



TESTIMONY OF ALICIA REA, ESQ.
LD 1707 – Ought Not to Pass

**An Act to Require a Person to Be a United States Citizen to Receive
State or Local Financial Assistance and to Ensure Municipal
Compliance with Federal Immigration Laws**

Joint Standing Committee on Health & Human Services
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Senator Ingwersen, Representative Meyer and members of the Joint Standing Committee on Health and Human Services, greetings. My name is Alicia Rea, and I am a policy fellow for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we urge you to oppose LD 1707.

LD 1707 would prohibit those who are not U.S. citizens from receiving state or local financial assistance. It would further force municipalities to cooperate with federal immigration enforcement.

This bill presents a number of constitutional concerns. First, it undermines the Tenth Amendment and the power of state and local governments to exercise their discretion about local priorities. Additionally, it will lead to violations of the Fourth and Fourteenth Amendments against Maine people, exposing state and local agencies to expensive litigation and civil liability. Finally, this bill will undermine community trust by incentivizing racial profiling and suspicion of anyone who looks different.

The Tenth Amendment

This bill would force municipalities to expend local resources by prohibiting municipalities from choosing not to participate in federal immigration enforcement.

This would upset the balance of powers between federal and state governments that is protected by the Tenth Amendment. As Justice Scalia recognized in *Printz v. United States*, “the Framers rejected the concept of a central government that would act upon and through the States... The constitution thus contemplates that a State’s government will represent and remain accountable to its own citizens.”¹

LD 1707 makes municipalities accountable not to their citizens, but to the Department of Homeland Security by forcing cooperation with federal

¹ *Printz v. U.S.*, 521 U.S. 898, 920 (1997).



immigration enforcement. The Tenth Amendment prohibits the federal government from commandeering state officers, but this legislation would require Maine to cede control of its local policies to federal immigration enforcement agencies. And while this bill will make our municipal officers accountable to the federal government, the federal government will not in turn provide our municipalities with support or oversight, and they will not be accountable to Maine communities.

Last, federal interference will hamper municipalities' ability to address local needs. Our town and city agencies may be asked to prioritize immigration enforcement over community needs. This would strip away an agency's ability to make important policy choices that the agency in its expertise has deemed to be in the best interest of its residents.

The Fourth and Fourteenth Amendments

The bill requires localities to comply with and support the enforcement of federal immigration law, which can include "immigration detainer" requests. Detainers exist outside of due process protections and ask state and local agencies to imprison someone on behalf of Immigration and Customs Enforcement (ICE) without any review or examination of probable cause from a judge as a neutral third party as required by the Fourth Amendment of the Constitution.

Unlike criminal warrants, which are supported by a judicial determination of probable cause, ICE detainers are issued by ICE enforcement agents without any authorization or oversight by a judge or other neutral decision-maker. It is well settled that a person's presence in the United States in violation of immigration laws on its own is not a crime. Immigration violations are generally civil, not criminal, in nature. As the United States Supreme Court has explained, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and, thus, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent."²

Without the safeguards of a judicial warrant, ICE detainers have repeatedly resulted in the illegal detention of people who have not violated any immigration laws and are not deportable, including United States citizens and immigrants who are lawfully present in the United States. In fact, between 2008 and 2012 alone, ICE erroneously issued more than 800

² See *Arizona v. U.S.*, 567 U.S. 387, 407 (2012).



detainers for United States citizens and over 28,000 for legal permanent residents.³

When municipalities violate the Fourth Amendment and assist in the unlawful detention of a person, the locality remains liable for the violation including any subsequent litigation and civil liability, even if the person is held at the request of federal law enforcement. The lack of any neutral decision-makers and due process make ICE detainers a threat to all people in the country, and Maine municipalities should not participate in this dangerous practice. Our towns and cities are already stretched thin, and cannot afford the risk of taking on these substantial legal and financial liabilities.

Community Trust and Racial Profiling

This bill would also undermine community trust in municipalities. The chilling effect of this type of legislation means that members of our communities will stop attending school, seeking out medical care, and cooperating with law enforcement as victims or witnesses, for fear of their own safety.

Additionally, this bill will lead to increased racial profiling by local and state agencies. This is particularly dangerous for Maine law enforcement agencies since the liability that accompanies racial profiling could be costly for jurisdictions that are already operating under limited financial resources.⁴

Maine municipalities should remain independent. We urge you to reject LD 1707 due to its harmful effects on public safety, constitutional rights, and community trust.

³ According to ICE's own records, between 2008 and 2012, it issued detainers against 834 U.S. citizens and 28,489 legal permanent residents. TRAC Immigration, *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, Feb. 20, 2013, available at <https://trac.syr.edu/immigration/reports/311/>.

⁴ For example, in Pennsylvania, Lehigh County had to pay \$95,000 of a \$145,000 settlement to a U.S. Citizen who had been illegally held on an immigration detainer. See Prison Legal News, *\$145,000 Settlement for U.S. Citizen Held on Detainer due to Racial Profiling*, (Jan. 10, 2015), available at <https://www.prisonlegalnews.org/news/2015/jan/10/145000-settlement-us-citizen-held-immigration-detainer-dueracial-profiling/>.