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Crossing the Rubicon:

When Federal Immigration Requests Trigger Municipal Liability

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Certification of Originality:

I certify that this writing submission is my original work, and it has not been previously published in any form.

Crossing the Rubicon: When Federal Immigration Requests Trigger Municipal Liability

I. Introduction: Municipal Liability in the Inter-Agency Gap

For Illinois municipal officials, federal immigration enforcement presents a deceptively simple question with profound legal consequences: what must a local agency do when Immigration and Customs Enforcement ("ICE") requests assistance? While high-profile policy debates often dominate the headlines, the underlying legal constraints are fixed by a rigid constitutional framework that leaves little room for administrative error. In recent enforcement cycles, including operations reported in the Chicago metropolitan area during 2024–2025, the principal point of legal exposure for municipalities has shifted from mere information-sharing to custodial decision-making at the moment state-law authority expires.

This Article argues that the decision to extend detention at federal request once state-law authority has lapsed constitutes the functional "Rubicon" of municipal liability. Drawing on Supreme Court Fourth Amendment jurisprudence and Seventh Circuit applications of the so-called "mission" limitation on seizures, this Article explains why constitutional violations are no longer measured merely by the length of a delay, but by whether the scope of local police power has been impermissibly expanded beyond its lawful mission. It further situates municipal non-participation within the Tenth Amendment's anti-commandeering doctrine and the related principle of intergovernmental immunity, which together confirm that refusal to assist federal civil immigration enforcement is constitutionally protected state action.

Finally, this Article examines the Illinois TRUST Act and related 2025 legislation, including House Bill 1312, to provide municipal counsel with a practical framework for minimizing entity-level liability under 42 U.S.C. § 1983 and parallel state-law causes of action.

Throughout, the analysis focuses on custody—not communication—as the decisive fault line separating lawful non-cooperation from actionable constitutional violation.

II. Sovereign Architecture: Federal Exclusivity and State Limits in Immigration Enforcement

Immigration enforcement involves a strict division of sovereign authority, leaving little flexibility for municipal officials. The Supreme Court has consistently recognized that the power to admit or exclude noncitizens is an "inherent attribute of sovereignty" reserved for the federal government.[1] But this federal exclusivity does not automatically authorize local officers to enforce civil immigration law. Municipalities are not agents of the federal government, and local officers generally cannot arrest or detain individuals solely for civil immigration violations.[2] Without a formal delegation of authority under Section 287(g) of the Immigration and Nationality Act, any local detention to support federal civil enforcement is *ultra vires* unless grounded in independent state-law authority. As the Massachusetts Supreme Judicial Court explained in *Lunn v. Commonwealth*, local officers do not have inherent authority to make arrests for civil infractions—a principle that underpins the jurisdictional limits set by the Illinois TRUST Act.[3]

The Tenth Amendment's anti-commandeering doctrine reinforces this jurisdictional boundary by limiting the expansion of federal regulatory power. In *Murphy v. NCAA*, the Supreme Court confirmed that the federal government cannot "conscript" state officials or force them to implement federal programs.[4] Applied to immigration, ICE may request local

[1] *Arizona v. United States*, 567 U.S. 387, 394–95 (2012); *see also* 8 U.S.C. §§ 1101–1537.
[2] *Arizona*, 567 U.S. at 408.
[3] *Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143, 1157–58 (2017).
[4] *Murphy v. NCAA,* 584 U.S. 453, 470 (2018).

cooperation through administrative detainers (Forms I-200 and I-205) but cannot require it.[5] Refusing to assist does not amount to obstruction; instead, it reflects the municipality's exercise of its sovereign prerogative. Any decision to cooperate must rest on a clear state-law grant of authority—a grant that Illinois has deliberately withheld and, in some respects, preempted.

A. Statutory Preemption: The TRUST Act as a Withdrawal of Custodial Discretion

In Illinois, the decision to opt out of federal civil enforcement is codified in the Illinois TRUST Act, which withdraws local discretion over custodial decisions.[6] The Act is not merely advisory; it governs municipal conduct at the point of greatest consequence—the deprivation of liberty. Under Article VII of the Illinois Constitution, home rule units have broad authority over local affairs, but the General Assembly may specify powers that are exclusively reserved to the state.[7] The TRUST Act uses this authority to prohibit local law enforcement from detaining anyone solely on the basis of an immigration detainer.[8]

This withdrawal of authority creates a "jurisdictional ceiling" that operates symmetrically across the state. In non-home rule jurisdictions, the absence of an affirmative statutory grant forecloses municipal participation as a matter of first principles.[9] In home rule jurisdictions, the TRUST Act serves as an express limitation on general police powers, removing the category of "civil immigration facilitation" from the local mission. As a result, an Illinois municipality cannot lawfully justify prolonged detention on the theory that cooperation with ICE falls within its inherent discretionary authority. Once the state-law basis for custody—such as the posting of

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[5] *See Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) (clarifying that detainers are requests, not mandatory orders).
[6] 5 ILCS 805/10 (2025).
[7] Ill. Const. art. VII, § 6(h).
[8] 5 ILCS 805/15(a).
[9] *See City of Chicago v. Roman*, 184 Ill. 2d 504, 512–15 (1998) (explaining that municipal powers are limited to those granted by the legislature).

bond or the issuance of a release order—has been satisfied, the municipality's sovereign mission is legally exhausted.

B. Home Rule Authority and the 2025 Legislative Refinements

Municipal counsel often ask whether the TRUST Act sets a "floor" or a "ceiling" for non-cooperation. Illinois law makes clear that home rule units can enact stricter ordinances than state law, unless the legislature clearly intends to occupy the field exclusively.[10] The TRUST Act primarily reduces liability, leaving municipalities free to adopt policies that further limit federal access—for example, prohibiting the use of municipal facilities for ICE interviews or withholding advance notice of release times.

This framework was strengthened in the 2025 legislative session with Senate Bill 2305, which limited the sharing of non-public law enforcement databases with federal civil authorities.[11] By addressing informal coordination, the law targets practices that could lead to warrantless civil arrests. Together, the TRUST Act and Senate Bill 2305 create a clear statutory scheme: local law enforcement cannot extend custody for civil immigration purposes or provide operational support that would make such extensions possible. For municipal attorneys, adherence is not optional—it is a legal requirement.

III. The Fourth Amendment "Mission" Doctrine: Measuring the Moment of Release

While state law sets the limits of municipal authority, the Fourth Amendment acts as a practical "stopwatch" for day-to-day custody decisions. In Illinois, the greatest constitutional risk arises in the period between completing a state-law custodial obligation—such as posting bond or serving a sentence—and the individual's physical release. This interval is not a flexible

[10] *See Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶¶ 30–31.
[11] S.B. 2305, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).

administrative window; it is a constitutional boundary where continued cooperation with federal authorities can become a violation. Under 42 U.S.C. § 1983, this risk is heightened because, although individual officers may claim qualified immunity, municipalities themselves have no such protection.[12]

A. The *Rodriguez* Standard and the Constitutional Stopwatch

The Supreme Court's decision in *Rodriguez v. United States* established the controlling framework for assessing the permissible duration of a seizure.[13] In *Rodriguez*, the Court held that a seizure justified solely by the interest in addressing a traffic violation "becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission" of the stop.[14] This doctrine exists to prevent law enforcement from using minor procedural delays as a pretext to extend seizures for unrelated objectives. A detention becomes unlawful as soon as the tasks linked to that mission "are—or reasonably should have been—completed"[15] Importantly, the Court rejected the argument that brief, incremental delays could be excused as *de minimis*.[16] Justice Ginsburg explained that once tasks tied to the original mission are—or reasonably should have been—completed, "the authority for the seizure ends."[17] Courts have applied *Rodriguez* not only in traffic stops but also in custodial settings to ensure that the constitutional clock starts and stops with the lawful mission.[18]

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[12] *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978).
[13] *Rodriguez v. United States,* 575 U.S. 348, 354 (2015).
[14] *Id.* at 350–51.
[15] *Id.*
[16] *Id.* at 357.
[17] *Id.* at 354.
[18] *See, e.g., Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (noting that a seizure lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes protected interests); *see also Manuel v. City of Joliet*, 580 U.S. 357, 367–69 (2017) (applying Fourth Amendment constraints to pretrial detention).

After an arrest, a local agency's "mission" is defined by state law. Where an individual is arrested on a state charge, the permissible duration of detention extends only so far as necessary to accomplish the purposes authorized by that charge—such as booking, bond processing, or appearance before a judicial officer. Once a judge orders release or bond is posted, the agency's authority ends.

For Illinois municipalities, the Seventh Circuit's application of this "stopwatch" principle in *United States v. Rodriguez-Escalera* is instructive.[19] In *Rodriguez-Escalera*, the court suppressed evidence obtained after a traffic stop was extended for approximately twenty-two minutes to await a narcotics dog, holding that law enforcement may not "piggyback" unrelated objectives onto a completed mission.[20] Although the precise facts of *Rodriguez-Escalera* involved narcotics enforcement rather than immigration, this reasoning applies to immigration enforcement as well. Because the Illinois TRUST Act removes civil immigration facilitation from local police authority, officers cannot delay release to accommodate federal needs.[21] ICE detainers, as administrative requests rather than judicial warrants, do not provide the independent probable cause required to justify continued detention.[22]

B. Institutional Custom and Liability in the Inter-Agency Gap

Under *Monell*, a local government can be held liable when a constitutional violation stems from an official policy, a widespread custom, or a failure to train that reflects deliberate indifference. [23] This doctrine exists to ensure municipalities cannot escape responsibility for unconstitutional practices that result from systemic policies or entrenched customs. Courts have

[19] *United States v. Rodriguez-Escalera*, 884 F.3d 661, 668–70 (7th Cir. 2018).
[20] *Id.* at 670.
[21] 5 ILCS 805/15(a).
[22] *Cf. Galarza*, 745 F.3d at 645.
[23] *Monell*, 436 U.S. at 694.

applied *Monell* broadly to hold municipalities accountable when individual officer misconduct reflects broader institutional failures, rather than isolated mistakes.[24] Liability does not require a formal legislative directive; it arises when a practice is "so persistent and widespread" that it effectively becomes municipal policy.[25]

In immigration enforcement, this "gap" often appears when officers routinely notify ICE of release times or allow federal access to secure facilities. Even a formal policy of "non-cooperation" offers no protection if officers are shown to regularly facilitate civil arrests through informal channels.[26] In such cases, silence or missing documentation can serve as evidence of an unconstitutional custom of joint action.[27]

C. Deliberate Indifference: Failure to Train and the Evidentiary Risks of Informal Coordination

Failing to provide officers with clear guidance on the limits of custodial discretion creates another potential route to *Monell* liability. Under *Connick v. Thompson*, deliberate indifference exists when policymakers are aware that violations are likely but do not take action.[28] Following the 2025 statutory updates, this awareness is no longer theoretical. Because the distinction between judicial warrants and administrative detainers has been litigated for over a decade—and is now codified and expanded in the Illinois TRUST Act—rigorous training on the "binary" nature of release authority is plainly necessary under the *City of Canton* framework.[29]

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[24] *See City of Canton v. Harris*, 489 U.S. 378, 385-887(1989).
[25] *Id.*; *see also Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372, 379–80 (7th Cir. 2017) (en banc) (emphasizing that the "gap" between formal policy and actual practice can trigger liability).
[26] *See Estate of Sims ex rel. Sims v. County of Bureau*, 506 F.3d 509, 515–16 (7th Cir. 2007).
[27] *See Castañon Nava v. Dep't of Homeland Sec.*, No. 1:18-cv-03757, Doc. 214, slip op. at 8 (N.D. Ill. Oct. 7, 2025).
[28] *Connick v. Thompson*, 563 U.S. 51, 61 (2011).
[29] *See City of Canton*, 489 U.S. at 388.

When municipal leaders know that federal operations are occurring near local facilities, failing to train officers on the "moment of release" carries significant risk. In these high-stakes situations, a single unconstitutional detention can establish municipal liability if it stems from a systemic failure to provide clear custodial protocols. [30] Recent cases show that informal practices increase exposure: the lack of formal records documenting interactions between local officers and federal agents may lead courts to infer an unconstitutional custom.[31] Protecting against liability requires more than a written policy of non-cooperation; it demands documented, consistent adherence to the point when state-law authority ends.

IV. Intergovernmental Immunity and the 2025 Enforcement Conflict

The constitutional tension between municipal non-participation and federal civil immigration enforcement intensified during the 2024–2025 enforcement cycle, particularly in Illinois state facilities. In response to reported federal operations targeting individuals at or near courthouses and other state-controlled spaces, the Illinois General Assembly enacted House Bill 1312, establishing protections for "sensitive locations" and expanding civil remedies for unlawful arrests.[32] The law is grounded in the doctrine of intergovernmental immunity, under which each sovereign retains exclusive authority over its core governmental functions, free from undue interference by the other.[33]

Because courthouses, jails, and hospitals are central to state sovereignty, Illinois retains exclusive authority to regulate these spaces and ensure public safety and orderly justice. When federal civil enforcement activity threatens to disrupt those functions—by deterring court

[30] *Accord Glisson*, 849 F.3d at 381.
[31] *See Castañon Nava*, slip op. at 12.
[32] H.B. 1312, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).
[33] *See McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819); *see also Murphy*, 584 U.S. at 470.

attendance, interfering with custodial operations, or diverting local resources—the state may act to protect the integrity and accessibility of its institutions without violating the Supremacy Clause.

Judicial responses in 2025 reinforced the protective nature of HB 1312. In *United States v. Illinois*, Judge Jenkins dismissed a federal challenge to Illinois's sanctuary policies, ruling that while a state may not physically interfere with federal agents executing their lawful authority, it is not required to facilitate federal civil enforcement within state-controlled spaces.[34] The court framed Illinois's action as defensive rather than obstructive.[35] This principle was further supported on December 23, 2025, when the Supreme Court in *Trump v. Illinois* denied a federal stay application of HB 1312 pending appeal.[36] In a concurrence respecting the denial of a stay, Justice Kavanaugh emphasized that a state's refusal to assist federal civil enforcement—particularly by declining to extend custody or provide access to non-public facilities—does not amount to obstruction.[37] Rather, such refusal reflects the "settled principle that the federal government may not compel state participation in federal regulatory programs."[38]

These 2025 cases highlight that custody remains the critical boundary. Federal agents may operate in public areas, but they cannot "conscript" state custodial authority to carry out civil arrests.[39] For municipal counsel, the message is clear: officials who follow the TRUST Act's custodial limits are not obstructing federal law—they are upholding the state's constitutional duties. As the next section discusses, informal coordination practices that bypass

[34] *United States v. Illinois*, No. 25-cv-04821, slip op. at 12 (N.D. Ill. July 25, 2025).
[35] *Id.*
[36] *Trump v. Illinois*, No. 25A412, slip op. at 3 (U.S. Dec. 15, 2025).
[37] *Id.* at 4-7 (Kavanaugh, J., concurring).
[38] *Id.*
[39] *See Printz v. United States*, 521 U.S. 898, 935 (1997).

these boundaries—like sharing non-public release information or granting unauthorized facility access—create the main basis for municipal liability under *Monell*.

V. Statutory Damages and Custodial Liability Under the Illinois Bivens Act

The 2025 enactment of Public Act 104-0440 on December 9, 2025, marked a major shift in Illinois municipal law, effectively transforming the TRUST Act from administrative guidance into a mechanism for liability.[40] By establishing a "parallel track" for custodial claims, the General Assembly provided a way around restrictive federal interpretations of 42 U.S.C. § 1983, giving plaintiffs a more predictable path to damages in state court. Known as the Illinois Bivens Act, the law allows civil actions against anyone who, while enforcing civil immigration law, knowingly violates either the Illinois or U.S. Constitution.[41]

Unlike federal § 1983 cases, which often require proof of actual injury to survive a motion to dismiss, the Illinois Bivens Act sets a minimum statutory damage award of $10,000 for unauthorized civil arrests in "protected areas," such as courthouses, hospitals, and licensed daycare centers. [42] This automatic-damages approach significantly changes the litigation landscape for municipal counsel. Because damages are triggered by a "knowing" violation, the usual de minimis defense—often applied to short delays of five or ten minutes—is no longer effective. Under the post-2025 regime, every minute of detention beyond the end of state-law authority carries a predictable monetary consequence.

Although the Act allows a qualified immunity defense, it is much narrower than its federal counterpart.[43] A municipality's failure to update operational manuals or communicate the

[40] *See* P.A. 104-0440, art. 5 (eff. Dec. 9, 2025).
[41] *See* 745 ILCS 90/5-10 (2025).
[42] 745 ILCS 90/10-25 (2025).
[43] 745 ILCS 90/5-15 (2025).

requirements of the Court Access, Safety, and Participation Act can serve as evidence of "knowing" non-compliance. [44] As a result, the burden of proof has effectively shifted: to challenge the "knowledge" element, municipalities must show proactive, documented adherence to state custodial limits.

VI. Risk Mitigation and the Municipal Compliance Defense

In an environment where informal practices can trigger *Monell* liability and state-law violations under HB 1312 carry automatic penalties, the only reliable defense is documented, operational disengagement. Recent cases in the Northern District of Illinois illustrate the stakes: the absence of formal records of inter-agency interactions can allow courts to infer an unconstitutional custom. This was evident in the *Castañon Nava* case, where the court upheld the extension of the consent decree through February 2, 2026, finding that the federal government's expansion of "mandatory detention" authority did not excuse the warrantless arrests documented in the Chicago area.[45] This ruling confirms that local facilitation of warrantless arrests remains a primary source of municipal liability.

To protect against these risks, municipalities must move beyond "paper compliance" and implement specific, verifiable protocols:

1. *The "Hard Release" Rule*: Municipalities should treat the completion of any state-law custodial obligation—whether by bond, court order, or sentence—as a fixed constitutional endpoint.[46] Agencies should adopt a "Hard Release" policy that requires that once state-law

[44] 745 ILCS 90/10-5 (2025).
[45] *Castañon Nava*, slip op. at 8.
[46] 5 ILCS 805/15(a).

authority lapses, the individual must be physically removed from secure custody and transferred immediately to a public, non-custodial space. [47]

2. Contemporaneous Audit Trails: Effective compliance requires thorough documentation. Municipalities should maintain contemporaneous logs documenting: the time state-law authority to detain ended; the time the individual was physically released from secure custody; and any requests received from federal agents. These records serve two functions. First, they provide affirmative evidence of constitutional compliance. Second, they rebut claims of informal customs or joint participation by demonstrating a consistent pattern of lawful disengagement.

3. Mandatory "Warrant Filter": Liability often arises when departments fail to distinguish between judicial warrants and non-binding administrative forms, like ICE Forms I-200 and I-205.[48] To reduce error, departments should implement a "warrant filter" requiring supervisory verification before any custody decision based on federal paperwork. All intake and release personnel should be trained to distinguish between judicial warrants and administrative immigration forms. Quick-reference guides placed at booking and release stations materially reduce the risk that administrative requests will be mistaken for mandatory legal commands.

4. Spatial and Data Management: Senate Bill 2305 (2025) explicitly prohibits law enforcement from giving federal civil immigration authorities direct access to non-public electronic databases.[49] Additionally, the 1,000-foot buffer zones around "sensitive locations" must be actively enforced.[50] Providing logistical support or sharing non-public release schedules

[47] *See Rodriguez*, 575 U.S. at 354.
[48] *See Galarza*, 745 F.3d at 645.
[49] 5 ILCS 805/15(b).
[50] 745 ILCS 90/10-20 (2025).

within these areas can trigger state-law liability, even if no federal arrest occurs. Accordingly, departments should implement written controls governing both data access and physical access. Agencies must prohibit federal civil immigration authorities from accessing non-public electronic databases, including records revealing custody status, release eligibility, or release timing. Separately, departments should distribute clear maps identifying restricted areas and 1,000-foot buffer zones and adopt protocols governing when, if ever, federal agents may enter non-public physical spaces. Municipal personnel should be instructed that observation and documentation of federal activity are permissible, but that affirmative assistance—whether through data sharing, logistical support, or facilitated access to restricted spaces—is not.

VII. Conclusion: The Sovereign Limits of Municipal Custody

The 2025 legal framework has made clear the "Rubicon" of municipal liability: the moment state-law authority ends. As this Article has shown, the combination of the Tenth Amendment, the Illinois TRUST Act, and the Fourth Amendment "mission" doctrine marks a clear point where local police authority stops. [51] Trying to bridge this gap through informal coordination does more than assist federal authorities—it crosses municipal sovereign boundaries and exposes municipalities to serious liability under both 42 U.S.C. § 1983 and Illinois statutory law.

Today, the only defensible policy is one of documented, immediate disengagement from federal civil enforcement. Protecting the municipal treasury is now directly tied to respecting the constitutional "stopwatch."[52] For municipal attorneys, compliance is not optional—it is a strict requirement under both state law and the Constitution.

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[51] *See Murphy*, 584 U.S. at 470.
[52] *See Rodriguez*, 575 U.S. at 354.