AMERICAN CIVIL LIBERTIES
UNION OF FLORIDA
Tel. 786-363-4436
www.aclufl.org

November 3, 2017

To: Members of the House Judiciary Committee
From: Kara Gross, Legislative Counsel, ACLU of Florida
Kirk Bailey, Political Director, ACLU of Florida
Re: Opposition to HB 9, Which Bans Sanctuary Policies and Requires Local Entanglement with Federal Immigration Enforcement

---

We write in opposition to HB 9, which requires all local law enforcement agencies in Florida to expend their resources to enforce federal immigration law, regardless of community priorities, local resources, or constitutional limitations. Additionally, the bill threatens to withhold state grant funding for five years from any jurisdiction that does not comply with the bill's requirements, and to fine those jurisdictions up to $5,000 per day.

HB 9 prohibits all localities in the state from adopting polices or procedures that limit entanglement with federal immigration enforcement – even if such policies or procedures reflect the values of local residents. It also requires each and every Florida county and municipality to expend maximum local resources to enforce federal immigration law. Specifically, this bill provides that no state entity, law enforcement agency, local government entity, state university, or representative thereof,[1] may adopt or have in effect a "sanctuary policy." Sanctuary policy is defined broadly and vaguely in the bill to include any "law, policy, practice, procedure, or custom adopted or permitted by a state entity, local governmental entity, or law enforcement agency" which limits or prevents:

- Compliance with an immigration detainer,
- Compliance with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee,
- Federal immigration agency access to an inmate for interview,
- Investigation of the inmate's immigration status, and
- Providing a federal immigration agency with an inmate's incarceration status or release date.

---

[1] As defined in the bill, this includes, but is not limited to, any state entity or office, board, commission, department, or institution thereof (including state universities and colleges) and any person holding public office or having official duties as an employee of such entity; any state or local police department, sheriff's office, or state university and college police departments, including any employee thereof; any county or municipality, and any person holding local public office or having official duties of such local entity. *See* HB 9, Section 908.102, Definitions (Legislative Session 2018).

The bill provides that any sanctuary policy in effect be repealed within 90 days of the effective date of the Act.

Additionally, this bill imposes an affirmative obligation on every state and local entity, or law enforcement agency, and employee thereof, to "fully comply with and, to the full extent permitted by law, support the enforcement of federal immigration law." (Section 908.202) The bill does not provide any guidance as to what it means to "support" immigration enforcement "to the full extent permitted by law." It provides no exceptions.

Separate from its ban on sanctuary policies, the bill also provides that a state entity, local government entity, or law enforcement agency, or employees thereof, may not, *even once*, "prohibit or in any way restrict" another state or local entity or employee thereof from doing any of the following:

- Sending immigration status information to a federal immigration agency,
- Requesting, receiving, or reviewing immigration status information from a federal immigration agency,
- Recording or maintaining immigration status information,
- Using immigration-status information to determine a person's domicile or eligibility for benefits, services, or licenses,
- Using that information to confirm a person's identity,
- Using that information to comply with a detainer. (Section 908.202)

The bill requires officers to demand proof of immigration status from *every single person* they arrest. (Section 908.203) Moreover, if a local officer determines that a person is undocumented, the bill forces the officer to report the person to the federal government.

Finally, the bill forces local officials to honor every single federal immigration detainer they receive.[2] Officials must honor any request written on the detainer form, including both a request for notification of a person's release date, and a request to extend the person's detention. (Section 908.204) There are no exceptions, even if the officer doubts probable cause, or the

[2] Immigration detainer requests (also referred to as "ICE detainers" or "immigration holds") are one of the key tools U.S. Immigration and Customs Enforcement (ICE) uses to apprehend individuals who come in contact with local and state law enforcement agencies and funnel them into the federal deportation system. A detainer is a written request that a local jail or other law enforcement agency detain an individual after the date he or she would otherwise be released in order to provide ICE agents extra time to decide whether to transfer the individual into federal custody for deportation or removal purposes.

person presents proof of citizenship, or the person is a crime victim or witness, or the jail is already full. This provision also allows localities to charge detained individuals for the cost of their own detention. (Section 908.205)

An "immigration detainer" as defined in the bill "means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law…" It further provides that "an immigration detainer is deemed facially sufficient" even if the form is incomplete and fails to indicate on its face that the federal immigration official has reason to believe that the person to be detained may not be lawfully present in the Unites States, if accompanied by a mere affidavit that makes such assertion. *See* HB 9, Section 908.102(2)(b).

Moreover, the bill provides that state entities (including universities), local government entities, and law enforcement, and representative employees or officers thereof, may be fined up to $5,000 per day for each day that the sanctuary policy is in effect after October 1, 2018. They must also pay the cost of all legal fees out of their own pockets. Additionally, it creates a civil cause of action for damages against a state entity, local governmental entity, or law enforcement agency for personal injury or wrongful death due to any harm committed by someone released by local law enforcement despite a detainer request. The bill mandates that state and local entities and law enforcement "fully comply" to the "fullest extent" permitted by law, but does not provide any funding or reimbursement for the cost of detaining individuals beyond the date they would otherwise be released. It only states that a local entity may petition the Federal Government for such reimbursement, or charge the person detained for the costs of detention. It also provides that local entities in violation of the Act shall be ineligible for state grant funding for a period of five years from the violation.

The bill also creates a mandatory duty for state and local employees to report each other for any "known or probable violation" of the bill. (Section 908.206) Officials and employees who fail to report their colleagues and employees are subject to removal from office.

In effect, under this bill, local law enforcement will be conscripted to prioritize immigration enforcement over any and all local needs, like fighting crime and keeping their communities safe. Local law enforcement will be forced to expend maximum time, personnel, and financial resources enforcing civil immigration law, with no reimbursement from the state or federal government. Moreover, local law enforcement will continue to be liable in federal court for constitutional violations committed as a result of this law's requirements.

It is important to note that the Florida Sheriffs Association has made clear in the past with regard to similar legislation that has been defeated that no jurisdiction in the state has true "sanctuary" policies that categorically refuse all cooperation with immigration requests from the federal

government.[3] Instead, some counties have opted not to honor warrantless Immigration and Custom Enforcement (ICE) detainers because of constitutional concerns, because they are extremely costly, and because they undermine trust and cooperation with law enforcement. If HB 9 becomes law, it would expose every government entity in Florida to potential liability for constitutional violations, divert a huge amount of local law enforcement resources away from safeguarding our communities, and cost the state millions of dollars at taxpayer expense, without any federal reimbursement of costs. We urge you to oppose this bill.

ICE Detainers Are Not Warrants

ICE detainers[4] are not arrest warrants. Unlike criminal warrants, which are supported by a judicial determination of probable cause that the individual committed a crime, ICE detainers are issued by ICE enforcement agents themselves without any authorization or oversight by a judge or other neutral decision-maker. 8 C.F.R. 287.7(b) (listing federal police officers who can issue detainers). The same is true for ICE administrative warrants, which are issued not by a judge but by an ICE officer. 8 C.F.R. 287.5(e)(2) (listing officers who can issue administrative warrants). Without the safeguards of a judicial warrant, ICE detainers can—and do—result in unconstitutional detention when they are issued without probable cause. Hundreds of detainers have been placed on U.S. citizens and lawful permanent residents who are not deportable.[5]

---

[3] *See* Florida Sheriffs Association, Priority Enforcement Program (PEP) Policy Paper, available at http://www.flsheriffs.org/uploads/docs/FL_Sheriffs_PEP_Policy_Paper_FINAL.pdf ("Florida Sheriffs are NOT Permitting "Sanctuary"); Elizabeth Behrman, *Fla. sheriffs deny claims of 'sanctuary' cities in state*, Tampa Tribune, July 18, 2015, *available at* http://www.tbo.com/news/crime/fla-sheriffs-deny-claims-of-sanctuary-cities-in-state-20150718/; https://www.flsheriffs.org/uploads/docs/Legal_Alert_-_ICE_Detainers2.pdf.

[4] An ICE detainer is a notice sent by ICE to a state or local law enforcement agency or detention facility. The purpose of an ICE detainer is to notify that agency that ICE is interested in a person in the agency's custody, and to request that the agency hold that person after the person is otherwise entitled to be released from the criminal justice system (for example, after posting bail), giving ICE extra time to decide whether to take the person into federal custody for administrative proceedings in immigration court.

[5] According to ICE's own records, between FY2008 and FY2012, it erroneously issued 834 detainers against U.S. citizens. TRAC Immigration, *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, Feb. 20, 2013, *available at* http://trac.syr.edu/immigration/reports/311/. And according to ICE's own data, the vast majority of detainers are placed on people with no criminal records or very minor ones. Transactional Records Access Clearinghouse, Syr. Univ., *Few ICE Detainers Target Serious Criminals*, Sept. 17, 2013, http://trac.syr.edu/immigration/reports/330/.

Localities Can Be Held Liable for Honoring ICE Detainers

A growing body of case law – and ICE itself – has made clear that ICE detainers are requests, not commands. Local law enforcement agencies are not required to hold anyone based on an ICE detainer.[6] Immigration enforcement is a job for trained federal immigration authorities and not for local law enforcement, whose job is to protect all residents regardless of immigration status by solving and preventing crimes.

Since ICE detainers are merely requests, state and local law enforcement agencies and detention facilities open themselves up to legal liability for detaining an individual for any length of time based on an ICE detainer request.[7] Localities can even be held liable for imprisoning immigrants who are undocumented pursuant to ICE detainers, if the detention does not comply with constitutional requirements.[8] Many localities around the country that chose to honor ICE detainers have had to expend significant resources defending civil rights litigation and paying financial settlements to people who were unlawfully imprisoned on a detainer.[9] As the Florida Sheriffs Association has previously pointed out, localities that honor detainers face significant liability.[10] By requiring localities to honor all detainers, the bill would mean that all immigrants

---

[6] *See* 8 C.F.R. § 287.7(a) (emphasis added); 8 C.F.R. § 287.7(d) (titled "Temporary detention at Department request.") (emphasis added); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); Acting Director of ICE stated that Letter from Daniel Ragsdale, Acting Director of ICE, to Representative Mike Thompson (Feb. 25, 2014), (immigration detainers "are not mandatory as a matter of law"), *available at* http://www.notonemoredeportation.com/wp-content/uploads/2014/02/13-5346-Thompson-signed-response-02.25.14.pdf.

[7] For example, the *Galarza* case settled for $145,000, including $95,000 from Lehigh County, Pennsylvania. *See* Peter Hall, "Man Wrongly Jailed Settles Suit Against Lehigh County," Morning Call (June 2, 2014), *available at*: www.mcall.com/news/breaking/mc-lehigh-galarza-immigration-detainer-settlement-20140602,0,5558794.story. ICE refused to indemnify the County for these costs.

[8] *See Miranda-Olivares v. Clackamas County*, 12-CV-02317-ST, 2014 WL 1414305, at *3 (Apr. 11, 2014) (jail violated immigrant's Fourth Amendment rights by prolonging her incarceration pursuant to an ICE detainer).

[9] *See* ACLU Immigrants' Rights Project, *Recent court decisions relating to ICE detainers*, July 27, 2015, *available at* https://www.aclu.org/sites/default/files/field_document/recent_ice_detainer_cases_2.pdf (partial list of recent damages awards and settlements).

[10] FSA PEP Policy Paper, *supra* n.3 (explaining that even the Priority Enforcement Program, which limited detainer issuance, "d[id] not adequately address the Fourth Amendment concerns with holding an individual absent a warrant or judicial order . . . . PEP ask[ed] sheriffs to accept unlimited liability in the enforcement of a Federal responsibility. In cases where a sheriff's office has been sued for honoring an ICE detainer, neither DHS nor any of its components have stepped forward with any type of support."). *See also* https://www.flsheriffs.org/uploads/docs/Legal_Alert_-_ICE_Detainers2.pdf.

who come into contact with local law enforcement—even victims, witnesses, and others who have not committed any crime—can be swept up in the immigration enforcement and deportation pipeline.

HB 9 Thwarts Local Priorities and Decreases Public Safety in Our Communities and on Our Campuses

HB 9 would disrupt established and effective community policing policies adopted by local law enforcement agencies. Far from being "sanctuary" zones, several localities recognize that immigrant victims and witnesses will not report crimes if they fear that local police are acting as immigration agents. Thus, in order to solve crimes, local officials need to win the trust of the community. HB 9 makes immigration agents out of local police – it requires them to notify DHS about any arrested individual who cannot prove his or her lawful immigration status.

Studies conducted since inauguration demonstrate the impact on public safety is not mere conjecture. The Houston Police Department found that the sexual assault incidents reported by Latinos in 2017 were down nearly 43 percent when compared to the same period 2016.[11] The study also reported a 12 percent decrease in the number of Latino-reported aggravated assaults and robberies.[12] Similarly, the Los Angeles Police Department reported a 25 percent drop in reports of sexual assault from Latino residents and a 10 percent drop in reports of domestic violence from Latino residents in 2017.[13] The apparent exception for victims and witnesses in HB 9 does not solve the problem; it is not administrable, as it frequently is not readily apparent at the onset of an investigation which individuals are witnesses or victims. Moreover, the exception applies only to information-sharing, and not detention, and therefore does nothing to permit localities to decline to honor detainer requests issued by ICE against victims and witnesses. Victim and witness safety and cooperation would be further frustrated by express provisions which force localities to keep records about the immigration status of victims and witnesses for at least 10 years, risking that those records may be compromised by internal leaks or ICE subpoenas and that the victims and witnesses will then be subject to removal.

---

[11] *See* John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR (May 25, 2017), *available at*: http://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting.
[12] *Id*.
[13] James Queally, *Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, Los Angeles Times (Mar. 21, 2017), *available at* http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html.

Indeed, the Major Cities Chiefs Association,[14] the Presidential Task Force on 21st Century Policing,[15] and Attorneys General from New York, Oregon, California, Washington, Rhode Island, and the District of Columbia[16] have all adopted positions or policies opposing local law enforcement entanglement with federal immigration enforcement on the grounds that it harms public safety. Recognizing that community trust in the police is central to their core mission to protect public safety,[17] many localities have enacted carefully crafted policies to foster this trust and have prioritized their police resources to focus on community needs. When immigrant victims and witnesses can feel confident that their interactions with the police will not lead to their deportation, they are much more likely to report crimes, making our local communities and campuses safer.[18] Because forcing local law enforcement officials to honor ICE detainers undermines community trust in the police, HB 9 would compromise the safety of the whole community.

In addition to driving a wedge between local police and the communities they serve, the bill would saddle local law enforcement agencies with unmanageable costs. As the federal government is not required to reimburse local facilities for the costs of holding people under

---

[14] *See* Major Cities Chiefs Association, "Immigration Policy" (2013), available at https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf.
[15] See President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (May 2015) at 18 (Action Item 1.9.1), available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
[16] See "Setting the Record Straight on Local Involvement in Federal Civil Immigration Enforcement: The Facts and the Laws" (May 2017), available at https://ag.ny.gov/sites/default/files/setting_the_record_straight.pdf.
[17] Major Cities Chiefs Association, *Immigration Policy* (2013), *available at* https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf (recognizing that "trust and cooperation with immigrant communities . . . are essential elements of community oriented policing"); *SAFE Act Anything But*, Former Tampa Police Chief and Retired Director of U.S. Marshals Service Eduardo Gonzalez, Tampa Tribune (Aug. 31, 2013), available at http://www.tbo.com/list/news-opinion-commentary/safe-act-anything-but-20130831/ ("There isn't anyone I've worked with in law enforcement who would disagree that the single most important asset local police have in protecting public safety is the trust and cooperation of the community they are sworn to protect. . . .I don't think police officers, whose primary mission is to ensure the safety of the communities they serve, have any business getting involved in immigration enforcement. Requiring them to do so . . . would be wholly counterproductive to their primary mission of keeping communities safe and diametrically opposed to everything I learned in my 34 years of law enforcement experience.").
[18] Nik Theodore, Department of Urban Planning and Policy at the University of Illinois at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

detainers, forced compliance with ICE detainer requests would raise the costs of incarceration for local agencies.[19] The suggestion in the bill that local entities can petition the federal government for reimbursement or that detained immigrants should pay for their own detention is at odds with reality – and basic fairness – and cannot hide that the bill requires significant expense by localities without realistic solutions to defray these costs. Apart from detainers, local law enforcement agencies would have to comply with all requests from ICE—anything from tactical support to allocation of office space in jails to investigating leads for ICE. This investment would upend localities' ability to prioritize public safety and the enforcement of local laws over federal immigration law.

Beyond these costs, under the bill's sweeping and unorthodox expansion of ordinary tort rules, Florida localities would be liable for injury caused by an undocumented person released from their custody, no matter if the injury is unrelated in time or space to the local "sanctuary" policy. So, for example, a county could be liable for a negligent injury inflicted in New York by an immigrant who was released from local custody in Florida years ago. Foisting liability in perpetuity upon localities and universities is unreasonable, and fiscally irresponsible.

Conclusion

In light of the many problems with ICE detainers, over 360 cities, counties, and states nationwide have declined to respond to ICE detainer requests, or to honor them only in limited circumstances, such as when they are accompanied by a judicial warrant.

HB 9 would force state entities (including state universities and colleges), local governments, law enforcement agencies (including county, municipal, and university and college police departments), and employees thereof, into an impossible situation where they must choose between: (a) honoring ICE detainer requests and potentially being held liable for damages for constitutional violations – in addition to harming public safety, or (b) not honoring ICE detainer requests, and facing a range of harsh financial penalties and sanctions, including personal injury damages. For all of the above reasons, we respectfully urge you to uphold the U.S. Constitution and oppose this bill.

For more information, please do not hesitate to contact Kara Gross at kgross@aclufl.org or Kirk Bailey at kbailey@aclufl.org.

---

[19] For example, in Miami-Dade County, a study estimated that continuing to honor ICE detainers, which often results in individuals declining to post bond and significantly lengthening their detention, would result in $12.5 million in detention costs to the county. Edward F. Ramos, *Fiscal Impact Analysis of Miami-Dade's Policy on "Immigration Detainers*," *available at* https://immigrantjustice.org/sites/immigrantjustice.org/files/Miami%20Dade%20Detainers--Fiscal%20Impact%20Analysis%20with%20Exhibits.pdf.