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Senator Anne Carney, Senate Chair
Representative Amy Kuhn, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Submitted online

RE: LD 2106, “An Act to Prohibit the Disclosure of Nonpublic Records without Proper Judicial Review”: Testimony in SUPPORT

Dear Sen. Carney, Rep. Kuhn, and honorable Members of the Judiciary Committee:

I strongly urge you to support LD 2106. We are in extraordinary times, and Maine residents and businesses need the strongest legal protections available in state law, when compliance with the rule of law by our federal government can no longer be considered a given.

I have specialized in Immigration and Nationality Law for forty years, nearly thirty of them in Maine. What is happening today has never happened during my career, including after 9/11 when there were serious attacks on the civil liberties and civil rights of many immigrants in this country.

But even then, federal immigration authorities, in the main, complied with the rule of law. Now, every single day (and long before the recent egregious actions in Minnesota and most recently also in Maine) the Department of Homeland Security is ignoring federal immigration statutes that have not changed since the new administration took power, is violating long-settled federal case law setting limits on immigration enforcement agents’ powers under both statute and the Constitution, and even are repeatedly failing to comply with federal court orders. Again, this is happening every day, and has been for months. There is far more going on that immigration lawyers are seeing daily than makes it into the media and into the general public’s awareness.

The vast majority of the people who were detained in Maine since last week are legally here, with no criminal record. They had pending applications for asylum or residency, valid non-immigrant visas, and authorization to work. In over 39 of my 40 years of immigration specialization, USCIS and former INS/now DHS respected these immigrants’ legal status, as assured by the Immigration and Nationality Act. But now, we have DHS’s spokesperson calling them “illegal” to justify their targeting, even though they simply are not. (There have been some individuals picked up who are indeed out-of-status, but in Maine and across the country, they are the minority of those detained).

Similarly, it is well-settled federal law that to enter a dwelling or the private areas of businesses or public accommodations like schools, hospitals, etc., ICE/CBP agents must have a judicial warrant from a federal court. An administrative warrant issued by DHS, or even one enter by

an administrative immigration judge doesn't suffice. But ICE officers, according to a policy memo leaked by a whistleblower, are being told by the Acting ICE Director in an astonishing disregard of the rule of law that an administrative warrant is enough to forcibly enter people's homes - even though the federal law has not changed and that is simply untrue. While this leaked memo applies to homes, not businesses, if the Acting ICE Director is disregarding the law regarding homes, we cannot trust that ICE will not similarly decide in the near future to ignore long established law requiring a judicial warrant to enter non-public areas of businesses and institutions.

In addition, for decades, it has been the policy of then-INS, now DHS to not do enforcement actions at "sensitive locations" which includes hospitals, schools, courthouses, and churches. There was an awareness that we don't want anyone to be afraid to seek medical care, go to court as victims or witness of crimes, or for protection orders (many noncitizen spouses of U.S. citizens are undocumented specifically because their abusers refused to petition for them as way to control them), nor to be afraid to send their children to school, or to attend their houses of worship. But the current administration swiftly rescinded that policy.

So it is of utmost importance that Maine be prepared for the possibility of enforcement actions and overreach by federal immigration agents in child care facilities, public schools and higher education institutions, health care providers and hospitals, and public libraries, given how much disregard for established law we have witnessed in their recent actions in Maine and Minnesota and nationwide.

LD 2106 would give clear guidance to employers and administrators regarding training staff about what is the law in Maine. And if ICE agents were to insist incorrectly that a federal judicial warrant isn't needed for them to enter non-public spaces of institutions and businesses, employees can refuse entry based on asserting the state law.

Importantly, while LD 2106 does not include specific consequences for violations, its existence will offer remedies if ICE violates existing federal law requiring federal judicial warrants to enter non-public areas. Immigration lawyers representing individuals detained after such violations can file motions to suppress in immigration court based on the violation of state law, not just federal, to terminate their removal proceedings. If records are unlawfully reviewed or seized, again, lawyers will now have an additional tool to deploy to seek to ensure that ICE cannot disregard the rule of law with impunity.

We are not living in normal times. Sadly, we cannot trust our federal government to follow federal law. We need to arm the entities that are the sensitive locations covered in LD 2106 with stronger state laws to try to protect the rights and safety of their staff and the public whom they serve. Please vote ought to pass on LD 2106.

Very truly yours,

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LD 2106
Please vote OTP. Testimony attached.