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2018 Report

# Fixing Wisconsin Sheriff Policies on Immigration Enforcement

**ACLU**  
Wisconsin





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## THE PROJECT



fearful of local law enforcement and decline to cooperate in reporting crimes or acting as witnesses. Families are torn apart as ICE seeks to deport immigrants with any level of contact with the justice system. Immigrants are driven back into the shadows of the economy where they can be subject to abuse and exploitation.

How has local law enforcement in Wisconsin cooperated with ICE in recent years? 2056 immigrants were deported from Wisconsin between February 2011 and October 2017 according to records from the TRAC immigration database project at Syracuse University.<sup>2</sup> There were 10,299 detainers issued by ICE to local jails in Wisconsin between 2005 and 2017, asking those jails to detain specified immigrants until ICE could take custody of them.<sup>3</sup> In addition, two counties in Wisconsin, Dodge and Kenosha, currently lease out parts of their jails to ICE as immigrant detention facilities.<sup>4</sup>

In the summer of 2017, the ACLU of Wisconsin Foundation (ACLU-WI) began a project to collect information about the policies and practices of local sheriff's departments in dealing with immigration enforcement. ACLU-WI sent a letter and open records request to sheriffs in all 72 Wisconsin counties and received responses from 63 of the counties.<sup>5</sup>

The records received show that, while the majority of Wisconsin counties are not active participants in Trump's deportation force, very few are taking steps to ensure that local sheriff's departments are safeguarding the rights of immigrant members of their communities and avoiding unconstitutional detentions of migrants. In particular, Wisconsin county sheriffs appear to routinely honor voluntary detainers issued by ICE in violation of the Fourth Amendment to the US constitution.

President Donald Trump came into office in 2017 threatening to increase the deportation of immigrants lacking legal status in the country. Available data indicates that interior enforcement, detentions of immigrants away from the border areas, has increased markedly during the Trump administration.<sup>1</sup> One part of this increased interior enforcement is the administration's effort to have local law enforcement take an active role assisting ICE with locating and detaining deportable immigrants.

Aggressive immigration enforcement in Wisconsin and elsewhere can have serious negative impacts on local communities. Immigrant households become

1. According to the Migration Policy Institute, ICE arrests and deportations in the first 8 months of the Trump administration were up 40% from the previous year. <https://www.migrationpolicy.org/news/ice-arrests-under-trump-are-significantly-over-latter-obama-years-pushback-california-other>

2. <http://trac.syr.edu/phptools/immigration/secure/>

3. <http://trac.syr.edu/phptools/immigration/detain/>

4. State and local cooperation with ICE is not new, but extends back through the Obama administration and earlier. For example, see, Green Bay joint enforcement activities in 2014 <https://www.doj.state.wi.us/sites/default/files/in-the-news/31-arrests-gb-ice-20140318.pdf>, Waukesha joint enforcement in 2009 <https://www.doj.state.wi.us/news-releases/wisconsin-department-justice-agents-partner-immigration-and-customs-enforcement-ice>, Sheboygan joint enforcement in 2008 <https://www.doj.state.wi.us/news-releases/eight-illegal-alien-gang-members-brought-federal-custody>

5. Sample letter to Adams County Sheriff's Department, [https://www.aclu-wi.org/sites/default/files/field\\_documents/adams\\_county.pdf](https://www.aclu-wi.org/sites/default/files/field_documents/adams_county.pdf)





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## DETAINDER POLICIES

An immigration detainer is a request by federal Immigration and Customs Enforcement (ICE) that a local jail hold an immigrant suspected of being in the country without authorization for up to 48 hours after that immigrant would otherwise be entitled to be released, so that ICE can take custody of the immigrant. Rarely, if ever, are these detainers accompanied by a warrant signed by a neutral judicial official. Most often detainers are simply signed by an ICE officer.

Numerous courts have ruled that local jails may not continue to detain an individual simply on the basis of an ICE detainer. Local law enforcement agencies have paid significant damage awards to immigrants in such unlawful detainer cases.<sup>6</sup>

ACLU-WI inquired whether county sheriffs in Wisconsin had put policies and practices in place to avoid the possibility of the county illegally detaining a person pursuant to an ICE detainer which lacks a judicial warrant.

6. *Palacios-Valencia v. San Juan County*, No. 14-cv-1050 (D.N.M. settled 2017) (San Juan County pays \$350,000 to settle detainer class action lawsuit, pays named plaintiffs \$25,000 and \$15,000 to settle their claims); *Roy v. County of Los Angeles*, No. 12-cv-9012, 2018 WL 914773 (C.D.Cal. Feb. 7, 2018) (ruling in favor of a class of noncitizens held on detainers seeking damages against Los Angeles County, which had paid \$255,000 to settle one named plaintiff's detainer claim); *Goodman v. Arpaio*, 2:16-cv-04388 (D. Ariz. settled 2018) (Maricopa County settles detainer lawsuit for \$30,750 in damages and \$50,000 in attorney's fees); *Gomez-Maciel v. Coleman*, No. 17-cv-292 (E.D. Wash. settled 2017) (City of Spokane settles detainer lawsuit for \$49,000); *Lunn v. Massachusetts*, 477 Mass. 517 (2017) (holding that police had no authority under state law to hold people on ICE detainers); *Alfaro-Garcia v. Henrico County*, No. 15-cv-349 (E.D. Va. settled May 2017) (Virginia pays \$23,000 to settle detainer lawsuit against county); *Figueroa-Zarceno v. City and County of San Francisco*, No. 17-cv-229 (N.D. Cal.) (San Francisco pays \$190,000 settlement to person unlawfully turned over to ICE).

Of the 63 counties which responded, 29 counties have no formal policy at all dealing with detainees.<sup>7,8</sup>

Alternatively, a few Wisconsin counties did have a clear policy of not honoring immigration detainees. The policy of the Oconto County Sheriff's Department states simply:

*Oconto County will not honor I.C.E. detainees and will not hold subject solely on their request.  
Policy 101.02 re Foreign Citizens,  
revised 03/15/2017*

The policy in the Dane County jail provides:

*[A]dvice INS that if they can provide us with a court document signed by a judge granting law enforcement/us the authority to hold within 48 hours, we will honor the hold. If they do not provide us with a court document signed by a judge granting law enforcement the authority to hold with 48 hours, process the inmate for release.<sup>9</sup>*

Some otherwise good-sounding policies are flawed for failure to indicate that only a warrant signed by a judicial authority (judge or magistrate) is sufficient to meet the Fourth Amendment requirements.

For example, the policy of the Buffalo County Sheriff's Department states:

*Upon receipt of an I.C.E. (Customs and Immigration) Detainer, jail staff will immediately call the contact number on the Detainer, and advise I.C.E. that in order for us to detain that individual they must provide us with a **warrant**. The call should be documented as to the number called, date & time of call and whom you spoke with and that information should be attached to the Detainer and placed in the inmate's jail file. We will not detain someone for I.C.E. without a **warrant**. If we have an inmate on local charges and those charges are dismissed or handled and that inmate is ready for release, we will not hold that inmate for I.C.E. to obtain a **warrant**. If I.C.E. tries to tell you something different, contact a supervisor.*

The problem with this policy is that ICE makes use of a document it calls a "Warrant for arrest of Alien" (I-200 form) which is signed solely by an Immigration Officer and may pertain only to a civil violation of federal immigration law. A local jail which continued to hold an immigrant on the basis of such an administrative warrant would still be in violation of the constitution's prohibition on unlawful seizures.



Photo credit: Joe Brusky

7. The state's largest county, Milwaukee, which has seen the highest number of detainees and removals, indicated that it had no policies on questioning immigrants about their status or honoring ICE detainees.

8. Adams, Barron, Burnett, Calumet, Clark, Columbia, Douglas, Florence, Fond du Lac, Green, Kenosha, Langlade, Lincoln, Marinette, Milwaukee, Monroe, Oneida, Outagamie, Polk, Portage, Price, Racine, Sawyer, Walworth, Washburn, Washington, Waukesha, Waupaca, Wood

9. Other Wisconsin counties which have policies of not honoring detainees include Eau Claire, Iron, Juneau, and Shawano



Of those county sheriff's departments which have a policy in place, the majority<sup>10</sup> use policies they acquired from a private company called LexiPol.<sup>11</sup> With respect to detainees, the LexiPol policy document states:

*No individual should be held solely on a federal immigration detainer under 8 CFR (code of federal regulations) section 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.*

This provision in the LexiPol policy is flawed, not only because it fails to specify that an administrative warrant is insufficient, but because the provision lists other legally insufficient documents including an affidavit or removal order as a basis to honor ICE detainers. As mentioned above, a judicial warrant, not an administrative warrant on form I-200, is the only accompanying documentation that satisfies the requirements of the Fourth Amendment. A prior order of deportation may indicate a civil immigration offense, but is insufficient to establish probable cause of the existence of a federal crime.<sup>12</sup>

Policies of some Wisconsin sheriff departments encourage compliance with ICE detainer requests - compliance that could result in unlawful detentions. These counties include Brown, Door, Dunn, Kewaunee, and Manitowoc. In 2014, Manitowoc had a practice that it would not honor ICE detainers. After meeting with ICE representatives in 2015, however, the Manitowoc department agreed to notify ICE before the release date of immigrants serving sentences



in the Manitowoc jail. For pretrial detainees, the department agreed that if an immigrant posts bail or has charges dismissed, that person would be held a "reasonable amount of time" for ICE to pick them up but not over a weekend or holiday. One part of the Door County policy discusses detainers and immigration holds and states, "The hold will remain in effect until release is authorized by one of the Immigration Enforcement Agencies."

In light of the hundreds of detainers which ICE sends to local Wisconsin law enforcement each year, it is troubling that local jails in Wisconsin either have no policy at all, or have policies which are incorrect or actually affirmatively encourage compliance with detainers in violation of the Fourth Amendment. From the records produced, it appears that the few local sheriffs who took the time to actually get legal advice about their obligations under the constitution were the sheriffs most likely to refuse to comply with ICE detainers.

10. The 19 county sheriff departments which indicated they use the LexiPol policy include: Bayfield, Dodge, Forest, Grant, Green Lake, Iowa, La Crosse, Marathon, Marquette, Ozaukee, Pepin, Rock, Rusk, Saint Croix, Sauk, Trempealeau, Vilas, Waushara, Winnebago

11. For an overview of LexiPol's influence on local law enforcement policies, see I. Eagly and J. Schwartz, *Lexipol: The Privatization of Police Policymaking*, 96 Texas Law Review 891 (2018)

12. ACLU affiliates in Southern California and Washington have urged local law enforcement agencies in their states to reject the LexiPol policies. Southern California: <https://www.aclusocal.org/en/news/whats-hidden-police-policies-across-california>; Washington: <https://www.aclu.org/news/faulty-lexipol-policies-expose-police-departments-costly-lawsuits-aclu-wa-and-nwirp-warn-letter>



Photo credit: Joe Brusky

Despite community opposition, the Waukesha County Sheriff's Department signed a 287(g) agreement with the federal government.<sup>14</sup>

## INTERACTIONS REGARDING IMMIGRATION STATUS

The ACLU also asked each county's sheriff to provide copies of any policy with regard to questioning individuals about their immigration status.

Having clear policies which limit questioning about immigration status, unless directly relevant to a state criminal investigation, is important. Without such policies, immigrant communities can become fearful of any interaction with local law enforcement. As a consequence, immigrants may fail to report crimes, may fail to offer testimony as witnesses, and generally do not cooperate with law enforcement in keeping their community safe. When victims are silent, criminals are free to act again. In parts of the United States where law enforcement cooperation with ICE is well-known, rates of reporting of crimes such as rape and domestic violence have dropped significantly in neighborhoods with high percentages of immigrants.<sup>15</sup>

Despite the importance of having clear policies on dealing with immigrants, 34 of the 62 counties which responded indicated that they have no policy with respect to questioning individuals with regard to their immigration status.<sup>16</sup>

None of the counties responded with strong policies which respect the rights of immigrant communities, and none limit questioning about immigration status to situations where status is relevant to the ongoing investigation of a criminal offense.

## 287(G) AGREEMENTS

ICE has also been seeking out the assistance of local sheriff departments through 287(g) agreements. Under a 287(g) agreement, local deputies are trained by ICE, and given authority to act as ICE representatives in dealing with immigrants. ACLU-WI determined that sheriffs in two Wisconsin counties, Milwaukee and Waukesha, had applied to participate in the program. Milwaukee County was not approved after protest by ACLU-WI<sup>13</sup> and other community groups.

13. <https://www.aclu-wi.org/en/news/reverse-david-clarkes-anti-immigrant-legacy>

14. A copy of the agreement is available at <https://www.ice.gov/doclib/287gMOA/287g-Waukesha.pdf>

15. See *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system*, ACLU 2018, <https://www.aclu.org/report/freezing-out-justice>

16. Barron, Brown, Buffalo, Burnett, Calumet, Clark, Columbia, Douglas, Dunn, Eau Claire, Florence, Green, Iron, Kenosha, Langlade, Lincoln, Manitowoc, Marinette, Milwaukee, Monroe, Oneida, Outagamie, Polk, Price, Racine, Sawyer, Shawano, Taylor, Walworth, Washburn, Washington, Waukesha, Waupaca, Winnebago



Photo credit: Joe Brusky

As was true with detainer policies, the most frequently encountered policies come from the private company LexiPol. Nineteen of the counties<sup>17</sup> had LexiPol policies which indicate:

#### **ENFORCEMENT**

An officer may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law. Federal authorities shall be notified as soon as possible and the detained individual shall be immediately released if the federal authorities do not want the person held. An officer should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant.

#### **CIVIL VS. CRIMINAL FEDERAL OFFENSES**

An individual who enters into the United States illegally has committed a misdemeanor (8 USC § 1325(a)). Generally, an alien who initially made a legal entry into the United States but has remained beyond what is a legal period of time has committed a federal civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize any person, except to the extent permitted by the United States or Wisconsin Constitutions. Instead, the totality of circumstances shall be used to determine reasonable suspicion, and shall include factors weighing for and against reasonable suspicion.

17. Bayfield, Dodge, Forest, Grant, Green Lake, La Crosse, Marathon, Marquette, Oconto, Ozaukee, Pepin, Portage, Rock, Rusk, Saint Croix, Sauk, Trempealeau, Vilas, Waushara



Factors that may be considered in determining reasonable suspicion that a criminal immigration violation has occurred may include, but are not limited to:

- (a) An admission that the person entered the United States illegally.
- (b) Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- (c) While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency.
- (e) Other factors based upon training and experience.

#### **IMMIGRATION CHECKS**

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer)
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

A deputy shall verify from a 287(g) certified officer, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

If the deputy has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, deputies should notify a supervisor as soon as practicable. No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

A deputy is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

This LexiPol policy clearly suggests that sheriff's deputies need to check on the immigration status of a detainee and make determinations as to whether this status relates to a federal civil offense or a federal crime. These are not simple determinations under complicated immigration laws and policies for which local law enforcement agencies are ill-equipped. Rather than simply indicate that immigration status should not be inquired about, the LexiPol policy indicates that a deputy "shall verify" that status with ICE.



Photo credit: Claudio Martinez

In several counties which do not use the LexiPol policy<sup>18</sup>, deputies are affirmatively directed to contact ICE whenever the jail holds anyone who is not a US citizen, without regard to any other factor. An example comes from Fond du Lac county:

*Persons who are foreign-born or foreign citizens and are not entitled to diplomatic immunity and are not U.S. citizens, should be processed under the normal procedures, and the U.S. Department of Justice – Immigration and Naturalization Service **should be immediately notified.***

Or Iowa County:

*When booking an individual that is NOT a US Citizen....**Notify ICE of the detainment. They will want to know when the subject may be released.***

Kewaunee County responded to the ACLU-WI open records request with a copy of a 2008 publication from the Wisconsin Department of Justice titled *Guide for Law Enforcement Contacts with Foreign Nationals*<sup>19</sup>. This State document produced in 2008 is actually more troubling than the policies in almost all of the individual counties. The State policy encourages local law enforcement to notify ICE of an undocumented person not only when that person has been detained in the county jail on a state offense, but also to notify ICE after any interaction with such a person even if the person could not be lawfully detained for the reason he or she was originally stopped.

18. Adams,Dane, Door, Fond du Lac, Iowa

19. <http://www.wistatedocuments.org/digital/collection/p267601coll4/id/1117/>



## OTHER OBSERVATIONS

In response to other inquiries from ACLU-WI, it generally appears that most Wisconsin county jails will allow ICE agents to meet with persons in custody. So even if local deputies are not questioning immigrants about their status, they will open their doors to ICE agents upon request.

ACLU-WI also uncovered a disturbing practice of bail forfeiture. Immigrants arrested on state charges may have bail set by the judge. Bail is posted, but instead of releasing the immigrant, he or she would be held on an ICE detainer and then delivered into

ICE custody. Once the person was in ICE custody, the immigrant did not get returned for court hearings in state circuit court and the bond was forfeited, even though the reason the immigrant could not return was the county's delivery of him or her into the hands of federal immigration authorities. In situations where there is a detainer, the immigrant should be advised that it is pointless to post the bond because he or she will not be freed, and instead turned over for deportation while potentially forfeiting the bond.



Photo credit: Molly Collins



Photo credit: Claudio Martinez

## BETTER POLICIES

ACLU-WI provided the sheriff's department in every Wisconsin county with a model policy which strikes the appropriate balance between the needs of local law enforcement and the constitutional rights of immigrants. The policy helps local sheriffs make it clear that they will not become an active part of Trump's deportation force, but instead will

work to establish an environment where immigrant members of the community can feel secure in their interactions with local law enforcement that they will not be turned over for deportation.

The recommended policy appears on the following pages.



## **MODEL Guidance Regarding Due Process and Immigration Enforcement**

### **I. DUE PROCESS AND IMMIGRATION ENFORCEMENT**

- A. Building trust between police and all residents is vital to the public safety mission of [Agency]. Policing in a fair and impartial manner is essential to building such trust. Therefore, [Agency members] shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration

status. [Agency members] may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense.

- B. Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Federal law does not grant local and state agencies authority to enforce civil immigration law. Similarly, state law does not grant local and state agencies authority to enforce civil immigration laws. [Agency members] shall not dedicate [agency] time or resources to the enforcement of federal immigration law where the only violation of law is presence in the United States without authorization or documentation.

- C. The Constitution's Fourth Amendment protection against unreasonable search and seizure applies equally to all individuals residing in the United States. Therefore, [agency members] shall not initiate or prolong stops based on civil immigration matters, such as suspicion of undocumented status. Similarly, [agency members] shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations.

- D. "Administrative warrants" and "immigration detainers" issued by Immigration and Customs Enforcement (ICE) have not been reviewed by a neutral magistrate and do not have the authority of a judicial warrant. Therefore, [agency members] shall not comply with such requests.

### **II. VICTIM AND WITNESS INTERACTION**

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and community.

- a. Federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses. It is essential to the mission of the [agency] that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.
- b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, [agency members] will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation. [Agency members] will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. [Agency members] should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses and that [agency members] do not ask victims/witnesses about their immigration status.
- c. Therefore, [Agency members] will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the agency/department for help or to make reports, giving full priority to public safety and justice concerns.

- d. This policy is to be interpreted to comply with 8 U.S.C. § 1373 which provides:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

### **III. IMMIGRATION STATUS**

- a. [Agency member's] suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person.
- b. [Agency members] may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that [Agency] should not use a person's characteristics as a reason to ask about civil immigration status.
- c. [Agency members] shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection. Arrest for "unlawful entry" after a person is already within the United States is outside the arrest authority of Wisconsin officers.

### **IV. ESTABLISHING IDENTITY**

- a. [Agency members] may make attempts to identify any person they detain, arrest, or who comes into the custody of the [Agency].
- b. [Agency members] shall not request passports, visas, "green cards," or other documents relating to one's immigration status in lieu of, or in addition to, standard forms of identification such as a

driver's license, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable.

### **V. CIVIL IMMIGRATION WARRANTS**

- a. [Agency members] shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants are not valid warrants for Fourth Amendment purposes because they are not reviewed by a judge or any neutral magistrate. Moreover, federal regulations direct that only federal immigration officers can execute said warrants. Finally, Wisconsin law enforcement agencies do not have any authority to enforce civil immigration law.

### **VI. INTERACTIONS WITH FEDERAL IMMIGRATION OFFICERS**

- a. [Agency members] shall not contact Customs and Border Patrol (CBP) or ICE for assistance on the basis of a suspect's or arrestee's race, ethnicity, national origin, or actual or suspected immigration status.
- b. [Agency members] shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.
- c. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted unless acting in partnership with a federal agency as part of a formal partnership. [Agency members] are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for immigration enforcement.





Photo credit: Claudio Martinez

## VII. USE OF RESOURCES

- a. [Agency members] shall not hold for or transfer people to federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge, and therefore not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.
- b. Unless ICE or CBP agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency's] custody.
- c. Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in [Agency's] custody. Immigration status or perceived immigration status, including the existence of an immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes. Furthermore, immigration status or perceived immigration status shall not be used as a criteria for citation, arrest, or continued custody.

For more information, or to get involved in ACLU work for uniform adoption of these recommendations, contact ACLU-WI at [liberty@aclu-wi.org](mailto:liberty@aclu-wi.org) or 414-272-4032.



**ACLU of Wisconsin**

207 E. Buffalo St. Suite 325  
Milwaukee, WI 53217  
[liberty@aclu-wi.org](mailto:liberty@aclu-wi.org)  
414.272.4032  
[aclu-wi.org](http://aclu-wi.org)