

April 22, 2019

DELIVERED VIA EMAIL

Florida House of Representatives  
The Capitol  
400 S. Monroe Street  
Tallahassee, FL 32399

Re: **Opposition to HB 527, Anti-Immigrant Bill Exposing Every State and Local Entity and Law Enforcement Agency to Liability for Constitutional Violations**

Dear Representative:



On behalf of more than 130,000 members and supporters statewide, the American Civil Liberties Union (ACLU) of Florida opposes HB 527. We respectfully request that our opposition be included in the record and made available to the public.

4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Kirk Bailey  
*Political Director*

Kara Gross  
*Legislative Director*

HB 527 requires all local law enforcement agencies in Florida to expend their scarce resources to enforce federal immigration law, regardless of community priorities, local resources, or constitutional limitations. Additionally, the bill threatens to withhold state grant funding for five years from any jurisdiction that does not comply with the bill's requirements, and to fine those jurisdictions up to \$5,000 per day.

HB 527 prohibits all localities in the state from adopting policies or procedures that limit entanglement with federal immigration enforcement – even if such policies or procedures reflect the values of local residents. It also requires each and every Florida county and municipality to expend maximum local resources to enforce federal immigration law. Specifically, this bill provides that no state entity, law enforcement agency, local government entity, state university, or representative thereof,<sup>1</sup> may adopt or have in effect a “sanctuary policy.” Sanctuary policy is defined broadly and vaguely in the bill to include any “law, policy, practice, procedure, or custom adopted or permitted by a state entity, local governmental entity, or law enforcement agency” which limits or prevents:

- Compliance with an immigration detainer,
- Compliance with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee,

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<sup>1</sup> As defined in the bill, this includes, but is not limited to, any state entity or office, board, commission, department, or institution thereof (including state universities and colleges) and any person holding public office or having official duties as an employee of such entity; any state or local police department, sheriff's office, or state university and college police departments, including any employee thereof; any county or municipality, and any person holding local public office or having official duties of such local entity. *See* HB 527, Section 908.102, Definitions (Legislative Session 2019).



- Federal immigration agency access to an inmate for interview,
- Investigation of any person’s immigration status, and
- Providing a federal immigration agency with an inmate’s incarceration status or release date.

The bill provides that any sanctuary policy in effect be repealed within 90 days of the effective date of the Act.

Additionally, this bill imposes an affirmative obligation on every law enforcement agency to use its “best efforts to support the enforcement of federal immigration law.” (Section 908.202) The bill does not provide any guidance as to what it means to use “best efforts” to “support” immigration enforcement. It provides no exceptions. Moreover, the bill does not provide any funding or reimbursement for the costs and resources diverted to ensuring law enforcement uses its “best efforts” to support federal immigration law.

Finally, the bill forces local officials to implement every single federal immigration detainer request they receive.<sup>2</sup> Officials must blindly carry out any request written on the detainer form, including both a request for notification of a person’s release date, and a request to extend the person’s detention. There are no exceptions, even if the officer doubts probable cause, or the person presents proof of citizenship, or the person is a crime victim or witness, or the jail is already full.

An “immigration detainer” as defined in the bill “means a facially sufficient written or electronic request issued by a federal immigration agency using that agency’s official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law...” It further provides that “an immigration detainer is deemed facially sufficient” even if the form is incomplete and fails to indicate on its face that the federal immigration official has probable cause to believe that the person to be detained may not be lawfully present in the United States, if accompanied by a mere affidavit that makes such assertion. *See* HB 527, Section 908.102(2)(b).

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<sup>2</sup> Immigration detainer requests (also referred to as “ICE detainers” or “immigration holds”) are one of the key tools U.S. Immigration and Customs Enforcement (ICE) uses to apprehend individuals who come in contact with local and state law enforcement agencies and funnel them into the federal deportation system. A detainer is a written request that a local jail or other law enforcement agency detain an individual after the date he or she would otherwise be released in order to provide ICE agents extra time to decide whether to transfer the individual into federal custody for deportation or removal purposes. Accompanying administrative warrants are in no way equivalent to legitimate criminal warrants and do not satisfy judicial probable cause that a crime has been committed, and are therefore meaningless from a constitutional liability perspective.



Moreover, the bill provides that state entities (including colleges and universities), local government entities, and law enforcement, and representative employees or officers thereof, may be fined up to \$5,000 per day for each day that the sanctuary policy is in effect after October 1, 2019. Individuals who are penalized under this bill must pay the cost of all legal fees out of their own pockets. Any official who voted for a sanctuary policy or allowed it to be implemented can be removed from office.

Additionally, the bill creates a civil cause of action for damages against a state entity, local governmental entity, or law enforcement agency for personal injury or wrongful death due to any harm committed by someone released by local law enforcement despite a detainer request. It also provides that local entities in violation of any provision of this bill shall be ineligible for state grant funding for a period of five years from the violation.

In effect, under this bill, local law enforcement will be conscripted to prioritize immigration enforcement over any and all local needs, like fighting crime and keeping their communities safe. Local law enforcement will be forced to expend maximum time, personnel, and financial resources enforcing civil immigration law, with no guaranteed reimbursement from the state or federal government. Moreover, local law enforcement will continue to be liable in federal court for constitutional violations committed as a result of this law's requirements.

It is important to note that Florida does not have any true "sanctuary cities" that categorically refuse all cooperation with immigration requests from the federal government.<sup>3</sup> Instead, some counties have opted not to implement warrantless Immigration and Custom Enforcement (ICE) detainer requests because of constitutional concerns, because they are extremely costly, and because they undermine trust and cooperation with law enforcement. If HB 527 becomes law, it would expose every government entity in Florida to potential liability for constitutional violations, divert a huge amount of local law enforcement resources away from actually keeping our communities safe, and cost taxpayers millions of dollars, without any federal reimbursement of costs. We urge you to oppose this bill.

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<sup>3</sup> See Florida Sheriffs Association, Priority Enforcement Program (PEP) Policy Paper, available at [http://www.flsheriffs.org/uploads/docs/FL\\_Sheriffs\\_PEP\\_Policy\\_Paper\\_FINAL.pdf](http://www.flsheriffs.org/uploads/docs/FL_Sheriffs_PEP_Policy_Paper_FINAL.pdf) ("Florida Sheriffs are NOT Permitting "Sanctuary"); 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/>; [https://www.flsheriffs.org/uploads/docs/Legal\\_Alert\\_-\\_ICE\\_Detainers2.pdf](https://www.flsheriffs.org/uploads/docs/Legal_Alert_-_ICE_Detainers2.pdf).



## **ICE Detainers Are Not Warrants**

ICE detainers<sup>4</sup> are not arrest warrants. Unlike criminal warrants, which are supported by a judicial determination of probable cause that the individual committed a crime, ICE detainers are issued by ICE enforcement agents themselves without any authorization or oversight by a judge or other neutral decision-maker. 8 C.F.R. 287.7(b) (listing federal police officers who can issue detainers). The same is true for ICE administrative warrants, which are issued not by a judge but by an ICE officer. 8 C.F.R. 287.5(e)(2) (listing officers who can issue administrative warrants). Without the safeguards of a judicial warrant, ICE detainers can—and do—result in unconstitutional detention without probable cause. Thousands of detainers in recent years have been placed on U.S. citizens and lawful permanent residents who are not deportable.<sup>5</sup>

## **Localities Can Be Held Liable for Honoring ICE Detainers**

ICE detainers are mere requests, not commands, as ICE itself admits. In fact, the detainer request form is nothing more than a check-box form that specifically states, “It is therefore requested that you” detain the individual.<sup>6</sup> Local law enforcement agencies are not required to hold anyone based on an ICE detainer.<sup>7</sup>

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<sup>4</sup> 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.

<sup>5</sup> According to ICE’s own records, between FY2008 and FY2012, it erroneously 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/>. Other recent studies have suggested that ICE wrongly targets a much higher number of U.S. citizens. See David Bier, *We Have a New Reason Not to Trust ICE*, Cato Inst., Aug. 29, 2018, <https://www.cato.org/publications/commentary/we-have-new-reason-not-trust-ice>. And according to ICE’s own data, the vast majority of detainers are placed on people with no criminal records or very minor ones. Transactional Records Access Clearinghouse, Syr. Univ., *Few ICE Detainers Target Serious Criminals*, Sept. 17, 2013, <http://trac.syr.edu/immigration/reports/330/>.

<sup>6</sup> <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>

<sup>7</sup> See *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>.



Immigration enforcement is a job for trained 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 serious legal liability for detaining an individual based on an ICE detainer request.<sup>8</sup> 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.<sup>9</sup> Many localities around the country that chose to implement ICE detainers have had to expend significant resources defending civil rights litigation and paying financial settlements to people who were unlawfully imprisoned on a detainer.<sup>10</sup> In fact, three lawsuits are currently proceeding against Florida sheriffs for holding U.S. citizens based on ICE detainers.<sup>11</sup> As the Florida Sheriffs Association has previously pointed out, localities that honor detainers face significant liability.<sup>12</sup> By requiring localities to honor all detainers, the bill would mean that all immigrants who come into contact with local law enforcement—even victims, witnesses, and others who have not committed any crime—can be swept up in the immigration enforcement and deportation pipeline. And Florida localities would be forced to pay significant litigation costs and damages.

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<sup>8</sup> 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](http://www.mcall.com/news/breaking/mc-lehigh-galarza-immigration-detainer-settlement-20140602,0,5558794.story). ICE refused to indemnify the County for these costs.

<sup>9</sup> 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).

<sup>10</sup> See ACLU, *Local jurisdictions remain legally liable for honoring ICE detainers*, April 3, 2018, available at <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018> (partial list of recent damages awards and settlements).

<sup>11</sup> See *Brown v. Ramsay*, No. 4:18-cv-10279 (S.D. Fla. Dec. 3, 2018); *Creedle v. Miami-Dade County*, 2018 WL 6427713 (S.D. Fla. Nov. 9, 2018) (denying County’s motion to dismiss); *CFC v. Miami-Dade County*, 2018 WL 6616030 (S.D. Fla. Dec. 14, 2018) (same).

<sup>12</sup> FSA PEP Policy Paper, *supra* n.3 (explaining that even the Priority Enforcement Program, which limited detainer issuance, “d[id] not adequately address the Fourth Amendment concerns with holding an individual absent a warrant or judicial order . . . PEP ask[ed] 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.”). See also [https://www.flsheriffs.org/uploads/docs/Legal\\_Alert\\_-\\_ICE\\_Detainers2.pdf](https://www.flsheriffs.org/uploads/docs/Legal_Alert_-_ICE_Detainers2.pdf).

## **HB 527 Thwarts Local Priorities and Decreases Public Safety in Our Communities and on Our Campuses**

HB 527 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. Thus, in order to solve crimes, local officials need to win the trust of the community. HB 527 makes immigration agents out of local police – it requires them to notify DHS about any arrested individual who cannot prove his or her lawful immigration status.



Studies conducted over the past two years demonstrate the impact on public safety is not mere conjecture. The Houston Police Department found that the sexual assault incidents reported by Latinos in 2017 were down nearly 43 percent when compared to the same period 2016.<sup>13</sup> The study also reported a 12 percent decrease in the number of Latino-reported aggravated assaults and robberies.<sup>14</sup> Similarly, the Los Angeles Police Department reported a 25 percent drop in reports of sexual assault from Latino residents and a 10 percent drop in reports of domestic violence from Latino residents in 2017.<sup>15</sup> The apparent exception for victims and witnesses in HB 527 does not solve the problem; it 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 applies only to information-sharing, and not detention, and therefore does nothing to permit localities to decline to comply with detainer requests issued by ICE against victims and witnesses. Victim and witness safety and cooperation would be further frustrated by express provisions which force localities to keep records about the immigration status of victims and witnesses for at least 10 years, risking that those records may be compromised by internal leaks or ICE subpoenas and that the victims and witnesses will then be subject to removal.

Indeed, the Major Cities Chiefs Association,<sup>16</sup> the Presidential Task Force on 21<sup>st</sup> Century Policing,<sup>17</sup> and Attorneys General from New York, Oregon, California,

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<sup>13</sup> See John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR (May 25, 2017), available at: <http://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>.

<sup>14</sup> *Id.*

<sup>15</sup> James Queally, *Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, Los Angeles Times (Mar. 21, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

<sup>16</sup> See Major Cities Chiefs Association, “Immigration Policy” (2013), available at [https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf).

<sup>17</sup> See President’s Task Force on 21st Century Policing, “Final Report of the President’s Task Force on 21st Century Policing” (May 2015) at 18 (Action



Washington, Rhode Island, and the District of Columbia<sup>18</sup> have all adopted positions or policies opposing local law enforcement entanglement with federal immigration enforcement on the grounds that it harms public safety. Recognizing that community trust in the police is central to their core mission to protect public safety,<sup>19</sup> many localities have enacted carefully crafted policies to foster this trust and have prioritized their police resources to focus on community needs. 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 crimes, making our local communities and campuses safer.<sup>20</sup> Because forcing local law enforcement officials to honor ICE detainers undermines community trust in the police, HB 527 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 is not required to reimburse local facilities for the costs of holding people pursuant to ICE detainers, forced compliance with these requests would raise the costs of incarceration for local agencies.<sup>21</sup> The

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Item 1.9.1), available at

[https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>18</sup> See “Setting the Record Straight on Local Involvement in Federal Civil Immigration Enforcement: The Facts and the Laws” (May 2017), available at [https://ag.ny.gov/sites/default/files/setting\\_the\\_record\\_straight.pdf](https://ag.ny.gov/sites/default/files/setting_the_record_straight.pdf).

<sup>19</sup> Major Cities Chiefs Association, *Immigration Policy* (2013), available at [https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](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.”).

<sup>20</sup> 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](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

<sup>21</sup> 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*



suggestion in the bill that local entities can petition the federal government for reimbursement or that detained immigrants should pay for their own detention is at odds with reality – and basic fairness – and cannot hide that the bill requires significant expense by localities without realistic solutions to defray these costs. Apart from detainers, local law enforcement agencies would have to comply with all requests from ICE—anything from tactical support to allocation of office space in jails to investigating leads for ICE. This investment would upend localities’ ability to prioritize public safety and the enforcement of local laws over federal immigration law.

Beyond these costs, under the bill’s 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 could be liable for a negligent injury inflicted in New York by an immigrant who was released from local custody in Florida years ago. Foisting liability in perpetuity upon localities and colleges and universities is unreasonable, and fiscally irresponsible.

### **Conclusion**

In light of the many problems with ICE detainers, at least 760 counties nationwide have adopted policies to decline to respond to ICE detainer requests, or to implement them only in limited circumstances, such as when they are accompanied by a judicial warrant.<sup>22</sup> Hundreds of other counties limit entanglement with ICE in other ways. More than 120 sanctuary policies, in 28 states, were enacted in just the past two years.<sup>23</sup>

HB 572 would force state entities (including state universities and colleges), local governments, law enforcement agencies (including county, municipal, and university and college police departments), and employees thereof, into an impossible situation where they must choose between: (a) honoring ICE detainer requests and potentially being held liable for damages for constitutional violations – in addition to harming public safety, or (b) not honoring ICE detainer requests, and facing a range of harsh financial penalties and sanctions, including personal injury damages and loss of employment. For all of the above reasons, we respectfully urge you to uphold the U.S. Constitution and oppose this bill.

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*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>.

<sup>22</sup> Immigrant Legal Resource Center, *The Rise of Sanctuary*, January 25, 2018, at [https://www.ilrc.org/sites/default/files/resources/rise\\_of\\_sanctuary-lg-20180201.pdf](https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-lg-20180201.pdf), p. 9.

<sup>23</sup> Immigrant Legal Resource Center, *The Success of Sanctuary Under Trump*, January 21, 2019, at <https://www.ilrc.org/success-sanctuary-under-trump>



We thank you for your consideration of the above. Please do not hesitate to contact me at (786) 363-4436 or [kgross@aclufll.org](mailto:kgross@aclufll.org) if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara J. Gross".

Kara Gross  
Legislative Director

