



April 4, 2014

The Honorable Michael Nutter  
Mayor of Philadelphia  
Office of the Mayor  
Room 215 City Hall  
Philadelphia, PA 19107

**RE: Proposed Philadelphia Anti-Cooperation Policy**

Dear Mayor Nutter:

I write on behalf of the Federation for American Immigration Reform, a nonprofit, nonpartisan public interest membership organization of concerned citizens who share a common belief that our nation's immigration policies must be reformed to improve border security, stop illegal immigration, and promote immigration levels consistent with the national interest.

Recent news articles<sup>1</sup> indicate that you have drafted an executive order that will institute an anti-cooperation policy in Philadelphia to limit cooperation with detainer requests from United States Immigration and Customs Enforcement ("ICE"). Specifically, your proposed executive order would prohibit Philadelphia law enforcement officials from honoring ICE detainer requests for any alien otherwise eligible for release from custody, unless the alien is a defendant in a pending criminal case charged with a first or second degree felony involving violence, or from providing ICE with notice of an alien's release from custody, unless the same conditions are met. On behalf of our members who reside in Philadelphia, we urge to reconsider this policy as it will only hurt the community in which you were elected to serve.

Your proposed executive order and other anti-cooperation policies that impede federal enforcement of immigration law pose a serious threat to public safety and create safe havens that facilitate criminal activity, especially in regard to drug- and gang- related crimes, human trafficking, and identity theft. In a letter to FAIR, Former ICE Director John Morton stated his

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<sup>1</sup> Troy Graham and Michael Matza, *Nutter to End Agreement with ICE on Detention*, THE INQUIRER, Feb. 21, 2014, available at [http://articles.philly.com/2014-02-21/news/47530689\\_1\\_ice-agents-philadelphia-mayor-nutter-ice](http://articles.philly.com/2014-02-21/news/47530689_1_ice-agents-philadelphia-mayor-nutter-ice).



opposition to anti-detainer policies and warned that jurisdictions that ignore ICE detainer requests undermine public safety in their communities. He noted that his agency has documented serious crimes committed by deportable aliens who have been released rather than handed over to ICE.<sup>2</sup> The number of dangerous criminal aliens that could be released as a result of your proposed executive order is certain to be high given that the policy only allows law enforcement to comply with ICE detainers if the alien is currently being charged with a violent first- or second-degree felony, but not on the basis of prior convictions. Thus, if an alien with an extensive history of violent criminal convictions is in custody, Philadelphia law enforcement officers will be forced to release the alien back into the community – regardless of whether the alien has any legal right to remain in the United States – if the alien is presently only charged with a minor crime.

Plainly, ignoring federal immigration detainers for even minor crimes will make Philadelphia less safe. Recently, the U.S. Attorney's Office in Seattle, Washington sent a letter to the King County Council, who was considering a similar anti-detainer policy, providing data that shows that ignoring federal immigration detainers for even minor crimes makes communities less safe.<sup>3</sup> The data revealed that all of the criminal aliens with significant criminal and deportation histories detained and prosecuted by the U.S. Attorney's Office in an 18 month period would have been released back onto the streets because their charge did not qualify as a serious offense under King County's proposed anti-cooperation policy. Similarly, under your proposed executive order, all detainees with significant criminal and deportation histories who happen to only be charged with a minor offense will be released back onto the streets, at the expense and safety of citizens and lawful residents.

As you acknowledged in your proposed executive order, the Secure Communities program exists to track and apprehend dangerous criminals who are in the country illegally. The Obama Administration even further restricted the circumstances under which federal agents may pursue aliens in the custody of state and local law enforcement in December of 2012.<sup>4</sup> Under the new policy, ICE may only issue detainers requesting custody of aliens in the most severe circumstances—“individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.”<sup>5</sup> If, as also stated in your proposed executive order, immigration enforcement is a federal matter, then further limiting the priorities set by the federal government through local policy, thereby impeding federal enforcement of federal law, is reckless and nonsensical.

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<sup>2</sup> Letter from ICE Director John Morton for Ms. Julie Kirchner (Aug. 23, 2012), *available at* [http://www.fairus.org/DocServer/John\\_Morton\\_Response\\_082312.pdf](http://www.fairus.org/DocServer/John_Morton_Response_082312.pdf).

<sup>3</sup> Letter from Robert H. Westinghouse, Chief, Criminal Division, U.S. Attorney, Western District of Washington, to Jim Brewer, Legal Counsel, King County Council (Aug. 26, 2013), *available at* <http://www.king5.com/news/documents/Document-immigration-detainers-King-County-US-Attorney-221414821.html>.

<sup>4</sup> Memorandum from John Morton, Director, ICE, for All Field Office Directors, All Special Agents in Charge, All Chief Counsel (Dec. 21, 2012), *available at* <https://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>.

<sup>5</sup> *Id.* at 1.

Anti-cooperation policies also undermine national security efforts and enable terrorists and individuals of national security concern to go unnoticed and carry out their activities unimpeded by immigration law. Reportedly, over half of the 48 individuals convicted or tied to recent terrorist plots in the United States either were themselves illegal aliens or relied upon illegal aliens to get fake IDs. Immigration violators participated in the first attack on the World Trade Center, the Los Angeles Millennium bombing plot, the New York subway bombing conspiracy, and the 9/11 terrorist attacks.

ICE has just 20,000 employees, only half of which are dedicated to the apprehension and removal of illegal aliens. The cooperation of state and local police forces, which number about 800,000 strong, is vital to ferreting out those among us who wish to cause us harm. At least five of the 9/11 hijackers were illegal aliens, of which four—ringleader and pilot Mohammed Atta, pilot Hani Hanjour, pilot Ziad Jarrah, and muscle Nawaf al-hazmi—came into contact with state and local law enforcement several times before the attacks for various reasons. If those state and local law enforcement agencies had been working with federal immigration officials, the 9/11 terrorist plot might have been thwarted.

Furthermore, cities that institute anti-cooperation policies become magnets for illegal immigration and illegal immigration results in higher crime rates.<sup>6</sup> Frankly, accommodating those who violate our laws only encourages more lawlessness. Even the average illegal alien, who some claim is “otherwise law-abiding” despite violating our duly established immigration law, violates numerous laws, including, but not limited to, laws prohibiting identity theft, forgery, and driving without a license or insurance, often creating real victims.

Conversely, cities that cooperate with and assist the federal government in its immigration enforcement efforts see a dramatic decrease in illegal immigration and crime. For example, DHS estimated that Arizona’s illegal alien population grew from 330,000 in 2000 to 560,000 by 2008, one of the fastest rates nationally.<sup>7</sup> After Arizona’s SB 1070 strict enforcement and cooperation law passed, however, Arizona’s illegal alien population dropped by 18 percent from 2008 to 2009.<sup>8</sup> Arizona also experienced a significant decrease in violent crime.<sup>9</sup> After

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<sup>6</sup> The Federal Bureau of Prisons reported that, although illegal aliens only make up an estimated 3.7 percent of the United States population, non-citizens account for 26 percent of the federal jail population. See United States Department of Justice, Federal Bureau of Prisons, *State of the Bureau*, at 3 (2010), available at <http://www.bop.gov/news/PDFs/sob10.pdf>. The U.S. Department of Homeland Security (“DHS”) estimates that non-citizens nationally comprise 20 percent of inmates in prisons and jails. See Center for Immigration Studies, *Immigration and Crime: Assessing a Conflicted Issue*, at 1 (November 2009), available at <http://www.cis.org/articles/2009/crime.pdf>.

<sup>7</sup> Office of Immigration Statistics, DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008*, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf).

<sup>8</sup> Office of Immigration Statistics, DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2009.pdf).

<sup>9</sup> Federal Bureau of Investigation (“FBI”) crime data registered a major drop from 2005 to 2010 in violent crimes in Arizona — by 14.4 percent compared to a 10.4 percent drop nationally. Property crimes declined more steeply — by 21.4 percent, *i.e.*, more than twice the reduction nationwide of 10.7%. See FAIR, *Recent Demographic Change in Arizona: Anatomy of Effective Immigration Reform Legislation*, available at

Prince William County, Virginia instituted a policy of cooperation with DHS, its illegal alien population decreased significantly in just two years, resulting in a reduction in violent crime and hit-and-run accidents.<sup>10</sup>

Anti-cooperation policies also result in a needless waste of limited public resources, forcing the federal government to expend manpower and money to seek out and arrest deportable criminals who have already been arrested and taken into custody by local law enforcement for other crimes. Federal immigration enforcement efforts are funded by the American taxpayer, including the citizens and legal residents of Philadelphia. Your proposed executive order purports to conserve resources, but in the end costs us all much, much more.

In addition to undermining public safety, your proposed executive order may also violate federal law. First, the United States Supreme Court has held that state laws and policies are preempted when they conflict with federal law, including when they stand “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>11</sup> In this case, Congress has set priorities through the Immigration and Nationality Act (“INA”) to determine who may enter and remain in the United States.<sup>12</sup> Your proposed executive order, however, attempts to shield aliens from the administration of federal law, thereby frustrating the execution of federal law. As a result, your proposed executive order would be preempted by federal law, because it conflicts with federal law by standing as an obstacle to the accomplishment and execution of the purposes and objectives of Congress, as expressed through the INA.

Second, the United States Supreme Court has held that any state law or policy related to immigration will be *per se* preempted if it is a regulation of immigration.<sup>13</sup> A state law or policy is a “regulation of immigration” when it is “essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.”<sup>14</sup> Any state law or policy that is a “regulation of immigration” will be preempted because the “power to regulate immigration is unquestionably exclusively a federal power.”<sup>15</sup> Your proposed executive order regulates immigration because it decides who may remain in the United States. As a result, your policy will likely be *per se* preempted by federal law.

Third, federal law clearly prohibits any federal, state, or local government entity or official from prohibiting, or in any way restricting, any government entity or official from sending to, or receiving from, ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual.<sup>16</sup> Because your proposed executive order under certain

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<http://www.fairus.org/publications/recent-demographic-change-in-arizona-anatomy-of-effective-immigration-reform-legislation-2012>.

<sup>10</sup> Center for Survey Research, University of Virginia, *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy FINAL REPORT 2010*, available at <http://www.pwccgov.org/government/bocs/Documents/13188.pdf>.

<sup>11</sup> *United States v. Arizona*, 132 S. Ct. 2492 (2012) (citation omitted).

<sup>12</sup> 8 U.S.C. § 1101, *et seq.*

<sup>13</sup> *De Canas v. Bica*, 424 U.S. 351, 354-355 (1976).

<sup>14</sup> *Id.* at 354.

<sup>15</sup> *Id.* (citation omitted).

<sup>16</sup> *See* 8 U.S.C. § 1373.

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circumstances would restrict Philadelphia's law enforcement officers from communicating with the federal government regarding the status of aliens in Philadelphia custody, your executive order will likely also violate federal law and thus be preempted.

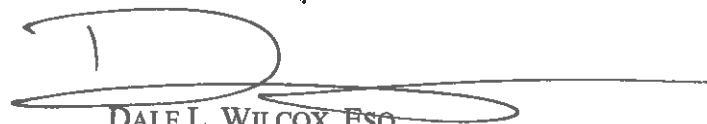
It is almost unheard of that a law enforcement agency would refuse to cooperate with another law enforcement agency. Yet, unfortunately, for a growing number of communities under political pressure, making illegal aliens feel comfortable seems to be taking precedence over comity between brothers in uniform in need of assistance. These political gestures come at great risk to the safety and security of those communities and beyond. Refusing to cooperate and assist fellow law enforcement is not a legitimate way for state and local governments to express opposition to immigration policies. The first responsibility of all law enforcement agencies is the protection of public safety.

Your proposed executive order is not necessary to establish trust between law enforcement and immigrant communities. It is absurd to suggest that immigrants do not want their communities kept safe from criminal aliens. Moreover, police do not inquire about the immigration status of witnesses or victims of crime, much less fingerprint them. Therefore, there is no reason for immigrants – even illegal immigrants who have not committed other criminal offenses – to be deterred from cooperating with police.

We, therefore, strongly urge you to protect Philadelphia residents and refuse to institute an anti-cooperation policy.

Thank you for your time and consideration.

Sincerely,



DALE L. WILCOX, ESQ.  
STATE & LOCAL DIRECTOR

CC: ICE Philadelphia Field Office Director Thomas Decker