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Testimony on Senate Bill 660 for the Judicial Proceedings Committee
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Good Afternoon, Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee.

My name is Michael Meyerson. I am the DLA Piper Professor of Law at the University of Baltimore School of Law, where I teach Constitutional Law. I have also written extensively on constitutional rights and responsibilities. In my opinion, Senate Bill 660, which directs Maryland’s law enforcement agencies to observe, record, and document ICE’s enforcement actions, is not only constitutional, it embodies the best of America’s constitutional tradition.

Those who framed our Constitution in 1787 understood that the federalism embodied in that document created a system of “dual sovereignty.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Under this American system of federalism “both the Federal Government and the States wield sovereign powers....” *Murphy v NCAA* 584 U.S. 453, 470-71 (2018). And a State’s sovereign obligation to protect its inhabitants extends to protecting against abuses of power by the Federal government.

As James Madison declared, “the state legislatures will jealously and closely watch the operations of [the federal] government, and be able to resist with more effect every assumption of power than any other power on earth can do.” James Madison, House of Representatives, **Papers of James Madison** 12:196—209 (June 8, 1789). It is, in fact, the constitutional function of state legislatures to “to sound the alarm to the people” when the federal government invades the rights of the people with ‘unconstitutional acts.” **Federalist** 44 (Madison)

Of course, under the Supremacy Clause, a state cannot interfere with the operations of the federal government. *See e.g. M'Culloch v. Maryland*, 17 U.S. 316, 329–30 (1819)(state tax on national bank was unconstitutional because “there cannot be a clearer case of interference.”). But merely observing, recording, and documenting what federal immigration officers are doing is not interfering with them.

In fact, just recently the Fourth Circuit Court of Appeal declared that private persons have a first amendment right to both record and livestream encounters with police. *Sharpe v. Winterville Police Dep't*, 59 F.4th 674, 681 (4th Cir. 2023). Significantly, the Court found that neither “common sense [n]or caselaw” indicates that a ban on recording law enforcement officers serves the strong public interest in protecting the safety of officers. *Id.* at 682. That ban on recording would be unconstitutional, the Court said, because recordings of law enforcement activities “contribute to discussion about governmental affairs,” and can help to “disseminate...information about a public controversy.” *Id.* at 681.

Those interests may be even more important for the sovereign state of Maryland to undertake in protecting its inhabitants against the kind of lawless violence by ICE agents we saw in Minneapolis. Senate Bill 660 is a 21st Century mechanism for fulfilling the promises of our grand 18th document. In the words of James Madison again, the bill permits, “the state legislatures to be sure guardians of the people's liberty.” James Madison, House of Representatives, **Papers of James Madison** 12:196—209 (June 8, 1789).