

August 8, 2019

ATTORNEY GENERAL RAOUL CONDEMNS FEDERAL "EXPEDITED REMOVAL" PROCESS

Process Allows Immigration Agents to Deport Individuals without Judges or Hearings

Chicago — Attorney General Kwame Raoul today condemned the federal government's newly expanded expedited removal process, which allows immigration officials to deny immigrants a hearing in front of an immigration judge while ordering them to be removed from the United States.

Under the process the U.S. Department of Homeland Security enacted last month, federal immigration agents anywhere in the country, including Illinois, can initiate the so-called "expedited removal" of any person who is unable to prove to an agent that they have resided in the United States continuously for at least two years and meets certain other conditions. The American Immigration Council and the American Civil Liberties Union of the District of Columbia (ACLU-DC) have filed a lawsuit in federal court challenging the process on behalf of immigrant advocacy groups.

"The administration's expedited removal process authorizes immigration agents to engage in racial profiling and puts the nearly 2 million immigrants living in Illinois at risk of being arbitrarily interrogated and removed from our country," Raoul said. "Authorizing immigration agents to bypass a judge and order immigrants to be deported is outrageous, and nothing could be less American than this denial of due process."

The process gives U.S. Immigration and Customs Enforcement (ICE) and other immigration authorities the power to question individuals about their residence in the United States and places the burden of proof on immigrants – rather than immigration agents. Individuals subject to this questioning by immigration officials must be able to demonstrate that they have resided in the U.S. "continuously" for at least two years in order to avoid deportation. The expedited removal process allows immigration agents to now circumvent the court and order people to be "removed from the United States without further hearing or review" if they believe sufficient proof or documentation of residence has not been provided.

According to the federal expedited removal statute, people seeking asylum or expressing a fear of persecution in their home countries can be exempt from the new policy. Federal laws and regulations require immigration officers to refer to asylum officers individuals who intend to seek asylum or fear persecution in their home countries. Additionally, federal regulations require immigration officers to review all available data and resources to attempt to verify any person's claim of U.S. citizenship, permanent residence, and refugee or asylum status.

Raoul's office is evaluating the constitutionality of the expedited removal process. Until the new expansion, immigration agents were limited to enforcement of expedited removal within 100 air miles of the U.S. border of individuals in the country for no more than two weeks.

Attorney General Raoul encouraged immigrants living in Illinois and immigration advocates to be aware of the expanded process and access additional information available on the [National Immigrant Justice Center's website](#). Raoul also encouraged state and local law enforcement officials to access his office's online [Guidance to Law Enforcement](#) on authority under Illinois and federal law to engage in immigration enforcement.

The Attorney General's office also offers "Know Your Rights" resources for immigrants and immigration advocates free of charge on the [Attorney General's website](#). Information is available in English, Spanish, Arabic, Chinese, Hindi, Polish, Serbian and Urdu, along with a mobile version and printable pocket-sized guide. The

materials summarize people's rights if confronted by an immigration agent or a police officer, detail what to expect if immigration agents or police officers come to your home, and offer an explanation of your rights if you are arrested. They also provide important reminders about immigration documentation, tips for avoiding dishonest immigration service providers and links to additional resources.

The Attorney General's office does not request information about immigration or citizenship status from anyone who contacts the office or files a complaint. Attorney General Raoul encourages individuals to contact his office to report instances of discrimination or harassment by calling his Civil Rights Hotline at 1-877-581-3692.



***Guidance: Illinois Laws Governing Law
Enforcement Interactions with Immigrant
Communities***

Updated December 2021



Guidance to Local Law Enforcement on Illinois Laws Governing Interactions with Immigrant Communities

Illinois law largely prohibits law enforcement from participating in actions to enforce immigration law. This guidance is intended to clarify the restrictions on participation in immigration enforcement by state and local law enforcement in Illinois, and to remind law enforcement of certain legal obligations to assist foreign nationals and immigrant victims of crimes.

I. Purpose

Local law enforcement¹ agencies in Illinois are dedicated to protecting the communities they serve. Promoting public safety requires assistance and cooperation from the community so that law enforcement can gather the information necessary to solve and deter crime. Law enforcement has long recognized that a strong relationship with the community encourages individuals who have been victims of or witnesses to a crime to cooperate with the police. Establishing and maintaining trust with community members is crucial to ensuring that they report crimes, provide witness statements, cooperate with law enforcement, and feel comfortable seeking help when they are concerned for their safety.

Building trust is particularly crucial in immigrant communities where residents may be reluctant to engage with their local police department if they are fearful that such contact could result in deportation for themselves, their family, or their neighbors. This is true of not only undocumented individuals who may be concerned about their own immigration status, but also U.S. citizens who may be worried about their parents, their children, or other members of their family who immigrated to the United States. With this goal in mind, Illinois law enforcement agencies are subject to the Illinois TRUST Act, which helps bolster community trust and cooperation by affirming that law enforcement agencies in Illinois are largely prohibited from participating in immigration enforcement. And, under the Voices of Immigration Communities Empowering Survivors (“VOICES”) Act, Illinois law enforcement officers must follow specific procedures to support immigrants victimized by violent crime or human trafficking who help law enforcement investigate or prosecute criminal activity. In 2021, the Illinois General Assembly expanded the protections and obligations in both these laws through a new law, the Way Forward Act. This updated guidance incorporates the new protections and obligations from the Way Forward Act.

Public safety suffers when violent crimes go unreported or witnesses withhold information from law enforcement.² In the interest of public safety, local law enforcement officials have an

¹ Throughout this guidance, “local law enforcement” is used to describe state and local law enforcement agencies such as municipal police departments, sheriffs’ offices, Illinois State Police, and other non-federal law enforcement authorities. This includes campus police departments serving public and private higher education institutions.

² See Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 CRIMINOLOGY 2 (May 2019) (observing much lower rates of violence reporting in newer immigrant communities).

incentive to ensure that their policies and conduct facilitate cooperation from immigrants and their communities.³

II. Illinois Laws Prohibiting Local Law Enforcement from Engaging in Federal Civil Immigration Enforcement

No federal law compels law enforcement in Illinois to assist with or participate in any immigration enforcement action. At the state level, Illinois law generally prohibits participation in immigration enforcement by state and local law enforcement. For example, a local law enforcement agency in Illinois cannot: give an immigration agent access to individuals in its custody; detain individuals pursuant to a federal administrative warrant; detain individuals pursuant to an immigration detainer request from U.S. Immigration and Customs Enforcement (ICE); or share information about individuals in its custody with federal immigration authorities. Importantly, local law enforcement officers cannot arrest an individual for violation of a federal law without a warrant unless state law has granted them authority to do so,⁴ and Illinois law prohibits local law enforcement from stopping, arresting, searching, or detaining an individual based on his or her citizenship or immigration status.⁵ In addition, now that the Way Forward Act is in effect, law enforcement agencies must submit annual reports to the Illinois Attorney General's Office to show compliance with many of these requirements.

- a. Local law enforcement is prohibited from participating in enforcement of federal civil immigration law.*

The federal government cannot require local law enforcement to enforce federal law.⁶ In fact, any authorization from the federal government for local law enforcement to enforce federal immigration law is effective only if it is accompanied by authority under state law.⁷ Any requests from federal immigration authorities—such as ICE or U.S. Customs and Border Protection (CBP)—for assistance from local law enforcement to detain an individual or to provide access to individuals held by local authorities must be viewed as requests, not obligations.⁸ State law dictates whether local law enforcement can comply with those requests.

³ While this guidance focuses on obligations in Illinois law, local law enforcement agencies are encouraged to consider whether their internal policies promote trust and confidence among community members. For example, some local law enforcement agencies require officers to identify the jurisdiction they represent when engaging with community members to encourage transparency and cooperation and to avoid any concern or confusion about whether the officers work for federal immigration authorities.

⁴ *Arizona v. United States*, 567 U.S. 387, 414 (2012) (noting that the “authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law”) (citing *United States v. Di Re*, 332 U.S. 581, 589 (1948)).

⁵ 5 ILCS 805/15(b).

⁶ *Printz v. United States*, 521 U.S. 898, 923–24 (1997) (finding that the U.S. Constitution prohibits the federal government from compelling the states to enact or administer a federal regulatory program).

⁷ *Arizona*, 567 U.S. at 414.

⁸ *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1004 (N.D. Ill. 2016); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Uribe-Rios*, 558 F.3d 347, 350 n.1 (4th Cir. 2009);

In Illinois, local law enforcement generally cannot assist in the enforcement of federal civil immigration law. The Illinois TRUST Act states that a “law enforcement agency or official may not participate, support, or assist in any capacity with an immigration agent’s enforcement operations.”⁹ It further specifies that local law enforcement:

- May not transfer any person into an immigration agent’s custody;
- May not give any immigration agent access, including by telephone, to any individual who is in the law enforcement agency’s custody;
- May not permit immigration agents’ use of agency facilities or equipment, including the use of electronic databases not available to the public, for any investigative or immigration enforcement purpose; and
- May not otherwise render collateral assistance to federal immigration agents, including by coordinating an arrest in a courthouse or other public facility, transporting any individuals, establishing a security or traffic perimeter, or providing other on-site support.¹⁰

Local law enforcement may provide these types of assistance only in two narrow circumstances: when they are presented with a federal criminal warrant; or when they are otherwise required by a specific federal law.¹¹

To demonstrate compliance with these and other TRUST Act measures, the law requires law enforcement agencies to report annually to the Illinois Attorney General’s Office on any requests from federal immigration authorities related to their participation, support, or assistance in any immigration agent’s civil enforcement operation. The report must also include specific information about how law enforcement addressed the request.¹²

United States v. Female Juvenile, A.F.S., 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992).

⁹ 5 ILCS 805/15(h)(1). In certain states, local law enforcement may enter into a formal working agreement with the Department of Homeland Security known as a Section 287(g) agreement to assist in the “investigation, apprehension, or detention of aliens in the United States.” 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act). Illinois law, however, prohibits any law enforcement agency or official in Illinois from entering into a Section 287(g) agreement. 5 ILCS 835/5(b).

¹⁰ 5 ILCS 805/15(h)(1)-(4).

¹¹ 5 ILCS 805/15(h).

¹² 5 ILCS 805/25(a)(1).

b. *Local law enforcement is prohibited from sharing information with federal immigration authorities.*

The question of whether local law enforcement may voluntarily share citizenship or immigration status information with federal authorities is governed by state law, not federal law.¹³ **In Illinois, the TRUST Act generally prohibits local law enforcement from sharing information with federal immigration agents.** Specifically, the TRUST Act states that local law enforcement:

- May not provide information in response to any immigration agent’s inquiry or request for information regarding any individual in law enforcement custody;
- May not provide to any immigration agent information not otherwise available to the public relating to an individual’s release or contact information; and
- May not provide immigration agencies direct access to any electronic database or data-sharing platform maintained by the local agency.¹⁴

Again, local law enforcement may provide these types of assistance only when they are presented with a federal criminal warrant, or when otherwise required by a specific federal law.¹⁵

c. *Local law enforcement is prohibited from stopping, arresting, searching, or detaining an individual solely based on citizenship or immigration status.*

Immigration is governed by federal law.¹⁶ And although some provisions of federal immigration statutes are criminal, deportation and removability are matters of civil law, not criminal law.¹⁷ Whether an individual is lawfully present in the United States is a question of federal civil immigration law.¹⁸ The U.S. Supreme Court has held that “it is not a crime for a removable alien to remain present in the United States.”¹⁹ Thus, unlawful presence alone does not establish probable cause that an individual has committed an offense under Illinois law. The fact

¹³ See *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 872 (N.D. Ill. 2018), *aff’d on other grounds sub nom. City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020); *City & County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 953 (N.D. Cal. 2018), *aff’d on other grounds sub nom. City & County of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020); *New York v. Department of Justice*, 343 F. Supp. 3d 213, 237 (S.D.N.Y. 2018), *rev’d*, 951 F.3d 84 (2d Cir. 2020).

¹⁴ 5 ILCS 805/15(h)(5)-(7).

¹⁵ 5 ILCS 805/15(h).

¹⁶ *Arizona*, 567 U.S. at 394-95.

¹⁷ See *Gonzales v. City of Peoria*, 722 F.2d 468, 474-75 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).

¹⁸ *Id.*

¹⁹ *Arizona*, 567 U.S. at 407 (“If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”).

that a person might be subject to deportation is not a lawful reason for arrest or detention by local law enforcement.²⁰

Accordingly, **the Illinois TRUST Act states that a “law enforcement agency or law enforcement official shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual’s citizenship or immigration status.”**²¹ This is true even if an officer is aware that an administrative warrant has been issued for an individual. In general, local law enforcement officers need a criminal warrant to arrest a person, unless state law has granted them authority to make a warrantless arrest. This is true whether the arrest is for a violation of state or federal law.²² Illinois law permits arrest by local law enforcement only if the officer has a criminal arrest warrant, has reasonable grounds to believe a warrant has been issued, or has reasonable grounds to believe that the individual is committing or has committed a criminal offense for which arrest is permitted.²³

d. Local law enforcement has no authority to arrest an individual based on an ICE administrative warrant.

Neither federal nor state law authorizes local law enforcement officers to arrest an individual pursuant to an ICE administrative warrant.²⁴ Local law enforcement officers might learn that an individual is subject to an administrative warrant when performing a criminal background check in the FBI’s National Crime Information Center database. However, ICE administrative warrants do not indicate that an individual has committed a criminal offense, nor do they constitute probable cause that a criminal offense has been committed.²⁵ ICE administrative warrants are prepared by ICE employees and are not approved or reviewed by a judge.²⁶ Furthermore, administrative warrants issued by ICE authorize only U.S. Department of Homeland Security (DHS) or ICE agents to arrest the individual, not local law enforcement. **Thus, any arrest by local law enforcement solely based on an administrative warrant issued by ICE is not an arrest pursuant to a criminal warrant or a finding of probable cause.**²⁷

²⁰ *Id.*; see also *Galarza*, 745 F.3d at 641 (“The [Immigration and Nationality Act] does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal.”); *Morales v. Chadbourne*, 793 F.3d 208, 217–18 (1st Cir. 2015) (new seizures as a result of an immigration detainer must be supported by probable cause).

²¹ 5 ILCS 805/15(b).

²² *Miller v. United States*, 357 U.S. 301, 305 (1958) (noting that the lawfulness of a warrantless arrest for violation of federal law by state peace officers is “determined by reference to state law”).

²³ 725 ILCS 5/107-2.

²⁴ See *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009) (discussing the sheriff’s lack of authority to enforce an ICE administrative warrant).

²⁵ *El Badrawi v. Department of Homeland Security*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008); *Toledo*, 615 F. Supp. 2d at 459.

²⁶ 8 U.S.C. § 1357; see also *United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the process to obtain an ICE administrative warrant).

²⁷ Illinois law authorizes peace officers to arrest an individual only when a warrant has been issued for a criminal offense—not a civil offense. 725 ILCS 5/107-2.

e. *Local law enforcement cannot detain individuals pursuant to a federal immigration detainer request.*

DHS and ICE issue “immigration detainers” or “hold requests” when they have identified an individual in the custody of local law enforcement who might be in violation of civil immigration laws.²⁸ An immigration detainer is a notice from federal authorities that an individual in the custody of local law enforcement might be in violation of civil immigration laws; it typically asks the local agency to detain the individual for up to an additional 48 hours past his or her release date to allow federal authorities to assume custody.²⁹ ICE policy establishes that all detainer requests (Form I-247A) will be accompanied by one of two forms signed by an ICE immigration officer: either (1) Form I-200 (Warrant for Arrest of Alien) or (2) Form I-205 (Warrant of Removal/Deportation).³⁰ These forms are administrative warrants signed by ICE officers that authorize other ICE officers to detain an individual.³¹ They are not criminal warrants issued by a court and they do not establish individualized probable cause that an individual has committed a criminal offense. Only federal officers have the authority to arrest an individual for a violation of civil immigration law without a criminal warrant.³²

Accordingly, **the Illinois TRUST Act prohibits law enforcement officials and agencies from complying with immigration detainers.** It states that a “law enforcement agency or law enforcement official shall not detain or continue to detain any individual solely on the basis of any immigration detainer or civil immigration warrant or otherwise comply with an immigration detainer or civil immigration warrant.”³³ Consistent with the Illinois TRUST Act, federal courts have determined that immigration detainers are voluntary requests with which local law enforcement need not comply,³⁴ as they do not constitute individualized probable cause sufficient

²⁸ See 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers” (March 24, 2017).

²⁹ See *Abdi*, 463 F.3d at 551.

³⁰ U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers” (March 24, 2017). Similarly, local law enforcement is not authorized to arrest or detain an individual based on the previously issued Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) or Form I-247X (Request for Voluntary Transfer).

³¹ For the purposes of the Trust Act, a civil immigration warrant also is defined to include Form I-203.

³² *Arizona*, 567 U.S. at 407; 8 U.S.C. § 1357.

³³ 5 ILCS 805/15(a). In some states, local law enforcement may enter into formal agreements with the federal government to detain people who have been apprehended for violating federal civil immigration law. See 8 U.S.C. § 1103(a)(11)(B). Illinois law, however, also prohibits law enforcement agencies and officials from entering into any “agreement to house or detain individuals for federal civil immigration violations.” 5 ILCS 805/15(g)(1). See *McHenry County v. Raoul*, No. 21-cv-50341, ECF No. 41 at *8 (N.D. Ill. Dec. 6, 2021) (“[T]he federal government can only house [ICE] detainees in the facilities of a state or a state’s political subdivision via a cooperative agreement The State of Illinois, by legislative act, has decided that its political subdivisions may not enter or remain in such agreements.”).

³⁴ 8 C.F.R. 287.7(a) (describing a detainer as a “request”); *Galarza*, 745 F.3d at 645 (concluding detainers are requests and collecting decisions from five other federal circuits characterizing detainers as requests); *Prim v. Raoul*, No. 20-cv-50094, 2021 WL 214641, at *3 (N.D. Ill. Jan. 21, 2021) (“ICE detainer forms issue a request to local officials and not a compulsory duty”).

for detaining an individual.³⁵ Any detention of an individual after his or her release date is considered a new arrest and must be based on probable cause that a crime has been committed.³⁶

Holding detainees past their scheduled release for ICE pick up could expose the law enforcement agency to civil liability, as it has in other jurisdictions. Local law enforcement agencies have been held liable for detaining an individual beyond his or her release date in response to an immigration detainer.³⁷ On top of the prohibitions outlined in the Illinois TRUST Act, the Illinois and federal constitutions prohibit unreasonable searches and seizures.³⁸ **Any detention of an individual without a judicial warrant—including prolonging an initial detention—must be supported by probable cause that an individual committed a criminal offense.** An ICE administrative warrant does not meet this standard.³⁹

To ensure compliance, the TRUST Act requires that law enforcement submit an annual report to the Illinois Attorney General’s Office regarding all immigration detainer requests or civil immigration warrants that the law enforcement agency received. Among other information, the report must include the date and time that the individual subject to the immigration detainer or civil immigration warrant was released or transferred, as well as the government agency to which the individual was transferred.⁴⁰

f. Local law enforcement generally may not inquire about immigration status and may not deny services to people in their custody on the basis of their immigration status.

As noted, immigration is a matter of federal law, not state law. And although some states authorize state or local law enforcement to enforce federal immigration law, there is no express or inherent authority under Illinois law that permits state or local law enforcement to do so.⁴¹ **Thus, the Illinois TRUST Act generally prohibits law enforcement agencies and officials from “inquir[ing] about or investigat[ing] the citizenship or immigration status or place of birth of any individual in the agency or official’s custody or who has otherwise been stopped or**

³⁵ *Moreno*, 213 F.Supp.3d at 1007-08 (holding that ICE’s practice of issuing detainees without individualized determination of the equivalent of probable cause was unlawful).

³⁶ *Morales*, 793 F.3d at 217; *Moreno*, 213 F. Supp. 3d at 999.

³⁷ *Santos v. Frederick County Bd. of Commissioners*, 725 F.3d 451, 464–65 (4th Cir. 2013); *see also Villars v. Kubiатовski*, 45 F.Supp.3d 791, 801–03 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza*, 745 F.3d at 645 (finding county liable for unlawful detention pursuant to an immigration detainer).

³⁸ Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV.

³⁹ *Santos*, 725 F.3d at 464–65; *see also Villars*, 45 F.Supp.3d at 801–03; *Galarza*, 745 F.3d at 645; *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 25 (finding that investigative alert was not sufficient to support a probable cause for arrest).

⁴⁰ 5 ILCS 805/25(a)(2).

⁴¹ *See People v. Lahr*, 147 Ill.2d 379, 382, 589 N.E.2d 539 (Ill. 1992) (recognizing that the authority of local police officers to effectuate an arrest is dependent on the statutory authority given to them by the political body that created them); *Gonzales*, 772 F.2d at 475 (requiring that state law grant local police the “affirmative authority to make arrests” under the specific provisions of the Immigration and Nationality Act that they sought to enforce).

detained by the agency or official.”⁴²

There are certain circumstances under which local law enforcement may appropriately inquire about a person’s citizenship, immigration status, or place of birth. Local law enforcement may, for instance, notify a person “about that person’s right to communicate with consular officers from that person’s country of nationality,” or may be required to facilitate communication with consular offices as described in Part III below.⁴³ Local law enforcement may also request evidence of citizenship or immigration status pursuant to certain state and federal firearms laws.⁴⁴

Other legal requirements also limit law enforcement’s ability to treat persons in their custody differently on the basis of citizenship or immigration status. Specifically, the Illinois TRUST Act states that “a law enforcement agency or law enforcement official may not deny services, benefits, privileges, or opportunities to an individual in custody or under probation status . . . on the basis of the individual’s citizenship or immigration status” or any civil immigration proceedings pending against the person (including the issuance of an immigration detainer or administrative warrant).⁴⁵ Such benefits and services include “eligibility or placement in a lower custody classification, educational, rehabilitative, or diversionary programs.”⁴⁶

III. Illinois Laws Requiring Law Enforcement to Assist Foreign Nationals and Immigrant Victims of Crimes

a. Custodial facilities must facilitate consular communication.

Over fifty years ago, the United States ratified the Vienna Convention, which requires federal, state, and local government authorities to inform detained or arrested foreign nationals of their right to contact their national consulate. To promote compliance with existing international legal obligations, Illinois amended its criminal code, effective January 1, 2016, to detail law enforcement’s obligations.⁴⁷ Law enforcement officials in charge of a custodial facility are directed to:

- Ensure that, within 48 hours of an individual’s booking or detention, foreign nationals are advised that they have a right to communicate with an official from the consulate of their country; and
- If a foreign national requests consular notification or the notification is mandatory by law, ensure notice is given to the appropriate officer at the consulate of the foreign national in

⁴² 5 ILCS 805/15(e).

⁴³ *Id.*

⁴⁴ Specifically, the Firearm Owners Identification Card Act (430 ILCS 65/0.01 *et seq.*), the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.*), Article 24 of the Criminal Codes of 2012 (720 ILCS 5/24-1 *et seq.*), or 18 U.S.C. §§ 921-931.

⁴⁵ 5 ILCS 805/15(f).

⁴⁶ *Id.*

⁴⁷ 725 ILCS 5/103-1(b-5).

accordance with the U.S. Department of State Instructions for Consular Notification and Access;⁴⁸ and

- Ensure that the foreign national is allowed to communicate with, correspond with, and be visited by, a consular officer of his or her country.

This statute does not create any affirmative duty for law enforcement to investigate whether an arrestee or detainee is a foreign national.⁴⁹

b. Law enforcement officials must complete U-visa and T-visa certification forms.

In order to encourage immigrant victims of crimes to come forward and work with law enforcement, federal law permits survivors of certain crimes to apply for U-visa or T-visa nonimmigrant status based on their willingness to assist law enforcement in investigating or prosecuting the crime.⁵⁰ Survivors of qualifying crimes, such as domestic violence and sexual assault, may apply for U-visas;⁵¹ survivors of severe human trafficking may apply for T-visas.⁵² A key component of the U-visa and T-visa application process is the certification form, by which a certifying agency⁵³ confirms the survivor's helpfulness or willingness to assist in the investigation or prosecution of the qualifying crime. Though these visas are created by federal law, they require forms certified by state and local law enforcement agencies responsible for detecting, investigating, and prosecuting qualifying criminal activity.

The VOICES Act, 5 ILCS 825/1 *et seq.*, sets forth requirements for certifying agencies that receive requests to complete U-visa or T-visa certification forms. As amended by the Way Forward Act, the VOICES Act requires each agency to:

- Designate a supervisory official or officials as the agency's certifying official(s) who must respond to requests for certification forms;

⁴⁸ Resources from the U.S. Department of State for law enforcement are available at <https://travel.state.gov/content/travel/en/consularnotification.html>.

⁴⁹ 725 ILCS 5/103-1(b-5)(1).

⁵⁰ 8 U.S.C. § 1101(a)(15)(T), (U); U.S. DEPARTMENT OF HOMELAND SECURITY, U VISA LAW ENFORCEMENT RESOURCE GUIDE (2020), available at https://www.dhs.gov/sites/default/files/publications/20_1228_uscis_u-visa-law-enforcement-resource-guide.pdf; DHS, T VISA LAW ENFORCEMENT RESOURCE GUIDE (2020), available at <https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf>.

⁵¹ Qualifying crimes for a U visa include any of the following (or any similar activity in violation of federal, state, or local criminal law): "rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes." 8 U.S.C. § 1101(a)(15)(U)(iii).

⁵² 8 U.S.C. § 1101(a)(15)(T). For additional guidance about how human trafficking is defined in T visa eligibility, see 8 CFR 214.11(a); DHS, T VISA LAW ENFORCEMENT RESOURCE GUIDE (2020), available at <https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf>.

⁵³ "Certifying agencies" include state and local law enforcement agencies, prosecutors, and other agencies that are responsible for investigating or prosecuting qualifying crimes. 5 ILCS 825/5. However, only law enforcement agencies are required to submit annual reports to the Office of the Illinois Attorney General under the VOICES Act. 5 ILCS 825/20.

- Make publicly available information regarding the agency's procedures for certification requests;
- Arrange regular trainings for its certifying official(s);
- Not disclose the immigration status of a victim or person requesting a certification form, except to comply with federal or state law, legal process, or when authorized by the victim or requester;⁵⁴ and
- Follow certain timeframes and procedures to complete certification forms submitted by victims of qualifying criminal activity.⁵⁵

Unlike federal law, which allows state and local agencies discretion in determining whether to complete these certification forms, the VOICES Act mandates that certifying agencies in Illinois complete certification forms if certain requirements are met.

Agencies that receive a certification request by a victim of qualifying criminal activity must:⁵⁶

- Within 90 business days of receiving the request, complete the certification form and provide it to the requester;
- Apply a rebuttable presumption⁵⁷ that the victim is, has been, or is likely to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity; and
- Fully complete and sign the certification form and include details about the nature of the crime and a detailed description of the victim's helpfulness or likely helpfulness.

If requested to recertify or reissue a certification form, the certifying official must provide the reissued certification within 90 business days of that request.⁵⁸

The 90-day deadlines are expedited to 21 business days in three circumstances. First, the expedited deadline applies if the requester is in federal immigration removal proceedings or detained. Second, the expedited deadline applies if the children, parents, or siblings of the requester would reach an age within the 90-business-day period that would make them ineligible for certain benefits under federal law. If they would reach that age within the 21 business day period, then the

⁵⁴ 5 ILCS 825/10(g).

⁵⁵ "Victim of qualifying criminal activity" means a person described in Section 1101(a)(15)(U)(i)(I) of Title 8 of the United States Code, in the definition of "victim of a severe form of trafficking" in Section 7102(14) of Title 22 of the United States Code, or in any implementing federal regulations, supplementary information, guidance, and instructions; *see* 5 ILCS 825/5 (definitions).

⁵⁶ 5 ILCS 825/10(d)-(e).

⁵⁷ This presumption exists as long as the victim has not refused or failed to provide information and assistance that law enforcement reasonably requested. 5 ILCS 825/10(d).

⁵⁸ 5 ILCS 825/10(e).

certifying official has just 5 business days to complete and provide the certification form to the requester. And third, the expedited deadline applies if the person seeking recertification has a deadline to respond to a request for evidence from United States Citizenship and Immigration Services (USCIS).⁵⁹ The 90-day statutory deadlines can be extended only upon written agreement with the requester or requester's representative.⁶⁰

If a certifying official denies a certification request, then the official must provide written notice of the denial to the requester explaining why the available evidence does not support a finding that the person is a victim of qualifying criminal activity, and provide contact information should the requester desire to appeal the decision.⁶¹ If a requester appeals, the certifying agency or official must respond to the appeal within 30 business days.⁶² The requester is also entitled to file a mandamus action or seek other equitable relief against the certifying agency in a circuit court without exhausting administrative appeals.⁶³

To ensure compliance with the VOICES Act, law enforcement agencies must report annually to the Illinois Attorney General's Office on every request for completion of a certification form. This report must include the date that each request was received, and the date on which the law enforcement agency responded (either with a completed certification form or a written notice explaining the denial).⁶⁴

IV. Summary

- Law enforcement authorities in Illinois generally are prohibited from assisting with any immigration enforcement operation. State law prohibits Illinois law enforcement from entering into immigration enforcement agreements with immigration authorities, from complying with immigration detainers, from transferring individuals into immigration agents' custody, and from allowing immigration agents access to state and local facilities for investigative or enforcement purposes.
- State law likewise generally prohibits Illinois law enforcement from sharing information with federal immigration enforcement agents about individuals in their custody, including those individuals' release dates.
- Law enforcement may not stop, arrest, search, or detain any individual on the sole basis that they are undocumented. A removable alien's presence in the United States is not a crime. Arrests may be made only when law enforcement have a criminal warrant or probable cause that a criminal offense has been committed.

⁵⁹ 5 ILCS 825/10(d).

⁶⁰ 5 ILCS 825/10(d)(4), (e).

⁶¹ 5 ILCS 825/11(a). The written notice must be submitted to the address provided in the request.

⁶² 5 ILCS 825/11(a).

⁶³ 5 ILCS 825/11(b).

⁶⁴ 5 ILCS 825/20.

- Local law enforcement agencies may not detain an individual beyond his or her release date pursuant to an immigration detainer or civil immigration warrant.
- Illinois law also prohibits local law enforcement agencies from treating individuals in their custody differently on the basis of their citizenship or immigration status.
- Custodial facilities must allow foreign nationals to communicate with consular offices.
- Law enforcement agencies are required to create procedures to ensure they timely certify forms for eligible victims of certain crimes who apply for U-visas or T-visas.
- Law enforcement agencies must report annually to the Illinois Attorney General's Office regarding their compliance with the TRUST Act and the VOICES Act.