

*Shawn Hanley - Chairman
James Balli – Vice Chairman
Boyd Austin
Terry Clark*



*Phil Kent
Amor Kok
Mike Yeager*

Immigration Enforcement Review Board

Meeting Agenda

June 27, 2018

IERB Review Panel Hearing

10:00 AM

Meeting Location

*Coverdell Legislative Office Building
Room 506*

1. Call to Order
2. Recommence Review Panel Hearing on Complaint 2017-13 suspended May 15, 2018.
 - Entertain any matters related to the Complaint in the discretion of the Review Panel. Vote on whether to adopt the attached proposed written opinion or otherwise reach a decision on the Complaint.
3. Other Business
4. Adjournment

**IMMIGRATION ENFORCEMENT & REVIEW BOARD
STATE OF GEORGIA**

**RE: CITY OF DECATUR
Public Agency Respondent**

IERB COMPLAINT NO. 2017-13

**CASEY CAGLE
Complainant**

This Complaint was filed by Lieutenant Governor Casey Cagle (“Mr. Cagle”) alleging that the City of Decatur (“Decatur”) has adopted a “Sanctuary Policy” in violation of O.C.G.A. § 36-80-23(a)(6) and also violated O.C.G.A. § 50-36-4 by falsely reporting compliance with Georgia’s immigration laws.¹ Decatur denied both allegations, raised certain constitutional objections² and filed briefs to support its position. On May 15, 2018, the Complaint then came before a Review Panel (“Panel”) of the Immigration Enforcement Review Board (“IERB”). Decatur was allowed to introduce evidence in the form of witness testimony and exhibits. At the conclusion of Decatur introducing all desired evidence and making a closing argument, the hearing was suspended for purposes of the Panel

¹ The IERB has no jurisdiction over violations of O.C.G.A. § 50-36-4 and therefore will issue no ruling on whether Decatur falsely reported compliance and that portion of the Complaint is dismissed.

² The IERB is not a Court of law and will not render any opinion as to constitutionality of this process, of the statutes the IERB is tasked with enforcing or the federal immigration laws regarding administrative detainers as those issues, if any, must be addressed by the Judiciary.

reviewing the voluminous evidence presented at the hearing and to allow the proffer of other submissions no later than Thursday, May 17, 2018. Decatur and Mr. Cagle both timely forwarded additional documentation to the Panel.³ Although the IERB is not required to issue written opinions, the Panel felt it was appropriate to do so for this Complaint as other jurisdictions have similar policies and the issue is one of first impression before the IERB.

STANDARD OF PROOF

As advised by the Attorney General's office, the applicable standard of proof when determining whether Decatur has violated Georgia's immigration laws is the "preponderance of the evidence test." Rule 291-2-.04. "A 'preponderance of the evidence' [standard]...simply requires that the evidence show a rational factfinder that a particular fact is more likely than not." Redmon v. Daniel, 335 Ga. App. 159, 162 (2015). "The standard requires only that the finder of fact be inclined by the evidence toward one side or the other." Zwiren v. Thompson, 276 Ga. 498, 500 (2003). Accordingly, the question before the Panel is whether Decatur has enacted a practice or policy which "more likely than not" "prohibits **or** restricts" a Decatur police officer from cooperating and communicating

³ Counsel for Decatur objected to any additional documentation being submitted by Mr. Cagle. The objection was initially overruled as Decatur was allowed to submit additional documentation. Decatur has also submitted a letter of written objections and will be allowed to present argument on its objection at the hearing during which a vote will be taken whether to accept this written Ruling by the Panel. However, the issue is moot as the Panel can reach the decision herein based on the information of record and submitted at the hearing.

immigration status information to federal law enforcement. For the reasons set forth below, the Panel concludes the answer to that question is yes.

FINDINGS OF FACT AND RULING

Sometime in September of 2017, what Decatur referred to in testimony as a “loose coalition of groups” met with the Decatur Mayor and City Manager. For background information only, while one group was identified at the May 15 hearing as “Hate Free Decatur”, the identities of the other members were not specified but “Project South⁴”, the “Georgia Latino Alliance for Human Rights”⁵, and the “Georgia Not1More Coalition⁶” are identified by Move-On.org as the groups who presented the written “policy” to Decatur.⁷ Regardless of individual identity, it is clear that the “loose coalition” shared a common vehement opposition to federal immigration laws and a desire to have local jurisdictions pass written policies refusing to cooperate with federal law enforcement. It was after meeting with this “loose coalition” that Decatur, for the first time in its history, determined a need to adopt a written policy prohibiting cooperation with Immigration and Customs Enforcement (“ICE”) detainers/administrative warrants. Indeed, Decatur’s Police Chief testified to being summoned to a meeting to draft such a

⁴ <https://projectsouth.org/legal-advocacy-work/>

⁵ <http://www.glahr.org/get-involved/deportation-defense>

⁶ <http://www.notonemoredeportation.com/2016/02/08/georgia-condemns-ice-raids/>

⁷ <https://petitions.moveon.org/sign/tell-the-city-of-decatur>

policy **only** after the Mayor and City Manager met with the groups who wanted a non-detention policy in writing.⁸ Decatur attempts to reduce the significance of this fact by saying Decatur was simply putting into writing the practice utilized for years. The Panel finds that explanation unconvincing and determines that, more likely than not, Decatur, by and through its' Police Department, enacted General Order, Chapter 7 Section 03-d (the "Policy"), for the purpose of creating a "Sanctuary Culture" by preventing cooperation with ICE requests and/or to otherwise hinder ICE's ability to apprehend persons illegally present in the United States and located within the city limits of Decatur.⁹ More important to this Panel, however, is the fact that the Policy now provided that a Decatur police officer could be terminated for complying with federal law.¹⁰

The Policy enacted reads in pertinent part as follows:

The Decatur Police Department **shall not hold or extend the detention of any person at the request of U.S. Immigration and Customs Enforcement (ICE)** unless the agency first

⁸ The Panel notes that Dekalb County, the City of Atlanta and other jurisdictions in this State that have [as argued by Decatur] enacted such a policy use extremely similar, if not verbatim, language to the policy presented [or drafted] by the "loose coalition." <https://petitions.moveon.org/sign/tell-the-city-of-decatur> Thus, when Decatur argues other Metro-Atlanta local governments have adopted similar policies, the argument is most likely true as the same "loose coalition" is drafting the language and demanding it be implemented in various Georgia jurisdictions to oppose federal immigration law.

⁹ Decatur put into the record an October 12, 2017 story in the Atlanta Journal Constitution which reports Decatur is a city which has "adopted measures in favor of restricting interactions with U.S. Immigration and Customs Enforcement."

¹⁰ This is an important distinction because the groups which oppose enforcement of immigration law want a tool to be able to punish law enforcement officers who disagree with their political view.

presents the Decatur Police Department with a judicially issued warrant authorizing such detention.

In particular, the Decatur Police Department shall not arrest, **hold, extend the detention of, transfer custody of**¹¹, or transport anyone solely on the basis of an immigration detainer or an administrative immigration warrant, including an administrative immigration warrant in the National Crime Information Center (NCIC) database....

Since the Decatur Police Department does not have a facility to house an arrested person, the Decatur Police Department **will not hold a person for additional time beyond when the criminal matter allows release solely to notify ICE** of the person's release **or to facilitate the transfer of the person to ICE**...

Any officer determined to have violated this General Order is **subject to disciplinary action**.

(emphasis added. Decatur admits that the Policy is in place and that a police officer who fails to comply with the Policy can be terminated.

The Georgia law at issue here states that “[n]o local governing body, whether acting through its governing body or by an initiative, referendum, **or any other process**, shall enact, adopt, **implement, or enforce** any sanctuary policy.”

O.C.G.A. § 36-80-23 (emphasis added).¹² “Sanctuary policy” means “any regulation, rule, policy, or practice adopted by a local governing body which

¹¹ Decatur's Policy would prohibit a Decatur police officer from allowing an ICE agent to take into custody a non-citizen illegally in the United States even if the ICE agent was physically present and presented an administrative warrant stating the subject was reasonably believed to have committed a terrorist act.

¹² Decatur argued that, even if the Policy was a “sanctuary policy”, because the City Commission [local governing body] did not officially vote to pass the Policy the Complaint fails as a matter of law. The Panel rejects that defense in that Decatur provided its Police Chief with the authority [other process] to create, “implement and enforce” the Policy and Decatur has clearly “adopted” the Policy by allowing it to be implemented by its Police Department. Moreover, the written Policy was enacted only after meeting with the anti-enforcement groups.

prohibits or restricts¹³ local officials or employees from **communicating or cooperating** with federal officials or law enforcement officers with regard to reporting **immigration status information** while such local official or employee is acting within the scope of his or her official duties.” *Id.* (emphasis added). It is important to note the Legislature used both “prohibit” and “restrict” and when interpreting a statute one should “give meaning and intent to all words” and thus “restrict” means something different than “prohibit.” See *Arby’s Restaurant Group v. McRae*, 292 Ga. 243, 245 (2012). When the statute does not define a word [as here] the word is given its’ ordinary, everyday meaning. An often-used dictionary defines the word “restrict” as “to confine or keep within limits.”¹⁴ Therefore, the Panel reads O.C.G.A. § 36-80-23(a)(6) as a complete bar to any policy which either “prohibits” [does not allow] or “restricts” [confines or limits] a law enforcement officer’s ability to communicate and cooperate with ICE regarding the communication of immigration information.

O.C.G.A. § 36-80-23(a)(3) defines “immigration status information” as “**any information**...including but not limited to **any statement, document**, computer generated data, recording, or **photograph**, which is relevant to immigration status **or the identity or location** of an individual who is reasonably believed to be

¹³ A policy can be an illegal Sanctuary Policy if it prohibits OR restricts. Decatur has argued that the Policy does not “prohibit” communication. However, a complete prohibition on communication is not required to find a policy illegal, a policy can be illegal if it merely “restricts” communication.

¹⁴ <http://www.dictionary.com/browse/restrict>

illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.” (emphasis added).

The Panel finds that the Policy violates O.C.G.A. § 36-80-23(a)(6) in that it restricts a Decatur police officer from being able to timely, freely and completely communicate to federal officials “the identity or location” [which is immigration status information] of an person believed to be illegally in the United States. This is demonstrated in that the Policy prohibits the “holding, or extending the detention of” a person on the basis of an ICE warrant and Decatur “will not hold a person for additional time beyond when the criminal matter allows release **solely to notify ICE.**” In other words, if a Decatur police officer conducts a traffic stop, completes her interaction with the person and becomes aware that there is an active ICE warrant/detainer, the officer must let the person go without “extending the detention” for additional time in order to communicate the person’s “identity or current **location**” to ICE and may “not hold a person...solely **to notify** ICE.” If a Decatur police officer extends the detention of a person who has an ICE warrant/detainer for **any** length of time so that she may communicate the current location of said person or to copy the person’s driver’s license or other identity card [which is **immigration status information** as identity cards would be

“documents or photographs relevant to immigration status”], she has violated the Policy and **may be terminated.**

Accordingly, the Policy violates O.C.G.A. § 36-80-23(a)(6) and is an illegal “Sanctuary Policy” in that it restricts and places limitations on Decatur police officers’ ability to timely, freely and fully “cooperate or communicate” immigration status information to federal officials. The Policy is not only an illegal Sanctuary Policy under Georgia law, it would punish a Decatur police officer with termination for detaining a person [even one reasonably believed by ICE to have committed domestic terrorism or a terrorist act as defined by O.C.G.A. § 35-3-62] for any amount of time to communicate with ICE unless there was a judicially issued [Non-ICE] warrant.¹⁵ The Panel finds that punitive provision of the Policy especially offensive and somewhat ironic. At the hearing Decatur accused Mr. Cagle of making accusations purportedly critical of police officers when it is, in fact, Decatur who has enacted a rule which would allow for a police officer to be terminated for following federal law and cooperating with federal law enforcement.

As required by the IERB Rules, the identified “remedial action” is that the Policy should immediately be rescinded in writing by Decatur. See Rule 291-2-

¹⁵ Decatur makes no exception for detention of persons identified by ICE warrant/detainer requests as a person reasonably believed to have committed a terrorist act.

.03. If the Policy is not immediately rescinded, Decatur is notified to be prepared to show cause why sanctions should not be imposed up to and including, the loss of any appropriated State funds and removal of the designation of Decatur as a “qualified local government.” See Rule 291-2-.04. The Department of Audit and Accounts is hereby requested to provide the IERB and Decatur with the amount of appropriated State funds for this fiscal year.

This ____ day of _____ 2018.

Shawn Hanley, Chairman, IERB & Member, Review Panel

James Balli, Vice Chairman, IERB Member, Review Panel