



July 5, 2016

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Re: Oppose the “Stop Dangerous Sanctuary Cities Act” (S. 3100)

Dear Senator Casey:

The American Civil Liberties Union strongly urges you to vote against the misleadingly entitled “Stop Dangerous Sanctuary Cities Act” (S. 3100). A cloture vote on the motion to proceed is scheduled to take place on Wednesday, July 6. **The ACLU urges you to vote NO on the cloture vote on the motion to proceed, and, if a vote is scheduled for final passage of the bill, to vote NO on S. 3100. The bill is bad for the country, and is particularly harmful to Pennsylvania.**

The bill is fraught with constitutional and policy problems, and is both legally and fiscally irresponsible. First, the bill perpetuates the myth that there are “sanctuary” zones free from immigration enforcement. Secondly, the bill exposes the federal government to broad liability for constitutional violations that occur when localities imprison individuals on the basis of Department of Homeland Security (“DHS”) immigration detainers, while doing nothing whatsoever to address the core Fourth Amendment problem of detaining individuals without a judicial determination of probable cause. Finally, the bill threatens to penalize financially over 350 localities across the country¹ that promote adherence to Fourth Amendment constitutional protections and promote public safety by adopting community trust policies that distinguish their own criminal law enforcement role from DHS’s immigration enforcement functions.

Impact of S. 3100 on Pennsylvania: If S. 3100 were enacted, at least 32 of Pennsylvania’s 67 counties would lose access to tens of millions of dollars in federal housing, community development, and economic development assistance.² At least thirty-two Pennsylvania counties have policies penalized under S. 3100. These policies safeguard against constitutional violations that occur when localities hold individuals beyond their ordinary release date, on the mere basis of a DHS detainer request. These counties generally require DHS to act like any other law enforcement agency, and secure a constitutionally valid warrant issued by a judge. The Pennsylvania counties are: Armstrong, Bedford, Blair, Bradford, Bucks, Butler, Carbon, Chester, Clarion, Columbia, Delaware, Erie, Elk, Fayette, Jefferson, Lackawanna, Lebanon, Lehigh, Lycoming, Mifflin, Montgomery, Montour, Perry, Philadelphia, Pike, Somerset, Susquehanna, Tioga, Washington, Wayne, Westmoreland, and York.³

In FY 2015, Pennsylvania counties with constitutionally protective policies subject to penalty under S. 3100 received **over sixty-two million dollars** from the federal funding sources targeted by this bill – the Community Development Block Grant (CDBG) Program and the U.S. Economic Development Administration (EDA) – including multiple counties that would be affected by S. 3100. Section 4 of this bill threatens to withhold federal funding that is important to local communities and governments, provided through the Community Development Block Grant (CDBG) Program and the U.S. Economic Development Administration. CDBG funds are

¹ Angie Junck and Grisel Ruiz, Detainer Map, Immigrant Legal Resource Center, <http://www.ilrc.org/enforcement> (last visited July 1, 2016).

² Stop Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. (2nd Sess. 2016) (Sec. 4 places limitations on grants through the U.S. Department of Housing and Urban Development’s Community Development Block Grant program (“CDBG”), as well as the U.S. Economic Development Administration.)

³ Sheller Center for Social Justice, Temple University Beasley School of Law, “A Changing Landscape: Pennsylvania Counties Reevaluate Policies on Immigration Detainers,” (March 2015), <http://www2.law.temple.edu/csj/files/a-changing-landscape.pdf>.

intended to ensure decent affordable housing, provide services to vulnerable community members, and expand and retain businesses, for cities large and small. Grants are also provided for areas recovering from Presidentially declared disasters, as well as for other purposes, such as areas affected by housing foreclosures.⁴ EDA funding supports economic development, public works, and other projects with the goal of building of durable regional economies, including those in economically distressed areas of the United States.⁵

I. There are NO “sanctuary” zones free from immigration enforcement.

The bill title’s reference to “sanctuary” policies perpetuates the myth that some areas in the country are free from immigration enforcement. That is simply not true. DHS conducts immigration enforcement throughout the country.

State and local law enforcement agencies immediately notify DHS of every single individual who is taken into state or local custody through the automatic sharing of fingerprints obtained at booking.

While S. 3100 is often described as punishing Philadelphia and other so-called “sanctuary” cities, the bill’s broad sweep would target at least 32 Pennsylvania counties and over 350 localities nationwide – most of which expressly do not identify as “sanctuary” cities. Far from being sanctuary zones, these localities have adopted common-sense policing policies which reflect the careful balancing of interests by local officials who uniquely understand the particular needs and priorities of their communities. These localities have chosen to limit the amount of scarce local law-enforcement resources they commit to controversial DHS immigration enforcement practices that have caused countless unconstitutional detentions,⁶ invited racial profiling,⁷ torn apart hundreds of thousands of families,⁸ and deterred immigrants from calling police when they witness or are victimized by crime.⁹

The 350 localities that stand to lose housing, community development, and economic development assistance due to S. 3100 include cities, large and small, across the country. More than half of all 50 states have at least one locality that would be affected -- Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Texas, Washington, Wisconsin, Wyoming and the District of Columbia.¹⁰

II. DHS immigration detainers present serious Fourth Amendment problems by causing the extended detention of tens of thousands of people annually without probable cause, without judicial approval, and without due process protections.

Protection against unreasonable detention by the government is the bedrock of the Fourth Amendment of the Constitution. The Fourth Amendment provides that the government cannot hold anyone in jail without getting a warrant or the approval of a judge. This constitutional protection applies to everyone in the United States – citizen and immigrant alike. In the case of

⁴ U.S. Department of Housing and Urban Development, Community Development Block Grant Program – CDBG, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited July 1, 2016).

⁵ U.S. Economic Development Administration, Overview, available at <https://www.eda.gov/about/> (last visited July 1, 2016).

⁶ Julia Preston, *Immigration Crackdown Also Snares Americans*, N.Y. TIMES (Dec. 13, 2011), http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?_r=1.

⁷ Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, “Secure Communities by the Numbers: An Analysis of Demographics and Due Process” (Oct. 2011), available at https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁸ Ginger Thompson and Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. TIMES (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850EE9BC311DADF1D154084E&gwt=pay&assetType=nyt_now.

⁹ 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.

¹⁰ Junck & Ruiz, *supra* note 2.

immigration detainer requests, DHS is asking a locality to lock up a person without a warrant or judicial approval, merely based on the say-so of one DHS agent. DHS immigration detainers have caused widespread wrongful detentions, including detentions of U.S. citizens, an issue we have litigated here in Pennsylvania.¹¹

A growing number of courts have recognized the constitutional problems with DHS's immigration detainer practices and have consistently concluded that DHS, state, and local officials may be held liable for causing wrongful detentions in violation of the Fourth Amendment.¹² Even DHS Secretary Jeh Johnson has acknowledged the "increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment."¹³ That is why 350 localities have decided not to execute a DHS immigration detainer request unless it is accompanied by additional evidence, most typically a judicial warrant.

Even though both DHS and the federal courts recognize that immigration detainers are simply requests, not orders, the Senate bill sponsors now seek to make detainer requests effectively mandatory by forcing all localities to execute them. Those localities that decline to execute DHS detainer requests will lose important federal law enforcement funding and community development block grants.

S. 3100, however, does nothing to address the fundamental constitutional problems plaguing DHS's use of immigration detainers. Rather than fix the constitutional problems by requiring a judicial warrant, the bill sponsors perpetuate the unconstitutional detainer practices and force the federal government to absorb legal liability for the constitutional violations which will inevitably result. This is irresponsible lawmaking, from both a legal and fiscal perspective. Instead of attempting to shift liability for Fourth Amendment violations from localities to the federal government, the Senate should end the use of DHS's unconstitutional detainer requests. Alternatively, the Senate should fix the constitutional defects and require DHS to present a judicial warrant with every detainer request. This would not be an extraordinary measure, as every law enforcement agency in the country, save DHS by its own made-up practices, is required to produce a judicial warrant in order to lock up a person.

III. S. 3100 would overturn 350 community trust policies designed to promote public safety and to combat crime.

S. 3100 seeks to penalize over 350 cities and counties whose local leaders have adopted community trust policies in order to promote public safety and combat crime. Numerous law enforcement community members support community trust policies:

- The Law Enforcement Immigration Task Force: "When state and local law enforcement agencies are required to enforce federal immigration laws, undocumented residents may fear that they, or people they know or depend upon, risk deportation by working with law enforcement. This fear undermines trust between law enforcement and the communities we serve."¹⁴
- The President's Task Force on 21st Century Policing, co-chaired by former Philadelphia Police Commissioner Charles Ramsey: "Law enforcement agencies should build relationships based on

¹¹ See, e.g., *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D. Pa. 2012), *rev'd on other grounds*, *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014), available at https://www.aclu.org/sites/default/files/field_document/123991p.pdf; and, *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014), *affirmed*, *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015), available at https://www.aclu.org/sites/default/files/field_document/morales.pdf.

¹² See, *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ---, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (slip op.) (holding that plaintiff's detention on an ICE detainer after she would otherwise have been released "constituted a new arrest, and must be analyzed under the Fourth Amendment"), available at [http://immigrantjustice.org/sites/immigrantjustice.org/files/Miranda-Olivares%20v%20Clackamas%20County%20\(D%20Or.%20detainer%20SJ%20decision\).pdf](http://immigrantjustice.org/sites/immigrantjustice.org/files/Miranda-Olivares%20v%20Clackamas%20County%20(D%20Or.%20detainer%20SJ%20decision).pdf).

¹³ Memorandum from DHS Secretary Jeh Charles Johnson for Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, Megan Mack, Officer, Office of Civil Rights and Civil Liberties, and Philip A. McNamara, Assistant Secretary for Intergovernmental Affairs, "Secure Communities" (Nov. 20, 2014), available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

¹⁴ Law Enforcement Immigration Task Force Letter to Senate Judiciary Chairman Chuck Grassley and Ranking Member Patrick Leahy at 2 (July 20, 2015), available at http://immigrationforum.org/wp-content/uploads/2015/07/7_20_2015-LEITF-Letter-re-sanctuary-proposals-Senate.pdf.

trust with immigrant communities. This is central to overall public safety....Decouple federal immigration enforcement from routine local policing for civil enforcement and nonserious crime.”¹⁵

- Dayton (OH) Police Chief Richard Biehl: “Since Dayton adopted these policies and innovative ways of addressing crime problems, our crime rates have significantly declined. In the past three years, serious violent crime has dropped nearly 22 percent while serious property crime has gone down almost 15 percent.”¹⁶
- Polk County (IA) Sheriff Bill McCarthy: “We’re going to do what’s best for Polk County and what’s best for Polk County is to treat these people with respect and the human dignity that they’re entitled to and for us to follow the law when we deal with them.”¹⁷

IV. Conclusion

S. 3100 perpetuates unconstitutional immigration detainer practices, and threatens to penalize at least 32 Pennsylvania counties whose policies promote both constitutional rights and public safety. Rather than taking a punitive approach to local law enforcement agencies that are working hard to balance their duties to uphold the Constitution and to keep their communities safe, the Senate should end DHS’s unconstitutional detainer practices, or fix the constitutional deficiencies by requiring judicial warrants for all detainer requests.

The ACLU urges the Senate to vote NO on the cloture vote on the motion to proceed, and, if cloture is invoked, to vote NO on S. 3100. For more information, please contact ACLU Policy Counsel Chris Rickerd (202-675-2339; crickerd@aclu.org).

Sincerely,



Reginald T. Shuford
Executive Director

¹⁵ President’s Task Force on 21st Century Policing Final Report at 18 (May 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

¹⁶ Richard S. Biehl, *Here’s How Not to Jump-Start Immigration Reform in House*, ROLL CALL (Jan. 24, 2014), http://www.rollcall.com/news/heres_how_not_to_jump_start_immigration_reform_in_house_commentary-230343-1.html.

¹⁷ Ryan Smith, *Iowa Jails Refuse Immigration Detainers*, KCCI DES MOINES (Aug. 18, 2014), <http://www.kcci.com/news/iowa-jails-to-refuse-immigration-detainers/27595720>.