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July 9, 2018

Attorney General Tim Fox  
215 N Sanders St.  
Helena, MT 59601

*Re: Montana's Immigration Policies in the Era of President Donald Trump*

Dear Attorney General Fox:

We are at a crossroads. In this extremely troubling era of zero tolerance, family separation, racial profiling and aggressive deportations, the State of Montana needs renewed leadership in the immigration arena. The Trump administration has “take[n] the shackles off” Immigration and Customs Enforcement (“ICE”) officers and given them expansive and often unreviewed discretion to target people of color for detention and deportation. The line between immigration enforcement and human rights violations has become increasingly thin since ICE was created in 2003. It is no longer enough for our state leadership to simply disagree with the inhumane policies enacted by the Trump Administration. Montana voters elected you to act. This letter describes recent overzealous immigration actions taken in Montana as well as the responses you have a moral obligation to undertake.

The following categories of aggressive immigration tactics demonstrate that President Trump’s xenophobic and racist policies have arrived in Montana.

I. ICE Administrative Subpoenas to State Agencies

ICE is regularly issuing subpoenas to the Department of Labor and Industry. These subpoenas seek quarterly wage reports and workers compensation coverage reports for various businesses in Montana which ICE assumes employ immigrants, such as Mexican restaurants. Last February, DOLI legal secretary Jordan Dyrdaahl-Roberts resigned from his position in protest over the subpoenas. In an Op-Ed in the Washington Post, Jordan wrote: “I loved my work at the Labor Department, but I can’t be part of breaking up families.”

These ICE subpoenas are unabashed fishing expeditions that undermine federal and state provisions protecting the right to privacy. The ACLU of Montana has requested that DOLI and other state agencies refuse to comply with ICE’s unnecessary demands. The State is well within its legal rights to refuse to produce the requested information. However, DOLI has notified us that it will honor the ICE subpoenas, despite our position that it is under no legal requirement to do so.

The ICE subpoenas are invalid and unenforceable because they run afoul of well-recognized federal statutory and constitutional limitations. Indeed, the Ninth Circuit has already held that reliance on exactly the kind of “blanket” subpoena at issue here in federal immigration enforcement investigations exceeds ICE’s statutory authority. *Peters v. United States*, 853 F.2d 692 (9th Cir. 1988). It also violates the Fourth Amendment’s reasonableness requirement. *See In re Grand Jury Subpoena, JK-15-029*, 828 F.3d 1083 (9th Cir. 2016).

## II. Aggressive Enforcement Actions

On January 25, 2017, President Trump issued an order enlarging the federal government’s deportation force. This order envisions large-scale exclusion and detention, to be facilitated by hiring 10,000 additional ICE officers and 5,500 additional Customs and Border Patrol (CBP) agents and officers.

President Trump’s immigration policies have exploded in Montana. Federal agents have engaged in aggressive enforcement actions targeting people of color, including:

### A. May 31, 2018, Raid of Mushroom Picking Camp Near Superior, MT

May 31, 2018, at 6:00 a.m., CBP, ICE, U.S. Forest Service officers, and Mineral County Sheriff deputies raided the commercial mushroom camp located at the Quartz Flat Campground, ten miles east of Superior on HWY 90. According to court records, the Mineral County Sheriff’s Office told ICE agents that several people staying at the Quartz Flat Campground as part of a commercial morel mushroom harvesting business might be in the country illegally. Law enforcement employed aggressive tactics, including the use of firearms, against the mushroom pickers. For example, we received reports that a pregnant woman, who is a U.S. citizen, was aggressively handcuffed and arrested. She was among the individuals who were later released.

### B. Gallatin County Raids

In April, 2018, we received credible reports of numerous enforcement actions underway statewide, with specific emphasis on Gallatin County, including the use of traffic stops as a pretense for checking immigration status.

### C. Aggressive Deportation Actions

On August 2, 2017, ICE agents arrested Audemio Orozco-Ramirez, the victim of a sexual assault that occurred in ICE custody in October 2013. Audemio is a Mexican national and father of seven children (six of whom are U.S. citizens, and one with valid immigration status). He has been living in the United States for over 20 years. In a shift from its normal protocol, ICE immediately transported Audemio directly to Utah to stage his deportation.

Audemio’s 2013 sexual assault garnered statewide media attention, especially in light of missing surveillance video from the night of the rape. After this sexual assault, ICE released Audemio from custody under an “Order of Supervision.” This allowed Audemio to return to his family and legally work, as he has done for almost four years now. He had been checking in with ICE

every month since then. On August 2, 2017, after his routine check-in, Audemio was arrested, and subsequently deported.

### III. Racial Profiling

#### A. Ana Suda/Martha Hernandez

On May 16, 2018, a CBP agent detained and interrogated two Montana residents, both U.S. citizens, after he heard them speaking Spanish in a Havre gas station. The agent stated: “The reason I asked you for your ID is because I came in here, and I saw that you guys are speaking Spanish, which is very unheard of up here.” Martha Hernandez and Ana Suda recorded the interaction and repeatedly asserted their rights as U.S. citizens.

It is unlawful racial profiling to demand papers or detain individuals simply because they are speaking Spanish. The Constitution and the Department of Homeland Security's own nondiscrimination policy prohibit racial profiling. English has never been the only language spoken in Montana, and people have the right to speak Spanish whenever and wherever they choose without being harassed and detained.

#### B. Zuri Moreno

In May, 2018, ACLU Advocacy and Policy Assistant (and U.S. citizen) Zuri Moreno was a passenger in a vehicle traveling on Highway 12 between Helena and Missoula. Montana Highway Patrol stopped the vehicle. Inexplicably, the officer demanded to see Zuri's identification. In Montana, an officer must have objective data and a resulting suspicion justifying the demand for identification. A routine traffic stop does not justify demanding identification from the vehicle's passenger. Zuri's experience is yet another example of law enforcement unlawfully engaging in racial profiling of Montana residents, presumably with the intent to check their immigration status.

### IV. ICE Detainers

Last fall, Arturo Valerio-Gonzales was arrested on misdemeanor criminal charges in Gallatin County. When he was booked into the detention center, local law enforcement noted the color of his skin and his inability to speak fluent English, and contacted ICE. ICE then faxed a form to Gallatin County placing a 48-hour “detainer” or “hold” on Arturo. That meant that, even though Arturo was capable of posting bail, local officials would not release him.

These detainers are routinely being honored by local law enforcement and jail officials across the state. We have heard that Gallatin, Yellowstone, Cascade and other counties are collaborating with ICE to hold individuals beyond the time when they would otherwise be released. Local officials are under no obligation to comply with the ICE detainers. Nevertheless, they are choosing to honor them and regularly transferring individuals to federal custody.

These ICE detainers are not issued by a judge, nor are they supported by probable cause. Instead, they are issued by federal agents who simply run a name and potentially other

identifying information through an immigration database. An immigrant's unauthorized presence in Montana is not a crime. Nevertheless, local law enforcement have routinely re-arrested and jailed suspected immigrants for no reason other than their suspected immigration status.

\* \* \*

It is time for Montana to end all collaboration with federal agencies in the immigration enforcement arena. Public statements are no longer sufficient. Your office has the authority to set policy for law enforcement agencies throughout the state, and to provide legal guidance to state and local agencies. Accordingly, we request that you undertake the following actions:

- 1) Order highway patrol and any other agencies under your purview to cease all cooperation or collaboration with ICE.
- 2) Sign on to the lawsuit filed by 17 states and D.C. challenging family separation. *See, [https://www.washingtonpost.com/world/national-security/17-states-and-dc-sue-over-trumps-family-separation-policy/2018/06/26/b32d2a6c-7975-11e8-80be-6d32e182a3bc\\_story.html?noredirect=on&utm\\_term=.19d1ec00dd63](https://www.washingtonpost.com/world/national-security/17-states-and-dc-sue-over-trumps-family-separation-policy/2018/06/26/b32d2a6c-7975-11e8-80be-6d32e182a3bc_story.html?noredirect=on&utm_term=.19d1ec00dd63)*
- 3) Issue an AG opinion that ICE detainers are illegal.
- 4) Advise state agencies such as DOLI that they are within their rights to refuse administrative subpoenas issued by ICE.
- 5) Aggressively investigate incidents of racial profiling.

As you know, we live in an amazing state with a truly exceptional state Constitution. We need not allow Washington D.C. to dictate what happens here in Montana. Montana does not have to march in lock-step with President Trump's aggressive and xenophobic immigration policies. Montana always has, and hopefully always will, march to its own drumbeat – a drumbeat that echoes the values enshrined in our state Constitution. You have an obligation to reject federal commandeering of state resources.

In these difficult times Montana needs your leadership now more than ever. We would welcome the opportunity to work with you on any and all of these requests. If you have any questions, please do not hesitate to contact us.

Sincerely,



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