

Memorandum

TO: Mayor, City Council
From: Harry B. Center, II, Esq. City Solicitor
Date: September 9, 2026
RE: Municipal Obligations & Options Re: ICE Enforcement

Following the events of July 13, 2026, I have been asked to review the City's legal obligations with respect to Immigration and Customs Enforcement (hereinafter "ICE"). I also have been asked to research and advise what ordinances, policies, directives to City employees and/or actions that the City of Biddeford may adopt with respect to ICE activities within the City of Biddeford.

1. Immigration Enforcement Activity

Our American system of government is one of dual sovereignty, meaning that both the federal government and the states wield sovereign powers. *Murphy v. Nat'l Collegiate Ath. Ass'n*, 584 U.S. 453 (2018). By extension and through Maine's Home Rule authority, Maine municipalities also possess broad governmental authority. (See generally, 30-A M.R.S. § 3001 et. seq.) However, state and local governments are limited in several ways under the United States Constitution, specifically by the so-called "Supremacy Clause" and the doctrine of preemption. The Supremacy Clause in the United States Constitution provides that federal law is the supreme law of the land and when federal and state law conflict, federal law is supreme and state law is preempted. *United States v. New York*, 814 F. Supp. 266 (U.S. ND NY 2025). Keep in mind that despite the Supremacy Clause, the Constitution does not grant unlimited legislative powers to Congress, as the Tenth Amendment provides that Congress' legislative powers are certain and enumerated, and all other legislative power is reserved for the States. (Tenth Amendment U.S. Const.).

With this background, it is clear that the federal government has broad and undoubted power with respect to immigration. *Arizona v. United States*, 567 U.S. 387 (2012). In fact, the United States Constitution grants Congress the power to establish a Uniform Rule of Naturalization. *Art. I, § 8, cl. 4*. Pursuant to that Constitutional grant of authority, Congress passed the *Immigration and Nationality Act ("INA")*, 8 U.S.C. § 1101 et. seq. The Supremacy Clause gives Congress the power to pre-empt state law. The doctrine of preemption provides that state law (and implicitly local/municipal law) must give way to federal law, precluding state and local governments from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance. *Gade v. National Solid Wastes Management Ass'n*. 505 U.S. 88. The Federal Government has broad, undoubted

power over the subjects of immigration and the status of aliens. This Federal power to determine and conduct immigration policy is well settled. *Arizona v. United States*, 567 U.S. 387, 395.

Within the sweeping federal legislation that governs immigration control, there are two sections which authorize -but not require - state and local officials to arrest and/or detain alleged illegal aliens. Those statutes also allow local and state agencies to cooperate in the detention and arrest of illegal aliens¹-however there is no mandate or requirement that state and local governments participate in such conduct. Those federal statutes are set forth at 8 U.S.C. § 1252(c) and §1357. Those federal statutes authorize state and local officials to arrest and detain alleged illegal aliens and allow the U.S. Attorney General to enter agreements with state and local governments to investigate, apprehend or detain alleged illegal aliens and to transport them across state lines to detention centers.

Notwithstanding federal preemption over all overt acts to enforce immigration laws, the *Tenth Amendment* of the United States Constitution and the so-called “*anticommandeering rule*” preclude the federal government from compelling states and local governments to enforce federal immigration law. Under the anticommandeering rule, the U.S. Congress cannot issue direct orders to state or local lawmakers, and state and local governments can refuse to adopt federal immigration policies- even if their refusal “inevitably frustrates” federal immigration enforcement. *U.S. v. California* 921 F. 3d 865 (9th Cir. 2019). This case applied the anticommandeering rule to a California law which prohibited state law enforcement from asking individuals about their immigration status or detaining individuals based on federal immigration “hold” requests along with limiting local law enforcement’s ability to release detained individuals to federal immigration authorities.

Based on an abundance of Federal Court decisions interpreting the anticommandeering doctrine or rule, it is my opinion that the City of Biddeford may lawfully pass or adopt ordinances or policies which limit or preclude any cooperation or assistance to ICE immigration enforcement.

2. Options for the City of Biddeford to Consider

This memorandum addresses potential ordinances and/or policies that the City may consider in response to recent ICE activities. The memorandum also reviews State law and other municipal approaches to ICE enforcement.

¹ I realize that the term “alien” is considered derogatory by some, however Federal Law expressly defines the term 8 U.S.C. § 1101 (a) (3).

A. LD 1971

The State Legislature passed what is called “LD 1971” which recently took effect. The law was passed without Governor Mills’ signature, as she reportedly stated that while she approves of the law, she had concerns about some of the language. That statute applies to the Biddeford Police Department. Pursuant to LD 1971, the Biddeford Police Department is prohibited from conducting immigration enforcement activities, prohibited from investigating individuals solely for suspected violations of federal immigration laws and prohibited from inquiring into a person’s immigration status.

B. Other Municipal Responses

LD 1971 applies solely to law enforcement. Some Maine municipalities have passed ordinances precluding the use of municipal funds and prohibiting municipal employees from assisting ICE in any way. Currently, the Cities of Portland, Rockland and Lewiston have specific ordinances all which appear identical and I attach Lewiston’s because it is in the clearest format.

The City of Portland, Maine adopted a “Staff Guideline” for dealing with ICE enforcement. Municipal staff are given instructions on how to engage with federal law enforcement officers. Municipal staff are cautioned that they must cooperate as required by law, however staff are directed to request that any ICE agent provide identification, and request to see a judicial warrant. Portland’s staff guidance does ensure that if a valid judicial warrant is produced, staff are counseled to be polite and cooperative. If there is no judicial warrant², staff are instructed to politely refuse ICE entry to any non-public area. I have attached Portland’s staff guidance, as it is very comprehensive. The guidance also advises that staff should immediately contact a supervisor and Portland has an incident report form for all ICE encounters.

In addition to ordinances, the City of Biddeford may consider zoning amendments that would preclude any ICE facilities or detention facilities. The Council could consider additions to the Land Use Code to prohibit any facilities or structures in Biddeford from being used as detention facilities or offices housing ICE agents.

² I note that the City of Portland’s Staff Guidance for interaction with Immigration Enforcement refers to Judicial Warrants. A significant aspect of concern regarding this recent ICE enforcement is that Administrative Warrants are being issued by the Agency, as opposed to having a ‘neutral and detached’ magistrate or judicial officer determine whether there is probable cause that a person is illegally in the United States.

C. Zoning Restrictions

I am not aware of any Maine Municipalities that have used zoning as a tool to provide protection to the targets of this ICE campaign. The City of Chicago has adopted zoning restrictions that preclude ICE from conducting activity on various City properties. The Mayor of Chicago passed the zoning restrictions as an executive order. The City of Biddeford does not pass ordinances in that manner. Any zoning restrictions on ICE use of City property to conduct civil immigration enforcement activity would need to be adopted pursuant to our ordinances.

The Chicago executive order proclaimed that City's commitment to the safety, dignity and human rights of all residents, regardless of immigration status (as well as race, religion or national origin). The order further recognized that the ICE civil enforcement activities have undermined community trust, caused fear and created a barrier to essential city services. The Order further stated that legitimate public safety is best achieved by trust and collaboration between agencies and not by militarization and unnecessarily aggressive conduct.

Based on those principles, the City of Chicago prohibited the use of city owned parking lots, vacant lots, parks, garages and virtually any city owned property from being used as a staging area for ICE civil immigration enforcement. Prohibitions may also include a ban on using city owned property for immigration processing locations and operations bases.

In addition to passing zoning ordinances precluding the use of city property by ICE for civil immigration enforcement, Chicago also assisted private landowners to prohibit ICE from using private property as well. The City of Chicago designed and printed standardized signage that private landowners and leaseholders could display to delineate private property in which the landowner or leaseholder chose to restrict activities related to civil immigration enforcement. Chicago made these signs available to the public free of charge. Examples of private properties that the owners or leaseholders chose to ban ICE civil immigration activity from included businesses, medical offices and facilities and institutions of faith.

If the City of Biddeford chooses to adopt such zoning regulations, I would work with the City Planner and Code Enforcement Officer to draft the applicable regulations. I anticipate such regulations would consist of making federal ICE civil immigration enforcement prohibited use on all city property. The City may also consider precluding as a use, immigration detention facilities, ICE offices or facilities and any ICE related uses.

South Portland, Westbrook and Augusta have passed "Resolutions", denouncing ICE tactics, supporting immigration and such, but those municipalities do not have ordinances.

These resolutions in my opinion are expressions of sentiment, and are not actual overt governmental responses.

i. Civil Immigration Enforcement

It is important to note the distinction between criminal and civil ICE enforcement. The Chicago restrictions expressly state “civil immigration enforcement”. The Lewiston and Rockland ordinances do not distinguish between civil and criminal immigration enforcement, however those ordinances do provide qualifying language such as “...except as required by federal or state law...”, meaning municipal officials are allowed to cooperate with ICE if it is required by law.

Generally, ICE distinguishes “criminal” and “civil” immigration arrests by the legal basis for the action underlying the allegation of being an “illegal immigrant”. According to materials from ICE, criminal enforcement occurs when an individual has a criminal conviction or there is a warrant for arrest signed by a judge or a neutral and detached magistrate. This is based on the 4th Amendment of the United States Constitution. City officials are not required to assist in the enforcement of federal criminal law, however local law enforcement may have an obligation, depending on the circumstances, to become involved in immigration enforcement, should a violation of state criminal law be applicable.

Civil immigration enforcement activity consists of ICE bypassing a warrant authorized by a neutral and detached magistrate or judge, utilizing an internal administrative warrant issued by the agency itself. In my opinion this violates the 4th Amendment of the United States Constitution. ICE would argue that an individual who has an expired visa or other technical reason for not having a current visa are subject to removal, just not subject to a separate criminal charge. In my opinion the City and its employees do not have any legal responsibility to assist any ICE activity that is based solely on ICE’s own paperwork.

CONCLUSION

In my opinion, the Council has several options to demonstrate to both the immigration community and the community as a whole that the City of Biddeford denounces the ICE tactics and enforcement techniques. There is a broad spectrum as to how that message as well as action could be implemented.

With the passage of LD 1971, the Council may choose to rely on that State Law, which precludes the Biddeford Police Department from assisting with ICE enforcement. Should the Council feel that LD 1971 is sufficient, it may also want to consider another proclamation in the similar fashion as Westbrook and South Portland have done.

Alternatively, the Council may take the approach of Rockland and Lewiston and pass the attached ordinance that those Cities have adopted. As well as potentially modifying that ordinance as the Council deems fit. Potential options include:

1. Expressly codifying within the City ordinance, the limitations on law enforcement set forth in LD 1971
2. Prohibiting the use of city funds and all other ICE assistance.
3. Issuing Guidelines to staff for interactions with ICE.
4. Zoning Amendments as discussed herein.
5. Regulating ICE activity on City owned property.
6. Assisting private landowners and lease holders with signage to preclude ICE activity.
7. Require all City staff, potentially including law enforcement, to demand identification from any ICE agent, whenever any ICE enforcement is conducted on City property.
8. Require City staff, including law enforcement, to document all interaction with ICE. Regarding law enforcement, this would likely be limited to civil enforcement.
9. Require ICE to utilize judicial warrants for enforcement activities within the City of Biddeford.
10. Reiterate and confirm the City's support of peaceful protest of ICE.
11. State the City's willingness to investigate and hold ICE accountable, to the extent allowable.

Regardless of the approach taken by the Council, enforcement of immigration law rests exclusively with the Federal Government. The City of Biddeford has no jurisdiction to force the Department of Homeland Security, or ICE to practice immigration law enforcement in a safe, humane, transparent, accountable manner.