

January 24, 2020

Joint Committee on Public Safety and Homeland Security
Rep. Harold P. Naughton, Jr., Chair
Sen. Michael Moore, Chair

**SUPPORT H.3573/S.1401
SAFE COMMUNITIES ACT**

The ACLU of Massachusetts and our nearly 100,000 members and activists throughout the Commonwealth support the Safe Communities Act in the strongest terms. We respectfully request that the committee advance legislation to enhance the safety of all Massachusetts residents by ensuring that state and local law enforcement are not complicit in the Trump administration's assault on immigrant members of our communities.

Immigrants are deeply interwoven in every Massachusetts community. Most non-citizens in our state have lived here for more than ten years, many for decades. More often than not, immigrant families include citizens and non-citizens: many marriages are between people with mixed status; parents from other countries have children born in the Bay State. When people come from other countries and build their lives in the Commonwealth — as workers and employers, individuals and spouses, parents and children, students and teachers, neighbors and parishioners — they deserve equal protection under our laws.

It is imperative for Massachusetts to stand up for our values at this historic moment. We should not lift a finger — or spend a dime — in service of federal immigration enforcement policy that threatens our values and our communities.

Under the Trump administration, immigration enforcement has drastically increased and the priorities for deportation have widened dramatically. Over the past two years, the Trump administration has created a climate of fear for noncitizens across the country, instituting some of the most inhumane immigration policies. Here in Massachusetts, families are being separated by indefinite detention without due process. A worker who reported workplace safety violations suffered retaliation by a Boston police officer who reported him to federal Immigration Customs Enforcement (ICE). Sick children and their parents seeking care in Boston-area hospitals have been threatened with deportation despite life-threatening medical conditions. More than 90% of the deportation cases initiated in Massachusetts during the 2019 fiscal year were against people charged solely with immigration violations — not crimes.¹

¹ Transactional Records Clearing House, *U.S. Deportation Proceedings in Immigration Courts*, November 25, 2019, http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php

Massachusetts need not willfully participate in this cruel and counterproductive system. Immigration law is purely a federal matter, and it is the federal government's job to enforce federal immigration statutes. States and localities cannot be forced or coerced into using their own time and resources to assist with that enforcement.

If we continue to do so voluntarily, we do so at our peril. It is widely understood that the more local agencies assist with federal immigration issues, the more they lose the trust of their communities, who fear that any interaction with local government could get them deported. And when our neighbors fear local government and do not report crime, everyone's safety suffers.

Since 2017, Massachusetts courts and municipalities have acted to protect immigrants living in the commonwealth from Trump's deportation machine. In 2017, in a case called *Commonwealth v. Lunn*, the Supreme Judicial Court held that it is illegal for Massachusetts state and local law enforcement officers to hold a person on a warrantless federal request known as an "ICE detainer." In addition, over 60 towns and cities across the state have adopted policies to limit cooperation between local law enforcement and federal immigration enforcement.

Now it's time for the legislature to act. Passing the Safe Communities Act (SCA) would send a powerful message to immigrant communities throughout the commonwealth: we are not ICE agents and you are welcome here.

Massachusetts is not the first to plot this course. In addition to the hundreds of cities, towns, and counties across the country that have passed similar policies, five states have statewide protections akin to the Safe Communities Act. State legislatures in Connecticut, California, and Illinois have passed legislation similar to the Safe Communities Act, and, most recently, the New Jersey attorney general instituted a statewide ban on 287(g) contracts, which unwisely deputize local officials to act as ICE agents.

What the Safe Communities Act does

It is important to be clear about the nature of the bill: what it is and what it is not.

The SCA does four main things: it ensures that state and local law enforcement officers do not ask about the immigration status of people they encounter; it prohibits state and local law enforcement from entering into 287(g) contracts, which deputize local jail staff to act as federal ICE agents; it sets the parameters for how local police, sheriffs, and courts collaborate with ICE; and it helps ensure that persons in local custody have notice about their rights before interacting with ICE.

1. Prohibits law enforcement agencies from asking about status

The bill prohibits Massachusetts law enforcement agencies, including police, court officers, and jail officials, from asking about the immigration status of people they encounter. While the state police and many local departments already have similar policies, it is important to have a single, uniform, statewide policy. Without a statewide policy, immigrant families continue to live under an umbrella of fear, not knowing which

communities are safe and which are not. Victims of crime, particularly victims of domestic violence, do not come forward when they cannot trust the police. Indeed, everyone is safer when all members of our community feel they can reach out to law enforcement for help.

2. Prohibits 287(g) contracts

The bill cancels existing 287(g) contracts between jails and the federal government and prohibits new ones. These contracts are the most extreme form of collaboration between localities and ICE. They voluntarily deputize local jail staff to act as federal ICE agents, while the local entity foots the bill. Massachusetts is the only state in New England to have such agreements.

3. Limits outreach to ICE

The bill allows court and law enforcement officials to notify ICE when a person is being released after serving a criminal sentence, but would prohibit them from reaching out to ICE with information about people who are held and released without being convicted of a crime. Importantly, the bill makes clear that local agencies may not call ICE on someone awaiting trial, or after charges are dismissed and the court rules that they are free to go. Massachusetts should not facilitate a person's detention and deportation before their case can be resolved. That creates a chilling effect that prevents people from accessing the courts, interferes with the Commonwealth's criminal justice system, and undermines justice for all.

4. Guarantees basic rights and due process protections in local custody

ICE agents are present in all of our county jails and state prisons, and routinely interview individuals incarcerated there in order to make out a deportation case against them. The bill provides a sorely-missing level of due process by requiring that a person in local custody receive notice of their legal rights before an ICE agent interviews them. These include the right to contact their attorney (if they have one), the right to decline the interview, or the right to remain silent. Because there are no *Miranda* warnings in the immigration context, individuals in local custody often do not know that they have legal rights, opening the door for ICE to misrepresent the situation and abuse its power.

Taken together, these provisions will ensure that Massachusetts resources are focused on meeting our commonwealth's needs, and not on helping deport our neighbors.

The Safe Communities Act does not limit police's ability to fight crime

The SCA does not create a safe harbor for criminals. The bill would not stop police from doing their everyday work, including investigating crime, arresting persons, or even working together with federal agencies on criminal matters. By proscribing certain types of collaboration between local law enforcement and ICE, the bill seeks to disentangle Massachusetts government from the enforcement of civil immigration laws, sending a powerful message that police can be trusted, and leaving intact all other tools for criminal law enforcement. For example, police and sheriffs could still participate in multi-agency investigations, or assist a federal agency in arresting an individual with a warrant.

Our statutes must provide clear guidance to local law enforcement, in keeping with fundamental principles of due process and fairness, that prioritize the public safety of all Massachusetts residents, citizens and non-citizens alike. The SCA is designed to *help* police do their jobs better by creating more community trust in law enforcement.

Massachusetts has often led the nation in advancing due process and civil rights. It is no coincidence that our Supreme Judicial Court was the first in the nation to hold, in *Commonwealth v. Lunn*, that our state laws don't allow local law enforcement to detain a person based solely on a request from ICE — and we appreciate that the legislature has rebuffed subsequent proposals to do so, which we believe are unconstitutional.

The Safe Communities Act is a complement to the court decision in *Lunn*, and an antidote to the Trump deportation machine. It will enhance public safety by reassuring Massachusetts residents that state and local law enforcement agencies are not out to deport them and by focusing resources on local needs. Here in Massachusetts, we have an opportunity — indeed, a responsibility — to play a leadership role in moving fundamental rights forward.

We strongly urge you to give the Safe Communities Act a favorable report, and we welcome the opportunity to work with the Committee as you consider this important proposal. Thank you.

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