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ACLU of Utah to Law Enforcement Agencies: Be Wary of Involvement with ICE

SALT LAKE CITY, UT — The American Civil Liberties Union (ACLU) of Utah today sent a letter to all 153 law enforcement agencies (LEAs) in Utah, advising them to carefully exercise discretion in complying with requests for resources and cooperation by the federal Immigration and Custom Enforcement (ICE) agency. The letter reminds LEAs that their mission of protecting and serving their own local communities cannot be altered by federal command, and warns that nationwide, following ICE's requests has led many LEAs to civil rights violations and liability that lies solely with the LEAs and not ICE.

"The enforcement of immigration laws is a role assigned to the federal government under Article 1, Section 8 of the Constitution and you have no obligation under federal law to participate," the ACLU of Utah states in the letter. "The Tenth Amendment of the Constitution protects you from being compelled to perform the functions of the federal government."

This outreach effort by the ACLU of Utah comes in the wake of an Executive Order signed by President Trump at the end of January 2017, which directed ICE agents to pursue for deportation a much broader group of immigrants than previously targeted by ICE under President Obama. This group includes people who have merely been charged (not convicted) of even low-level criminal offenses, as well as people who are judged by individual immigration officials, in the vague language of the order, to "pose a risk to public safety or national security."

"Groups working with immigrants - whether citizens, residents, or undocumented people - are reporting high levels of fear, confusion and chaos within the communities they serve," said John Mejia, Legal Director of the ACLU of Utah. "We want to remind our law enforcement leaders that there are decisions they can make, locally, to keep their communities safe and calm. State and local law enforcement agencies cannot be forced to become federal ICE agents."

The letter, which was mailed to all 29 county sheriff offices, as well as 124 municipal police departments and Utah Highway Patrol offices, focuses on two main areas of voluntary federal-local cooperation with regards to immigration: compliance with ICE “detainers” and participation in 287(g) agreements. “Detainers” are requests by ICE for LEAs to hold already-detained people past the time they would otherwise be released, in order for ICE to investigate their immigration status. Under 287(g) agreements, officers of LEAs are trained as immigration enforcement agents to assist ICE. The ACLU of Utah letter informs LEAs that compliance with ICE detainer requests is voluntary, not mandatory, and it is fully consistent with federal law for state and local LEAs not to enter into 287(g) agreements.

The ACLU of Utah encourages LEAs to decline to cooperate in either detainers or 287(g) agreements for several reasons: the importance of focusing on local public safety priorities; possible damage to relations between community members and law enforcement; the high (and mostly un-reimbursed) costs of participation in federal immigration activities; and legal liability borne by local law enforcement agencies when ICE gets things wrong.

The letter also asserts that the Trump Administration’s recent threats to strip federal funding from jurisdictions that decline to direct their personnel and resources toward federal immigration priorities are likely to “encounter substantial constitutional hurdles” should they be pursued.

“We want to be sure that Utah’s law enforcement leaders know they have the power to make their own decisions about how to prioritize their limited time and resources to serve local goals of protecting and serving,” states Mejia. “They cannot be forced to ignore their community priorities to participate in the federal government’s newly expanded mass deportation agenda.”

The contents of this letter are available here: <http://acluutah.org/images/SheriffWinderLetter.pdf>

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