



## U.S. Department of Justice

### Office of Justice Programs

Washington, D.C. 20531

October 11, 2017

The Honorable Jim Kenney  
City of Philadelphia  
1401 JFK Blvd., Room 1430  
Philadelphia, PA 19102-1687

Dear Mayor Kenney,

Your FY 2016 Byrne JAG grant award, required you to comply with 8 U.S.C. § 1373; to undertake a review to validate your jurisdiction's compliance with 8 U.S.C. § 1373; and to submit documentation, including an official legal opinion from counsel, adequately supporting the validation. Thank you for your recent submission. The Department of Justice has reviewed your submission, all attached documentation, and your jurisdiction's laws, policies, and practices relating to compliance with section 1373, to the extent they were provided or are readily available.

This letter is to inform you that, based on a preliminary review, the Department has determined that your jurisdiction appears to have laws, policies, or practices that violate 8 U.S.C. § 1373. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 5-16. Section 1 of the Executive Order states that notice of a person's release from custody shall not be provided, "unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant."<sup>1</sup> The Department has determined that this section restricts the sharing of information regarding immigration status in violation of 8 U.S.C. § 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.C of the Memorandum states that "immigrants who are victims of crimes will not have their status as an immigrant transmitted in any manner." The Department has determined that this Memorandum restricts the sharing of information regarding immigration status in violation of 8 U.S.C.

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<sup>1</sup>An ICE detainer form ordinarily requests that a jurisdiction (1) provide advance notice of the alien's release; and (2) maintain custody of the alien for up to 48 hours beyond the scheduled time of release. The Department is not relying on Philadelphia's restriction of the latter form of cooperation in this preliminary assessment.

§ 1373(a). It is not the Department of Justice’s nor the Department of Homeland Security’s policy or practice to request information from state and local jurisdictions regarding the immigration status of victims. There are, however, instances where the Department finds that requesting this information could be appropriate, such as where a person is both a perpetrator and a victim.

Additionally, based on this preliminary review, the Department has noted that the following laws, policies or practices may violate 8 U.S.C. § 1373, depending on how your jurisdiction interprets and applies them. These laws, policies, or practices include, but may not be limited to:

- Executive Order No. 8-09. Section 2(b) of the Executive Order states that police officers “shall not . . . inquire about a person’s immigration status,” unless certain limited exceptions apply. Under 8 U.S.C. § 1373(b)(1), however, Philadelphia may not “in any way restrict” the “requesting” of “information regarding . . . immigration status” from federal immigration officers. On its face, the Department has determined that the Executive Order appears to bar Philadelphia officers from requesting information regarding immigration status from federal immigration officers. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers and employees from requesting information regarding immigration status from federal immigration officers. The Department is thus requesting Philadelphia to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(b).
- Executive Order No. 8-09. Section 3 of the Executive Order states that Philadelphia officers and employees “shall [not] disclose” information “relating to an individual’s immigration status.” Section 3(b)(2), however, allows disclosure when “required by law.” In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this Executive Order to not restrict Philadelphia officers from sharing information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).
- Police Commissioner Memorandum No. 01-06. Section III.A of the Memorandum states that officers shall not transmit “information relating to an immigrant” unless “required by law” or certain other exceptions apply. In order to comply with 8 U.S.C. § 1373, the Department has determined that Philadelphia would need to certify that it interprets and applies this policy to not restrict Philadelphia officers and employees from sharing

information regarding immigration status with federal immigration officers. The Department has also determined that Philadelphia would need to certify that it has communicated this interpretation to its officers and employees. If Philadelphia cannot provide this certification, the Department has determined that this provision violates section 1373(a).

Your jurisdiction may submit a response to this preliminary assessment, as well as any additional evidence you would like the Department to consider, before it reaches its final determination. Please submit all additional documentation by October 27, 2017. Once the Department has had an opportunity to review your submission, the Department will notify you of its final determination.

This letter reflects the Department's preliminary assessment of your jurisdiction's compliance with 8 U.S.C. § 1373. This letter does not constitute final agency action and nothing in this letter creates any right or benefit enforceable at law against the United States. Additionally, as the United States continues to collect information about your jurisdiction, it reserves the right to identify additional bases of potential violations of 8 U.S.C. § 1373.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Hanson". The signature is written in a cursive style with a large initial "A" and "H".

Alan Hanson  
Acting Assistant Attorney General