

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 1340 – Ought Not To Pass

An Act To Ensure Municipal Compliance with Federal Immigration Laws

JOINT STANDING COMMITTEE ON
STATE AND LOCAL GOVERNMENT

May 3, 2021

Senator Baldacci, Representative Matlack and distinguished members of the Joint Standing Committee on State and Local Government, greetings. My name is Michael Kebede, and I am Policy Counsel 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 am here to testify in opposition to LD 1340, which would and punish communities that protect their residents' constitutional rights.

At the outset, we note that over the past few years, the public and the full legislature spent considerable time and energy considering and roundly rejecting similar bills.¹ Like those bills, 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, this bill will undermine community trust by punishing communities who refuse collaborate in the harassment of anyone who looks different. Third, it will lead to violations of the Fourth and Fourteenth Amendments, which in turn will expose state and local agencies to expensive litigation and civil liability. These consequences will likely result in widespread mistrust of law enforcement, impoverishment of our communities, and harm to the most vulnerable Mainers.

This bill punishes communities who protect their residents' constitutional rights.

This proposal is a thinly veiled attempt to punish and impoverish municipalities in Maine that refuse to expend local resources to enforce federal immigration law. In order to keep basic funding for schools and general assistance, municipalities will be forced to direct their local law

¹ LDs 1833 and 366 from the 128th Legislature and LD 1449 from the 129th legislature are just three examples.

enforcement to prioritize immigration enforcement over any local needs. Such an outcome 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.”² This bill would also upset the balance between local and state government, violating Maine’s long-standing constitutional tradition of granting extensive rights of home rule to municipalities. *See* Me. Const. Art. VIII, sec. 1, 2; 30-A MRS § 2101 *et seq.*

This bill would make local governments accountable not to their citizens but to the Department of Homeland Security, and penalize those local governments that prioritize the public safety needs of Mainers over federal policy. The Tenth Amendment prohibits the federal government from commandeering state officers, but with this bill, the sponsor asks Maine to voluntarily cede control of its law enforcement to the Department of Homeland Security.

This bill would foster racial profiling and undermine community trust in law enforcement.

LD 1340 would deny funding to any municipality that “prohibits, formally or informally, a local law enforcement officer from gathering information regarding the lawful or unlawful citizenship or immigration status of any individual.” This is, in effect, a policy to sanction racial profiling.

Officers who decide to inquire into a person’s immigration status are likely to rely on the physical appearance and language accent of that person. This practice will lead to abuse and racial profiling. In addition to fostering racial profiling, this bill would undermine community trust in law enforcement. Many immigrants fear interacting with law enforcement when they perceive a risk of being separated from their families and deported.³ This fear is not “confined to immigrants.”⁴ LD 1340 threatens to conflate the roles of Maine local institutions and federal immigration officials. This will deter victims from reporting crime or assisting law enforcement, making law enforcement’s job harder, and threatening the safety of Mainers.

² 521 us. 898, 920 (1997).

³ See Nik Theodore, *Insecure Communities: Latino perceptions of police involvement in immigration enforcement* (Univ. of Ill. 2013). Available at https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁴ *Id.*

This bill would induce local governments to violate the Fourth and Fourteenth Amendments and will subject those entities to liability for those violations.

The citizenship inquires and immigration-information-sharing that this bill seeks to impose on local law enforcement could also easily led to increased enforcement of immigration detainers. Immigration detainers⁵ are not arrest warrants. Unlike criminal warrants, which are supported by a judicial determination of probable cause, ICE detainers are issued by ICE agents themselves without any authorization or oversight by a judge or other neutral decision-maker. Without the safeguards of a judicial warrant, ICE detainers have repeatedly resulted in the illegal detention of individuals who have not violated any immigration laws at all and are not deportable, including U.S. citizens and immigrants who are lawfully present in the United States. In fact, between 2002 and 2019, ICE erroneously issued more than 3,000 detainers for U.S. citizens.⁶ According to ICE's own records, at least one of those detainers for U.S. citizens was issued in Maine.⁷

Since ICE detainers are not based on probable cause, state and local law enforcement agencies violate the Fourth Amendment when they hold a person on an immigration detainer alone.⁸ This can be very costly for local jurisdictions already strapped for resources.⁹ Local government institutions can even be held liable for imprisoning undocumented immigrants pursuant to ICE detainers, if the detention does not comply with constitutional requirements.¹⁰ This bill would make it difficult for Maine localities to refuse to comply with these detainer requests, exposing them to the same liability for civil rights violations discussed above.

⁵ An immigration detainer is a notice sent by ICE to a state or local law enforcement agency or detention facility. The purpose of an ICE detainer is to notify a local agency that ICE is interested in a person who is in that agency's custody, and to request that the agency hold that person after the person is otherwise entitled to be released from the criminal justice system, giving ICE extra time to decide whether or not they should take the person into federal custody for administrative proceedings in immigration court.

⁶ *TRAC Immigration, Latest Data: Immigration and Customs Enforcement Detainers*, <https://trac.syr.edu/phptools/immigration/detain/> (accessed on April 30, 2021).

⁷ *Id.*

⁸ See, e.g., *Morales v. Chadbourne*, 235 F.Supp.3d 388 (D. R41. 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 (C.D. Cal. Feb. 8, 2018) (holding sheriff department's practice of holding immigrants solely on immigration detainers violated Fourth Amendment).

⁹ 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 Immigration Detainer due to Racial Profiling, (Jan. 10, 2015). Available at <https://www.prisonlegalnews.org/news/2015/ian/10/145000-settlement-us-citizen-heldimmigration-detainer-due-racial-profiling>

¹⁰ See *Miranda-Olivares v. Clackamas County*, 12-CV-02317-ST, 2014 WL 1414305, at 3 (Apr. 11, 2014) (jail violated immigrant's Fourth Amendment rights by prolonging her incarceration pursuant to ICE detainer).

This bill is a purported solution in search of a problem. Maine needs laws that promote the safety and well-being of its residents. This bill not only fails on both accounts, but affirmatively harms Mainers by hindering government institutions ability to serve their constituents, diverting much-needed local resources to federal immigration enforcement, exposing state and local agencies legal liability for constitutional violations, and causing the loss of community trust in law enforcement.

We urge you to vote *ought not to pass*.