

March 13, 2017

The Honorable Donald J. Trump  
The White House  
1600 Pennsylvania Ave., NW,  
Washington, D.C. 20502

**RE: PROPOSED TERMINATION OF FUNDING TO “SANCTUARY” JURISDICTIONS UNDER EO 13768 IS UNCONSTITUTIONAL**

Dear Mr. President:

The undersigned 292 constitutional, immigration, administrative law, and international law professors and scholars<sup>1</sup> write to share our legal conclusion that section 9(a) of Executive Order 13768 (“EO 13768”), which directs the federal government to withhold federal funding from states, counties, and cities with “sanctuary” policies, is unconstitutional. Consequently, we strongly urge your Administration to rescind section 9(a) of EO 13768.

There is no single legal definition of “sanctuary cities” or “sanctuary” jurisdictions. The term has been used to tarnish or celebrate (depending on the speaker) laws, ordinances, or policies that states, cities, and counties have opted to disentangle them from federal immigration enforcement. On January 25, 2017, you signed EO 13768, which directs the Attorney General and Secretary of the U.S. Department of Homeland Security (DHS) to designate jurisdictions who willfully do not comply with 8 U.S.C. § 1373 as “sanctuary jurisdictions,” identify the federal grants administered to those jurisdictions, and withhold funds to punish jurisdictions that do not rescind their policies.<sup>2</sup> **Based on our legal analysis of EO 13768, 8 U.S.C. § 1373, the U.S. Constitution, and relevant Supreme Court precedent, we conclude that terminating federal funding from these jurisdictions in order to coerce them to rescind their “sanctuary” policies violates the Tenth Amendment, exceeds the federal government’s powers under the Spending Clause, and exceeds the president’s powers under Article II.**

**I. JURISDICTIONS HAVE INHERENT CONSTITUTIONAL AUTHORITY TO PROMULGATE “SANCTUARY” POLICIES**

When states, cities, and counties promulgate “sanctuary” policies, they are exercising their reserved constitutional authority under the Tenth Amendment to promote the health, safety, and welfare of their residents.<sup>3</sup> At their core, “sanctuary” policies are decisions by state and

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<sup>1</sup> All institutional affiliations are for identification purposes only and do not signify institutional endorsement of this letter.

<sup>2</sup> EXEC. ORDER NO. 13,768, 82 C.F.R. 8799 § 9 (2016), available at <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>.

<sup>3</sup> U.S. CONST. amend. X; *Sligh v. Kirkwood*, 237 U.S. 52 (1915); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“The promotion of safety of persons and property is unquestionably at the core of the State’s police power”).

local governments about state and local priorities, particularly law enforcement priorities. Many of these policies offer the protections of equal treatment, privacy and confidentiality to community members. Some limit affirmatively sharing an individual’s immigration status, release date, or other immigration information except as required by law; others direct local law enforcement to refrain from asking victims and witnesses about immigration status; still others prohibit local authorities from investigating, arresting, or detaining individuals on immigration-related grounds. Importantly, “sanctuary” policies do not prevent federal immigration authorities from entering local jurisdictions and detaining, arresting, or deporting immigrants using federal resources and officers. More than 600 counties limit the use of their resources for the purposes of immigration enforcement and could conceivably be considered as having “sanctuary” policies.<sup>4</sup>

## II. “SANCTUARY” POLICIES DO NOT VIOLATE 8 U.S.C. § 1373

As an initial matter, we believe that 8 U.S.C. § 1373 is unconstitutional as commandeering under the Tenth Amendment,<sup>5</sup> a contention at the center of the legal challenge brought by the city of San Francisco.<sup>6</sup> However, even if 8 U.S.C. § 1373 is constitutional, “sanctuary” policies do not violate 8 U.S.C. § 1373.<sup>7</sup> The plain text of 8 U.S.C. § 1373 covers only information about citizenship or immigration status—not other information—and does not require state and local actors to collect *any* information regarding immigration status. 8 U.S.C. § 1373 only prohibits restrictions on the sharing of information that is collected.<sup>8</sup> Under 8 U.S.C. § 1373, state and local jurisdictions “may not prohibit, or in any way restrict, any government entity or official from sending to” the federal government “information regarding the citizenship or immigration

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<sup>4</sup> Lena Graber, Nikki Marquez, *Searching for Sanctuary: An Analysis of America’s Counties & Their Voluntary Assistance With Deportations* 12, IMMIGRANT LEGAL RESOURCE CENTER, Dec. 2016, <https://www.ilrc.org/searching-sanctuary>.

<sup>5</sup> See Ilya Somin, *Why Trump’s executive order on sanctuary cities is unconstitutional*, WASHINGTON POST, Jan. 26, 2017, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/> (“As Scalia put it in the same opinion, federal law violates the Tenth Amendment if it ‘requires [state employees] to provide information that belongs to the State and is available to them only in their official capacity.’ The same is true if, as in the case of Section 1373, the federal government tries to prevent states from controlling their employees’ use of information that ‘is available to them only in their official capacity.’”).

<sup>6</sup> Compl. ¶ 75, *San Francisco v. Trump* (N.D. Cal. 2017) (“Section 1373(a) unconstitutionally regulates ‘States in their sovereign capacity.’ (citing *Reno v. Condon*, 528 U.S. 141, 151 (2000)).”).

<sup>7</sup> Unfortunately, the Executive Order has already unconstitutionally coerced at least one jurisdiction. The Mayor and county commission of Miami-Dade recently ordered jails to comply with federal immigration detainers in response to EO 13768. See Alan Gomez, *Miami-Dade Commission votes to end county’s ‘sanctuary’ status*, Feb. 17, 2017, USA TODAY <http://www.usatoday.com/story/news/nation/2017/02/17/miami-dade-county-grapples-sanctuary-city-president-trump-threat/98050976/>. Not only does the mayor and commission’s order direct local jails to violate the Fourth Amendment by complying with warrantless detainer requests, but such directive is unnecessary because the Miami-Dade ordinance, like sanctuary policies in general, does not violate 8 U.S.C. § 1373. Moreover, the mayor and county’s decision instead open Miami-Dade to legal liability in light of extensive federal court decisions that warrantless detainers are unconstitutional.

<sup>8</sup> *Harbison v. Bell*, 556 U.S. 180 (2009) (looking first to plain text of statute to discern congressional intent).

status . . . of an individual” or restrict the “[m]aintaining [of] such information.”<sup>9</sup> Further, nothing in 8 U.S.C. § 1373 requires jurisdictions to prolong the detention of individuals otherwise entitled to release to comply with an immigration detainer.<sup>10</sup> Thus, “sanctuary” policies that direct local law enforcement agencies to refrain from collecting immigration information or to decline detainers requesting prolonged detention requests do not violate 8 U.S.C. § 1373.

Moreover, to the extent your administration purports to impose additional requirements beyond 8 U.S.C. § 1373 by promulgating EO 13768, such action exceeds the authority granted to the Executive under Article II to “take care that the laws be faithfully executed.”<sup>11</sup> Importantly, 8 U.S.C. § 1373 cannot, in any event, be the basis for the executive branch to create new conditions on federal grants.

### **III. THE EXECUTIVE’S ATTEMPTED IMPOSITION OF NEW CONDITIONS ON GRANTS EXCEEDS THE FEDERAL GOVERNMENT’S SPENDING CLAUSE AUTHORITY**

Longstanding Supreme Court precedent interpreting Congress’s Spending Clause power mandates that the federal government may not impose conditions on grants to states and localities unless the conditions are “unambiguously” stated “so that the States can knowingly decide whether or not to accept those funds.”<sup>12</sup> Few if any federal grants to “sanctuary” cities are explicitly conditioned on compliance with 8 U.S.C. § 1373. Any such conditions must be approved by Congress and can only be applied prospectively on new grants, not retroactively to grants that have already been disbursed. The executive cannot simply make up new conditions on its own and impose them on state and local governments.

Moreover, any spending conditions must be germane to the “federal interest in [the] particular [] project or program[.]”<sup>13</sup> EO 13768’s attempt to reach funding streams unrelated to immigration enforcement would violate that requirement. Finally, the federal government may not use its Spending Clause power to induce state and local government action that is itself unconstitutional.<sup>14</sup> Any attempt to induce states and localities to violate constitutional rights—for example, by unlawfully holding individuals on immigration detainers—would be an “illegitimate exercise of the [Spending Clause] . . . power.”<sup>15</sup>

These limits on the federal government’s spending clause powers are not mere technicalities. If the President could make up new conditions on federal grants without specific, advance

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<sup>9</sup> 8 U.S.C. § 1373 (West 2016).

<sup>10</sup> *See id.*

<sup>11</sup> U.S. CONST. art. II. (“he shall take Care that the Laws be faithfully executed”).

<sup>12</sup> *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17, 24 (1981); *South Dakota v. Dole*, 483 U.S. 203 (1986).

<sup>13</sup> *South Dakota* 483 U.S. at 207-08 (1987) (citing *Massachusetts v. United States*, 435 U.S. 444, 461 (1978)).

<sup>14</sup> *Id.* at 210.

<sup>15</sup> *Id.* at 210-11.

congressional authorization, impose them on funding streams wholly unrelated to immigration enforcement, and induce local actors to engage in actions that are themselves unconstitutional, it would create chaos in our constitutional system. Such an executive power-grab would also usurp Congress’s legislative powers. It is Congress, not the president, which has the constitutional authority to attach conditions to federal grants.<sup>16</sup>

#### **IV. WITHHOLDING FEDERAL FUNDING TO “SANCTUARY” JURISDICTIONS IS UNCONSTITUTIONAL UNDER TENTH AMENDMENT**

Nor can the executive branch use the threat of withholding federal funding to coerce states and localities to rescind “sanctuary” policies. EO 13768 directs the Office of Management and Budget to catalogue “all Federal grant money that is currently received by any “sanctuary” jurisdiction.” Among others, the federal government administers a variety of law-enforcement grants to state and local jurisdictions under U.S. Department of Justice (DOJ) programs, including through Edward Byrne Memorial Justice Assistance Grants, State Criminal Alien Assistance Program, and Office of Community Oriented Policing Services.<sup>17</sup> These grants are critical in the funding of public safety, crime victim and witness initiatives, and drug treatment and enforcement. The executive branch cannot, consistent with the Tenth Amendment, threaten to cut off these law-enforcement grants, much less the myriad other federal grants that states and cities receive, in order to coerce “sanctuary” jurisdictions to comply with EO 13768’s directives.

Critically, the Tenth Amendment prohibits the federal government from “commandeering” state and local government by simply forcing them to enforce federal law.<sup>18</sup> In a case involving federal commands to state and local law enforcement, the Supreme Court held in *Printz v. United States* that the “Federal Government may not compel the States to enact or administer a federal regulatory program.”<sup>19</sup> The federal government can no more command a “sanctuary” jurisdiction to implement the executive’s deportation policy than it can command a state legislature to enact a statute or a state executive official to conduct background checks on gun purchasers.<sup>20</sup> Forcing counties and cities to allocate local resources, including police officers, technology, and personnel, to enforce federal immigration law by detaining immigrants, to collect and share immigration information, or otherwise participate in immigration enforcement runs afoul of the Supreme Court’s clear prohibition on commandeering. Consequently, neither Congress nor your Administration can force “sanctuary” jurisdictions to

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<sup>16</sup> U.S. CONST. art. II. (“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . .”).

<sup>17</sup> Memorandum from Matthew J. Piers, et. al, Hughes Socol Piers Resnick, & Dym, Ltd. on Legal Issues Regarding Local Policies Limiting Local Enforcement of Immigration Laws and Potential Federal Responses, to Tom Cochran, The U.S. Conference of Mayors, Jan. 13, 2017, <https://www.nilc.org/wp-content/uploads/2017/02/HSPRD-Memo-on-Local-Enforcement-of-Immigration-Laws-and-Federal-Resp.pdf>.

<sup>18</sup> *Printz v. United States*, 521 U.S. 898 (1997).

<sup>19</sup> *Id.* at 898-900.

<sup>20</sup> *New York v. United States*, 505 U.S. 144, 166 (1992).

enforce federal immigration law by directing them to rescind their “sanctuary” policies.

Importantly, there is no exception to the Tenth Amendment that allows federal statutes and regulations to mandate the disclosure of private information about residents gathered by sanctuary jurisdictions in their sovereign capacity.<sup>21</sup> In *Reno v. Condon* the Supreme Court found that requiring information sharing is permissible under the Tenth Amendment only when it “does not require [states] to enact any laws or regulations, and it *does not require state officials to assist in the enforcement of federal statutes regulating private individuals.*”<sup>22</sup> Here, the stated goal of EO 13768 is to “employ all lawful means to *enforce* the immigration laws of the United States”<sup>23</sup> and obtaining the immigration status of individuals is an obvious effort to enforce federal immigration law.

The federal government may, of course, “induce” state and local actors to cooperate with federal policymakers<sup>24</sup> by “offer[ing] funds to the States, and . . . condition[ing] those offers on compliance with specified conditions.”<sup>25</sup> The use of federal funds to “induce” jurisdictions, however, is not absolute. In 2012, the Supreme Court held that when the federal government “threatens to terminate other significant independent grants as a means of pressuring the States to accept” a federal policy, that threat can become coercive, and therefore, unconstitutional.<sup>26</sup> In *NFIB*, the Court concluded that directing a cabinet Secretary, in that case the Secretary of Health and Human Services, to penalize States that did not participate in the Medicaid expansion by stripping their existing Medicaid funding, “threatened loss of over 10 percent” of the State’s budget and constituted “economic dragooning.”<sup>27</sup> States had, in the words of the Court, “no real option but to acquiesce in the Medicaid expansion.”<sup>28</sup> Moreover, the new federal policy accomplished a “shift in kind, not merely degree,” in the terms of the grant, one that states “could hardly anticipate.”<sup>29</sup>

Here, the federal government provides a variety of grants and funding streams, virtually none of which, as previously stated, require jurisdictions to engage in enforcement of federal immigration law. Directing DOJ to withhold this funding unconstitutionally alters the bargain

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<sup>21</sup> See generally Robert A. Mikos, *Can the States Keep Secrets from the Federal Government?*, 161 U. PA. L. REV. 103, (2012).

<sup>22</sup> *Reno v. Condon*, 528 U.S. 141, 151 (2000) (emphasis added).

<sup>23</sup> EXEC. ORDER NO. 13,768, 82 C.F.R. 8799 § 1 (2016), available at <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>.

<sup>24</sup> *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2579 (2012) (“And in exercising its spending power, Congress may offer funds to the States, and may condition those offers on compliance with specified conditions.”).

<sup>25</sup> *Id.* at 2566.

<sup>26</sup> *Id.* at 2566-67.

<sup>27</sup> *Id.* at 2574.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

the states and cities agreed to by imposing additional, burdensome—and previously unannounced—requirements that amount to coercion.

Moreover, the scope of the grants and their intersection in a variety of different state and local programs leave jurisdictions “with no real option but to acquiesce.”<sup>30</sup> Santa Clara (CA),<sup>31</sup> San Francisco (CA), Chicago (IL), Providence (RI), Denver (CO), New York City (NY) would all lose approximately 10% or more of their budgets if federal funds were withheld, similar to the amount judged to be an unconstitutional coercion in *NFIB*.<sup>32</sup> Certain jurisdictions would lose even more, with Washington, D.C. losing upwards of 25% of its budget, substantially more than the 10% loss contemplated in *NFIB*.<sup>33</sup>

For all of the reasons above, we strongly urge your Administration to rescind section 9(a) of EO 13768. Thank you for considering the above legal analysis. If you have any questions regarding this letter, please do not hesitate to contact Jose Magaña-Salgado of the Immigrant Legal Resource Center at 202-777-8999 or [jmagana@ilrc.org](mailto:jmagana@ilrc.org).

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<sup>30</sup> *Id.*

<sup>31</sup> Compl. ¶ 108, *Santa Clara v. Trump*, (N.D. Cal. 2017) (“As set forth above, [Santa Clara] County receives approximately \$1 billion in federal funding per year, which amounts to more than 15% of its total budget.”).

<sup>32</sup> Sara Rathod, *Here Are the Sanctuary Cities Ready to Resist Trump Deportation Threats*, MOTHER JONES, Dec. 2, 2016, <http://www.motherjones.com/politics/2016/11/sanctuary-city-immigration-federal-deportation-trump-threats-budget>.

<sup>33</sup> *Id.* (“The threatened loss of over 10 percent of a State’s overall budget, in contrast, is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.”).

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**Statement for the Record of Chief of Police Michael Tupper  
Marshalltown (Iowa) Police Department**

**U.S. House of Representatives – Committee on the Judiciary**

**Restoring Enforcement of our Nation's Immigration Laws**

**March 28, 2017**

Chairman Goodlatte, Ranking Member Conyers, and members of the Committee, thank you for the opportunity to present this written testimony for today's hearing on the important issue of enforcing immigration laws.

I am Michael Tupper, the Chief of Police of the Marshalltown Police Department in Marshalltown, Iowa. I have worked in law enforcement for almost 25 years, the last 13 as a chief of police in Iowa. I've been the police chief in Marshalltown since 2011, before that serving for 7 ½ years as the chief in the city of Nevada, Iowa, which is located in Story County, Iowa. Prior to becoming a police chief, I spent 11 ½ years with the Ottumwa (Iowa) Police Department.

Marshalltown is located in central Iowa and has a population of approximately 28,000. We are a tolerant and inclusive community. About 30 percent of Marshalltown's population is Latino, and more than 40 languages are spoken by students attending the local public schools. There are also significant populations of Southeast Asian and Sudanese immigrants in the city, including resettled refugees. Many immigrants come to Marshalltown to work in the city's meat processing plant, as well as in agriculture, retail and service jobs.

As Chief of Police, I believe that we need to serve everybody in our community, including our undocumented population. My department's primary responsibility is to ensure public safety, and we work hard as a department to build and maintain public trust, fostering the relationships needed to effectively carry out this responsibility. Community trust is a two-way street. We want people to know they can call on the police when they need our help. But we also believe it is important that people feel comfortable in reporting crimes and otherwise helping



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our department do its job. Good community policing plays an important part in fostering these relationships.

Community policing in Marshalltown is aimed at the entire community – citizens, legal residents, and undocumented individuals alike. We view the public as our partners and hold numerous community-oriented events like Coffee with a Cop and Citizens Police Academy in order to allow community members to meet the police department’s leaders, officers and staff. We hold events all across the city, from nursing homes to Latino grocery stores, aiming to meet the community in non-enforcement, casual settings. We have had great success with this approach, seeing positive relations with the public and reductions in violent crime and overall crime in my six years in Marshalltown. This type of outreach fosters mutual respect and good communication, which is essential in helping the police department do its job.

In connecting with the community and establishing trust, I have found that the city’s residents – whether citizen or immigrant, documented or undocumented – generally share similar concerns: safe neighborhoods, good schools, and security for their families and loved ones. Underlying these relationships is a foundation of trust.

Yet, in recent months, I have been concerned by the public discourse and hostility I have seen surrounding the issue of immigration and am concerned about the impact this is having in my community. It is my understanding that it took years for the community to recover from a series of immigration raids targeting a meat processing plant in our city about a decade ago. The arrests were disruptive, separating parents from children and sowing fear in our immigrant communities. In recent months, rumors and speculation regarding future immigration raids have again increased fear in these communities, and led some to question whether it is safe to trust local law enforcement. If community trust is undermined by the possibility of future enforcement actions, that change affects public safety for the entire city.

As this Committee considers issues concerning immigration policy and enforcement, I urge you to be mindful of the importance of preserving community trust. When Marshalltown’s Latino community fears immigration raids or other enforcement activities, not only undocumented people are affected. When family members, neighbors, or friends are subject to immigration enforcement actions, legal residents and even citizens may be discouraged from cooperating with our police department, making the community less safe.

To the extent the Committee is considering proposals to require local law enforcement agencies to carry out immigration enforcement functions that the federal government has carried out in the past, I would be concerned. Immigration law is best enforced by federal government. While Marshalltown is a tolerant and inclusive city, my department has cooperated with the U.S. Immigration and Customs Enforcement (ICE) in the past, including taking part in the Priority

Enforcement Program. But taking on additional immigration enforcement responsibilities sends a message to our immigrant community that cooperating with our department could lead to members of the community being deported. That is not a message we want to send.

Additionally, placing additional immigration enforcement responsibilities on local law enforcement agencies is problematic in terms of cost and resources. Immigration enforcement is uniquely time --and resource -- intensive, and creates significant new fiscal and personnel costs for local law enforcement agencies. I know my department does not have the financial resources or personnel to take on these additional responsibilities.

I disagree with the contention that undocumented people pose a threat to the community by virtue of their being out of status. My experience in Marshalltown has demonstrated that this just is not true. My experience in Marshalltown tells me that cracking down on undocumented people who do not pose a threat to the public could have the unintended effect of increasing crime. By undermining community trust and creating fear in our immigrant communities, we stand the risk of losing the cooperation of these communities and increasing the likelihood that crimes would go unreported, making everyone less safe. The decrease in violent crime and overall crime in Marshalltown during my six years as Chief of Police coincides with our concerted effort to win the trust of the public. I am concerned that carrying out immigration enforcement responsibilities that are traditionally in the realm of the federal government could undercut this progress.

While I am concerned about proposals that would compel local law enforcement to carry out immigration functions, I would stress that I am not at all opposed to working with the federal government on immigration and other matters. Cooperation between federal and local authorities can be constructive and beneficial to all involved. As Chief of Police, I want to spend my time focusing on catching violent offenders and holding criminals accountable. The best way to do this is through maintaining the trust of my community – including the immigrant communities that reside in my city.

Michael W. Tupper  
Chief of Police  
Marshalltown Police Department



**Statement for the Record of Retired Chief of Police James R. Hawkins  
Garden City, Kansas, Police Department**

**U.S. House of Representatives – Committee on the Judiciary**

**Restoring Enforcement of our Nation’s Immigration Laws**

**March 28, 2017**

My name is James Hawkins, and I served as the Chief of Police of the Garden City Police Department in Garden City, Kansas, for nineteen years, between February 1996 and May 2015. I joined the Garden City Police Department in October 1983 as a patrol officer and, before being appointed Chief, held the ranks of Detective, Lieutenant, and Captain. Following my retirement as chief, I joined the Kansas Bureau of Investigation as a special agent, and I have continued to reside in Garden City. I have a Master’s Degree in Spanish and Portuguese from the University of Massachusetts and worked as a teacher with the Garden City School District for four years prior to joining the department.

Garden City is located in southwest Kansas and serves as a significant retail hub for the region. The city’s economy is largely rooted in the agriculture, construction, education, and retail industries, and the city’s population increased more than 46 percent between 1980 and 2010.<sup>1</sup> Garden City is a “majority-minority” city, with Latinos making up 48.6 percent of the population in 2010 and other minority groups comprising an additional 7 to 8 percent of the population.<sup>2</sup> Immigrants and refugees from around the world – from Cuba to Burma, Mexico to Somalia, Central America to Southeast Asia – live and work in and around Garden City. While it is estimated that there are 65,000 undocumented immigrants living in all of Kansas,<sup>3</sup> in my estimation, approximately 12,000 reside in southwest Kansas, including a few thousand residing in Garden City.

I appreciate the opportunity to share my views on the subject of this hearing – the enforcement of immigration laws. As someone with decades of experience as a local law enforcement leader, and who currently investigates crimes for a state law enforcement agency, I recognize that trust is crucial in completing the mission of any police

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<sup>1</sup> U.S. Census Bureau. Census of Population and Housing, <http://www.census.gov/prod/www/decennial.html>.

<sup>2</sup> U.S. Census Bureau. American FactFinder, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml).

<sup>3</sup> Migration Policy Institute, Profile of Undocumented Population: Kansas, <http://www.migrationpolicy.org/data/undocumented-immigrant-population/state/KS> (accessed March 26, 2017),

department. When immigrant communities fear state and local law enforcement, crime victims and witness are less likely to cooperate in investigations, making the community as a whole less safe. When immigrants feel safe in their communities, we are all safer.

In my 32 years with the Garden City Police Department, I have seen how the fear of deportation can have a negative impact on community safety. All too often, immigrants resist calling authorities or otherwise cooperating with law enforcement, out of fear that their cooperation may lead to being discovered and deported. Undocumented immigrants may be afraid to call authorities when criminal activity is happening in their neighborhood or when they are victims of crime, and sometimes go so far as to fail to call an ambulance when someone is sick or injured. For law enforcement officers, this situation creates breeding grounds for criminal enterprises and undermines safe communities. An increased reliance on state and local law enforcement carrying out traditionally federal immigration enforcement functions threaten to make these problems worse.

In addition to undermining community trust, efforts to require local law enforcement agencies to carry out additional immigration functions are likely to burden police departments already facing significant personnel and resource constraints. Particularly in Kansas, where state and local governments have faced difficult budget challenges in recent years, devoting additional money and personnel to immigration enforcement would take away from departments' normal, everyday duties. In my years as a police chief, I had to prioritize limited resources towards ensuring the safety of my community. Devoting additional time, training, and manpower to something as complex as immigration enforcement would have forced me to divert significant resources away from my primary mission, which is protecting the public.

Having had the opportunity to work with local refugee resettlement agencies and other organizations that aid immigrants, I know firsthand that most immigrants live and work in my community without incident and do not have criminal records. In my experience, immigrants in southwest Kansas overwhelmingly are law-abiding, long-standing members of the community, often with children and families. One estimate states that almost 60% of undocumented immigrants in Kansas have lived in the United States for 10 years or more.<sup>4</sup> As Congress considers proposals to encourage or even require local law enforcement to carry out additional immigration enforcement responsibilities, I would urge it to be mindful of the contributions immigrants make in communities across

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<sup>4</sup> Migration Policy Institute, Profile of Undocumented Population: Kansas, <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/KS> (accessed March 26, 2017),

America, and avoid advancing policies that undermine already stretched law enforcement agencies or community trust.

In a time when the political debate over immigration policy has become fiercely contested, I am heartened by the reaction of my community to a recent incident in which Garden City's immigrant community was targeted by domestic extremists. In October 2016, three U.S. citizens who were involved in the anti-government, sovereign citizen militia movement,<sup>5</sup> were arrested and charged with plotting to set off bombs at an apartment complex in Garden City where Somali immigrants live and worship.<sup>6</sup> Federal authorities acted admirably in uncovering the plot before it could be carried out and nobody was injured.

Following this disturbing event, the community, including faith leaders and members of the Garden City Police Department, held a public rally in the neighborhood to express their solidarity with the Somali immigrant community. The outpouring of support for the Somali immigrant community transcended racial, religious and political boundaries and is encouraging to members of the community, like me, who want to see immigrants welcomed and supported.

I believe that cooperation between federal, state, and local law enforcement can be beneficial for all levels of government. Throughout my years as a police chief, we extensively cooperated with federal authorities on a host of issues, including issues relating to immigration enforcement. No one wants violent criminals on the street and immigrants with criminal convictions who pose a danger to the community can and should be prioritized for deportation. However, immigration enforcement is a federal responsibility and the federal authorities should continue to be the primary actors carrying out these responsibilities.

I urge Congress, and specifically this Committee, to take steps to encourage constructive engagement between federal, state, and local law enforcement and immigrant communities that are consistent with community trust and the rule of law.

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<sup>5</sup> Eric Tucker and Roxana Hegeman, "3 arrested in alleged bomb plot targeting Somalis in Kansas," Associated Press, October 14, 2016, <http://bigstory.ap.org/article/f73471c52d9941cfa8049cf093bcb3df/3-arrested-plot-targeting-somalis-kansas>.

<sup>6</sup> United States Department of Justice, "Three Kansas Men Charged With Plotting a Bombing Attack Targeting the Local Somali Immigrant Community," Press Release, October 14, 2016, <https://www.justice.gov/opa/pr/three-kansas-men-charged-plotting-bombing-attack-targeting-local-somali-immigrant-community>.





## Supreme Court of California

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CHIEF JUSTICE OF CALIFORNIA

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March 16, 2017

Attorney General Jeff Sessions  
The United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable John F. Kelly  
U.S. Department of Homeland Security  
Secretary of Homeland Security  
Washington, DC 20528

RE: Immigration Enforcement Tactics at State Courthouses

Dear Attorney General Sessions and Secretary Kelly:

As Chief Justice of California responsible for the safe and fair delivery of justice in our state, I am deeply concerned about reports from some of our trial courts that immigration agents appear to be stalking undocumented immigrants in our courthouses to make arrests.

Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws.

Our courts are the main point of contact for millions of the most vulnerable Californians in times of anxiety, stress, and crises in their lives. Crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families all come to our courts seeking justice and due process of law. As finders of fact, trial courts strive to

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mitigate fear to ensure fairness and protect legal rights. Our work is critical for ensuring public safety and the efficient administration of justice.

Most Americans have more daily contact with their state and local governments than with the federal government, and I am concerned about the impact on public trust and confidence in our state court system if the public feels that our state institutions are being used to facilitate other goals and objectives, no matter how expedient they may be.

Each layer of government – federal, state, and local – provides a portion of the fabric of our society that preserves law and order and protects the rights and freedoms of the people. The separation of powers and checks and balances at the various levels and branches of government ensure the harmonious existence of the rule of law.

The federal and state governments share power in countless ways, and our roles and responsibilities are balanced for the public good. As officers of the court, we judges uphold the constitutions of both the United States and California, and the executive branch does the same by ensuring that our laws are fairly and safely enforced. But enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice. I respectfully request that you refrain from this sort of enforcement in California's courthouses.

Sincerely,



TANI G. CANTIL-SAKAUYE

cc: Hon. Dianne Feinstein, Senator  
Hon. Kamala Harris, Senator  
Hon. Jerry Brown, Governor



***Statement of the Fair Immigration Reform Movement “FIRM”  
Submitted to the House Subcommittee on Immigration and Border Security  
Tuesday, March 28, 2017  
10:30 a.m.***

We submit this statement for the record on behalf of the Fair Immigration Reform Movement, a national coalition of 44 grassroots organizations from 32 states around the country committed to promoting and preserving the rights of immigrants at the local, state and federal level.

Trump’s out-of-control immigration enforcement is tearing apart families and creating panic and fear in cities and towns across America. Targeting hardworking immigrant families for deportation hasn’t reduced crime, but it has increased community members’ fear of law enforcement, making crime prevention and community policing more difficult. Less than 100 days into his administration, victims and witnesses of crime are already too afraid to report crime to local police out of fear of being deported. In Los Angeles, reports of sexual assault have dropped 25% and reports of domestic violence by 10% among Latinos living in the city.<sup>1</sup>

If Congress and the White House were serious about keeping America safe, they would protect investments in critical crime prevention programs, such as funding for sexual assault prevention included under the Violence Against Women Act, instead of seizing on any opportunity to promote false stereotypes and misinformation about the immigrant community. Holding more than 40,000 immigrants in detention facilities each day and deporting millions of hardworking family members each year is not going to prevent crime, but investing in crime prevention programs will.

There is simply no evidence supporting claims that immigrants are more likely to commit crime. In fact, the opposite is true.<sup>2</sup> The vast majority of immigrants, like the vast majority of all Americans, are hardworking people trying to take care of their families and help their kids succeed. In fact, research shows that immigrants are *less* prone to commit crime than native-born Americans.<sup>3</sup> Data also shows high concentrations of immigrants are also associated with *lower crime rates*.<sup>4</sup> For example, in Chicago, New York and Los

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<sup>1</sup> Los Angeles Times, (Mar. 23, 2017), available at: <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

<sup>2</sup> American Immigration Council, (Jul. 13, 2015), available at: <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>; The Huffington Post, (Feb. 8, 2013), available at: [http://www.huffingtonpost.com/2013/02/08/2-us-mexico-border-cities\\_n\\_2647897.html](http://www.huffingtonpost.com/2013/02/08/2-us-mexico-border-cities_n_2647897.html).

<sup>3</sup> Immigration Policy Center, available at: <http://immigrationpolicy.org/special-reports/criminalization-immigration-united-states>

<sup>4</sup> Immigration Policy Center, available at: <http://www.immigrationpolicy.org/just-facts/anecdotes-evidence-setting-record-straight-immigrants-and-crime-0>

Angeles, the crime rate has dropped the fastest in neighborhoods with the highest immigrant concentrations.<sup>5</sup> Research also shows immigrants benefit communities by revitalizing struggling local economies.<sup>6</sup> The arrival of immigrants has helped revive many blighted cities and towns across America.<sup>7</sup>

Finally, FIRM is alarmed that the Subcommittee has given voice to extremist voices such as Thomas Hodgson, sheriff in Bristol County, Mass. and Jessica Vaughan from the Center for Immigration Studies, a designated hate group.<sup>8</sup> According to a prisoners' rights attorney who has sued Hodgson successfully in two class action lawsuits on behalf of prisoners in Massachusetts, the sheriff ***"has no problem violating the law if he thinks that one of his proposals will get him a headline."*** Hodgson has cost Massachusetts taxpayers at least \$5 million in legal fees defending his outrageous policies in the courts. In one case, he tried to charge inmates a daily \$5 fee only to have a court strike down the policy after taxpayers paid to defend it.<sup>9</sup> Hodgson has also been accused of giving a lucrative contract to a campaign donor.<sup>10</sup> In 2015, Hodgson attended a trip to the southern border sponsored by the Federation for American Immigration Reform, a designated hate group affiliated with the Center for Immigration Studies.<sup>11</sup> In January 2017, Hodgson made the shocking proposal that inmates in his county could build Trump's wall along the southern border as a form of "community service."<sup>12</sup>

Republicans in Congress should be held accountable for promoting these radical, anti-American perspectives that are creating division and violence all across America. History will not look favorably upon those who sat in silence as these fringe elements were given a national platform for their hateful agenda.

The real solution is broad and humane immigration reform, which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country. FIRM stands ready to work with the Subcommittee to pass comprehensive immigration reform legislation that keeps families together and protects the rights and safety of everyone in America.

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<sup>5</sup> *Id.*

<sup>6</sup> The Atlantic, (2013), available at: <http://www.theatlantic.com/politics/archive/2013/10/immigrants-injecting-life-into-the-rust-belt/430314/>; Partnership for New American Economy, (2013), available at: <http://www.renewoureconomy.org/wp-content/uploads/2013/09/revival-of-american-cities.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Southern Poverty Law Center, (Mar. 23, 2017), available at: <https://www.splcenter.org/hatewatch/2017/03/23/hate-groups-center-immigration-studies-want-you-believe-they%E2%80%99re-mainstream>.

<sup>9</sup> Boston Globe, (Jan. 7, 2017), available at: <https://www.bostonglobe.com/metro/2017/01/07/abraham/eNQk99psjLJyAOm0aauXEM/story.html>.

<sup>10</sup> SouthCoast Today, (Sept. 23, 2006), available at: <http://www.southcoasttoday.com/article/20060923/News/309239996>.

<sup>11</sup> Huffington Post, (Oct. 28, 2015), available at: [http://www.huffingtonpost.com/lindsay-schubiner/sheriffs-join-border-hate-group\\_b\\_8407020.html](http://www.huffingtonpost.com/lindsay-schubiner/sheriffs-join-border-hate-group_b_8407020.html).

<sup>12</sup> The Washington Times, (Jan. 4, 2017), available at: <http://www.washingtontimes.com/news/2017/jan/4/sheriff-thomas-hodgson-offers-inmates-community-se/>.

**Statement of  
Mary Meg McCarthy, Executive Director  
Heartland Alliance's National Immigrant Justice Center**

**House Subcommittee on Immigration and Border Security  
Hearing on "Restoring Enforcement of our Nation's Immigration Laws"**

**March 28, 2017**

Chairman Sensenbrenner, Ranking Member Lofgren, and members of the Immigration and Border Security Subcommittee of the House Judiciary Committee:

Heartland Alliance's National Immigrant Justice Center<sup>1</sup> would like to share with you the story of our client Donet Christie. Donet is an immigrant. He is also the victim and survivor of a brutal hate crime. Donet called the police for protection immediately after he was victimized. He knows that had he believed calling the police might have put him at risk of deportation to Jamaica, he would not have made that call. Donet reflects today on how grateful he feels to have been able to put his trust in the police in this way.

Here is Donet's story, in his own words:

*Today I feel blessed. In the United States, I can be free, I can be myself, and I do not have to hide the way I did for so much of my life growing up in Jamaica. I am a gay man living in Chicago, where I make a good living working as a gate agent for Amtrak. I left a lot behind me in Jamaica, years of abuse and hate. Here I can be me and I can live in peace.*

*Only a few years ago, things were much harder. On the day that I was assaulted and robbed in 2011, my immigration case was still in process. I was nervous all the time. I had been undocumented in the United States for many years, but I knew I could not go back to Jamaica. My life there was too difficult to describe: as a child I was sexually abused and as a teenager and young adult my own family subjected me to violence and harassment because of my sexual orientation.*

*The robbery brought back so many bad memories. I was in the passenger seat of my best friend's car pulling up to another friend's home when five men with guns forced us out of the car and onto the ground. They called us "faggots" and other derogatory terms. I quickly realized this was a hate crime. When my friend tried to get up off the sidewalk, they smacked him hard across the face. They drove away with my best friend's car, took*

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<sup>1</sup> NIJC is a non-governmental organization (NGO) dedicated to safeguarding the due process rights of noncitizens. We are unique among immigrant advocacy groups in that our advocacy and impact litigation are informed by the direct representation we provide to approximately 10,000 clients annually. Through our offices in Chicago, Indiana, and Washington D.C., and in collaboration with our network of 1,500 *pro bono* attorneys, NIJC provides legal counsel to immigrants, refugees, unaccompanied children, and survivors of human trafficking.

*my wallet, my phone, and my belongings, but at that moment all I cared about was our lives.*

*When they were gone we went up to my friend's apartment and we called the police. It was our instinct, the first thing we thought to do. I never doubted it. The police listened to our account of what happened and they investigated with our help. They worked with my friend to try to find his car and they provided us with the paperwork we needed to file the necessary insurance claims. I was grateful to the police; I felt protected at a time when I needed every comfort I could get. I really struggled after the attack. I had nightmares and couldn't sleep unless all the lights were on. I remember I would get up tons of times in the course of every night to make sure the doors were locked. All the trauma I had suffered years earlier came right back to me. I was scared.*

*It's a few years later now and although I still seek therapy to help me manage what I've been through, I feel safe again. But now I'm hearing that our government wants to take away choice from local police so they have to cooperate with federal immigration enforcement. I can tell you this: back in 2011, if I had even the slightest notion that calling 911 would have put me at risk of immigration detention or deportation, I would not have called. If the choice had been to call the police and get protection but risk going back to Jamaica where my life and dignity would be threatened, I would have chosen not to call. And what kind of choice is that to force people to make?*

*Today I am a lawful permanent resident of the United States. I'm grateful to my lawyers, I'm grateful to my employer, and I'm grateful for my safety. I'm grateful too that on the day I was victimized, I was able to call my local police for protection without any fear that doing so would result in my exile back to a country I fear. I urge our elected officials to do what you can to make sure this protection remains in place without compromise, today and in the future.*

Donet's story reminds us that immigration is not a public safety issue. Immigrants make us a stronger, safer, more vibrant nation. Yet the safety and security of all our communities are jeopardized by the President's threats to coerce local law enforcement agencies into the business of enforcing our federal immigration laws. We hope you will consider Donet's story as a call to remain vigilant against such dangerous policies.

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National Task Force to End  
Sexual & Domestic Violence

March 28, 2017

As the Steering Committee of the National Taskforce to End Sexual and Domestic Violence (NTF), comprising national leadership organizations advocating on behalf of sexual and domestic violence victims and women's rights, we represent hundreds of organizations across the country dedicated to ensuring **all** survivors of violence receive the protections they deserve. For this reason, we write to express our deep concerns about the potential impact that proposals that seek to undermine community trust policies will have. Proposals that weaken community trust policies will be dangerous for victims of sexual assault, domestic violence, and trafficking, and in particular, for immigrant victims, and communities at large.

Undermining policies that local jurisdictions have determined are constitutionally sound and appropriate for their respective communities decreases the ability of law enforcement agencies to respond to violent crimes and assist **all** victims of crime, U.S. Citizens and immigrants alike. As recognized in the bipartisan Violence Against Women Act (VAWA), law enforcement plays a critical role in our coordinated community response to domestic and sexual violence.

***Perpetrators use fear of deportation as abuse.*** Local policies that minimize intertwining of local law enforcement with U.S. Immigration and Customs Enforcement (ICE) help bring the most vulnerable victims out of the shadows by creating trust between law enforcement and the immigrant community, which in turn help protect ***entire*** communities.<sup>1</sup> Abusers and traffickers use the fear of deportation of their victims as a tool to silence and trap them. Not only are the individual victims harmed, but their fear of law enforcement leads many to abstain from reporting violent perpetrators or coming forward and, as a result, dangerous criminals are not identified and go unpunished.

***Community trust policies are critical tools for increasing community safety.*** Laws that seek to intertwine the immigration and law enforcement systems will undermine the Congressional purpose of protections enacted under VAWA and will have the chilling effect of pushing immigrant victims into the shadows and allow criminals to walk on our

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<sup>1</sup> A study conducted by the University of Illinois- Chicago found that increased involvement of local police and immigration enforcement eroded trust between the police and immigrants, undocumented and documented. 45% of documented immigrants were less likely to report a crime while 70% of undocumented immigrants responded similarly. <http://www.motherjones.com/politics/2015/07/sanctuary-cities-public-safety-kate-steinle-san-francisco>.

See also, <http://www.npr.org/sections/codeswitch/2017/01/29/512002076/why-sanctuary-cities-are-safer>.



streets. As VAWA recognizes, immigrant victims of violent crimes often do not contact law enforcement due to fear that they will be deported. According to a study conducted by the National Domestic Violence Hotline and the National Latin@ Network: Casa de Esperanza, 45% of the foreign-born callers expressed fear of calling and/or seeking help from the police or courts.<sup>2</sup> Furthermore, 12% of US-Born callers expressed fear of seeking help due to the current wave of anti-immigrant policies. Immigrants are already afraid of contacting the police and these policies to further intertwine immigration and law enforcement systems will only exacerbate this fear. The result is that perpetrators will be able to continue to harm others, both immigrant and U.S. Citizen victims alike.

### ***Recent Immigration Executive Orders are Undermining Victim Protections in our Communities***

Since January, victim advocates are describing the immense fear expressed by immigrant victims and their reluctance to reach out for help from police. Advocates at domestic violence programs in jurisdictions with large undocumented populations are reporting a “large drop in the number of women coming in for services,” indicating victims are not pursuing criminal charges against abusers or moving into domestic violence shelters.<sup>3</sup> Advocacy programs are reporting significant increases in calls from immigrant victims, many of whom are seeking information on the advisability of working with law enforcement and prosecution given their fear of deportation in light of the Executive Orders. Other advocates are reporting a drop in the number of victims seeking accompaniment to work with police and seek protection orders. Thousands of victim advocates nationwide are reporting that they are uncertain how to best advise immigrant survivors about what will happen if they call the police or go to court.

Recent reports from law enforcement officials confirm this widespread fear and uncertainty. In Los Angeles, Police Chief Charlie Beck has reported that his city is already seeing evidence of this increased fear: Reports of sexual assault have dropped by 25 percent and domestic violence by 10 percent among the Latino population since the beginning of the year.<sup>4</sup> In Denver, Colorado, City Attorney Kristin Bronson reported that since the issuance of the interior enforcement Executive Order, four domestic-violence victims have declined to pursue charges against their abusers out of fear of deportation.<sup>5</sup> The Travis County, Texas District Attorney similarly reported that at least one domestic violence case there recently stalled because the victim declined to press charges out of fear of deportation.<sup>6</sup> When victims are afraid to come forward, abusers and perpetrators will be able to continue to harm victims with impunity and our entire communities are affected.

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<sup>2</sup> [http://www.nationallatinonetwork.org/images/files/HotlineReport\\_2\\_2015\\_Final.pdf](http://www.nationallatinonetwork.org/images/files/HotlineReport_2_2015_Final.pdf);  
<http://nomore.org/nomas/> <http://m.huffpost.com/us/entry/7112130?>

<sup>3</sup> Tyler Kingkade, *Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming Forward*, BuzzFeed News (Mar. 16, 2017), <http://bzfd.it/2nNRX9L>.

<sup>4</sup> James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, L.A. Times (Mar. 21, 2017), <http://lat.ms/2nPwdva>.

<sup>5</sup> Mark Joseph Stern, *Bad for Undocumented Immigrants, a Gift to Domestic Abusers*, Slate.com (Mar. 8, 2017), <http://slate.me/2mZlJvS>.

<sup>6</sup> Nora Caplan-Bricker, *I Wish I'd Never Called the Police*, Slate.com (Mar. 19, 2017), <http://slate.me/2mYrYgC>.



For these reasons, we urge you to affirm the intent and spirit of VAWA by supporting strong relationships between law enforcement and immigrant communities, which is critical for public safety in general, and particularly essential for domestic and sexual violence victims. Thank you very much for your efforts to protect and support immigrant of domestic violence and sexual assault.

For more information, please contact Grace Huang, Asian Pacific Institute on Gender-Based Violence at [ghuang@api-gbv.org](mailto:ghuang@api-gbv.org), or Rosie Hidalgo, National Latin@ Network: Casa de Esperanza, at [rhidalgo@casadeesperanza.org](mailto:rhidalgo@casadeesperanza.org).

Sincerely,  
The National Task Force to End Sexual and Domestic Violence



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**Statement of the Massachusetts Immigrant and Refugee Advocacy Coalition  
Submitted to the House Subcommittee on Immigration and Border Enforcement  
Tuesday, March 28, 2016  
10:30 am**

We submit this statement for the record on behalf of the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA), the largest organization in New England promoting the rights and integration of immigrants and refugees. We serve the Commonwealth's one million foreign-born residents with policy analysis and advocacy, institutional organizing, training and leadership development, strategic communications, citizenship assistance, and AmeriCorps initiatives that provide capacity-building for community-based organizations. The Coalition comprises an active membership of over 130 organizations, including community-based groups, legal service providers social service organizations, ethnic associations, schools, refugee resettlement agencies, health centers, hospitals, religious institutions, unions and law firms, as well as thousands of individual members, contributors, and allies.

The Trump Administration's new approach to immigration enforcement fails to serve our national interest and serve any rational purpose other than to tear American families and American communities apart. To justify this approach, the administration has talked tough about getting out "bad hombres". The facts are very different though; this administration has eliminated a priority system for civil immigration enforcement that actually focused resources on those who could pose a threat to our communities. Instead, it has put into place a system that effectively does away with any priorities, creating greater fear in our communities and negating local police's hard-fought efforts at creating a mutually beneficial relationship with the communities they protect and serve. Indeed, the administration has rescinded a memo that provided limited protections to victims and witnesses of crimes, discouraging them from assisting law enforcement efforts to keep communities safe. Worse yet, a week ago we learned from Syracuse University's Transactional Records Access Clearinghouse that the administration is frustrating transparency efforts by refusing to provide comprehensive detainer-by-detainer information that ICE previously released in response to Freedom of Information Act requests.

Many of your panelists today will no doubt try to justify the actions of this administration, but they do so without the benefit of actual facts. They will try to tell you, for instance, that jurisdictions that refuse to honor ICE detainers are in violation of the law, and will likely cite 8 USC §§1373 & 1324. 8 USC §1373 refers to sharing information about immigration status – any reasonable person would clearly understand that failure to honor a detainer would not implicate this statute because ICE would already have information about immigration status, otherwise it would not issue a detainer in the first place. We also remind this honorable panel that 282 legal scholars recently sent a letter to the administration arguing that restricting funding on this basis would be an unconstitutional exercise of federal power.<sup>1</sup>

8 USC §1324 refers to individuals who conceal, harbor, or shield an undocumented immigrant. Again, in no reasonable way can the failure to honor a detainer be interpreted as concealing, harboring, or shielding an undocumented immigrant. Moreover, §1324 specifically refers to "Any person" and does not apply to municipalities.

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<sup>1</sup> [https://www.ilrc.org/sites/default/files/resources/2017-03-13\\_law\\_professor\\_letter\\_re\\_eo13768\\_sanctuary\\_jurisdictions\\_embargoed.pdf](https://www.ilrc.org/sites/default/files/resources/2017-03-13_law_professor_letter_re_eo13768_sanctuary_jurisdictions_embargoed.pdf)



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Indeed, the Trump Administration's attempts to force local jurisdictions to honor detainers brings with it a number of constitutional problems. First of all, the Supreme Court has repeatedly ruled that the 10<sup>th</sup> Amendment prohibits the federal government from "commandeering" state government to enforce federal law. In his opinion for the majority in *Printz v US*, Justice Antonin Scalia pointed out that, "[O]pinions of ours have made clear that the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs."<sup>2</sup> Similarly, honoring ICE detainers has caused numerous constitutional problems for local law enforcement agencies as numerous federal courts have found detainer-based detention by law enforcement agencies to be a violation of the Fourth Amendment.<sup>3</sup> The financial liabilities assumed by already strained local police departments for such constitutional violations would further undermine the safety and security of our cities and towns at tax-payers' expense.

Doubtless, some of today's witnesses may argue that local policies limiting cooperation with Immigration and Customs Enforcement present a threat to the safety and well-being of residents. Once again, they make such claims without having the facts on their side. Decades' worth of studies have consistently found that crime rates are lower among immigrant populations and their US-born children despite the false narrative that is spun without basis by those who are opposed to immigration. In fact, a recent study by the Center for American Progress found that cities that limit cooperation with local police have a lower crime rate and higher median household income than their peers of comparable size.<sup>4</sup>

This should come as no surprise, as building trust between communities and local police is vital to both crime prevention and to encouraging victims and witnesses of crimes to come forward. Boston Police Commissioner Bill Evans has already publicly disapproved of the impact that this administration's policies have had on criminal law enforcement, "It's hard enough now to get [immigrant communities] to talk and to build trust and respect, and I think what's going on now is hurting our efforts and the whole idea of community policing, especially in immigrant communities."<sup>5</sup>

In addition, the limited resources that law enforcement has – and the public tax dollars that generate those resources – are clearly better spent on actual criminal law enforcement rather than civil immigration enforcement. Take Sheriff Arpaio for example. Under his campaign against immigrants, 911 response times increased, over 400 sex crimes went without adequate investigation, 40,000 felony arrest warrants went un-served, and the crime rate in Maricopa County increased while the crime rate in the rest of his state decreased.<sup>6</sup>

The immigration enforcement approach of the Trump Administration threatens to undermine our Constitution, squander our tax dollars, and make our communities less safe. If the honorable members of this subcommittee are genuinely interested in the security and financial well-being of the American people, it would ignore the "alternative facts" that underpin the arguments of many of today's witnesses and would instead renew the push for an immigration reform plan that allows us to move forward together as whole families, whole communities, and a whole nation.

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<sup>2</sup> *Printz v US*, 521 US 898, 925 (1997).

<sup>3</sup> See Johnson, Jeh; *Secure Communities Memo*; November 20, 2014; footnote 1.

<sup>4</sup> Wong, Tom K; *The Effects of Sanctuary Policies on Crime and the Economy*; Center for American Progress; January 26, 2017.

<sup>5</sup> Bedford Tori; *Police Commissioner Evans: Local Police Can't Prevent ICE Raids*; WGBH 89.7; February 28 2017.

<sup>6</sup> Khan, Mahwish; *Report: The Notorious Record of Maricopa County, AZ's Sheriff Joe Arpaio*; America's Voice; July 16, 2010.