

MEMORANDUM

Legal Department, City of Salem, Rm. 205 City Hall, Phone: (503) 588-6003

To: City Council

From: Dan Atchison, City Attorney

Date: November 26, 2025

Subject: Local law enforcement limitations on enforcing laws on federal law enforcement agents

Summary:

Recent federal immigration and customs enforcement activity throughout the Salem area has raised questions about the Salem Police Department's authority to respond to reports of wrongdoing by federal officers. This memo addresses the legal and logistical limitations placed upon the Salem Police Department, which effectively prohibit intervention in federal immigration and customs enforcement.

Legal Limitations on Salem Police Department Intervention:

Federal law enforcement officers, including those working in immigration and customs enforcement, are recognized under federal law: 18 USC §115(c)(1). A "federal officer" is defined as "any officer, agent, or employee of the United States authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law." Federal officers receive certain privileges and immunities when acting in their official capacity or performing official duties.

One privilege offered to federal officers is immunity from local prosecution under the Supremacy Clause of the U.S. Constitution. The Supremacy Clause protects federal officers from state criminal prosecution when those officers are acting in their official capacity or performing official duties. This immunity typically applies when the officer's actions were authorized by federal law, the officer subjectively believed the actions were justified, and that subjective belief was objectively reasonable under the existing circumstances. If these conditions are met, a state likely cannot criminally charge, prosecute, or convict a federal officer acting in an official capacity or performing official duties.

Supremacy Clause Immunity would likely also apply to traffic violations. The Salem Police Department would likely be unable to enforce traffic violations against vehicles engaged in federal immigration and customs enforcement activity when the drivers are acting in their official capacity or performing official duties. While the Salem Police Department may initiate traffic stops of unmarked vehicles bearing no valid license plates, if an officer discovers that the driver of the vehicle is a federal officer acting in

their official capacity or performing official duties, the Salem Police Department would likely be unable to enforce traffic violations against the driver.

Another privilege offered to federal officers involves the transfer of a prosecution from state court to federal court. Under 28 U.S.C. § 1442, cases against federal officers filed in state court can be transferred to federal court. A federal judge would then hear the case, rather than a judge in Marion or Polk County. State prosecutors, like those at the Marion County District Attorney's Office, have extremely limited ability to prohibit this federal transfer process.

Finally, there is no state or federal statute authorizing local law enforcement intervention in federal immigration and customs enforcement activity. Should a Salem Police officer intervene, there is little preventing the officer from being arrested and charged with a federal crime. Senators, mayors, and even judges have been arrested for allegedly intervening in federal immigration and customs enforcement activity.

Logistical Limitations on Salem Police Department Intervention:

In addition to the legal privileges and immunities explained above, there are logistical limitations on Salem Police Department intervention in federal immigration and customs enforcement activity. Most notably, a lack of access to evidence.

In a typical law enforcement investigation, officers, prosecutors, and state courts can command individuals to produce documents and evidence for use at trial. These commands typically have no effect on federal officers. Federal officers are not required to comply with local subpoenas, investigatory protocols, or best practices for criminal prosecution in state court. Such barriers render meaningful follow-up by law enforcement officers and state prosecutors extremely difficult. Even if the Salem Police Department responded to an allegation of wrongdoing made against a federal officer, the ability for local law enforcement to investigate, gather evidence, and assemble a case for eventual prosecution, would be nearly impossible.

Conclusion:

Though local law enforcement officers, like all public agencies in Oregon, are prohibited by state law from assisting or cooperating with federal immigration and customs enforcement, the Salem Police Department is effectively prohibited from stopping or intervening in federal immigration and customs enforcement. The legal and logistical considerations explained above prevent the Salem Police Department from being able to meaningfully investigate claims of wrongdoing by federal immigration and customs enforcement. Intervention by local law enforcement in federal immigration and customs enforcement could even result in the arrest and prosecution of Salem Police Department officers by the federal government.

Finally, the decision to charge and prosecute federal immigration and customs enforcement officers is beyond the authority of the Salem Police Department. Law

enforcement officers investigate violations of law, collect evidence, make arrests, and document their investigations; however, the Salem Police Department has no authority or ability to prosecute an individual, including a federal officer, for a violation of criminal law. The Salem Police Department will refer all claims of wrongdoing by federal immigration and customs enforcement officers to the proper federal investigatory agencies, including the United States Attorney's Office, who have the power, resources, and duty to prosecute federal crimes.