

Gov. Baker seeks to 'Trump' laws and empower (AG Sessions') ICE

Guest Commentary



From the
Brookline TAB

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Guest Commentary, Brookline

By Nelson Brill

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As an immigration attorney practicing in Brookline for more than 30 years and a longtime Brookline resident, I strenuously object to your editorial, "A Matter of Sense" published on Sept. 14. Not only does it — and Gov. Baker's anti-immigrant bill — flout Brookline's recent reaffirmation of our 1985 and 2006 sanctuary-welcoming policies, but it reflects a failure to carefully research the established legal landscape in this area and also fails to interview people on the ground who know how local police cooperating with Trump-era ICE agents have created fear in our communities (and the chilling effect such a corrosive environment has on the constitutional rights of both citizens and non-citizens).

Touching (too) briefly on legal precedent, the Supreme Court has been clear for over 100 years: removal is a civil, not a criminal, consequence. For instance, in removal cases, persons have no absolute right to legal counsel to assist them, as is the case in a criminal

proceeding. Only federal immigration officers are supposed to be trained to address and enforce the complex legal framework of immigration law. There are removal cases that have been terminated in the immigration courts because ICE agents have been found to misinterpret the law or have been found to violate the fundamental constitutional rights due noncitizens such as a noncitizen's right to be free from unwarranted search and seizures under the Fourth Amendment or fundamental due process in their removal hearings under the Fifth Amendment. To allow state and local police with no legal standing or training to participate in any way with cooperating or enforcing civil immigration laws flies in the face of legal precedent, as the Massachusetts Supreme Judicial Court recently affirmed in the Lunn case.

On the supposed “common sense” of Gov. Baker’s proposal to hold a person in state court until ICE arrives because they allege that such a person is “a threat to public safety,” I believe that such a proposal is drafted in an overbroad and vague manner. It allows broad interpretation of its “threat” language by our shameful AG Sessions (who could decree to local ICE officers that “public threat” could be expanded in any number of ways).

This anti-immigrant proposal will be interpreted in the discretion of ICE officers and their local police partners operating in the context of the corrosive environment of fear now escalating in our communities.

I have given talks at local hospitals, schools and community agencies and have heard directly about kids skipping medical appointments; parents not attending school meetings; victims of violence not coming forward to report crimes — because of their stated fears that link local police or other agencies to federal immigration enforcement. This linkage is only weighted by the fact that Trump has now rescinded the Obama policy under which people with no (or minor) criminal records; who had immediate family here and a history of work and contributions to their community were not prioritized for removal. Now this prosecutorial discretion is gone; anyone ICE has contact with, regardless of their equities, will be subject to immediate arrest, detention and the initiation of removal proceedings — often to nations they never knew or where violence, civil wars or repression await them. There are reports of ICE officers arresting people in sweeps at courthouses; it can happen at the doorsteps of any neighborhood home, apartment complex or school.

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“Common Sense?” Baker’s proposal is the opposite: exacerbating an escalation of fear of ICE’s enforcement machinery — already having too much discretion to locate, arrest, detain and seek removal of our most vulnerable neighbors — regardless of their equities.

Citizens and non-citizens must unite to oppose such proposals and the chilling effect they have upon fundamental protections that we take for granted. I just returned from a visit to the Anne Frank House Museum in Amsterdam and through that moving experience (involving a refugee family fleeing to safety in Holland and supported in safety by the heroic actions taken by their Dutch friends and neighbors), I know more than ever the importance of speaking up and opposing proposals like the Baker proposal that are illegal, irrelevant (indeed harmful) to public safety and instead create fear and chill/diminish fundamental rights for both citizens and non-citizens.

The Tab has long editorialized largely in synch with Brookline's progressive and humane culture. Instead of Baker's bill overruling Lunn, the Tab should support the Safe Communities Bill, (Bill S 1305), which non-"moderate" Baker opposes. The Safe Communities Bill seeks to protect the civil rights and safety of all residents by drawing a clear line between federal immigration enforcement and public safety. "Common Sense" and legal precedent are its foundation.

Nelson Brill is an immigration attorney and Brookline PAX board member