



TESTIMONY OF ALICIA REA, ESQ.
LD 1656 – Ought Not to Pass

**An Act to Facilitate Compliance with Federal Immigration Law by
State and Local Government Entities**

Joint Standing Committee on Judiciary
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Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Alicia Rea, and I am a policy fellow of 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. On behalf of our members, I urge you to oppose LD 1656.

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 law enforcement priorities. Second, 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. Third, LD 1656 will undermine community trust by incentivizing racial profiling and suspicion of anyone who looks different.

The Tenth Amendment

This bill would force local law enforcement to expend local resources by prohibiting municipalities and the state 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 1656 makes local governments accountable not to their citizens, but to the Department of Homeland Security. The Tenth Amendment prohibits the federal government from commandeering state officers, but this legislation would require Maine to cede control of its law enforcement to the federal Department of Homeland Security. And while this bill will make our

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



officers accountable to the federal government, the federal government will not in turn provide our officers with support or oversight, and they will not be accountable to Maine communities.

Last, federal interference will hamper local law enforcement's ability to address local needs. Our law enforcement 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, including "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 detainers for United States citizens and over 28,000 for legal permanent residents.³

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

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/>.

LD 1656 ignores recent case law that has made clear that ICE detainers are mere requests, not commands. Under federal law, local law enforcement agencies are not required to hold anyone based on an ICE detainer alone.⁴ Since ICE detainers are not based on probable cause, state and local law enforcement agencies violate the Fourth Amendment when they hold a person solely on an immigration detainer.⁵ When local law enforcement violates the Fourth Amendment and unlawfully detains 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 law enforcement 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 law enforcement. This would make us all less safe because people who are the victim of or witness to a crime are less likely to report it if they feel unsafe interacting with local law enforcement.⁶ When local police departments detain people simply due to their alleged undocumented status, they create an environment where these community members—including survivors of domestic violence—are afraid to call for help, report crimes, share evidence, and testify in trials.

For example, in 2018, the Exeter Police Department in New Hampshire detained an undocumented person after that person helped the department with a criminal investigation.⁷ These practices deter people from helping police with investigations, but LD 1656 would mandate exactly that.

In addition to undermining community safety for all Mainers, this bill will lead to increased racial profiling by local and state agencies. This is

⁴ See 8 C.F.R. §§287.7(a), (d); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014).

⁵ See, e.g., *Morales v. Chadbourne*, 235 F.Supp.3d 388 (D. R.I. 2017) (holding “the state did indeed violate Ms. Morales’ constitutional rights” when it held U.S. citizen for 24 hours on ICE detainer); see also *Roy v. Cty. of Los Angeles*, 2018 WL 914773, *23.

⁶ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Department of Urban Planning and Policy, University of Illinois at Chicago, May 2013, available at https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁷ See ACLU-NH, *ACLU-NH Files Federal Lawsuit Over Exeter’s Unlawful Immigration Enforcement Practices*, Sept. 25, 2018, available at <https://www.aclu-nh.org/en/press-releases/aclu-nh-files-federal-lawsuit-over-exeters-unlawful-immigration-enforcement-practices>.



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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.⁸

Maine law enforcement should remain independent. We urge you to reject LD 1656 due to its harmful effects on public safety, constitutional rights, and community trust.

⁸ 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/>.