



December 5, 2021

Councilor Valerie Abbott
 Councilor President Wardine Alexander
 Councilor Carol Clarke
 Councilor J.T. Moore
 Councilor Darrell O’Quinn
 Councilor Pro Tem Crystal Smitherman
 Councilor LaTonya Tate
 Councilor Hunter Williams
 Councilor Clinton Woods
 Birmingham City Hall—Third Floor
 Office of the City Council
 710 North 20th Street
 Birmingham, AL 35203

Mayor Randall Woodfin
 City of Birmingham
 710 20th Street North
 Birmingham, AL 35203

Re: A contract between the City of Birmingham and ICE is an insult to Birmingham’s immigrants

Dear City Councilors and Mayor Woodfin,

We are a coalition of community organizations and residents committed to promoting the dignity and well-being of all persons residing in the City of Birmingham. We are writing about an urgent matter of public safety. We want to express our strong opposition to the proposed ordinance submitted by the Mayor’s office that would authorize an Interlocal Cooperation Agreement between the City of Birmingham and United States Immigration and Customs Enforcement (“ICE”) to allow our local police officers to act as federal ICE agents.¹ Although the renewal of this contract is being marketed as a means to combat violent crime, in actuality, this ordinance and contract would give Birmingham police officers the power to act as immigration enforcement officers and to arrest Birmingham residents under the authority of ICE.

We are living in an era where the relationship between the police and communities of color is being rightfully scrutinized. The citizens of Birmingham were at the forefront of the civil rights

¹ See “Memorandum of Understanding between U.S. Immigration and Customs Enforcement Homeland Security Investigations and Birmingham Police Department regarding the designation of Birmingham Police Department employees as Customs Officers (Excepted),” attached.

movement when they stood up against Bull Connor and his oppressive police tactics, and this is a perfect opportunity to live up to that legacy. Further entangling our local police force with ICE would have extremely harmful effects on many Birmingham residents. This ordinance, if passed, would ultimately make Birmingham residents less safe from violence and crime, perpetrators less likely to be held accountable, and our police force less effective in protecting our community.

Turning our police officers into de facto ICE agents will disintegrate any trust that has been carefully developed with our communities, resulting in a far more dangerous city for Black and Brown people. We ask you sincerely: what value does this proposed ordinance and corresponding ICE contract actually hold when our local police force already has the full authority to investigate and take action with respect to all crimes under Alabama law, including human trafficking, child exploitation, and other violent crimes? We do not need to deputize our local police force as ICE agents in order to reduce crime and protect our residents. Our police officers already have legal authority to investigate crime and enforce our laws. Complicity with ICE will harm the most vulnerable of Birmingham's residents that are already disproportionately funneled into the jail-to-deportation system.² Further collusion with ICE will incentivize our police to further target black and brown people in ICE's pursuit of federal arrests³ and asset seizures. Residents who already mistrust ICE will now reasonably fear any interactions with our local police force.

All residents, regardless of nationality and ethnicity, must feel safe calling the police when they are the victim or witness to a crime. However, if our police force becomes an ICE force, then victims and witnesses of human trafficking, domestic violence, and other crimes will not come forward.⁴ Victims will suffer in silence, witnesses will be too afraid to cooperate with our local police, and the perpetrators of crime will more likely to escape accountability. Our immigrant communities are aware of formal and informal collusion between the Birmingham Police Department and federal immigration enforcement agencies. Deepening this troubling complicity will further erode the tenuous trust that currently exists between our local police and our immigrant residents.

Further, this proposed collusion with ICE will decrease the transparency and accountability of our police department. There are no accountability measures built into this plan for ICE collusion. Handing over power of oversight to a rogue federal agency will make our police answer to ICE rather than our community. The ICE contract explicitly requires deputized police officers

² According to BJS data from 2015, Black people are more likely to be subject to traffic and street stops than their white counterparts. See ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, US DEP'T. OF JUST., CONTACTS BETWEEN POLICE AND PUBLIC, 2015, at 4 tbl.3 (2018), <https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf>. See, e.g., Shamira Ibrahim, *Ousman Darboe Could Be Deported Any Day. His Story is a Common One for Black Immigrants*, VOX (Feb. 5, 2020), <https://www.vox.com/identities/2019/9/30/20875821/black-immigrants-school-prison-deportation-pipeline>

³ In recent years there has been a massive increase in the prosecution of immigration crimes in federal court. See MARK MOTIVANS, U.S. DEP'T OF JUST., IMMIGRATION, CITIZENS, AND THE FEDERAL JUSTICE SYSTEM, 1998-2018, at 1 fig. 1 (2019), <https://bjs.ojp.gov/content/pub/pdf/icfjs9818.pdf>

⁴ See Reva Dhingra, *et al.*, "When local police cooperate with ICE, Latino communities under-report crime. Here's the data," *Washington Post*, February 5, 2021, <https://www.washingtonpost.com/politics/2021/02/05/when-local-police-cooperate-with-ice-latino-communities-under-report-crime-heres-data/>

to follow ICE directives and instructions. From years of experience we know the devastating effects of ICE presence in our communities. We have seen ICE inflict physical and psychological violence on our families, friends, and neighbors. We have seen ICE agents breaking laws with impunity. We have seen unscrupulous employers use the threat of ICE as a means to steal hard-earned wages and retaliate against worker organizing. We have seen hard-working families—the same ones that are celebrated as essential to the fabric of our society—torn apart.

Across the country, contractual involvement between local police and ICE has led to racial profiling, civil rights violations, isolation of immigrant communities, and family separations.⁵ Some cities and counties have suffered considerable financial harm as a consequence of working with ICE.⁶ More and more cities are choosing to stop colluding with ICE altogether. In recent years, municipalities in states such as Louisiana, Georgia, Texas, North Carolina, and Virginia have wisely ended their contracts with ICE.⁷ We must not jeopardize Birmingham's financial stability by entering into a risky ICE contract.

You, our elected leaders, are responsible for promoting the safety and well-being of all our city's residents, and disentangling our city from its current collusion with ICE will do just that. Our local police force is responsible for protecting our residents. Keeping our police focused and accountable to our communities, rather than having them do ICE's job and following ICE's directives, will help our police keep us safe. As a coalition of community organizations, we implore you to allow us to further educate you on the dangers of this proposed ordinance and ICE contract.

The Mayor's office is pushing this ordinance through the City Council without an opportunity for meaningful vetting and debate. The Mayor's office has not engaged with the immigrant and minority communities who would be most impacted by this ordinance. On the contrary, the manner in which this issue has been handled has lacked transparency at every stage. It seems that the Mayor's office blindsided the public, and the City Council itself, in its attempts to quietly add this item to the City Council's agenda. Then, it bypassed the Public Safety Committee meeting where local immigrants' rights leaders were promised a chance to voice our concerns.

On Tuesday morning the City Council will vote on this ordinance, and our coalition still has not had the opportunity to meaningfully discuss our understandable concerns. At the very least we deserve a chance to be heard and included in the discussion. We respectfully ask that the City Council vote down this ordinance. **Nothing about us without us.**

⁵ See Debbie Cenziper, *et al.*, "Under Trump, ICE aggressively recruited sheriffs as partners to question and detain undocumented immigrants," *Washington Post*, November 23, 2021, https://www.washingtonpost.com/investigations/interactive/2021/trump-ice-sheriffs-immigrants-287g/?itid=ap_debbiecziper. See Immigrant Legal Resource Center, <https://www.ilrc.org/national-map-287g-agreements>

⁶ Courts have held Clackamas County, Oregon liable for \$30,100, and Salt Lake County, Utah liable for \$75,000 as the result of constitutional violations in the course of local law enforcement collusion with ICE. See *Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2013 WL 653968, at *5-6 (D. Ut. Feb. 21, 2013).

⁷ See <https://www.ilrc.org/local-enforcement-map> for a map of jurisdictions that have limited local entanglement with ICE. ICE agents are the nation's interior immigration enforcers.

Sincerely,

Adelante Alabama Worker Center

Alabama Coalition for Immigrant Justice

Alabama NAACP

Beloved Community Church

Birmingham DSA

Birmingham Mutual Aid

Cell A65

Dynamite Hill-Smithfield Community Land Trust

GASP

Greater Birmingham Ministries

Saint Junia United Methodist Church

SWEET Alabama

MEMORANDUM OF UNDERSTANDING

between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS

and

Birmingham Police Department

regarding

THE DESIGNATION OF Birmingham Police Department EMPLOYEES
AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Birmingham Police Department
2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Birmingham Police Department.
3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Birmingham Police Department

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), HSI is not conveying the authority to enforce administrative violations of immigration law.

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Birmingham Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. **RESPONSIBILITIES.**

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of Birmingham Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, et seq.).

Birmingham Police Department agrees:

- a. That only sworn law enforcement officers of Birmingham Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
 - b. To schedule periodic meetings to review this MOU, as required.
5. **REPORTING AND DOCUMENTATION.** HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and Birmingham Police Department.

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: HSI Atlanta
Name: Susan Swihert
Title: TFO Coordinator
Address: 107 Frankfurt Circle
Birmingham, AL 35211
Telephone Number: +1 (205) 256-1240
Fax Number: +1 (205) 917-8523
E-mail Address: Susan.C.Swihert@ice.dhs.gov

Birmingham Police Depart :
Name: Patrick D. Smith
Title: Chief of Police
Address: 1710 1st Avenue North
Birmingham, AL 35203
Telephone Number: +1 (205) 254-1700
Fax Number:
E-mail Address: Patrick.Smith@birminghamal.gov

7. OTHER PROVISIONS. This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

- 8. EFFECTIVE DATE. The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.
- 9. MODIFICATION. This MOU may be amended by the written concurrence of both Parties.
- 10. TERMINATION. This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

Katrina W. Berger
Name of HSI Official
Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Patrick D. Smith
Name of Birmingham's Official
Chief of Police
Title of Birmingham's Official
Name of Birmingham's Agency

Date: _____

Date: _____

Attest

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT.

[Signature] 18 October 2021
Assistant City Attorney / Date