

March 9, 2022

DELIVERED VIA EMAIL

Speaker Sprowls
Florida House
402 S. Monroe Street
Tallahassee, FL 32399

Re: ACLU FL Written Testimony in Opposition to SB 1808/ HB 1355, Harming Immigrants

Dear Speaker Sprowls and members of the House:



The ACLU of Florida is a nonpartisan organization whose mission is to protect, defend, strengthen, and promote the constitutional rights and civil liberties of all people in Florida. On behalf of our 180,000 members and supporters in Florida, we write in opposition to SB 1808, and respectfully request that you vote “No” on this harmful bill. Additionally, we request that this written testimony be included in the record of the meeting.

What the Bill Does

Among other things, HB 1355/SB 1808 would expand SB 168’s “sanctuary policy” ban,¹ despite the fact that a federal judge ruled that the ban was unconstitutional.²

The bill prohibits local governments from protecting Floridians’ private information with regard to their immigration status from being transmitted by anyone within law enforcement to any state entity, state agency, and any state university or college.

HB 1355/SB 1808 forces every law enforcement agency that operates a county detention facility to enter into a 287(g) agreement with ICE, regardless of whether the law enforcement agency desires to, the significant costs³ associated with such a contract, or any evidence of a public safety benefit.

Lastly, it prohibits state and local contracts with private businesses, private entities, and other “common carriers” that provide transportation to “unauthorized aliens”—a vaguely defined and confusing category. “Common carriers” would not be able to discern from looking at an individual whether they fall within this term. Whether someone is authorized to be present in the United States is a complicated and fact-intensive inquiry that even the most experienced immigration attorneys could disagree upon based on the individual’s specific circumstances as applicable to immigration statutes, rules, regulations, case law

¹ Section 908.102, Florida Statutes.

² *City of S. Miami v. DeSantis*, No. 19-CV-22927, 2021 WL 4272017 (S.D. Fla. Sept. 21, 2021).

³ <https://www.niskanencenter.org/287g-agreements-a-costly-choice-for-localities/>

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and policy guidance and is not something that common carriers have the training or expertise to be able to determine.

The bill, as amended, requires all “common carriers” who contract with local or state government entities to fill out an “attestation” stating that they don’t and won’t provide transportation to individuals “knowing that the person is an *unauthorized alien*.” The amended bill does not define “unauthorized alien,” rather it cites to 8 U.S.C. ss1101, which also does not define that term.

In order for every common carrier that contracts with local or state governments to be able to attest under oath and under penalties of perjury to whether or not any person using their services to travel to Florida falls within this vaguely defined term of “unauthorized alien,” they will likely have to obtain proof of immigration status from every child and adult who intends to utilize their services. This is an unreasonable burden that threatens to exacerbate racial profiling and national origin discrimination against anyone who the common carrier subjectively thinks is unauthorized.

This Bill Is Harmful to the Public and Costly to the State:

This legislature passed SB 168, an anti-immigrant bill, a few sessions ago. Since then, a federal district court judge, in a 110-page opinion, held that the bill’s “Sanctuary Prohibition,”⁴ and “Best Efforts” Provision,⁵ were unconstitutional and grounded in racial animus and discriminatory intent. Additionally, the Court found that the bill would likely increase racial profiling.⁶ Specifically, the District Court held:

“Based on the evidence presented, the Court finds that Plaintiffs have proven by a preponderance of the evidence that SB 168 has discriminatory or disparate effects on racial and ethnic minorities, and these discriminatory effects were both foreseeable and known to the Legislature at the time of SB 168’s enactment. ...

[t]he Court finds that SB 168’s alleged justification as a necessary public safety measure was unsupported by the statistical data about crime rates in Florida or by any other evidence in the record, and that this justification was pretextual. ...

In sum, when the evidence is taken as a whole, the Court concludes that Plaintiffs have established that the Best Efforts Provision and the Sanctuary Prohibition are unconstitutional because they violate the Equal Protection Clause. ...

⁴ Fla. Stat. § 908.103.

⁵ Fla. Stat. § 908.104(1).

⁶ *City of S. Miami v. DeSantis*, No. 19-CV-22927, 2021 WL 4272017 (S.D. Fla. Sept. 21, 2021).



Plaintiffs have met their burden of establishing that the Best Efforts Provision, Fla. Stat. § 908.104(1), and the Sanctuary Prohibition, Fla. Stat. § 908.103, violate the Equal Protection Clause. As such, Plaintiffs are entitled to judgment on Count X and Count XI of the Amended Complaint. Defendants are PERMANENTLY ENJOINED from enforcing Fla. Stat. § 908.103 and Fla. Stat. § 908.104 because these statutory provisions are unconstitutional.”⁷

In light of the District Court’s Opinion, this legislature should focus on repealing SB 168’s unconstitutional provisions, not expanding them.

Legislation has been introduced this session (HB 6119/ SB 1900) that would repeal SB 168’s unconstitutional and permanently enjoined provisions. Yet, these bills have not received a hearing. Instead, leaders in the legislature are choosing to hear and advance HB 1355/ SB 1808, which expands upon SB 168’s permanently enjoined provision and would further harm immigrants in our communities.

Exacerbating Racial Profiling and Prohibiting Local Governments from Protecting Private Information

The Governor and the legislature are continuing to double down in their discriminatory and racial animus toward immigrant communities by not only seeking to overturn the lower court’s decision through an appeal, but by also seeking to expand the definition of “sanctuary policy” in SB 168. This bill completely ignores the fact that a federal court has ruled the sanctuary prohibition unconstitutional. Additionally, HB 1355/SB 1808 would exacerbate racial profiling by requiring 287(g) agreements and attestations from common carriers. It is significant that the federal judge in reviewing the state’s rationale for SB 168 found that “SB 168’s alleged justification as a necessary public safety measure was unsupported by the statistical data about crime rates in Florida or by any other evidence in the record, and that this justification was pretextual.” To be clear, there is no evidence of any public safety benefit to these anti-immigrant bills.

Our legislature should not be wasting its time and our taxpayer dollars expanding an unconstitutional provision that the state is permanently enjoined from enforcing.

Moreover, the broadly worded prohibition on protecting Floridians’ private information with regard to their immigration status raises several privacy concerns. The bill prevents local governments from safeguarding immigration status information from being transmitted by anyone within law enforcement to any state entity, state agency, state prosecutor, and any state university or college. The bill does not provide any guardrails for protection of such information, does not specify who may transmit or receive such information, and does not contain any requirement that the information only be transferred for a lawful purpose.

⁷ *Id.* at *39-55.



Without any safeguards as to who is authorized to receive the information, the circumstances that must be established and criteria that must be met before such information is shared, the means and method of such sharing of information, and how that information will be protected once received by the state agency, there is significant concern for abuse.

Forcing Law Enforcement Agencies to Enter into Specific Contracts

HB 1355/ SB 1808 forces every law enforcement agency that operates a county detention facility to enter into a 287(g) agreement with ICE, regardless of whether the law enforcement agency desires to, the costs associated with such a contract, or any evidence of a public safety benefit.⁸ These 287(g) agreements formally deputize local officers to perform ICE responsibilities and thus divert local law enforcement's time and resources toward federal immigration activities. HB 1355/ SB 1808 removes law enforcement agency discretion to determine for themselves whether a 287(g) contract is beneficial for their community, or whether their needs could be met more efficiently and cost-effectively through another type of cooperation arrangement. Local law enforcement agencies should have the discretion to consider alternatives to 287(g) agreements that have evidence-based public safety benefits and that do not alienate immigrant communities and undermine trust in law enforcement.

Research has indicated that 287(g) agreements lead to racial profiling, civil rights violations, and unwarranted family separations. When local officials act as immigration enforcers, nonwhite individuals are often stopped and harassed at increased rates and immigrant communities increasingly feel distrust toward law enforcement.

Moreover, 287(g) agreements are costly to the state and local governments, in terms of implementation, lost resources, and lack of public trust. Importantly, federal law requires that local jurisdictions bear the cost of their participation in a 287(g) agreement.

Harming Immigrant Children, Disrupting Tourism, and Interfering with Contracts

Lastly, HB 1355/ SB 1808 seeks to prohibit state and local contracts with "common carriers" that provide transportation to vaguely defined "unauthorized aliens." Common carriers, in order to comply the bill and avoid potential charges of perjury, may need to investigate and confirm the immigration status of every passenger to determine whether or not they fall within the term "unauthorized alien." This would disrupt state and local contracts with private businesses and

⁸ <https://www.niskanencenter.org/287g-agreements-a-costly-choice-for-localities> ("[L]ocal jurisdictions should be empowered to consider alternatives to 287(g) agreements that would prevent and fight crime without alienating immigrant communities and jeopardizing public safety").



private entities that provide transportation into Florida, and could have significant impacts on tourism.

Enforcement of this bill could threaten anyone who a common carrier subjectively thinks is an “unauthorized alien” based on their skin color or dominant language spoken. This could include United States citizens as well DACA recipients and family members of U.S. citizens who are waiting for their green card; lawfully admitted visitors who are in the process of renewing or extending their visas—whether they are tourists visiting Florida’s attractions; international students or faculty at Florida’s colleges and universities; or even, in some cases, professionals and investors growing our new economy. Not to mention seasonal agricultural workers who are willing to come to Florida to do the work that so many other Floridians are not. Additionally, while such non-citizens, just like unaccompanied minor children and asylum applicants and refugees, may have federal authorization to be here (in which case they should not fall within the amended bill’s undefined term “unauthorized alien,” though it is unclear how that term is being defined), it would be impossible for a common carrier to tell from looking who has federal authorized status and who does not. This could lead to common carriers needing to check the immigration status of every child and adult in order to comply with the law, an unreasonable burden on common carriers.

The bill requires common carriers that contract with local or state governments to attest under oath and under penalties of perjury that they are not providing transportation to a person in this state knowing that the person is an “unauthorized alien.” This would require common carriers to obtain proof of immigration status and the means of entry into the United States from every child and adult who intends to utilize their services—an unreasonable burden on private businesses that threatens to exacerbate racial profiling and disrupt Florida’s tourism industry.

Requiring a determination of whether someone falls within the vaguely defined term “unauthorized alien” from every child or adult who intends to utilize a private businesses’ transportation service would open the door to unlawful interrogations, as well as racial profiling and discrimination. HB 1355/SB 1808 places an unreasonable burden on common carriers to make immigration status determinations based on assumptions of foreign birth, which they are neither equipped nor legally allowed to do.

SB 1808/ HB 1355 also raises potential constitutional concerns with regard to its interference with private third-party contracts and its burdens on interstate commerce, and accordingly we respectfully request the staff analysis address these issues before the next committee hearing.

Additionally, the staff analysis fails to discuss any of the constitutional concerns raised in the 110-page opinion striking down as unconstitutional SB 168's sanctuary prohibition,⁹ other than citing to the opinion in a footnote.

Conclusion

Everyday Floridians are suffering and barely able to make ends meet -- we need our legislature to focus on and invest in public education, affordable housing, healthcare access, and job creation for all Floridians. If your goal is to improve the health and safety of Floridians, these are the reforms the legislature should be pursuing.

For all the above reasons, we urge you to vote "No" on SB 1808/HB 1355. Please do not hesitate to contact Kara Gross, Legislative Director of the ACLU Florida, at kgross@aclufl.org, if you have any questions or would like any additional information.



Sincerely,

A handwritten signature in blue ink that reads "Kara J. Gross".

Kara Gross
Legislative Director &
Senior Policy Counsel

Cc: Kirk Bailey, Political Director, ACLU FL

⁹ The Florida Senate, Bill Analysis and Fiscal Impact Statement, SB 1808, Jan. 21, 2022, at 6 ("E. Other Constitutional Issues: None identified").