

March 5, 2014

Chair, Senator Brian E. Frosh  
Vice Chair, Senator Lisa A. Gladden and  
Members  
Judicial Proceedings Committee  
Maryland General Assembly  
Annapolis, MD

Re: **In support of the Maryland Law Enforcement Trust Act**

Dear Honorable Senators,

We are writing as law professors in support of the Maryland Law Enforcement Trust Act (“Trust Act”), which would clarify the limits of state and local participation in federal immigration enforcement and prohibit state or local officials from continuing to detain an individual solely on the basis of a federal immigration detainer.<sup>1</sup> The Trust Act would build public confidence in law enforcement by clarifying limits that distinguish clearly between state and local law enforcement on the one hand and federal immigration enforcement on the other. It would improve law enforcement in our state because it would allow community members to rely on and collaborate with local authorities without fear of unrelated and devastating repercussions for themselves or their family members. A number of state and local governments around the country have enacted policies and legislation similar to the Trust Act, and the State of Maryland should do likewise.

In support of the Trust Act, we will briefly discuss some of the concerns raised by the use of detainers in the context of our nation’s broken immigration system, as well as recent data that show that fully seventy percent (70%) of detainers issued in Maryland have been imposed on individuals with no criminal history whatsoever, and that detainers are imposed in proportions that raise serious concerns about racial profiling. We will discuss the legally nonbinding nature of immigration detainers and the constitutional concerns about their enforcement by state and local authorities. In the end, it is our conclusion that Maryland should join the growing number of jurisdictions that limit the enforcement of federal immigration detainers.

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<sup>1</sup> Senate Bill 554 and House Bill 0029. As discussed below (*see* Sections II and III), an immigration detainer is a request from the federal Department of Homeland Security that a law enforcement agency notify ICE prior to releasing an individual so that ICE may make arrangements to assume custody within 48 hours after the person would otherwise have been released by the local jurisdiction.

We write as law professors with expertise in legal matters including immigration law, the interpretation of regulatory requirements, administrative law, law enforcement and the interplay of state and federal law. Our positions in support of the Trust Act are our own personal positions and not that of any of the institutions where we teach.

## **I. Local concerns about immigration detainers lodged against non-criminals**

Through the federal Secure Communities program, all individuals arrested and fingerprinted by local law enforcement agents now have their fingerprints automatically forwarded to the Department of Homeland Security's fingerprint database, regardless of whether they are ever charged with or convicted of committing a crime.<sup>2</sup> This allows immigration agents to issue detainers for individuals solely on the basis of a fingerprint match. From 2008 to date, hundreds of thousands of detainers have been issued on the basis of the Secure Communities program.<sup>3</sup>

State and local law enforcement representatives have expressed concerns about this enmeshing of local law enforcement and federal immigration enforcement, noting the mutual reliance of local authorities and community members in community-based efforts to fight crime. Crime victims and other community members who fear racial profiling or immigration-related repercussions for themselves or for family members are often reluctant to call or cooperate with the police.<sup>4</sup>

Recent data reveal that the vast majority of immigration detainers issued in Maryland serve to facilitate civil immigration enforcement against individuals with no serious criminal record. Only eight percent (8%) of individuals subjected to detainers in Maryland had been

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<sup>2</sup> See John Fritze, *Immigration program aimed at criminals deports many with no record: Md. among highest percentages in nation for removals of noncriminal immigrants*, The Baltimore Sun, Feb. 8, 2014 (noting that “[w]hen someone is arrested, his or her fingerprints are sent automatically to the Department of Homeland Security”); see also Tom Keane, *Walsh is right about Secure Communities*, The Boston Globe, Dec. 10, 2013 (“Every time a cop detains or arrests someone, that person’s fingerprints are to be turned over to the feds.”); Julia Preston, *Despite Opposition, Immigrant Agency to Expand Fingerprint Program*, N.Y. Times, May 11, 2012 (noting that “Under Secure Communities, fingerprints of anyone booked by the local or state police are sent through the F.B.I. to be checked in databases of the Department of Homeland Security which include immigration records.”).

<sup>3</sup> U.S. Immigration and Customs Enforcement, *Secure Communities, Monthly Statistics through May 31, 2013, IDENT/IAFIS Interoperability* (2013), available at [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2013-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf) (noting that “Since Secure Communities’ use of IDENT/IAFIS Interoperability was first activated in Harris County, TX, on October 27, 2008, ICE has removed over 279, 482 aliens and over 81, 989 Level 1 convicted criminal aliens after identification through use of IDENT/IAFIS interoperability.”). IAFIS stands for Integrated Automated Fingerprint Identification System while IDENT stands for Automated Biometric Identification System.

<sup>4</sup> Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago (May 2013), [http://www.uic.edu/cuppa/gci/documents/1213/Insecure\\_Communities\\_Report\\_FINAL.pdf](http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf).

convicted of serious offenses, as defined by ICE enforcement priorities.<sup>5</sup> Seventy percent (70%) of individuals had *no criminal record at all*, and eighteen percent (18%) had only traffic offenses on their record.<sup>6</sup> These detainees serve no local public safety function, since the individuals would otherwise be released per conventional bond criteria, which permits those arrested to be released on their own recognizance or upon posting of a bond, when the individuals are not flight risks or a danger to the community. Rather, the detainees only enforce a federal immigration law that many believe to be overly punitive and inhumane in its effects on individuals and families.

There is also evidence of serious racial disparities in the imposition of detainees under Secure Communities that raises the specter of the racial profiling of particular immigrant communities. A recent review of government data on the lodging of detainees in Maryland revealed the disproportionate targeting of Latinos. Though those born in Latin American countries represent only thirty-seven percent (37%) of the foreign-born population in Maryland, approximately eighty-five percent (85%) of immigration detainees in the state were used against individuals born in that region.<sup>7</sup> These data are in line with a study conducted by the Chief Justice Earl Warren Institute on Law and Social Policy, which showed that young, Latino men were disproportionately the targets of detainees under the Secure Communities program.<sup>8</sup>

In response to these and other concerns, a growing number of state and local governments in our region and nationwide have passed or are considering the passage of Trust Acts or similar policies, including California, where the Trust Act went into effect January 1, 2014. These initiatives limit state, county, or local participation in federal immigration enforcement efforts and limit compliance with federal immigration detainees. In doing so, these policies may restore some public confidence in local and state law enforcement by reducing the risk of racial profiling and redirecting limited resources back to combating serious, violent crime. Baltimore City has an executive order prohibiting discrimination on the basis of race, national origin or immigration status and prohibiting the use of city resources to enforce federal

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<sup>5</sup> Transactional Records Access Clearinghouse (TRAC), *Targeting of ICE Detainers Varies Widely by State and by Facility*, <http://trac.syr.edu/immigration/reports/343/> (Feb. 11, 2014); see also, Fritze, *Immigration program aimed at criminals deports many with no record*, *supra* n. 2.

<sup>6</sup> *Id.*

<sup>7</sup> American Civil Liberties Union of Maryland, *Restoring Trust: How Immigration Detainers In Maryland Undermine Public Safety Through Unnecessary Enforcement*, November 2013, available at: <https://immigrantjustice.org/sites/immigrantjustice.org/files/ACLU%20Maryland--Detainer%20Report.pdf>.

<sup>8</sup> The Chief Justice Earl Warren Institute on Law and Social Policy conducted a review of the demographics of 375 arrests in the Secure Communities program. Aarti Kohli, et al., The Chief Justice Earl Warren Institute On Law And Social Policy, *Secure Communities By The Numbers: An Analysis Of Demographics And Due Process* (2011), available at [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf) (finding that although previous research had shown that 57 percent of the undocumented population in the U.S. is men, 93 percent of the sample arrested through Secure Communities was men; and while 77 percent of the undocumented population is estimated to be from Latin America, 93 percent of the sample arrested by Secure Communities was Latino).

immigration law.<sup>9</sup> The District of Columbia and 18 other jurisdictions have likewise enacted policies and ordinances limiting or prohibiting compliance with federal immigration detainers.<sup>10</sup>

**II. The regulations authorizing the use of detainers, and the detainer form itself, clearly state that detainers are requests and not binding orders.**

Federal regulations clearly state that immigration detainers are only non-binding *requests*: a detainer “serves to *advise* another law enforcement agency that the Department [of Homeland Security] seeks custody of an alien . . . . The detainer is a *request* that such agency advise the Department [of Homeland Security], prior to the release of the alien.”<sup>11</sup> The federal regulations on immigration detainers contain no language stating that a local law enforcement agency is required to abide by a detainer.

The immigration detainer form itself likewise notes that the request to hold an individual is not binding on the law enforcement agency. The Department of Homeland Security (“DHS”) issues detainer requests to local law enforcement with a three-page form called an I-247 Immigration Detainer—Notice of Action.<sup>12</sup> That form states:

**IT IS *REQUESTED* THAT YOU:**

Maintain custody of the subject for a period NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This *request* derives from federal regulation 8 C.F.R. § 287.7.<sup>13</sup>

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<sup>9</sup> *Baltimore City Executive Order Advancing Public Safety and Access to City Services*, signed by Mayor Stephanie Rawlings-Blake, Mar. 1, 2012.

<sup>10</sup> D.C. CODE §24-211.06 (2012). *See also, infra*, Section V.

<sup>11</sup> 8 C.F.R. § 287.7(a) (2013) (emphases added).

<sup>12</sup> Dep’t of Homeland Sec., Immigration Detainer —Notice of Action (Dec. 2012), *available at* <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf> (last accessed on Nov. 19, 2013).

<sup>13</sup> *Id.* (emphasis added). Previous versions of the detainer form contained misleading language. *See* Dep’t of Homeland Sec., Immigration Detainer - Notice of Action (Dec. 2011) *available at* [http://www.ilrc.org/files/documents/detainer\\_guidance\\_plus\\_addendums.pdf](http://www.ilrc.org/files/documents/detainer_guidance_plus_addendums.pdf) (last accessed on Nov. 22, 2013). The earlier version stated that 8 C.F.R. § 287.7 “provides that a law enforcement agency ‘shall maintain custody of an alien’ once a detainer has been issued by DHS.” That directive was misleading because the word “shall” in § 287.7(d) refers to the *time limit* beyond which local law enforcement *may not* detain an individual pursuant to an ICE detainer. Given voluntary compliance with an ICE detainer, 8 C.F.R. § 287.7(d) provides that a local law enforcement agency “*shall* maintain custody of the alien for a period *not to exceed 48 hours . . . .*” 8 C.F.R. § 287.7(d) (emphasis added). In December 2012, DHS amended the form to make clear that immigration detainers are simply requests, and that they are not mandatory. *See* KATE M. MANUEL, CONG. RESEARCH SERV., R42690, IMMIGRATION DETAINERS: LEGAL ISSUES 11–12 (2012) (noting that the form was first amended two years earlier “in August 2010 to indicate that ICE ‘requested’—rather than ‘required’—that aliens be held”).

**III. In both public and internal communications, DHS consistently acknowledges that detainers are not binding on local law enforcement agencies.**

DHS concedes that detainers are permissive requests rather than mandatory orders. In response to questions from Congressional leaders, local governments, the public, and litigants, DHS has explicitly stated that immigration detainer requests are not mandatory. In a 2010 briefing to members of the Congressional Hispanic Caucus, a DHS official affirmed that “local [law enforcement agencies] are not mandated to honor a detainer, and in some jurisdictions they do not.”<sup>14</sup> DHS has likewise confirmed that detainers are not mandatory in response to inquiries from local governments.<sup>15</sup> Even DHS’s own description of detainers published in the Federal Registry notes that detainers are non-binding requests to local law enforcement.<sup>16</sup> In response to a recent class action lawsuit, DHS again acknowledged that detainers do not impose a requirement upon local law enforcement agencies and stated that detainers are “legally-authorized request[s] upon which a state or local law enforcement agency *may* rely.”<sup>17</sup>

DHS’s internal communications also acknowledge that compliance with immigration detainers is voluntary. In a 2010 internal memorandum, Immigration and Customs Enforcement (an agency within DHS) outlined its policy concerning detainers.<sup>18</sup> In that document, each time a detainer is defined it is categorized as a request rather than a mandate.<sup>19</sup> For example, the policy describes a detainer as a “*request* that the [local law enforcement agency] maintain custody”<sup>20</sup> and a “*request* that [a local law enforcement agency] temporarily detain an alien.”<sup>21</sup>

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<sup>14</sup> See Email to David Venturella, Assistant Dir., Immigration and Customs Enforcement Secure Communities at 3 (Oct. 29, 2010, 10:04), available at <http://altopolimigra.com/wp-content/uploads/2011/12/ICE-FOIA-2674.020612.pdf> (summarizing the briefing to Congressional members).

<sup>15</sup> See, e.g., Letter from David Venturella, Assistant Dir., Immigration and Customs Enforcement Secure Communities, to Miguel Marquez, Santa Clara County Counsel, available at <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf> (“[Question from Santa Clara County Counsel:] Is it ICE’s position that localities are required to hold individuals pursuant to [a detainer] or are detainers merely requests with which a county could legally decline to comply? [ICE Response:] ICE views an immigration detainer as a request”).

<sup>16</sup> 55 Fed. Reg. 43326 (Oct. 29, 1990) (“The detainer is merely a notice to an alien’s custodian that the Service is interested in assuming custody of the alien when he is released from his incarceration.”).

<sup>17</sup> See Defendants’ Answer at 5, 11 Moreno v. Napolitano, No. 1:11-CV-05452 (N.D. Ill. Dec. 12, 2012) (“Defendants [d]eny the allegation in the second sentence that a detainer . . . imposes a requirement upon a [local law enforcement agency]”) (“Defendants Deny the allegation in the second sentence that the regulation cited on the I-247 form . . . imposes a requirement upon the [local law enforcement agency]”); *Id.* at 5 (emphasis added).

<sup>18</sup> U.S. Immigration and Customs Enforcement, Interim Policy Number 10074.1: Detainers (Aug. 2, 2010), available at [http://www.aclunc.org/docs/legal/interim\\_detainer\\_policy.pdf](http://www.aclunc.org/docs/legal/interim_detainer_policy.pdf).

<sup>19</sup> *Id.* at 1–2.

<sup>20</sup> *Id.* at 1 (emphasis added).

<sup>21</sup> *Id.* at 2 (emphasis added).

#### **IV. An attempt by DHS to make detainers binding would likely violate the Tenth Amendment of the United States Constitution.**

The Tenth Amendment prevents a federal agency, such as DHS, from requiring state and local law enforcement officials to use state resources to achieve federal enforcement goals.<sup>22</sup> The Tenth Amendment guarantees a system of dual sovereignty: state governments transfer certain powers to the federal government, but retain “a residual and inviolable sovereignty.”<sup>23</sup> Under this system, the federal government cannot force state or local officials to enact or administer a federal regulatory program.<sup>24</sup> The prohibition on federal “commandeering” of state officers reflects the separation of powers between the state and federal government—a division that provides a crucial and necessary check on federal powers.<sup>25</sup>

As the U.S. Supreme Court noted in *Printz v. United States*, “[t]he power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States.”<sup>26</sup> The Court then held that “[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”<sup>27</sup> According to the Court, regardless of potential benefits or policy rationales, “such [federal] commands are fundamentally incompatible with our constitutional system of dual sovereignty.”<sup>28</sup> Likewise, the First Circuit has also explained that under the Tenth Amendment, “Congress may not command states to administer federal regulatory programs, conscript state officers directly, or otherwise treat state governments as federal handmaidens.”<sup>29</sup>

Consequently, Tenth Amendment jurisprudence prohibits the federal government from requiring local law enforcement agencies’ compliance with immigration detainer requests. Detainers are issued pursuant to federal immigration law enforcement programs and priorities and states need not use their own limited resources to hold noncitizens only for federal immigration purposes—especially when doing so is contrary to local law enforcement interests. Legislation like the

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<sup>22</sup> See U.S. CONST. amend. X. (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

<sup>23</sup> See *Printz v. U.S.*, 521 U.S. 898, 918–19 (1997) (quoting THE FEDERALIST No. 39, at 245 (James Madison)). In *Printz*, the Court cited several sources of constitutional text supporting the theory of residual state sovereignty, including the: (1) prohibition on involuntary reduction or combination of a state’s territory (U.S. CONST. art. IV, §3); (2) Judicial Power Clause (U.S. CONST. art. III, §2); and (3) Privileges and Immunities Clause (U.S. CONST. art. IV, §2), which speaks of the “citizens” of the States. *Id.*

<sup>24</sup> See *id.* at 902–04, 932 (finding an interim provision of the Brady Handgun Violence Prevention Act that required state and local law enforcement officers to conduct background checks on prospective gun purchasers unconstitutional).

<sup>25</sup> See *New York v. United States*, 505 U.S. 144, 168–69 (1992).

<sup>26</sup> *Printz*, 521 U.S. at 922.

<sup>27</sup> *Id.* at 935.

<sup>28</sup> *Id.*

<sup>29</sup> *Herrera-Inirio v. I.N.S.*, 208 F.3d 299, 307 (1st Cir. 2000).

Trust Act, which seeks to limit the compliance of state and local law enforcement officers, is therefore constitutional.

V. **Maryland should join the growing number of jurisdictions that limit detainers, especially in light of concerns about the fairness and functionality of the immigration system.**

Two states and over a dozen localities have enacted legislation or policies limiting compliance with immigration detainers. In June 2013, Connecticut became the first state to pass a version of the Trust Act.<sup>30</sup> Four months later, following a statement from California Attorney General Kamala D. Harris that “detainer requests are not mandatory” and that “law enforcement agencies in California can make their own decisions about whether to fulfill an individual immigration detainer,”<sup>31</sup> California Governor Jerry Brown signed the California TRUST Act.<sup>32</sup> Even Former DHS Secretary Janet Napolitano expressed support for the California TRUST Act.<sup>33</sup>

Over a dozen major cities and counties have likewise limited the circumstances in which local law enforcement agencies may comply with ICE detainers. These municipalities include: Washington, DC;<sup>34</sup> New York City, NY;<sup>35</sup> Chicago, IL (Cook County);<sup>36</sup> Seattle (King County), WA;<sup>37</sup> Miami-Dade County, FL;<sup>38</sup> New Orleans, LA;<sup>39</sup> Los Angeles, San Francisco, and Santa

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<sup>30</sup> See An Act Concerning Civil Immigration Detainers, Conn. Pub. Acts No. 13-155 (2013), available at <http://www.cga.ct.gov/2013/ACT/PA/2013PA-00155-R00HB-06659-PA.htm>.

<sup>31</sup> Information Bulletin from Kamala D. Harris, Att’y Gen. of the State of California to Executives of State and Local Law Enforcement Agencies, *Responsibilities of Local Law Enforcement Agencies Under Secure Communities*, No. 2012-DLE-01 (Dec. 4, 2012) (hereinafter “Harris Information Bulletin”).

<sup>32</sup> See Assembly Bill No. 4, 2013 Cal. Stat. ch. 570 (2013), available at [http://legalinfo.ca.gov/pub/13-14/bill/asm/ab\\_0001-0050/ab\\_4\\_bill\\_20130916\\_enrolled.pdf](http://legalinfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_4_bill_20130916_enrolled.pdf); see also Patrick McGreevy, *Signing Trust Act is another illegal-immigration milestone for Brown*, L.A. TIMES, Oct. 5, 2013, <http://www.latimes.com/local/la-me-brown-immigration-20131006,0,5441798.story>.

<sup>33</sup> Larry Gordon, *UC student leaders meet with new system president Napolitano*, L.A. TIMES, Oct. 1, 2013, <http://www.latimes.com/local/lanow/la-me-ln-napolitano-students-20131001,0,286409.story>.

<sup>34</sup> D.C. CODE §24-211.06 (2012).

<sup>35</sup> See New York City, N.Y., Code § 14-154 (2013); Kirk Semple, *Council Votes to Add Curbs on Aiding Deportations*, N.Y. TIMES, Feb. 27, 2013, <http://www.nytimes.com/2013/02/28/nyregion/new-york-council-expands-restrictions-on-citys-cooperation-in-deportation-cases.html>.

<sup>36</sup> Cook Cnty. Bd. of Comm’rs, Ordinance 11-O-73 (Sep. 7, 2011).

<sup>37</sup> King Cnty Council Ordinance 2013-0285 (Dec. 2, 2013) (stating that King County will only honor ICE detainers for individuals convicted of, not merely charged with, serious, violent, sex, and gun crimes, or two or more serious traffic violations).

<sup>38</sup> Miami-Dade Cnty. Bd. of Comm’rs Res. R-1008-13 (Dec. 3, 2013) (“Resolution Directing the Mayor or Mayor’s Designee to Implement Policy on Responding to Detainer Requests from the United States Department of Homeland Security Immigrations and Customs Enforcement”).

<sup>39</sup> See Campbell Robertson, *New Orleans and U.S. in Standoff on Detentions*, N.Y. TIMES, Aug. 12, 2013, at A10, <http://www.nytimes.com/2013/08/13/us/new-orleans-and-us-in-standoff-on-detentions.html>.

Clara, CA;<sup>40</sup> Newark, NJ;<sup>41</sup> Milwaukee, WI;<sup>42</sup> Taos, NM;<sup>43</sup> and Amherst, MA.<sup>44</sup> Maryland should join this growing cadre of communities taking commonsense steps for public safety.

We have already noted law enforcement and public concerns about damage to community relations and the dangers of racial profiling that result from the use of detainees. In addition, many have voiced concern about unfettered collaboration in the enforcement of a deeply flawed federal immigration law that does not guarantee due process of law and provides inadequate relief from deportation even for those with family ties, long term residence or demonstrated rehabilitation. In the vast majority of removals nationwide, the individual has no opportunity to appear before an immigration judge, but is deported administratively by a DHS employee. In 2013, for example, seven of ten removals were conducted without an appearance in immigration court; in 2012, the proportion was three out of four.<sup>45</sup> Even those who make it to immigration court are not guaranteed legal representation and may not qualify for relief from removal, given the failure of the current system to give adequate consideration to family ties and other equities. Current law allows for the deportation, for example, of individuals who may not be citizens but were raised in the United States, of those who have U.S. citizen children and other dependent family members, and of those who lose the right to residence solely because of relatively minor or decades-old convictions and who pose no threat to public safety.<sup>46</sup>

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<sup>40</sup> See Office Correspondence from Alexander R. Yim, Chief Custody Division, County of Los Angeles Sheriff's Department, to All Concerned Personnel, Custody Division (April 9, 2013) (hereinafter "Yim Letter"); San Francisco, Cal. Res. 535-11 (2011); Inter-Office Correspondence from Vicki Hennessy, Interim Sheriff, San Francisco, to San Francisco Sheriff's Department Personnel, (Reference 2012-091) (Oct. 4, 2012); *Santa Clara County to Stop Honoring Immigration Detainers for Low-Level Offenders*, L.A. TIMES, Oct. 18, 2011, <http://latimesblogs.latimes.com/lanow/2011/10/santa-clara-county-to-stop-honoring-immigration-detainers-for-low-level-offenders-.html>; *Jailed immigrants: Santa Clara County sticks with lenient policy*, SAN JOSE MERCURY NEWS, Nov. 11 2013, [http://www.mercurynews.com/crime-courts/ci\\_24460689/supervisors-stick-lenient-santa-clara-county-immigration-policy](http://www.mercurynews.com/crime-courts/ci_24460689/supervisors-stick-lenient-santa-clara-county-immigration-policy).

<sup>41</sup> See James Queally, *Newark police first in N.J. to refuse to detain undocumented immigrants accused of minor crimes*, N.J.COM (Aug. 15, 2013), [http://www.nj.com/essex/index.ssf/2013/08/newark\\_police\\_first\\_in\\_nj\\_to\\_refuse\\_to\\_detain\\_illegal\\_immigrants\\_accused\\_of\\_minor\\_crimes.html](http://www.nj.com/essex/index.ssf/2013/08/newark_police_first_in_nj_to_refuse_to_detain_illegal_immigrants_accused_of_minor_crimes.html).

<sup>42</sup> Georgia Pabst, *Abele Signs Immigration Detainer Resolution*, JOURNAL SENTINEL, June 4, 2012, <http://www.jsonline.com/blogs/news/157041355.html>.

<sup>43</sup> See Taos County Adult Detention Policies and Procedures, *available at* <http://altopolimigra.com/wp-content/uploads/2011/12/Taos-Jail-Policy.pdf>.

<sup>44</sup> See Results: Annual Town Meeting April 30, May 2, 7, 9, 14, and 16, 2012, *available at* <http://www.amherstma.gov/DocumentCenter/Home/View/18533>.

<sup>45</sup> American Immigration Council, *Recent Report on Deportation Misses the Big Picture*, February 24, 2014, <http://immigrationimpact.com/2014/02/24/recent-report-on-deportation-misses-the-big-picture/>.

<sup>46</sup> See Human Rights Watch, *Forced Apart: Families Separate and Immigrants Harmed by United States Deportation Policy*, 5 (2007), <http://www.hrw.org/reports/2007/us0707/us0707web.pdf>; see also Note, *Affording Discretion to Immigration Judges: A Comparison of Removal Proceedings in the United States and Canada*, 32 B.C. Int'l & Comp. L. Rev. 115, 121-22 (2009) ("The Antiterrorism and Effective Death Penalty Act (AEDPA) broadened the list of criminal convictions that would designate a non-citizen as an 'aggravated felon' . . . . [C]ertain misdemeanor offenses under state law have been construed as aggravated felonies under the federal statute . . . . AEDPA specifically prevents immigration judges from allowing § 212(c) waivers for any aggravated felons, not just those with at least five-year imprisonments, as was practiced previously. Without the ability to file a § 212(c) waiver, a staggering amount of LPRs are facing mandatory removal proceedings for an increasingly wide array of relatively minor offenses. Immigration judges simply do not have the ability to provide any discretionary relief in such cases.



Congress has failed to reform a federal immigration system that is tearing families apart by its failure to provide legal and humane standards for obtaining or keeping immigration status. Maryland should not expend its scarce resources to help enforce a deeply troubled and troubling federal law at the expense of our communities.<sup>47</sup> For these reasons, we urge passage of the Maryland Law Enforcement Trust Act.

Sincerely,

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Senator Edward Kennedy (D-MA) predicted the repercussions of these broad laws: ‘An immigrant with an American citizen wife and children sentenced to one year of probation for minor tax evasion and fraud would be subject to this procedure. And under this provision, he would be treated the same as ax murderers and drug lords’).

<sup>47</sup> We are indebted for much of the research and drafting of this letter to the authors of the Massachusetts law professors’ letter of support for the Massachusetts Trust Act (February 3, 2014) and the California law professors’ letter of support for the California Trust Act (August 12, 2013).

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