



House Committee on Military, Veterans, and Homeland Security

HB 4197 & 4539: Welcoming/Sanctuary Cities

Position: Oppose

June 15, 2021

The ACLU of Michigan is opposed to HB 4197 and HB 4539 because they dismantle legal “welcoming cities” policies that promote positive relationships between law enforcement and the community.

It is important to dispel the false narratives around “sanctuary” or “welcoming” cities, which are sometimes misrepresented as “illegal sanctuary” policies/cities. A substantial number of cities that have adopted these policies do not violate any federal law. Welcoming policies are not only permissible, but they are also sensible.

I. Welcoming policies are permissible under federal law – and costly to abandon.

Federal immigration law, specifically 8 USC 1373, only prohibits local or state policies that limit the sending and receiving of immigration status information, it does *not* prohibit policies that limit communication or cooperation in any other form other than specifically sending information about a person’s immigration status.

The federal provision is very limited in scope because it has long been recognized that immigration enforcement is not and should not be the role of local governments and local law enforcement. That is why most local policies prohibit actions such as: (i) officers asking victims or witnesses of crimes about their immigration status, (ii) police detaining people pursuant to an unconstitutional ICE detainer request, (iii) law enforcement using local resources, funds, and personnel to work with ICE or CBP on immigration enforcement matters, and (iv) various policies to prevent discriminatory and unlawful conduct. None of which violate any federal immigration law, yet, this legislation attempts to make them all unlawful.

The cooperation and communication provisions of the legislation before this committee today are incredibly vague, and, in turn, incredibly broad, making the effective local policies described above, arguably, prohibited because they could be interpreted as limiting communication or cooperation in general. Without clear and unambiguous policies in place to regulate how law enforcement should interact and work with federal immigration enforcement agencies, law enforcement agencies may feel pressured into participating in immigration enforcement activities or going against their standard practices at the insistence of ICE to uphold a “cooperation” or “communication” requirement. As written, the legislation places no limiting principle on the scope of cooperation or communication, leaving it solely in the hands of federal agencies to dictate the conduct of local law enforcement in contravention of the will of the people in such local communities.

Often unknown to law enforcement is that federal immigration enforcement officials do not always obtain the requisite warrants, court orders, or have the necessary probable cause to engage in actions like searches or detaining individuals. Unfortunately, this results in many local law enforcement agencies across the country defending themselves in court against federal



claims after taking ICE at their word. These bills also invite racial profiling, unconstitutional detention, and the entanglement of limited local resources on federal issues.

Take ICE detainees¹ for example, over fifty jurisdictions outside of Michigan have abandoned their prior practice of automatically honoring ICE detainees.² In 2019, Kent County changed its detainer compliance policy after ICE unlawfully requested the detention of Jilmar Ramos-Gomez, a United States citizen and decorated military veteran. Kent County, which received the largest percentage of detainer requests from ICE in Michigan, now requires that ICE provide a judicial warrant in order for the Sheriff to hold individuals for immigration purposes.

ICE has tried to minimize those disturbing patterns by claiming that its detainer requests only target people with serious criminal records. But ICE's own data shows that this is false. The vast majority of detainer requests are issued against people with little to no criminal history.³ Indeed, two-thirds of the people targeted for deportation have no criminal convictions of any kind.⁴ The reality is that ICE detainer requests are indiscriminately issued against almost anyone who comes into contact with local police—immigrants, refugees, students, moms, dads, brothers, sisters, grandmothers and grandfathers—instilling fear in already scared communities.

The liability risks are large in magnitude and high in probability. Federal courts have consistently held that local agencies and officials can be sued for complying with ICE detainees. First, courts agree that extending a person's detention based on an ICE detainer constitutes a new arrest.⁵ Second, courts agree that a local agency violates the Fourth Amendment when it makes a detainer arrest without sufficient probable cause.⁶ Third, courts agree that because

¹ An immigration detainer, or "ICE hold," is a request from U.S. Immigration and Customs Enforcement (ICE) to a state or local law enforcement agency to hold someone until the person can be taken into federal immigration custody. A detainer asks the law enforcement agency to hold a person for up to 48 hours beyond the time that the person would otherwise be released (e.g., because charges were dropped, the person was released on bail or recognizance, the person was acquitted, or the person completed a jail or prison sentence).

² See, e.g., Catholic Immigration Network, *States and Localities That Limit Compliance with ICE Detainer Requests* (Jan. 2014) (listing over twenty jurisdictions), available at <https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014>; *Wayne County sheriff, ICE clash on holding immigrant inmates*, Detroit Free Press, July 2, 2017, available at <https://www.freep.com/story/news/local/michigan/wayne/2017/07/03/wayne-county-sheriff-ice-immigrants/443959001/>; *Kalamazoo County sheriff sets new time limit for holding ICE detainees*, MLive, Dec. 5, 2019, available at <https://www.thetimesherald.com/story/news/local/port-huron-township/2017/12/08/immigration-crackdown-pays-bills-county-jail/920909001/>.

³ Syr. Univ., *Few ICE Detainers Target Serious Criminals*, Sept. 17, 2013 (half of all detainees targeted people with no convictions of any kind; over 80% had either no convictions or non-violent ones only), <http://trac.syr.edu/immigration/reports/330/>.

⁴ John Bowden, *ICE Arrests of Immigrants with No Criminal Convictions Rises: Report*, TheHill.com, May 18, 2018, <https://bit.ly/2rSjwmK>; Assoc. Press, *Deportation Officers Are Increasingly Arresting People with No Crime Records*, Feb. 26, 2018, <https://nbcnews.to/2Clh3bn>; Niraj Warikoo, *Michigan Non-Criminal Immigrant Arrests, Deportations Soar Under Trump*, Detroit Free Press, Mar. 20, 2018, <https://on.freep.com/2DEhzzj>.

⁵ *Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cty.*, 2014 WL 1414305, at *9-10 (D. Or. Apr. 11, 2014); see also *Lunn v. Massachusetts*, 477 Mass. 517 (2017).

⁶ *Morales*, 793 F.3d at 217 & n.3 (explaining that "courts have uniformly held that probable cause is required" to hold someone a detainer).



detainers are fully voluntary, local officials can be held liable for damages when they effectuate a detainer without probable cause.⁷ As a result, police and sheriffs across the country have paid millions of dollars in damages, settlements, and attorney fees for detainer arrests.

As an example, the City of Grand Rapids recently paid \$190,000 for its participation in the unlawful detention of U.S. citizen Jilmar Ramos Gomez, who was held on an ICE detainer.⁸ Detainer-related lawsuits have continued to impose major legal costs elsewhere in the country as well.⁹ And the federal government has consistently refused to reimburse these costs. Moreover, the time period in which a person is detained via such a request is not reimbursed by the federal government. The proposed legislation guarantees local communities are put in the impossible position of being stuck between costly litigation or in violation of the statute and subject to injunctions and fees.

II. Welcoming policies are sensible and safer.

Police are better equipped to do their jobs and the public is protected when all members of the community feel safe talking to law enforcement. HB 4197 and 4593 erode the trust between police and immigrant communities. It will cause those in need to only further hesitate about talking to police out of fear of themselves or loved ones being detained or deported. Policies required in this legislation will undermine the trust between law enforcement and the communities they serve because they promote a fiction that immigrants and their families are not, in fact, already part of the social fabric of such communities.

These bills strip local governments and law enforcement of their ability to determine and enforce policies and practices that are most effective to ensure the safety of their entire community. Under this legislation, a municipality that enforces or adopts a federally permissible welcoming policy may be sued by ANY resident of that community. Passing laws that disrupt the relationship between police and the communities they serve will only make us *less* safe.

⁷ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (explaining that the county “was free to disregard the ICE detainer” and was therefore liable for its own actions); *Miranda-Olivares*, 2014 WL 1414305, at *4-8 (same).

⁸ *Grand Rapids Will Pay \$190,000 to Veteran Detained by ICE*, New York Times (Nov. 14, 2019).

⁹ For a small sample of recent cases, see *Roy v. County of Los Angeles*, No. 12-cv-9012, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018) (ruling in favor of a class of thousands of noncitizens held on detainers seeking damages against Los Angeles County, which had paid \$255,000 to settle one named plaintiff’s detainer claim); *Goodman v. Arpaio*, 2:16-cv-04388 (D. Ariz. settled 2018) (Maricopa County settles detainer lawsuit for \$30,750 in damages and \$50,000 in attorney’s fees); *Cisneros v. El Paso County*, No. 18-cv-30549 (Colo. D. Ct. Mar. 19, 2018) (ruling that county sheriff had no authority under state law to arrest based on civil immigration detainer); *Palacios-Valencia v. San Juan County*, No. 14-cv-1050 (D.N.M. settled 2017) (San Juan County pays \$350,000 to settle detainer class action lawsuit, pays named plaintiffs \$25,000 and \$15,000 to settle their claims); *Gomez-Maciel v. Coleman*, No. 17-cv-292 (E.D. Wash. settled 2017) (City of Spokane settles detainer lawsuit for \$49,000); *Figuroa-Zarceno v. City and County of San Francisco*, No. 17-cv-229 (N.D. Cal. settled 2017) (San Francisco pays \$190,000 settlement to person unlawfully turned over to ICE); *Lunn*, 477 Mass. 517 (holding that police had no authority under state law to hold people on ICE detainers). See also American Civil Liberties Union, *Recent ICE Detainer Damages Cases* (2018), <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018>.



- A survey of over 2,000 Latinos in Chicago, Houston, Los Angeles and Phoenix revealed that 44% of Latinos are less likely to contact the police if they have been a victim of crime for fear that the police will use this interaction as an opportunity to ask about their immigration status.¹⁰ 70% of undocumented Latinos report that they are less likely to contact police if they were victims of a crime.¹¹
- Welcoming policies have a positive impact on our communities. Studies show that crime rates are lower in counties with welcoming policies compared to those without. The Center for American Progress found that 35.5 fewer crimes were committed per 10,000 people in welcoming counties compared to non-welcoming counties.¹² On the other hand, studies show that cities with the type of policies being discussed here today have no effect on most types of crimes because immigrants maintain low crime rates even if they are faced with adverse social conditions such as low income or low levels of education.¹³
- Welcoming policies positively impact the economy. Over 7% of Michigan's workforce is comprised of immigrant workers.¹⁴ Labor force participation rates are 2.5% higher, on average, in counties with welcoming city policies and unemployment rates are 1.1% lower.¹⁵ Poverty is significantly lower and there is less reliance on public assistance in counties with welcoming policies.¹⁶
- Studies on economic impact of the immigrant community show that immigrants come with different skillsets that allow everyone to increase their productivity and incomes. On average, the median household income is \$4,353 higher in jurisdictions with welcoming policies.¹⁷

The negative effects on communities when local law enforcement actively assists ICE's immigration enforcement efforts have been well documented. Law enforcement leaders across the country have explained that attaching immigration consequences to police interactions makes ordinary police work more difficult.¹⁸ And academic studies have confirmed that immigrants avoid

¹⁰ Theodore, N. (2013). *Insecure communities: Latino perceptions of police involvement in immigration enforcement* (Rep.). University of Illinois at Chicago. Retrieved from https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

¹¹ Theodore, supra n. 1.

¹² Wong, T. (2017, January 26). The effects of sanctuary policies on crime and the economy. Retrieved from <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

¹³ Wolgin, P., & Kelley, A. (2011, July). *Your state can't afford it: The fiscal impact of states' anti-immigrant legislation* (Rep.). Retrieved https://cdn.americanprogress.org/wp-content/uploads/issues/2011/07/pdf/state_immigration.pdf.

¹⁴ American Immigration Council. (2015, January 1). New Americans in Michigan: the political and economic power of immigrants, Latinos, and Asians in the Great Lakes state. Retrieved from <https://www.americanimmigrationcouncil.org/research/new-americans-michigan>.

¹⁵ Wong, supra n. 3.

¹⁶ Wong, supra n. 3.

¹⁷ Wong, supra n. 3.

¹⁸ See, for example, Nat'l Imm. Law Ctr., *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement* (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement); Dep't of Justice, *The President's Task Force on 21st Century*



local authorities who act as a pipeline to the deportation system.¹⁹ In one recent study, a majority of prosecutors, judges, and police officers reported that ramped-up immigration enforcement activities nationally make it harder to protect local communities from crime.²⁰

III. Legislation like those proposed comes at a great cost to our community.

Jurisdictions with immigration enforcement entanglement policies face the economic burden of spending millions of dollars on implementation and litigation. Additionally, the backlash to these policies has a negative impact on tourism. In Arizona, backlash caused a \$14 million loss in lodging cancellations and commercial revenue. The decrease in tourism led to losses of thousands of jobs, over \$250 million in economic output, and \$9.4 million in tax revenue.

This legislation is unnecessary and based on inaccurate and incomplete information that perpetuates discrimination against the immigrant community. These bills are an overreach that go beyond the federal immigration laws and inappropriately regulate the day-to-day practices and policies of local governments. The deeper discriminatory message behind these bills is clear to everyone they impact. This message is evidenced through the vague language that invites the abuse of authority, all the while attacking the very policies designed to ensure that every resident of this state lives free of racial and ethnic profiling.

Respectfully submitted,

Monica Andrade
Attorney
American Civil Liberties Union of Michigan
mandrade@aclumich.org

Policing Guidebook, at 18 (May 2015) (recommending that ICE not issue detainer requests to local jails), <https://bit.ly/2G8S75v>; William J. Bratton, *The LAPD Fights Crime, Not Illegal Immigration*, L.A. Times, Oct. 27, 2009, <https://lat.ms/2LXm8IE>.

¹⁹ See, for example, Marcella Alsan & Crystal S. Yang, *Fear and the Safety Net: Evidence from Secure Communities*, Harvard Law School, May 2018, <https://bit.ly/2kN47QJ>; Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. for Am. Progress, Jan. 26, 2017, <https://ampr.gs/2kxOcHX>.

²⁰ Rafaela Rodrigues et al., *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims*, May 3, 2018, <https://bit.ly/2jvGfAr>; see also Am. Civil Liberties Union, *Freezing Out Justice* (2018) (summarizing the results), <https://www.aclu.org/report/freezing-out-justice>.