AMERICAN CIVIL LIBERTIES UNION
Nevada

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Via U.S. Certified Mail and Electronic Mail

October 11, 2019

Sheriff Joseph Lombardo
LVMPD Headquarters
400 S. Martin Luther King Blvd.
Las Vegas, Nevada 89106
Email: Sheriff@LVMPD.com

Liesl Freedman, General Counsel
Office of General Counsel
400 S. Martin Luther King Blvd.
Las Vegas, Nevada 89106
Email: L8706F@LVMPD.com

Re: ICE Detainers and Administrative Warrants of Arrest

Dear Sheriff Lombardo:

We are writing to express continued concerns regarding the Las Vegas Metropolitan Police Department's ("LVMPD") use of ICE detainers.[1] Since reversing the decision of your predecessor to decline to voluntarily detain individuals on the basis of ICE detainer requests, LVMPD and the Clark County Detention Center ("CCDC") have engaged in the practice of relying on ICE detainers to detain individuals beyond the time at which these individuals are entitled to release from custody.[2] As you are aware, this practice is unlawful.

In our prior letter of March 15, 2018, we briefed you on some of the many court decisions and statutory provisions that make it clear that, in prolonging detention under the asserted authority of an ICE detainer, your agency and its officers effectuate a new arrest that is lacking in probable cause.[3] Despite the weight of legal authority as well as the substantial policy considerations counseling against reliance on ICE detainers to detain individuals without probable cause or a properly issued arrest warrant, you decline to

[1] An ICE detainer, also called an ICE hold, is a request to the detaining law enforcement agency that the agency notify Immigration and Customs Enforcement (ICE) before the individual named in the hold is to be released and to continue to detain the individual for an additional 48-hour period to permit ICE to assume custody. An ICE detainer is issued on ICE form I-247A, a sample of which is attached as Exhibit A.
[2] See attached correspondence with Sheriff Gillespie dated December 16, 2013 (Exhibit B).
[3] See attached correspondence with Sheriff Lombardo dated March 15, 2018 (Exhibit C).

reverse your unlawful policy and practice.[4] We write now to inform you of new authority, explained below, that provides further reason for you to immediately cease use of or reliance on ICE detainer requests as a basis for detention beyond the point when an individual is otherwise entitled to or eligible for release. We write now also to reiterate the many court decisions and statutory provisions that make your policy and practice unlawful.

We request that you notify us in writing by close of business on Friday, October 25th whether LVMPD will cease this unlawful practice.

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A Federal Court Recently Enjoined ICE from Issuing Detainers to States Without Explicit State Statutes Authorizing Civil Immigration Arrests on Detainers

On September 27, 2019, the Central District of California issued a "permanent injunction enjoining ICE from issuing detainers to state and local law enforcement agencies in states where there is no explicit state statute authorizing civil immigration arrests on detainers." *Gonzalez v. Immigration and Customs Enforcement*, No. 2:12-cv-09012-AB (FFMx), 2019 WL 4734579, at *21 (C.D. Cal. Sept. 27, 2019). In effect, ICE is prohibited from issuing detainers originating from the Central District of California to any state without an explicit state statute authorizing civil immigration arrests on detainers.

The State of Nevada does not have a state statute explicitly authorizing civil immigration arrests on detainers. Nevada law provides only limited authority to Nevada law enforcement agencies to make arrests for civil matters. *See* NEV. REV. STAT. § 31.470 ("No person shall be arrested in a civil action except as prescribed by this chapter."). Civil immigration enforcement is not one of the enumerated situations permitting an arrest for a civil matter. *See* NEV. REV. STAT. § 31.480; *see also Dinitz v. Christensen*, 577 P.2d 873, 875 (Nev. 1978) ("Law-enforcement officers may make arrests only on 'probable cause,' a Fourth and Fourteenth Amendment standard applicable to states, as well as the federal government."); Op. Att'y Gen. Opinion No. 83-16 (Nov. 23, 1983), 1983 WL 171453 ("Nevada peace officers should act cautiously in enforcing federal laws…and should not detain or arrest a person solely on the basis that this individual might be [] deportable…When exercising arrest authority, Nevada peace officers must be certain that they act within the powers expressly described by statute.").

Moreover, in the Central District of California, the ICE center known as the Pacific Enforcement Response Center ("PERC") has long issued detainers after-hours to 41 states including Nevada. Following this decision, PERC as well as any other center or issuing agency from the Central District of California may not issue detainers to Nevada law enforcement agencies.

[4] See attached correspondence from General Counsel Liesl Freedman dated March 28, 2018 (Exhibit D).

As such, given the absence of an authorizing statute in Nevada, ICE may not issue detainers originating from the Central District of California to Nevada law enforcement agencies.

Detaining Individuals on an ICE Detainer Continues to Violate Federal and State Laws

The United States and Nevada Constitutions provide that the government generally must release people in custody who have served their sentence, have had charges against them dismissed, or have been acquitted of the charges against them. An ICE detainer fails to justify a person's continued detention for several reasons.[5]

When LVMPD continues to maintain custody of an individual solely on the basis of an ICE detainer, this act constitutes a new "arrest" under the Fourth Amendment of the U.S. Constitution. This principle is well established in law.[6] For LVMPD to undertake the arrest required for compliance with the ICE detainer, it must comply with the Fourth Amendment and be authorized by both federal and state laws. ICE's current detainer program leaves LVMPD operation in violation of both obligations.

LVMPD's compliance with ICE detainers continues to violate the Fourth Amendment. The Fourth Amendment requires that an arrest be justified by the issuance of a warrant by a neutral magistrate on a finding of probable cause or, in the case of a warrantless arrest, be reviewed by neutral magistrate within 48 hours of arrest.[7] In February 2018, the Central District of California determined that officers of the Los Angeles Sheriff's Department had "no authority to arrest individuals for civil immigration offenses, and thus, detaining individuals beyond their date for release violate[s] the

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[5] LVMPD's compliance with ICE detainers is completely voluntary. *See generally Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (local law enforcement agencies are free to disregard detainers and cannot use them as a defense of unlawful detention); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014), aff'd in part, dismissed in part, 793 F.3d 208 (1st Cir. 2015) ("The language of both the regulations and case law persuade the Court that detainers are not mandatory and the RIDOC should not have reasonably concluded as such."); *Villars v. Kubiatowski*, 45 F.Supp.3d 791, 802 (N.D. Ill. 2014) (federal courts and all relevant federal agencies and departments consider ICE detainers to be requests).

[6] *See, e.g.*, *Morales v. Chadbourne*, 793 F.3d 208, 215–16 (1st Cir. 2015) ("It was thus clearly established well before Morales was detained in 2009 that immigration stops and arrests were subject to the same Fourth Amendment requirements that apply to other stops and arrests -- reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1250 (E.D. Wash. 2017) (holding that "where detention is extended as a result of an immigration hold, that extension is a subsequent seizure for Fourth Amendment purposes" that must be supported by probable cause or a warrant); *Roy v. County of Los Angeles*, No. 2:12-cv-09012AB, 2018 WL 914773, at *23 (C.D. Cal., Feb. 7, 2018) (finding Los Angeles Sheriff's Department continued detention of inmates "beyond their release dates on the basis of immigration detainers…constitutes a new arrest under the Fourth Amendment.").

[7] *See Gerstein v. Pugh*, 420 U.S. 103, 116 (1975).

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individuals' Fourth Amendment rights."[8] In other words, the Court held that continued detention of an individual pursuant to an ICE detainer is justified under the Fourth Amendment only when the state has probable cause to believe that the individual has been involved in *criminal activity* separate and apart from the justification for the initial arrest.

Neither ICE's detainer form, nor the administrative warrants that often accompany it, require evidence or even suspicion of separate or new criminal activity by the detainer's subject. Instead, an ICE officer simply checks a box on the forms to indicate if evidence, according to the ICE officer, exists that the individual is subject to removal from the United States. This practice is not enough to justify continued detention by local law enforcement.

ICE's addition of the administrative warrant (Forms I-200 and I-205)[9] do not cure these Fourth Amendment violations. The Fourth Amendment requires that a probable cause determination be made by a "neutral magistrate," which is an officer who must be "neutral and detached" from the activities of law enforcement.[10] However, like ICE detainers, administrative warrants are issued and approved by immigration enforcement officials. They are not reviewed by a neutral magistrate to determine if they are based on probable cause as required by the Fourth Amendment, nor do they provide any evidence of suspicion that a new criminal offense has been committed.[11]

Electronic databases are unreliable sources of information to determine probable cause of an individual's removability. In September 2019, the Central District of California permanently enjoined ICE from issuing detainers based solely on electronic database information—where there is no removal order, no ongoing proceedings, and no prior interview—because the Court found that the databases relied upon were too error-ridden and incomplete to be reliable sources of information for probable cause determinations.[12] The Court recognized that ICE relies on databases to "cobble together information from disparate systems that are not at all intended to establish probable cause of removal."[13]

In addition to these Fourth Amendment violations, detaining individuals on ICE detainers also subjects LVMPD to liability because <u>an ICE detainer does not provide LVMPD with the federal authority required to undertake an arrest</u>. The Immigration and Nationality Act dramatically limits the circumstances in which state and

[8] *See Roy*, 2018 WL 914773, at *23.
[9] Sample forms I-200 and I-205 are attached as Exhibit E.
[10] *See Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972).
[11] *See Lunn v. Commonwealth*, 477 Mass. 517, 531 n.21 (Mass. 2017) ("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.").
[12] *See Gonzalez*, 2019 WL 4734579, at *21 ("Immigration and citizenship law are complex and require a taxing examination of a person's history—the databases ICE uses were not created to track those complexities.").
[13] *Id.*

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local officials may engage in the arrest and detention of individuals for civil immigration purposes.[14] Because "the removal process is entrusted to the discretion of the Federal Government," the law places primary authority to engage in arrests and detention for civil immigration purposes in the hands of federal immigration officers.[15] Only in three limited circumstances does the statute authorize state and local officers to engage in civil immigration arrests and detentions.[16] None of these three narrow provisions authorize state or local officials to undertake an arrest and detention solely based on a request from federal immigration officials, absent state authority to do so.[17] As discussed above, the Central District of California permanently enjoined ICE from issuing detainers to states whose laws do not expressly authorize state and local law enforcement to make arrests for civil immigration purposes.[18] Since Nevada has no law expressly authorizing such arrests, Nevada law does not provide LVMPD with the authority to undertake a civil immigration arrest.

LVMPD's participation in the 287(g) program does not immunize it from liability for detaining individuals on ICE detainers. The 287(g) agreement grants LVMPD officers the authority to issue the same administrative forms that ICE issues. However, it does not suggest or require any additional procedures to cure the Fourth Amendment problems inherent in detainer compliance, nor does it grant the necessary state authority to effectuate an arrest for civil immigration purposes. Section 287(g) authorizes non-federal law enforcement officials to perform immigration enforcement functions only "to the extent consistent with State and local law." As discussed above, Nevada law enforcement officers lack the authority to arrest or detain individuals under immigration detainers. Nothing in the 287(g) agreement changes this analysis. In fact, LVMPD

[14] *See Arizona v. United States*, 567 U.S. 387, 408 (2012) ("Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer.").
[15] *Id.* at 407–08.
[16] The three provisions of the Immigration and Nationality Act include: 1) 8 U.S.C. § 1103(a)(1), referring to "an actual or imminent mass influx of [undocumented individuals] arriving off the coast of the United States, or near a land border, present[ing] urgent circumstances requiring an immediate Federal response;" 2) 8 U.S.C. § 1252c, referring to individuals unlawfully present in the United States after a previous deportation subsequent to conviction of a felony; and 3) 8 U.S.C. § 1357(g), also known as Section 287(g) of the Immigration and Nationality Act, permitting cooperative agreements whereby non-federal officials are authorized to perform the function of an immigration officer.
[17] ICE has pointed to Section 287(g)(10)(B) of the Immigration and Nationality Act as an implicit grant of authority to states to engage in civil immigration arrests. However, courts have rejected this argument as an overly broad reading of that provision, which simply provides that Section 287(g) should not be construed to require an agreement for local or state officials "to cooperate … in the identification, apprehension, detention, or removal of [undocumented individuals]." *See Lunn*, 477 Mass. at 536 ("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 … 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.").
[18] *Gonzalez*, 2019 WL 4734579, at *22.

officials working under a 287(g) agreement are likely exposed to greater liability because the agreement requires local officials themselves to conduct the investigations and determinations that underlie detainer issuance. Given the complexity of federal immigration laws, this is a significant and risky undertaking for local officials.

For the reasons discussed above, LVMPD should immediately cease its practice of detaining individuals beyond the time at which they are entitled to release from custody on the purported authority of ICE detainers. You should notify us in writing by close of business on Friday, October 25th at the latest whether LVMPD intends to terminate these unlawful practices.

Sincerely,

s/ Sherrie Royster

Sherrie Royster
Legal Director
ACLU of Nevada
royster@aclunv.org
(702) 366-1536

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EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON *(complete box 1 or 2).*

- ☐ A final order of removal against the alien;
- ☐ The pendency of ongoing removal proceedings against the alien;
- ☐ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION *(complete box 1 or 2).*

- ☐ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

☐ If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

_____ _____

(Name and title of Immigration Officer) (Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____ .

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____ , in the following manner:

☐ in person ☐ by inmate mail delivery ☐ other (please specify): _____

_____ _____

(Name and title of Officer) (Signature of Officer) (Sign in ink)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) le ha puesto una retención de inmigración. Una retención de inmigración es un aviso a una agencia de la ley que DHS tiene la intención de asumir la custodia de usted (después de lo contrario, usted sería puesto en libertad de la custodia) porque hay causa probable que usted está sujeto a que lo expulsen de los Estados Unidos bajo la ley de inmigración federal. DHS ha solicitado que la agencia de la ley que le tiene detenido actualmente mantenga custodia de usted por un periodo de tiempo que no exceda de 48 horas más del tiempo original que habría sido puesto en libertad en base a los cargos judiciales o a sus antecedentes penales. **Si DHS no le pone en custodia durante este periodo adicional de 48 horas, usted debe de contactarse con su custodio** (la agencia que le tiene detenido en este momento) para preguntar acerca de su liberación. **Si usted cree que es un ciudadano de los Estados Unidos o la víctima de un crimen, por favor avise al DHS llamando gratuitamente al Centro de Apoyo a la Aplicación de la Ley ICE al (855) 448-6903.**

AVIS AU DETENU OU À LA DÉTENUE

Le Département de la Sécurité Intérieure (DHS) a placé un dépositaire d'immigration sur vous. Un dépositaire d'immigration est un avis à une agence de force de l'ordre que le DHS a l'intention de vous prendre en garde à vue (après celà vous pourrez par ailleurs être remis en liberté) parce qu'il y a une cause probable que vous soyez sujet à expulsion des États-Unis en vertu de la loi fédérale sur l'immigration. Le DHS a demandé que l'agence de force de l'ordre qui vous détient actuellement puisse vous maintenir en garde pendant une période ne devant pas dépasser 48 heures au-delà du temps après lequel vous auriez été libéré en se basant sur vos accusations criminelles ou condamnations. **Si le DHS ne vous prenne pas en garde à vue au cours de cette période supplémentaire de 48 heures, vous devez contacter votre gardien (ne)** (l'agence qui vous détient maintenant) pour vous renseigner sur votre libération. **Si vous croyez que vous êtes un citoyen ou une citoyenne des États-Unis ou une victime d'un crime, s'il vous plaît aviser le DHS en appelant gratuitement le centre d'assistance de force de l'ordre de l'ICE au (855) 448-6903**

NOTIFICAÇÃO AO DETENTO

O Departamento de Segurança Nacional (DHS) expediu um mandado de detenção migratória contra você. Um mandado de detenção migratória é uma notificação feita à uma agência de segurança pública que o DHS tem a intenção de assumir a sua custódia (após a qual você, caso contrário, seria liberado da custódia) porque existe causa provável que você está sujeito a ser removido dos Estados Unidos de acordo com a lei federal de imigração. ODHS solicitou à agência de segurança pública onde você está atualmente detido para manter a sua guarda por um período de no máximo 48 horas além do tempo que você teria sido liberado com base nas suas acusações ou condenações criminais. **Se o DHS não leva-lo sob custódia durante este período adicional de 48 horas, você deve entrar em contato com quem tiver a sua custódia** (a agência onde você está atualmente detido) para perguntar a respeito da sua liberação. **Se você acredita ser um cidadão dos Estados Unidos ou a vítima de um crime, por favor informe ao DHS através de uma ligação gratuita ao Centro de Suporte de Segurança Pública do Serviço de Imigração e Alfândega (ICE) pelo telefone (855) 448-6903.**

THÔNG BÁO CHO NGƯỜI BỊ GIAM

Bộ Nội An (DHS) đã ra lệnh giam giữ di trú đối với quý vị. Giam giữ di trú là một thông báo cho cơ quan công lực rằng Bộ Nội An sẽ đảm đương việc lưu giữ quý vị (sau khi quý vị được thả ra) bởi có lý do khả tín quý vị là đối tượng bị trục xuất khỏi Hoa Kỳ theo luật di trú liên bang. Sau khi quý vị đã thi hành đầy đủ thời gian của bản án dựa trên các tội phạm hay các kết án, thay vì được thả tự do, Bộ Nội An đã yêu cầu cơ quan công lực giữ quý vị lại thêm không quá 48 tiếng đồng hồ nữa. Nếu Bộ Nội An không đến bắt quý vị sau 48 tiếng đồng hồ phụ trội đó, quý vị cần liên lạc với cơ quan hiện đang giam giữ quý vị để tham khảo về việc trả tự do cho quý vị. Nếu quý vị là công dân Hoa Kỳ hay tin rằng mình là nạn nhân của một tội ác, xin vui lòng báo cho Bộ Nội An bằng cách gọi số điện thoại miễn phí 1(855) 448-6903 cho Trung Tâm Hỗ Trợ Cơ Quan Công Lực Di Trú.

被拘留者通知書

國土安全部(Department of Homeland Security，簡稱DHS)已經對你發出移民拘留令。移民拘留令為一給予執法機構的通知書，闡明DHS意欲獲取對你的羈押權(若非有此羈押權，你將會被釋放)；因為根據聯邦移民法例，並基於合理的原由，你將會被遞解離美國國境。DHS亦已要求現正拘留你的執法機構，在你因受到刑事檢控或定罪後，而在本應被釋放的程序下，繼續對你作出不超過四十八小時的監管。若你在這附加的四十八小時內，仍未及移交至**DHS**的監管下，你應當聯絡你的監管人(即現正監管你的機構)查詢有關你釋放的事宜。若你認為你是美國公民或為罪案受害者，請致電**ICE**執法部支援中心**(Law Enforcement Support Center)**知會**DHS**，免費電話號碼：**(855)448-6903**。

EXHIBIT B

NATIONAL IMMIGRATION LAW CENTER

December 16, 2013

Douglas C. Gillespie, Sheriff
Las Vegas Metropolitan Police Department
400 S. Martin L. King Blvd.
Las Vegas, Nevada 89106

Liesl Freedman, General Counsel
Office of General Counsel
400 S. Martin L. King Blvd.
Las Vegas, Nevada 89106

Dear Sheriff Gillespie:

We understand that it is Clark County Detention Center ("CCDC") practice to refuse to accept bail from pre-trial inmates who are the subject of an ICE hold.[1] We also understand that CCDC currently engages in the practice of detaining individuals on the basis of ICE holds for 48 hours and sometimes more after they would otherwise be entitled to release from custody. As described below, both practices are unlawful. We urge you to cease these unlawful practices immediately. If the department fails to do so, we may pursue legal action to end these practices.

Refusing to Allow Inmates with ICE holds to Post Bail Violates State and Federal Law

The Nevada Constitution provides an absolute right to bail, except in the case of individuals arrested for murder in the first degree. Nev. Const. Art. 1 § 7; Nev. Rev. Stat. § 178.484 (2012); *Application of Wheeler*, 81 Nev. 495, 499 (1965) ("[The] right to bail is absolute in a non-capital case."). When the assigned bail amount, as provided by the statutory bail schedule or court order, is deposited on behalf of the pre-trial detainee, that detainee must be released. *See* Nev. Rev. Stat. § 171.192 (providing that the "officer having charge of the defendant…shall forthwith discharge the defendant from arrest" upon receipt of a warrant admitting the defendant to bail).

[1] An ICE hold, also called an ICE or immigration detainer, is a request to the detaining agency that the agency notify Immigration and Customs Enforcement ("ICE") before the individual is to be released and continue to detain the individual for an additional 48-hour period to allow ICE to assume custody. An ICE hold is issued on ICE form I-247.

In addition, freedom from pre-trial detention is protected under the Due Process Clause of the U.S. Constitution as a fundamental liberty interest. Your policy of refusing bail for individuals with ICE holds infringes on this liberty interest and absent very weighty justification, is impermissible. *See, e.g., United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."). No such justification is applicable in the instance of individuals ordered released on bail who happen to have ICE holds. We can conceive of no legitimate interest in preventing an inmate with an ICE hold from posting bail, particularly because ICE holds themselves are permissive and merely constitute expressly time-limited requests by ICE, on the agency's own I-247 form, to hold individuals for a period of no more than 48 hours excluding Saturdays, Sundays, and holidays "*beyond the time when the subject would have otherwise been released from your custody.*"

Nothing about an ICE hold gives CCDC the legal authority to deny inmates the right to post bail, nor to override Nevada's fundamental right to post bail. Refusing to accept bail from pre-trial detainees who are subject to ICE holds is therefore plainly unlawful.

Confining Persons with ICE holds After They Would Otherwise be Entitled to Release Violates State and Federal Law

Both the Nevada and United States Constitutions provide that the government generally must release inmates who have served their sentence, have had charges against them dismissed, or have been acquitted of the charges against them. The so-called ICE hold does not justify these inmates' continued detention for numerous reasons.

ICE Holds are Requests, and the Constitution Would Prohibit the Federal Government from Compelling the County to Comply with ICE Holds

ICE holds are requests, not orders. *See, e.g., U.S. v. Uribe-Rios*, 558 F.3d 347, 350 n.1 (4th Cir. 2009) ("A detainer is a mechanism by which federal immigration authorities may request that another law enforcement agency temporarily detain an alien 'in order to permit assumption of custody by the Department [of Homeland Security].'"); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011) ("A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency 'advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.'").

Indeed, if the ICE hold were interpreted as an order, it would violate the Constitution because the federal government cannot lawfully require a state or local law enforcement agency to detain anyone. As established by the Supreme Court in *Printz v. United States*, any such order would constitute unlawful commandeering in violation of the Tenth Amendment of the United States Constitution. 521 U.S. 898, 925-35 (1997). Accordingly, any detention of an individual pursuant to an ICE hold cannot be justified on the ground that the detention is required by federal law pursuant to the ICE hold. Your agency cannot abdicate its legal responsibilities by pointing to the ICE hold.

ICE Holds are Not Arrest Warrants

The Fourth Amendment generally prohibits the government from detaining an individual absent an arrest warrant issued by a judicial officer based on a finding of probable cause. An ICE hold does not meet these requirements.

An ICE hold is not an arrest warrant. Arrest warrants are issued by judicial officers. *See* Nev. R. Stat. §179.320. In contrast, ICE holds are issued by individual immigration enforcement officers. *See* 8 C.F.R. § 287.7(b). ICE holds lack all of the procedural protections and safeguards that accompany the issuance of an arrest warrant or a criminal detainer. *See* Nev. R. Stat. § 171.108. *See also Major Cities Chiefs Immigration Committee Recommendations* at 8 (June 2006), www.houstontx.gov/police.pdfs/mcc_position.pdf (ICE's "civil detainers do not fall within the clear criminal enforcement authority of local police agencies and in fact lay[] a trap for unwary officers who believe them to be valid criminal warrants or detainers").

Given that ICE holds are not arrest warrants, the question arises regarding what authority they provide to justify a deprivation of liberty at all. In fact, ICE holds do not provide any lawful authority to justify an individual's detention beyond the point at which he or she is otherwise entitled to release from your custody. Both the U.S. and Nevada Constitutions clearly provide that individuals may not be detained without probable cause. *McKenzie v. Lamb*, 738 F.2d 1005, 1007 (9th Cir. 1984); *Harper v. State*, 84 Nev. 233, 239-40 (1968). But ICE holds are regularly issued without a finding of probable cause and act as a way for ICE to keep the individual detained while the agency decides whether to assume custody of the individual. Such detention likely violates the U.S. Constitution. *See Arizona v. United* States, 132 S. Ct. 2492, 2509 (2012) (citing Fourth Amendment cases and recognizing that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns."); *Brass v. County of Los Angeles*, 328 F.3d 1192, 1202 (9th Cir. 2003) ("Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest…") (quoting *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991)).

Even Assuming that an ICE hold Justified an Additional 48 Hours of Detention, Any Longer Would Certainly Be Illegal

Even assuming that local officials could lawfully hold an inmate in jail on the basis of an ICE hold for 48 hours after he or she would otherwise be released, holding an inmate beyond that 48-hour period absent extraordinary circumstances clearly violates the U.S. Constitution. With an ICE hold, ICE asks law enforcement agencies to hold inmates who would otherwise be released for 48 hours *not including Saturdays, Sundays, and federal holidays*. If the County abides by this weekend and holiday exclusion, they may hold an individual for up to 120 hours if he or she would otherwise have been released on the Friday before a holiday weekend. This prolonged detention is inconsistent with Supreme Court precedent. *See McLauglin*, 500 U.S. at 57-58 (holding that Riverside's policy of providing a judicial probable cause determination

"within two days, exclusive of Saturdays, Sundays, or holidays … exceeds the 48 hour period we deemed constitutionally permissible.").

For the reasons discussed above, the Clark County Detention Center should immediately cease its practices of refusing to accept bail from pre-trial detainees who are subject to ICE holds and of detaining individuals beyond the time at which they are entitled to release from custody on the purported authority of ICE holds. As we are sure you are aware, 42 U.S.C. § 1983 provides ample means for individuals who have been unlawfully detained to seek recovery for damages suffered as a result of CCDC's detainer practices. Maintaining these practices will increase the liability that the County has already incurred as a result of these unlawful practices. Moreover, if the County maintains these practices and we prevail on a lawsuit challenging them, we would be entitled to significant attorneys' fees under 42 U.S.C. § 1988.

Please notify us by, at latest, close of business January 6, 2014 whether you intend to terminate these practices immediately.

Sincerely,

Melissa Keaney
Staff Attorney
National Immigration Law Center
(213)674-2820
Keaney@nilc.org

EXHIBIT C

Holland & Knight

NILC

ACLU Nevada

Via U.S. Certified Mail and Electronic Mail

March 15, 2018

Sheriff Joseph Lombardo
LVMPD Headquarters
400 South Martin Luther King Blvd.
Las Vegas, Nevada 89106
Email: Sheriff@ LVMPD.com

Liesl Freedman, General Counsel
Office of General Counsel
400 South Martin Luther King Blvd.
Las Vegas, Nevada 89106
Email: L8706F@LVMPD.com

Re: ICE detainers, ICE I-200 Warrants of Arrest, and Bail

Dear Sheriff Lombardo:

As you may know, we previously worked with your predecessor, Sheriff Gillespie, in addressing concerns regarding the Las Vegas Metropolitan Police Department's (LVMPD) treatment of ICE detainers, including its practice of denying bail where an ICE detainer was present.[1] This led to the Department's recognition that an ICE detainer does not by itself provide a constitutional basis for continued detention and the institution of a new policy prohibiting detention on an ICE detainer.[2]

It appears from our investigation, which has been confirmed in direct conversations with LVMPD staff, that the Department, under your leadership, has revoked this policy and is, once again, detaining individuals on the basis of an ICE detainer when they would otherwise be entitled to release from custody and refusing to accept bail for pre-trial inmates who are the subject of an ICE detainer. As we have previously informed you, and as described below, both

[1] An ICE detainer, also called an immigration hold or an immigration detainer, is a request to the detaining law enforcement agency that the agency notify Immigration and Customs Enforcement (ICE) before the individual named in the hold is to be released and to continue to detain the individual for an additional 48-hour period to permit ICE to assume custody. An ICE detainer is issued on ICE form I-247A. A sample I-247A form is attached as Exhibit A.

[2] Please see attached correspondence with Sheriff Gillespie dated December 16, 2013 (Exhibit B).

practices are unconstitutional and raise significant public policy concerns. We urge you to notify us by **close of business March 30** whether LVMPD will cease these unlawful practices. If the Department fails to do so, we will pursue legal action to end these practices. The Department may also be liable for damages and attorney's fees in lawsuits brought by unlawfully detained individuals.

Detaining individuals on an ICE detainer continues to violate federal and Nevada law notwithstanding federal changes

The Nevada and U.S. Constitutions provide that the government generally must release inmates who have served their sentence, have had charges against them dismissed, or have been acquitted of the charges against them. An ICE detainer (and the I-200 or I-205 form that sometimes accompany them) do not justify these inmates' continued detention for numerous reasons.[3]

When LVMPD continues to maintain custody solely on the basis of an ICE detainer, this constitutes a new "arrest" under the Fourth Amendment of the U.S. Constitution. This principle is well established in law.[4] For LVMPD to undertake the arrest required for compliance with the ICE detainer, it must comply with the Fourth Amendment and be authorized by both federal and state law. ICE's current detainer program leaves LVMPD operating in violation of both obligations.

LVMPD's compliance with ICE detainers violates the Fourth Amendment. The Fourth Amendment requires that an arrest be justified by the issuance of a warrant by a neutral

[3] The Department's compliance with ICE detainers is completely voluntary. *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (local law enforcement agencies are free to disregard detainers and cannot use them as a defense of unlawful detention); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014), aff'd in part, dismissed in part, 793 F.3d 208 (1st Cir. 2015) ("The language of both the regulations and case law persuade the Court that detainers are not mandatory and the RIDOC should not have reasonably concluded as such."); *Villars v. Kubiatowski*, 45 F.Supp.3d 791, 802 (N.D. Ill. 2014) (federal courts and all relevant federal agencies and departments consider ICE detainers to be requests).

[4] *See Morales v. Chadbourne*, 793 F.3d 208, 215-16 (1st Cir. 2015) ("It was thus clearly established well before Morales was detained in 2009 that immigration stops and arrests were subject to the same Fourth Amendment requirements that apply to other stops and arrests -- reasonable suspicion for a brief stop, and probable cause for any further arrest and detention"); *Roy v. County of Los Angeles*, No. 2:12-cv-09012-AB, 2018 WL 914773, at *23 (C.D. Cal., Feb. 7, 2018) (finding Los Angeles Sheriff's Department continued detention of inmates "beyond their release dates on the basis of immigration detainers" … "constitutes a new arrest under the Fourth Amendment"); *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 944 (D. Minn. 2017) (internal quotations omitted) ("Orellana's continued detention [pursuant to an ICE detainer] is properly viewed as a warrantless arrest, which is reasonable under the Fourth Amendment where it is supported by probable cause."); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1250 (E.D. Wash. 2017) (holding that "where detention is extended as a result of an immigration hold, that extension is a subsequent seizure for Fourth Amendment purposes" that must be supported by probable cause or a warrant); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *9 (D. Or., Apr. 11, 2014) (finding the county's continued detention of Miranda-Olivares pursuant to an ICE detainer "not a continuation of her initial arrest, but new seizures independent of the initial finding of probable cause for violating state law").

magistrate on a finding of probable cause or, in the case of a warrantless arrest, be reviewed by a neutral magistrate within 48 hours of arrest."[5] In February 2018, the U.S. District Court for the Central District of California held in *Roy v. County of Los Angeles* that the officers of the Los Angeles Sheriff's Department "have no authority to arrest individuals for civil immigration offenses, and thus, detaining individuals beyond their date for release violate[s] the individuals' Fourth Amendment rights."[6] Specifically, the Court ruled that continued detention of an individual pursuant to an ICE detainer is only justified under the Fourth Amendment when the state has probable cause to believe that the individual has been involved in *criminal activity* separate and apart from the justification for the initial arrest. Neither ICE's detainer form, nor the administrative warrants that sometimes accompany it, require evidence or even suspicion of new criminal activity by the subject of the detainer. Instead, an ICE officer simply checks a box on the forms to indicate if evidence, according to the ICE officer, exists that the individual is subject to removal from the United States. This is not sufficient to justify continued detention by local law enforcement.

ICE's addition of the administrative warrant Forms I-200 and I-205[7] do not cure the Fourth Amendment issues. The Fourth Amendment requires that a probable cause determination be made by a "neutral magistrate," an officer who must be "neutral and detached" from the activities of law enforcement.[8] Like ICE detainers, administrative warrants are issued and approved by immigration enforcement officials. They are not reviewed by a neutral magistrate to determine if they are based on probable cause as required by the Fourth Amendment, nor do they provide any evidence of suspicion of commission of a new criminal offense.[9]

Assuming that an ICE detainer could overcome the Fourth Amendment deficiencies, detaining an individual on an ICE detainer still exposes LVMPD to liability because it does not provide LVMPD with the federal authority it needs to undertake an arrest. The Immigration and Nationality Act dramatically limits the circumstances in which state and local officials may engage in the arrest and detention of individuals for civil immigration purposes.[10] Because "the removal process is entrusted to the discretion of the Federal Government," the law places primary authority to engage in arrests and detention for civil immigration purposes in the hands of trained federal immigration officers.[11] Only in three limited circumstances does the statute authorize state and local officers to engage in civil immigration arrests and detentions.[12] None of these three narrow provisions authorize state or local officials

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[5] *Gerstein v. Pugh*, 420 U.S. 103, 116 (1975).
[6] *Roy*, 2018 WL 914773, at *23.
[7] Sample forms I-200 and I-205 are attached as Exhibits C and D, respectively.
[8] *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972).
[9] *See Lunn*, 477 Mass. at 531 n.21 ("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.").
[10] *Arizona v. United States*, 567 U.S. 387, 408 (2012) ("Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer.").
[11] *Id.* at 407-08.
[12] The three provisions of the Immigration and Nationality Act include: 1) 8 U.S.C. § 1103(a)(1), referring to "an actual or imminent mass influx of aliens arriving off the coast of the United States, or

to undertake an arrest and detention solely based on a request from federal immigration officials, absent state authority to do so.[13] The federal government has in fact conceded that a detainer "does not … provide legal authority for [an] arrest" by non-federal officials.[14]

Absent such a grant of authority from the federal government, the central question is whether Nevada law provides such authority. **Nevada law does not authorize arrests pursuant to ICE detainers.** Nevada law provides your department only limited authority to make arrests for civil matters. *See* NRS § 31.470 ("No person shall be arrested in a civil action except as prescribed by this chapter."). Immigration enforcement is not one of the enumerated situations permitting an arrest for a civil matter under Nevada law. *See* NRS § 31.480. This is why the Nevada Attorney General issued an opinion concluding that: "Nevada peace officers should act cautiously in enforcing federal laws…and should not detain or arrest a person solely on the basis that this individual might be a deportable alien…When exercising arrest authority, Nevada peace officers must be certain that they act within the powers expressly described by statute." Op. Att'y. Gen. Opinion No. 83-16 (Nov. 23, 1983), 1983 WL 171453.

LVMPD's participation in the 287(g) Program does not immunize it from liability for detaining individuals on ICE detainers. The 287(g) agreement, principally, gives specified LVMPD officers the authority to issue the same administrative forms that ICE issues. It does not suggest or require any additional procedures that would cure the Fourth Amendment problems inherent in detainer compliance, nor does it grant the necessary state authority to effectuate an arrest for civil immigration purposes. Section 287(g) authorizes non-federal law enforcement officials to perform immigration enforcement functions only "to the extent consistent with State and local law." As discussed above, Nevada law enforcement officers lack the authority to arrest

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near a land border, present[ing] urgent circumstances requiring an immediate Federal response;" 2) 8 U.S.C. § 1252c, referring to individuals unlawfully present in the United States after a previous deportation subsequent to conviction of a felony; and 3) 8 U.S.C. § 1357(g), also known as Section 287(g) of the Immigration and Nationality Act, permitting cooperative agreements whereby non-federal officials are authorized to perform the function of an immigration officer.

[13] ICE has pointed to Section 287(g)(10)(B) of the Immigration and Nationality Act as an implicit grant of authority to states to engage in civil immigration arrests. But courts have dismissed this argument as an overly broad reading of that provision, which simply provides that Section 287(g) should not be construed to require an agreement for local or state officials "to cooperate … in the identification, apprehension, detention, or removal of aliens…" *See Lopez-Aguilar*, 2017 WL 5634965 at *10 (citing *Arizona*, 567 U.S. at 408) ("[W]e conclude that the full extent of federal permission for state-federal cooperation in immigration enforcement does not embrace detention of a person based solely on either a removal order or an ICE detainer. Such detention exceeds the 'limited circumstances' in which state officers may enforce federal immigration law and thus violates 'the system Congress created.'"); *Lunn v. Commonwealth*, 477 Mass. 517, 536 (Mass. 2017) ("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 … 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.").

[14] *Gonzalez v. Immigration and Customs Enforcement*, Case No. 13-4416 (C.D. Cal.), *consolidated in* Case No. 12-9012 (C.D. Cal.), Dkt. 272-1, ICE's Response to Plfs' Undisputed Statement of Material Facts for Partial Summary Judgment, ¶ 64; *see id.* ¶ 162.

or detain individuals under immigration detainers. Nothing in a 287(g) agreement changes this analysis. **In fact, LVMPD officials working under a 287(g) agreement are likely exposed to greater liability** because the agreement requires the local officials themselves to conduct the investigation and determinations that underlie detainer issuance. Given the maze-like complexity of the federal immigration laws, this is a significant and hazardous undertaking.

Refusing to accept bail for individuals with an ICE detainer violates the Nevada Constitution and the Fourth Amendment

Nothing about an ICE detainer or ICE's most recent policy changes relating to the issuance of ICE detainers gives LVMPD the legal authority to deny inmates the right to post bail, nor to override Nevada's fundamental right to post bail.

The Nevada Constitution provides an absolute right to bail, except in the case of individuals arrested for murder in the first degree. Nev. Const. Art. 1 § 7; Nev. Rev. Stat. § 178.484 (2012); *Application of Wheeler*, 81 Nev. 495, 499 (1965) ("[The] right to bail is absolute in a non-capital case."). When the assigned bail amount, as provided by the statutory bail schedule or court order, is deposited on behalf of the pre-trial detainee, that detainee must be released. *See* Nev. Rev. Stat. § 171.192 (providing that the "officer having charge of the defendant … shall forthwith discharge the defendant from arrest" upon receipt of a warrant admitting the defendant to bail).

Freedom from pre-trial detention is also protected under the Due Process Clause of the U.S. Constitution as a fundamental liberty interest. Your policy of refusing to accept bail for individuals with an ICE detainer infringes on this liberty interest and absent very weighty justification, is impermissible. *See, e.g., United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."); *see also Roy v. Los Angeles*, 2015 WL 12582637 (C.D. Cal. 2015) (denying defendants' motion to dismiss plaintiffs' claim that county's refusal to accept bail for individuals with an ICE detainer violates state and federal law).[15] **Refusing to accept bail from pre-trial detainees who are subject to an ICE detainer is plainly unlawful.**

Complying with ICE detainers undermines community trust in LVMPD

While LVMPD's compliance with ICE detainers subjects the agency to liability for the significant constitutional and legal violations discussed above, in an era when historically harsh immigration enforcement has caused widespread fear among immigrant communities, LMVPD's actions also carry significant non-legal risks, risks that implicate community safety and basic American values of due process.

When states and localities are, or are perceived to be, participating in DHS's enforcement of federal immigration law, immigrants grow increasingly afraid of their local

[15] Clark County Detention Center's policy of refusing to accept bail for individuals with an ICE detainer was confirmed in an April 24, 2017 e-mail correspondence with Chief Suey, wherein he indicated that "Justice Court Pre-Trial Services will not accept bail when an ICE detainer is present."

police. In recent months this fear has translated into a decline in overall community safety, as fewer immigrant crime victims and witnesses are coming forward to report crimes. For example, in the first months of 2017, the Los Angeles Police Department reported that the "sexual assaults reported by Latinos in Los Angeles have dropped 25 percent, and domestic violence reports by Latinos have decreased by 10 percent compared to the same period last year."[16] In Houston, the Police Department reported similar findings, as the number of Hispanics reporting rape in the first quarter of 2017 went down 42.8 percent from the prior year.[17] And in Denver, the prosecuting attorney reports more than a dozen Latina women have dropped domestic violence charges for fear of deportation under the Trump administration.[18]

ICE's intimidation tactics extend beyond individual community members, as the agency increasingly uses bullying tactics against local and state law enforcement and elected officials who have supported policies that limit the presence of ICE in their communities. The Trump administration has persistently threatened to strip federal law enforcement funding from jurisdictions that limit their role in performing the responsibilities of federal immigration enforcement,[19] despite Supreme Court precedent warning against such incursions.[20]

The moral, ethical and social costs that accompany LVMPD's involvement in federal immigration enforcement grow steeper each day. As you weigh the extent of LVMPD's entanglement with federal immigration enforcement, these considerations must be weighed along with the vulnerability to litigation that detainer compliance will entail, despite ICE's numerous efforts to claim otherwise.

Conclusion

For the reasons discussed above, LVMPD should immediately cease its practices of detaining individuals beyond the time at which they are entitled to release from custody on the purported authority of ICE detainers and refusing to accept bail from pre-trial detainees who are subject to ICE detainers. As we are sure you are aware, 42 U.S.C. § 1983 provides ample means

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[16] Michael Balsamo, *Associated Press*, "LAPD: Latinos report fewer sex crimes amid immigration fears," Mar. 22, 2017, https://apnews.com/b1fb6bf0d0264463a81f65faa50c59fb.

[17] Brooke A. Lewis, *Houston Chronicle*, "HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year" Houston Chronicle, April 6, 2017, http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php.

[18] *See* Sarah Stillman, *The New Yorker,* "When Deportation is a Death Sentence," Jan. 15, 2018, https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence; Mark Joseph Stern, *Slate*, "Bad for Undocumented Immigrants, a Gift to Domestic Abusers," Mar. 8, 2017, http://www.slate.com/articles/news_and_politics/jurisprudence/2017/03/denver_city_attorney_kristin_bronson_on_the_trump_immigration_crackdown.html.

[19] Matt Zapotosky, "Justice Department threatens to subpoena records in escalating battle with 'sanctuary jurisdictions,'" Washington Post, Jan. 24, 2018, https://www.washingtonpost.com/world/national-security/justice-department-threatens-to-subpoena-records-in-escalating-battle-with-sanctuary-jurisdictions/2018/01/24/984d0fee-0113-11e8-bb03-722769454f82_story.html?utm_term=.3afa3ba8748e.

[20] The Supreme Court has held, in the context of the Medicaid expansion in the Affordable Care Act, that the federal government cannot use financial leverage to coerce states and localities into enforcing federal priorities. *See NFIB v. Sebelius*, 567 U.S. 519, 575-85 (2015).

for individuals who have been unlawfully detained to seek recovery for damages suffered as a result of LVMPD's detainer practices. Maintaining these practices will increase the liability that the County has already incurred. Moreover, if the County maintains these practices and we prevail on a lawsuit challenging them, we will be entitled to significant attorneys' fees under 42 U.S.C. § 1988, in addition to whatever damages our client(s) recover.

Please notify us by, at latest, close of business March 30 whether you intend to terminate these practices immediately.

Sincerely,

s/ Melissa Keaney

Melissa Keaney
Staff Attorney
National Immigration Law Center
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(213) 674-2820

Amy M. Rose
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EXHIBIT D

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT
JOSEPH LOMBARDO, Sheriff

Partners with the Community

March 28, 2018

Melissa Keaney, Staff Attorney
National Immigration Law Center
keaney@nilc.org

Re: ICE Detainers

Dear Ms. Keaney:

I am in receipt of your letter to Sheriff Lombardo and myself dated March 15, 2018. You have demanded that LVMPD discontinue accepting ICE detainers. You have threatened legal action if it does not do so. You have also demanded to be notified of that decision by March 30, 2018. LVMPD is aware of the ongoing proceedings in the *Roy v. County of Los Angeles* and is further aware of the orders that Court has issued. LVMPD continues to monitor the *Roy* case; however, based on the current scope of the Court's limited order and the factual distinctions in LVMPD's programs, LVMPD declines to discontinue honoring ICE detainers by your deadline.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: _____
Liesl Freedman
General Counsel

LKF:cam

cc: Robert Barton, Senior Counsel
Holland & Knight
robert.barton@hklaw.com

Amy M. Rose, Legal Director
ACLU of Nevada
rose@aclunv.org

EXHIBIT E

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

_____
(Signature of Authorized Immigration Officer)

_____
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

_____ Name and Signature of Officer

_____ Name or Number of Interpreter (if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

_____
(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

_____
(Signature of immigration officer)

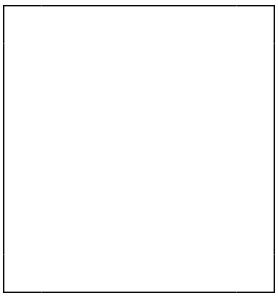
_____
(Title of immigration officer)

_____
(Date and office location)

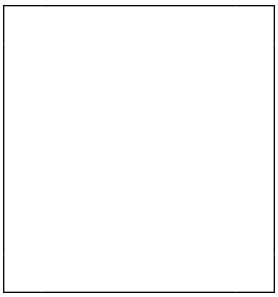
To be completed by immigration officer executing the warrant: Name of alien being removed:

_____

Port, date, and manner of removal: _____



Photograph of alien removed



Right index fingerprint of alien removed

_____

(Signature of alien being fingerprinted)

_____

(Signature and title of immigration officer taking print)

Departure witnessed by: _____

(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

_____

_____

_____

_____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____

(Signature and title of immigration officer)