

December 17, 2019



Testimony of ACLU of Wisconsin

In Opposition to Senate Bill 151

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Wisconsin, a non-partisan, non-profit organization working to protect civil liberties—including ensuring fair treatment for the immigrant community in our state and nation. We urge you to reject Senate Bill 151, which tramples local decisions regarding how police should interact with immigrant members of the local community and requires sheriffs to participate in a flawed and dangerous immigration detainer process.

The enforcement of immigration laws is a role assigned to the federal government under Article 1, Section 8 of the U.S. Constitution, and state and local governments have no obligation under federal law to participate in such enforcement. While local agencies are required to share certain information with federal immigration authorities, those agencies have no affirmative duty to collect that information. Similarly, immigration detainers, or holds, are voluntary requests from the federal government which need not be honored.

An increasing number of localities Wisconsin have opted – dating back to the Obama administration – to leave the immigration enforcement business to the federal government and focus their resources on local matters. These localities do not ask individuals about their immigration status and do not honor immigration detainers.

Why have they made these decisions? To effectively protect public safety, local law enforcement needs cooperation from local immigrant communities. Local residents serve as witnesses, report crime, and otherwise assist law enforcement. The foundation for this cooperation is often destroyed when local police are viewed as an extension of the immigration system. Survivors of domestic violence refrain from reporting offenses; individuals with key information about burglaries or escapees from county jails fail to contact the police or Sheriff's department. It is an unfortunate truth that, as immigration enforcement has expanded, the willingness of immigrant communities to interact with law enforcement has declined.

Time spent engaging in federal immigration enforcement detracts from performance of the core duties of local law enforcement. Immigration enforcement does not advance local priorities, because it commonly targets individuals who pose no threat to public safety. Traditional police work designed to solve serious crimes should not be displaced by efforts to identify and arrest people who may have simply overstayed a visa.

Senate Bill 151 would override the decisions of local elected officials to focus on local communities' public safety concerns rather than on the priorities of federal agencies. The proposed bill would prohibit Wisconsin communities from adopting policies which say to our immigrant neighbors "If you come to

report a crime, if you come to testify at trial, if you seek the protection of the police, we will not act as an arm of ICE, and will not interrogate you about your immigration status.”

The legislation also requires local jails to honor immigration detainers. An “ICE detainer” is NOT the same as a judicial warrant. Instead, it is a written voluntary request that local law enforcement detain an individual for an additional 48 hours after they would otherwise be released. Unfortunately the ICE process for issuing detainers is full of mistakes which often result in persons being wrongfully deprived of their liberty.

For example, during a recent two-year period, the ACLU determined that ICE sent detainers to one Florida county for 420 persons who were actually US citizens, not immigrants¹. Another study by the Cato Institute estimated that 3500 US citizens were subject to detainers just in Texas from 2006-2017.² In September, a federal court found that the databases which ICE uses to send out the most common forms of detainers were “inaccurate, incomplete and error-filled.”

Local jurisdictions that participate in immigration enforcement often end up in court over constitutional violations for honoring detainers. Local police acting upon ICE detainer requests face liability for unlawful detentions in violation of the Fourth Amendment and the Due Process Clause. For example, a county in Oregon was found liable for violating the Fourth Amendment for detaining an individual pursuant to an ICE detainer request. As a result of the lawsuit, the county was ordered to pay more than \$100,000.

Thus many sheriffs have decided to require that ICE deliver a judicial warrant based on probable cause before holding a person in jail after any state-law justification ends. This legislation overrules the decisions of these elected sheriffs and requires them to honor detainers despite the demonstrated history of problems with the detainer system. Local governments throughout the State of Wisconsin have decided they do not want to face the liability risk of honoring detainers, yet this legislation would force them to do so - and potentially subject themselves to legal liability.

In conclusion, Senate Bill 151 is a misguided attempt to require local governments to be part of the federal government deportation scheme and to override local communities’ priorities to seek to serve and protect their immigrant neighbors.

¹ <https://www.aclufi.org/en/publications/citizens-hold-look-ices-flawed-detainer-system-miami-dade-county>

² <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>