Sheriff's Department statistic)

General District Court
Courts Services Metrics

85 cases/Probation Counselor (current)

- **35 intensive supervision cases**
- **<u>PLUS</u> 50 standard probation cases**
- **Dangerously high ratio**

10 additional Probation Counselors needed to meet State Standard

- 40 intensive supervision cases/Probation Counselor
- **<u>OR</u>** 60 standard probation cases/Probation Counselor
- **Not both**

5/5.0 FTE additional Probation Counselors needed for FY18
Estimated cost: $470K

CSB System Needs

CSB services are needed to align with the Courts to assure timely assessments, treatment recommendations, and service linkages in order to make diversion work at this intercept:

- 6/6.0 FTE positions to support Courts
- 1/1.0 FTE System Navigator at MCRC to engage and link to treatment

Total FY 18 Identified Need: 7/7.0 Total FTE

Estimated cost: $725K

Additional Gaps & Needs at MCRC (Intercept 1)

MCRC site model is for 24/7 coverage

- Best practice for CIT Assessment Sites

Staffing needed for 24/7 coverage:

- 3/3.0 FTE sheriff deputies estimated cost: $400K
- 3/3.0 police officers estimated cost: $400K

Total FY 18 Identified Need: 6/6.0 Total FTE

Estimated cost: $800K

Diversion First Local Budget Information

FY 2017

Budget Allocation: $5,092,964

- 19/19.0 FTEs

FY 2018

- Original budget request: $5,243,590 and 30/30.0 FTEs
- Advertised budget recommendation: $0
- This presentation identifies priority needs totaling $1.995 million and 18/18.0 FTEs

DIVERSION FIRST

Juvenile and Domestic Relations Court:

Purpose & Intent

Virginia Code 16.-227

To **divert** from or within the juvenile justice system, to the extent possible, consistent with the protection of the **public safety**, those children who can be cared for or treated through **alternative programs**;

Juvenile Intake

- Juvenile Intake Officers essentially perform the same function as Magistrates do in the Adult system.
- Intake Officers are trained to implement validated assessment tools at the intake level to aid in their decision making regarding the appropriate level of diversion services.

Assessment Tools

- Youth Assessment Screening Instrument (YASI)
  - Determines the level of risk to reoffend
  - Determines risk and protective factors providing probation officers, intake officers and the Court targeted areas to intervene
- Global Assessment of Individual Needs, Short Screen (GAINS-SS)
  - 5 to 10 min tool to screen adolescents for possible mental health or substance use disorders
  - High scores result in referrals to CSB or private providers where appropriate

Juvenile Intake Diversion Data

- Alternative Accountability Program:
  - 81% of referrals reach agreement
  - 99% of youth are compliant with agreed sanctions/outcomes
- Juvenile Intake Diversion Program:
  - 95% Successful Completion Rate
  - 83% avoided a criminal record six months after completing diversion

DIVERSION FIRST

Goal

- Decrease the number of low risk youth from formally penetrating the formal court process.
- Connect youth and families with services without having to penetrate the formal court process.
- Decrease the amount of racial and ethnic disparities in diversion decision making
- Right Child, Right Time, Right Dosage !

DIVERSION FIRST

Questions and Discussion

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

SUBJECT:

Implementing the President's Border Security and Immigration Enforcement Improvements Policies

This memorandum implements the Executive Order entitled "Border Security and Immigration Enforcement Improvements," issued by the President on January 25, 2017, which establishes the President's policy regarding effective border security and immigration enforcement through faithful execution of the laws of the United States. It implements new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States. It constitutes guidance to all Department personnel, and supersedes all existing conflicting policy, directives, memoranda, and other guidance regarding this subject matter—to the extent of the conflict—except as otherwise expressly stated in this memorandum.

A. Policies Regarding the Apprehension and Detention of Aliens Described in Section 235 of the Immigration and Nationality Act.

The President has determined that the lawful detention of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) pending a final determination of whether to order them removed, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as "catch-and-release," shall end.

Accordingly, effective upon my determination of (1) the establishment and deployment of a joint plan with the Department of Justice to surge the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants; and, (2) the establishment of appropriate processing and detention facilities, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) personnel should only release from detention an alien detained pursuant to section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States, in the following situations on a case-by-case basis, to the extent consistent with applicable statutes and regulations:

1. When removing the alien from the United States pursuant to statute or regulation;

2. When the alien obtains an order granting relief or protection from removal or the Department of Homeland Security (DHS) determines that the individual is a U.S. citizen, national of the United States, or an alien who is a lawful permanent resident, refugee, asylee, holds temporary protected status, or holds a valid immigration status in the United States;

3. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director consents to the alien's withdrawal of an application for admission, and the alien contemporaneously departs from the United States;

4. When required to do so by statute, or to comply with a binding settlement agreement or order issued by a competent judicial or administrative authority;

5. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director authorizes the alien's parole pursuant to section 212(d)(5) of the INA with the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP, except in exigent circumstances such as medical emergencies where seeking prior approval is not practicable. In those exceptional instances, any such parole will be reported to the Deputy Director or Deputy Commissioner as expeditiously as possible; or

6. When an arriving alien processed under the expedited removal provisions of section 235(b) has been found to have established a "credible fear" of persecution or torture by an asylum officer or an immigration judge, provided that such an alien affirmatively establishes to the satisfaction of an ICE immigration officer his or her identity, that he or she presents neither a security risk nor a risk of absconding, and provided that he or she agrees to comply with any additional conditions of release imposed by ICE to ensure public safety and appearance at any removal hearings.

To the extent current regulations are inconsistent with this guidance, components will develop or revise regulations as appropriate. Until such regulations are revised or removed, Department officials shall continue to operate according to regulations currently in place.

As the Department works to expand detention capabilities, detention of all such individuals may not be immediately possible, and detention resources should be prioritized based upon potential danger and risk of flight if an individual alien is not detained, and parole determinations will be made in accordance with current regulations and guidance. *See* 8 C.F.R. §§ 212.5, 235.3. This guidance does not prohibit the return of an alien who is arriving on land to the foreign territory contiguous to the United States from which the alien is arriving pending a removal proceeding under section 240 of the INA consistent with the direction of an ICE Field Office Director, ICE Special Agent-in-Charge, CBP Chief Patrol Agent, or CBP Director of Field Operations.

B. Hiring More CBP Agents/Officers

CBP has insufficient agents/officers to effectively detect, track, and apprehend all aliens illegally entering the United States. The United States needs additional agents and officers to ensure complete operational control of the border. Accordingly, the Commissioner of CBP shall—while ensuring consistency in training and standards—immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers, subject to the availability of resources, and take all actions necessary to ensure that such agents/officers enter on duty and are assigned to appropriate duty stations, including providing for the attendant resources and additional personnel necessary to support such agents, as soon as practicable.

Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for

Management, Chief Financial Officer, and Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

C. Identifying and Quantifying Sources of Aid to Mexico

The President has directed the heads of all executive departments to identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico. Accordingly, the Under Secretary for Management shall identify all sources of direct or indirect aid and assistance, excluding intelligence activities, from every departmental component to the Government of Mexico on an annual basis, for the last five fiscal years, and quantify such aid or assistance. The Under Secretary for Management shall submit a report to me reflecting historic levels of such aid or assistance provided annually within 30 days of the date of this memorandum.

D. Expansion of the 287(g) Program in the Border Region

Section 287(g) of the INA authorizes me to enter into a written agreement with a state or political subdivision thereof, for the purpose of authorizing qualified officers or employees of the state or subdivision to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. This grant of authority, known as the 287(g) Program, has been a highly successful force multiplier that authorizes state or local law enforcement personnel to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, transport and conduct searches of an alien for the purposes of enforcing the immigration laws. From January 2006 through September 2015, the 287(g) Program led to the identification of more than 402,000 removable aliens, primarily through encounters at local jails.

Empowering state and local law enforcement agencies to assist in the enforcement of federal immigration law is critical to an effective enforcement strategy. Aliens who engage in criminal conduct are priorities for arrest and removal and will often be encountered by state and local law enforcement officers during the course of their routine duties. It is in the interest of the Department to partner with those state and local jurisdictions through 287(g) agreements to assist in the arrest and removal of criminal aliens.

To maximize participation by state and local jurisdictions in the enforcement of federal immigration law near the southern border, I am directing the Director of ICE and the Commissioner of CBP to engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements for the purpose of entering into agreements under 287(g) of the INA.

The Commissioner of CBP and the Director of ICE should consider the operational functions and capabilities of the jurisdictions willing to enter into 287(g) agreements and structure such agreements in a manner that employs the most effective enforcement model for that jurisdiction, including the jail enforcement model, task force officer model, or joint jail enforcement-task force officer model. In furtherance of my direction herein, the Commissioner of

CBP is authorized, in addition to the Director of ICE, to accept state services and take other actions as appropriate to carry out immigration enforcement pursuant to 287(g).

E. Commissioning a Comprehensive Study of Border Security

The Under Secretary for Management, in consultation with the Commissioner of CBP, Joint Task Force (Border), and Commandant of the Coast Guard, is directed to commission an immediate, comprehensive study of the security of the southern border (air, land and maritime) to identify vulnerabilities and provide recommendations to enhance border security. The study should include all aspects of the current border security environment, including the availability of federal and state resources to develop and implement an effective border security strategy that will achieve complete operational control of the border.

F. Border Wall Construction and Funding

A wall along the southern border is necessary to deter and prevent the illegal entry of aliens and is a critical component of the President's overall border security strategy. Congress has authorized the construction of physical barriers and roads at the border to prevent illegal immigration in several statutory provisions, including section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, 8 U.S.C. § 1103 note.

Consistent with the President's Executive Order, the will of Congress and the need to secure the border in the national interest, CBP, in consultation with the appropriate executive departments and agencies, and nongovernmental entities having relevant expertise—and using materials originating in the United States to the maximum extent permitted by law—shall immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border.

The Under Secretary for Management, in consultation with the Commissioner of CBP shall immediately identify and allocate all sources of available funding for the planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget requests for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years.

G. Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

It is in the national interest to detain and expeditiously remove from the United States aliens apprehended at the border, who have been ordered removed after consideration and denial of their claims for relief or protection. Pursuant to section 235(b)(1)(A)(i) of the INA, if an immigration officer determines that an arriving alien is inadmissible to the United States under

section 212(a)(6)(C) or section 212(a)(7) of the INA, the officer shall, consistent with all applicable laws, order the alien removed from the United States without further hearing or review, unless the alien is an unaccompanied alien child as defined in 6 U.S.C. § 279(g)(2), indicates an intention to apply for asylum or a fear of persecution or torture or a fear of return to his or her country, or claims to have a valid immigration status within the United States or to be a citizen or national of the United States.

Pursuant to section 235(b)(1)(A)(iii)(I) of the INA and other provisions of law, I have been granted the authority to apply, by designation in my sole and unreviewable discretion, the expedited removal provisions in section 235(b)(1)(A)(i) and (ii) of the INA to aliens who have not been admitted or paroled into the United States, who are inadmissible to the United States under section 212(a)(6)(C) or section 212(a)(7) of the INA, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been continuously physically present in the United States for the two-year period immediately prior to the determination of their inadmissibility. To date, this authority has only been exercised to designate for application of expedited removal, aliens encountered within 100 air miles of the border and 14 days of entry, and aliens who arrived in the United States by sea other than at a port of entry.[1]

The surge of illegal immigration at the southern border has overwhelmed federal agencies and resources and has created a significant national security vulnerability to the United States. Thousands of aliens apprehended at the border, placed in removal proceedings, and released from custody have absconded and failed to appear at their removal hearings. Immigration courts are experiencing a historic backlog of removal cases, primarily proceedings under section 240 of the INA for individuals who are not currently detained.

During October 2016 and November 2016, there were 46,184 and 47,215 apprehensions, respectively, between ports of entry on our southern border. In comparison, during October 2015 and November 2015 there were 32,724 and 32,838 apprehensions, respectively, between ports of entry on our southern border. This increase of 10,000–15,000 apprehensions per month has significantly strained DHS resources.

Furthermore, according to EOIR information provided to DHS, there are more than 534,000 cases currently pending on immigration court dockets nationwide—a record high. By contrast, according to some reports, there were nearly 168,000 cases pending at the end of fiscal year (FY) 2004 when section 235(b)(1)(A)(i) was last expanded.[2] This represents an increase of more than 200% in the number of cases pending completion. The average removal case for an alien who is not detained has been pending for more than two years before an immigration judge.[3] In some immigration courts, aliens who are not detained will not have their cases heard by an

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[1] Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 Fed. Reg. 4902 (Jan. 17, 2017).

[2] Syracuse University, *Transactional Records Access Clearinghouse (TRAC) Data Research*; available at http://trac.syr.edu/phptools/immigration/court_backlog/.

[3] *Id.*

immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force. I direct the Commissioner of CBP and the Director of ICE to conform the use of expedited removal procedures to the designations made in this notice upon its publication.

H. Implementing the Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

Section 235(b)(2)(C) of the INA authorizes the Department to return aliens arriving on land from a foreign territory contiguous to the United States, to the territory from which they arrived, pending a formal removal proceeding under section 240 of the INA. When aliens so apprehended do not pose a risk of a subsequent illegal entry or attempted illegal entry, returning them to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens.

Accordingly, subject to the requirements of section 1232, Title 8, United States Code, related to unaccompanied alien children and to the extent otherwise consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings.

To facilitate the completion of removal proceedings for aliens so returned to the contiguous country, ICE Field Office Directors, ICE Special Agents-in-Charge, CBP Chief Patrol Agent, and CBP Directors of Field Operations shall make available facilities for such aliens to appear via video teleconference. The Director of ICE and the Commissioner of CBP shall consult with the Director of EOIR to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country.

I. Enhancing Asylum Referrals and Credible Fear Determinations Pursuant to Section 235(b)(1) of the INA

With certain exceptions, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum. For those aliens who are subject

to expedited removal under section 235(b) of the INA, aliens who claim a fear of return must be referred to an asylum officer to determine whether they have established a credible fear of persecution or torture.[4] To establish a credible fear of persecution, an alien must demonstrate that there is a "significant possibility" that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.[5]

The Director of USCIS shall ensure that asylum officers conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, the asylum officer shall consider the statements of the alien and determine the credibility of the alien's statements made in support of his or her claim and shall consider other facts known to the officer, as required by statute.[6]

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that the alien has a significant possibility of establishing eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.[7]

The Director of USCIS shall also increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and continue to strengthen the integration of its operations to support the Field Operations, Refugee, Asylum, and International Operations, and Service Center Operations Directorate, to detect and prevent fraud in the asylum and benefits adjudication processes, and in consultation with the USCIS Office of Policy and Strategy as operationally appropriate.

The Director of USCIS, the Commissioner of CBP, and the Director of ICE shall review fraud detection, deterrence, and prevention measures throughout their respective agencies and provide me with a consolidated report within 90 days of the date of this memorandum regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes.

J. Allocation of Resources and Personnel to the Southern Border for Detention of Aliens and Adjudication of Claims

The detention of aliens apprehended at the border is critical to the effective enforcement of the immigration laws. Aliens who are released from custody pending a determination of their removability are highly likely to abscond and fail to attend their removal hearings. Moreover, the screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at

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[4] *See* INA § 235(b)(1)(A)-(B); 8 C.F.R. §§ 235.3, 208.30.
[5] *See* INA § 235(b)(1)(B)(v).
[6] *See id.*
[7] *Id.*

detention facilities located at or near the point of apprehension will facilitate an expedited resolution of those claims and result in lower detention and transportation costs.

Accordingly, the Director of ICE and the Commissioner of CBP should take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable. CBP shall focus these actions on expansion of "short-term detention" (defined as 72 hours or less under 6 U.S.C. § 211(m)) capability, and ICE will focus these actions on expansion of all other detention capabilities. CBP and ICE should also explore options for joint temporary structures that meet appropriate standards for detention given the length of stay in those facilities.

In addition, to the greatest extent practicable, the Director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

K. Proper Use of Parole Authority Pursuant to Section 212(d)(5) of the INA

The authority to parole aliens into the United States is set forth in section 212(d)(5) of the INA, which provides that the Secretary may, in his discretion and on a case-by-case basis, temporarily parole into the United States any alien who is an applicant for admission for urgent humanitarian reasons or significant public benefit. The statutory language authorizes parole in individual cases only where, after careful consideration of the circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit. In my judgment, such authority should be exercised sparingly.

The practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the Director of USCIS, the Commissioner of CBP, and the Director of ICE shall ensure that, pending the issuance of final regulations clarifying the appropriate use of the parole power, appropriate written policy guidance and training is provided to employees within those agencies exercising parole authority, including advance parole, so that such employees are familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance.

Notwithstanding any other provision of this memorandum, pending my further review and evaluation of the impact of operational changes to implement the Executive Order, and additional guidance on the issue by the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to have a credible fear of persecution or

torture shall remain in full force and effect.[8] The ICE policy directive shall be implemented in a manner consistent with its plain language. In every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remains on the individual alien, and ICE retains ultimate discretion whether it grants parole in a particular case.

L. Proper Processing and Treatment of Unaccompanied Alien Minors Encountered at the Border

In accordance with section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified in part at 8 U.S.C. § 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. § 279), unaccompanied alien children are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by an immigration officer. An unaccompanied alien child, as defined in section 279(g)(2), Title 6, United States Code, is an alien who has no lawful immigration status in the United States, has not attained 18 years of age; and with respect to whom, (1) there is no parent or legal guardian in the United States, or (2) no parent of legal guardian in the United States is available to provide care and physical custody.

Approximately 155,000 unaccompanied alien children have been apprehended at the southern border in the last three years. Most of these minors are from El Salvador, Honduras, and Guatemala, many of whom travel overland to the southern border with the assistance of a smuggler who is paid several thousand dollars by one or both parents, who reside illegally in the United States.

With limited exceptions, upon apprehension, CBP or ICE must promptly determine if a child meets the definition of an "unaccompanied alien child" and, if so, the child must be transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.[9] The determination that the child is an "unaccompanied alien child" entitles the child to special protections, including placement in a suitable care facility, access to social services, removal proceedings before an immigration judge under section 240 of the INA, rather than expedited removal proceedings under section 235(b) of the INA, and initial adjudication of any asylum claim by USCIS.[10]

Approximately 60% of minors initially determined to be "unaccompanied alien children" are placed in the care of one or more parents illegally residing in the United States. However, by Department policy and practice, such minors maintained their status as "unaccompanied alien children," notwithstanding that they may no longer meet the statutory definition once they have been placed by HHS in the custody of a parent in the United States who can care for the minor. Exploitation of that policy led to abuses by many of the parents and legal guardians of those minors and has contributed to significant administrative delays in adjudications by immigration

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[8] ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).

[9] *See* 8 U.S.C. § 1232(b)(3).

[10] *See generally* 8 U.S.C. § 1232; INA § 208(b)(3)(C).

courts and USCIS.

To ensure identification of abuses and the processing of unaccompanied alien children consistent with the statutory framework and any applicable court order, the Director of USCIS, the Commissioner of CBP, and the Director of ICE are directed to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal, and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be "unaccompanied alien child[ren]," as defined in section 279(g)(2), Title 6, United States Code, continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

M. Accountability Measures to Protect Alien Children from Exploitation and Prevent Abuses of Our Immigration Laws

Although the Department's personnel must process unaccompanied alien children pursuant to the requirements described above, we have an obligation to ensure that those who conspire to violate our immigration laws do not do so with impunity—particularly in light of the unique vulnerabilities of alien children who are smuggled or trafficked into the United States.

The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable.

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States. In appropriate cases, taking into account the risk of harm to the child from the specific smuggling or trafficking activity that the individual facilitated and other factors relevant to the individual's culpability and the child's welfare, proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

N. Prioritizing Criminal Prosecutions for Immigration Offenses Committed at the Border

The surge of illegal immigration at the southern border has produced a significant increase in organized criminal activity in the border region. Mexican drug cartels, Central American gangs, and other violent transnational criminal organizations have established sophisticated criminal

enterprises on both sides of the border. The large-scale movement of Central Americans, Mexicans, and other foreign nationals into the border area has significantly strained federal agencies and resources dedicated to border security. These criminal organizations have monopolized the human trafficking, human smuggling, and drug trafficking trades in the border region.

It is in the national interest of the United States to prevent criminals and criminal organizations from destabilizing border security through the proliferation of illicit transactions and violence perpetrated by criminal organizations.

To counter this substantial and ongoing threat to the security of the southern border—including threats to our maritime border and the approaches—the Directors of the Joint Task Forces-West, -East, and -Investigations, as well as the ICE-led Border Enforcement Security Task Forces (BESTs), are directed to plan and implement enhanced counternetwork operations directed at disrupting transnational criminal organizations, focused on those involved in human smuggling. The Department will support this work through the Office of Intelligence and Analysis, CBP's National Targeting Center, and the DHS Human Smuggling Cell.

In addition, the task forces should include participants from other federal, state, and local agencies, and should target individuals and organizations whose criminal conduct undermines border security or the integrity of the immigration system, including offenses related to alien smuggling or trafficking, drug trafficking, illegal entry and reentry, visa fraud, identity theft, unlawful possession or use of official documents, and acts of violence committed against persons or property at or near the border.

In order to support the efforts of the BESTs and counter network operations of the Joint Task Forces, the Director of ICE shall increase of the number of special agents and analysts in the Northern Triangle ICE Attaché Offices and increase the number of vetted Transnational Criminal Investigative Unit international partners. This expansion of ICE's international footprint will focus both domestic and international efforts to dismantle transnational criminal organizations that are facilitating and profiting from the smuggling routes to the United States.

O. Public Reporting of Border Apprehensions Data

The Department has an obligation to perform its mission in a transparent and forthright manner. The public is entitled to know, with a reasonable degree of detail, information pertaining to the aliens unlawfully entering at our borders.

Therefore, consistent with law, in an effort to promote transparency and renew confidence in the Department's border security mission, the Commissioner of CBP and the Director of ICE shall develop a standardized method for public reporting of statistical data regarding aliens apprehended at or near the border for violating the immigration law. The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public in a medium that can be readily accessed.

At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following information must be included: the number of convicted criminals and the nature of their offenses; the prevalence of gang members and prior immigration violators; the custody status of aliens and, if released, the reason for release and location of that release; and the number of aliens ordered removed and those aliens physically removed.

P. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Sheriff

Ad Hoc Police Practices Review Commission - Progress Report (12.12.2016)

Subcommittee	Recommendation	Recommendation #	Final Report Page #	Status	Contact	Details
Mental Health	Implement "Stepping Up." The Board of Supervisors, the CSB, the Judiciary, State legislators, and the Sheriff's Office should collaborate to implement a community-wide system of care overhaul using the BOS-endorsed, national initiative known as "Stepping Up."	MH-8.a.	84	**In Progress**	CSB	
Mental Health	Provide CIT Training to jail and custodial personnel. The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to deputies detailed to courtroom security and deputies working inside the Adult Detention Center.	MH-12.a.	85	**In Progress**	Sheriff's Office	
Mental Health	Establish strategically located CIT assessment sites. The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD, and the Sheriff's Office collaboratively.	MH-13.a.	85	**In Progress**	CSB	Diversion First/Merrifield Crisis Response Center
Mental Health	CSB and Sheriff's Office to consider increasing behavioral health clinician staff hour availability inside the Adult Detention Center (ADC), to include not only on-site, but through technology.	MH-16.a.	87	**In Progress**	CSB / Sheriff's Office	

Commonwealth's Attorney

Ad Hoc Police Practices Review Commission - Progress Report (12.12.2016)

Subcommittee	Recommendation	Recommendation #	Final Report Page #	Status	Contact	Details
Use of Force	The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to meet its charge to "...review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; follow up on open issues, such as the internal FCPD UOF Committee charter; and support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.	UOF-40	126	**Not Implemented**	Dep. Co. Exec. for Public Safety	
Oversight	Criminal investigations of FCPD officers involved in incidents in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases") should continue to be conducted by the FCPD Major Crimes Division. Exceptions could occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation should be conducted by investigators from another Northern Virginia jurisdiction police department or by the Virginia State Police.	IOI-1	180	**Implemented**	PD & CWA	
Oversight	Funds should be appropriated to the Commonwealth's Attorney's Office to allow for the fulltime employment of two independent criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations within the scope of the Independent Police Auditor.	IOI-2	180	**Under Review**	Commonwealth's Attorney (CWA)	
Oversight	Such investigators shall participate in MCD criminal investigations of cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.	IOI-2.a.	181	**Under Review**	PD & CWA	
Oversight	The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of Police.	IOI-4	181	**Implemented**	Dep. Co. Exec. for Public Safety	

Oversight	The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a death or serious injury case, or other case within the scope of the responsibilities of the Independent Police Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by another Virginia Commonwealth's Attorney.	IOI-6	181	**Implemented**	Commonwealth's Attorney (CWA)	
Oversight	The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving death or serious injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.	IOI-7	181	**Implemented**	Commonwealth's Attorney (CWA)	
Oversight	The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.	IOI-16	184	**In Progress**	Dep. Co. Exec. for Public Safety	

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

SUBJECT:

Enforcement of the Immigration Laws to Serve the National Interest

This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," and the November 20, 2014 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents,"[1] all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," and "Secure Communities."

A. The Department's Enforcement Priorities

Congress has defined the Department's role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

[1] The November 20, 2014, memorandum will be addressed in future guidance.

B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department's resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department's personnel, and hampered the Department's enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE's Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department's detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an "immigration officer" for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

C. Exercise of Prosecutorial Discretion

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, lCE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of

the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

G. Aligning the Department's Privacy Policies With the Law

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the DHS *Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will

develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

H. Collecting and Reporting Data on Alien Apprehensions and Releases

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

I. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Immigrants in Fairfax County

Feb. 24, 2017

Fairfax County has received several inquiries about federal changes in policies or procedures regarding immigrants. This page will be updated as new information becomes available.

Health and Human Services

As with any new federal administration, there may be changes that impact programs and services provided at the local level. Our housing, health and human services programs and legislative staff are actively monitoring executive orders and proposals by Congress in assessing any immediate and long-term impacts. Despite uncertainty, our mission to support the well-being of all who live, work and play in Fairfax County remains the same. For any family or individual in need, county services are available to help you. We encourage you to contact our offices to seek assistance.

Sheriff's Office

The Fairfax County Sheriff's Office, which manages the Fairfax County Adult Detention Center (ADC), complies with all state and federal laws, including the requirements of U.S. Immigration and Customs Enforcement (ICE).

When a person is arrested and booked into the ADC, the person's fingerprints are automatically transmitted to state and federal authorities, including ICE.

If ICE places both an arrest warrant and an order to detain on an inmate in the ADC, the Sheriff's Office must hold the inmate for up to 72 hours past his or her release date (not counting weekends and holidays) under a 2012 intergovernmental service agreement with ICE. If ICE does not take custody of the inmate within that time frame, the inmate will be released. Effective April 2, 2017, that agreement will expire, and the Sheriff's Office hold time will be limited to 48 hours (not counting weekends and holidays).

In 2016, the Sheriff's Office received ICE arrest warrants/orders to detain for 289 inmates. Of those 289 inmates, ICE took custody of 258.

Police Department

The Fairfax County Police Department (FCPD) investigates every crime reported to them and responds to every call for police assistance, regardless of a person's immigration status. They strive to serve, protect and provide police assistance to anyone in this county who needs it. When the police arrest someone, they do not check immigration status.

The Police Department is not involved in targeted immigration enforcement operations with Homeland Security Investigations (HSI). Local and state law enforcement officers, including Fairfax County, do not have the authority to conduct immigration enforcement sweeps or stop anyone solely to inquire about their citizenship or immigration status.

Prior to any HSI activity, the investigators make every effort to notify the Police Department through the communications dispatch center. This is done for general awareness purposes and in the event they experience an unforeseen emergency that requires local law enforcement or emergency medical assistance.

The below paragraphs cite the FCPD General Order 601 – Arrest Procedures:

"Our officers have limited authority to arrest undocumented aliens for violations of federal immigration laws under the Virginia Code. If we come in contact with any person in the performance of our duties and a warrant check is conducted via the National Criminal Information Center (NCIC), the Immigration Violators File (IVF) is automatically searched and a "hit" may be received. IVF hits are based on administrative warrants entered by ICE (now called HSI) on deported felons and absconders. There are situations (e.g., reports of suspicious persons or activity) in which officers may not have reasonable suspicion that an individual has committed or is committing a crime, or probable cause to effect an arrest, but still have cause to check a person's wanted status through NCIC. It is the policy of the Department to not knowingly release any person identified and confirmed by ICE (HSI) as a previously deported felon illegally present in the United States back into the community if probable cause to arrest under the provisions of §19.2-81.6 exists, or a detainer can be obtained.

"If the response reads "OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL" and the individual is not in custody or being taken into custody for any other violation of law, officers shall not confirm the hit through the LESC and shall not take the individual into custody based solely upon the IVF hit. The majority of such administrative warrants represent civil violations of immigration law."

The following criteria must exist for a FCPD officer to effect an arrest an illegal alien as it pertains to Virginia State Code §19.2-81.6:

§19.2-81.6. Authority of law-enforcement officers to arrest illegal aliens. All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-81.

Juvenile and Domestic Relations District Court

The Juvenile and Domestic Relations District Court adheres to the Code of Virginia with respect to reporting violent felonies to the proper authorities. Virginia Code Section 16.1-309.1 (H) states "that an intake officer shall report to the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent felony and who the intake officer has probable cause to believe is in the United States illegally." The intake officer will complete a violent offender form which assists in determining this status.

Sanctuary City Status

Fairfax County is not a Sanctuary County or Sanctuary City.

It is important to note that the term “sanctuary county” or (more commonly) “sanctuary city” is not a legal term, and therefore the term means different things to different people. Generally, the term sanctuary city is given to cities in the United States or Canada that have policies designed to shelter illegal immigrants. The term generally applies to cities that do not allow municipal funds or resources to be used to enforce federal immigration laws, usually by not allowing police or municipal employees to inquire about an individual's immigration status.

The Fairfax County Board of Supervisors has not designated Fairfax County as a sanctuary county. In fact, a review shows no indication that the board has taken any action that could be interpreted as making Fairfax County a sanctuary county. County agencies and officials strive to comply with all federal requirements to determine an individual’s immigration status.

Additional Information

This page will continue to be updated as changes happen or new information is available. You may also stay connected to Fairfax County through NewsCenter and our social media channels for the latest news and information.