Human Rights Commission Meeting

Monday, December 16, 2024 at 6:00 PM

Agenda

ACCESS INFORMATION:

A. This meeting will be held on Monday, December 16th, 2024 at 6:00 PM. Location: 3rd Floor Conference Room

B. The Public may join the virtual meeting online: https://watertown-ma.zoom.us/j/81519996849

C. Public may comment through email: dnewton@watertown-ma.gov

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1. Call to Order
2. Roll Call
3. Discussion
   A. Statement on Immigrant Rights
4. Public Comment
5. Adjournment

Watertown Police Department

IMMIGRATION LEGAL ISSUES Chapter 1I

General Order Number: 19-001 **Effective Date: 5/31/2017**
Reference: **Revised Date: 02/20/2019**
Accreditation Standards: 1.2.7
Mass. Gen. Law:
Other: Presidential Executive Order No 13768, 8 U.S.C. § 1373, 8 CFR 287.7(a) and 8 CFR 287.7(d)

I. PURPOSE AND SCOPE

The Watertown Police Department recognizes and values the diversity of the community it serves. Many of its residents have emigrated to this community from other countries, and some may not be citizens or legal residents of the United States. The Town of Watertown and the Watertown Police Department are committed to promoting safety and providing proactive community policing services to all who live, work, or visit our community. In furtherance of the Department's community policing philosophy, all community members and general stakeholders should know that they are encouraged to seek and obtain police assistance and protection regardless of their specific immigration and/or documentation status without fear of status checks.

The Watertown Police Department relies upon the cooperation of all persons located in the Town of Watertown, including citizens, legal residents, and those without a specific documentation status, to achieve our important goals of protecting life and property, investigating and preventing crime, and resolving recurring neighborhood issues. Assistance from the many varied immigrant communities is especially important when an immigrant, whether documented or not, is the victim of or witness to a serious crime. It is absolutely essential that victims do not feel apprehensive or intimidated in any way in coming forward with the requisite information and general firsthand knowledge to aid in investigating a particular crime, and holding those responsible accountable to our criminal justice system. Mutual trust and a spirit of cooperation are absolutely crucial in deterring crime and in solving crime incidents, as well as in maintaining public order, safety, and security in the entire community.

We fully realize that federal immigration enforcement or perceived enforcement by the Watertown Police Department could have a "chilling effect" in our local immigrant community, and could limit cooperation with police by members of the community at large. Because many families with undocumented family members also include legal members, this could drive a potential wedge between the department and large portions of the legal immigrant community as well. When fearing an immigration investigation and possible deportation, many immigrants with critical information might not come forward, even when heinous crimes are committed against them and/or their families. As stated, we depend on the cooperation of all of our residents and stakeholders including immigrants, legal and undocumented, in solving all sorts of crimes and in the maintenance of public order.

We, as duly sworn officers, are responsible for providing effective police services to everyone in the Town of Watertown in an equal, fair, and just manner. The Watertown Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the Town

of Watertown. Thus, detection of criminal behavior is of primary interest and concern in dealing with any individual suspected of violating the law. Race, religion, gender, ethnicity, sexual orientation, gender identity, age, occupation, immigration status, or any other arbitrary characteristic pertaining to any specific individual have absolutely no bearing on any decision for a Watertown Police officer to effectuate a stop, investigation, or detention of an individual or have any impact whatsoever on the decision to make a lawful arrest for a violation of a criminal law.

The specific immigration status (or lack thereof) of an individual or group of individuals in and of itself, is not and shall not be a matter of local police concern or subsequent enforcement action by the Watertown Police Department unless there exists through reliable and credible information a potential threat to public safety. It is incumbent upon all officers and employees of the Watertown Police Department to make an unyielding personal commitment to equal enforcement of the law and equal service to the public regardless of immigration/documentation status. Confidence in this valued commitment will not only protect an individual's rights and freedoms from being adversely affected, but shall also increase the public's confidence in the Watertown Police Department's ability to protect and serve all members of our community.

II. POLICY

The enforcement of the nation's federal immigration laws is the responsibility of the federal government, not the Watertown Police Department. Accordingly, the Watertown Police Department shall not undertake immigration-related investigations. Exceptions may be made under Section III (C) below. Further, the Watertown Police Department shall not enter into any voluntary Federal 287(g) Program that would have local officers trained and sworn to enforce federal civil immigration laws.

This prohibition does not preclude the Watertown Police Department from cooperating with and assisting federal immigration officials from the DHS Immigration and Customs Enforcement (ICE) Agency when formally requested as part of an ongoing *criminal investigation*, or from notifying those federal officials in situations where a ~~t~~threat to public safety is perceived by the Watertown Police Department. {See III (C), (D) below}

Nothing in this policy shall prohibit or restrain any Watertown police officer from sending to, or receiving from, any local, state, or federal agency information regarding citizenship or immigration status, consistent with 8 U.S.C. 1373, or an order from a court of competent jurisdiction.

Notwithstanding the foregoing paragraph, no officer or employee of the Watertown Police Department shall be authorized by this statement to collect any information regarding the citizenship or immigration status, lawful or unlawful, of any individual if such information is not required to be collected by the laws of the Commonwealth of Massachusetts, the ordinances of the Town of Watertown, or the policies and regulations of the Watertown Police Department.

A person coming into contact with the Watertown Police Department shall be afforded all of the civil rights, due process, and equal protection safeguards available under the Constitution and laws of the United States of America, the Commonwealth of Massachusetts, the Town of Watertown, and treaties of the United States as applicable, irrespective of the person's immigration and/or documentation status.

III. PROCEDURE

A. Immigration Detainer – Notice of Action

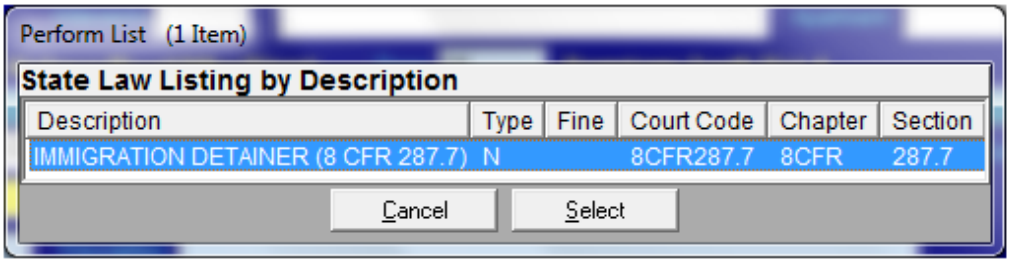
1. The Watertown Police Department recognizes that an immigration detainer request issued by DHS-ICE serves to advise the Department that DHS-ICE seeks custody of an undocumented person presently in police custody for the purpose of arresting and removing that individual. The detainer is a **request** that the Watertown Police Department contact and advise DHS-ICE, prior to the release of the undocumented person. Per Commonwealth vs. Lunn, the Watertown Police Department does not have authority to detain an individual based solely on a civil detainer request.

2. Any person who is arrested by the Watertown Police Department shall be booked in accordance with the pre-existing policy (Chapter 72B Booking Process). If, in the course of standard processing procedures, DHS- ICE files an immigration detainer request (Form I-247 – issued 12/12), the arrestee shall be made aware of the detainer and provided a copy. If the arrestee posts bail or is released on his/her own recognizance by the Clerk of Court, the Officer-in-Charge (OIC) shall notify the arrestee that he/she will not be further detained by the Watertown Police Department.

3. While the Watertown Police Department will not detain persons solely on the basis of DHS-ICE immigration detainer requests, it is not prohibited from detaining an arrestee, regardless of immigration status, for any lawful reason, such as a judicial arrest warrant.

4. When an immigration detainer request has been issued in the form of a fax from DHS-ICE for an individual already in police custody, the OIC shall immediately inform the Clerk of Court or Assistant Clerk Magistrate of the existence of the detainer request.

5. It shall be the responsibility of the Clerk of Court to determine whether a monetary bail is established or require release of the arrestee on personal recognizance. No person shall be held in custody by the Watertown Police Department based solely on the existence of a DHS-ICE civil immigration detainer request. The Watertown Police Department shall not routinely give advance notice to DHS-ICE of the lawful release of an arrestee for whom an immigration detainer request has been issued unless information is available to indicate the arrestee poses a threat to public safety.
6. Per Chapter 72B "Booking Process" the department shall keep a record in the IMC report system of all arrestees. If an arrestee is the subject of a DHS-ICE detainer request, the OIC will additionally ensure that the details of the immigration detainer request are documented and attached to the IMC booking report.



7. Further, the OIC shall make a copy of the immigration detainer request for the court prosecutor, and staple the original copy to the police report for records filing.

8. The OIC shall adhere to the Consular Notification Policy if the arrestee is from one of the listed nations.

9. The Chief may issue procedures to implement this policy that shall be included in the department's *Policies and Procedures Manual*, updated as required, and made available to the public on the Department's web site and/or elsewhere.

B. <u>Inquiries into Immigration Status:</u>

1. A person's right to file a police report, serve as a witness to crimes, participate in any police-community activities, or otherwise benefit from general police services shall not be contingent upon the individual providing proof of citizenship or any type of documented immigration status.

2. Consequently, officers shall not question any person about his/her specific citizenship or immigration status, or take any action against that person based solely on his/her real or suspected immigration status, unless that person is reasonably believed to be involved in one or more of the activities identified in Section C. below.

3. Officers shall not request passports, visas, resident alien cards (i.e. "green cards"), or travel documents in lieu of, or in addition to driver's licenses and other standard forms of identification. Such documents shall only be requested when standard forms of identification are unavailable, or when the officer is proceeding under Section C. below. An exception could occur if the operator of a lawfully stopped motor vehicle presents what appears to be a valid Foreign Country's Driver's License which is valid in this state for only one (1) year, and requires the operator to produce proof to the investigating officer of the most recent admission date to the United States, so as to effectively toll the one-year time period (e.g. Form I-94 or Passport with an entry stamp).

4. No funds, resources, facilities, property, equipment or personnel of the Watertown Police Department shall be used for civil immigration-related investigations, detentions or arrests unless there is probable cause to suspect an individual has committed a non-immigration-related criminal offense.

5. If any federal program or statute is created that requires registration of persons based solely on race, gender, sexual orientation, gender identity, religion, national or ethnic origin, political or social beliefs, or immigration status, no police officer or civilian employee of the Watertown Police Department shall make such information in its databases or other record-keeping systems available pursuant to such federal program or statute

C. <u>Notification to Federal Immigration Authorities:</u>

In furtherance of the Watertown Police Department's community policing philosophy and continuing engagement and outreach efforts, officers shall not participate in any federal civil immigration-related investigations of any immigrant or foreign national, except:

1. When <u>probable cause exists</u> to arrest an immigrant or foreign national for <u>any violent felony</u>, including, but not limited to:

    a) Murder
    b) Assault with intent to Murder
    c) Assault & Battery by means of a Dangerous Weapon
    d) Assault by means of a Dangerous Weapon
    e) Armed Burglary

f) Rape (or any Sex Offense)
g) Mayhem
h) Armed Robbery;

2. When probable cause exists to suspect the immigrant or foreign national is involved in any terrorist and/or unlawful subversive activities. The FBI Joint Terrorism Task Force (JTTF) shall also be contacted forthwith;

3. When probable cause exists to suspect the immigrant or foreign national is involved in fraudulent assimilation or trafficking of individuals into the United States, or probable cause exists to suspect participation in an organized venture to fraudulently assimilate undocumented foreigners into this country;

4. When probable cause exists to suspect the immigrant or foreign national is participating in criminal street gang activity involving violence and/or distribution of illegal drugs/weapons;

5. When the immigrant or foreign national is arrested on a criminal warrant from the Massachusetts Warrant Management System (WMS).

Keeping in mind that maintaining the trust of its constituents is of primary importance in successfully serving the community, it is understood that an arrest on any charge is not a conviction. Notwithstanding Chapter 72B "Booking Process", the Watertown Police Department shall not otherwise notify DHS-ICE and/or other federal authorities of an arrest merely because an arrestee is an undocumented immigrant.

D. <u>Immigration and Customs Enforcement (ICE) Investigations and/or Requests for Assistance</u>:

1. The U.S. Bureau of Immigration and Customs Enforcement has primary jurisdiction for enforcement of the provisions of Title 8, U.S. Code, dealing with illegal entry into the U.S. by foreign nationals.

2. When notified that an immigration raid is going to take place in Watertown, the OIC will request that all DHS-ICE agents visually identify themselves as DHS-ICE agents and that the lead agent contact the OIC prior to deployment.

3. Under no circumstances will any member of the Watertown Police Department provide consent to any DHS-ICE agent to pose as a Watertown police officer.

4. Watertown police officers shall not participate in any DHS-ICE tactical operation(s) as part of any detention or arrest team solely for the civil enforcement of federal immigration laws, unless it is in direct response to an emergency call for immediate assistance on a temporary basis when an officer's (Agent's) safety is at risk.

5. Members of the Watertown Police Department may however, separate and apart from DHS-ICE agents, engage in activities designed to ensure the safety of the public during an immigration raid. Notwithstanding this directive, no member of the department may engage in any of the following activities during an immigration raid for federal civil violations:

    a. Stop, detain, or arrest any person without probable cause that a criminal offense has occurred, or unless a criminal warrant is in effect.
    b. Interrogate any person at the request of an ICE agent;

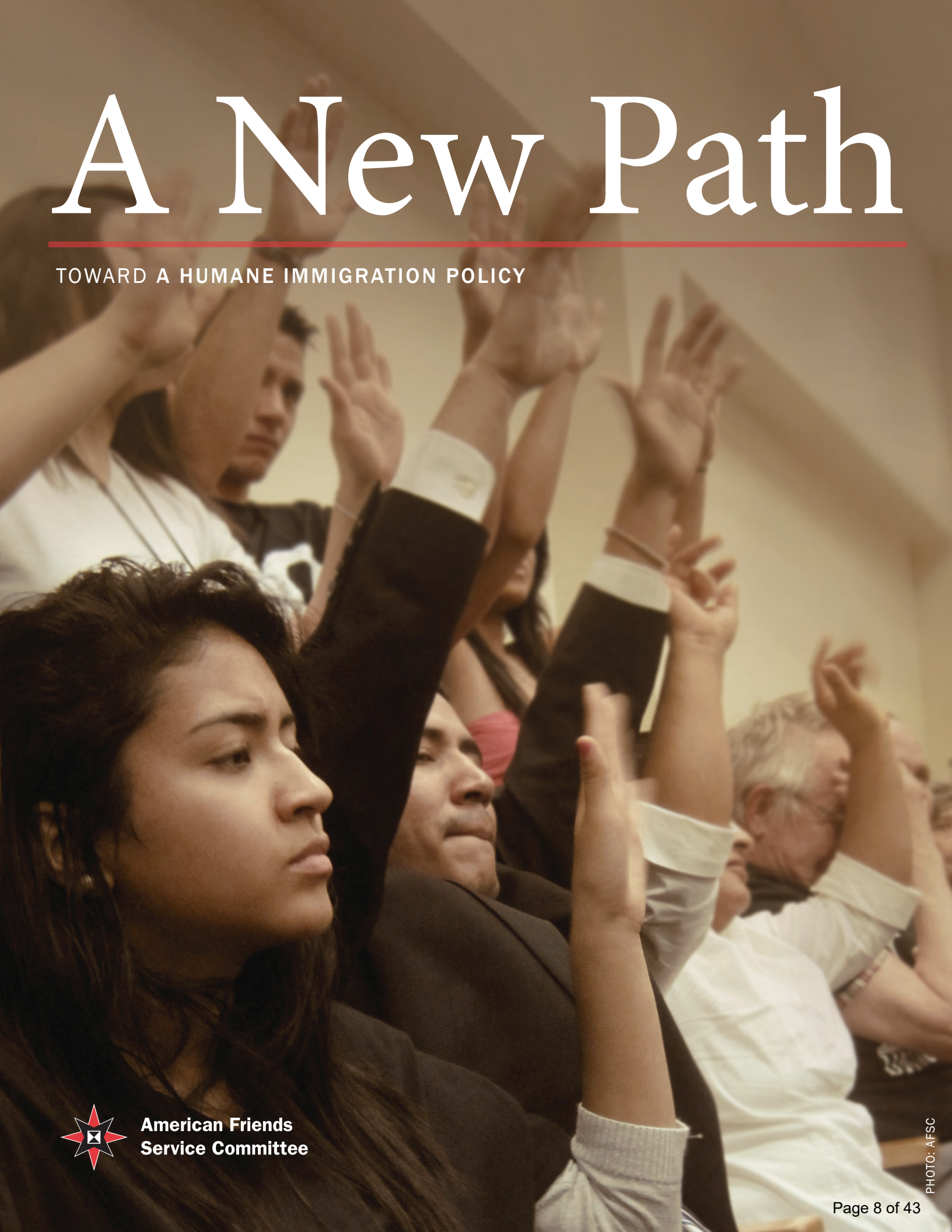
c. Independently facilitate an immigration raid;
d. Facilitate an ICE agent's access or entry into any dwelling, business, or other building;
e. Impede the rights of any person engaging in lawful, peaceful protest or assembly.

6. Whenever DHS-ICE has occasion to be in the Town of Watertown, whether looking for a target(s) who is the subject of a criminal warrant (investigatory side, Homeland Security Investigations – HSI) or looking for individuals who have Final Orders of Deportation (civil side, Enforcement and Removal Operations -ERO), the OIC shall send out a Command Staff message to that effect.

    a. In addition, the OIC shall request copies of all relevant warrants or court orders and the specific reason that DHS-ICE intends to place the individual into custody.
    b. In all cases the OIC shall ensure that a call number is generated on the Dispatch Log by Communications personnel (e.g. Immigration Enforcement).
    c. The DHS-ICE agent shall be asked to report back to the OIC with results of the investigation (e.g. no warrant served, one in custody, etc.) so that the Dispatch Log can be updated.
    d. A courtesy booking shall not be required for those placed in custody by DHS-ICE officials solely for civil enforcement reasons.

A New Path

TOWARD **A HUMANE IMMIGRATION POLICY**



American Friends
Service Committee

PHOTO: AFSC

American Friends Service Committee

1501 Cherry Street
Philadelphia, PA 19102
www.afsc.org

The American Friends Service Committee (AFSC), founded during World War I by Quakers who aimed to serve both humanity and country while committed to nonviolence, has worked throughout the world in areas of conflict or natural disasters and in oppressed communities. In 1947, AFSC was a co-recipient of the Nobel Peace Prize, on behalf of all Quakers, for its humanitarian work feeding children in postwar Europe, "from the nameless to the nameless...."

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Make family reunification a top priority

Recognize the distinctly important and valuable role of family ties by supporting the reunification of immigrant families in a way that equally respects both heterosexual and same-sex relationships.

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Ensure that immigrants and refugees have access to services

Our values should not be contingent on immigration status. Public programs and services to address needs like public health or to fulfill our societal sense of fairness and compassion should never be dependent on a person's race, ethnicity, or place of birth.

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PHOTO © DAVID BACON

Executive Summary

The American Friends Service Committee (AFSC) is an almost 100-year-old faith-based organization grounded in Quaker beliefs respecting the dignity and worth of every person. Since 1917 AFSC has worked with war refugees and displaced persons worldwide. Today AFSC's engagement across the U.S. includes a range of work focused in immigrant and refugee communities. AFSC provides direct legal services and engages in organizing with immigrants and allies along with advocacy and movement building throughout the U.S. We support immigrant and refugee workers and their communities to organize themselves, to seek out and raise their issues and affirm their aspirations and needs, and to continue to make contributions to this nation.

The principles and recommendations in this refreshed edition of *A New Path: Toward Humane Immigration Policy* are grounded in AFSC's history and values as a faith-based organization and in the voices of the communities with which we are deeply connected. AFSC supports measures that ensure the integration of immigrants as full members of our society and address the root causes that push people to migrate. We believe that the basis of U.S. immigration policy should be the protection of human rights and equal opportunity, not structures that benefit people of certain nationalities, enable employers to tap workers outside the protections of wage and safety laws, or result in the forced separation of families and communities.

Since the initial publication of this paper in 2009, the fundamental issues impacting the communities we work in have remained the same, yet the extent of human rights abuses and the destruction of families have worsened. More than a million families have been torn apart as a result of draconian immigration laws,[1] and the need for fundamental change to protect rights is as strong as ever. This updated version of A New Path includes additional information about the mass detention and deportation of immigrants, as well as on the continuing destruction of communities through expansion of militarized approaches to enforcement at the U.S./Mexico border.

There are approximately 11 million undocumented people residing in the United States.[2] Of that number, eight million are workers laboring in a variety of industries and services vital to the U.S. economy and to the survival of families both in the United States and in their countries of origin.[3] Humane immigration policy must include a mechanism for undocumented workers to gain permanent residency and citizenship in a fair, timely, and orderly fashion. At the same time, it must stop the detention and deportation system that has torn apart families, and instead ensure that the human rights of liberty and due process are enforced.

Furthermore, U.S. immigration policy must be coupled with economic policies that encourage and fund sustainable development, create conditions in which working people have opportunities to earn a living wage in their home countries, foster an authentic commitment to demilitarization, and lead to the peaceful resolution of internal and international conflicts. We urge principled and visionary leadership on effective immigration policies that embody the best of the nation's values.

AFSC is firmly committed to pursuing immigration policy change grounded in the following principles and key recommendations to Congress and President Obama:

PRINCIPLE ONE

Develop humane economic policies to reduce forced migration

International economic policies, including trade agreements, need to be consistent with human rights, trade justice, and sustainable approaches to the environment and economic development in order to prevent labor displacement and its consequences such as forced economic migration.

- Fully respect the right of local and indigenous communities to develop, safeguard, and nurture their economies and the livelihoods of their people without interference from developed nations or transnational corporations.
- Respect the human and labor rights of all workers by stopping the use of trade agreements and structural adjustment policies that displace people and create a vulnerable labor force.
- Support and promote global economic policies that invest in and develop a sustainable and strong social infrastructure and healthy environment.
- Explore alternative forms of economic integration that are consistent with international human rights laws, cultural rights, and environmental protections.

PRINCIPLE TWO

Protect the labor rights of ALL workers

All workers are entitled to humane policies that protect their labor and employment rights.

- End guest worker programs, as the experiences of past and present guest workers have been characterized by extreme exploitation and abuse akin to human trafficking.
- Repeal employer sanctions which have only led to increased exploitation of workers and an underground market for fabricated documentation.
- End electronic worker verification systems and other means of keeping immigrant workers out of the workforce, such as I-9 audits, that punish both immigrant workers and employers.
- Allow all workers to apply for and obtain Social Security numbers, and to receive benefits from the system to which they often contribute.

PRINCIPLE THREE

Develop a clear path to citizenship

Inclusive measures must be enacted that lead to permanent residence and citizenship for undocumented immigrants.

- Eliminate cap on visas to end the years-long delay for those currently awaiting visas.

- Pass legislation that allows people who reside in the U.S. to apply immediately for permanent residence and a path to citizenship if they choose.
- Create opportunities for migration to the U.S. for people who plan to migrate but who have no relatives here to petition for them.
- Ensure that positive factors (e.g., family ties, community service) are always balanced against any negative factors (e.g., criminal record, immigration violations) when determining eligibility for status.

PRINCIPLE FOUR

Respect the civil and human rights of immigrants

Immigrants, regardless of status, deserve the same civil and human rights as all U.S. residents.

- End arrests, detention, and deportation of immigrants.
- Eliminate all agreements between the Department of Homeland Security and local/county/state law enforcement agencies (287(g)/Secure Communities).
- Ensure the due process rights of immigrants in detention, deportation, or removal proceedings including access to legal representation, fair trials, meaningful and expedient judicial review, and an end to racial, ethnic, and religious profiling and other forms of illegal searches and seizures.
- Eliminate arbitrary, indefinite, or mandatory detention or other forms of abusive treatment and detention practices that separate family members; end all ICE detention contracts.

PRINCIPLE FIVE

Demilitarize the U.S.-Mexico border

End costly, ineffective, and inhumane policies that have heavily militarized the U.S.-Mexico border region and undermined the quality of life of border communities.

- Demilitarize the U.S.-Mexico border and cease all enforcement policies and practices that criminalize and punish immigrants and members of border communities. Prevent the extension of militarized border operations to the U.S.-Canada border and the interior of the nation.
- Roll back federal funding for Border Patrol personnel and reduce the excessive numbers of Border Patrol agents. Instead invest in oversight mechanisms for the Office of the Inspector General and other independent investigative bodies.
- Require border enforcement agencies and their respective agents to comply with and uphold local, national, and international laws and civil and human rights along the border region and in the interior of the country.
- Create policies for border authorities to facilitate orderly, expedited crossings at the ports of entry and improve infrastructure at the ports of entry in order to prevent long and costly waiting periods.

PRINCIPLE SIX

Make family reunification a top priority

Recognize the distinctly important and valuable role of family ties by supporting the reunification of immigrant families in a way that equally respects both heterosexual and same-sex relationships.

- Meet the global demand of immigrants to be reunited with their families by eliminating the cap on the total number of family-based visas available and funding the U.S. Citizenship and Immigration Service to expedite the immigration adjustment process.
- Provide the same benefits to same-sex partners that are available to heterosexual partners.
- Eliminate harsh obstacles to immigrating, including prohibitions on returning to the United States based on prior immigration history, past criminal records, and high-income requirements for immigrant sponsors.
- Eliminate restrictions on eligibility for spouses of deceased U.S. citizens or lawful permanent residents and ensure that children can immigrate with parents. Allow applications to be filed from within the U.S. so that families are not separated due to consular processing requirements.

PRINCIPLE SEVEN

Ensure that immigrants and refugees have access to services

Our values should not be contingent on immigration status. Public programs and services to address needs like public health or to fulfill our societal sense of fairness and compassion should never be dependent on a person's race, ethnicity, or place of birth.

- Extend access to quality, affordable health care and social services to everyone, regardless of immigration status.
- Eliminate rules based on immigration status in determining eligibility for public benefits.
- Re-affirm protected access to public schools at K-12 levels, protect admission to higher education, and promote eligibility for in-state tuition to public universities along with access to financial aid for undocumented students.
- Provide adequate funding for refugee protection and resettlement.

PHOTO: © DAVID BACON

PRINCIPLE ONE

Develop humane economic policies to reduce forced migration

International economic policies, including trade agreements, need to be consistent with human rights, trade justice, and sustainable approaches to the environment and economic development in order to prevent labor displacement and its consequences such as forced economic migration.

Efforts to restrict immigration without addressing systemic and underlying root causes of migration will further punish those most brutally impacted by economic despair and poverty without providing an answer to the underlying crises driving their dislocation. AFSC supports efforts to improve international cooperation to address social and economic conditions that force migration and disrupt or impede sustainable development.

Throughout the past three decades, free trade pacts such as the North American Free Trade Agreement (NAFTA) have dominated economic and political relations between the Global South and the North. These asymmetrical agreements allow for the easier flow of goods and capital across national borders, while the movement of people displaced by

IMMIGRANT STORY

AFSC works with families in the U.S. and internationally who are forced to migrate due to the economic consequences of trade policies. In Mexico, families migrated to border cities to try to find alternative incomes in process assembly plants owned by U.S. corporations, known as maquiladoras.

NAFTA was a lie. It did not fulfill its promise of more and better jobs, but on the contrary now everything is more expensive: food, school supplies, transportation, everything.

—Teresa Hernández, a maquiladora worker from Matamoros, Mexico.

In 1993, in spite of having a single salary and with the children in school, I could buy more things. Before it was enough so that your children could go to school and give you better nutrition. Now it's not enough for anything.

—A maquiladora worker from Ciudad Acuña, Mexico.

these same agreements has been restricted and criminalized. These agreements and policies require the elimination of subsidies in developing countries, often devastating small farmers and producers, while large corporations receive enormous subsidies from the governments of developed countries.

Future economic policies should be consistent with human rights, fair trade, and sustainable approaches to the environment and economic development. Nations and international bodies such as the World Trade Organization, International Monetary Fund, and the World Bank must recognize that individuals and communities have a right not to migrate. This right is predicated on respect for national sovereignty, peaceful coexistence, and the right of countries to shape an economic development model that benefits its citizens rather than transnational corporations. Any economic model that ignores a country's own citizens, resident migrants, indigenous communities, and racial and ethnic minorities will increase abject poverty and social inequality and is doomed to fail.[4]

RECOMMENDATIONS

- Fully respect the right of local and indigenous communities to develop, safeguard, and nurture their economies and the livelihoods of their people without interference from developed nations or transnational corporations.
- Respect the human and labor rights of all workers by stopping the use of trade agreements and structural adjustment policies that displace people and create a vulnerable labor force.
- Support and promote global economic policies that invest in and develop a sustainable and strong social infrastructure and healthy environment.
- Recognize the need for redress to developing countries that have withstood direct and extreme social and economic damages due to trade agreements and structural adjustment policies. Efforts to repair the damage of these policies should respond to the needs of local communities and could include availability of rural credit to support local sustainable farming; infrastructure-building and public works projects that improve community wellness and quality of life; and support for education and cultural development.
- Explore alternative forms of economic integration that are consistent with international human rights laws, cultural rights, and environmental protections.
- Adopt, sign, and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families. Afford migrant workers their rights as contained in the Universal Declaration of Human Rights and the relevant conventions of the International Labor Organization.

PHOTO: © DAVID BACON

PRINCIPLE TWO

Protect the labor rights of ALL workers

All workers are entitled to humane policies that protect their labor and employment rights.

I. Ensure that everyone can work with dignity

All people in the United States regardless of immigration status have a right to work with dignity. All workers must be paid a wage that allows them to live decently and support their families. The workplace should be safe from undue health hazards, and workers must be provided with appropriate and adequate safety equipment and training. All workers, including immigrant workers, have the right to freely associate, organize, and form labor unions without employer retaliation or retribution.

Domestic policies must also support job readiness and job creation programs, retooling, and ongoing training in a globally changing world. Both immigrant and native-born workers have a right to employment and living wages. Proposals for future immigration policy must augment economic stimulus programs that ensure jobs with a decent and livable wage for all workers. AFSC opposes any public policy that increases the vulnerability of immigrant workers and pits workers against each other by undermining job security, wages, and working conditions.

Furthermore, in developing immigration policy, AFSC rejects any form of temporary worker program as an alternative to a path to citizenship. The experiences of past and present guest workers have been characterized by extreme exploitation and abuse akin to human trafficking. Both the infamous Bracero Program and the current H1-B, H-2A, and H-2B programs contain written labor protections. However, the reality is that inspections are inadequate and ineffectual, as the programs are structurally designed to supply labor to industry at a price that benefits employers but undermines the rights of workers.[5]

RECOMMENDATIONS

- End guest worker programs, as the experiences of past and present guest workers have been characterized by extreme exploitation and abuse akin to human trafficking.
- Strengthen, implement, and monitor labor and employment laws, including the Fair Labor Standards Act, the National Labor Relations Act, and their state equivalents.
- Ensure that statutory and administrative remedies that redress workplace grievances apply equally to all workers regardless of immigration status.
- Increase the number of federal inspectors responsible for all U.S. wage and hour violations.
- Pass legislation that protects and guarantees the right of workers to effectively exercise their labor rights, form unions, and bargain collectively without intimidation, retaliation, or retribution from employers.
- Establish job creation and job-training programs to ensure that workers can find employment. All workers should be allowed to enroll in these programs.

II. End policies and actions that expose workers to abuse and exploitation

Workplace immigration programs such as the Electronic Employment Eligibility System (E-Verify) and I-9 Audits, as well as workplace raids, punish workers and their families instead of unethical employers that exploit a workforce they consider disposable.[6]

The requirement that employees submit proof of authorization to work in order to obtain employment has been in the law only since 1986, and has negatively impacted workers' rights. Discrimination based on immigration status has led to an increase in exploitation of workers and a tiered system of protection of labor rights that has created less secure employment conditions for all. Non-payment of minimum wage and overtime, as well as wage theft, has become endemic in the low-wage end of various services and industries that many immigrant workers occupy.

When employers are able to use the vulnerability of undocumented workers to force them to accept substandard wages or conditions, the wages and conditions of all workers suffer. When that vulnerability makes it harder and more risky for undocumented workers to organize unions or assert their labor rights, it becomes harder for the workers around them to do so as well.

IMMIGRANT STORY

In April 2010, an industrial bakery in Woburn, Massachusetts, was bought by a national corporation, which re-verified the employment eligibility of all the workers. They used the E-Verify system that cross checks information from the highly flawed Social Security Administration and Department of Homeland Security databases. As a result, more than 200 workers were fired.

The Chelsea Collaborative, a multi-service community organization, was flooded with calls and visits from the workers. AFSC's Project Voice was asked to conduct a series of workshops and trainings on labor rights, verification systems, and wage recovery campaigns. After days of "intakes" we uncovered massive violations of minimum wage and overtime laws. The Collaborative partnered with the Greater Boston Legal Services to develop a legal strategy to recover wages. After two years, 1,200 former and current employees recuperated $649,000 in back wages.

We heard rumors about a change in ownership. No one informed the workers or supervisors. The managers instructed us to go to the personnel office, where we were told that we no longer had a job if we didn't have good papers. Some were told to reapply at the temp agency if they had good papers. I knew about 100 workers who got fired and had families. They all had rent and bills to pay.

Someone said, let's go to the Chelsea Collaborative, "they can give us orientation and legal advice."

At the Collaborative we learned about our rights including minimum wage and overtime. At first we were fearful but we received many trainings. Together we were able to recover our stolen wages even when we no longer worked for the company. Now I can send some money to my family in Guatemala. Every immigrant worker should learn about their rights and organize!

—Julian, a former Woburn bakery worker

Employer sanctions are one mechanism that increases the vulnerability of undocumented workers. The misguided idea behind employer sanctions is that unauthorized migration would end if employers who hire undocumented workers are fined or penalized. Instead, unethical employers have taken advantage of undocumented workers' vulnerability by paying below prevailing wages and violating other labor rights. Under the guise of making it illegal for employers to hire undocumented workers, it has become illegal for undocumented workers to work. Employer sanctions do not work. The AFSC believes that employers should be able to hire workers without becoming immigration agents.

Consistent with international human and labor rights, and universal moral and ethical principals, work should be a right with mutual obligations and responsibilities. All work has dignity. Only by equally enforcing labor rights regardless of documentation can workplace abuse and exploitation end. Employer sanctions and workplace eligibility systems such as E-Verify and I-9 Audits are creating an Apartheid labor system that leaves one group of workers with rights and another without, while also diminishing wages and protections for all workers.[7]

RECOMMENDATIONS

- End workplace raids and actions that punish employers for hiring workers.
- Repeal employer sanctions which have only led to increased exploitation of workers and an underground market for fabricated documentation.
- End electronic worker verification systems (like E-verify) and other means of keeping immigrant workers out of the workforce, such as I-9 audits, that punish both immigrant workers and employers.
- Allow all workers to apply for and obtain Social Security numbers, and to receive benefits from the system to which they contribute.
- Ensure, implement, and monitor anti-discrimination protections.
- Adequately fund and staff the Department of Labor and the Office of the Inspector General to ensure that fair labor standards and accountability measures are implemented and monitored.

PHOTO: © DAVID BACON

PRINCIPLE THREE

Develop a clear path to citizenship

Inclusive measures must be enacted that lead to permanent residence and citizenship for undocumented immigrants.

Permanent residency and the opportunity to apply for U.S. citizenship for current and future immigrants will ensure the protection of social, political, and labor rights for all people residing in the U.S. It also will eliminate the marginalization of undocumented individuals and their families, including same-sex couples. Providing a roadmap to citizenship recognizes the equity immigrants have built through their participation in U.S. society and acknowledges the inherent injustice of the secrecy, vulnerability, and exploitation imposed on undocumented women, men, and children when they cannot obtain lawful status. Visas that are temporary, tied to employment, or given as a result of recruitment by employers for labor programs condemn people to second-class social and political status, and make them vulnerable to retaliation for exercising their rights.

Approximately 9 million people live in mixed status families that include U.S. born children and undocumented immigrants.[8] These families struggle without access to documentation and live in fear of deportation and long-term separation because of harsh immigration laws. Permanent resident status for all will bring these families the peace of mind that they will not be separated. Once undocumented immigrants adjust status to permanent residence, they should have the choice to apply for the full benefits conferred by U.S. citizenship.

IMMIGRANT STORY

Family and friends of Ildefonso Martinez Sanchez, father of five, remember him as a good man and a hard worker who never hurt anyone. Ildefonso lived in Vista, California, for more than 20 years, working as a butcher at a local supermarket before getting laid off because of his immigration status.

Ildefonso's life took a deadly turn the day he came into contact with a Vista sheriff's deputy at a local store. As he went to purchase milk and eggs for his family a deputy asked Ildefonso for identification. When Ildefonso showed a Mexican I.D., the sheriff's deputy called the U.S. Border Patrol. Ildefonso was subsequently deported to Tijuana, Mexico.

There was no "legal" way for Ildefonso to return to the U.S., and he was subject to the 10 year bar of entry because he had lived in the U.S. unauthorized for more than one year. So on April 20, 2012, desperate to reunite with his family, Ildefonso agreed to pay a coyote $3,000 and began his journey across the Arizona desert with a group of 20 people. On the second day of the journey Ildefonso became ill and unable to keep up with the group. Despite the attempts of another group member to help him, Ildefonso got lost in the desert.

On April 26, 2012, Ildefonso's body was found badly decomposed. He was the sole breadwinner for his family, who now must deal with the heartbreak of Ildefonso's death, which was the result of broken immigration policies and unnecessary local law enforcement collaboration with the Border Patrol.

RECOMMENDATIONS

- Eliminate cap on visas to end the years-long delay for those currently awaiting visas.
- Pass legislation that allows people who reside in the U.S. to apply immediately for permanent residence and a path to citizenship if they choose.
- Create opportunities for migration to the U.S. for people who plan to migrate but who have no relatives here to petition for them.
- Ensure that positive factors (e.g., family ties, community service) are always balanced against any negative factors (e.g., criminal record, immigration violations) when determining eligibility for status.

PHOTO: © DAVID BACON

PRINCIPLE FOUR

Respect the civil and human rights of immigrants

Immigrants, regardless of status, deserve the same civil and human rights as all U.S. residents.

Freedom of movement is a human right. Immigration policy must protect that right and recognize and incorporate civil and human rights standards within national border and migration policies. Current U.S. immigration laws criminalize immigrants and migration itself by allowing the arrest, detention, and deportation of people based on their immigration status. Under this structure, the basic principles of due process, the right to counsel, and the right to a fair trial are not guaranteed. Current law and practice must change in order to protect these fundamental human rights.

A study by the Migration Policy Institute released in January 2013 shows that the U.S. spends more money on immigration enforcement than on the other federal criminal enforcement agencies combined, reaching $17.9 billion in FY 2012 alone.[9]

From 2008 through 2012, arrests, detentions, and deportations of immigrants increased dramatically, with more than one million people forcibly sent out of the U.S.[10] Close to 32,800 immigrants are detained on any given day in a national network of more than 250 county jails, as well as private and federal prisons.[11] These detentions are based solely on alleged immigration violations.

This is true even though the immigration laws that people are accused of violating are part of the civil rather than the criminal legal system. However, under a program called Operation Streamline, civil immigration violations are used as a basis for charging immigrants with violations of criminal law. Criminalizing immigrants in this way violates the U.S. Constitution and adds to the humanitarian crisis at the border, bringing defendants to trial in shackles and chains, and incarcerating them in for-profit, privately-run detention centers for months or longer. A report by Grassroots Leadership found that "By 2011, unlawful entry and unlawful re-entry were the two single most prosecuted crimes in the federal judicial system. More than 38,000 migrants were prosecuted under the unlawful entry statute and were sentenced, on average, to 30 days in jail. And, more than 33,000 immigrants were convicted of re-entry with an average sentence of more than a year in federal prison."[12]

This massive increase in prosecution, detention, and incarceration of immigrants is directly benefitting the for-profit prison industry, led by companies such as Corrections Corporation of America and GEO Group. It is no coincidence that these corporations have spent millions of dollars on lobbying and campaign contributions in order to influence policies that increase enforcement and detention.[13]

Although immigrants are often held in jails where conditions are substandard—131 people died while in the custody of U.S. Immigration and Customs Enforcement between 2003 and 2012[14]—current detention standards are not enforceable by law, leaving little or no redress for many detainees and their families.

At the same time, immigration laws mandate the deportation of immigrants convicted of a very broad range of crimes—including long-time lawful green card holders—regardless of the person's rehabilitation, length of residence in the U.S., family or other ties to the U.S., or lack of ties to the home country. Immigration judges have no discretion to look at the whole person. This drastic law,[15] passed in 1996, has resulted in hundreds of thousands of immigrants being taken away from the only homes they know, leaving behind fragile communities that suffer terribly from the loss of their loved ones. The expansion of programs that require collaboration between immigration and local law enforcement agencies has exacerbated this problem and created fear and distrust of local police in many immigrant communities throughout the U.S.

These actions take place within the bounds of U.S. law, but outside international human rights standards that protect the rights to liberty, family, and freedom from arbitrary arrest or detention. Our laws must change to recognize these rights and to protect the dignity of migrants and their families, with a focus on ensuring family unity.

IMMIGRANT STORY

On April 20, 2010, an undercover Prince George's County police officer came to my home and asked me to sell him a $2 phone card. I sold him the card and immediately thereafter the police officer and three other officers who he called in handcuffed me in front of my two-year-old child and took me into custody. When I was taken before the Commissioner (magistrate judge), I was asked whether I spoke English, to which I said "no." The Commissioner said to me: "then you go to jail."

I was charged with operating an unauthorized business and incarcerated for several days. The criminal charges were dropped but because of the Secure Communities program (federal deportation program) I was taken into custody by ICE and placed in removal proceedings before I was released on recognizance. I am still fighting my deportation. I have two children who are U.S. citizens.[16]

—Florinda, who lives in Maryland

Detention and deportation have effects far beyond the detention center. When a parent is detained, children and the family suffer; when the family's breadwinner is detained, the entire community must deal with damaging repercussions.

RECOMMENDATIONS

- End arrests, detention, and deportation of immigrants.
- Halt community sweeps, checkpoints, and roadblocks.
- Abolish the Operation Streamline program which coerces border crossers into plea bargains on Federal criminal charges, tries defendants en masse, and sentences them to incarceration in for-profit detention centers.
- Eliminate all agreements between the Department of Homeland Security and local/county/state law enforcement agencies (287(g)[17]/Secure Communities[18]).
- Ensure the due process rights of immigrants in detention, deportation, or removal proceedings including access to legal representation, fair trials, meaningful and expedient judicial review, and an end to racial, ethnic, and religious profiling and other forms of illegal searches and seizures.
- Create mechanisms to review and monitor conditions and standards in all jails and detention centers to protect basic rights such as medical and mental health care, and access to legal counsel.
- Codify specific and enforceable compliance standards for all facilities that jail immigrants.
- Eliminate arbitrary, indefinite, or mandatory detention or other forms of abusive treatment and detention practices that separate family members; end all ICE detention contracts.
- Implement humane, community based alternatives to detention that allow release after an individualized hearing.
- Repeal immigration laws that mandate deportation and lead to double punishments for individuals who have served time on criminal offenses.
- Ensure judicial procedures that take into account the impact of deportation on family and community members as well as on the individual; restore discretion to immigration judges to consider the whole person, rather than solely a criminal conviction, in deportation hearings.

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PRINCIPLE FIVE

Demilitarize the U.S.-Mexico border

End costly, ineffective, and inhumane policies that have heavily militarized the U.S.-Mexico border region and undermined the quality of life of border communities.

I. Demilitarize the U.S.-Mexico border and protect the region's quality of life

The U.S.-Mexico border has become an increasingly militarized boundary between two nations not engaged in armed conflict. Demilitarization of the U.S.-Mexico border is essential to the establishment of more effective and humane immigration policies that respect the needs of border communities.

Since 1977 AFSC has worked on the U.S.-Mexico border, supporting civic participation and community organizing efforts within border communities. In more than 30 years of work we have documented a distressing range of ongoing civil and human rights abuses, including racial profiling, and harassment of migrant workers and their families by federal law enforcement officials.

AFSC's border policy recommendations emerge from a vision of national boundaries that are the product of mutual agreement, jointly administered, disarmed, and maintained with border crossing procedures that respect the human dignity and rights of all people.

The extremely inefficient, costly, and deadly border enforcement policies in place today have been implemented without input from impacted border communities, and in a manner which fuels mistrust and tension between border residents and federal law enforcement agencies. Border Patrol personnel have increased from 9,100 in 2001 to more than 21,400 agents in 2013, 85% of which are deployed at the border with Mexico.[19]

Massive increases in appropriations for increased border security, including Department of Homeland Security equipment, enforcement personnel, and infrastructure, have served only to decrease real security in the U.S., disrupting the quality of life and economies of border communities and eroding human rights in the region. Since the 1993 establishment of border control policies,[20] at least 7,000 immigrants have lost

their lives. Since 2010, there have been 20 Border Patrol-related killings of border residents and immigrants, some of which occurred on Mexican national territory.[21] The Border Patrol has generated an inhumane culture of cruelty that operates with impunity and wanton disregard for the law, inadequate oversight, and in violation of domestic and international norms and standards.

RECOMMENDATIONS

- Demilitarize the U.S.-Mexico border and cease all enforcement policies and practices that criminalize and punish immigrants and members of border communities. Prevent the extension of militarized border operations to the U.S.-Canada border and the interior of the nation.
- Repeal the waiver authority which gives the Executive Branch under the Secretary of the Department of Homeland Security unprecedented power and jurisdiction to build walls throughout the border at the expense of laws and regulations that protect the environment, cultural landmarks, and the quality of life of border residents.
- Roll back federal funding for Border Patrol personnel and reduce the excessive numbers of Border Patrol agents. Instead invest in oversight mechanisms for the Office of the Inspector General and other independent investigative bodies.
- Grant unrestricted crossing rights for members of Indigenous nations and communities whose traditional lands predated the imposition of bisecting national boundaries.
- Direct government agencies to allow humanitarian organizations to do their work to save lives and recover remains without threat of retribution.
- Develop a uniform system for tracking border deaths between all data collecting agencies. Recognize border-crossing deaths as an international humanitarian crisis.
- Commit to transparency on the use of lethal force by Customs and Border Protection.
- Require border enforcement agencies and their respective agents to comply with and uphold local, national, and international laws and civil and human rights along the border region and in the interior of the country.
- Create policies for border authorities to facilitate orderly, expedited crossings at the ports of entry and improve infrastructure at the ports of entry in order to prevent long and costly waiting periods.
- End the deployment of the National Guard or any other U.S. military forces to the Border regions for immigration enforcement purposes.

II. End the privatization of enforcement along the border and restore due process rights

The increasing reliance on domestic and foreign private military contractors adds a profit motive to border militarization. Furthermore, the growth in arrests has created a booming business of immigration detention, leading to windfalls for private for-profit corrections companies and county jails.

In 2008, Secure Border Initiatives cost taxpayers billions of dollars in awards made to private entities to maintain and operate immigration detention facilities, construct walls and barriers, and transport deportees along the U.S.-Mexico border. Bids were awarded to foreign military contractors to build high-tech surveillance towers, marking a dangerous new threat to the wellbeing of border communities: the privatization of enforcement along the border. In recent years, Customs and Border Protection acquired ten aerial drones to monitor the U.S.-Mexico border, at a cost of $18 million each.[22] The Office of the Inspector General recommended grounding these drones because of poor program planning and because they are too expensive to maintain.

IMMIGRANT STORY

Anastasio Hernández Rojas, a 42-year-old husband and father of five, was beaten and Tasered to death by at least a dozen Border Patrol agents on May 28, 2010, at the San Ysidro-Tijuana Port of Entry. The Border Patrol agents had apprehended and intended to deport Anastasio, who was attempting to return to his family after being detained and deported on Mother's Day 2010.

Anastasio was a longtime San Diego resident and construction worker who did not have legal status. His death was ruled a homicide by the San Diego County Coroner's office, which determined that Anastasio had suffered multiple blows to his head and was Tasered repeatedly by a stun gun and stopped breathing during the assault.

Almost three years have passed since Anastasio's death at the hands of federal border agents. His lifetime partner, Maria, says that the family is still struggling to cope with the pain and trauma of their loss. Maria holds back her tears as she confesses that she is not able to answer the many questions her two children have about the murder of their father.

Anastasio is one of the 20 individuals killed by Border Patrol officials since 2010.[23]

RECOMMENDATIONS

- End all contracts with domestic and foreign private military contractors that contribute to the further militarization of the U.S./Mexico border.
- End the use of invasive and costly surveillance technology on the border, including aerial drones.
- Provide moral and financial support so that local and regional leaders and public officials take effective leadership to disband border vigilante groups. Public officials that promote, aid, sanction, or support such groups should be held accountable for the impact of any and all acts of vigilantism.

PHOTO: AFSC

PRINCIPLE SIX

Make family reunification a top priority

Recognize the distinctly important and valuable role of family ties by supporting the reunification of immigrant families in a way that equally respects both heterosexual and same-sex relationships.

Family unification has been the cornerstone of U.S. immigration policy since 1965. This basic value must be strengthened in any changes to current laws. The existing permanent resident visa system is based on an obsolete framework that arbitrarily caps the number of visas available each year, both for families and for workers, without regard to family reunification or current economic realities. This policy serves no substantial national interest and only increases the size of the undocumented population, as many immigrants—especially women—join their families before they are eligible to submit applications for residence, in order to avoid long and harsh separations that can last up to ten years.

AFSC's decades of providing direct legal immigration services in Newark, Des Moines and Miami lead us to call for policies that eliminate long waiting periods and ensure reunification of families in the shortest time period. AFSC supports an increase in the allocation of visas that will allow families to be reunited without delay. This should include access to visas for all members of the family so they are able to migrate together rather than separately. Where immigration law disqualifies some family members from coming in to the U.S., broad discretion to waive such bars should be available. Families already in the U.S. should be able to apply for immigration status without being compelled to return to their home countries and endure unnecessary separation from their loved ones.

IMMIGRANT STORY

Ms. C and her three children came to the United States in 2003 to reunite with the children's father. She was stopped while crossing the border into Texas and put into removal proceedings. Fear kept her from returning to immigration court and the family soon moved to New Jersey. Ms. C and the children's father later separated, leaving her alone to support the family, which now included five children.

In 2012, Ms. C was arrested for shoplifting groceries for her family and put in immigration detention. She was not given a hearing before a judge because she had received an in absentia removal order in Texas. Her oldest son, who had enrolled at Rutgers University on a full scholarship, moved home from college to care for his siblings, the youngest of whom were 6 and 8. He sought help from a Rutgers University law professor who, in cooperation with AFSC, obtained a stay of removal for Ms. C. She was released and went home to her children. While in detention, she was diagnosed with breast cancer, after having had two previous surgeries for uterine cancer.

Ms. C's youngest two children are U.S. citizens and the older children have applied for Deferred Action for Childhood Arrivals. Unfortunately, with the lack of discretion available to immigration judges, Ms. C does not have a strong case for permanent immigration relief and is hoping her stay of removal will be renewed next year.

RECOMMENDATIONS

- Meet the global demand of immigrants to be reunited with their families by eliminating the cap on the total number of family-based visas available and funding the U.S. Citizenship and Immigration Service to expedite the immigration adjustment process.
- Expedite the processing of pending visa applications by allocating additional funds to the U.S. Citizenship and Immigration Service.
- Eliminate harsh obstacles to immigrating, including prohibitions on returning to the United States based on prior immigration history, past criminal records, and high-income requirements for immigrant sponsors.
- Provide the same benefits to same-sex partners that are available to heterosexual partners.
- Eliminate restrictions on eligibility for spouses of deceased U.S. citizens or lawful permanent residents and ensure that children can immigrate with parents. Allow applications to be filed from within the U.S. so that families are not separated due to consular processing requirements.

PHOTO: © DAVID BACON

PRINCIPLE SEVEN

Ensure that immigrants and refugees have access to services

Our values should not be contingent on immigration status. Public programs and services to address needs like public health or to fulfill our societal sense of fairness and compassion should never be dependent on a person's race, ethnicity, or place of birth.

Our values should not be contingent on immigration status. Public programs and services that reflect the broad needs of our society for public health and community wellbeing, as well as our societal sense of fairness and compassion, should never be dependent on a person's race, ethnicity, or place of birth. AFSC believes all members of our communities should have access to needed services. Health care, education, and an affordable, safe place to live are basic human rights, not privileges. Currently, many immigrants and refugees are excluded from access to services to the detriment of all members of our community.[24] Rather than limit access to basic human rights, we should be expanding the safety net for vulnerable populations and our society as a whole.

IMMIGRANT STORY

On December 31, 2012, a 72-year-old man who suffers from severe Parkinson's disease was turned away by a local hospital emergency room and sent to the AFSC office in Newark, New Jersey. The man, undocumented and without any health insurance, had long been ill and without any stable living environment. He had been in and out of hospitals and the homeless shelter system for years.

When the hospital decided that they could not provide him with any services, they put him in a taxi and sent him to the AFSC office, which they knew as a program that helps immigrants. But the man did not need the services provided by AFSC—he needed shelter and ongoing medical care for his illness.

The AFSC staff took him to another emergency room that agreed to accept him. AFSC staff members also wrote a strong letter to officials at the first hospital, who responded in a very positive way, stating that they have changed their procedures, advised their staff, and would like to meet with AFSC to discuss future needs.

RECOMMENDATIONS

- Extend access to quality, affordable health care, affordable housing, food and nutrition programs, disability assistance, job training, and disaster assistance to everyone, regardless of immigration status.
- Eliminate rules based on immigration status in determining eligibility for public benefits, including the current time limits on receiving Supplemental Security and Medicare benefits for immigrants who have left their home countries because of torture, abuse, or other instances of particular suffering.
- Ensure compliance with federal and state laws that mandate interpretation services for people with limited English proficiency. Create opportunities and incentives for health care and other social service providers to be trained in cultural competency and to work effectively with interpreters and patients with limited English speaking abilities.
- Invest in programs that increase diversity in health care and social service professions, including members of immigrant communities and bilingual providers.
- Increase funding to safety-net health care facilities that provide life-saving preventive, primary, and specialty care to those who do not have insurance, including hospitals, federally qualified health centers, and migrant and rural health centers.
- Re-affirm protected access to public schools at K-12 levels, protect admission to higher education, and promote eligibility for in-state tuition to public universities along with access to financial aid for undocumented students.
- Vigorously enforce all laws that prohibit discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- Provide adequate funding for refugee protection and resettlement.

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   This displacement of people creates a flow of migrant workers moving from developing to developed countries. Corporations have used this migrant flow to satisfy their need for human labor at a price they want to pay. Furthermore, developing nations have been forced to adopt a labor export policy, in which the remittances sent back by their citizens are used to make enormous foreign debt payments, help family members and communities survive as the public services infrastructure and budget is reduced, and act as an escape valve for rising social discontent. And the impact of the "brain drain" of workers educated at public expense is made even more bitter when highly educated immigrants are forced to work abroad in jobs requiring much less skill and education

   The same failed policies encourage unrestricted private foreign trade and investment in developing countries that subject local industries and enterprises to produce for export, rather than for domestic consumption. Countries are pressured to keep wages and incomes relatively low in order to attract competition from foreign multinational corporations and to oppose any effort by workers and farmers to organize and raise their basic wages. Existing legal rights and protections for workers, farmers, and the poor are ignored, while international financial institutions require legal changes that eliminate labor rights, land reform, nationalization, or other achievements of past struggles.

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7. Since employer sanctions became law in 1986, a long record has been established of their use by employers to violate labor rights and standards for undocumented people and to take punitive measures when workers attempt to organize or file complaints. The federal government has made the situation worse by implementing measures that further criminalize work, such as charging workers with Federal identity theft for using an active Social Security number to gain employment; requiring employers to dismiss workers with Social Security

numbers that do not match the Social Security database (the "no-match" letter); use of I-9 audits; and expanding electronic databases for determining if workers are eligible to be hired (E-Verify). The latter has been found to contain significant errors and bureaucratic mistakes while all of these have served to deprive undocumented workers of their right to work, organize, receive legal wages and equal treatment. This ends up driving down wages and working conditions for all workers.

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18. Secure Communities ("S-Comm") is a deportation program launched by the Immigration and Customs Enforcement Agency (ICE) in 2008. Through S-Comm, fingerprints submitted by local law enforcement agencies to the FBI for criminal background checks are automatically searched against immigration databases. If ICE determines that an individual may be deportable, it requests that the local law enforcement agency detain him or her for transfer to ICE and possible deportation. ICE initially presented S-Comm as a voluntary program. But when states and localities began to push back, citing concerns about S-Comm's deleterious effects on community policing, risks of racial profiling, burden on cash-strapped communities, and failure to stick to its stated target of deporting dangerous criminals, ICE declared the program would be mandatory. As a result of S-Comm, local police have become a primary gateway to deportation, with serious implications for public safety and civil rights.

19. Border Security: Immigration Enforcement Between Ports of Entry, Congressional Research Service Report R42138, Marc R. Rosenblum, 2012. Available online at fpc.state.gov/documents/organization/180681.pdf

20. Intense border militarization began just before NAFTA was implemented with the application of the Southwest Border Enforcement Strategy, which included a series of operations that intentionally pushed the migrant flow from urban centers to rural and desolate areas. In 1993 Operation Hold-the-Line in Texas, followed by Operation Gatekeeper along the California border in 1994, became the framework for introducing sophisticated methods of controlling and redirecting migration patterns into the United States. For a comprehensive analysis on the history of border militarization pre-1994, please see: The Militarization of the U.S.-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home, Timothy J. Dunn, CMAS Books (Center for Mexican American Studies, The University of Texas at Austin, 1996).

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23. Border Patrol Abuse Since 2010, Southern Border Communities Coalition. Available online at: http://soboco.org/border-patrol-brutality-since-2010/

24. The 1996 welfare and immigration laws severely restricted immigrant access to public benefits. The Personal Responsibility and Work Opportunity Act ("Welfare Reform") barred Legal Permanent Residents (Green Card holders) from accessing most public benefits, other than emergency services, for five years. This includes food stamps, TANF, Social Security and others. Undocumented immigrants are barred from receiving nearly all public services and benefits, including those listed above.

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PRESS STATEMENT

Statement of Attorney General Maura Healey on SJC Decision Regarding ICE Detainer Requests

7/24/2017

Office of Attorney General Maura Healey

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BOSTON — Today, Attorney General Maura Healey issued the following statement on the Massachusetts Supreme Judicial Court's **decision** in the case of *Lunn v. Commonwealth*. This is the first statewide decision in the nation on whether local law enforcement officials may, as a matter of state law, detain someone at the request of federal immigration authorities.

"Today's decision is a victory for the rule of law and smart immigration and criminal justice policies, and a rejection of anti-immigrant policies that have stoked fear in communities across the country. As my office argued in this case, Massachusetts law protects our residents from illegal detention and prevents the federal government from forcing local law enforcement to make decisions contrary to the public safety interests of their communities. This decision allows local law enforcement to focus their resources on keeping people safe."

In March, AG Healey together with Suffolk County Sheriff Steve Tompkins **filed a brief** arguing that there are many ways that state and local law enforcement agencies cooperate with the federal government if a particular individual poses a threat to public safety, but that should be left to those authorities to decide consistent with local needs.

Many organizations **submitted briefs** supporting the AG's filing, including the Immigration and Refugee Clinical Program at Harvard Law School, the Criminal Defense Clinic at Boston University School of Law, Massachusetts Association of Criminal Defense Lawyers, and Suffolk Lawyers for Justice, Inc., as well as thirty academics in the field of immigration law.

Today's decision closely tracks the arguments laid out in the brief by the AG's Office. In the decision issued today, the SJC found that "Massachusetts law provides no authority for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody."

Similar to what the AG's Office has also argued, the decision also makes clear that this is a matter that is best addressed by the Legislature, if they wish to do so.

Media Contact

Jillian Fennimore +

Office of the Attorney General →

Attorney General Maura Healey is the chief lawyer and law enforcement officer of the Commonwealth of Massachusetts.

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SREYNUON LUNN vs. COMMONWEALTH & another. [Note 1]

477 Mass. 517

April 4, 2017 - July 24, 2017

Suffolk County

Present: Gants, C.J., Lenk, Hines, Gaziano, Lowy, Budd, & Cypher, JJ.

Records And Briefs:

(1) SJC-12276 01 Appellant Lunn Brief
(2) SJC-12276 04 Amicus Harvard Immigration Brief
(3) SJC-12276 05 Amicus Immigration Legal Academics Brief
(4) SJC-12276 06 Appellee Commonwealth Brief
(5) SJC-12276 07 Amicus Boston University School Of Law Brief
(6) SJC-12276 09 Amicus Bristol County Bar Advocates Brief
(7) SJC-12276 10 Amicus The United States Brief

Oral Arguments

Alien. Arrest.

Discussion of civil immigration enforcement [521-523], the use of civil immigration detainers [523-526], and the voluntary nature of such detainers [526-527].

This court concluded that what the Federal Department of Homeland Security asks for when it requests in a civil immigration detainer that a Massachusetts custodian hold a person for up to two days after he or she would otherwise be entitled to release from State custody constitutes an arrest as a matter of Massachusetts law. [527-528]

This court concluded that court officers in Massachusetts, who have the same power to arrest while on court house premises as Massachusetts police officers, lack authority under either Massachusetts common law [528-531] or Massachusetts statutory law [531-532] to arrest an individual pursuant to a request contained in a Federal civil immigration detainer to hold that individual for up to two days after he or she would otherwise be entitled to release from State custody; further, this court declined to adopt, as a matter of Massachusetts law, the theory of inherent authority to carry out such detainer requests as a basis for authorizing civil immigration arrests. [532-537]

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on February 7, 2017.

The case was reported by Lenk, J.

Emma C. Winger (Mark Fleming, of New York, & Alyssa Hackett, Committee for Public Counsel Services, also present) for the petitioner.

Joshua S. Press, of the District of Columbia, for the United States.

Jessica V. Barnett, Assistant Attorney General (Allen H. Forbes, Special Assistant Attorney General, & Sara A. Colb, Assistant Attorney General, also present) for the Commonwealth & another.

The following submitted briefs for amici curiae:

Sabrineh Ardalan, of New York, Philip L. Torrey, Mark C. Fleming, & Laila Ameri for Immigration and Refugee Clinical

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Program at Harvard Law School.

Christopher N. Lasch, of Colorado, for David C. Baluarte & others.

Karen Pita Loor for Criminal Defense Clinic at Boston University School of Law.

Omar C. Jadwat, of New York, Spencer E. Amdur, of Pennsylvania, Cody H. Wofsy, of California, Matthew R. Segal, Jessie J. Rossman, Laura Rótolo, Carlton E. Williams, Kirsten V. Mayer, Kim B. Nemirow, & Laura Murray-Tjan for Bristol County Bar Advocates, Inc., & others.

BY THE COURT. After the sole pending criminal charge against him was dismissed, the petitioner, Sreynuon Lunn, was held by Massachusetts court officers in a holding cell at the Boston Municipal Court at the request of a Federal immigration officer, pursuant to a Federal civil immigration detainer. Civil immigration detainers are documents issued by Federal immigration officers when they wish to arrest a person who is in State custody for the purpose of removing the person from the country. By issuing a civil detainer, the Federal officer asks the State custodian voluntarily to hold the person for up to two days after he or she would otherwise be entitled to be released from State custody, in order to allow Federal authorities time to arrive and take the person into Federal custody for removal purposes.

The United States Supreme Court has explained that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," Arizona v. United States, 567 U.S. 387, 407 (2012), and that the Federal administrative process for removing someone from the country "is a civil, not criminal, matter." Id. at 396. Immigration detainers like the one used in this case, for the purpose of that process, are therefore strictly civil in nature. The removal process is not a criminal prosecution. The detainers are not criminal detainers or criminal arrest warrants. They do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime. Detainers like this are used to detain individuals because the Federal authorities believe that they are civilly removable from the country.

It is undisputed in this case that holding someone in circumstances like this, against his or her will, constitutes an arrest under Massachusetts law. The question before us, therefore, is whether Massachusetts court officers have the authority to arrest someone

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at the request of Federal immigration authorities, pursuant to a civil immigration detainer, solely because the Federal authorities believe the person is subject to civil removal. There is no Federal statute that confers on State officers the power to make this kind of an arrest. The question we must answer is whether the State law of Massachusetts authorizes such an arrest. To answer the question, we must look to the long-standing common law of the Commonwealth and to the statutes enacted by our Legislature. Having done so, we conclude that nothing in the statutes or common law of Massachusetts authorizes court officers to make a civil arrest in these circumstances. [Note 2], [Note 3]

Background. Lunn was arraigned in the Boston Municipal Court on October 24, 2016, on a single count of unarmed robbery. The day before the arraignment, the United States Department of Homeland Security (department) issued a civil immigration detainer against him. The detainer document was a standard form document then in use by the department. It requested, among other things, that the Massachusetts authorities continue to hold Lunn in State custody for up to two days after he would otherwise be released, in order to give officers of the department time to arrive and take him into Federal custody. [Note 4]

Bail was set at the arraignment in the amount of $1,500. Lunn did not post bail and, according to the trial court docket, was committed to the custody of the sheriff of Suffolk County (sheriff)

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at the Suffolk County jail in lieu of bail. [Note 5]

Lunn was brought back to court for trial on February 6, 2017. [Note 6] He was transported from the jail to the court house by personnel from the office of the sheriff, and was delivered into the custody of the trial court's court officers. Because the Commonwealth was not ready for trial at that time, the judge dismissed the case for lack of prosecution. [Note 7] At that point there were no longer any criminal charges pending against Lunn in Massachusetts. Lunn's counsel informed the judge of the outstanding detainer and asked that Lunn be released from custody notwithstanding the detainer, the criminal case having been dismissed. The judge declined to act on that request. [Note 8] Lunn remained in the custody of the court officers; it appears that he was kept in a holding cell in the court house. Several hours later -- the record before us does not specify exactly how long -- department officials arrived at the

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court house and took Lunn into Federal custody.

The following morning, February 7, 2017, Lunn's counsel filed a petition in the county court on his behalf, pursuant to G. L. c. 211, § 3, asking a single justice of this court to order the Boston Municipal Court to release him. [Note 9] The petition alleged, among other things, that the trial court and its court officers had no authority to hold Lunn on the Federal civil detainer after the criminal case against him had been dismissed, and that his continued detention based solely on the detainer violated the Fourth and Fourteenth Amendments to the United States Constitution and arts. 12 and 14 of the Massachusetts Declaration of Rights. By that time, however, Lunn had already been taken into Federal custody. The single justice therefore considered the matter moot but, recognizing that the petition raised important, recurring, and time-sensitive legal issues that would likely evade review in future cases, reserved and reported the case to the full court.

Discussion. 1. Civil versus criminal immigration enforcement. The principal statute governing immigration in the United States is the Immigration and Nationality Act (act), 8 U.S.C. §§ 1101 et seq. It sets forth in elaborate detail the terms, conditions, and procedures for admitting individuals into the United States who are not citizens or nationals of this country (referred to in the act as "aliens," 8 U.S.C. § 1101[a][3]), as well as the terms, conditions, and procedures for removing those individuals from the country. Some violations of the act are criminal offenses. It is a crime, for example -- punishable as a misdemeanor for the first offense -- for an alien to enter the country illegally. 8 U.S.C. § 1325(a). [Note 10] Immigration crimes are prosecuted in the Federal District Courts, like any other Federal crimes.

Many violations of the act are not criminal offenses. Being

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present in the country illegally, for example, is not by itself a crime. Illegal presence without more is only a civil violation of the act that subjects the individual to possible removal. 8 U.S.C. § 1227(a)(1)(B). See Arizona, 567 U.S. at 407; Melendres v. Arpaio, 695 F.3d 990, 1000-1001 (9th Cir. 2012) ("[U]nlike illegal entry, mere unauthorized presence in the United States is not a crime"). [Note 11]

Significantly, the administrative proceedings brought by Federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions. See Arizona, 567 U.S. at 396. See also 6 C. Gordon, S. Mailman, S. Yale-Loehr, & R.Y. Wada, Immigration Law and Procedure § 71.01[4][a] (Matthew Bender, rev. ed. 2016) (acknowledging "the uniform judicial view, reiterated in numerous Supreme Court and lower court holdings, . . . that [removal] is a civil consequence and is not regarded as criminal punishment"). This is true even where the alleged basis for removal is the commission of a criminal offense. Aliens are subject to removal from the country for a variety of reasons. For example, an individual is subject to removal if he or she was inadmissible at the time of entry into the country or has violated the terms and conditions of his or her admission, 8 U.S.C. § 1227(a)(1)(A)☐(D); has committed certain crimes while in the country, id. at § 1227(a)(2); is or at any time after admission into the country has been a drug abuser or addict, id. at § 1227(a)(2)(B)(ii); presents certain security or foreign policy risks, id. at § 1227(a)(4);

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has become a public charge, id. at § 1227(a)(5); or has voted illegally, id. at § 1227(a)(6). Removal proceedings are heard and decided by executive branch immigration judges appointed by the United States Attorney General, who operate within the Department of Justice's Executive Office for Immigration Review. Id. at § 1101(b)(4).

2. Use of civil immigration detainers. The type of immigration detainer issued by the department in this case was Form I-247D, entitled "Immigration Detainer - Request for Voluntary Action." It was one of three different types of forms then being used by the department to notify State authorities that they had in their custody a person believed by the department to be a removable alien, and to indicate what action the department was asking the State authorities to take with respect to that person. [Note 12]

Form I-247D was to be completed and signed by a Federal immigration officer. In part 1.A of the form, the officer was asked to indicate, by checking one or more of six boxes, a basis on which the department had determined that the person in custody was "an immigration enforcement priority." [Note 13] The officer in this case checked the box stating that Lunn "has been convicted of a 'significant misdemeanor' as defined under [department] policy." There was no indication on the form what that misdemeanor was, whether it was a Federal or State offense, when it occurred, or when he was convicted.

Part 1.B of the form stated that the department had determined that there was probable cause to believe that the person in custody was a removable alien, and required the officer completing the form to indicate, by checking one or more of four boxes, the basis for that determination. In this case the officer checked two boxes: the first stated that there was "a final order of removal against the [petitioner]"; and the second stated that there was "biometric confirmation of the [petitioner's] identity and a records check of

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federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the [petitioner] either lacks immigration status or notwithstanding such status is removable under [United States] immigration law." The detainer did not provide any specific details as to the order of removal. [Note 14]

The detainer form stated that the department "requested" the custodian of the subject of the detainer to do three things: (1) "[s]erve a copy of this form on the subject and maintain custody of him/her for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow [the department] to assume custody"; [Note 15] (2) notify the department at a given telephone number "[a]s early as possible prior to the time you otherwise would release the subject"; and (3) "[n]otify this office in the event of the subject's death, hospitalization or transfer to another institution." [Note 16]

In short, this was a civil immigration detainer. It alleged that Lunn was subject to, and was being sought by the Federal authorities for the purpose of, the civil process of removal. It was not a criminal detainer or a criminal arrest warrant. It did not allege that the Federal authorities were seeking Lunn for a criminal immigration offense or any other Federal crime, for purposes of a criminal prosecution. [Note 17]

In Massachusetts, an immigration detainer form of this type

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will typically travel with its subject as he or she is transferred between custodians. In this case, for example, the detainer, originally issued by the department to the Boston police, would have been given by the police to the court officers at the time Lunn was brought into court for arraignment; by the court officers to the sheriff following the arraignment, when Lunn was committed to the sheriff's custody in lieu of bail; and by the sheriff back to the court officers when the defendant was brought into court for trial.

The parties stipulate that it is common in Massachusetts, as apparently happened here, that the courts and law enforcement

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agencies do not actually serve the subject with a copy of the detainer, as the form requests. The parties further stipulate that "[i]ndividual law enforcement agencies in the Commonwealth may or may not have policies on the subject of [immigration] detainers," and that "[p]olicies and practices vary from one Commonwealth law enforcement agency to another as to whether, or under which circumstances, to honor [such] detainers."

3. Voluntariness of detainers. Federal immigration detainers like Form I-247D, and now Form I-247A, by their express terms are simply requests. They are not commands, and they impose no mandatory obligations on the State authorities to which they are directed. The Federal government, through the detainer, "requests" that it be notified when a person in State custody, whom the Federal government believes to be a removable alien, is scheduled to be released, and it "requests" that the State authorities voluntarily keep the person in custody for up to two additional days, so that the department can arrive and assume custody of the person.

The United States, in its brief as amicus curiae, concedes that compliance by State authorities with immigration detainers is voluntary, not mandatory. The government's concession is well founded for at least two reasons. First, the act nowhere purports to authorize Federal authorities to require State or local officials to detain anyone. See Galarza v. Szalczyk, 745 F.3d 634, 641 (3d Cir. 2014) ("The [a]ct does not authorize [F]ederal officials to command [S]tate or local officials to detain suspected aliens subject to removal"). [Note 18] Second, the Tenth Amendment to the United States Constitution prohibits the Federal government from compelling States to employ their resources to administer and

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enforce Federal programs. See id. at 643-644, citing Printz v. United States, 521 U.S. 898 (1997), and New York v. United States, 505 U.S. 144 (1992) (analyzing constitutional concerns associated with interpreting detainers to be mandatory; "a conclusion that a detainer issued by a [F]ederal agency is an order that [S]tate and local agencies are compelled to follow . . . is inconsistent with the anti-commandeering principle of the Tenth Amendment"). In other words, even if the Federal government wanted to make State compliance with immigration detainers mandatory, the Tenth Amendment likely would prevent it from doing so. The Federal government has also made the same concession in litigation elsewhere, and in various policy statements and correspondence, that State compliance with its detainers is voluntary. See Galarza, supra at 639 n.3, 641-642 (summarizing cases and statements; "In short, the position of [F]ederal immigration agencies has remained constant: detainers are not mandatory").

4. The requested detention constitutes an arrest. What the department is asking for, when it requests in a civil immigration detainer that a Massachusetts custodian hold a person for up to two days after he or she would otherwise be entitled to release from State custody, constitutes an arrest as a matter of Massachusetts law. An arrest occurs in Massachusetts, with or without a warrant, when "there is (1) an actual or constructive detention or seizure, (2) performed with the intention to effect an arrest, and (3) so understood by the person detained. See Commonwealth v. Powell, 459 Mass. 572, 580 (2011)[, cert. denied, 565 U.S. 1262 (2012)]; Commonwealth v. Limone, 460 Mass. 834, 839 (2011). The subjective understanding of the officer or of the defendant does not control. Commonwealth v. Avery, 365 Mass. 59 (1974); Commonwealth v. Johnson, 413 Mass. 598 (1992)." J.A. Grasso, Jr., & C.M. McEvoy, Suppression Matters Under Massachusetts Law § 6-1 (2017). The United States acknowledged at oral argument in this case that a detention like this, based strictly on a Federal immigration detainer, constitutes an arrest. The government has made similar concessions in other cases as well. See, e.g., Moreno v. Napolitano, 213 F. Supp. 3d 999, 1005 (N.D. Ill. 2016) (stating that Federal defendants "concede that being detained pursuant to an . . . immigration detainer constitutes a warrantless arrest"). Cf. Morales v. Chadbourne, 793 F.3d 208, 217 (1st Cir. 2015) ("[W]hile a detainer is distinct from an arrest, it nevertheless results in the detention of an individual. . . .

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Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes -- one that must be supported by a new probable cause justification").

To be sure, it is permissible in certain limited circumstances for a police officer, on making an otherwise lawful stop, to briefly detain an individual for investigatory purposes, even though the individual's liberty is thereby temporarily restrained and he or she is not free to leave. See, e.g., Commonwealth v. Sinforoso, 434 Mass. 320, 325 (2001); Commonwealth v. Willis, 415 Mass. 814, 819-820 (1993); Commonwealth v. Sanderson, 398 Mass. 761, 765-767 (1986). See generally Terry v. Ohio, 392 U.S. 1 (1968). But that is not what happens with a Federal immigration detainer. When a Massachusetts custodian holds an individual solely on the basis of a civil detainer, the custodian has no investigatory purpose. Indeed, by its very nature, the detainer comes into play only if and when there is no other basis for the State authorities to continue to hold the individual (e.g., after he or she has posted bail or been ordered released on personal recognizance; or after he or she has completed serving the committed time on a criminal sentence; or, as in this case, after pending charges have been dismissed). The sole purpose of the detention is to maintain physical custody of the individual, so that he or she remains on the premises until the Federal immigration authorities arrive and take him or her into Federal custody to face possible removal. Moreover, the requested detention is not necessarily brief. The department, by its detainer, asks for a detention of up to two full days.

What happened in this case, therefore, was plainly an arrest within the meaning of Massachusetts law. Lunn was physically detained in a holding cell, against his will, for several hours. He was otherwise entitled to be free, as no criminal charges were then pending against him and there was no other basis under Massachusetts law to hold him. The sole basis for holding him was the civil immigration detainer. The question, then, is whether the court officers who held him had the authority to arrest him on the basis of a civil detainer.

5. Authority of court officers to arrest. Court officers in Massachusetts, while on court house premises, have the same power

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to arrest as Massachusetts police officers. G. L. c. 221, § 70A. [Note 19] The authority to arrest is generally controlled by Massachusetts common law and statutes, which confer the power and also define the limits of that power. Our State law may authorize Massachusetts officers to enforce Federal statutes and make arrests for Federal offenses (unless preempted by Federal law), but it need not do so. Commonwealth v. Craan, 469 Mass. 24, 33 (2014), and cases cited. In the absence of a Federal statute granting State officers the power to arrest for a Federal offense, their authority to do so is a question of State law. Id. See United States v. Di Re, 332 U.S. 581, 589-590 (1948) (authority of State officers to make arrests for Federal crimes is, absent Federal statutory instruction, matter of State law); Gonzales v. Peoria, 722 F.2d 468, 475-476 (9th Cir. 1983), overruled on other grounds, Hodgers-Durgin v. De La Vina, 199 F.3d 1037, 1040 n.1 (9th Cir. 1999) (concluding that Arizona officers had authority as matter of State law to enforce criminal provisions of Federal immigration law). We must therefore carefully examine Massachusetts common law, Massachusetts statutory law, and any Federal statutory law that may possibly give Massachusetts officers the power to arrest in these circumstances.

a. Massachusetts common law. Under the common law of Massachusetts, police officers have the authority to make warrantless arrests, but only for criminal offenses, and then only in limited circumstances. First, an officer has authority to arrest without a warrant any person whom he or she has probable cause to believe has committed a felony. See Commonwealth v. Gernrich, 476 Mass. 249, 253 (2017); Commonwealth v. Hason, 387 Mass. 169, 173 (1982). Second, an officer has authority to arrest without a warrant any person who commits a misdemeanor, provided the misdemeanor involves an actual or imminent breach of the peace, is committed in the officer's presence, and is ongoing at the time of the arrest or only interrupted by the arrest. See Commonwealth v. Jewett, 471 Mass. 624, 629-630 (2015); Commonwealth v. Howe, 405 Mass. 332, 334 (1989); Muniz v. Mehlman, 327 Mass. 353, 357 (1951); Commonwealth v. Gorman, 288 Mass. 294, 297-299 (1934), and numerous authorities cited.

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"Breach of the peace" in this context generally means an act that causes a public disturbance or endangers public safety in some way. See, e.g., Jewett, 471 Mass. at 629-630 (reckless operation of motor vehicle, including erratic driving on public streets, near-collision with parked vehicle, failure to stop, and chase through residential area, involved breach of peace); Howe, 405 Mass. at 334 (operating motor vehicle while under influence of alcohol); Commonwealth v. Mullins, 31 Mass. App. Ct. 954, 954-955 (1991) (blaring loud music "turned up to full blast" and shouting obscenities from apartment window, thereby disturbing neighbors and resulting in gathering of neighbors outside). See also Black's Law Dictionary at 189 (6th ed. 1990) (defining "[b]reach of the peace" as "violations of public peace or order and acts tending to a disturbance thereof . . . disorderly, dangerous conduct disrupting of public peace"); 4 C.E. Torcia, Wharton's Criminal Law § 503 (15th ed. 1996). [Note 20]

That is the sum and substance of the power of police officers to make warrantless arrests under Massachusetts common law. Conspicuously absent from our common law is any authority (in the

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absence of a statute) for police officers to arrest generally for civil matters, let alone authority to arrest specifically for Federal civil immigration matters. [Note 21], [Note 22]

b. Massachusetts statutory law. Apart from the common law, the parties and the amici have directed us to numerous and varied Massachusetts statutes that authorize arrests by police officers and other officials, both with and without warrants. See, e.g., G. L. c. 12, § 11J (constitutional and civil rights violations); G. L. c. 41, § 98 (public disturbances and disorder); G. L. c. 90, § 21 (certain motor vehicle offenses); G. L. c. 91, § 58 (misdemeanors committed in or upon certain Massachusetts waterways); G. L. c. 94C, § 41 (controlled substance offenses); G. L. c. 209A, § 6 (7) (domestic violence offenses); G. L. c. 269, § 10 (h) (unlicensed firearm offenses); G. L. c. 276, § 28 (various

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misdemeanors); G. L. c. 279, § 3 (probation violations). However, no party or amicus has identified a single Massachusetts statute that authorizes a Massachusetts police officer or court officer, directly or indirectly, to arrest in the circumstances here, based on a Federal civil immigration detainer. Simply put, there is no such statute in Massachusetts.

The parties and amici have also identified several Massachusetts statutes that authorize the noncriminal detention of individuals in certain circumstances. See, e.g., G. L. c. 111B, § 8 (protective custody for incapacitated and intoxicated persons); G. L. c. 123, § 12 (emergency hospitalization due to mental illness); G. L. c. 123, § 35 (involuntary commitment of persons with alcohol and substance abuse disorders); G. L. c. 123A (sexually dangerous persons); G. L. c. 215, §§ 34, 34A (civil contempt for noncompliance with spousal or child support order); G. L. c. 276, §§ 45-49 (material witnesses in criminal proceedings). Again, however, none of these statutes either directly or indirectly authorizes the detention of individuals based solely on a Federal civil immigration detainer.

c. Argument of the United States. The United States, as amicus curiae, asks us to hold that officers in Massachusetts have "inherent authority" to carry out the detention requests made in Federal civil immigration detainers ☐- essentially, to make arrests for Federal civil immigration matters as a form of cooperation with the Federal authorities. See, e.g., United States v. Santana-Garcia, 264 F.3d 1188, 1193-1194 (10th Cir. 2001) (State and local police officers have "implicit authority" to investigate and arrest for violations of Federal immigration law, presumably both civil and criminal, absent State or local law to contrary). [Note 23] But see Gonzales, 722 F.2d at 475 (State law must affirmatively grant

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authority to State and local officers to enforce Federal immigration law before arrest can be made on that basis).

"The assertion that [S]tate and local officials have inherent civil enforcement authority has been strongly contested in the academy, in police departments, and in the courts" (footnotes omitted). Armacost, "Sanctuary" Laws: The New Immigration Federalism, 2016 Mich. L. Rev. 1197, 1211 (Armacost). Moreover, it is questionable whether a theory of "inherent" or "implicit" State authority continues to be viable in the immigration context after the United States Supreme Court's decision in Arizona, supra, which severely curtailed, on Federal preemption grounds, the power of State and local police to act in Federal immigration matters. See I.J. Kurzban, Immigration Law Sourcebook 425 (15th ed. 2016) ("The notion of 'inherent authority' to arrest and detain undocumented persons . . . has been seriously undermined" by Supreme Court's holding); Armacost, supra at 1211-1215 (arguing that inherent authority theory has been foreclosed by Supreme Court's decision). Assuming that the theory remains viable, and has not been foreclosed by the Supreme Court's decision in Arizona, a point of Federal law that we need not decide, we nevertheless decline to adopt it as a matter of Massachusetts law as a basis for authorizing civil immigration arrests.

As we have said, the common law and the statutes of this Commonwealth are what establish and limit the power of Massachusetts officers to arrest. There is no history of "implicit" or "inherent" arrest authority having been recognized in Massachusetts that is greater than what is recognized by our common law and the enactments of our Legislature. Where neither our common law nor any of our statutes recognizes the power to arrest for Federal civil immigration offenses, we should be chary about reading our law's silence as a basis for affirmatively recognizing a new power to arrest -- without the protections afforded to other arrestees under Massachusetts law [Note 24] -- under the amorphous rubric of "implicit" or "inherent" authority. Recognizing a new common-law power to effect a Federal civil immigration arrest would also create an anomaly in our common law: a State or local

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police officer in Massachusetts (or, as in this case, a court officer) would be able to effect a warrantless arrest for a criminal misdemeanor only if it involves a breach of the peace (see part 5.a, supra), but would be able to arrest for a Federal civil matter without any such limitation; in other words, the officer would have greater authority to arrest for a Federal civil matter than for a State criminal offense. See generally Bach, State Law to the Contrary? Examining Potential Limits on the Authority of State and Local Law Enforcement to Enforce Federal Immigration Law, 22 Temp. Pol. & Civ. Rts. L. Rev. 67 (2012).

The prudent course is not for this court to create, and attempt to define, some new authority for court officers to arrest that heretofore has been unrecognized and undefined. The better course is for us to defer to the Legislature to establish and carefully define that authority if the Legislature wishes that to be the law of this Commonwealth. [Note 25]

The United States, as amicus, also points to 8 U.S.C. § 1357(g)(10) for the proposition that State officers may cooperate with Federal immigration authorities by detaining and arresting pursuant to an immigration warrant. To understand what § 1357(g)(10) accomplishes, it is necessary to consider § 1357(g) as a whole.

Section 1357(g) generally concerns situations in which State and local officers can perform functions of a Federal immigration officer. Section 1357(g)(1) provides specifically that States and their political subdivisions may enter into written agreements with the Federal government that allow State or local officers to perform functions of an immigration officer "at the expense of the State or political subdivision and to the extent consistent with State and local law." Such agreements are commonly referred to as "287(g) agreements," referring to the section of the act that authorizes them, § 287(g), which is codified in 8 U.S.C. § 1357(g). Among other things, State and local officers performing Federal functions under such agreements must be trained in the enforcement of Federal immigration laws, must adhere to the Federal laws, may use Federal property and facilities to carry out their functions, and are subject to the supervision and direction of the United States Attorney General. 8 U.S.C. § 1357(g)(2)-(5). No State or political subdivision is required to enter into such an agreement. See 8

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U.S.C. § 1357(g)(9). [Note 26]

The specific language relied on by the United States in this case is the final paragraph of § 1357(g), which provides:

"(10) 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."

Significantly, the United States does not contend that § 1357(g)(10) affirmatively confers authority on State and local officers to make arrests pursuant to civil immigration detainers, where none otherwise exists. See Craan, 469 Mass. at 33 (recognizing that Federal statute may confer authority on State officers to arrest for Federal offenses). See also Di Re, 332 U.S. at 589-590. In other words, it does not claim that § 1357(g)(10) is an independent source of authority for State or local officers to make such an arrest. Rather, it cites § 1357(g)(10) as a part of its argument that State and local officers have inherent authority to make these kinds of arrests; specifically, it relies on this provision for the proposition that such arrests, when performed at the request of the Federal government, are a permissible form of State participation in the Federal immigration arena that would not be preempted by Federal law. We have already rejected the argument that Massachusetts officers have an inherent authority to arrest that exceeds what is conferred on them by our common law and statutes.

Further, it is not reasonable to interpret § 1357(g)(10) as affirmatively granting authority to all State and local officers to make arrests that are not otherwise authorized by State law. Section 1357(g)(10), read in the context of § 1357(g) as a whole, simply makes clear that State and local authorities, even without a 287(g) agreement that would allow their officers to perform the functions

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of immigration officers, may continue to cooperate with Federal immigration officers in immigration enforcement to the extent they are authorized to do so by their State law and choose to do so. [Note 27]

In those limited instances where the act affirmatively grants authority to State and local officers to arrest, it does so in more explicit terms than those in § 1357(g)(10). See, e.g., 8 U.S.C. § 1103(a)(10) (permitting Attorney General to authorize State and local officers, with consent of their department or agency, to perform all powers and duties of immigration officers in emergency cases of "actual or imminent mass influx of aliens off the coast of the United States, or near a land border"); id. at § 1252c

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(authorizing State and local officers, "to the extent permitted by State and local law," to arrest and detain convicted felons who have been previously deported but are presently in country illegally); id. at § 1324(c) (authorizing arrest, by designated immigration officers "and all other officers whose duty it is to enforce criminal laws," of persons who commit criminal offense of illegally bringing in, transporting, or harboring aliens); id. at § 1357(g)(1)-(9) (authorizing State and local officers trained pursuant to written agreements with Federal government to perform duties of immigration officers).

Conclusion. The case is remanded to the county court for entry of a judgment stating that Lunn's case is dismissed as moot, and declaring that Massachusetts law provides no authority for Massachusetts court officers to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody.

So ordered.

FOOTNOTES

[Note 1] Sheriff of Suffolk County (sheriff), intervener.

[Note 2] Given this conclusion, we do not address whether such an arrest, if authorized, would be permissible under the United States Constitution or the Massachusetts Declaration of Rights.

[Note 3] We acknowledge the amicus briefs submitted by the Immigration and Refugee Clinical Program at Harvard Law School; the Criminal Defense Clinic at Boston University School of Law; Bristol County Bar Advocates, Inc., Massachusetts Association of Criminal Defense Lawyers, Pilgrim Advocates, Inc., and Suffolk Lawyers for Justice, Inc.; and thirty academics in the field of immigration law.

We also acknowledge the brief filed by the United States as amicus curiae. In addition, we allowed the motion of the United States to participate in the oral argument of the case. Mass. R. A. P. 17, as amended, 426 Mass. 1602 (1998).

[Note 4] The detainer was addressed to the Boston police department and any other Massachusetts authorities that subsequently assumed custody of Lunn. The detainer form states, "This request takes effect only if you serve a copy of this form on the subject . . . ," and provides space for "the law enforcement agency currently holding the subject of the notice" to indicate when and how it was served. Lunn does not appear to have been served with a copy of the detainer by the police, the sheriff, or the court, although he acknowledges that he was told of it by his counsel.

[Note 5] An entry was made on the trial court docket stating that the petitioner was "held on . . . [the] detainer." This entry, to the extent it suggests that the petitioner was actually being held in custody pursuant to the Federal immigration detainer, is misleading. At no point before trial was he actually held pursuant to the detainer. He was held in lieu of bail while awaiting trial in the present case and, for a brief period, on a criminal sentence in a separate case (see note 6, infra). The detainer by its own terms requested that he be detained only if and when he was to be released from State custody.

[Note 6] Several additional events occurred between the time of arraignment and the time of trial that, although not essential to our decision, are worth noting. First, Lunn was transferred at some point to the custody of the sheriff of Norfolk County to serve a sentence (at the Norfolk County house of correction) in a separate criminal case from Norfolk County. When that sentence was completed, on or about January 13, 2017, he was returned to the custody of the sheriff of Suffolk County and held in lieu of bail awaiting trial in this case.

Second, on November 21, 2016, the trial court allowed the Commonwealth's motion to amend the criminal complaint in the case, with Lunn's consent, by reducing the charged offense from unarmed robbery (G. L. c. 265, § 19 [b]) to larceny from a person (G. L. c. 266, § 25 [b]).

Third, on January 20, 2017, a judge in the Superior Court, acting on a request for bail review, G. L. c. 276, § 58, reduced the amount of Lunn's bail to $750. Although Lunn was financially able to post that amount, he declined to do so on the belief that he would then be held anyway on the outstanding detainer.

[Note 7] This was the second scheduled trial date. The Commonwealth had not been ready for trial on the first date, so the case was continued to February 6, 2017.

[Note 8] The docket entry in this respect originally stated that Lunn's request to be released had been "heard and denied." The entry was later changed (after the case was entered in this court) to state that "[n]o action" was taken on the request. The parties agree that the amended entry accurately reflects the judge's statement, made in response to Lunn's request, that he "decline[d] to take any action on the detainer."

[Note 9] Previously, two other Supreme Judicial Court single justices, acting on similar petitions pursuant to G. L. c. 211, § 3, had ruled that Massachusetts trial courts have no authority to hold a defendant, or otherwise order him or her to be held, on a Federal civil immigration detainer. Nelson Maysonet vs. Commonwealth, Supreme Judicial Court, No. SJ-2016-346 (Aug. 12, 2016). Santos Moscoso vs. A Justice of the E. Boston Div. of the Boston Mun. Ct., Supreme Judicial Court, No. SJ-2016-168 (May 26, 2016).

[Note 10] Other immigration crimes include failing to carry a registration card, 8 U.S.C. § 1304(e); wilfully failing to register, making fraudulent statements in connection with registration, or counterfeiting registration documents, id. at § 1306; knowingly bringing in, transporting, or harboring an alien, id. at § 1324; engaging in a pattern or practice of illegally hiring aliens, id. at § 1324a(f); operating a commercial enterprise for the purpose of evading immigration laws, id. at § 1325(d); and illegally reentering the country after having previously been removed, id. at § 1326. There is no indication in the record before us that Lunn entered the country illegally or committed any immigration crime.

[Note 11] Other civil immigration violations include engaging in unauthorized work, 8 U.S.C. § 1227(a)(1)(C)(i); failing to remove alien stowaways from vessels and aircraft, id. at § 1253(c)(1); and wilfully failing or refusing to depart from the country after a final order of removal, id. at § 1324d(a). The latter potentially has both civil and criminal consequences. See id. at §§ 1253(a), 1324d(a).

Although there was a final order of removal outstanding against Lunn, issued in 2008, there is no indication in the record before us that he wilfully failed or refused to depart pursuant to that order. The United States represents in its brief that the reason Lunn was not actually removed pursuant to the 2008 order is that "his country of origin declined to provide travel documents." He was instead released from Federal detention in 2008 on supervision. See 8 U.S.C. § 1231(a). We note that he was again released from Federal detention, for the same reason, in May, 2017, approximately three and one-half months after he was taken into Federal custody in this case. Boston Globe, Immigrant Who Can't Be Deported to Cambodia Released from Detention, May, 2017, https://www.bostonglobe.com/metro/2017/05/24/immigrant-who-can-deported-cambodia-challenges-his-detention/JZ6PUrPNYK125ZbdKbaM0N/story.html [https://perma.cc/3S8E-SXJB].

[Note 12] The other two forms were Form I-247N, entitled "Immigration Detainer - Request for Voluntary Notification of Release of Suspected Priority Alien," and Form I-247X, entitled "Request for Voluntary Transfer." Neither of those forms was used in this case. The Federal government has since rescinded all three forms and replaced them with a single new form, described in note 17, infra.

[Note 13] The "enforcement priority" language referred to certain prioritized bases for removal that were set forth in a "priority enforcement program" that was then in effect. The program is no longer in effect. It has been terminated pursuant to an executive order of the President of the United States. See Exec. Order No. 13768, Enhancing Public Safety in the Interior of the United States, 82 Fed. Reg. 8799, 8801, at § 10(a) (Jan. 25, 2017).

[Note 14] The final order of removal was issued in 2008. Despite the order, the Federal authorities were unsuccessful in actually removing Lunn. See note 11, supra. There is no indication in the record that they did not know how to find him in 2016 when they issued the detainer in this case, that he presented a flight risk, or that the reason they were unable to remove him previously had subsided.

[Note 15] As stated in note 4, supra, there is no indication in the record before us that a copy of the form was ever served on Lunn by any of his Massachusetts custodians - the police, the sheriff, or the trial court. The parties stipulate that he was not served by the sheriff or by the court. The United States claims in its brief that it appears that he was served, citing the page of the trial court docket that states he was "held on . . . [the] detainer" (see note 5, supra), although the docket makes no mention of the detainer having been served. The only copy of the detainer in the record is blank in the spaces provided for date and manner of service.

[Note 16] This case involves only the first request in the detainer, i.e., that a custodian continue to hold an individual after he or she is entitled to be released. The other two requests are not at issue in this case, and we therefore need not and do not address them.

[Note 17] On March 24, 2017, the Federal government, effective April 2, 2017, rescinded Forms I-247D, I-247N, and I-247X, and replaced them with a single new form, Form I-247A, entitled "Immigration Detainer - Notice of Action." Like Form I-247D, it states that the Department of Homeland Security (department) has determined that probable cause exists to believe that the subject is a removable alien, and requires the immigration officer completing the form to indicate, by checking one or more boxes, the basis on which that determination was made. It also states that "[t]he alien must be served with a copy of this form for the detainer to take effect," and it provides blank spaces, to be filled in by the custodian, indicating the date and manner of service. Significantly, like Form I-247D, it "request[s]" that the custodian "[n]otify [the department] as early as possible (at least 48 hours, if possible) before the alien is released from [the custodian's] custody," and "[m]aintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from [the custodian's] custody to allow [the department] to assume custody."

Pursuant to a written policy dated March 24, 2017, of United States Immigration and Customs Enforcement, the agency within the department responsible for identifying and apprehending removable aliens, new Form I-247A must be accompanied by one of two other forms: Form I-200, entitled "Warrant for Arrest of Alien," or Form I-205, entitled "Warrant of Removal/Detention." The latter applies when the individual named in the detainer is subject to a final order of removal, and may be signed by any of the thirty-two types of immigration officials designated in 8 C.F.R. § 241.2(a)(1); the former applies when the named individual is a removable alien not yet subject to a final order of removal, and may be signed by any of the fifty-three types of immigration officials designated in 8 C.F.R. § 287.5(e)(2). These are civil administrative warrants approved by, and directed to, Federal immigration officials. Neither form requires the authorization of a judge. Neither form is a criminal arrest warrant or a criminal detainer.

Unlike old Form I-247D, new Form I-247A does not contain a statement indicating that the individual named in the detainer is an "enforcement priority," or any specific basis for such a determination. See note 13, supra. Without this information, the State custodian will not know, from the new form, the reason alleged for seeking removal, e.g., whether the individual is believed to be a threat to national security or has just briefly overstayed a lawfully issued visa. In cases where Form I-205 is used, i.e., when there has been a final order of removal, the immigration officer completing that form must indicate the provisions of the Immigration and Nationality Act (act) on which the order was based; this may provide the State custodian with some information on the claimed basis for removal.

[Note 18] One of the regulations promulgated pursuant to the act states in part: "(d) Temporary detention at [d]epartment request. Upon a determination by the [d]epartment to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency *shall* maintain custody of the alien for a period not to exceed [forty-eight] hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the [d]epartment" (emphasis added). 8 C.F.R. § 287.7(d). As the United States Court of Appeals for the Third Circuit explained, the regulation's use of the word "shall," correctly understood in the context of the entire statutory and regulatory scheme, does not change the voluntary nature of the detainer. Galarza v. Szalczyk, 745 F.3d 634, 640 (3d Cir. 2014) ("it is hard to read the use of the word 'shall' in the timing section to change the nature of the entire regulation"). The United States concedes in its amicus brief that this paragraph of the regulation only "defines the maximum length of time that an alien with an immigration detainer may be held. It does not require local law enforcement agencies to hold anyone."

[Note 19] "Court officers and those authorized to act as court officers within the judicial branch may perform police duties and have police powers in or about the areas of the court to which they have been assigned when so designated by the chief justice of the trial court, the chief justice of the supreme judicial court or the chief justice of the appeals court, as appropriate." G. L. c. 221, § 70A.

[Note 20] The breach of the peace requirement for a misdemeanor arrest has its roots in English common law, see Regina v. Tooley, 2 Ld. Raym. 1296, 1301, 92 Eng. Rep. 349, 352-353 (K.B. 1710), quoted with approval in Commonwealth v. Gorman, 288 Mass. 294, 297 (1934), and has become firmly embedded in the common law of Massachusetts. "Arrest without a warrant for a misdemeanor not amounting to a breach of the peace was impermissible at common law." Commonwealth v. Conway, 2 Mass. App. Ct. 547, 550 (1974). Not only have our cases cited the breach of the peace requirement repeatedly as a correct statement of our common law, but we have also consistently enforced the requirement, when necessary, by holding warrantless misdemeanor arrests that were not authorized by statute and that did not involve any breach of the peace to be unlawful. See, e.g., Commonwealth v. Mekalian, 346 Mass. 496, 497-498 (1963) (misdemeanor offense of registering bets without license did not involve breach of peace; arrest without warrant or statutory authorization was unlawful, resulting in suppression of evidence seized incident to arrest); Commonwealth v. Wright, 158 Mass. 149, 158-159 (1893) (misdemeanor offense of possessing "short lobsters" with intent to sell did not involve breach of peace; arrest without warrant or statutory authorization was unlawful); Commonwealth v. O'Connor, 7 Allen 583, 584-585 (1863) (arrest for drunkenness in private that did not create breach of public peace was unlawful); Commonwealth v. Ubilez, 88 Mass. App. Ct. 814, 820-821 (2016) (misdemeanor offense of operating motor vehicle with revoked or suspended registration, absent evidence of erratic or negligent operation or other danger to public, did not involve breach of peace; arrest without warrant or statutory authorization unlawful). Contrast Atwater v. Lago Vista, 532 U.S. 318, 327-355 (2001) (surveying common law; holding that Fourth Amendment to United States Constitution does not require breach of peace for warrantless misdemeanor arrest).

[Note 21] The parties and the United States, as amicus curiae, have brought to our attention a change in the standard immigration detainer form that occurred shortly before the oral argument in this case, and the fact that immigration detainers are now accompanied by either Form I200 or Form I205. See note 17, supra. The latter forms are Federal administrative warrants issued by Federal immigration officials to other Federal immigration officials. They appear to have no bearing on the question whether Massachusetts officers have authority under Massachusetts law to make civil immigration arrests. They do not transform the removal process into a criminal process, nor do they change the fact that Massachusetts officers, absent a statute, have no common-law authority to make civil arrests. Simply stated, the fact that a Federal officer may have the authority under Federal law to take custody of an individual pursuant to one of these forms for removal purposes does not mean that Massachusetts officers have the authority under Massachusetts law to do so.

We note that the Federal government's stated reason for now issuing administrative warrants with civil immigration detainers is to counteract a recent ruling by a Federal District Court judge that, in the absence of a showing of risk of flight, invalidated arrests made by Federal officers pursuant to detainers as impermissible warrantless arrests under the act. See Moreno v. Napolitano, 213 F. Supp. 3d 999, 1005-1009 & n.2 (N.D. Ill. 2016), quoting 8 U.S.C. § 1357(a)(2) (authorizing Federal immigration officers to arrest without warrant only if, among other things, they have "reason to believe that the alien so arrested . . . is likely to escape before a warrant can be obtained for his arrest"). See also United States Immigration and Customs Enforcement, Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers § 2.4, at 2 n.2 (Mar. 24, 2017).

[Note 22] As we have said, this case concerns detention based solely on a civil immigration detainer. This was not a situation where a detainer provided an officer with probable cause that a Federal criminal offense had been committed. We therefore do not address the authority or obligations of Massachusetts officers who, by a detainer or otherwise, acquire information of a Federal criminal offense.

[Note 23] We do not see any meaningful difference between "inherent authority" (the term used by the United States in its brief) and "implicit authority" (the term used by the United States Court of Appeals for the Tenth Circuit). The term "inherent authority" likely derives from a memorandum of the Department of Justice's Office of Legal Counsel, dated April 3, 2002, which espoused the theory in that way. The 2002 memorandum essentially reversed course from a 1996 opinion of the Office of Legal Counsel, which had reflected the Department of Justice's historical view that, absent express authorization, State and local police lack authority to arrest or detain aliens solely for purposes of civil immigration proceedings. See Armacost, "Sanctuary" Laws: The New Immigration Federalism, 2016 Mich. L. Rev. 1197, 1210-1211; Lewis, Gass, von Briesen, Master, & Wishnie, Authority of State and Local Officers to Arrest Aliens Suspected of Civil Infractions of Federal Immigration Law, 7 Bender's Immigr. Bull. 944, 944-945 (Aug. 1, 2002).

[Note 24] Among other things, an individual arrested without a warrant in Massachusetts has a statutory right to be considered for bail and, if not admitted to bail, a constitutional right to a prompt determination of probable cause to arrest, made by a neutral magistrate, generally within twenty-four hours of arrest. See Jenkins v. Chief Justice of the Dist. Court Dep't, 416 Mass. 221, 238-245 (1993).

[Note 25] We express no view on the constitutionality of any such statute, or whether such a statute would be preempted by Federal law. It would be premature for us to rule on those questions unless and until a specific statute is enacted.

[Note 26] This case does not involve such a written agreement. We therefore express no view whether the detention of an individual pursuant to a Federal civil immigration detainer by a Massachusetts officer who is operating under such an agreement would be lawful.

[Note 27] Nothing in the legislative history of 8 U.S.C. § 1357(g) or the department's very thorough "Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters" (accessible at https://dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf [https://perma.cc/S7UA-6S4E]), suggests that § 1357(g)(10) constitutes an affirmative grant of immigration arrest authority to States.

The United States cites three cases that mention § 1357(g)(10), but none of them resolves the exact question presented here, which is whether the statute confers authority on State officers to arrest on a Federal civil immigration detainer even where State law does not authorize such an arrest. Those cases principally addressed whether the actions of State officers were done in cooperation with Federal officers, or unilaterally such that they would be preempted by Federal law. Those courts were not asked to decide whether State officers are independently authorized by § 1357(g)(10) to do acts, in the name of "cooperation," that they are not authorized to do under State law. See United States v. Ovando-Garzo, 752 F.3d 1161, 1163-1164 (8th Cir. 2014) (holding that North Dakota highway patrol trooper who detained suspect at request of United States Border Patrol agent acted cooperatively pursuant to § 1357[g][10], not unilaterally, and thus did not exceed scope of authority so as to trigger preemption; no issue whether officer's actions were authorized by North Dakota law); Santos v. Frederick County Bd. of Comm'rs, 725 F.3d 451, 465-466 (4th Cir. 2013), cert. denied, 134 S. Ct. 1541 (2014) (holding that detention by State deputy sheriffs before confirmation that immigration warrant was active was not cooperation for purposes of § 1357[g][10], thereby triggering preemption, because arrest was not made pursuant to Federal direction; no issue whether detention was authorized by Maryland law); United States v. Quintana, 623 F.3d 1237 (8th Cir. 2010) (noting in single sentence that North Dakota highway patrol trooper who stopped defendant for traffic violation was authorized by § 1357[g][10] to assist Federal agent in arresting detainee; no issue whether detention was authorized under State law).

We have also considered other cases that mention § 1357(g)(10). None of them addresses the specific question we have here, i.e., whether the statute independently and affirmatively confers authority on State officers to arrest on immigration detainers where such an arrest is not authorized by State law.

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