



MEMORANDUM

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TO: The Senate Local Government Committee

FROM: Andy Hoover, Legislative Director, ACLU of Pennsylvania

DATE: October 18, 2016

RE: OPPOSITION TO HOUSE BILL 1885 (WHITE)

On Wednesday, the Senate Local Government Committee is scheduled to consider House Bill 1885. This legislation would hold municipalities liable if they do not enforce federal immigration law and if a person without immigration status is convicted of a personal injury crime. The legislation also requires law enforcement to inquire into a person's immigration status if the person has been arrested and if the officer has "reasonable cause"¹ that the person does not have authorization. If HB 1885 becomes law, it would expose every government entity in Pennsylvania to potential liability for constitutional violations. On behalf of the 25,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote "no" on HB 1885.

Today in Pennsylvania and around the country, localities are rightly insisting that Immigration and Customs Enforcement (ICE) operates within the boundaries of the constitution. And they are implementing policies that uphold their obligations under the constitution and that protect public safety.

HB 1885 undermines those important legal and policy efforts. This legislation may forbid policies to not honor ICE detainers, which currently exist in 33 counties.² The bill bans local policies that prohibit "cooperating or communicating" with federal immigration officials. But those 33 counties have rightly chosen to not honor ICE detainers because they recognize the legal liability that doing so would present. Lehigh County illegally detained Ernesto Galarza, a U.S. citizen, for three days in the county jail in 2008, at the request of ICE. Mr. Galarza filed litigation against the county, the city of Allentown, and the federal government.³ While the city and the federal government settled, the county fought the lawsuit, and in 2012, the Court of Appeals for the Third Circuit ruled that the county was liable for illegally detaining Galarza.

¹ "Reasonable cause" is not a legal standard.

² Sheller Center for Social Justice, *A Changing Landscape: Pennsylvania Counties Reevaluate Policies on Immigration Detainers*, Mar. 2015, available at <http://www2.law.temple.edu/csj/files/a-changing-landscape.pdf>. Since the publication of this report, Allegheny County has also implemented a policy to not honor ICE detainers, as part of a settlement from litigation brought by a U.S. citizen who was held overnight in the Allegheny County Jail at ICE's request.

³ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). More information is available at <https://www.aclupa.org/our-work/legal/legaldocket/galarzavszalcyketal/>.

ICE detainers⁴ are not arrest warrants. Unlike criminal warrants, which are supported by a determination of probable cause, ICE routinely issues detainers simply because it wants more time to investigate a person's immigration status. And unlike warrants, ICE detainers are issued by ICE enforcement agents themselves without any authorization or oversight by a judge or any other neutral decisionmaker. 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.

HB 1885 would force 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.

Along with compromising municipalities' obligations under the constitution, this legislation goes further by undermining the efforts of local governments to build positive relationships between law enforcement and the community. The definition of "sanctuary municipality" includes a municipality with a policy that limits "inquiring about an individual's name, date and place of birth and immigration status while enforcing or conducting an official investigation into a violation of any law of this Commonwealth." Some municipal governments have wisely chosen to not inquire into the immigration status of witnesses and victims of crime, as a means to promote public safety. Police departments want to encourage people to come forward and want to end the cycle of victimization. HB 1885 cuts off this valuable tool for public safety.

Finally, HB 1885 requires law enforcement officials to inquire into a person's immigration status if the person has been arrested and if the official has "reasonable cause" that the person does not have immigration authorization. This provision will inevitably lead to racial profiling against Pennsylvanians based on the way they look or speak. Minor transgressions will become pretext for racial profiling. This provision is similar to a requirement in Arizona's SB 1070 of 2010. No state has passed such a requirement since the brief wave of SB 1070 copycat bills. In fact, Colorado repealed a similar mandate in 2013. Enforcement of federal immigration law by local officials cost Colorado \$13 million annually.⁵

This legislation will force municipalities to violate the constitutional rights of their residents and will undermine important public safety goals of local governments. Please vote "no" on HB 1885.

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 Colorado Fiscal Institute (2012) *Misplaced priorities: SB90 & the costs to local communities*. Available at <http://www.coloradofiscal.org/misplaced-priorities-sb90-the-costs-to-local-communities/>.