



To: The Florida Senate and House of Representatives
From: Michelle Richardson, Director of Public Policy & Advocacy
Date: December 1, 2015
Re: **Opposition to SB 872/HB 675, Requiring Local Law Enforcement to Enforce Federal Immigration Law**

We write in opposition to SB 872 and HB 675 which outlaws so-called “sanctuary” policies and forces each and every Florida county and municipality to expend maximal local resources to enforce federal immigration law. The bill requires localities to comply with all immigration-related requests by the federal government, including “detainer” requests to imprison someone without the judicial determination of probable cause required under the Fourth Amendment of the Constitution. Entities may be fined up to \$5,000 for every day they do not fulfill every immigration request made of them and will be perpetually and civilly liable for any bad acts committed by someone released by local law enforcement despite a detainer request. Local agencies will not be reimbursed for the cost of detaining these individuals and will continue to be liable in federal court for constitutional violations. In effect, law enforcement will be conscripted to prioritize immigration enforcement over any local needs to address crime or keep communities safe and will be forced to pick up the bill for it too.

It is important to note that as the Florida Sheriffs’ Association has made clear, no jurisdiction in the state has true “sanctuary” policies that categorically refuse all cooperation with immigration requests from the federal government.¹ Instead, some counties have opted not to honor warrantless Immigration and Custom Enforcement (ICE) detainers because they are unconstitutional, extremely costly, and undermine trust and cooperation with law enforcement. If SB 872/HB 675 becomes law, it would expose every government entity in Florida to potential liability for constitutional violations while making Floridians *less* safe. We urge you to oppose this bill.

¹ 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”). See also 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/>.

ICE Detainers Are Not Warrants

ICE detainers² are not arrest warrants. Unlike criminal warrants, which are supported by a judicial determination of probable cause, ICE detainers are issued by ICE enforcement agents themselves without any authorization or oversight by a judge or other neutral decision-maker. Without the safeguards of a judicial warrant, ICE detainers can—and do—result in the illegal detention of individuals who have not violated any immigration laws at all and are not deportable, including U.S. citizens and immigrants who are lawfully present in the United States. Since 2008, ICE has erroneously issued more than 800 detainers for U.S. citizens.³

Localities Can Be Held Liable for Honoring ICE Detainers

A growing body of case law 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 alone.⁴ Immigration enforcement is a job for 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 making the decision to detain an individual for any length of time based solely on an ICE detainer request.⁵ 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.⁶ Many localities around the country that chose to honor ICE detainers have had to expend resource defending civil rights litigation and paying financial settlements

² 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.

³ According to ICE's own records, between FY2008 and FY2012, it 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/>.

⁴ 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>.

⁵ 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.

⁶ 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).

to people who were unlawfully imprisoned on a detainer.⁷ As the Florida Sheriff's Association has pointed out, last year's reforms to the ICE detainer program through the Priority Enforcement Program (PEP), do not remedy these constitutional infirmities, and thus localities that honor detainers are still subject to liability.⁸

Additional Reasons Why Localities Have Chosen to Stop Honoring ICE Detainers

SB 872 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—and thus, in order to solve crimes, local officials need to win the trust of the community. The apparent exception for victims and witnesses in SB 872 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 focuses on information-sharing, and not detention, and therefore does nothing to permit localities to refuse to honor detainer requests issued by ICE against victims and witnesses.

Recognizing that community trust in the police is central to their core mission to protect public safety,⁹ many localities have enacted carefully crafted policies to foster this trust and have prioritized their police resources to focus on community needs. Importantly, none of the "sanctuary" policies targeted by the bill shields anyone who is arrested and booked from the knowledge of federal immigration authorities; through the automatic receipt of fingerprints, DHS is already notified of all individuals booked into jail across the country. 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

⁷ 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).

⁸ FSA PEP Policy Paper, *supra* n.1 ("PEP does not adequately address the Fourth Amendment concerns with holding an individual absent a warrant or judicial order . . . PEP asks 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.").

⁹ 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.").

crimes.¹⁰ Because forcing local law enforcement officials to honor ICE detainers undermines community trust in the police, SB 872 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 does not reimburse local facilities for the costs of holding people under detainers, forced compliance with ICE detainer requests would raise the costs of incarceration for local agencies.¹¹ Apart from detainers, local law enforcement agencies would have to comply with all requests from ICE—anything from tactical support for immigration enforcement operations to allocation of office space in local jails to enable ICE interviews with detainees. This investment would upend localities' ability to prioritize the enforcement of local laws over immigration law. And subsection 908.006(3) of the bill, which mandates full compliance and support of federal immigration enforcement suggests that the maligned 287(g) program to deputize local police to enforce immigration law could be imposed on every single county in Florida, beyond the two jurisdictions with current 287(g) agreements, at a major cost to local police budgets and community relations, given the concern that such programs disproportionately target low-level offenders and lead to racial profiling.¹²

Beyond these costs, under the bills' 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 would be on the hook even for a negligent injury inflicted in Oregon by an immigrant who was released from local custody in Florida decades ago. Foisting liability in perpetuity upon localities is unreasonable, and fiscally irresponsible.

SB 872 Would Affect Several Counties in Florida

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

¹⁰ 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.

¹¹ 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>.

¹² Randy Capps, et al., Migration Policy Institute, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, at 36 (Jan. 2011), available at <http://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement> (because "[t]he 287(g) jail model does not impose federal oversight on the officers who make the initial arrests," ICE "opens the door to racial profiling and pretextual arrests").

when they are accompanied by a judicial warrant. Among them are numerous counties in Florida, including, for example, Miami-Dade and Broward.

SB 872 would force these counties into an impossible situation where they must choose between (a) honoring ICE detainer requests and potentially being held liable for damages for constitutional violations, or (b) not honoring ICE detainer requests, and facing a range of harsh financial sanctions. We urge you to stand with these counties in upholding the U.S. Constitution and oppose the bill.

For more information, please contact Michelle Richardson, Director of Policy and Advocacy at mrichardson@aclufl.org.