



GEORGETOWN LAW

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April 16, 2026

Hon. Charles E. Grassley
Chairman
Senate Committee on the Judiciary
Washington, DC 20510-6275

Re: Questions for the Record — March 25 Subcommittee Hearing

Dear Chairman Grassley,

Thank you again for inviting me to testify at the Subcommittee the Constitution's March 25 hearing, "Protecting American Citizenship II: Federalism, Sanctuary Cities, and the Rule of Law." I have received Questions for the Record submitted by Senator Schmitt. Please find below my answers to those questions (along with copies of the questions themselves) for inclusion in the hearing record.

➤ **Questions from Senator Schmitt**

1. Do you think *Printz v. United States*, 521 U.S. 989 (1997), was correctly decided? Why or why not?

I do, as I suggested in my testimony and for reasons I have previously described. See Steve Vladeck, *Spending, Coercion, and Commandeering*, ONE FIRST, Feb. 3, 2025, <https://www.stevevladeck.com/p/121-spending-coercion-and-commandeering>

2. You've argued that states and localities "should be able to use disagreement with how federal policies are being enforced as a justification for carving out regulatory space to enforce policies all their own."

a. Do you think *Arizona v. United States*, 567 U.S. 387 (2012), was correctly decided? Why or why not?

I do, for reasons I have previously described. See Steve Vladeck, *Federal vs. State Immigration Enforcement Under Arizona v. United States*, ONE FIRST, Jan. 29, 2024, <https://www.stevevladeck.com/p/64-federal-vs-state-immigration-enforcement>

b. Do you think *Kansas v. Garcia*, 589 U.S. 191 (2020), was correctly decided? Why or why not?

I do not. Unlike the justices in the majority in *Garcia*, who are generally skeptical of the concept of “implied preemption,” I am comfortable with the idea that Congress can displace state law through implications drawn from statutory text. And on this point, I find Justice Breyer’s opinion concurring in part and dissenting in part to be persuasive.

- c. In your opinion, is North Carolina’s G.S. § 162-62 constitutional? Why or why not?

I am not familiar with the cited section, and therefore have formed no opinion as to its constitutionality.

- d. Do you believe that states and localities should be able to develop their own immigration policies, such as refusing to honor ICE detainers and providing illegal aliens with driver’s licenses? Why or why not?

As I suggested in my testimony, I believe that the Supreme Court’s anti-commandeering doctrine *requires* allowing states and localities to develop their own immigration policies when those policies are not preempted by federal law. As for whether it *should* allow them to do so, as noted above, I believe *Printz* is rightly decided.

- e. Do you believe that states and localities should be able to develop their own immigration policies, such as prohibiting illegal aliens from working in the state without federal work authorization or criminalizing entry into the state without federal legal status? Why or why not?

As I suggested in my testimony, I believe that the Supreme Court’s anti-commandeering doctrine *requires* allowing states and localities to develop their own immigration policies when those policies are not preempted by federal law. As for whether it *should* allow them to do so, as noted above, I believe *Printz* is rightly decided.

3. Is there any constitutional bar to a state or locality complying with an ICE detainer by alerting ICE of the person’s upcoming release and facilitating custody transfer before the period of state or local custody expires? Please explain.

There *could* be constitutional bars depending upon the circumstances, which the question does not provide. Some *state* constitutions, for instance, may impose constraints on such compliance. And if the detainer is ordering the state or locality to engage in behavior that violates, e.g., the Fourth Amendment, then yes, that could provide a bar as well. These may be the minority of cases, but it is not clear to me that they’d be an empty set.

4. Is there any constitutional bar to a state or locality cooperating with ICE pursuant to a 287(g) agreement with the federal government? Please explain.

There *could* be constitutional bars depending upon the circumstances, which the question does not provide. Some *state* constitutions, for instance, may impose constraints on such compliance. And if the detainer is ordering

the state or locality to engage in behavior that violates, e.g., the Fourth Amendment, then yes, that could provide a bar as well. These may be the minority of cases, but it is not clear to me that they'd be an empty set.

5. Judicial warrants were brought up by both members and witnesses during the hearing. Many sanctuary jurisdictions have refused to even comply with federal authorities absent a “judicial” warrant for the alien’s arrest. For example, Virginia Governor Spanberger has announced that, unless ICE has a judicial warrant, Virginia will refuse to cooperate on matters of immigration enforcement.

- a. Does the Fourth Amendment require a “judicial” warrant? Or does it require a warrant issued by a neutral and detached magistrate, who does not have to be a judge? Please explain.

I believe that the usage of the term “judicial warrant” is meant to stand in for the Supreme Court’s jurisprudence, under which the Warrant Clause, when it applies, requires a warrant from a “neutral and detached magistrate.” But the Court has been clear for decades that, “Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement.” An “administrative warrant” signed only by an executive branch officer quite obviously flunks that test. See *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972).

- b. Does federal immigration law provide for arrest and detention for civil immigration enforcement—i.e., deportation or removal proceedings—pursuant to a “judicial” warrant or an administrative warrant? Do federal immigration, magistrate, or district judges have statutory authority to issue search or arrest warrants in civil immigration matters, such as for removal proceedings? Please be sure to cite any relevant statutory provisions in your response.

There are a wide range of circumstances in which federal immigration law authorizes the government to arrest and detain individuals, and the specific requirements vary based upon the circumstances. There are some circumstances in which federal authorities can make immigration arrests without *any* warrant; there are some in which they can make arrests with only an administrative warrant; and there are some in which a judicial warrant is required. The specifics of those authorities are beyond the scope of my testimony. But the general point that I made during the hearing, and that I’ll reiterate here, is that there is very little authority for the proposition that federal officers can use an *administrative* warrant to enter a private home without consent. See Steve Vladeck, “Administrative Warrants” and the *Percival Op-Ed*, ONE FIRST, Jan. 26, 2026, <https://www.stevevladeck.com/p/206-administrative-warrants-and-the>.

6. Towards the end of your written testimony, you note that you have “some disagreements with some of [the] choices” that “different local and state governments have made in this space[.]”

- a. As a matter of policy, do you agree with jurisdictions refusing to alert ICE in advance of when an illegal alien will be released from jail? Why or why not?

I would not know how to answer this question categorically. I think different jurisdictions, comprised of different voters with different political preferences, can reach reasonably different conclusions as to what their local authorities should or should not do. What's good policy for the Mayor of New York City and for the Governor of Texas are necessarily going to be two very different questions.

- b. As a matter of policy, do you agree with jurisdictions refusing to alert in advance of when an illegal alien will be released from prison? Why or why not?

I would not know how to answer this question categorically. I think different jurisdictions, comprised of different voters with different political preferences, can reach reasonably different conclusions as to what their local authorities should or should not do. What's good policy for the Mayor of New York City and for the Governor of Texas are necessarily going to be two very different questions.

- c. As a matter of policy, do you agree with jurisdictions refusing to cooperate with ICE to effectuate a safe, orderly transfer of custody before an illegal alien's scheduled release from custody in that jurisdiction's jail?

I would not know how to answer this question categorically. I think different jurisdictions, comprised of different voters with different political preferences, can reach reasonably different conclusions as to what their local authorities should or should not do. What's good policy for the Mayor of New York City and for the Governor of Texas are necessarily going to be two very different questions.

- d. As a matter of policy, do you agree with jurisdictions refusing to cooperate with ICE to effectuate a safe, orderly transfer of custody before an illegal alien's scheduled release from custody in that jurisdiction's prison?

I would not know how to answer this question categorically. I think different jurisdictions, comprised of different voters with different political preferences, can reach reasonably different conclusions as to what their local authorities should or should not do. What's good policy for the Mayor of New York City and for the Governor of Texas are necessarily going to be two very different questions.

Please let me know if there's any additional information I can provide.

Sincerely yours,



Stephen I. Vladeck