




THE PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Audits and Investigations

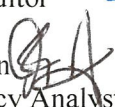
October 1, 2019

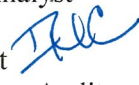
MEMORANDUM

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: David H. Van Dyke 
County Auditor

FROM: Josh Hamlin 
Senior Policy Analyst

Inez N. Claggett 
Senior Legislative Auditor

RE: Policy Analysis and Fiscal Impact Statement
CB-62-2019 Equity in Policing

Legislative Summary

CB-62-2019, sponsored by Councilmembers Taveras, Hawkins, Ivey, Dernoga, Glaros, Davis, Streeter, Turner, Anderson-Walker and Harrison was presented on September 24, 2019. CB-62-2019 would generally prohibit the County Police Department (and all other County agencies) from participating in civil immigration enforcement matters. It would also: (1) generally prohibit County agencies from inquiring into a person's citizenship or immigration status unless required to do so by law or court order; (2) prohibit County agencies from threatening or coercing a person based on actual or perceived citizenship or immigration status; (3) generally prohibit County agencies from conditioning the provision of benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by State or federal law or court order; (4) prohibit County agencies from aiding the federal government in investigation or enforcement of any federal programs requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin; and (5) impose certain requirements related to County forms and record-sharing related to immigration enforcement.

Background/Current Law

County involvement in immigration enforcement

In 2014 the County became the second jurisdiction in Maryland to require the U.S. Immigration Customs and Enforcement (ICE) agency to obtain a warrant to hold undocumented immigrants in the County's Department of Corrections past their release date.¹ This policy ended the County's participation in a federal Secure Communities program² where ICE worked together with local, state, and federal police authorities, which had begun in December 2009.

Typically, ICE issues an "immigration detainer" to inform a local law enforcement agency that ICE intends to take custody of an individual that is in the local law enforcement agency's custody for the purposes of putting them in removal proceedings. A detainer is issued when ICE has "determined that probable cause exists that the subject is a removable alien."³ By issuing the detainer, ICE *requests* that the local jurisdiction notify them at least 48 hours before the individual is released from custody or maintain custody of the individual for a period not to exceed 48 hours after that person would otherwise be released to provide ICE time to assume custody. In accordance with the 2014 policy, the County has not honored ICE detainers on noncriminal matters.

In 2017, Maryland Attorney General Brian Frosh issued a Guidance Memorandum entitled "Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials."⁴ The Memorandum updated a 2014 advice letter and described the legal implications of local participation in federal immigration matters. The Memorandum made several legal conclusions, including the following:

- State and local law enforcement agencies (LEAs) face potential liability exposure if they seek to enforce federal immigration laws, particularly if they do so outside the context of a federal cooperation agreement under 8 U.S.C. § 1357(g)(1).
- LEAs must absorb all costs associated with federal cooperation agreements under 8 U.S.C. § 1357(g)(1). The federal government does not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional profiling.
- LEAs face potential liability exposure if they honor ICE or CBP detainer requests unless the request is accompanied by a judicial warrant or supported by information providing probable cause that the subject of the detainer has *committed a crime*.
- State and local officers may not be prohibited from *sharing* information about a detainee's citizenship or immigration status with federal immigration officials, but they *are not required* to do so.
- Local governments may adopt policies prohibiting their officers and employees from *inquiring* about a person's immigration status except where required by law
- As an overriding principle, the government bears the burden of proving that the detention of someone beyond the person's State-law release date does not violate the Fourth Amendment and its Maryland counterpart.

¹ https://cliniclegal.org/sites/default/files/prince_george_county_sept_2014.pdf

² In November 2014, after a string of controversies and lawsuits, the Department of Homeland Security discontinued the Secure Communities program. On January 25, 2017, President Donald Trump issued an executive order restarting the Secure Communities program.

³ <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>

⁴ The Guidance Memorandum was subsequently updated in 2018.

http://www.marylandattorneygeneral.gov/Reports/Immigration_Law_Guidance.pdf

In June of this year, Hyattsville resident Claudia Ramos was taken into ICE custody and placed in deportation proceedings after a minor traffic incident. She is one of at least three undocumented immigrants⁵ placed in deportation proceedings after ICE was contacted by County police who mistook an administrative removal warrant⁶ for a criminal arrest warrant. In response to these incidents, County Executive and Chief of Police developed a new General Order to bar County police cooperation with ICE on noncriminal matters (attached to this memorandum).⁷

The new General Order clarifies and explicitly states the policy that “PGPD officers shall not initiate an investigation or otherwise take law enforcement action solely based on the actual or perceived immigration status, including the initiation of a stop, apprehension, arrest, or any other field contact.” It also details procedures for dealing with administrative immigration warrants (no detention / no ICE notification) and criminal immigration warrants (detention / confirmation with ICE). Finally, the General Order provides that “PGPD officers are permitted to assist ICE officers and employees when the primary focus of a federal investigation is not immigration violations. Examples include, but are not limited to: customs violations, money laundering, narcotics cases, gang crimes, human trafficking, terrorist activities, and execution of a criminal warrant or court order issued by a federal judge or magistrate.”

Discussion/Policy Analysis

What would CB-62-2019 do?

In addition to codifying much of the substance of the new PGPD General Order, CB-62-2019 includes several provisions that apply to all County agencies.⁸ These provisions include:

- County agents and agencies are prohibited from requesting information or otherwise investigating or assisting in the investigation of any person’s citizenship or immigration status, unless the inquiry or investigation is required by law or court order, or is material to a criminal investigation, provided that such information is not used for civil immigration enforcement (§2-521, page 3, lines 29-31 and page 4, lines 1-7).
- County agents and agencies are prohibited from coercing, intimidating, or threatening any person based on that person’s (or a member of the person’s family’s) actual or perceived citizenship or immigration status (§2-522, page 4, lines 8-11).
- County agents and agencies are prohibited from conditioning the provision of County benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by law or court order and must accept certain alternative forms of identification in lieu of a Maryland driver’s license or identification card (§2-523, page 4, lines 12-23).
- County agents and agencies are prohibited from using County resources to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin (§2-525, page 6, lines 12-16).

⁵ Jose Roberto Ortega of Temple Hills and Maria Pérez Baires of Hyattsville were each taken into ICE custody in 2018 after police stopped them for traffic infractions.

⁶ An administrative warrant is a document signed by an ICE agent, stating that a person is being designated for possible arrest and possible deportation proceedings. It has not been signed by a judge and does not involve a finding of probable cause of a *crime*.

⁷See General Order Manual, Chapter 35 – Immigration Procedures, pp. 225-230:

<https://www.princegeorgescountymd.gov/DocumentCenter/View/16571/Volume-II-Operations-PDF>

⁸ CB-62-2019 defines “Agency” as “any County department, agency, division, commission, council, committee, board, other body, or person established by Charter, ordinance, executive order, or by the County Council.”

- All County forms must be promptly reviewed, and any questions regarding citizenship or immigration status, other than those required by law or court order, must be removed unless the information is necessary for a County function (§2-526(a), page 6, lines 17-22).
- A County agency that receives a federal immigration enforcement request for detention or notification must notify the subject of the request within 48 hours of receipt. (§2-526(b), page 6, lines 23-26).
- Every agency must report to County Executive and County Council every six months on the number of federal immigration enforcement requests received and the manner of disposition of each request. (§2-526(c), page 6, lines 27-31).

Matters generally specific to law enforcement (though still applicable to all County agencies) are covered in §2-524 of the Bill (page 4, line 24 through page 6 line 11). Key provisions of this section include:

- No investigation may be initiated, or law enforcement action taken, solely based on the actual or perceived citizenship or immigration status of a person. A person may not be required to prove their citizenship status, country of origin, or information related to their immigration status, and identification may not be requested for the sole purpose of determining the person's immigration status. A traffic stop may not be prolonged, and a person may not be detained, solely for questions related to the person's immigration status, and immigration status must not be included in routine questioning in interviews about potential traffic or criminal offenses (page 4, line 24 through page 5, line 5).
- County agents and agencies are prohibited from stopping, searching, arresting or detaining a person based on an administrative warrant, or immigration detainer, or other Department of Homeland Security directive, or a belief that the person has committed a civil immigration violation (page 5, lines 6-9).
- Following an arrest, County agents and agencies are prohibited from:
 - contacting any federal immigration official unless the person is the subject of a *criminal* warrant requiring such action;
 - affecting the person's processing based on an administrative warrant or immigration detainer;
 - detaining a person after that person becomes eligible for release based on an administrative warrant or immigration detainer; and
 - detaining a person solely on the belief that the person has committed a civil immigration violation (page 5, lines 10-21).
- County agents and agencies are prohibited from coordinating with federal immigration enforcement officials *in furtherance of a civil immigration enforcement action*, including a prohibition on notifying immigration enforcement officials that a person has been released from custody, *unless the person has been convicted of a violent crime under Maryland law* (page 5 line 22 through page 6, line 4).
- County agents and agencies are prohibited from entering into agreements with the federal government to house individuals in detention for civil immigration charges, or for any other purpose related to civil immigration enforcement; this prohibition includes so-called 287(g) agreements⁹ (page 6, lines 5-11).

Finally, CB-62-2019 includes a general statement of compliance with federal law, providing that “[n]o provision in this Division shall be interpreted as preventing a law enforcement agent from sending to or

⁹ Section 287(g) of the U.S. Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g), authorizes the Department of Homeland Security (DHS) to deputize selected state and local law enforcement officers to enforce federal immigration law.

receiving from any local, state, or Federal agency information regarding the citizenship or immigration status of an individual pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.”

Policies like those which make up the substance of CB-62-1019, including the County’s past and current policies described above, are generally adopted to strengthen relations between law enforcement and the community they serve, and ensuring that all people, regardless of immigration status, feel comfortable reporting crimes. Avoiding entanglement with enforcing federal civil immigration law allows the police to determine how they will prioritize and allocate their resources to perform their local law enforcement function. Finally, such policies protect police agencies, and local jurisdictions, from potential liability resulting from local enforcement of federal immigration laws. This liability concern was pointed out by the Maryland Attorney General in the Guidance Memorandum discussed above.

The provisions of CB-62-2019 that go beyond the subject matter of the recently issued Police General Order serve two additional functions. First, they would ensure that all County agencies provide services, benefits, and opportunities in a non-discriminatory manner. Second, they would significantly reduce the unnecessary collection of information related to people’s citizenship or immigration status.

While there may be details or adjustments to be made to the Bill with input from the Executive branch, the fundamental policy question with regard to CB-62-2019 is whether the policies it furthers need to take the form of law, or whether they can be better handled administratively. All of the Bill’s provisions can be implemented without legislation; some already are. Enacting a law will ensure greater levels of transparency, consistency, and permanency, but will sacrifice some of the flexibility of administrative pronouncements.

Resource Personnel

Council District 2 Staff

Assumptions and Methodology

Proposed Section 2-526 of CB-062-2019 could potentially present an administrative burden on a County Agency if a potentially significant amount of information needs to be deleted, exchanged, or reported in accordance with the proposed provisions. Therefore, an Agency Director could determine that additional resources are needed to comply with the proposed provisions. The Office of Audits and Investigations assumes the requirements could be accomplished by an entry-level administrative/support professional.

Fiscal Impact

- Direct Impact

Enactment of CB-062-2019 could have a negative fiscal impact on the County should an Agency Director request, and be approved to receive, additional resources to be in compliance with proposed Section 2-526. We are unable to determine a realistic estimate of impact because each request for additional resources will be specific in nature and will cater to the needs of the Agency. However, a request for additional resources may not outweigh the benefits of enhancement of the privacy, safety, and security of County residents through enactment of CB-062-2019.

- Indirect Impact

Enactment of CB-062-2019 may have a positive indirect fiscal impact on the County by enhancing the privacy, safety and security of County residents which may encourage individuals to maintain residency within the County thereby increasing indirect sources of County revenue.

Appropriated in the Current Fiscal Year Budget

No.

Effective Date of Proposed Legislation

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please call me.

Attachment: PGPD General Order Manual, Volume II, Chapter 35: Immigration Procedures

VOLUME II CHAPTER 35. IMMIGRATION PROCEDURES

35. IMMIGRATION PROCEDURES

(July 2019)

I. POLICY

It is the policy of the Prince George's County Police Department ("PGPD" or "the Department") to treat all individuals with respect, compassion, courtesy, and equality, regardless of citizenship or immigration status. The Department shall provide services to all persons and exercise its duties in conformity with all applicable Federal, State, and local laws, regardless of the person's citizenship status, nationality, race or ethnicity.

II. CHECKLIST

N/A

III. DEFINITIONS

United States Immigration and Customs Enforcement: United States Immigration and Customs Enforcement (ICE) is the federal law enforcement agency under the Department of Homeland Security (DHS) responsible for enforcement of federal laws related to border control, customs, trade and immigration.

Foreign National: A person who is a citizen of any country other than the United States.

Administrative Warrant: An administrative (civil) warrant is issued by an immigration official for suspected violations of immigration laws. An administrative (civil) warrant does not include a criminal warrant signed by a judge or magistrate, and it shall not be used by PGPD officers as the basis to detain or arrest a person.

IV. FORMS

- Case Record

V. PROCEDURES

1. General

- Warrants for deportation and removal are civil in nature, not criminal.
- The enforcement of civil federal immigration laws falls exclusively within the authority of ICE. Thus, state and local law enforcement officers do not have legal grounds to stop, detain, search, or arrest an individual based solely on an administrative (civil) warrant, unless they have been deputized by ICE to do so. *See* 8 U.S.C. Section 1357(g) (Cooperation Agreements). The Prince George's County Police Department has not and does not intend to be deputized.
- Local governments may adopt policies prohibiting their officers and employees from inquiring about a person's immigration status except where required by law.¹

2. Traffic Stops and Citizen Contacts (Prohibited Actions)

- PGPD officers shall not initiate an investigation or otherwise take law enforcement action solely based on the actual or perceived immigration status, including the initiation of a stop, apprehension, arrest, or any other field contact.

¹ *See* 8 U.S.C. §1373;
http://www.marylandattorneygeneral.gov/Reports/Immigration_Law_Guidance.pdf.

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- ❑ Persons are not required to prove their citizenship status, country of origin, or information related to their immigration status in the United States. PGPD officers shall not request identification for the sole purpose of determining a person's immigration status.
- ❑ A traffic stop may not be prolonged and an individual may not be detained solely for questions related to a person's immigration status.
- ❑ When persons are being interviewed about potential traffic or criminal offenses, questions about their immigration status shall not be part of the routine questioning.

3. Administrative (Civil) Immigration Warrants

- ❑ Warrants for deportation are civil in nature, not criminal.
- ❑ When an officer receives information in the NCIC database on a person, the officer must attempt to determine whether the warrant is an administrative (civil) warrant. To make this determination, the officer must review the introductory message at the beginning of the "notice" from NCIC. If it is administrative in nature, it will contain the language:
 - ❑ SUBJECT HAS AN OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL/DEPORTATION FROM THE UNITED STATES, or
 - ❑ SUBJECT HAS AN OUTSTANDING

ADMINISTRATIVE
WARRANT OF ARREST FOR
IMMIGRATION VIOLATIONS

- ❑ Should it be determined from the NCIC database and/or any further inquiry that a person has an administrative (civil) immigration warrant, PGPD officers shall immediately release the person. However, officers **shall not** notify ICE.
- ❑ If an officer is unable to determine the nature of the warrant, the officer shall promptly contact his or her shift commander for consultation and a final decision. The Shift Commander shall exercise due diligence to determine the existence of an administrative (civil) warrant, and, if necessary, detain the individual for a reasonable amount of time until such determination can be made. For purposes of this policy, a reasonable amount of time shall not exceed sixty (60) minutes, in accordance with routine NCIC "hit" confirmation procedures. Once the shift commander concludes that an administrative (civil) immigration warrant exists, the person immediately shall be released. A case record detailing the incident must be completed.

4. Criminal Immigration Warrants

- ❑ When a criminal immigration warrant is located in the NCIC database during a traffic stop or an investigation, the individual will be detained and confirmation with ICE will be made.
- ❑ Before any further detention, arrest, or search (incident to arrest) is made, it must be confirmed that the warrant is both active and is for a criminal offense.

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- If ICE is unable to immediately determine the nature of the warrant, the officer shall promptly contact his or her Shift Commander for consultation and a final decision. The Shift Commander shall exercise due diligence to determine the existence of a criminal warrant and, if necessary, detain the individual for a reasonable period of time until such determination can be made. For purposes of this policy, a reasonable amount of time shall not exceed sixty (60) minutes, in accordance with routine NCIC “hit” confirmation procedures.
- Upon confirmation from ICE that a criminal immigration warrant exists, the person shall be arrested and processed in accordance with the General Orders Manual, Volume II, Chapter 4, Arrest Procedures, and Volume II, Chapter 19, Fugitive Arrests on Out-of-County Warrants. A booking record detailing the incident must be completed.
- If, after a thorough investigation that involves the consultation of the shift commander concludes with no determination as to the existence of a criminal arrest warrant, the incident shall be documented on a case report record.
- PGPD officers are obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States.

NOTE: See Appendix A for sample NCIC “notice” results for administrative (civil) and criminal ICE warrants.

5. Assisting Federal Authorities

- PGPD officers are permitted to assist ICE officers and employees when the primary focus of a federal investigation is not immigration violations. Examples include, but are not limited to: customs violations, money laundering, narcotics cases, gang crimes, human trafficking, terrorist activities, and execution of a criminal warrant or court order issued by a federal judge or magistrate.
- All operational requests for assistance made by ICE or other immigration officials that do not have a nexus to criminal activity will require the approval of the Chief of Police, on a case-by-case basis.
- Nothing in this order prohibits PGPD officers from responding to or remaining on the scene of any federal criminal law enforcement investigation, or to assist with officer or public safety.

6. Contact Information

- United States Immigration and Customs Enforcement (ICE) – Law Enforcement Support Center – (802) 872-6020;
Baltimore Field Office – (410) 637-4000
- United States Department of State – 24-Hour Operations Center – (202) 647-1512

VI. GOVERNING LEGISLATION & REFERENCE

This General Order addresses:

Legislation:

VOLUME II CHAPTER 35. IMMIGRATION PROCEDURES

- (CR 8-303 of the Maryland Annotated Code)

Reference:

- Santos v. Frederick County Board of Commissioners
- Vienna Convention on Consular Relations (VCCR)

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Appendix A
Sample Results from NCIC
Inquiry

SAMPLE RESPONSE FROM NCIC INQUIRY: ADMINISTRATIVE (CIVIL) WARRANTS

Administrative Warrant of Removal:

WARNING REGARDING FOLLOWING RECORD - SUBJECT OF NIC/N307770847 HAS AN
OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL FROM THE UNITED STATES. CONTACT
LESC
AT (877) 999-5372 FOR IMMEDIATE HIT CONFIRMATION AND AVAILABILITY OF
BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT DETAINER.

MKE/IMMIGRATION VIOLATION - FAILURE TO APPEAR FOR REMOVAL
ORI/VTINS1000 NAM/SMITH, JOHN SEX/M RAC/W POB/FN DOB/19510101
HGT/510 WGT/180 EYE/BRO HAI/BRO CTZ/FN SKN/DRK
SMT/SC LF ARM
SOC/777010000
OFF/ALIEN UNLAWFULLY PRESENT DUE TO ORDER OF REMOVAL OR EXCLUSION FROM THE USA
OCA/ASD1234-T MIS/KNOWN AS JOHNNY BOY
ORI IS BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, LAW ENFORCEMENT SUPPORT
CENTER
(877) 999-5372
NIC/N307770847 DTE/19980605 0000 EDT DLU/20090101 0600 EST
*****THIS RECORD MAY BE USED ONLY BY CRIMINAL JUSTICE AGENCIES FOR
CRIMINAL JUSTICE PURPOSES.
*****END OF IMMIGRATION VIOLATOR FILE RESPONSE*****

Administrative Warrant of Arrest:

WARNING REGARDING FOLLOWING RECORD - SUBJECT OF NIC/N307770847 HAS AN OUTSTANDING
ADMINISTRATIVE WARRANT OF ARREST FOR IMMIGRATION VIOLATIONS FOR FAILURE TO COMPLY
WITH NS REGISTRATION. CONTACT LESC AT (877) 999-5372 FOR IMMEDIATE HIT
CONFIRMATION AND AVAILABILITY OF BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
DETAINDER.

MKE/IMMIGRATION VIOLATION - NS REGISTRATION
ORI/VTINS1000 NAM/SMITH, JOHN SEX/M RAC/W POB/FN DOB/19510101
HGT/510 WGT/180 EYE/BRO HAI/BRO CTZ/FN SKN/DRK
SMT/SC LF ARM
SOC/777010000
OFF/SOUGHT FOR VIOLATION OF NS REGISTRATION
OCA/ASD1234-T MIS/KNOWN AS JOHNNY BOY
ORI IS BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, LAW ENFORCEMENT SUPPORT
CENTER (877) 999-5372
NIC/N307770847 DTE/19980605 0000 0830 EDT DLU/20090101 0600 EST
*****THIS RECORD MAY BE USED ONLY BY CRIMINAL JUSTICE AGENCIES FOR
CRIMINAL JUSTICE PURPOSES.
*****END OF IMMIGRATION VIOLATOR FILE RESPONSE*****

VOLUME II CHAPTER 35. IMMIGRATION PROCEDURES

Sample Response from NCIC Inquiry

SAMPLE RESPONSE FROM NCIC INQUIRY: CRIMINAL ICE WARRANT

One Example of a Criminal ICE Warrant:

***MESSAGE KEY ZW SEARCHES WANTED PERSON FILE FELONY RECORDS REGARDLESS OF EXTRADITION AND MISDEMEANOR RECORDS INDICATING POSSIBLE INTERSTATE EXTRADITION FROM THE INQUIRING AGENCY'S LOCATION. ALL OTHER NCIC PERSONS FILES ARE SEARCHED WITHOUT LIMITATIONS.

MKE/WANTED PERSON

EXL/1 - FULL EXTRADITION UNLESS OTHERWISE NOTED IN THE MIS FIELD

ORI/VTICE0900 NAM/TEST, TEST SEX/M RAC/W POB/EY

DOB/19000101 HGT/509 WGT/175 EYE/BRO HAI/BLK

SKN/LGT

MNU/PP-1234567 SOC/123456789

OFF/FRAUD - FALSE STATEMENT

DOW/20090114 OCA/2-M-TEST

VLD/20120411

MIS/CRIMINAL WARRANT IN VIOLATION OF TITLE 18 USC, SECTION 1542, FALSE STATEMENT

MIS/ON A PASSPORT APPLICATION; ISSUED BY THE U S DISTRICT COURT, EASTERN

MIS/DISTRICT OF VIRGINIA

DNA/N

ORI IS ICE LESC 802 872-6020

DOB/19730515

AKA/TESTER, TEST

AKA/ALPHA, BET

MNU/PP-5678943

SOC/9854321

NIC/W123456789 DTE/20090115 1510 EST DLU/20120411 1301 EST

IMMED CONFIRM WARRANT AND EXTRADITION WITH ORI