

**Senator Eric Schmitt**  
**Senate Judiciary Committee**  
**Subcommittee on the Constitution**  
**Written Questions for Sheriff Clarence Birkhead**  
**Hearing on “Protecting American Citizenship II: Federalism, Sanctuary Cities, and the**  
**Rule of Law”**  
**Wednesday, March 25, 2026**

1. During the hearing, you suggested that there were large financial costs associated with complying with ICE detainers. You additionally said compliance compromised your office’s ability to pursue its own policy and other objectives.
  - a. Please list the relevant actions, as well as the associated time and cost for each action that, prior to the enactment of G.S. § 162-62, would have been necessary for your office to alert ICE that you had an illegal alien in your custody and alert ICE to that illegal alien’s scheduled release from your custody.
  - b. Please list the relevant actions, as well as the associated time and cost for each action that, prior to the enactment of G.S. § 162-62, would have been necessary for your office to honor an ICE detainer and coordinate a safe, orderly transfer of custody of an individual subject to a detainer before he or she would otherwise be released from your office’s custody.
  - c. Please list the relevant actions, as well as the associated time and cost for each action that, under G.S. § 162-62, your office undertakes to alert ICE of an illegal alien in your custody and his or her scheduled release from your custody, comply with an ICE detainer, and coordinate a safe, orderly transfer of custody of an individual subject to a detainer to ICE before he or she would otherwise be released from your office’s custody.

As discussed hereinafter, N.C. Gen. Stat. 162-62 was initially enacted by the North Carolina General Assembly in 2007. I do not have any knowledge of federal immigration enforcement policies prior to 2007. Nor am I aware of whether the federal immigration authorities issued ICE detainers in the early 2000s. Until recent amendments, under G.S. 162-62, North Carolina Sheriffs alerted all law enforcement agencies, including ICE, of a person’s detention through the fingerprinting process. Through AFIS, all law enforcement agencies receive a notice that a person wanted by their agency was detained in the Durham County Detention Facility. The fingerprinting alert is automatic with minimal cost. As the alert was automatic, prior to recent amendments, the cost would have included the cost of the fingerprint machine, maintenance and warranty costs and any related licensure or software costs.

Prior to recent amendments to G.S. 162-62, all law enforcement agencies were alerted, through the fingerprinting process, that a person was in our custody. Unless we had a court order, judicially issued warrant or an extradition request, our processes did not include notifying any law enforcement that a person was being released from our custody. If a law enforcement agency, including ICE, determined they wanted custody of a person detained by our facility, then that law enforcement agency would make its own inquiries into case status, bond status and take the necessary steps to extradite or arrest the person. I do not have detailed knowledge of the detainer process in Durham County prior to my term in office, which began in December 2018. During my tenure and until recent statutory amendments, the Durham County Detention Facility did not process or follow ICE detainers due to constitutional and legal concerns. Rather, we made clear that we would honor court orders, writs and warrants entered by a judicial official.

Recent amendments to G.S. 162-62 created a judicial process for reviewing ICE detainers. If a court order is entered requiring the detention facility to enforce an ICE detainer, then my staff follows the court order. Pursuant to the court order, a person is held for up to 48 hours and ICE receives a communication from my staff that a person has met their release conditions. In addition to potential civil liability that could arise from someone claiming to have been wrongfully detained pursuant to a detainer, the detention facility incurs the costs of housing a detainee for additional time. This includes our daily housing rate of \$100 per day and any related medical costs. My deputies facilitate the judicial review of ICE detainers. Since December 1, 2024, we have received at least 131 detainers, and my deputies spend an average of one hour in each judicial proceeding related to ICE detainers.

2. When asked by ICE whether you alert ICE before releasing an individual subject to a detainer so that ICE could safely take him or her into federal custody, you responded: “No. Because that’s not what the law says. No, I will not call ICE.”<sup>1</sup>
  - a. Which, if any, “law” prohibited you from alerting ICE to that individual’s upcoming release?

I am not aware of a specific law prohibiting my office from contacting any law enforcement agency, including ICE. ICE, as all law enforcement agencies, are notified through AFIS every time a person is fingerprinted and admitted into the Durham County Detention Facility. After this occurs, our facility follows our processes as prescribed by law, but we do not carry out additional notification requirements that go above and beyond the processes set out under the law.

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<sup>1</sup> Barry Yeoman & Vibhav Nandagiri, *Amid An Unprecedented Immigration Crackdown, Durham Tries to Hold the Line*, THE ASSEMBLY (Apr. 14, 2025), <https://www.theassemblync.com/news/politics/durham-nc-immigration-trump-sheriff-activists/>.

Under recent legislation, receipt of an ICE detainer would require my staff to present the detainer to a judicial official for review. If a court order is entered, recent legislation requires us to hold the person for forty-eight hours and notify ICE when that person meets release conditions. See N.C. Session Laws 2024-55 and 2025-85. Our policies and practices are fully compliant with these legal requirements.

- b. Do you think it is safer for the individual subject to the detainer, ICE officers, and the public for ICE to take custody of an individual when he or she is being released from state or local custody, or when he or she is out in public in the community? Please explain.

Yes, I agree it is safer to transfer custody of an individual to ICE, or any other law enforcement agency, while that person is still in custody or in the process of being released. We must also do so in a manner that upholds constitutional principles, in accordance with court orders, and ensures that the community feels safe cooperating with state and local law enforcement.

3. North Carolina recently enacted G.S. § 162-62 to require law enforcement agencies such as yours to verify the immigration status of certain persons taken into custody and to cooperate with ICE detainers. Despite your previous refusal to cooperate with ICE and your statements at the hearing, do you support the North Carolina law's requirements and procedures for cooperating with ICE and honoring detainers? Why or why not?

N.C. Gen. Stat. 162-62 is not new legislation. Since 2007, Sheriffs' Offices have been required to check the legal status of detainees. As mentioned above, the 2007 legislation addressed notification to ICE of the person's detention, through the fingerprinting process. In 2024 and 2025, the North Carolina legislature twice amended G.S. 162-62 to create a new state judicial process for reviewing detainers and enacting time-specific ICE notification requirements, as noted in my testimony. My staff follows these new procedures and our policies and practices are fully compliant with these legal requirements.

4. How is your office implementing G.S. § 162-62? What has been your experience carrying out the requirements and processes of that law?

G.S. 162-62 has been a law in North Carolina since 2007. I cannot state specifically the processes and procedures prior to my tenure as Sheriff beginning in December 2018. Generally, from the beginning of my term in office through December 1, 2024, ICE was alerted to the detention of a

possible undocumented person through the fingerprinting process. Statutory changes that became effective on December 1, 2024 and October 1, 2025 have created a judicial process for reviewing detainers and implemented specific requirements every Sheriff must follow. My detention facility follows the statutory process, as well as relevant court orders.

Creating and implementing new internal processes and procedures have increased the workload of detention facility intake, records and release staff. Upgraded or new software is needed to better track the new court orders, communication records and to accurately calculate release dates and times in order to avoid constitutional violations. Significantly, since these changes took effect, my law enforcement officers (deputies) are regularly “pulled from the road,” and other duties to help facilitate the court hearings to review ICE detainers.

5. Carlos Heriberto Mendoza-Martinez is a member of the Norteños Latin Street Gang, illegally entered the United States more than once. On May 12, 2010, he was convicted of manslaughter and was subsequently removed from the country. He later illegally re-entered the country. In April 2021 and June 2024, Durham authorities arrested and charged him with assault on a woman and domestic violence. Yet, pursuant to policies you instituted, Durham County Sheriff’s Office did not honor ICE detainers and released Martinez without making the minimal effort of contacting ICE.<sup>2</sup>
  - a. Why did your office not contact ICE to alert them that this criminal illegal alien was in your custody?

ICE would have been notified once Mendoza-Martinez was taken into custody in Durham County. As noted above, fingerprinting a detainee automatically alerts all law enforcement agencies, including ICE, that a person is in the custody of the Durham County Detention Facility.

- b. Why did your office not coordinate with ICE to ensure they knew in advance when he was scheduled to be released from your custody so they could effectuate a safe, orderly transfer of custody?

Since becoming Sheriff in December 2018, I have explained that the Durham County Detention Facility’s policies regarding ICE detainers are founded upon constitutional due process and Fourth Amendment principles. Our facility follows our processes as prescribed by law, but we do not carry out additional notification requirements that go above and beyond the processes set out under the law.

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<sup>2</sup> U.S. ICE (July 24, 2024), <https://www.ice.gov/news/releases/ero-arrests-mexican-national-convicted-manslaughter>; Dep’t Homeland Sec. (Sept. 22, 2025), <https://www.dhs.gov/news/2025/09/22/over-weekend-ice-arrests-criminal-illegal-aliens-convicted-sexual-assault-robbery>.

We will honor and enforce court orders and judicially issued warrants. I require my detention staff and deputies to perform our law enforcement duties in a safe and orderly manner. Those processes must be performed in accordance with the requirements of federal, state, and local law, as well as our nation's and our state's constitutions.

- c. You stated at the hearing that refusing to communicate or cooperate with ICE enhances trust in your community. Do you think failing to contact and cooperate with ICE before Mendoza-Martinez's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?
- d. You stated at the hearing that refusing to communicate or cooperate with ICE enhances public safety in your community. Do you think failing to contact and cooperate ICE before Mendoza-Martinez's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?
- e. Why were the abstract goals of "trust" and "public safety" more important to you than preventing these two specific instances of assault and domestic violence?

In response to sub-questions c, d and e, trust and public safety are not merely abstract goals. A community cannot achieve public safety goals without trust in our criminal justice system.

As an elected law enforcement leader, my overriding goal is to ensure the safety of the public. As I stated in my testimony, effective policing is impossible without the cooperation of the public. Based on my experience, when local law enforcement is perceived as an extension of federal immigration authorities, the trust we all work hard to secure and maintain is eroded. As a result, immigrant communities — both documented and undocumented — are more likely to fear engagement with local law enforcement and retreat into the shadows. When there is a lack of trust of law enforcement within any community, people are less likely to report crimes or participate in investigations. Law enforcement's ability to solve crimes is diminished, making our communities less safe.

- f. What do you have to say to the victim of these crimes, whose victimization could have been prevented if you had alerted ICE and facilitated Mendoza-Martinez's removal from Durham and the United States?

I have limited information regarding Mr. Mendoza-Martinez's return to the United States and the crimes he committed thereafter. From the question, Mr. Mendoza-Martinez was charged with assault on a female and domestic violence. Jail records indicate he was detained in our facility for one day. As previously stated, ICE would have been alerted to Mr. Mendoza-Martinez's detention through the fingerprinting process. His release conditions were determined at the time of his arrest and detention in the Durham County Detention Facility. As the jail custodian, I follow court orders and the conditions of release. I do hope, however, that Mr. Mendoza-Martinez was held accountable for his actions in our criminal justice system and express the utmost concern for the victim and their loved ones.

- g. Under North Carolina's new law, would you have been required to alert ICE to Mendoza-Martinez's presence and cooperate with ICE to facilitate a transfer of custody before releasing him?

As of October 1, 2025, if a court order has been entered requiring a person to be held pursuant to a detainer, then yes, ICE would have received a second notification when that person meets their release conditions.

6. Mario Zavala-Zuniga, a criminal illegal alien from Honduras, was convicted of second-degree kidnapping in Durham, North Carolina.<sup>3</sup>
  - a. Why did your office not contact ICE to alert them that this criminal illegal alien was in your custody?
  - b. Why did your office not coordinate with ICE to ensure they knew in advance when he was scheduled to be released from your custody so they could effectuate a safe, orderly transfer of custody?
  - c. You stated at the hearing that refusing to communicate or cooperate with ICE enhances trust in your community. Do you think failing to contact and cooperate with ICE before Zavala-Zuniga's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?
  - d. You stated at the hearing that refusing to communicate or cooperate with ICE enhances public safety in your community. Do you think failing to contact and cooperate ICE before Zavala-Zuniga's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?

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<sup>3</sup> Dep't Homeland Sec. (March 23, 2026), <https://www.dhs.gov/news/2026/03/23/over-weekend-ice-arrested-murderers-pedophiles-rapists-child-abusers-and-gang>.

e. What do you have to say to the victim of these crimes, whose victimization could have been prevented if you had alerted ICE and facilitated Zavala-Zuniga's removal from Durham and the United States?

f. Under North Carolina's new law, would you have been required to alert ICE to Zavala-Zuniga's presence and cooperate with ICE to facilitate a transfer of custody before releasing him?

Mario Zavala-Zuniga was taken into custody for deportation by ICE on March 23, 2026. Mr. Zavala-Zuniga had been paroled from a North Carolina prison the previous day. His case illustrates the deportation process for an undocumented person who has committed a serious criminal offense in our country.

Mr. Zavala-Zuniga was arrested and committed to the Durham County Detention Facility on March 22, 2024. He was fingerprinted, and through AFIS, the system alerted all law enforcement agencies, including ICE, that Mr. Zavala-Zuniga was in our jail. He remained in our jail until his criminal conviction in April 2025 for second degree kidnapping. Upon his conviction, he was transferred away from the Durham County Detention Facility to a state prison where he served his sentence until his parole in March 2026. He was then taken into custody by ICE for deportation.

Regarding your sub-questions, ICE was notified and alerted of Mr. Zavala-Zuniga's detention in Durham County. Consistent with existing legal requirements and procedures, Durham County does not – and is not required to – notify ICE is convicted of a criminal offense and transferred to state prison. The state prison would be required to notify ICE of a release on parole or completion of the criminal sentence, not the Durham County Detention Facility.

Sub-questions c and d relate to trust and public safety. My understanding is that this case illustrates how a safe, orderly transfer of custody can be carried out upon release from criminal custody. More importantly, public trust was built and maintained by this case – a person was held accountable for his criminal behavior and subsequently, served his criminal sentence then was brought into immigration custody, consistent with the law and due process principles.

Regarding sub-question e, I do not have a record of Mr. Zavala-Zuniga being detained in my jail prior to the second degree kidnapping case. Finally, regarding sub-question f, the answer is no. Under North Carolina's recent amendments to G.S. 162-62, Durham County would not have been required to alert ICE prior to transferring him to state prison to serve a criminal sentence.

7. Jose Guzman, an illegal alien, was arrested for felony armed robbery charges in Durham 2019. Your office ignored an ICE detainer request—one of more than 500 your office ignored that year—and released Guzman. He then murdered a 19-year-old woman within six months of his release. Further, Guzman murdered his victim in your county.<sup>4</sup>

I would like to push back against the contention that the Durham County Detention Facility “ignored . . . more than 500” ICE detainer requests in 2019. Our internal records show the Durham County Detention Facility received approximately 85 ICE detainees in 2019. The article cited in your question states that there were 500 ICE detainer requests statewide in 2019, but did not delineate how many detainees were issued in each county.

- a. Why did your office not contact ICE to alert them that this criminal illegal alien was in your custody? Consistent with the requirements of G.S. 162-62, ICE was alerted to Mr. Guzman’s detention in Durham’s jail. As noted above, fingerprinting a detainee automatically alerts all law enforcement agencies, including ICE, that a person is in custody of the Durham County Detention Facility. After ICE received that notification, an ICE detainer was sent to the Durham County Detention Facility in October 2019. Mr. Guzman remained in our custody until his transfer to state prison in January 2023.

Mr. Guzman was in our facility in early 2019 for a different offense and was released on bond in March 2019. Based upon our records, Mr. Guzman was detained in our facility on December 31, 2018. He would have been fingerprinted at that time and ICE would have been alerted as a result, but we have no record of whether a detainer was issued at that time. We began maintaining ICE detainer records in 2019 and do not have any ICE detainer records for 2018. Our records only contain one ICE detainer recorded for Mr. Guzman – from October 2019.

- b. Why did your office not coordinate with ICE to ensure they knew in advance when he was scheduled to be released from your custody so they could effectuate a safe, orderly transfer of custody?

Consistent with the requirements of G.S. 162-62, ICE would have been alerted to Mr. Guzman’s detention in the Durham County Detention Facility.

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<sup>4</sup> Dep’t Homeland Sec. (Nov. 26, 2019), <https://www.dhs.gov/archive/news/2019/11/26/acting-secretary-wolf-addresses-dangerous-sanctuary-policies-north-carolina-law>.

Since becoming Sheriff in December 2018, I have explained that the Durham County Detention Facility's policies regarding ICE detainees are founded upon constitutional due process and Fourth Amendment principles. Our facility follows our processes as prescribed by law, but we do not carry out additional notification requirements that go above and beyond the processes set out under the law.

We will honor and enforce court orders and judicially issued warrants. I require my detention staff and deputies to perform our law enforcement duties in a safe and orderly manner. Those processes must be performed in accordance with the requirements of federal, state, and local law, as well as our nation's and our state's constitutions.

- c. You stated at the hearing that refusing to communicate or cooperate with ICE enhances trust in your community. Do you think failing to contact and cooperate with ICE before Guzman's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?
- d. You stated at the hearing that refusing to communicate or cooperate with ICE enhances public safety in your community. Do you think failing to contact and cooperate ICE before Guzman's period of custody ended so that ICE could ensure a safe, orderly transfer of custody promoted public trust?
- e. Why were the abstract goals of "trust" and "public safety" more important to you than preventing this specific murder?

In response to sub-questions c, d and e, as noted above, trust and public safety are not merely abstract goals. A community cannot achieve public safety goals without trust in our criminal justice system. As an elected law enforcement leader, my overriding goal is to ensure the safety of the public. As I stated in my testimony, effective policing is impossible without the cooperation of the public. Based on my experience, when local law enforcement is perceived as an extension of federal immigration authorities, the trust we all work hard to secure and maintain is eroded. As a result, immigrant communities — both documented and undocumented — are more likely to fear engagement with local law enforcement and retreat into the shadows. When there is a lack of trust of law enforcement within any community, people are less likely to report crimes or participate in investigations. Law enforcement's ability to solve crimes is diminished, making our communities less safe.

- f. What do you have to say to the murder victim and the victim's family, whose victimization could have been prevented if you had alerted ICE and facilitated Guzman's removal from Durham and the United States?

This is a terrible and tragic situation and I extend my condolences to the victim's family and loved ones. As stated in response to sub-question a, ICE would have been alerted of Mr. Guzman's detention in late 2018, early 2019 through the fingerprinting process. Mr. Guzman's release conditions were determined at the time of his arrest and detention in the Durham County Detention Facility. As the jail custodian, I follow court orders and the conditions of release.

- g. Under North Carolina's new law, would you have been required to alert ICE to Guzman's presence and cooperate with ICE to facilitate a transfer of custody before releasing him?

As of October 1, 2025, if a court order has been entered requiring a person to be held pursuant to a detainer, then yes, ICE would have received a second notification when that person meets their release conditions.

8. In my opening statement, I discussed the role of policy prioritization. Is your highest priority as Sheriff to the protect American citizens in your county or illegal aliens?
  - a. If you had to make a choice to either protect an Americans from certain harm or shield an illegal immigrant from deportation, which would you pick?

My role as sheriff is to protect all residents of Durham County, regardless of their immigration status, to the best of my ability. I do not "shield" any person who commits a crime from apprehension and criminal prosecution under North Carolina law.

9. In March, an illegal alien named Jose Medina shot and killed Sheridan Gorman in Chicago. Medina was apprehended by Border Patrol on May 9, 2023, but was released into the interior due to President Joe Biden's immigration policies. He was then arrested by Chicago authorities in June 2023 for shoplifting. Chicago did not alert ICE of his arrest. Chicago did not effectuate a transfer of custody of Medina to ICE for removal proceedings.<sup>5</sup>

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<sup>5</sup> Dep't of Homeland Sec. (March 22, 2026), <https://www.dhs.gov/news/2026/03/22/ice-asks-governor-pritzker-and-chicago-sanctuary-politicians-not-release-criminal>.

- a. As a matter of policy, do you agree with President Biden's mass parole policy that led to aliens like Medina being released into the United States' interior rather than detained and deported? Why or why not?
- b. As a matter of policy, do you agree with Chicago's policy to not alert ICE when it arrests an illegal alien, such as Medina? Why or why not?
- c. As a matter of policy, you agree with Chicago's policy to not cooperate with ICE to effectuate transfers of custody of illegal aliens, such as Medina? Why or why not?
- d. As a matter of p Policy, do you think Medina should have been deported, either after he was arrested by Border Patrol or after he was arrested by Chicago authorities in 2023? Why or why not?

In response to each of these sub-questions, as the sheriff of Durham County, North Carolina, I do not have an official position on any presidential administration's immigration policies and programs. Similarly, I do not have an official position on the programs and policies in other states or local jurisdictions. As an elected Sheriff, the people who live and work in my county – my constituents – require my staff to fairly and impartially perform our duties regardless of race, gender, sexual orientation, ethnicity, or immigration status. Public safety goals and priorities derive from an assessment of the crimes and issues most impacting the quality of life in our community. The foundation for all enforcement operations and public safety initiatives is adherence to the constitutional principles upon which our country was founded. These principles, coupled with my policing philosophy of fair and consistent enforcement, carried out with dignity and respect for all humankind, are afforded to every person regardless of their origin of birth.