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January 21, 2026

The Honorable Nicole A. Williams  
Maryland General Assembly  
207 Lowe House Office Building  
Annapolis, Maryland 21401  
*Via email*

***RE: State Law Prohibiting Law Enforcement from Wearing Face Coverings  
(Senate Bill 1)***

Dear Delegate Williams:

You have requested advice concerning the constitutionality of Senate Bill 1 (“Public Safety - Law Enforcement Officers - Prohibition on Face Coverings”), which would make it a crime for local, state, or federal law enforcement agents to wear masks in the course of their duties, with limited exceptions.<sup>1</sup>

***Short Answers***

1. In my view, Senate Bill 1 is not clearly unconstitutional since criminalizing conduct to protect public safety and the regulation of State and local law enforcement are within the State’s police powers.
2. However, it would be difficult and likely unconstitutional for the State to enforce a masking prohibition against federal agents like Immigration and Customs Enforcement (“ICE”) agents, or to require them to adopt certain anti-masking policies.

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<sup>1</sup> <https://mgaleg.maryland.gov/2026RS/bills/sb/sb0001F.pdf>

## *Analysis*

The General Assembly has the power to regulate State and local law enforcement, as well as to criminalize certain conduct. This power extends even to State and local law enforcement acting pursuant to a 287(g) agreement,<sup>2</sup> which must comply with applicable State law. *See* 8 U.S.C. § 1357(g)(1) (stating that 287(g) agreements can permit state and local officials to carry out an immigration officer function “to the extent consistent with State and local law”). Indeed, ICE’s sample “Memorandum of Agreement” for the “287(g) Jail Enforcement Model” states, “no participating LEA [law enforcement agency] personnel will be expected or required to violate or otherwise fail to maintain the LEA’s rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.”<sup>3</sup> So, even if a 287(g) agreement allows local officers to help enforce federal immigration laws, they can only do so to the extent permitted by, and consistent with, State law.<sup>4</sup> Thus, a State law prohibiting mask wearing when carrying out law enforcement activity would apply to *State and local officers*, even those operating under a 287(g) agreement, regardless of ICE’s own policies.

To the contrary, in my view, there is a substantial risk that a court would find that applying a law like Senate Bill 1 to *federal agents* is unconstitutional. Under the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, federal law overrides conflicting state laws. Additionally, the legal principle of intergovernmental immunity prevents states from directly interfering with or regulating the operations of federal agencies.<sup>5</sup> For example, in *United States v. City of Arcata*, the Ninth Circuit Court of Appeals confirmed that a city ordinance that prohibited military recruiters from recruiting individuals under 18 violated intergovernmental immunity because it sought to regulate the conduct of government employees directly. 629 F.3d 986, 991 (9th Cir. 2010). If Maryland adopted Senate Bill 1, it would likely face a legal challenge, as California’s No Secret Police Act has, and the outcome is uncertain.

True, there are some aspects of Senate Bill 1 that make it more defensible against an intergovernmental immunity or preemption challenge. For example, it applies to State and local law enforcement, not just federal law enforcement, avoiding the problem of singling out

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<sup>2</sup> Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g), allows the U.S. Attorney General to enter into written agreements with states and local law enforcement agencies deputizing qualified agents to carry out federal immigration law enforcement functions under the supervision of ICE.

<sup>3</sup> *See* Memorandum of Agreement, 287(g) Jail Enforcement Model at 4, (Feb. 15, 2025), [https://www.ice.gov/doclib/about/offices/ero/287g/JEM\\_MOA\\_Fillable.pdf](https://www.ice.gov/doclib/about/offices/ero/287g/JEM_MOA_Fillable.pdf).

<sup>4</sup> *See Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 384 (D.N.J. 2020), *aff’d sub nom. Ocean Cnty. Bd. of Commissioners v. Att’y Gen. of State of New Jersey*, 8 F.4th 176 (3d Cir. 2021) (“While Congress has the exclusive province to regulate federal civil immigration law, the INA itself contemplates that States shall have the ability to determine the extent to which they participate in the enforcement of such laws.”).

<sup>5</sup> *See Mc’Culloch v. Maryland*, 17 U.S. 316, 317 (1819) (“The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws ...”).

the federal government for direct regulation. In addition, there is no current federal law or regulation that *requires* ICE officers to wear masks, meaning it would not be impossible for ICE to comply with both federal law and a State law prohibiting mask-wearing, and therefore not conflict preempted.

Nevertheless, under a preemption analysis, a court would consider whether prohibiting mask wearing obstructs or places a significant burden on federal law enforcement agencies' ability to carry out federal law. *See Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (law is preempted when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"); *United States v. California*, 921 F.3d 865, 880 (9th Cir. 2019) (explaining that obstacle preemption "attaches to any state law, regardless of whether it specifically targets the federal government, but only if it imposes an obstructive, not-insignificant burden on federal activities"). If so, then the State law could not apply to federal law enforcement agents like ICE because "a court may not convict a criminal defendant of violating a state law that federal law prohibits." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015).

The answer to this question likely would depend on the circumstances, including a particular federal agency's reasons for why mask-wearing is needed to carry out its duties under the law. Courts generally tend to defer to the federal government on issues of immigration enforcement, and I think a court would be hesitant to enforce such a law against the federal government if it appeared the State was trying to directly regulate ICE or interfere with federal officials' control over the agency's operations and conduct.

Ultimately, I do not think Senate Bill 1 is clearly unconstitutional on its face since there are permissible applications to State and local law enforcement; however, in my view, there is a substantial risk that a court would find that it could not be constitutionally enforced against federal law enforcement due to the intergovernmental immunity doctrine.

Sincerely,



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