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Delivered by U.S. and Electronic Mail

September 3, 2015

The Honorable Charles E. Grassley
U.S. Senate
Hart Senate Office Building, Room 135
Washington, D.C. 20510

Dear Senator Grassley:

I write on behalf of the ACLU of Iowa to express our strong opposition to the substitute amendment you have proposed along with Senator Vitter to the “Stop Sanctuary Cities Act” (S. 1814). The substitute amendment would directly punish 26 Iowa county law enforcement agencies (LEAs) that have decided, out of their obligation to abide by the U.S. and Iowa constitutions and as a matter of sound public policy, to limit the circumstances under which they would enforce Department of Homeland Security (DHS) detainer requests.

I. Limited Detainer Policies in Iowa Promote Community Trust and Abide by the Constitution.

Twenty-six (26) counties in Iowa have implemented local policies not to hold individuals beyond their release date from state custody, in the absence of a constitutionally-valid warrant issued by a judge, on the mere basis of a DHS detainer request: Allamakee, Benton, Black Hawk, Cass, Clinton, Dubuque, Franklin, Fremont, Greene, Ida, Iowa, Jefferson, Johnson, Linn, Marion, Monona, Montgomery, Plymouth, Polk, Pottawattamie, Scott, Sioux, Story, Wapello, Wright, and Winneshiek.ⁱ Far from being “sanctuary” zones—a label that these counties have rejectedⁱⁱ—these counties, after a thoughtful dialogue with their communities, have adopted policies that best promote public safety in their jurisdictions.

Your substitute amendment, however, threatens Iowa’s LEAs with revocation of federal funding under the DOJ State Criminal Alien Assistance Program (“SCAAP”) and the Community Oriented Policing Services Program (“COPS ”), as well as under the Department of Housing and Urban Development’s Community Development Block Grant Program (“CDBG”), unless these counties comply with DHS detainer requests and notification requests—even when those requests are illegal and complying would subject the counties to legal and financial liability. That puts Iowa LEAs in a catch-22 that ultimately interferes with public safety and local control.

In addition to hamstringing Iowa’s LEAs financially, the substitute amendment would undermine LEAs’ ability to do their job. Law enforcement leaders like the Major Cities Chiefs

Associationⁱⁱⁱ and the President's Task Force on 21st Century Policing^{iv} have stated that promoting trust between local law enforcement officials and communities fosters cooperation and enhances their core mission of protecting public safety. When communities perceive that their local law enforcement officers are operating as immigration enforcement agents, then individuals are less likely to cooperate with LEAs, and victims and witnesses of crimes will be less likely to come forward with information. Upon announcing that Polk County would no longer honor ICE requests, Sheriff Bill McCarthy said, "[w]e'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."^v

This does not mean that immigration enforcement no longer occurs in these counties, as the sheriffs of several Iowa counties have made clear.^{vi} DHS conducts immigration enforcement throughout Iowa and the country, and DHS is immediately notified by LEAs of every single individual who is taken into state or local custody, through the automatic receipt of fingerprints. Importantly, none of the limited detainer policies shields anyone who is arrested and booked into state or local custody from DHS.

Some LEAs in Iowa have already said they likely would not change their department's stance even if it leads to loss of federal funds.^{vii} Senator Grassley should respect that these localities have chosen to limit the amount of scarce local law-enforcement resources they commit to controversial DHS immigration enforcement practices that have harmed public safety by deterring immigrants from calling the police even if they had witnessed or been victimized by crime,^{viii} caused countless unlawful detentions,^{ix} invited racial profiling,^x and torn apart hundreds of thousands of families.^{xi}

II. The Grassley Substitute Amendment Undermines Important Public Policies Aimed at Following the Constitution and Protecting Public Safety.

By seeking to force LEAs to implement DHS's immigration detainers without resolving the constitutional defects of detainers, Your substitute amendment places Iowa's counties into a lose-lose situation: either violate the Constitution, community trust, and incur liability for unlawfully detaining individuals or lose federal funding.

A. The Amendment would penalize Iowa counties for refusing to violate the Fourth Amendment in the case of unconstitutional detainers.

For years, DHS has used immigration detainers to demand extended detention by local law enforcement agencies (LEAs) of individuals in their custody based on bare suspicion of unlawful immigration status, disregarding the constitutional requirements of the Fourth Amendment and leading to numerous cases of U.S. citizens and others being held wrongfully by state and local LEAs. In recent years, however, multiple federal courts have found that state or local LEAs and/or officials may be held liable for their role in causing extended detentions in violation of the Fourth Amendment.^{xii} In 2014, in response to these court decisions holding DHS and local LEAs liable for detaining people beyond their release times for immigration enforcement purposes, the Iowa County Attorneys Association advised county attorneys to cease honoring immigration detainers.^{xiii} The letter noted, "[I]t is doubtful that the 48 hour hold

requested by the I-247 detainer [request] will offer protection from liability. It is clear that continued detention of a prisoner held solely on an I-247 detainer beyond the 48 hours will create civil liability for the county. It is also clear that the county cannot rely upon federal authorities to defend or indemnify the county or this potential liability.^{xiv} The letter also outlined two other potential areas of liability, including jail staff discouraging detainees from posting bond based upon an I-247 detainer, and detention solely based on an I-247 detainer after the basis for state custody has expired.^{xv} Accordingly, 26 counties in Iowa joined hundreds of LEAs across the country in changing their policies, permitting compliance with a DHS immigration detainer request only if it is accompanied by a judicial warrant.^{xvi}

B. The Amendment's notification requirements lack safeguards to protect Iowa counties from liability.

The substitute amendment's mandate that all state and local LEAs notify DHS when individuals are to be released from state/local custody raises additional legal concerns. If local LEAs implement the notification directive in a way that extends an individual's detention for any period—including extending the time required to process someone for release from custody while awaiting pick-up from DHS—they face the same potential Fourth Amendment liabilities as apply in the detainer context. *See Rodriguez v. United States*, 575 U.S. ---, 135 S. Ct. 1609, 1614, 1616 (2015) (prolonging a detention by seven or eight minutes without a new constitutionally adequate justification violates the Fourth Amendment). Similarly, LEA transfers to DHS based on notification requests can be subject to Fourth Amendment limitations. Yet, notifications are based on an even lower evidentiary standard than immigration detainers and clearly fall below the Fourth Amendment's requirement of probable cause.

We respectfully ask that as Chairman of the Senate Judiciary Committee, you safeguard Iowa counties that are following the constitutional requirement of the Fourth Amendment and its guarantee that individuals not be deprived of their liberty without a judicial warrant.

III. The Substitute Amendment Would Harm Your Commendable and Important Efforts to Reduce the Federal Prison Population.

The creation of a new five-year mandatory minimum sentence for illegal reentry (8 U.S.C. § 1326) would lead to unprecedented overcrowding in the federal prison system, undermining your bipartisan work to reduce the number of federal prisoners.^{xvii} This provision in the substitute amendment would permit an individual convicted of illegal entry who has no prior criminal history or only a misdemeanor history to receive a fine in lieu of a sentence. But if that individual is sentenced, the sentence must be at least five years. The proposed five-year mandatory minimum would cost taxpayers nearly \$2 billion annually and increase the federal prison population by approximately 65,000.^{xviii} To handle that increase, the federal Bureau of Prisons would need 20 new prisons or crowd its prisons to 167 percent of rated capacity.^{xix}

IV. Conclusion

We ask that you decline to take an approach that would withdraw important federal funds from 26 Iowa communities that have followed the Constitution and carefully calibrated local

policies limiting detainer to when a judge has authorized it. Furthermore, the new mandatory minimum sentence proposal should be abandoned because it would further overcrowd the federal prison system at tremendous taxpayer expense with no public safety benefit—an approach that contradicts the very reforms you have been working towards. Therefore, we respectfully urge you to withdraw the substitute amendment.

Sincerely,



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Executive Director
ACLU of Iowa

ⁱ See <http://tinyurl.com/acluofiowa26counties>

ⁱⁱ Martha Stoddard, *Nebraska, Iowa Counties reject immigrant 'sanctuary' label*, WORLD-HERALD BUREAU (Jul. 14, 2015), http://www.omaha.com/news/metro/nebraska-iowa-counties-reject-immigrant-sanctuary-label/article_a3e341f6-60c7-5d3a-8771-63884f6f0ec7.html.

ⁱⁱⁱ Major Cities Chiefs Association, "Immigration Policy" (2013), available at https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf (recognizing that "trust and cooperation with immigrant communities . . . are essential elements of community oriented policing.").

^{iv} 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 (recognizing that "build[ing] relationships based on trust with immigrant communities . . . is central to overall public safety.").

^v Ryan Smith, *Iowa Jails Refuse Immigration Detainers*, KCCI DES MOINES (Aug. 18, 2014, 10:58 PM), <http://www.kcci.com/news/iowa-jails-to-refuse-immigration-detainers/27595720>.

^{vi} See Lee Hermiston, *Local sheriffs no longer honoring all ICE detainer requests*, THE GAZETTE (Aug. 4, 2014), <http://www.thegazette.com/subject/news/public-safety/crime/local-sheriffs-no-longer-honoring-all-ice-detainer-requests-20140801>; and, Stoddard *supra* Note 2 (quoting Sgt. Brandon Bracelin of the Polk County Sheriff's Office).

^{vii} See, e.g., Brent Griffiths, *Grassley Takes Aim at Sanctuary Cities*, THE DAILY IOWAN (Aug. 3, 2015, 5:00 am), <http://www.dailyiowan.com/2015/08/03/Metro/42685.html>.

^{viii} 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), available at http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

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

^x AARTI KOHLI, PETER L. MARKOWITZ & 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.

^{xi} Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, NYT (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850EE9BC311DADFID154084E&gwt=pay&assetType=nyt_now.

^{xii} See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *affirmed*, *Morales v. Chadbourne*, -- F.3d ---, 2015 WL 4385945 (1st Cir. July 17, 2015); *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *rev'd on other grounds*, *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141 (D. Neb. July 31, 2014); *Villars v. Kubiawski*, 45 F.Supp.3d 791 (N.D. Ill. 2014); *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ---, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013); *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).

^{xiii} *Email Shows Toms Miller's Office is Advising County Attorneys to Throw Open the Jailhouse Doors for Suspected Illegal Immigrants*, THE IOWA REPUBLICAN (Sept. 4, 2014), <http://theiowarepublican.com/2014/email-shows-tom-millers-office-is-advising-county-attorneys-to-throw-open-the-jailhouse-doors-for-suspected-illegal-immigrants/>.

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *See id.* (explaining media reports indicate that 22 counties have changed their policies in light of the letter).

^{xvii} Todd Ruger, *Grassley, Critic of Sentencing Change, Works on Compromise Bill*, CQ ROLL CALL (Aug. 27, 2015, 11:41 am).

^{xviii} The population increase was calculated using U.S. Sentencing Commission data on the number of FY13 new illegal reentry convictions (n=18498) and average sentence lengths (n=18 months), and adopting the conservative assumption that average sentence lengths will not exceed the proposed 5-year mandatory minimum. *See Illegal Reentry Offenses*, United States Sentencing Commission (April 2015) available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf. The cost of this prison population increase was calculated using BOP's FY13 cost calculation of \$80.25 per prisoner, per day. *See Federal Prison System Per Capita Costs*, Bureau of Prisons, available at http://www.bop.gov/foia/fy13_per_capita_costs.pdf.

^{xix} *See* Bureau of Prisons FY 2016 Performance Budget Congressional Submission, Federal Prison System, Buildings and Facilities (2015), available at http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/federal_bureau_of_prisons_bop_bf.pdf.