Institute for
Constitutional Advocacy and Protection

GEORGETOWN LAW

Testimony Regarding HB1575

Correctional Services and Public Safety - Immigration Enforcement - Prohibitions (Community Trust Act)

Hearing Date: February 25, 2026

Dear Chair Bartlett, Vice Chair Davis, and members of the Judiciary Committee,

Thank you for the opportunity to submit testimony regarding SB 0791 and HB 1575. This testimony evaluates whether these bills are consistent with federal constitutional and statutory law. In my view, the measures fall squarely within Maryland's sovereign authority under the United States Constitution to determine how state and local resources are allocated and to decline participation in federal regulatory programs. The Supreme Court has repeatedly made clear that, while the federal government possesses broad authority over immigration, it may not compel states or their officers to administer or enforce federal law. These bills reflect that settled constitutional principle, clarify the limits of state and local detention authority, and reduce the risk of unlawful seizures and attendant civil liability.

My conclusion is informed by nearly two decades of experience studying, teaching, writing about, and litigating constitutional law, including in the context of immigration enforcement. I currently serve as Special Litigation Counsel at the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown Law, which regularly litigates and advises on these constitutional principles, including the limits of federal power and the scope of state autonomy in the immigration context. ICAP has published a two-page fact sheet summarizing many of the key points set forth in greater detail in this testimony.[1]

1. The Federal Constitution Provides that Maryland Is Free to Refuse to Cooperate in Immigration Enforcement.

"[O]ur Constitution establishes a system of dual sovereignty between the States and the Federal Government."[2] "[T]he structure and limitations of federalism . . . allow the States 'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'"[3] As the Supreme Court has recognized, one "fundamental structural" consequence of this dual sovereignty is that the federal government may not conscript state or local

[1] https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2025/01/2025.01.31_Fact-Sheet-on-State-and-Local-Immigration-Cooperation.pdf
[2] *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).
[3] *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (internal citations omitted).

governments into administering or enforcing federal regulatory programs or deploy state or local officials in service of federal regulatory objectives.[4]

Among other things, this well-settled constitutional rule means that the federal government cannot force states to assist in the enforcement of federal immigration laws.[5] The federal government may enforce immigration law directly through federal agencies such as Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP).[6] But the Constitution prohibits the federal government from requiring states or their political subdivisions to use state personnel or resources to carry out federal immigration enforcement.[7] The constitutional rule against commandeering provides ample legal support for bills under consideration, and courts have consistently upheld similar provisions.[8]

Consistent with the constitutional division of responsibility, federal statutory law provides a comprehensive set of rules governing how *federal* agencies may

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[4] *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 470 (2018); *accord, e.g., Printz v. United States*, 521 U.S. 898, 933 (1997).

[5] *E.g., United States v. California*, 921 F.3d 865, 891 (9th Cir. 2019) ("California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts."); *City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) ("[T]he Tenth Amendment prevents Congress from compelling Texas municipalities to cooperate in immigration enforcement."); *Galarza v. Szalczyk*, 745 F.3d 634, 643-45 (3d Cir. 2014) ("[I]mmigration officials may not compel state and local agencies to expend funds and resources to effectuate a federal regulatory scheme.").

[6] *E.g.*, 8 U.S.C. § 1103.

[7] Under some circumstances, Congress can condition federal funding on state or local compliance with requirements of federal law, but any such condition must be clearly stated, germane to the federal funding program, and not unduly coercive. Courts have largely rejected arguments that federal law currently requires cooperation with federal immigration enforcement as a condition of receiving many federal grants. *E.g., City & Cnty. of San Francisco v. Garland*, 42 F.4th 1078, 1089 (9th Cir. 2022); *City of Philadelphia v. Att'y Gen. of United* States, 916 F.3d 276 (3d Cir. 2019); *City of Chicago v. Sessions*, 888 F.3d 272, 287 (7th Cir. 2018). *But see New York v. DOJ*, 951 F.3d 84, 123 (2d Cir. 2020).

[8] *E.g., California*, 921 F.3d at 886 (upholding a provision that prohibited "[t]ransfer[ring] an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination."); *Ocean Cnty. Bd. of Commissioners v. Att'y Gen. of State of New Jersey*, 8 F.4th 176, 178–79 (3d Cir. 2021) (upholding state policy that prohibited "[p]roviding any non-public personally identifying information regarding any individual, "[p]roviding access to a detained individual for an interview, unless the detainee signs a written consent form" or "[p]roviding notice of a detained individual's upcoming release from custody"); *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) ("Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government."); *United States v. New Jersey*, No. CV201364FLWTJB, 2021 WL 252270, at *4 (D.N.J. Jan. 26, 2021) (upholding state law that prohibited providing notice to federal immigration authorities of a person's upcoming release); *United States v. Illinois*, 796 F. Supp. 3d 494, 506 (N.D. Ill. 2025) (upholding policies that prohibit "complying with detainers, communicating with immigration agents before releasing noncitizens, providing immigration agents access to noncitizens in custody, and giving immigration agents information (such as contact information and release dates) about noncitizens"); *United States v. New York*, No. 1:25-CV-744 (MAD/PJE), 2025 WL 3205011, at *4 (N.D.N.Y. Nov. 17, 2025) (upholding state policy against disclosing information to federal immigration authorities or providing federal immigration officials access to state facilities without a judicial warrant).

enforce immigration laws, and Congress has allocated billions of dollars to those federal agencies to carry out the tasks Congress has assigned to them.[9] At the same time, Congress has not required state or local governments to take steps to assist the federal government. Indeed, the federal government's control over immigration is so extensive that federal statutes contemplate only a few "specific limited circumstances" where states are even permitted to support enforcement of federal immigration law.[10] Even in these few limited circumstances, the choice is entirely optional: a state is free to refuse to cooperate altogether, and many state and local jurisdictions have declined, to varying degrees, to assist with the federal government's enforcement of federal immigration laws.[11] Congress could not, and has not, prohibited states from making that choice.

When a state exercises its sovereign prerogative not to assist the federal government with enforcement of federal immigration law, the state furthers important constitutional structural values.[12] First, "the principal benefit of the federalist system is a check on abuses of government power,"[13] and dual sovereignty provides "a double security . . . to the rights of the people" by allowing state governments to stand in opposition to "usurpations" by the federal government.[14] The Supreme Court once noted that "[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."[15] Even just federal agencies enforcing federal immigration law have been accused of violating the rights of citizens and non-citizens alike by using excessive force, racial profiling, unlawful detentions, and more.[16] By refusing to cooperate with the federal government's assaults on their residents, states vindicate not only their sovereignty but vindicate the Founder's vision that states would stand up for their residents and oppose federal overreach.

Limiting cooperation with federal immigration enforcement also furthers accountability and resource conservation values.[17] As noted, the federal government has allocated billions of dollars to federal agencies for enforcement of immigration laws. One could reasonably argue that it would be wasteful and irresponsible to

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[9] *E.g.*, Pub. L. No. 119-21, § 100052, 139 Stat. 72, 387 (2025) (appropriating nearly $30 billion to ICE).
[10] *Arizona v. United States*, 567 U.S. 387, 408 (2012).
[11] *E.g.*, *California*, 921 F.3d at 886 (upholding California's SB 54).
[12] *See Murphy*, 584 U.S. at 473.
[13] *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).
[14] Federalist No. 51.
[15] *Printz*, 521 U.S. at 922.
[16] *E.g.*, Nate Raymond, Kristina Cooke and Brad Heath, *Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't stopped*, Reuters (Feb. 17, 2026), https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/; American Immigration Council, *How ICE Went Rogue* (Feb. 11, 2026), https://www.americanimmigrationcouncil.org/fact-sheet/ice-cbp-legal-analysis/.
[17] *Murphy*, 584 U.S. at 473-74.

divert valuable state and local law enforcement resources away from fighting crime in Maryland communities towards subsidizing federal immigration enforcement efforts. Indeed, Marylanders who live in jurisdictions that assist federal immigration enforcement are effectively subject to a double tax—they pay for the federal government's enforcement of immigration laws, and then pay their local law enforcement to provide additional services to the federal government for free.

In sum, these bills sit comfortably within Maryland's authority under the United States Constitution to limit the use of state and local resources for federal immigration enforcement.[18] Moreover, as discussed below, in addition to the State's general prerogative to decline to aid the federal government, many of the bills' provisions enforce and clarify limitations on state and local governments that already exist in federal law.

2. Federal Law Prohibits Detaining Someone Solely Based on an Administrative Warrant or Immigration Detainer.

The bills properly make it unlawful to detain someone based on an "administrative warrant" or ICE detainer request from the federal government that is not accompanied by a judicial warrant. This provision tracks the requirements of the Fourth Amendment's prohibition against unreasonable seizures and the similar right enshrined in Maryland's Declaration of Rights.

ICE detainers notify federal, state, and local law enforcement agencies holding an individual in custody that the United States Department of Homeland Security (DHS) seeks custody of that individual so that it may remove him.[19] They ask the agency to "maintain custody" of the individual for up to 48 hours beyond when that person would otherwise be released so that ICE can arrange to take him into custody.[20] ICE detainers are merely requests; they "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."[21]

Whenever an individual is "kept in custody" pursuant to an ICE detainer and/or administrative warrant "after she [is otherwise] entitled to release," that detention is a "new seizure for Fourth Amendment purposes."[22] Thus the detention must comply with the Fourth Amendment requirement that all seizures be

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[18] *See supra* note 8.
[19] 8 C.F.R. § 287.7(a).
[20] *Id.* § 287.7(a), (d).
[21] *Galarza*, 745 F.3d at 636; *Lunn v. Commonwealth*, 477 Mass. 517, 526, 78 N.E.3d 1143, 1152 (2017); Law Enforcement Immigration Task Force, *A Path to Public Safety: The Legal Questions around Immigration Detainers* 2 (last accessed Dec. 14, 2025), https://perma.cc/9SNB-BETA (explaining that courts have interpreted 8 C.F.R § 287.7 "to refer to voluntary requests").
[22] *Morales v. Chadbourne*, 793 F. 3d 208, 217 (1st Cir. 2015); *see also Ramon v. Short*, 460 P.3d 867, 875 (Mont. 2020) ("There is broad consensus around the nation that an immigration detainer constitutes a new arrest.").

"reasonable"—that is, "based on probable cause to believe that the individual has committed a crime."[23] Maryland's Declaration of Rights imposes similar requirements.[24] But because it is generally "not a crime for a removable alien to remain present in the United States . . . the usual predicate for [detention] is absent."[25] Indeed, federal law does not provide *any* relevant statutory authority (other than the 287(g) authority now banned in Maryland[26]) that would permit state or local governments to detain someone based on suspected removability.[27]

To make matters worse, ICE detainers and administrative warrants are not issued or reviewed by a judge, but rather can be signed by any authorized immigration agent.[28] Because they are not signed by a judge, these documents are not "warrants" in the constitutional sense. The Supreme Court has been clear that the warrant requirement of the Fourth Amendment commands that "inferences of probable cause" must be "drawn by 'a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'"[29] Dating back to the nation's founding,[30] and continuing to this day,[31] there are only limited instances in which law enforcement can detain someone without a judicial warrant, such as probable cause that the person committed a felony.[32] A state or local officer's belief that a person committed a civil violation of immigration law or is removable does not provide a basis for a warrantless detention.[33]

Applying these basic constitutional principles, numerous federal and state courts have held that local officers who detained individuals solely on the basis of ICE detainers violated the Fourth Amendment.[34] Complying with unconstitutional requests not only harms Marylander's rights, but can expose governments to the

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[23] *Bailey v. United States*, 568 U.S. 186, 192 (2013) (internal quotation marks and citation omitted).
[24] Md. Decl. of Rights Art. 26; *Purnell v. State*, 171 Md. App. 582, 606, 911 A.2d 867, 882 (2006)
[25] *Arizona*, 567 U.S. at 407.
[26] M.D. Code Ann., Crim Proc. § 5-104.1.
[27] *See, e.g., Lunn*, 477 Mass. at 533-36, 78 N.E.3d at 1157-60; *Ramon*, 399 Mont. at 272, 460 P.3d at 877; *City of Gary*, 181 N.E. 3d 390, 408 (Ind. Ct. App. 2021) ("[W]e hold that federal law does not permit detentions by state and local officers based solely on civil immigration detainers or administrative warrants."), *vacated on other grounds*, 190 N.E.3d 349 (Ind. 2022).
[28] 8 C.F.R. § 287.7(b).
[29] *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).
[30] *E.g.*, Lindsay Nash, *Deportation Arrest Warrants*, 73 Stan. L. Rev. 433, 445 (2021).
[31] *E.g.*, Md. Code Ann., Crim. Proc. § 2-202.
[32] *Gonzalez v. United States*, 145 S. Ct. 529, 531-32 (2025) (statement of Sotomayor, J., joined by Gorsuch, J.).
[33] *E.g.*, *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012); *Lunn*, 477 Mass. at 537, 78 N.E.3d at 1160.
[34] *E.g.*, *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236, 1259 (S.D. Fla. 2018) ("[T]he County violated [plaintiffs'] Fourth Amendment rights when it arrested [them] based on a detainer and without probable cause that either of them had committed a crime."); *Buquer v. City of Indianapolis*, No. 1:11-CV-00708-SEB, 2013 WL 1332158, at *10 (S.D. Ind. Mar. 28, 2013).

risk of significant liability. For example, a recent jury awarded $125 million against a county in New York for holding individuals solely on the basis of ICE detainers.[35] These bills would help protect the taxpayers of Maryland against such exposure.

Although holding a person based on an administrative detainer or warrant is already likely illegal,[36] some jurisdictions in Maryland appear to be violating this constitutional rule.[37] These bills reinforce constitutional protections and further Maryland's interests in ensuring that all people in Maryland are treated fairly, equally, and lawfully. There is no conflict between the provisions in these bills prohibiting detention based on ICE detainers and any aspect of federal law.

3. Federal Law Prohibits State and Local Governments from Detaining Someone Based on Immigration Status.

The bills also provide important protections by banning the detention of someone (or prolonging the detention of someone, which is legally equivalent[38]) to investigate their immigration status or based on that person's potential removability. Federal law generally does not even allow—much less require—state or local governments to detain someone to investigate their immigration status or assess their potential removability.

In *Arizona v. United States*, the Supreme Court held that state and local governments may not detain someone "based on possible removability" except in "specific, limited circumstances."[39] That holding recognizes that it is generally not within the purview of state or local governments to unilaterally investigate immigration status or detain someone based on a belief that they are removable. There are both legal and practical reasons for this rule. Legally, the federal government has primary responsibility over immigration, and Congress has enacted detailed statutory provisions specifying exactly when and how *federal* agents may detain a person based on their removability.[40] It would disrupt this Congressional

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[35] ECF No. 287, Judgment, *Orellana Castaneda v. County of Suffolk*, Case No. 17-CV-4267 (WFK) (E.D.N.Y. Nov. 12, 2025) (jury award of $125 million in damages to class of people held in county jail solely on immigration detainers); *see also Orellana Castaneda v. County of Suffolk*, 2025 WL 481723, at *1 (E.D.N.Y. Jan. 2, 2025) (awarding summary judgment on liability to class), *appeal dismissed*, 2025 WL 2319643 (2d Cir. June 16, 2025); *accord, e.g.*, Luis Ferré-Sadurní, *New York City to Pay $92.5 Million to Improperly Detained Immigrants*, N.Y. Times (Dec. 18, 2024), https://www.nytimes.com/2024/12/18/nyregion/migrants-detention-settlement-deportation.html.

[36] Contrary to the weight of authority, one court upheld a state law that *authorized* detention of individuals subject to ICE detainers, finding that the plaintiffs had not established that the law violated the Fourth Amendment in every application. *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018). The decision does not call into doubt the authority of states to ban such detention.

[37] https://foxbaltimore.com/news/local/carroll-county-sheriff-says-ice-cooperation-continues-despite-ban-immigration-maryland; https://www.foxnews.com/politics/sheriffs-plot-ice-cooperation-workarounds-after-new-maryland-law-bans-cooperation-immigration-officers.

[38] *Morales*, 793 F.3d at 217.

[39] *Arizona*, 567 U.S. at 410.

[40] *Id.* at 407-09

scheme to have state and local agents also making detention decisions.[41] Practically, "[t]here are significant complexities involved in enforcing federal immigration law, including the determination whether a person is removable,"[42] and it is unduly burdensome to expect state and local agents untrained in immigration law to make decisions about immigration law's many nuances.

These bills further the important goals of making the ban on detention to investigate someone's immigration status or based on a belief about that person's removability more explicit and providing a judicial remedy for breaches, therefore ensuring that people across Maryland are free from unlawful detention.

4. Federal Law Generally Allows States to Prohibit Investigating an Individual's Citizenship Status.

Although it is unlawful to prolong someone's detention solely to investigate their citizenship status, another provision of these bills prohibits taking steps to investigate or inquire about a person's immigration status or place of birth. This provision of these bills provides additional protection to ensure that even if a person *is* lawfully in detention for some other basis, law enforcement will not investigate their immigration status.

Federal law allows (but does not require) state and local governments to share information with the federal government about who is in state or local custody, including information about such individual's immigration status. However, by statute (8 U.S.C. §§ 1373 and 1644), Congress has decreed that a state "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [Department of Homeland Security] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."[43] This statutory command is very narrow: it only applies to "information regarding the citizenship or immigration status" of an individual. And the only information captured by that phrase is "an individual's category of presence in the United States—e.g., undocumented, refugee, lawful permanent resident, U.S. citizen, etc.—and whether or not an individual is a U.S. citizen, and if not, of what country."[44] Federal statutes therefore allow states to restrict

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[41] *See id.* at 409.
[42] *Id.* at 409.
[43] 8 U.S.C. § 1373(a); *see also* 8 U.S.C. § 1644 (similar).
[44] *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 333 (E.D. Pa. 2018), *aff 'd in part, vacated in part on other grounds*, 916 F.3d 276 (3d Cir. 2019); *see also, e.g.*, *California*, 921 F.3d at 891 ("[T]he phrase 'information regarding the citizenship or immigration status, lawful or unlawful, of any individual' is naturally understood as a reference to a person's legal classification under federal law[.]"); *County of Ocean v. Grewal*, 475 F. Supp. 3d 355, 376 (D.N.J. 2020) ("[S]ections 1373(a) and 1644 apply only to information specifically regarding an individual's immigration or citizenship status, *i.e.*, whether the individual is a U.S. citizen, green card holder, or holds some other legal or unlawful status in the United States[.]"), *aff'd*, 8 F.4th 176 (3d Cir. 2021); *Steinle v. City & Cnty. of San Francisco*, 919 F.3d 1154, 1164 (9th Cir. 2019).

communication of other information, such as a person's home address, potential release date, or other identifying information.

Although federal statutes prohibit state and local restrictions on *communicating* information of an individual's immigration status with the federal government, federal law does not require state and local officials to *ask* about the citizenship or immigration status of those they encounter. Indeed, the Department of Homeland Security has long recognized that federal law does not provide a state or local officer with authority to investigate an individual's immigration status in order to communicate it to DHS.[45] Thus, many jurisdictions have properly limited their officers' authority to investigate immigration status, recognizing the very real possibility of racial profiling.[46] Nothing in federal law prevents a state or local government from prohibiting their officers from asking a person about their immigration status or other related information.

The Supreme Court has not decided whether Section 1373 and 1644's restrictions are constitutional. However, lower federal courts have concluded that they violate the constitutional principle that the federal government may not commandeer or coerce state governments.[47] The conclusion of these lower courts follows from the Supreme Court's 2018 decision in *Murphy*, which held that Congress may not "dictate[] what a state legislature may and may not do," such as by prohibiting a state from passing certain legislation.[48] Under this precedent, there is a strong chance that courts will deem the federal statutory provisions in Section 1373 and 1644 to be unconstitutional and unenforceable.

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In conclusion, these bills fall within Maryland's constitutional prerogative to protect its residents, conserve its resources, and refuse to cooperate with the federal government's enforcement efforts.

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[45] Department of Homeland Security, Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters (July 16, 2015), https://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf.

[46] *E.g.*, *Glob. Neighborhood v. Respect Wash.*, 434 P.3d 1024, 1050 (Wash. Ct. App. 2019) (holding that a policy "limiting questioning of individuals about immigration status and citizenship status also fulfills strictures of federal law" and furthers law enforcement's obligation to avoid racial profiling).

[47] *E.g.*, *United States v. Illinois*, 796 F. Supp. 3d 494, 525 (N.D. Ill. 2025) ("The Constitution does not allow Congress to legislate on States in this way, and §§ 1373 and 1644 do just that."); *Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 379 (D.N.J. 2020) (collecting cases), *aff'd on other grounds*, 8 F.4th 176 (3d Cir. 2021).

[48] *Murphy*, 584 U.S. at 474.