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VIA REGULAR AND ELECTRONIC MAIL

Sheriff Eric G. Samson
Androscoggin County Sheriff's Office
2 Turner Street
Auburn, ME 04210

Dear Sheriff Samson:

The Trump Administration has given clear indications that it seeks to encourage, if not compel, local jurisdictions to directly support federal immigration enforcement,¹ and a bill is currently pending in the Maine legislature that would further this federal agenda.² On behalf of the American Civil Liberties Union Foundation of Maine, we are writing to offer our support and assistance in any efforts you may undertake to resist the pressure from the Trump Administration, including any efforts your department may make to refine its policies and practices in this area. And, we are writing to inform you of potential challenges and legal liability associated with local law enforcement involvement in federal immigration operations.

The enforcement of immigration laws is a role assigned to the federal government under Article 1, Section 8 of the Constitution. You and your officers have no obligation under federal law to participate in immigration enforcement. An increasing number of states and localities across the nation have opted to leave the immigration enforcement business to the federal government and to focus their limited resources on local matters – even before President Trump announced his mass deportation plans.³ We believe that this is the right decision for Maine law enforcement agencies as well.

¹ Executive Order: Enhancing Public Safety in the Interior of the United States (January 25, 2017); Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017); DHS Memoranda: Enforcement of the Immigration Laws to Serve the National Interest (February 20, 2017).

² L.D. 366, “An Act To Ensure Compliance with Federal Immigration Law by State and Local Government Entities,” (128th Legis. 2017).

³ Recent reaction from law enforcement leaders to Trump Administration policies captures this same sentiment: <https://www.theguardian.com/us-news/2017/mar/01/police-chiefs-letter-trump-deportation->

Principal Reasons to Decline Involvement in Federal Immigration Enforcement

- *Local Priorities* – Local law enforcement agencies have traditional priorities, including responding to emergencies, patrolling neighborhoods to prevent crime, facilitating certain functions of the court system, and numerous other duties. Time spent engaging in federal immigration enforcement detracts from performance of these core duties. Immigration enforcement does not advance local priorities, because it commonly targets individuals who pose no threat to public safety.⁴ Traditional police work designed to solve serious crimes should not be displaced by efforts to identify and arrest people who may have overstayed a visa.⁵
- *Local Law Enforcement/Community Relations* – To effectively protect public safety, local law enforcement needs cooperation from local communities. Local residents serve as witnesses, report crime, and otherwise assist law enforcement. The foundation for this cooperation can be destroyed when local police are viewed as an extension of the immigration system.⁶ Survivors of domestic violence refrain from reporting offenses, and individuals with key information about property crimes fail to contact the police. These outcomes are not limited to the undocumented population. Many undocumented immigrants have U.S. citizen spouses and children. And because citizens and immigrants with legal status often fall victim to mistakes by ICE, their views toward local officials can sour as well.⁷
- *Fiscal Considerations* – Immigration enforcement is expensive.⁸ The federal government does not reimburse the cost of most programs and practices, and local jurisdictions can incur millions of dollars in added expenses as a result. These costs

immigrants, and even prior to the Trump Administration, localities had expressed clear reservations in this area – see, for example, the 2013 Statement from the Major Cities Chiefs Association: <http://democrats-judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/MCCAPC130821.pdf>.

⁴ Transactional Records Access Clearinghouse (TRAC), *Who Are the Targets of ICE Detainers?*, Feb. 20, 2013 (“In more than two out of three of the detainers issued by ICE, the record shows that the individual who had been identified had no criminal record — either at the time the detainer was issued or subsequently.”), <http://trac.syr.edu/immigration/reports/310/>.

⁵ Few ICE Detainers Target Serious Criminals, TRAC Immigration, <http://trac.syr.edu/immigration/reports/330/> (Mar. 2, 2017).

⁶ See, e.g. the University of Illinois at Chicago report from May 2013: https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf.

⁷ Data over a four year period analyzed by Syracuse Transactional Records Access Clearinghouse revealed that ICE had placed detainers on 834 U.S. citizens and 28,489 legal permanent residents.

⁸ Edward F. Ramos, *Fiscal Impact Analysis of Miami-Dade’s Policy on “Immigration Detainers”* (2014) (“[T]he annual fiscal impact of honoring immigration detainers in Miami-Dade County is estimated to be approximately \$12.5 million.”),

<https://immigrantjustice.org/sites/immigrantjustice.org/files/Miami%20Dade%20Detainers--Fiscal%20Impact%20Analysis%20with%20Exhibits.pdf>.

come through additional detention expenses, overtime payments for personnel, and litigation costs.⁹

- *Legal Exposure* – Maine law enforcement officers cannot arrest someone merely because someone else asks them to, even if that someone is the federal government. Local jurisdictions that participate in immigration enforcement often end up in court, and some have been held liable for constitutional violations. Local police acting upon ICE detainer requests have faced liability for unlawful detentions in violation of the Fourth Amendment and Due Process Clause. They have also been sanctioned by courts for violating prohibitions against racial profiling, especially under 287(g) “taskforce” agreements.¹⁰

As more and more community law enforcement agencies across the country consider how to respond to the renewed pressure to act as an arm of the federal immigration enforcement apparatus, two particularly ill-conceived practices have emerged. These have led to a range of negative consequences, including constitutional violations, for local governments.

Problem #1: Complying with ICE Detainers

An “ICE detainer” is a written request that local law enforcement detain an individual for an additional 48 hours after he/she would otherwise be released. These have been used to provide ICE additional time to examine an individual’s immigration status, decide whether to take the individual into custody, and/or facilitate transfer into federal custody. It is important to note that ICE detainer requests are voluntary, not mandatory. These detainers are typically issued without a judicial warrant supported by probable cause. In consequence, once the traditional basis for criminal detention has lapsed, continued detention violates the Fourth Amendment’s bar on unlawful detentions. Federal courts around the nation have held ICE and local law enforcement agencies liable for unconstitutional detentions under ICE detainers.¹¹ (*See, e.g., Morales v. Chadbourne*, 793 F.3d 208 (1st Cir., 2015) (holding that ICE agents subjected an individual to a separate seizure under the Fourth Amendment when they had her held pursuant to an ICE detainer after she would otherwise have been released); *see also Morales v. Chadbourne*, 996 F.Supp. 2d 19 (D. Rhode Island, 2014) (finding liability for

⁹ A study by Justice Strategies of Los Angeles’ compliance with ICE detainers indicated that the program cost the county over \$26 million per year: <http://www.justicestrategies.org/publications/2012/cost-responding-immigration-detainers-california>.

¹⁰ Letter from ACLU, to Bruce Friedman, Senior Policy Advisor, Office for Civil Rights and Civil Liberties, Dep’t of Homeland Sec. (Mar. 15, 2016), *available at* <https://www.aclu.org/letter/aclu-letter-dhs-crcl-re-287g-renewals-march-2016>.

¹¹ <https://www.aclu.org/other/recent-ice-detainer-cases?redirect=recent-ice-detainer-cases>.

local law enforcement agents, who did not appeal). In other words, as the leader of your agency, if you make a *choice* not to ask for a judicial warrant from ICE when presented with a detainer, you could bear the consequences of the federal government's mistakes.

Most often, ICE's detainers are merely the beginning of an investigation into someone's status, and that investigation often goes nowhere. In a four-year period, the Obama Administration placed detainer requests on 834 U.S. citizens—who are categorically *not* subject to removal—according to government data. Given the Trump Administration's pledge to expand ICE personnel¹² and heighten focus on immigration enforcement,¹³ it is inevitable that these types of mistakes will increase. Involvement with ICE in these practices unquestionably places your law enforcement agency at risk of liability – at a level greater than ever before – for which ICE will not provide indemnification.

Alternatively, many localities refuse to honor ICE detainers unless they are supported by a judicial warrant.¹⁴ Localities that maintain this requirement are promoting adherence to the Constitution, while also protecting their own best interests. These communities are not violating any law, including 8 U.S.C. § 1373, which President Trump referenced in his Executive Order. Even when local law enforcement agencies uphold the Fourth Amendment by declining to honor ICE detainers that are not supported by a judicial warrant, ICE can still carry out its role through a range of authorities and federal capabilities.

Problem #2: Participation in 287(g) Program

Section 287(g) of the Immigration and Nationality Act allows ICE to enter into agreements with local law enforcement that permit designated local police officers to perform federal immigration enforcement functions. There are two principal forms of 287(g) agreements – “task force” models and “jail” models. Under the task force model, local police may interrogate and arrest alleged noncitizens encountered in the field who they believe to be deportable. Under the jail model, local police may interrogate alleged noncitizens in criminal detention who have been arrested on local charges, issue detainers on those believed to be subject to deportation, and begin deportation proceedings.

¹² <http://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill>.

¹³ <http://www.sfchronicle.com/bayarea/article/Trump-s-new-priorities-expose-more-immigrants-10949458.php>.

¹⁴ See, e.g. the clear recommendation from the Kentucky Association of Counties from September 2014: <http://www.aclu-ky.org/wp-content/uploads/2014/09/kaco-memo.pdf>.

The 287(g) program is the most extensive form of local entanglement in federal immigration enforcement. It effectively transforms local police into federal immigration agents – yet without the federal funds to cover all of the expenses incurred by the local jurisdiction, and without same level of training that federal agents receive. 287(g) agreements often involve the full spectrum of negative results outlined above (diversion from core responsibilities, deterioration in community trust, negative fiscal impact, and legal exposure). Indeed, the DHS Inspector General has documented the challenges encountered in the 287(g) program, noting, for example, that “claims of civil rights violations have surfaced in connection with several [law enforcement agencies] participating in the program.”¹⁵ The public has become more fully aware of these problems through the unconstitutional¹⁶ implementation of a 287(g) program in Maricopa County, Arizona under Sheriff Joe Arpaio, who was subsequently voted out of office.

ACLU Recommendation: Place Local Communities and the Constitution First

In order to preserve the constitutional rights of all persons in the United States, the ACLU strongly recommends the adoption of policies that limit involvement in federal immigration enforcement and place local community needs first. This includes requiring judicial warrants in order to honor ICE detainers and declining to participate in the 287(g) program, as well as avoiding other forms of engagement in federal immigration enforcement that lead to many of the same problems (*e.g.* notifying ICE of an individual’s release date or home address, which can itself prolong someone’s detention and sow distrust in the community). We believe, and evidence has shown, that such a decision is in the best interest of local communities. The Constitution protects states and localities from being compelled to perform federal functions, and choosing to engage in federal immigration enforcement results in clear, negative consequences to public safety and local resources. The bottom line is that it is fully consistent with federal law for state and local law enforcement to avoid engaging in federal immigration enforcement.

The ACLU of Maine remains a resource for any additional information you may need on these immigration-related matters. We can also assist in the development of policies that formalize an appropriate set of rules on these issues (*e.g.* policies that limit inquiries by police regarding immigration status). Provisions that have been adopted by jurisdictions around the country along with other support materials are also found in a recent guidelines issued by the New York Attorney General.¹⁷

¹⁵ [DHS OIG Report on 298\(g\)](https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf), https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf.

¹⁶ *Melendres v. Arpaio*, 598 F. Supp. 2d 1025 (D. Ariz. 2009).

¹⁷ Guidance Concerning Local Authority Participation in Immigration Enforcement and Model Sanctuary Provisions,

We understand that the Trump Administration has threatened to strip federal funds from jurisdictions that decline to direct their personnel and resources toward federal immigration priorities – a set of jurisdictions the Administration has lumped under the characterization of “sanctuary jurisdictions.” However, prior court decisions indicate that the Administration will encounter substantial hurdles if it attempts to follow through on that pledge. We, along with our colleagues across the country, intend to resist these attacks on our communities and our neighbors, and we hope that these efforts will give us an opportunity to work together.

Very truly yours,



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Executive Director



Zachary L. Heiden, Esq.
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