HOUSE DOCKET, NO. 2165 FILED ON: 1/17/2019

HOUSE . . . . . No. 3337

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to federal and local law enforcement cooperation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Bradley H. Jones, Jr.	*20th Middlesex*	*1/17/2019*
Elizabeth A. Poirier	*14th Bristol*	*1/17/2019*
Susan Williams Gifford	*2nd Plymouth*	*1/17/2019*
Paul K. Frost	*7th Worcester*	*1/30/2019*
Todd M. Smola	*1st Hampden*	*1/31/2019*
Timothy R. Whelan	*1st Barnstable*	*1/28/2019*
Randy Hunt	*5th Barnstable*	*1/28/2019*
David F. DeCoste	*5th Plymouth*	*1/28/2019*
William L. Crocker, Jr.	*2nd Barnstable*	*1/28/2019*
Steven S. Howitt	*4th Bristol*	*1/30/2019*
Angelo L. D'Emilia	*8th Plymouth*	*1/31/2019*
Alyson M. Sullivan	*7th Plymouth*	*1/31/2019*
Michael J. Soter	*8th Worcester*	*2/1/2019*
Hannah Kane	*11th Worcester*	*2/1/2019*

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By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 3337) of Bradley H. Jones, Jr., and others relative to empowering law enforcement to cooperate with the federal government to transfer custody of certain convicted criminals. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to federal and local law enforcement cooperation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 276 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 20R the following section:-

Section 20S. (a) Any employee of the Commonwealth, or a public instrumentality or political subdivision thereof, who holds police powers or the powers of a sheriff or deputy sheriff, including but not limited to municipal police officers, court officers, and state troopers, and who has lawful custody of a person may, upon receipt of (1) a written request from United States Immigration and Customs Enforcement requesting detention of such person on the grounds that there is probable cause that such person is a removable alien and (2) an administrative warrant for arrest or warrant of removal/deportation, detain such person for a reasonable period of time after such person would otherwise be released from custody in order to transfer custody of such person to United States Immigration and Customs Enforcement, provided that a supervisory officer of such employee's agency has, in accordance with a policy

promulgated in accordance with subsection (c), first determined that there are specific facts indicating that the person to be detained poses a threat to public safety; and further provided that such person be provided with a copy of such written request; and further provided that in no circumstances shall such detention exceed 12 hours unless an appropriate judicial officer shall have made a probable cause determination under the procedure set forth in subsection (d).

(b) As used in subsection (a), "specific facts indicating that the person to be detained poses a threat to public safety" shall mean that, at a minimum, any of the following facts are true with respect to such person:

(1) the person has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;

(2) the person has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a);

(3) the person has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the person's immigration status;

(4) the person has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43); or

(5) the person has been convicted of a crime of (i) domestic violence; (ii) sexual abuse or exploitation; (iii) trafficking in persons in violation of sections 50 or 51 of chapter 265 or like violations of the law of another state, the United States or a military, territorial or Indian tribal authority; (iv) burglary; (v) unlawful possession or use of a firearm; (vi) drug distribution or

trafficking; (vii) second or subsequent operating or driving under the influence; or (viii) any other offense for which the person has been sentenced to time in custody of 180 days or more.

(c) Each agency of the Commonwealth or any public instrumentality or political subdivision of the Commonwealth that chooses to allow its employees to exercise the authority granted by subsection (a) shall promulgate a written policy designating which supervisory officers may make the determination required by subsection (a) before a person is detained and the criteria such supervisory officer shall use in making such determination.

(d) A determination of probable cause for detention shall be made by an appropriate judicial officer and promptly reduced to writing. The appropriate judicial officer shall consider any information presented by the detaining agency, whether or not known at the time of initial detention. The detaining agency shall present the information under oath or affirmation or under the pains and penalties of perjury, and may present the information orally, in person or by any other means, or in writing. If presented in writing, the information may be transmitted to the appropriate judicial officer by facsimile transmission or by electronic mail or by such other electronic means as may be found acceptable by the court. The determination of probable cause for detention shall be an ex parte proceeding. The person detained shall have no right to appear, either in person or by counsel. If the judicial officer determines that there is not probable cause to believe the person detained is a removable alien, then the judicial officer shall order that the person be released forthwith. Such a determination and order shall be filed in the District Court having jurisdiction over the location of the detention, together with all written information submitted by the detaining agency. Such documents shall be filed separately from the records of criminal cases, and shall be open for inspection by the public. If a determination under this subsection is necessary, the detaining agency shall present the information necessary to obtain

such determination to the appropriate judicial officer as soon as reasonably possible after the detention begins, but no later than 12 hours after the detention begins.

(e) This section shall not be construed to give rise to a private right of action and shall not be construed so as to make unlawful any arrest in this commonwealth which would otherwise be lawful.