



April 5, 2017

Commissioner Walt Monegan
Department of Public Safety
5700 East Tudor Road
Anchorage, AK 99811

by email: walt.monegan@alaska.gov

Re: Liability for cooperation with federal immigration officials

Dear Commissioner Monegan:

We hope that you are well. We write to inform you that, contrary to the recent suggestions made by U.S. Attorney General Jeff Sessions, the Alaska Department of Public Safety is not required to entangle itself in federal immigration law and that, if it does, it would expose itself to real legal liability.

This federal overreach comes at great cost for the Department, and in this current climate, our state simply cannot afford to put itself at risk by cooperating with federal immigration officials, including U.S. Immigration and Customs Enforcement (ICE). An increasing number of agencies across the nation have for years opted to leave the immigration enforcement business to the federal government; by sharing these agencies' reasons and some relevant cases with you, we hope that you too will choose the responsible and fiscally prudent option of leaving the enforcement of federal laws to the federal government.

For nearly one hundred years, the American Civil Liberties Union has fought to defend the Constitution and the nation's values of liberty and equal treatment. The ACLU of Alaska represents thousands of members, supporters, and activists throughout the state who fight to secure the same values here in Alaska. We write to offer our support in resisting federal overreach, and to ask you to revisit the Department's policies and procedures in this area.

Alaska cannot be required to enforce federal immigration law.

Article 1, Section 8 of the U.S. Constitution exclusively assigns immigration law to the federal government; its enforcement is a federal, not state, question.

The U.S. Supreme Court recognized that, "As a general rule, it is not a crime for a removable alien to remain present in the United States,"¹ and that because of our Constitutional system of federalism—in which both the federal government and each of the fifty states are independently sovereign—and the "significant complexities involved in

¹ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

enforcing federal immigration law,”² states do not have the general right—or ability—to enforce federal immigration law.

Arizona’s holding is anchored in a firm jurisprudential foundation. Our federalist system of dual sovereigns between the states and federal government, reflected in the U.S. Constitution’s Tenth Amendment, means that “the Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”³ For, “such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”⁴

Local and state law enforcement agencies face substantial legal liability by cooperating with ICE.

Immigration law is immensely complicated, and as a result, even participating in ICE investigations requires special training through express authorization. “There are significant complexities involved in enforcing federal immigration law, including the determination whether a person is removable.”⁵ The immigration status of any particular person can vary greatly, and whether they are in fact in violation of the complex federal immigration regulations is very difficult, if not impossible, for a patrol officer to determine.⁶ ICE agents themselves have made the mistake of unlawfully detaining lawful permanent residents 28,489 times from 2008 to 2012, and detaining U.S. citizens 834 times.⁷

Participating in immigration enforcement is fraught with legal risk, particularly for officers with little or no specialized training. For many law enforcement agencies, working with ICE means lawsuits for civil rights violations and racial profiling. Perhaps one of the most notorious examples is Sheriff Joe Arpaio, who cost Maricopa County taxpayers tens of

² *Id.* at 2506.

³ *Printz v. United States*, 521 U.S. 898, 935 (1997).

⁴ *Id.*

⁵ *Arizona*, 132 S. Ct. at 2506 (“Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer.”); *Melendres*, 695 F.3d at 1000.

⁶ Because of the difficulty and complexity involved in determining someone’s immigration status, and the reality that the relevant facts cannot be readily observed by a patrol officer, stops and arrests in attempts to enforce immigration laws often violate state and federal prohibitions on discrimination because they are based on an individual’s perceived ethnicity, national origin, or language skills. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) (holding that stops based on ethnic origin in attempts to enforce immigration law are unconstitutional). Notably, participation in a 287(g) agreement would not protect law enforcement agencies from liability for this kind of profiling.

⁷ Transactional Records Access Clearinghouse, “ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents,” *available at* <http://trac.syr.edu/immigration/reports/311/>.

millions of dollars and forced the county to raise property taxes to pay legal expenses, before he was voted out of office in November 2016.⁸

Cooperation with ICE destroys officers' relationships with their community and interferes with their main responsibilities.

Cooperating with immigration officials and sharing information with ICE detracts from law enforcement's traditional responsibilities and degrades officers' relationships with their community. The very foundation for cooperation with local communities is destroyed when local police are viewed as an extension of the immigration system.⁹ Individuals with key information about burglaries or other crimes fail to contact the police and, in particular, domestic violence victims will not report their abuse—instead, they will be cowed by their abusers' threats that calling law enforcement could get them deported.

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.¹⁰ We do not want to see the State Troopers or other law enforcement entities within the Department suffer the same fate. Additionally, traditional law enforcement priorities, including responding to emergencies, patrolling neighborhoods to prevent crime, facilitating certain functions of the court system, and numerous other duties should not be displaced with targeting individuals who pose no threat to public safety.¹¹

ACLU recommendation: place local communities and the Constitution first

There are no advantages for state and local law enforcement to enforce federal immigration law. There is a real legal risk of doing so: the Constitution protects states and localities from being compelled to enforce federal immigration law; it offers no protections for those that do.

In order to preserve the Constitutional rights of everyone in Alaska, our state and local law enforcement agencies should adopt policies that place local communities first and limit

⁸ *Melendres v. Arpaio*, 598 F. Supp. 2d 1025 (D. Ariz. 2009).

⁹ 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.

¹⁰ 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.

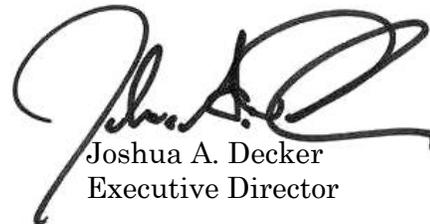
¹¹ Few ICE Detainers Target Serious Criminals, TRAC Immigration, <http://trac.syr.edu/immigration/reports/330/> (Mar. 2, 2017). Transactional Records Access Clearinghouse (TRAC), Who Are the Targets of ICE Detainers?, Feb. 20, 2013 (“In more than two out of three of the detainers issued by ICE, the record 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/>.

their involvement in enforcing federal immigration laws. Given the substantial legal and financial liability that officers face for targeting specific groups without justification or unlawfully detaining someone, leaving the immigration enforcement work to ICE is smart policy. Evidence has shown that such a decision is in the best interest of local communities.

We would like to meet with you to discuss how to develop smart policies that minimize the Department's exposure to legal liability, engender better relationships with the community, and further its priorities of public safety. In the meantime, the ACLU remains a resource for any additional information you may need on these immigration-related matters. We will continue to monitor developments throughout Alaska in our role as defender of the Constitution, and take action to support or challenge your policies and practices, as needed.

We would like to schedule a meeting with you to discuss these policies at your earliest convenience. To schedule this, please contact our legal and policy director, Tara Rich, at trich@acluak.org or 907.263.2007. Thank you for your consideration.

Sincerely,



Joshua A. Decker
Executive Director