



MEMORANDUM

TO: The Senate of Pennsylvania

FROM: Andy Hoover, Legislative Director, ACLU of Pennsylvania

DATE: October 23, 2016

RE: OPPOSITION TO HOUSE BILL 1885 (WHITE)

This week the Senate may consider House Bill 1885. Introduced by Representative Martina White, this legislation withholds all state funding from counties, cities, boroughs, and townships that do not acquiesce to the demands of federal immigration authorities. At least 34 local governments- 33 counties and the city of Philadelphia- have chosen to limit their interactions with Immigration and Customs Enforcement (ICE) in the interest of both upholding their obligations under the Constitution and to protect public safety. Because HB 1885 forces local governments to bend to the unconstitutional demands of ICE, the American Civil Liberties Union of Pennsylvania opposes this legislation. On behalf of the 25,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote “no” on this bill.

By threatening the withdrawal of all state funding, the supporters of HB 1885 send the message that local enforcement of federal immigration law is a higher priority than the numerous services provided by local governments. Members of the Senate are familiar with the many ways in which the commonwealth financially supports services provided by the counties. Members who vote “yes” on this bill are suggesting that enforcement of federal immigration law is a higher priority than support for domestic violence survivors, drug and alcohol treatment, and services for people with disabilities.

HB 1885 also includes an extraordinarily broad exposure of liability for local governments that limit their enforcement of federal law. Under this bill, local governments become liable for the actions of their residents who do not have immigration status, even if municipal officials never had contact with the person. Although the ACLU of Pennsylvania opposed it, the Senate version of this legislation, SB 997, at least required that a person had to have been in the custody of the local jurisdiction at some point. HB 1885 has no such requirement.

This legislation may force counties to participate in the unconstitutional demands of ICE by prohibiting policies that limit “cooperating” with federal immigration authorities. But 33 counties have wisely chosen to not honor ICE requests for prolonged detention. These counties recognize the legal liability that could result from honoring such requests. 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.¹ While the city and the federal government settled, the

¹ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). More information is available at <https://www.aclupa.org/our-work/legal/legaldocket/galarzavszalczyketal/>.

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.

In 2011, Angelica Davila, who is a U.S. citizen, was illegally detained in the Allegheny County jail at the request of ICE,² and in 2013, the ACLU of Pennsylvania filed suit on behalf of Ms. Davila. The county settled the litigation and implemented a policy to stop honoring ICE detainees.

ICE detainees³ are not arrest warrants. Unlike criminal warrants, which are supported by a determination of probable cause, ICE routinely issues detainees simply because it wants more time to investigate a person's immigration status. And unlike warrants, ICE detainees 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 detainees can result in the illegal detention of individuals who have not violated any immigration laws at all and are not deportable.

If HB 1885 becomes law, all 67 counties will be vulnerable to federal litigation like the Galarza and Davila cases for illegally detaining someone.

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, in the interest of 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"⁴ 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. 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.

² For more information, visit <https://www.aclupa.org/our-work/legal/legaldocket/davila-v-northern-regional-police-department-et-al/>

³ 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.

⁴ "Reasonable cause" is not a legal standard.

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/>.