August 26, 2025

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45012

SYLLABUS: 2025-015

1. The board of county commissioners may enter into an agreement with federal immigration authorities, on behalf of the sheriff, to detain aliens subject to removal in the county jail. The sheriff, however, does not have independent contracting authority for this purpose.

2. If a contract with federal immigration authorities is in place, the 48-hour limit on detention on the basis of a detainer does not apply. An alien subject to detention under federal immigration law may be detained "pending a decision on whether the alien is to be removed from the United States," 8 U.S.C. §1226(a), or longer if the person is ordered to be removed.

3. The terms of the contract with federal immigration authorities, including any agreement under 8 U.S.C. §1103(a)(11) or 1357(g)(1), would determine whether the sheriff or deputy sheriffs may transport aliens detained for violations of immigration law.

DAVE YOST
OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2025-015

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45012

Dear Prosecutor Gmoser:

You requested my opinion on the following question:

> Does a county sheriff, or a county board of commissioners on behalf of a sheriff, have statutory authority to enter into an agreement with federal immigration authorities which would allow for the incarceration, and possible transportation of aliens detained, at a county jail for civil violations of federal immigration law beyond a 48 hour hold?

For the reasons that follow, I find that the board of county commissioners may enter an agreement with federal immigration authorities, on behalf of the sheriff, to detain aliens (*i.e.*, noncitizens) subject to removal

from the United States in the county jail, and, if a contract is in place, the 48-hour limit on holding aliens in custody on the basis of a detainer does not apply. The terms of the contract with federal immigration authorities would determine whether the sheriff or his deputies may transport such detainees for medical purposes, court appearances, or between detention facilities.

The term "alien," as used in this opinion and federal law, means "any person not a citizen or national of the United States." 8 U.S.C. §1101(a)(3). For purposes of this opinion, the term "subject to removal" includes both aliens who are detained pending a decision on whether to be removed and aliens who are subject to a final removal order. *See* 8 U.S.C. §§1226 and 1231.

I

Before I answer your question, I pause for two remarks on my authority to advise on this matter. Though I am "not empowered to provide authoritative interpretations of federal law," I can "advise county prosecuting attorneys as to the extent of the official duties of county officials." (Citations omitted.) 1989 Ohio Atty.Gen.Ops. No. 89-001, at 2-1, fn. 1. Because your questions concern the powers and duties of the county sheriff and board of county commissioners, it is appropriate for me to advise on this matter.

Second, this opinion is focused on a narrow question: whether the law permits a county to enter a contract with federal immigration authorities to detain aliens in the county jail for violations of immigration law and removal proceedings. It does not decide whether any particular individual should be subject to detention for civil violations of federal immigration law. Only federal immigration authorities and, ultimately, the courts may make such determinations. Thus, "it is inappropriate for me to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals." 1986 Ohio Atty.Gen.Ops. No. 86-076, at 2-422.

II

Immigration in the United States is governed by the Immigration and Naturalization Act, 8 U.S.C. §1101 *et seq*. *See also* U.S. Const., art. I., § 8, cl. 4 (authorizing Congress to "establish an uniform Rule of Naturalization"). The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). As explained in 2007 Ohio Atty.Gen.Ops. No. 2007-018, at 2-176, Title 8 of the United States Code "establishes procedures for granting immigrant status, admission qualifications for aliens, procedures for detaining, deporting, and removing aliens, and the manner in which aliens may become naturalized citizens of the United States."

Several federal agencies oversee the enforcement of immigration law. Primary responsibility is vested with the Department of Homeland Security (DHS) and the U.S. Attorney General. *See* 6 U.S.C. §202 and 8 U.S.C. §1103. The Attorney General oversees the immigration court system. *See* 8 U.S.C. §1229a(b). Within DHS, enforcement duties are divided between Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS). *See* 6 U.S.C. §§211, 252, and 271.[1]

An alien may "be removed [from the United States] if the alien is within one or more . . . classes of deportable aliens" described in 8 U.S.C. §1227. "Removal is a civil, not criminal, matter." *Arizona*, at 396. Removal proceedings can be triggered by a criminal act or civil violation of immigration law. Based on an administrative warrant, an immigration officer may arrest and detain an alien "pending a decision on whether the alien is to be removed." 8 U.S.C. §1226(a); *see also* 8 U.S.C.

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[1] Many provisions of the Immigration and Naturalization Act still reference the U.S. Attorney General as the authority for enforcing immigration law. However, unless context indicates otherwise, statutory references to the Attorney General are deemed by operation of 6 U.S.C. §557 to refer to the DHS Secretary. *See also* 6 U.S.C. §251 (regarding the transfer of authority and responsibilities to DHS).

§1357(a)(2) (regarding warrantless arrests). "Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

If an alien arrested by immigration officers has not been involved in any criminal activity, the alien may be released on bond or conditional parole. 8 U.S.C. §1226(a). With only a few exceptions, however, an alien who has engaged in criminal activity must be taken into custody pending removal. 8 U.S.C. §1226(c). Within the last year, Congress amended the law to require the detention of illegal aliens who are arrested, charged, or convicted of "burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

DHS must "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. §1231(g)(1). 8 U.S.C. §1103(a)(11)(A) authorizes DHS to "make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the

housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State." Furthermore, "the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien" may enter a contract for compensation with respect to that detention. 8 U.S.C. §1231(i)(1).

To fulfill this obligation, the Secretary of Homeland Security, on behalf of ICE, may enter contracts with state and local political subdivisions for space to hold aliens in detention pending removal. *See* 8 U.S.C. §1103(a)(11); 48 C.F.R. §3017.204. An agreement between ICE and a political subdivision is sometimes executed as an amendment to an existing intergovernmental agreement with the U.S. Marshals Service. *See* 18 U.S.C. §§4002 and 4013; *see also* United States Government Accountability Office, *Report on Immigration Detention*, https://www.gao.gov/assets/gao-21-149.pdf (accessed Aug. 26, 2025) [https://perma.cc/8VV2-ZVZX].

Separately, 8 U.S.C. §1357(g)(1) allows DHS to enter agreements with states or political subdivisions to qualify officers "to perform a function of an immigration officer in relation to the investigation, apprehension, or *detention* of aliens in the United States (including the *transportation* of such aliens across State lines

to detention centers) . . . at the expense of the State or political subdivision and to the extent consistent with State and local law." (Emphasis added.) To participate in such activities, an officer or employee of the state or a political subdivision must "have knowledge of, and adhere to, Federal law relating to the function" and "have received adequate training regarding the enforcement of relevant Federal immigration laws." 8 U.S.C. §1357(g)(2). All such activities are "subject to the direction and supervision of the [DHS Secretary]." 8 U.S.C. §1357(g)(3).

Federalism plays an important role, too. Federal officials may not compel state officials to enforce federal immigration law. *See Printz v. United States*, 521 U.S. 898, 935 (1997) ("The 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."); *see also City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018). Nonetheless, a state or local government may choose to cooperate in this endeavor. Along those lines, the Ohio General Assembly adopted R.C. 9.63 to require cooperation with lawful requests for assistance during a federal immigration investigation "to the extent that the request is consistent with the doctrine of federalism." *See* R.C. 9.63(A). This law does not compel county officials to enter any agreements with federal immigration

authorities for use of the county jail, but it reflects the State's general policy of promoting such cooperation.

* * *

Your question references the detention of aliens on behalf of ICE "beyond a 48 hour hold." This refers to detention on the basis of a "detainer," which is limited to 48 hours by 8 C.F.R. §287.7(d). According to 8 C.F.R. §287.7(a), "A detainer serves to advise another law enforcement agency that [DHS] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." One of my predecessors advised that "[u]nder 8 C.F.R. §287.7(d), a county sheriff may detain an alien on the basis of a detainer issued by the United States Immigration and Customs Enforcement Office for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by federal immigration officials even though Ohio law otherwise would require that the alien be released from custody." 2007 Ohio Atty.Gen.Ops. No. 2007-018, at paragraph three of the syllabus. I find no reason to disagree with that conclusion.

2007 Ohio Atty.Gen.Ops. No. 2007-018 did not, however, address other types of civil detention, such as detention of an alien subject to removal pursuant to a contract with ICE. The distinction in type of detention, and the legal basis of each, is significant. Detention

pursuant to a detainer serves the limited purpose of enabling a transfer of custody from a state or local jurisdiction to ICE when the individual is already detained by the state or local authority for a criminal offense. The 48-hour limitation applies to this type of detention. 8 C.F.R. §287.7(d).

Your question, however, concerns detention of aliens who are already under ICE's custody for purposes of removal. As previously explained, federal law allows ICE to enter an agreement with a state or political subdivision, such as the county, to provide "housing, care, and security" for aliens detained by ICE. 8 U.S.C. §1103(a)(11). Such detention is not limited to 48 hours. *Id.*; *see also* 8 U.S.C. §1231(g)(1). Rather, when an alien is arrested for violations of immigration law, the alien may be detained for civil removal proceedings "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. §1226(a); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303-304. If the alien is ordered to be removed, detention could last until the person is deported. *See* 8 U.S.C. §1231(a); *but see Zadvydas v. Davis*¸ 533 U.S. 678 (2001) (concerning what constitutes a reasonable removal period).

III

With a basis established in federal law for housing aliens subject to removal in local detention facilities, I next address whether *state* law authorizes a county

sheriff, or a county board of commissioners on behalf of the sheriff, to enter into such agreements. County officials are creatures of statute and have "only those powers which are expressly provided by statute and those necessarily implied therefrom." 1986 Ohio Atty.Gen.Ops. No. 86-105, at 2-575.

Under R.C. 311.29, the sheriff may enter agreements with certain political subdivisions (municipalities, townships, school districts, etc.) to provide police services. *See* 1980 Ohio Atty.Gen.Ops. No. 80-018; 1995 Ohio Atty.Gen.Ops. No. 95-004. The board of county commissioners, however, is responsible for contracts involving the operations of a county jail. *See* R.C. 341.20 (contracts for food, medical services, and other programs or services for prisoners and other persons placed in the sheriff's charge); R.C. 9.07 and 341.21 (contracts to hold persons charged with or convicted of a federal crime); and R.C. 341.35 (contract for private operation and management of a jail); *see also* 1986 Ohio Atty.Gen.Ops. No. 86-105, at paragraph one of the syllabus ("a county sheriff is not authorized to contract under R.C. 311.29 in order to receive jail services from another county").

"Courts have consistently held that the board of county commissioners has general contracting authority for the county." 2024 Ohio Atty.Gen.Ops. No. 2024-006, Slip Op. at 8; 2-44, citing Am. *Fedn. of State, Cty. & Mun. Emps. v. Polta*, 59 Ohio App.2d 283, 286 (6th

Dist. 1977) ("It is the province of the board of county commissioners to make contracts for the county, and no other officer can bind the county by contract, unless by reason of some express provision of law."). The board of county commissioners "is the representative and guardian of the county, having the management and control of its property and financial interests, and has exclusive and original jurisdiction over all matters pertaining to county affairs, except in respect to matters the cognizance of which is exclusively vested in some other officer or person." *Dall v. Cuyahoga Cty. Bldg. Com.*, 24 Ohio Dec. 9, 11 (C.P. 1913); accord *Levy Court v. Coroner*, 69 U.S. 501, 507-508 (1865). *See also* 1977 Ohio Atty.Gen.Ops. No. 77-093, at 2-314 (noting that the county sheriff and board of county commissioners may act "in concert" even though the contracting authority at issue resides with the county commissioners).

No law authorizes the county sheriff to unilaterally enter a contract with federal immigration authorities. A board of county commissioners, however, is authorized under R.C. 307.85(A) to enter contracts with the federal government for cooperation in federal programs. According to that provision, "[t]he board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States . . . and for

such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state."

In several prior opinions, my predecessors have found R.C. 307.85(A) to be a sufficient basis for county commissioners to contract with the federal government for participation in federal programs and receive federal funds. *See* 1982 Ohio Atty.Gen.Ops. No. 82-005, 1984 Ohio Atty.Gen.Ops. No. 84-038, 1991 Ohio Atty.Gen.Ops. No. 91-028, and 2004 Ohio Atty.Gen.Ops. No. 2004-016; *but see* 2025 Ohio Atty.Gen.Ops. No. 2025-009 (regarding a federal law that required more specific enabling legislation). Likewise, R.C. 307.85 allows county commissioners to enter agreements with federal immigration authorities to hold detained aliens in the county jail, pursuant to the DHS "detention and removal program" under 6 U.S.C. §251(2) and 8 U.S.C. §1103(a)(11), as long as the contract does not require a county to perform acts in conflict with state law.

IV

Having identified R.C. 307.85 as a basis for the county commissioners' contracting authority, I now answer whether housing aliens subject to removal in a county jail is compatible with state law. It is.

The county sheriff is in "charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction." R.C. 341.01. Those standards encompass a wide range of topics, including booking procedures, the classification and separation of inmates, health services and sanitation, security, and disciplinary procedures. *See* R.C. 5120.10; Adm.Code 5120:1-8. State and local detention facilities that contract with federal immigration authorities are subject to additional minimum standards of care. *See* 8 C.F.R. §235.3(e); *see also* U.S. Immigration and Customs Enforcement, *2025 National Detention Standards*, https://www.ice.gov/doclib/detention-standards/2025/nds2025.pdf (accessed Aug. 26, 2025) [https://perma.cc/KDC8-WUKH].

The Department of Rehabilitation and Correction's minimum standards require a jail to document that "[a]ll inmates are legally committed to the jail," including the "[a]uthority for commitment." Adm.Code 5120:1-8-01(A) and (C)(4). Although there must be a specific legal basis for detention in the county jail, no statute expressly limits such confinement to persons charged with or convicted of a crime. In fact, R.C. 341.12, which relates to transferring inmates to another county jail due to inadequate space or staffing, references an additional class of persons who are "in

custody upon civil process." In addition, R.C. 341.20 authorizes a board of county commissioners to contract for programs or services "necessary for the care and welfare of prisoners *and other persons placed in the sheriff's charge."* (Emphasis added.)

State law separately authorizes civil detention in several instances. For example, a person may be jailed for civil contempt of court with an opportunity for release upon compliance with the court's order. R.C. 2705.05 and 2705.06; *State v. Kilbane*, 61 Ohio St.2d 201 (1980). Another example is that "an order to pay child support may be enforced by means of imprisonment through contempt proceedings." *Cramer v. Petrie*, 70 Ohio St.3d 131 (1994), at syllabus; *see* R.C. 2705.031. And a person may be committed to jail for failure to comply with a judgment for the payment of money, particularly for fraudulent evasion of payment, although not for the debt itself. *See* R.C. Ch. 2331; Ohio Const., art. I, §15; *see also Akron v. Mingo*, 169 Ohio St. 511 (1959) (discussing privilege from civil arrest under R.C. 2331.11).

Ohio law does not expressly address civil detention for violations of immigration law because that lies in federal law. Nonetheless, civil detention for violations of immigration law is not prohibited either. Local officials' authority to confine such persons in a county jail would derive, instead, from a lawful agreement with federal immigration authorities to detain aliens

subject to removal from the United States. *See* 8 U.S.C. §§1103(a)(11), 1226, 1231(g)(1), and 1357(g)(1).

V

Two Ohio statutes address the housing of federal prisoners in local detention facilities. As explained in a prior attorney general opinion, "R.C. 9.07(C)(l) authorizes a board of county commissioners to enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a county correctional facility." 2010 Ohio Atty.Gen.Ops. No. 2010-004, paragraph one of the syllabus. According to the definition in statute, an "out-of-state prisoner" includes "a person who is convicted of a crime in another state or under the laws of the United States." R.C. 9 .07(A)(6). This provision must be read together with R.C. 341.21(A), which provides that:

> The board of county commissioners may direct the sheriff to receive into custody prisoners charged with or convicted of crime by the United States, and to keep those prisoners until discharged.
>
> The board of the county in which prisoners charged with or convicted of crime by the United States may be so committed may negotiate and conclude

> any contracts with the United States for the use of the jail as provided by this section and as the board sees fit.

See 2010 Ohio Atty.Gen.Ops. No. 2010-004, at 2-27. A person in the custody of a county jail pursuant to an agreement under R.C. 9.07(C)(l) and R.C. 341.21(A) may be both convicted of a federal crime *and* later subject to removal proceedings. *See* 8 U.S.C. §1226(c). Your question, however, concerns the detention of aliens for *civil violations* of federal immigration law that trigger removal proceedings.

2007 Atty.Gen.Ops. No. 2007-018 concluded that "R.C. 341.21(A) does not authorize a board of county commissioners to direct the county sheriff to receive into his custody aliens who are being detained by the United States Immigration and Customs Enforcement Office for deportation purposes when the aliens have not been charged with, or convicted of, a crime by the United States." *Id.* at paragraph two of the syllabus. I agree with my predecessor that "[t]he plain language of R.C. 341.21(A) is limited to situations in which a prisoner has been 'charged with or convicted of crime by the United States.'" *Id.* at 2-183. However, that does not provide a basis for the opinion's next statement: "Because R.C. 341.21 expressly lists the situations in which a board of county commissioners may direct the county sheriff to receive federal prisoners into his custody, the board may not direct the sheriff to receive

federal prisoners into his custody in other situations." *Id.* at 2-183 (relying on the canon that "the expression of one or more things implies the exclusion of those not identified."). Unfortunately, 2007 Atty.Gen.Ops. No. 2007-018 failed to address other statutes, in both federal and state law, that authorize such an agreement with immigration authorities. *See above* at Parts II and III. In that regard, its analysis is both overbroad and falls short. It presumes R.C. 341.21 is the sole basis for detention of federal prisoners or alien detainees while failing to consider other sources of authority. Consequently, that aspect of the opinion, which is not part of its syllabus, does not provide a reliable basis for answering the questions you now raise. (Modifying 2007 Atty.Gen.Ops. No. 2007-018 in part.)

In summary, local officials may cooperate with the federal government and provide jail space for aliens subject to removal pursuant to a contract between the county commissioners and federal immigration authorities. The terms of the contract would determine whether the sheriff or deputy sheriffs may transport such detainees for medical services, court appearances, or between detention facilities. *See* R.C. 307.85(A); 8 U.S.C. §§1103(a)(11) and 1357(g)(1).

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. The board of county commissioners may enter into an agreement with federal immigration authorities, on behalf of the sheriff, to detain aliens subject to removal in the county jail. The sheriff, however, does not have independent contracting authority for this purpose.

2. If a contract with federal immigration authorities is in place, the 48-hour limit on detention on the basis of a detainer does not apply. An alien subject to detention under federal immigration law may be detained "pending a decision on whether the alien is to be removed from the United States," 8 U.S.C. §1226(a), or longer if the person is ordered to be removed.

3. The terms of the contract with federal immigration authorities, including any agreement under 8 U.S.C. §1103(a)(11) or 1357(g)(1), would determine whether the sheriff or deputy sheriffs may transport aliens detained for violations of immigration law.

Respectfully,

DAVE YOST
Ohio Attorney General