



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Division
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November 28, 2022

VIA U.S. MAIL AND E-MAIL

Sheriff Dale J. Wagner
Adams County Sheriff's Office
210 W. Broadway
Ritzville, WA 99169
dalew@co.adams.wa.us

RE: Adams County Sheriff's Office's Compliance with Keep Washington Working Act

Dear Sheriff Wagner:

The Attorney General's Office is committed to protecting the civil rights of everyone in the state of Washington. This includes ensuring that units of local government comply with state law designed to protect vulnerable individuals from being targeted by law enforcement based on their status as members of a protected class, such as national origin, citizenship, or immigration status. *See* RCW 49.60.030(1). I write to raise concerns that the Adams County Sheriff's Office may be in violation of the Keep Washington Working Act (KWW), RCW 10.93.160.

As you know, KWW restricts local law enforcement agencies from participating in the enforcement of federal immigration laws. KWW provides that a person's immigration status, presence, or employment in the U.S. is not a matter for police action, and enforcing civil federal immigration law is not local law enforcement's primary purpose. RCW 10.93.160(2).

To that end, KWW expressly prohibits local law enforcement agencies from, among other things:

- Inquiring into or collecting information about an individual's immigration or citizenship status, or place of birth, unless there is a connection between such information and an investigation into a violation of state or local criminal law;
- Providing information in response to a notification request from federal immigration authorities for the purposes of civil immigration enforcement;
- Providing nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by law; and
- Detaining someone, or holding someone in custody, solely for the purposes of determining immigration status or based solely on a civil immigration warrant or immigration hold request.

RCW 10.93.160(4)-(8).

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In May 2020, at the Legislature's direction, the Attorney General published Guidance, Model Policies, and Training Recommendations for State and Local Law Enforcement Agencies, to ensure that "local law enforcement duties are carried out in a manner that limits, to the fullest extent practicable and consistent with federal and state law, engagement with federal immigration authorities for the purpose of immigration enforcement." RCW 43.10.315; https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/Office_Initiativess/KWW/KWW%20LEA%20Model%20Guidance.pdf. I have enclosed a copy of these documents for your review.

KWW requires local law enforcement agencies, including the Adams County Sheriff's Office, to either (1) adopt policies consistent with the Attorney General's guidance; or (2) notify our Office that they are not adopting the guidance, state the reasons why, and provide a copy of the agency's policies that ensure compliance with KWW. RCW 43.10.315(1)-(2). To date, our Office has not received any information from the Adams County Sheriff's Office regarding its compliance with these provisions.

Accordingly, on January 24, 2022, our Office requested information from the Adams County Sheriff's Office reflecting your communications with federal immigration officials from May 2019 through December 2021. We reviewed information responsive to that request in batches as it was provided by your Office, as well as Adams County Sheriff's Office policies. Based on our review, it appears that your Office has engaged in conduct that may violate the above-cited provisions of KWW.

The records we reviewed indicate that since the effective date of KWW (May 21, 2019), staff in your Office contacted federal immigration officials at least 212 times to share nonpublicly available information pertaining to hundreds of individuals in custody at the Adams County Jail. The nonpublic information shared included dates of birth, FBI numbers, home addresses, drivers' license numbers, and anticipated jail release dates. None of this information appears to have been provided in connection with an ongoing criminal matter. In fact, the majority of the time, Adams County Sheriff's Office staff appear to have proactively provided this information from your "new in custody" lists to federal immigration officials, in plain violation of KWW. *See* RCW 10.93.160(5). Additionally, it appears that Adams County Sheriff's Office has continued to receive civil immigration warrants and serve them on individuals in your custody in violation of KWW.

We also reviewed the Adams County Sheriff's Office Policy Manual and identified certain policies that may be contributing to the above violations. First, Policy 428.4 (Immigration Violations – Enforcement) permits Deputies to "detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law," while noting separately that "a deputy should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant." Detaining individuals to determine their immigration status is prohibited under KWW. RCW 10.93.160(7). Moreover, Policy 428.4 does not explain what facts might lead a Deputy to believe an individual has "entered into the United States in violation of a federal criminal law," increasing the risk of Deputies illegally profiling individuals on the basis of their race, ethnicity, or nationality, in violation of both the state and federal constitutions.

Second, Policy 428.6 (Information Sharing) refers to 8 U.S.C. § 1373 (Section 1373), and provides "No member of this office will prohibit, or in any way restrict, any other member from doing any of

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the following regarding the citizenship or immigration status, lawful or unlawful, of any individual . . . Sending information to, or requesting or receiving such information from federal immigration officials" The Policy implies incorrectly that Deputies may freely share any information, including personally identifiable information, with federal immigration authorities. However, Section 1373 does not apply to personal information other than immigration or citizenship status, such as birthdate, address, location, or release date. Thus, your staff should not be sharing such information with federal immigration authorities unless it is clearly connected to a criminal matter. *See* RCW 10.93.160(4)(b), (5). Moreover, nothing in Section 1373 requires state or local law enforcement agencies to collect citizenship or immigration information from their constituents, or share that information with federal immigration authorities, as Policy 428.6 seems to imply. KWW, as noted above, prohibits the collection of such information unless it is directly connected to an ongoing state or local criminal investigation.

Based on the foregoing, the Attorney General's Office is concerned that the Adams County Sheriff's Office may be in violation of KWW and other civil rights laws. I request an opportunity to meet with you to discuss these issues and strategies your office may employ to ensure compliance with state law. I am available at the following dates and times:

- Monday, December 5, 2022: 9:00AM-1:00PM
- Tuesday, December 6, 2022: 11:00AM-1:00PM
- Thursday, December 8, 2022: 11:00AM-4:00PM
- Monday, December 12, 2022: 9:00AM-2:30PM
- Tuesday, December 13, 2022: 9:00AM-3:00PM

Please confirm a date and time that works for you, and I will circulate a remote meeting invitation. Please feel free to invite anyone else on your staff who should also participate.

I look forward to meeting with you.

Sincerely,



EMILY C. NELSON
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Encl.

cc: Randy Flyckt, Adams County Prosecutor