



VIA EMAIL AND CERTIFIED U.S. MAIL

Chief Anthony Powalie
Painesville Police Department
P.O. Box 601
Painesville, OH 44077
apowalie@painesville.com

CC: Monica S. Irelan, City Manager
Valerie Vargo, Clerk of Council

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AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

Re: Unconstitutionality of Police Policy 413

Dear Chief Powalie:

We write to express our concern over Painesville's Police Policy 413, adopted this Cinco de Mayo. This Policy directs the Painesville Police to engage in unlawful racial profiling, and to venture into the unauthorized enforcement of federal immigration law. It sends a message to members of the Painesville community—immigrants, people of color, and people for whom English is not a first language—that the police, rather than working in the common interest of protecting the community, are biased against certain members. We urge you to rescind this Policy completely, and instead adopt police guidelines that focus your resources on supporting *everyone* in the Painesville community.

Policy 413 takes needed police resources away from the well-being of your community, instead diverting them where local police do not belong. Enforcement of immigration law is a role the Constitution reserves for the federal government—not for local police.¹ As a local law enforcement agency operating without the authority of a 287(g) agreement, the Painesville Police Department has no statutory, inherent, or constitutional authority to detain people for violations of federal immigration law.² Courts routinely hold that local law enforcement may not initiate removal proceedings, authorize voluntary departure, or bring criminal immigration charges against individuals they believe to be in the country without status.³

¹ U.S. Const. Art. 1, §8

² See *Melendres v. Arpaio*, 989 F. Supp. 2d at 822, 892 (D. Ariz. 2013) citing *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011).

³ See, e.g., *Melendres v. Arpaio*, 989 F. Supp. 2d at 845; *Arizona v. United States*, — U.S. —, —, 132 S.Ct. 2492, 2506–07, 183 L.Ed.2d 351 (2012); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–484, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (federal government retains exclusive discretion on these matters); *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir.2011).

Your Police Department lacks jurisdiction to stop individuals on suspicion of past, and possibly long-past, federal immigration violations. Moreover, merely being in the United States without citizenship status is not a criminal offense,⁴ and the U.S. Supreme Court has held it cannot supply the basis for even a brief investigatory police stop.⁵

Not only does Policy 413 divert your police to work outside their jurisdiction; it invites blatant, and unlawful, racial profiling. Although the Policy suggests your police may detain individuals based on a perceived lack of English proficiency, under our Constitution, they may not do so. English language proficiency is a wholly unreliable indicator for criminal behavior, and its use as a factor in criminal suspicion only encourages impermissible racial and ethnic stereotyping. As you are surely aware, police may not make investigatory stops based on broad profiles including language, ethnicity, or location, which cast suspicion on “entire categories of people.”⁶ “Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone ... and that those who are not white enjoy a lesser degree of constitutional protection.”⁷

Nearly a quarter of Painesville’s population is Hispanic; still a larger fraction is non-white in general. Courts have specifically held, regarding municipalities like yours, “[t]he likelihood that in an area in which... a substantial part of the population is Hispanic, any given person of Hispanic ancestry is in fact an alien, let alone an illegal alien, is not high enough to make Hispanic appearance a relevant factor in the reasonable suspicion calculus.”⁸ Policy 413 unlawfully endows your police with blanket authority to stop nearly a *quarter of your community members* based on their perceived racial or ethnic identity, or perceived English language proficiency.

The ACLU of Ohio urges the Painesville Police Department to fully reject this Policy, and instead, to adopt policies that put the interests of your local community first. We ask that you affirm your community—and uphold the Constitution—by requiring judicial warrants before honoring any ICE detainer, by continuing to decline participation in the 287(g) program, and by avoiding other types of entanglement in federal immigration enforcement.

We understand that federal funding for local law enforcement is being threatened by the Trump Administration. But federal court decisions have indicated that the Administration will encounter substantial constitutional hurdles if it attempts to follow through with any such threat.

⁴ *Arizona v. United States*, 132 S.Ct. 2492, 2505 (2012); *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011).

⁵ See *Arizona v. United States*, — U.S. —, —, 132 S.Ct. 2492, 2505, 183 L.Ed.2d 351 (2012) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984)); *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 892 (D. Ariz. 2013) (“When [officers] merely suspect[] a person of being in the country without authorization, [they] do[] not, in the absence of additional facts that would make the person guilty of an immigration-related crime, have a basis to arrest or even engage in a brief investigatory detention of such persons.”).

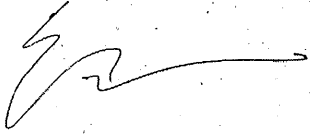
⁶ See *United States v. Manzo-Jurado*, 457 F.3d 928, 936 (9th Cir. 2006); *United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1121 (9th Cir. 2002).

⁷ *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir.2000) (en banc); see also *Melendres v. Arpaio*, 989 F.Supp.2d 822, 896 (D.Ariz.2013) (“[In general,] the race of an individual cannot be considered when determining whether an officer has or had reasonable suspicion in connection with a Terry stop, including for immigration investigation.”)

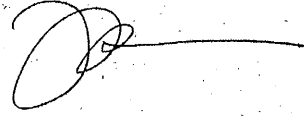
⁸ *Montero-Camargo*, 208 F.3d at 1132 (9th Cir.2000).

We will continue to monitor the development of an appropriate policing policy in Painesville, and we will take action to support or challenge your policies, as warranted.

Sincerely,



Elizabeth Bonham
Staff Attorney
ACLU of Ohio



Freda J. Levenson
Legal Director
ACLU of Ohio