



February 15, 2018

Re: Vote NO on Amendment 1948 (“Stop Dangerous Sanctuary Cities Act”)

Dear Senator:

The American Civil Liberties Union (ACLU), on behalf of our more than two million members and supporters, strongly urges you to **vote NO on Amendment 1948, the “Stop Dangerous Sanctuary Cities Act” (Act)**, offered by Senator Pat Toomey. We understand that the Senate may vote on this amendment today.

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

FAIZ SHAKIR
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

The proposal is fraught with constitutional and policy problems, and is both legally and fiscally irresponsible. First, the bill perpetuates the myth that there are “sanctuary” zones free from immigration enforcement. Second, the bill exposes the federal government to broad liability for Constitutional violations that occur when localities imprison individuals on the basis of Department of Homeland Security (“DHS”) immigration detainers, while doing nothing to address the core Fourth Amendment problem of detaining individuals without a judicial determination of probable cause. Finally, the bill threatens to penalize financially more than hundreds of jurisdictions across the country, all of which adhere to Fourth Amendment constitutional protections and promote public safety by adopting community trust policies that distinguish their own criminal law enforcement role from DHS’s immigration enforcement functions.

I. There are no “sanctuary” zones free from immigration enforcement.

The title’s reference to “sanctuary” policies perpetuates the myth that some areas in the country are free from immigration enforcement. That is simply not true. DHS conducts immigration enforcement throughout the country.

State and local law enforcement agencies immediately notify DHS of every single individual who is taken into state or local custody through the automatic sharing of fingerprints obtained at booking.

This bill’s broad sweep would target hundreds of jurisdictions across the country – most of which expressly do not identify as “sanctuary” cities. Far from being sanctuary zones, these localities have adopted common-sense policing policies which reflect the careful balancing of interests by local officials who uniquely understand the particular needs and priorities of their communities.

These localities have chosen to limit the amount of scarce local law-enforcement resources they commit to controversial DHS immigration enforcement practices that have caused countless [unconstitutional detentions](#), invited [racial profiling](#), torn apart hundreds of thousands of [families](#), and [deterred immigrants from calling police](#) when they witness or are victimized by crime.

The jurisdictions that stand to lose housing, community development, and economic development assistance due to this bill include cities across the country. This bill targets federal funding that is important to local

communities and governments, provided through the [Community Development Block Grant \(CDBG\) Program](#) and the [U.S. Economic Development Administration \(EDA\)](#). [CDBG funds](#) are intended to ensure decent affordable housing, provide services to vulnerable community members, and expand and retain businesses, for cities large and small. Grants are also provided for areas recovering from presidentially-declared disasters, as well as areas affected by housing foreclosures, Insular Areas, and colonias in southwest border states. [EDA funding](#) supports economic development, public works, and other projects with the goal of building durable regional economies, including those in economically distressed areas of the United States.

II. DHS immigration detainers present serious Fourth Amendment problems by causing the extended detention of tens of thousands of people annually without probable cause, without judicial approval, and without due process protections.

Protection against unreasonable detention by the government is the bedrock of the Constitution's Fourth Amendment. The Fourth Amendment provides that the government cannot hold anyone in jail without getting a warrant or the approval of a judge. This constitutional protection applies to everyone in the United States – citizen and immigrant alike. In the case of immigration detainer requests, DHS is asking a locality to lock up a person without a warrant or judicial approval, merely based on the say-so of one DHS agent. DHS immigration detainers have caused widespread [wrongful detentions](#), including [detentions of U.S. citizens](#).

A growing number of courts have recognized the constitutional problems with DHS's immigration detainer practices and have consistently concluded that DHS, state, and local officials may be held liable for causing wrongful detentions in violation of the Fourth Amendment. [Just last week](#), a federal judge held that an estimated 10,000 to 12,000 people who were unconstitutionally held in L.A. County jails may be entitled to monetary damages. That is why many jurisdictions have decided not to execute a DHS immigration detainer request unless it is accompanied by a determination of probable cause, most commonly demonstrated by a judicial warrant.

Although both DHS and the federal courts recognize that immigration detainers are simply requests, not orders, the Act seeks to make detainer requests effectively mandatory by forcing all localities to execute them. Those localities that decline to execute DHS detainer requests will lose federal community development block grants and EDA funds.

The proposal, however, does nothing to address the fundamental constitutional problems plaguing DHS's use of immigration detainers. Rather than fix the constitutional problems by requiring a judicial warrant, it would perpetuate the unconstitutional detainer practices and force the federal government to absorb legal liability for the constitutional violations which will inevitably result. This is irresponsible lawmaking, from both a legal and fiscal perspective, and is presented without a plan as to how the federal government would absorb this increased liability.

Instead of attempting to shift liability for Fourth Amendment violations from localities to the federal government, the Senate should end the use of DHS's unconstitutional detainer requests. Alternatively, the Senate should fix the constitutional defects and require DHS to present a judicial warrant with every detainer request. This would not be an extraordinary measure, as every law enforcement agency in the country, save DHS by its own made-up practices, is required to produce a judicial warrant in order to lock up a person.

Additionally, by deeming all state and local agents complying with detainers as federal DHS agents, this bill circumvents the U.S. Constitution, which clearly designates immigration as a federal function. In essence, this provision nationalizes the notoriously discredited and costly 287(g) program by deputizing all state and local law enforcement agents effectuating detainers. However, unlike 287(g) agreements, this bill does not require any formal agreement to be in place nor does it provide training, supervision or accountability for state and local agents to perform immigration law. This is a license for racial profiling and discriminatory policing and undermines the efforts of jurisdictions that have enacted so-called "sanctuary" policies for the express purpose of improving their policing practices.

III. The Act would overturn hundreds of community trust policies designed to promote public safety and combat crime.

This bill seeks to penalize hundreds of jurisdictions whose local leaders have adopted community trust policies in order to promote public safety and combat crime. Law enforcement leaders across the country agree. The [Law Enforcement Immigration Task Force](#) and the [U.S. Conference of Mayors](#) have already opposed this proposal. The [Major Cities Chiefs Association](#), the [Presidential Task Force on 21st Century Policing](#), [Attorneys General from New York, California, Oregon, Rhode Island, Washington, and the District of Columbia](#), and [prosecutors](#) and [law enforcement leaders](#) have adopted positions opposing local law enforcement entanglement with federal immigration enforcement on the ground that it harms public safety.

Under the Trump administration, whose anti-immigrant rhetoric has terrorized immigrant communities for the past year, immigrants and Latinos more broadly are reporting fewer crimes. Police chiefs in [Los Angeles](#) and [Houston](#) have announced that reports of crime by Latinos are down, and [analysis of data from other major cities](#) including Dallas, Denver, and Philadelphia shows similar trends. The Act would only exacerbate mistrust between police and immigrant communities.

IV. Conclusion

The Stop Dangerous Sanctuary Cities Act perpetuates unconstitutional immigration detainer practices, and upends hundreds of community trust policies. Rather than taking a punitive approach to local law enforcement agencies that are working hard to balance their duties to uphold the Constitution and to keep their communities safe, the Senate should end DHS's unconstitutional detainer practices, or fix the constitutional deficiencies by requiring judicial warrants for all detainer requests.

The ACLU urges Senators to vote NO on Amendment 1948 (Stop Dangerous Sanctuary Cities Act). For more information, please contact Madhu Grewal, ACLU Federal Immigration Policy Counsel, at mgrewal@aclu.org or 202-675-2303.

Sincerely,



Lorella Praeli
Director of Immigration Policy & Campaigns



Madhu Grewal
Federal Immigration Policy Counsel

