



Opponent Testimony for HB 2717

**Aileen Berquist, Community Engagement Manager,
American Civil Liberties Union of Kansas
House Committee on Federal and State Affairs
Tuesday, March 15, 2022 – 346-S**

Committee Chairs and Members of the Committee,

Thank you for the opportunity to present testimony today. My name is Aileen Berquist. I am the Community Engagement Manager and lobbyist for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in Kansas.

The ACLU of Kansas stands vehemently opposed to HB 2717. This bill was introduced with the specific purpose of undermining the implementation of a recent local government ordinance, the Safe and Welcoming Wyandotte Act. This ordinance regulates the way in which local law enforcement cooperates with Immigration and Customs Enforcement (ICE); in a manner entirely consistent with federal law, it permits cooperation only in instances where a judicial warrant is present or public safety is at risk. If passed, HB 2717 would not only strip local governments of making that choice—it would undermine public safety and force local governments to participate in an unfunded mandate to cooperate with potentially unconstitutional immigration enforcement activities, opening them up to potential legal action.

ICE detainers are not arrest warrants, and local governments are under no obligation to enforce them. Detainers are instead notifications to local law enforcement that ICE intends to assume custody of an individual, and a request for assistance. Courts have repeatedly found that states and localities are not required to imprison people based on these detainers. HB 2717 would force local law enforcement to cooperate, in spite of the significant legal risk that cooperation with ICE detainers poses.

Courts have repeatedly found that ICE detainers deny due process and do not comply with the fundamental protections required by the Fourth Amendment to the US Constitution. Multiple courts have held that the Fourth Amendment does not permit state or local officers—who generally lack civil immigration enforcement authority—to imprison people based on ICE detainers alone.¹ But that is precisely what HB 2717 demands that cities and counties do. This bill would effectively transform ICE's requests into commandments to local law enforcement, and in turn make them responsible—and liable—for any and all resulting violations of Fourth Amendment and due process rights.

Cities and counties should have the ability to limit their role in immigration enforcement specifically to ensure that they respect constitutional rights. Multiple federal courts across the country have found local governments fiscally liable for choosing to honor requests from ICE. This bill would force Kansas cities and counties to honor those very same requests, making them vulnerable to legal challenges on constitutional grounds, with taxpayers footing the bill.

¹ *Miranda-Olivares v. Clackamas County*, *Villars v. Kubiawski*, *People ex rel Swenson v Ponte*, and *Buquer v City of Indianapolis*.

This bill would also do untold harm to public safety, which is the primary responsibility of our local law enforcement agencies. When local police and sheriffs are known to detain for or share information with immigration authorities, it creates an enormous barrier to reporting of crime and cooperation with police. If Kansans do not feel safe coming to law enforcement for help, they will not report crimes. HB 2717 would make it harder for local law enforcement to do their jobs by breaking public trust.

We urge you to oppose HB 2717 on these grounds and encourage you to review the resources we have included with this testimony.

Resources

ACLU Backgrounder on ICE Detainers:

https://www.aclu.org/sites/default/files/field_document/aclu_backgrounder_on_detainers_1.31.19_public.pdf

National Immigrant Law Center, “ICE Detainers Are Illegal—so what does that really mean?”

https://www.ilrc.org/sites/default/files/resources/ice_detainers_advisory.pdf

Prior ACLU Testimony:

2016 - <https://www.aclukansas.org/en/legislation/aclu-testimony-hb-2587>

2017 -

http://www.kslegislature.org/li_2018/b2017_18/committees/ctte_s_fed_st_1/documents/testimony/20170215_49.pdf