

## **LePage threat to fire sheriffs violates Constitution**

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Maine Gov. Paul LePage, with his usual bluster, is threatening sheriffs who do not hold certain inmates beyond their scheduled release dates so their immigration status can be reviewed by U.S. Immigration and Customs Enforcement. LePage said earlier this week that he would fire sheriffs who don't cooperate with ICE.

While it appears LePage has the authority under the Maine Constitution to fire sheriffs — after a hearing — his directive that sheriffs must work with ICE on immigration issues likely runs afoul of the U.S. Constitution.

On a more fundamental — and humane — level, LePage's continued fear-mongering about immigrants being dangerous is wrong and heartless.

In a letter to the state's 16 county sheriffs, LePage said "the safety and security of the children, families and citizens of the state of Maine" are his first responsibility.

The claim that immigrants, especially undocumented immigrants, are dangerous criminals — also made repeatedly by President Donald Trump — is factually incorrect. Immigrants, both legal and undocumented, commit crimes at a far lower rate than native-born Americans. A recent study by the right-leaning Cato Institute calculated that the incarceration rate among undocumented immigrants in America is about half that of the incarceration rate among the native-born population. If incarceration for immigration-related offenses is removed, the incarceration rate for undocumented immigrants falls to less than a third of that of the native-born population.

Beyond the fallacy of immigrants posing a greater criminal danger than native-born Americans, LePage's directive to sheriffs rests on shaky legal ground. ICE has asked law enforcement officials to hold suspected undocumented immigrants on what are known as 48-hour detainers. Many law enforcement agencies will hold an inmate who is set for release to allow ICE to determine if it wants to take custody of the person.

In such instances, no judge has issued a warrant or order that the inmate continue to be held after their time is served. Many sheriffs nationwide, including at least three in Maine, worry that holding the inmate beyond his or her scheduled release violates the law.

In fact, the Massachusetts Supreme Judicial Court ruled in July that the detainers ICE seeks violate state law. “The detainers are not criminal detainers or criminal arrest warrants,” the court wrote. “They do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime.” The detainers are used to hold people whom federal authorities believe can be removed from the U.S. under civil law.

Therefore, the court said, the detainers result in someone being under civil arrest. Neither federal law nor state law gives state officers the powers to make this kind of arrest, the court concluded. Citing similar concerns, Cumberland County Sheriff Kevin Joyce sent a letter to ICE on Sept. 14 notifying the agency that his department would no longer honor ICE detainers without a judicial order.

Requiring state and local government agencies to carry out federal mandates violates the 10th Amendment to the U.S. Constitution, said Robert Glover, a political science professor at the University of Maine in Orono.

“LePage’s threat undermines the idea that collaboration between federal and local authorities should be voluntary and unforced in those areas that are the domain of state and local authorities,” Glover wrote in a BDN blog post. “It also intrudes deeply into the federal government’s sole and complete jurisdiction over immigration policy. As governor of Maine, he has no business trying to engineer an immigration policy outcome.”

In other words, LePage can’t translate his dislike of many immigrant groups, which he cloaks in the mantle of public safety, into policies that usurp local and federal powers or that put sheriff’s departments at risk of violating the laws they are sworn to uphold.