



MEMORANDUM

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TO: Senate Local Government Committee

FROM: Andy Hoover, ACLU of Pennsylvania

DATE: January 24, 2017

RE: OPPOSITION TO SENATE BILL 10 (RESCENTHALER)

On Wednesday, the Senate Local Government Committee is scheduled to consider Senate Bill 10. Introduced by Senator Reschenthaler, SB 10 requires local governments to enforce any “law, mandate, request, or order” by federal immigration authorities and withholds state grants for law enforcement if local governments do not follow such dictates. The bill also holds local governments liable for damages if a person is released from the agency’s custody despite the existence of a detention request and the person then commits “injury to person or property.” This legislation is an attempt to strong-arm municipal governments into following the policy agenda of the state, even when that agenda conflicts with what local officials have determined is best for their communities and when doing so conflicts with the government’s obligations under the Constitution of the United States. The American Civil Liberties Union of Pennsylvania opposes Senate Bill 10. On behalf of the now 27,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote “no” on this legislation.

Despite the sponsor’s rhetoric in his co-sponsorship memo, there is no such thing as a sanctuary city. Immigration and Customs Enforcement (ICE) has jurisdiction everywhere in the United States. And they use that power to enforce immigration law.

Nearly half of the counties in Pennsylvania,¹ though, have made clear that they expect ICE to respect people’s constitutional rights and will only detain people at ICE’s request if that request is accompanied by a warrant from a court. This is constitutional law 101, and counties have learned the hard way- in court- that doing otherwise will cost them.

In fact, Senator Martin, who was then a Lancaster County Commissioner, acknowledged this legal conundrum with LancasterOnline.com in 2015 in explaining the county’s policy of not holding people beyond their normal release. “Ever since (the decision of the Third Circuit Court of Appeals in *Galarza v. Szalczyk*)² everybody knows that if we’re

¹ Sheller Center for Social Justice, *A Changing Landscape: Pennsylvania Counties Reevaluate Policies on Immigration Detainers*, Mar. 2015, available at <http://www2.law.temple.edu/csj/files/a-changing-landscape.pdf>. Since the publication of this report, Allegheny County has also implemented a policy to not honor ICE detainers, as part of a settlement from litigation brought by a U.S. citizen who was held overnight in the Allegheny County Jail at ICE’s request.

² *Ernesto Galarza v. Mark Szalczyk*, No. 12-3991 (3d Cir. 2014). More information is available at <https://www.aclupa.org/our-work/legal/legaldocket/galarzavszalczyketal/>.

put in a position where we could be held liable for not having a probable cause for detention,” Martin said. “In the litigation world, that’s a big deal.”³

Section 305(a) of the bill addresses the demand that local governments follow every “law, mandate, request, or order” of federal immigration authorities with a penalty of a loss of grant funding for law enforcement for not acquiescing to that mandate. However, that section includes language that local agencies must follow ICE’s orders “if the law, mandate, request or order does not conflict with the rights guaranteed under the Pennsylvania Constitution or the United States Constitution(.)” Note that this language is not included in Section 8542(a.1)(a) of the bill, which deals with ICE detainees and municipal liability.

One might argue that, with this language, counties could still insist that they will only hold people at ICE’s request with a warrant. Perhaps that is the sponsor’s intent. At the least, however, the bill provides no clarity on what the desired outcome is. A hesitant county solicitor, worried about losing grant funding, may read this language and advise the county to hold people at ICE’s request, with or without a warrant, which would then put the county in legal jeopardy.

If the sponsor’s intent is to provide counties with an escape valve to avoid a situation like that in the *Galarza* case, then the language about “conflict” with constitutional rights should also be included in section 305(a) of the bill.

The debate about so-called sanctuary cities is much ado about nothing. Local governments continue to share information about the people they detain with ICE. These municipalities have been unfairly maligned for simply following their obligations under the Constitution. State legislators would be wise to follow them, rather than lead them, on this issue. Please vote “no” on SB 10.

³ Smart, G. (2015) *Lancaster County shuns feds’ requests to hold immigrants*. Available at http://lancasteronline.com/news/local/lancaster-county-shuns-feds-requests-to-hold-immigrants/article_bd2c16c4-2c91-11e5-a722-973879c71f38.html.