



U.S. Department of Justice

Office of the Inspector General

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May 31, 2016 [Re-posted to oig.justice.gov on September 23, 2016, due to a corrected entry in the Appendix, see page 12.]

MEMORANDUM FOR KAROL V. MASON

ASSISTANT ATTORNEY GENERAL

FOR THE OFFICE OF JUSTICE PROGRAMS

FROM:

MICHAEL E. HOROWITZ  
INSPECTOR GENERAL

SUBJECT:

Department of Justice Referral of Allegations of Potential  
Violations of 8 U.S.C. § 1373 by Grant Recipients

This is in response to your e-mail dated April 8, 2016, wherein you advised the Office of the Inspector General (OIG) that the Office of Justice Programs (OJP) had "received information that indicates that several jurisdictions [receiving OJP and Office of Violence Against Woman (OVW) grant funds] may be in violation of 8 U.S.C. § 1373." With the e-mail, you provided the OIG a spreadsheet detailing Department grants received by over 140 state and local jurisdictions and requested that the OIG "investigate the allegations that the jurisdictions reflected in the attached spreadsheet, who are recipients of funding from the Department of Justice, are in violation of 8 U.S.C. Section 1373." In addition to the spreadsheet, you provided the OIG with a letter, dated February 26, 2016, to Attorney General Loretta E. Lynch from Congressman John Culberson, Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, regarding whether Department grant recipients were complying with federal law, particularly 8 U.S.C. § 1373 (Section 1373). Attached to Chairman Culberson's letter to the Attorney General was a study conducted by the Center for Immigration Studies (CIS) in January 2016, which concluded that there are over 300 "sanctuary" jurisdictions that refuse to comply with U.S. Immigration and Customs Enforcement (ICE) detainers or otherwise impede information sharing with federal immigration officials.<sup>1</sup>

<sup>1</sup> Your e-mail also referenced and attached the OIG's January 2007 report, *Cooperation of SCAAP [State Criminal Alien Assistance Program] Recipients in the Removal of Criminal Aliens from the United States*. In that Congressionally-mandated report, the OIG was asked, among other things, to assess whether entities receiving SCAAP funds were "fully cooperating" with the Department of Homeland Security's efforts to remove undocumented criminal aliens from the United States, and whether SCAAP recipients had in effect policies that violated Section

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The purpose of this memorandum is to update you on the steps we have undertaken to address your question and to provide you with the information we have developed regarding your request. Given our understanding that the Department's grant process is ongoing, we are available to discuss with you what, if any, further information you and the Department's leadership believe would be useful in addressing the concerns reflected in your e-mail.

### OIG Methodology

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.<sup>2</sup> Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that "all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers."<sup>3</sup> From this narrowed list of jurisdictions, we determined, using the spreadsheet provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17,

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1373. As we describe later in this memorandum, the information we have learned to date during our recent work about the present matter differs significantly from what OIG personnel found nearly 10 years ago during the earlier audit. Specifically, during the 2007 audit, ICE officials commented favorably to the OIG with respect to cooperation and information flow they received from the seven selected jurisdictions, except for the City and County of San Francisco. As noted in this memorandum, we heard a very different report from ICE officials about the cooperation it is currently receiving. Additionally, our 2007 report found that the SCAAP recipients we reviewed were notifying ICE in a timely manner of aliens in custody, accepting detainers from ICE, and promptly notifying ICE of impending releases from local custody. By contrast, as described in this memorandum, all of the jurisdictions we reviewed had ordinances or policies that placed limits on cooperation with ICE in connection with at least one of the three areas assessed in 2007.

<sup>2</sup> At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked "Draft." The updated draft version of the report did not require us to alter our sample selection.

<sup>3</sup> This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

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2016, and sought to ensure that our list contained a mix of state and local jurisdictions.

Using this process, we judgmentally selected 10 state and local jurisdictions for further review: the States of Connecticut and California; City of Chicago, Illinois; Clark County, Nevada; Cook County, Illinois; Miami-Dade County, Florida; Milwaukee County, Wisconsin; Orleans Parish, Louisiana; New York, New York; and Philadelphia, Pennsylvania. These 10 jurisdictions represent 63 percent of the total value of the active OJP and OVW awards listed on the spreadsheet as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

Section 1373 states in relevant part:

- (a) **In General.** Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (b) **Additional authority of government entities.** Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
  - (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
  - (2) Maintaining such information.
  - (3) Exchanging such information with any other Federal, State, or local government entity.

According to the legislative history contained in the House of Representatives Report, Section 1373 was intended “to give State and local officials the authority to communicate with the Immigration and Naturalization Service (INS) regarding the presence, whereabouts, and activities of illegal aliens. This section is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.”<sup>4</sup>

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<sup>4</sup> House of Representatives Report, *Immigration in the National Interest Act of 1995*, (H.R. 2202), 1996, H. Rept. 104-469, <https://www.congress.gov/104/crpt/hrpt469/CRPT->

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For the 10 selected jurisdictions, we researched the local laws and policies that govern their interactions with ICE – particularly those governing the ability of the jurisdictions’ officers to receive or share information with federal immigration officials. We then compared these local laws and policies to Section 1373 in order to try to determine whether they were in compliance with the federal statute. We also spoke with ICE officials in Washington, D.C., to gain their perspective on ICE’s relationship with the selected jurisdictions and their views on whether the application of these laws and policies was inconsistent with Section 1373 or any other federal immigration laws.

The sections that follow include our analysis of the selected state and local laws and policies.

### **State and Local Cooperation with ICE**

A primary and frequently cited indicator of limitations placed on cooperation by state and local jurisdictions with ICE is how the particular state or local jurisdiction handles immigration detainer requests issued by ICE, although Section 1373 does not specifically address restrictions by state or local entities on cooperation with ICE regarding detainers.<sup>5</sup> A legal determination has been made by the Department of Homeland Security (DHS) that civil immigration detainers are voluntary requests.<sup>6</sup> The ICE officials with whom we spoke stated that since the detainers are considered to be voluntary, they are not enforceable against jurisdictions which do not comply, and these ICE officials stated further that state and local jurisdictions throughout the United States vary significantly on how they handle such requests.

In our selected sample of state and local jurisdictions, as detailed in the Appendix, each of the 10 jurisdictions had laws or policies directly related to how those jurisdictions could respond to ICE detainers, and each limited in some way the authority of the jurisdiction to take action with regard to ICE detainers. We found that while some honor a civil immigration detainer request when the subject meets certain conditions, such as prior felony

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104hrpt469-pt1.pdf (accessed May 24, 2016).

<sup>5</sup> A civil immigration detainer request serves to advise a law enforcement agency that ICE seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. 8 C.F.R. § 287.7(a)

<sup>6</sup> Several courts have reached a similar conclusion about the voluntary nature of ICE detainers. See *Galarza v, Szalczyk et al*, 745 F.3d 634 (3<sup>rd</sup> Cir. 2014) (noting that all Courts of Appeals to have considered the character of ICE detainers refer to them as “requests,” and citing numerous such decisions); and *Miranda-Olivares v. Clackamas County*, 2014 1414305 (D. Or. 2014).

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convictions, gang membership, or presence on a terrorist watch list, others will not honor a civil immigration detainer request, standing alone, under any circumstances. ICE officials told us that because the requests are voluntary, local officials may also consider budgetary and other considerations that would otherwise be moot if cooperation was required under federal law.

We also found that the laws and policies in several of the 10 jurisdictions go beyond regulating responses to ICE detainers and also address, in some way, the sharing of information with federal immigration authorities. For example, a local ordinance for the City of Chicago, which is entitled “Disclosing Information Prohibited,” states as follows:

Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or guardian. *Chicago Code, Disclosing Information Prohibited § 2-173-030.*

The ordinance’s prohibition on a city employee providing immigration status information “unless required to do so by legal process” is inconsistent with the plain language of Section 1373 prohibiting a local government from restricting a local official from sending immigration status information to ICE. The “except as otherwise provided under applicable federal law” provision, often referred to as a “savings clause,” creates a potential ambiguity as to the proper construction of the Chicago ordinance and others like it because to be effective, this “savings clause” would render the ordinance null and void whenever ICE officials requested immigration status information from city employees. Given that the very purpose of the Chicago ordinance, based on our review of its history, was to restrict and largely prohibit the cooperation of city employees with ICE, we have significant questions regarding any actual effect of this “savings clause” and whether city officials consider the ordinance to be null and void in that circumstance.<sup>7</sup>

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<sup>7</sup> The New Orleans Police Department’s (NOPD) policy dated February 28, 2016, and entitled “Immigration Status” also seemingly has a “savings clause” provision, but its language likewise presents concerns. In your April 8 e-mail to me, you attached questions sent to the Attorney General by Sen. Vitter regarding whether the NOPD’s recent immigration policy was in compliance with Section 1373. Paragraph 12 of the NOPD policy is labeled “Disclosing Immigration Information” and provides that “Members shall not disclose information regarding the citizenship or immigration status of any person unless:

- (a) Required to do so by federal or state law; or
- (b) Such disclosure has been authorized in writing by the person who is the subject of the request for information; or

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In addition, whatever the technical implication of the clause generally referencing federal law, we have concerns that unless city employees were made explicitly aware that the local ordinance did not limit their legal authority to respond to such ICE requests, employees likely would be unaware of their legal authority to act inconsistently with the local ordinance. We noted that in connection with the introduction of this local ordinance the Mayor of Chicago stated, “[w]e’re not going to turn people over to ICE and we’re not going to check their immigration status, we’ll check for criminal background, but not for immigration status.”<sup>8</sup> We believe this stated reason for the ordinance, and its message to city employees, has the potential to affect the understanding of

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(c) The person is a minor or otherwise not legally competent, and disclosure is authorized in writing by the person's parent or guardian.

Sub-section (a) applies only when an NOPD employee has an affirmative obligation, i.e., is “required” by federal law, to disclose information regarding citizenship or immigration status. Section 1373, however, does not “require” the disclosure of immigration status information; rather, it provides that state and local entities shall not prohibit or restrict the sharing of immigration status information with ICE. Accordingly, in our view, sub-section (a) of the NOPD policy would not serve as a “savings clause” in addressing Section 1373. Thus, unless the understanding of NOPD’s employees is that they are not prohibited or restricted from sharing immigration status information with ICE, the policy would be inconsistent with Section 1373. We did not consider selecting the City of New Orleans to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

Similarly, the City and County of San Francisco, CA administrative code, Section 12H.2, is entitled “Immigration Status” and provides, “No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.” As with the NOPD policy, a “savings clause” that only applies when a city employee is “required” by federal law to take some action would not seem to be effective in precluding the law from running afoul of Section 1373, which “requires” nothing, but instead mandates that state and local entities not prohibit, or in any way restrict, the sharing of immigration status information with ICE. Thus, as with the NOPD policy, unless the understanding of San Francisco employees is that they are permitted to share immigration status information with ICE, the policy would be inconsistent with Section 1373. According to news reports, last week the San Francisco Board of Supervisors reaffirmed its policy restricting local law enforcement’s authority to assist ICE, except in limited circumstances. Curtis Skinner, “San Francisco Lawmakers Vote to Uphold Sanctuary City Policy,” *Reuters*, May 24, 2016, <http://www.reuters.com/article/us-sanfrancisco-immigration-idUSKCN0YG065> (accessed May 26, 2016). We did not consider selecting the City and County of San Francisco to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

<sup>8</sup> Kristen Mack, “Emanuel Proposes Putting Nondetainer Policy On Books,” *Chicago Tribune*, July 11, 2012, <http://articles.chicagotribune.com/2012-07-11/news/ct-met-rahm-emanuel-immigrants-0711-2012> (accessed May 24, 2017).

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local officials regarding the performance of their duties, including the applicability of any restrictions on their interactions and cooperation with ICE.

Similarly, we have concerns that other local laws and policies, that by their terms apply to the handling of ICE detainer requests, may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore, be inconsistent with at least the intent of Section 1373.<sup>9</sup> Specifically, local policies and ordinances that purport to be focused on civil immigration detainer requests, yet do not explicitly restrict the sharing of immigration status information with ICE, may nevertheless be affecting ICE's interactions with the local officials regarding ICE immigration status requests. We identified several jurisdictions with policies and ordinances that raised such concerns, including Cook County, Orleans Parish, Philadelphia, and New York City.

For example, the Cook County, Illinois, detainer policy states, "unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty." Although this policy falls under the heading "Section 46-37 - Policy for responding to ICE Detainers" and does not explicitly proscribe sharing immigration status information with ICE, the portion of the prohibition relating to personnel expending their time responding to ICE inquiries could easily be read by Cook County officials and officers as more broadly prohibiting them from expending time responding to ICE requests relating to immigration status. This possibility was corroborated by ICE officials who told us that Cook County officials "won't even talk to us [ICE]."

In Orleans Parish, Louisiana, Orleans Parish Sheriff's Office (OPSO) policy on "ICE Procedures" states that, "OPSO officials shall not initiate any immigration status investigation into individuals in their custody or affirmatively provide information on an inmate's release date or address to ICE." While the latter limitation applies by its terms to information related to release date or address, taken in conjunction with the prior ban on initiating immigration status investigations, the policy raises a similar concern as to the

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<sup>9</sup> A reasonable reading of Section 1373, based on its "in any way restrict" language, would be that it applies not only to the situation where a local law or policy specifically prohibits or restricts an employee from providing citizenship or immigration status information to ICE, but also where the actions of local officials result in prohibitions or restrictions on employees providing such information to ICE.

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limits it places on the authority of OPSO officials to share information on that topic with ICE.

In Philadelphia, Pennsylvania, the Mayor, on January 4, 2016, issued an executive order that states, in part, that notice of the pending release of the subject of an ICE immigration detainer shall not be provided to ICE “unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.” According to news reports, the purpose of the order was to bar almost all cooperation between city law enforcement and ICE.<sup>10</sup>

In New York City (NYC), a law enacted in November 2014 restricts NYC Department of Corrections personnel from communicating with ICE regarding an inmate’s release date, incarceration status, or upcoming court dates unless the inmate is the subject of a detainer request supported by a judicial warrant, in which case personnel may honor the request. The law resulted in ICE closing its office on Riker’s Island and ceasing operations on any other NYC Department of Corrections property.

Although the Cook County, Orleans Parish, Philadelphia, and New York City local policies and ordinances purport to be focused on civil immigration detainer requests, and none explicitly restricts the sharing of immigration status with ICE, based on our discussions with ICE officials about the impact these laws and policies were having on their ability to interact with local officials, as well as the information we have reviewed to date, we believe these policies and others like them may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects.<sup>11</sup> That, of course, would be inconsistent with and prohibited by Section 1373.<sup>12</sup>

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<sup>10</sup> Michael Matza, “Kenney restores ‘sanctuary city’ status,” *Philadelphia Inquirer*, January 6, 2016, [http://articles.philly.com/2016-01-06/news/69541175\\_1\\_south-philadelphia-secure-communities-ice](http://articles.philly.com/2016-01-06/news/69541175_1_south-philadelphia-secure-communities-ice) (accessed May 24, 2016) and “Kenney rejects U.S. request to reverse ‘sanctuary city’ status,” *Philadelphia Inquirer*, May 4, 2016, [http://www.philly.com/philly/news/20160504\\_Kenney\\_rejects\\_Homeland\\_Security\\_s\\_request\\_to\\_reverse\\_Philadelphia\\_s\\_sanctuary\\_city\\_status.html](http://www.philly.com/philly/news/20160504_Kenney_rejects_Homeland_Security_s_request_to_reverse_Philadelphia_s_sanctuary_city_status.html) (accessed May 24, 2016)

<sup>11</sup> For example, the Newark, NJ police department issued a “Detainer Policy” instructing all police personnel that “There shall be no expenditure of any departmental resources or effort by on-duty personnel to comply with an ICE detainer request.” More generally, Taos County, NM detention center policy states: “There being no legal authority upon which the United States may compel expenditure of country resources to cooperate and enforce its immigration laws, there shall be no expenditure of any county resources or effort by on-duty staff for this purpose except as expressly provided herein.”

<sup>12</sup> The ICE officials we spoke with noted that no one at DHS or ICE has made a formal legal determination whether certain state and local laws or policies violate Section 1373, and we are unaware of any Department of Justice decision in that regard. These ICE officials were



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### **Effect on Department of Justice 2016 Grant Funding**

We note that, in March 2016, OJP notified SCAAP and JAG applicants about the requirement to comply with Section 1373, and advised them that if OJP receives information that an applicant may be in violation of Section 1373 (or any other applicable federal law) that applicant may be referred to the OIG for investigation. The notification went on to state that if the applicant is found to be in violation of an applicable federal law by the OIG, the applicant may be subject to criminal and civil penalties, in addition to relevant OJP programmatic penalties, including cancellation of payments, return of funds, participation in the program during the period of ineligibility, or suspension and debarment.

In light of the Department's notification to grant applicants, and the information we are providing in this memorandum, to the extent the Department's focus is on ensuring that grant applicants comply with Section 1373, based on our work to date we believe there are several steps that the Department can consider taking:

- Provide clear guidance to grant recipients regarding whether Section 1373 is an "applicable federal law" that recipients would be expected to comply with in order to satisfy relevant grant rules and regulations;<sup>13</sup>
- Require grant applicants to provide certifications specifying the applicants' compliance with Section 1373, along with documentation sufficient to support the certification.
- Consult with the Department's law enforcement counterparts at ICE and other agencies, prior to a grant award, to determine whether, in their view, the applicants are prohibiting or restricting employees from sharing with ICE information regarding the citizenship or immigration status of individuals, and are therefore not in compliance with Section 1373.
- Ensure that grant recipients clearly communicate to their personnel the provisions of Section 1373, including those

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also unaware of any legal action taken by the federal government against a state or local jurisdiction to require cooperation.

<sup>13</sup> We note that AAG Kadzik's letter to Chairman Culberson dated March 18, 2016, states that Section 1373 "could" be an applicable federal law that with which grant recipients must comply in order to receive grant funds, not that it is, in fact, an applicable federal law.

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employees cannot be prohibited or restricted from sending citizenship or immigration status information to ICE.

These steps would not only provide the Department with assurances regarding compliance with Section 1373 prior to a grant award, but also would be helpful to the OIG if the Department were to later refer to the OIG for investigation a potential Section 1373 violation (as the Department recently warned grant applicants it might do in the future).

We would be pleased to meet with you and Department's leadership to discuss any additional audit or investigative efforts by the OIG that would further assist the Department with regard to its concerns regarding Section 1373 compliance by state and local jurisdictions. Such a meeting would allow us to better understand what information the Department's management would find useful so that the OIG could assess any request and consult with our counterparts at the Department of Homeland Security Office of the Inspector General, which would necessarily need to be involved in any efforts to evaluate the specific effect of local policies and ordinances on ICE's interactions with those jurisdictions and their compliance with Section 1373.

Thank you for referring this matter to the OIG. We look forward to hearing from you regarding a possible meeting.

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## APPENDIX

### OIG Approach

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.<sup>14</sup> Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that “all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers.”<sup>15</sup> From this narrowed list of jurisdictions, we determined, using the spreadsheet that you provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17, 2016, and sought to ensure that our list contained a mix of state and local jurisdictions. Using this process we selected the 10 jurisdictions listed in the following table for further review. The dollar figure represents 63 percent of the active OJP awards as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

Jurisdiction	Total Award Amounts Reported by OJP
State of Connecticut	\$69,305,444
State of California	\$132,409,635
Orleans Parish, Louisiana	\$4,737,964
New York, New York	\$60,091,942
Philadelphia, Pennsylvania	\$16,505,312
Cook County, Illinois	\$6,018,544
City of Chicago, Illinois	\$28,523,222
Miami-Dade County, Florida	\$10,778,815
Milwaukee, Wisconsin	\$7,539,572
Clark County, Nevada	\$6,257,951
<b>TOTAL</b>	<b>\$342,168,401</b>

Source: OJP

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<sup>14</sup> At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked “Draft.” The updated draft version of the report did not require us to alter our sample selection.

<sup>15</sup> This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

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The following table lists each of the jurisdictions selected for review by the OIG and the key provisions of its laws or policies related to ICE civil immigration detainer requests and the sharing of certain information with ICE, if applicable.

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
<p>State of Connecticut</p> <p><b>The statement of Connecticut law has been corrected from a prior version of this memorandum. This correction does not affect the analysis or conclusions of this memorandum. We regret the error, and have notified those to whom we sent the memorandum of the correction.</b></p>	<p><i>Public Act No. 13-155, An Act Concerning Civil Immigration Detainers ...</i></p> <p>(b) No law enforcement officer who receives a civil immigration detainer with respect to an individual who is in the custody of the law enforcement officer shall detain such individual pursuant to such civil immigration detainer unless the law enforcement official determines that the individual:</p> <ol style="list-style-type: none"> <li>(1) Has been convicted of a felony;</li> <li>(2) Is subject to pending criminal charges in this state where bond has not been posted;</li> <li>(3) Has an outstanding arrest warrant in this state;</li> <li>(4) Is identified as a known gang member in the database of the National Crime Information Center or any similar database or is designated as a Security Risk Group member or a Security Risk Group Safety Threat member by the Department of Correction;</li> <li>(5) Is identified as a possible match in the federal Terrorist Screening Database or similar database;</li> <li>(6) Is subject to a final order of deportation or removal issued by a federal immigration authority; or</li> <li>(7) Presents an unacceptable risk to public safety, as determined by the law enforcement officer.</li> </ol> <p>(c) Upon determination by the law enforcement officer that such individual is to be detained or released, the law enforcement officer shall immediately notify United States Immigration and Customs Enforcement. If the individual is to be detained, the law enforcement officer shall inform United States Immigration and Customs Enforcement that the individual will be held for a maximum of forty-eight hours, excluding Saturdays, Sundays and federal holidays. If United States Immigration and Customs Enforcement fails to take custody of the individual within such forty-eight-hour period, the law enforcement officer shall release the individual. In no event shall an individual be detained for longer than such forty-eight-hour period solely on the basis of a civil immigration detainer.</p> <p><b>Approved June 25, 2013</b></p>

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<sup>16</sup> Several specific citations to various state and local laws and policies were removed for brevity.

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Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
State of California	<p><i>An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title I of the Government Code, relating to state government....</i></p> <p>7282.5. (a) A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under any of the following circumstances ...</p> <p><b>Effective Date: October 5, 2013.</b></p>
Orleans Parish, Louisiana	<p>The Orleans Parish Sheriff's Office (OPSO) shall decline all voluntary ICE detainer requests unless the individual's charge is for one or more of the following offenses: First Degree Murder; Second Degree Murder; Aggravated Rape; Aggravated Kidnapping; Treason; or Armed Robbery with Use of a Firearm. If a court later dismisses or reduces the individual's charge such that the individual is no longer charged with one of the above offenses or the court recommends declining the ICE hold request, OPSO will decline the ICE hold request on that individual.</p> <p><b>Orleans Parish Sheriff's Office Index No. 501.15, Updated June 21, 2013.</b></p>
New York, New York	<p><u>Title:</u> <i>A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the department of correction.</i></p> <p><u>Bill Summary:</u> ... The DOC would only be permitted to honor an immigration detainer if it was accompanied by a warrant from a federal judge, and also only if that person had not been convicted of a "violent or serious" crime during the last five years or was listed on a terrorist database. Further, the bill would prohibit DOC from allowing ICE to maintain an office on Rikers Island or any other DOC property and would restrict DOC personnel from communicating with ICE regarding an inmate's release date, incarceration status, or court dates, unless the inmate is the subject of a detainer request that DOC may honor pursuant to the law.</p> <p><b>Enacted Date: November 14, 2014, Law No. 2014/058.</b></p>

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Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
Philadelphia, Pennsylvania	<p><i>Executive Order No. 5-16 - Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests...</i></p> <p>NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:</p> <p>SECTION 1. No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to 8 C.F.R. § 287.7, nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.</p> <p><b>Signed by Philadelphia Mayor, January 4, 2016.</b></p>
Cook County, Illinois	<p><i>Sec. 46-37- Policy for responding to ICE detainees ...</i></p> <p>(b) Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty.</p> <p><b>Approved and adopted by the President of the Cook County Board of Commissioners on September 7, 2011.</b></p>
City of Chicago, Illinois	<p><i>Civil Immigration Enforcement Actions – Federal Responsibility §2-173-042 ...</i></p> <p>(b)(1) Unless an agent or agency is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall:</p> <ul style="list-style-type: none"> <li>(A) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;</li> <li>(B) permit ICE agents use of agency facilities for investigative interviews or other investigative purpose; or</li> <li>(C) while on duty , expend their time responding to</li> </ul>

**LAW ENFORCEMENT SENSITIVE**

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	<p style="text-align: center;">ICE inquiries or communicating with ICE regarding a person’s custody status or release date ...</p> <p style="text-align: center;"><i>Disclosing Information Prohibited § 2-173-030</i></p> <p>Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or guardian.</p> <p style="text-align: center;"><b>Updated November 8, 2012.</b></p>
Miami-Dade County, Florida	<p><i>Resolution No. R-1008-13: Resolution directing the mayor or mayor’s designee to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration and Customs Enforcement</i></p> <p>NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Mayor or Mayor's designee is directed to implement a policy whereby Miami-Dade Corrections and Rehabilitations Department may, in its discretion, honor detainer requests issued by United States Immigration and Customs Enforcement only if the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance with such detainer requests and the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Florida Statute section 776.08, or the inmate that is the subject of such a request has, at the time the Miami-Dade Corrections and Rehabilitations Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted.</p> <p style="text-align: center;"><b>Resolution passed and adopted by Miami-Dade Mayor, December 3, 2013.</b></p>
Milwaukee County, Wisconsin	<p>Amended Resolution - File No. 12-135</p> <p>BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby adopts the following policy with regard to detainer requests from the U.S. Department of</p>

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	<p>Homeland Security - Immigrations and Customs Enforcement:</p> <p>1. Immigration detainer requests from Immigrations and Customs Enforcement shall be honored only if the subject of the request:</p> <ul style="list-style-type: none"> <li>a) Has been convicted of at least one felony or two non-traffic misdemeanor offenses</li> <li>b) Has been convicted or charged with any domestic violence offense or any violation of a protective order</li> <li>c) Has been convicted or charged with intoxicated use of a vehicle</li> <li>d) Is a defendant in a pending criminal case, has an outstanding criminal warrant, or is an identified gang member</li> <li>e) Is a possible match on the US terrorist watch list</li> </ul> <p><b>Enacted: June 4, 2012</b></p>
Clark County, Nevada	<p>“Recent court decisions have raised Constitutional concerns regarding detention by local law enforcement agencies based solely on an immigration detainer request from the Immigration and Customs Enforcement (ICE). Until this areas of the law is further clarified by the courts, effective immediately the Las Vegas Metropolitan Police Department will no longer honor immigration detainer requests unless one of the following conditions are met:</p> <ul style="list-style-type: none"> <li>1. Judicial determination of Probable Cause for that detainer; or</li> <li>2. Warrant from a judicial officer.</li> </ul> <p>... The Las Vegas Metropolitan Police Department continues to work with our federal law enforcement partners and will continue to provide professional services to the Las Vegas community regardless of their immigration status in United States.</p> <p><b>Via Press Release on: July 14, 2014.</b></p>