



## Monitoring and Addressing Civil Rights and Civil Liberties Concerns Arising from Transfers from State or Local Law Enforcement Custody

On November 20, 2014, Secretary of Homeland Security Jeh C. Johnson issued a memorandum entitled *Secure Communities*, which discontinued Secure Communities and replaced it with the Priority Enforcement Program (PEP), and in so doing, established new priorities and procedures for the transfer of individuals within state or local custody to U.S. Immigration and Customs Enforcement (ICE). While this memorandum set defined parameters for custody transfers under PEP, it also allows ICE to arrange for the transfer of individuals from cooperating state and local law enforcement who meet the larger enforcement priorities as outlined in Secretary Johnson's November 20, 2014 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. At the same time, Secretary Johnson directed that the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) "develop and implement a plan to monitor state and local law enforcement agencies [(LEAs)] participating in such transfers" so that DHS can "detect inappropriate use . . . and . . . establish effective remedial measures to stop any such misuses . . . ."

DHS is committed to ensuring that immigration enforcement activities, including those initiated based upon criminal arrests by state and local LEAs, do not serve as a conduit for improper policing activities. CRCL will use all available and lawful means to identify concerns arising from allegations of biased policing, misuse of federal information systems, or any other allegation of improper LEA practices that may impact federal immigration enforcement. ICE will also notify CRCL when its officers or agents receive an allegation of improper LEA conduct, such as profiling on the basis of race, ethnicity, religion, or limited English proficiency, that led to an individual's arrest and subsequent transfer to ICE custody for civil immigration enforcement.

While DHS has a limited role in overseeing the activities of state and local LEAs, DHS is putting in place measures to ensure that DHS policies do not serve as a conduit for civil rights violations or biased policing.

- **CRCL monitoring and investigations.** CRCL may in the course of its monitoring and investigations identify information relevant to the Department's exercise of discretion and will share that information with ICE, as appropriate. Such information may include, but is not limited to, the Department's efforts to address any improper actions by a state or local LEA during its encounter with an individual, an individual's actions during the encounter, and the individual's status as a victim, witness, or plaintiff.
- **Review of all transfer requests for consistency with enforcement priorities.** ICE, through its office of Enforcement and Removal Operations (ERO) and, as appropriate, the Office of the Principal Legal Advisor (OPLA), will continue to review all transfer requests to ensure each meets enforcement priorities or otherwise would serve an important federal interest, as described in the Secretary's November 20 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. In addition, a determination will be made as to whether prosecutorial discretion should be exercised based on all available facts and circumstances pertaining to each case. Beginning at the targeting and arrest phase and continuing throughout the lifecycle of a removable individual's case, ICE will review the facts and circumstances of each case to ensure that enforcement action, including any that might arise as a result of the transfer of an individual from state or local custody to federal custody, is consistent with controlling law and comports with DHS enforcement priorities.

- **CRCL/ICE communication.** Where CRCL has received information that alleges biased policing by a state or local LEA, and CRCL has identified significant concerns with that agency's actions, CRCL will assist in the development of an appropriate Departmental response. Where CRCL, through its investigations and monitoring, develops a substantial basis to believe that an individual has come into ICE custody from state or local law enforcement custody as a result of inappropriate profiling, violation of law, or material violation of DHS policy, it may relay those concerns and any applicable prosecutorial discretion request to ICE. Such a request may be made at any stage of a CRCL inquiry, as appropriate. ICE will review the merits of each such request at the field level and, upon CRCL request or as otherwise deemed appropriate by ICE, at the ICE Headquarters level, in order to render a proper final determination that takes the civil rights and civil liberties concerns into account.
- **Quarterly meetings.** CRCL and ICE will meet quarterly and more often, as the need may arise, to discuss custody transfers. ICE will review requests by CRCL to consider an exercise of prosecutorial discretion.
- **Notification to DHS Headquarters.** Where CRCL has identified significant concerns with a state or local LEA's actions, including any that have resulted in the transfer of removable individuals to ICE custody, CRCL will notify Departmental leadership as appropriate and consistent with internal Departmental guidance.
- **Notification to other authorities.** If CRCL assesses or develops a good-faith basis to conclude that an LEA participating in transfers to ICE may be in violation of federal civil rights law, including but not limited to 42 U.S.C. § 14141, it will notify the U.S. Department of Justice, Civil Rights Division. CRCL may also communicate similar concerns to state attorneys general or other entities with appropriate jurisdiction.

Further detail regarding the prosecutorial discretion process can be found at <http://www.ice.gov/ImmigrationAction>, including information regarding an email address, [EROprosecutorialdiscretioninquiries@ice.dhs.gov](mailto:EROprosecutorialdiscretioninquiries@ice.dhs.gov), to receive and review case inquiries related to requests for prosecutorial discretion as well as other avenues of redress such as the Detention Reporting and Information Line (1.888.351.4024), the ERO Field Office outreach mailbox, [www.ice.gov/contact/ero](http://www.ice.gov/contact/ero), and the OPLA office prosecutorial review process.