ACLU Pennsylvania

MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 26, 2025

RE: OPPOSITION TO SENATE BILL 471 P.N. 425 (LAUGHLIN)

Bill summary: SB 471 (PN 425) would add a new section to Title 42 to require an attorney with the Office of Attorney General or county district attorney's office to notify Immigration and Customs Enforcement (ICE) if, at any point during the course of a criminal proceeding, the attorney "obtains information reasonably indicating that a criminal defendant is not a citizen" or has been in the United States in violation of 8 U.S.C. Ch. 12 (relating to immigration and nationality).

On behalf of over 100,000 members of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 471.

SB 471 would require state and county prosecutors to help ICE do its job.

ICE already has more than enough tools it needs to target people for immigration enforcement. ICE has access to state databases, like JNET (Pennsylvania Justice Network) and CLEAN (Commonwealth Law Enforcement Assistance Network), as well as to federal databases, like Nlets (International Justice and Public Safety Network), where arrest records are shared. Right now, if ICE determines that someone is a threat to public safety, ICE can detain them—including after arraignment, while criminal charges are pending, after an adjudication of guilt, or after someone completes a term of incarceration. SB 471 would mandate that state and county prosecutors add federal immigration enforcement to their job duties—a civil enforcement role that is wholly distinct from the job they are trained to do.

SB 471 would entangle two distinct systems—Pennsylvania's criminal legal system and federal civil immigration enforcement—in harmful and counterproductive ways.

Our immigration enforcement system and the criminal legal system are two separate and distinct systems. Immigration enforcement is governed by **federal civil immigration law**. PA's criminal legal system holds people accountable for violating **state criminal law**. Contrary to popular (mis)conception, merely being in the United States without lawful status is **NOT a crime**. Immigration enforcement is civil in nature, which is why ICE does NOT punish people for violating the law. People who are subject to removal from the United States are subject to it for different reasons—they may have entered without permission or overstayed their visa. And if they are removed due to violations of federal or state criminal law, those cases were charged and adjudicated in the criminal legal system—ICE has nothing to do with that process. So, while ICE may justify detaining someone for being charged with a crime, they are not empowered to or tasked with punishing people for allegations of criminal conduct—that is the job of the criminal legal system.

Entangling these two systems will have chilling and disruptive effects that ripple throughout the criminal legal system, harming defendants, victims and witnesses, and even prosecutors.

Chilling effect on defendants' access to the courts: For those facing criminal charges, SB 471 would have a chilling effect on their access to the courts and their constitutional due process rights. Injecting ICE into the middle of the criminal legal process can derail criminal cases by preventing or deterring individuals who are facing charges from attending their hearings. This, in turn, undermines court operations and the integrity of the criminal legal system as a whole. In fact, disclosing a person's immigration status when it isn't necessary to a case, is inadmissible as prejudicial under Rule 413(a) of PA's Rules of Evidence.

- A 2019 national survey conducted by Ceres Policy Research with more than 1,000 participants from mixed immigration status families found that **40%** of respondents avoided attendance in adult criminal court as a defendant or subject of a bench warrant due to fears about courthouse arrests by ICE.[1]

Victims could be denied their day in court: If people facing criminal charges become unavailable—in this case, defendants who don't appear due to fear of ICE agents at the courthouse or who become unavailable because ICE detains them during the pendency of their case—prosecutors are often forced to dismiss charges. As a result, victims could be denied their day in court. Similarly, immigrant crime survivors may choose not to press charges for fear of being detained by ICE.

- A 2019 Pennsylvania report by the Sheller Center for Social Justice at Temple University Beasley School of Law, surveying PA lawyers, legal services agencies, and community-based organizations, found that **77%** of respondents reported that a client expressed fear or chose not to pursue a case because of the possibility of an ICE courthouse arrest.[2]

Criminal cases could be derailed when witnesses choose not to cooperate or appear: Involving law enforcement—and by extension, prosecutors—in immigration enforcement (which they do when they are notifying ICE), can further erode the integrity of the criminal legal system. People who are crime victims or witnesses and who are also without lawful status are often reluctant to contact police or cooperate in a criminal case because they fear it will lead to contact with ICE.

- A national study conducted by the ACLU and the National Immigrant Women's Advocacy Project surveying judges, court administrators, attorneys, and law enforcement, found that **more than half of judges** surveyed reported that court cases in 2017 were interrupted because of an immigrant crime survivor's fear of coming to court.[3]
- A 2019 national survey conducted by Ceres Policy Research with more than 1,000 participants from mixed immigration status families found that **60%** of survey respondents avoided attending court as witnesses due to fears about courthouse arrests by ICE.[4]

Burdens prosecutors and potentially exposes them to legal jeopardy: SB 471 would burden prosecutors with requirements outside their legal expertise and may require them to report even when that information could undermine a pending case. Furthermore, assessing a person's immigration status requires knowledge of and familiarity with the intricacies of federal civil immigration law. Prosecutors are not trained to make these determinations. As a result, SB 471's mandate to report could make prosecutors vulnerable to legal issues, including potential federal civil rights violations and privacy implications under the PA Constitution.

For these reasons, we urge you to oppose Senate Bill 471.

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[1] Ceres Policy Research, *The Chilling Effect of ICE Courthouse Arrests: How Immigration and Customs Enforcement (ICE) Raids Deter Immigrants from Attending Child Welfare, Domestic Violence, Adult Criminal, and Youth Court Hearings*, (Oct. 2019), p.2.
[2] Sheller Center for Social Justice at Temple University Beasley School of Law, *Obstructing Justice: The Chilling Effect of ICE's Arrests of Immigrants at Pennsylvania's Courthouses*, (Jan. 30, 2019), p. 9.
[3] ACLU, Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system, (2018) p. 2.
[4] *Ibid,* Ceres Policy Research.