



MEMORANDUM

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TO: The Senate of Pennsylvania

FROM: Andy Hoover, Communications Director, ACLU of Pennsylvania

DATE: February 4, 2017

RE: OPPOSITION TO SENATE BILL 10 (RESCHENTHALER)

This week, the Senate may consider Senate Bill 10. Introduced by Senator Reschenthaler, this legislation forces local governments to accede to every demand of federal immigration authorities, even when those demands violate a municipality's obligations under the Constitution and when the municipality has determined that a local policy is in the best interests of its residents. The punishment for failure to bend to the will of Immigration and Customs Enforcement (ICE) is a total loss of state grant funding, including funding for 911 services and transportation infrastructure. The American Civil Liberties Union of Pennsylvania opposes Senate Bill 10, and on behalf of the now 28,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote "no" on SB 10.

According to the Senate Republicans' fiscal analysis, the amount of funding at risk for municipalities if SB 10 becomes law is \$996.3 million. But this analysis tallies just five counties that fit the definition of "municipality of refuge" – Philadelphia, Chester, Delaware, Montgomery, and Lehigh. This is a miscalculation. According to both the Center for Immigration Studies, a think tank that advocates for immigration restrictions,¹ and the Sheller Center for Social Justice at Temple University Beasley School of Law,² 17 counties (among the 51 counties that responded to a survey and a Right to Know request) have written policies to not honor detainer requests from ICE. Those counties are:

Bedford, Bradford, Bucks, Butler, Chester, Clarion, Delaware, Erie, Lebanon, Lehigh, Lycoming, Montgomery, Montour, Perry, Philadelphia, Pike, and Westmoreland.

The report from Temple also cites 15 more counties that do not honor ICE detainer requests but do not have a written policy (as of March, 2015). Those counties are:

Armstrong, Blair, Carbon, Columbia, Elk, Fayette, Jefferson, Lackawanna, Mifflin, Somerset, Susquehanna, Tioga, Washington, Wayne, and York.

Finally, after the publication of the Temple report, Allegheny County implemented a policy to not honor ICE detainer requests in November, 2015. The policy stemmed from litigation filed by the ACLU of Pennsylvania on behalf of Angelica Davila, a U.S. citizen who was held overnight in the Allegheny County Jail on an ICE detainer request after a traffic violation.³

¹ Center for Immigration Studies. (2016) *Map: Sanctuary Cities, Counties, and States*. Available at <http://cis.org/Sanctuary-Cities-Map>.

² Cole, R. et al. (2015) *A Changing Landscape: Pennsylvania Counties Reevaluate Policies on Immigration Detainers*. Available at <http://www2.law.temple.edu/csrf/files/a-changing-landscape.pdf>

³ *Davila v. Northern Regional Police Department, et al.* More information is available at <https://www.aclupa.org/our-work/legal/legaldocket/davila-v-northern-regional-police-department-et-al/>.

That's 33 counties that have chosen to honor their obligations under the Constitution and not honor ICE detainer requests. These counties recognize that an ICE detainer request is merely a voluntary ask from the executive branch that is not supported by a court order or by a finding of probable cause. The federal Court of Appeals for the Third Circuit has established that counties are liable if they illegally detain someone at ICE's request.⁴

If Senate Bill 10 becomes law, it will place counties in the impossible position between violating people's constitutional rights or losing millions of dollars in grant funding and risking liability for damages because they did not bend to the will of the General Assembly and the federal government. One could argue that the language of Section 305(a) of the bill that exempts municipalities from federal demands that conflict with the Constitution provides counties with an escape valve from that tension. But it is easy to imagine that a cautious county solicitor would advise the county commissioners or council to follow demands from ICE, rather than risk the loss of state grant funds. Besides, section 8542(a.1)(1) – the section specifically on ICE detainees - provides no such constitutional escape valve.

Senate Bill 10 is an agenda-driven initiative that runs roughshod over people's constitutional rights. Please vote "no" on SB 10.

⁴ *Ernesto Galarza v. Mark Szalczyk*, No. 12-3991 (3d Cir. 2014). More information is available at <https://www.aclupa.org/our-work/legal/legaldocket/galarzavszalcyketal/>.