

May 4, 2018

The Honorable Bill Haslam
Governor of Tennessee
Office of Governor Bill Haslam
State Capitol, 1st Floor
600 Charlotte Avenue
Nashville, TN 37243

Re: Request to veto HB 2315, the anti-immigrant bill

Dear Governor Haslam:

On behalf of the ACLU of Tennessee's tens of thousands of members, who reside in each of the state's 95 counties, we respectfully urge you to veto HB 2315. As many other concerned groups have already explained, this legislation is bad policy for Tennessee. It strips police chiefs and sheriffs of their ability to allocate scarce resources to best respond to local needs, and will devastate the hard-won trust between immigrant communities and local law enforcement that is so critical to effective policing and ensuring public safety for all Tennesseans.

We write to highlight more specifically, however, some of the constitutional and legal problems with the legislation's provisions governing immigration detainers. As explained below, HB 2315 raises serious concerns, particularly under the Fourth Amendment. We urge you to veto it to uphold the U.S. Constitution and to protect Tennessee and our taxpayers from the legal liability that could result from compliance with this law.

An immigration detainer is a checkbox form from U.S. Immigration and Customs Enforcement (ICE), the interior immigration enforcement agency of the federal government, that asks a local law enforcement official to continue holding an individual so that ICE can take custody. The detainer form requests up to 48 hours of additional detention after the state-law basis for custody expires — for example, after the individual is found not guilty, posts bond or serves his or her jail sentence.



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This extended detention for the purpose of immigration enforcement constitutes a new arrest, and therefore must be justified by probable cause.¹ But immigration enforcement is a uniquely federal responsibility, and the federal Immigration and Nationality Act severely restricts the involvement of local officials in immigration enforcement, emphasizing the importance of special training and supervision.² Because of the constitutional significance of detention pursuant to immigration detainers, and because of the limitations imposed by federal law on local immigration enforcement, local jurisdictions and officers across the country have faced litigation risks and financial liability for deciding to conduct arrests pursuant to immigration detainers.³

Importantly, nothing in federal law requires local officers to conduct arrests pursuant to immigration detainers.⁴ Indeed, the federal government has repeatedly acknowledged that local law enforcement agents are under no obligation whatsoever to conduct immigration arrests pursuant to immigration detainers. When a sheriff's deputies or police officers decide to make such an arrest, they run serious risks if they make the arrest without probable cause or



¹ *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015).

² *Arizona v. United States*, 567 U.S. 387 (2012).

³ Recent examples include: *Palacios-Valencia v. San Juan County*, No. 14-cv-1050 (D.N.M. settled 2017) (San Juan County pays \$350,000 to settle detainer class action lawsuit, pays named plaintiffs \$25,000 and \$15,000 to settle their claims); *Roy v. County of Los Angeles*, No. 12-cv-9012, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018) (ruling in favor of a class of noncitizens held on detainers seeking damages against Los Angeles County, which had paid \$255,000 to settle one named plaintiff's detainer claim); *Goodman v. Arpaio*, 2:16-cv-04388 (D. Ariz. settled 2018) (Maricopa County settles detainer lawsuit for \$30,750 in damages and \$50,000 in attorney's fees); *Gomez-Maciell v. Coleman*, No. 17-cv-292 (E.D. Wash. settled 2017) (City of Spokane settles detainer lawsuit for \$49,000); *Alfaro-Garcia v. Henrico County*, No. 15-cv-349 (E.D. Va. settled May 2017) (Virginia pays \$23,000 to settle detainer lawsuit against county); *Figueroa-Zarceno v. City and County of San Francisco*, No. 17-cv-229 (N.D. Cal.) (San Francisco pays \$190,000 settlement to person unlawfully turned over to ICE); *Orellana v. Nobles County*, No. 15-cv-3852 (D. Minn. settled 2017) (Nobles County pays \$15,000 to settle detainer lawsuit); *Del Agua v. Jones*, No. 15-cv-185 (E.D. Cal. settled 2015) (Sacramento County settles detainer case for \$25,000); *Davila v. Northern Regional Police Department*, No. 13-cv-70 (M.D. Pa. settled 2015) (Allegheny County pays \$25,000 and agrees to stop holding people on detainers); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (Lehigh County pays \$95,000 settlement for holding one person on a detainer, City of Allentown pays \$25,000); *Miranda-Olivares v. Clackamas County*, No. 12-2317, 2014 WL 1414305 (D. Or. Apr. 11, 2014), 2015 WL 5093752 (D. Or. Aug. 28, 2015) (Clackamas County pays \$30,100 settlement for holding a person on a detainer, along with \$97,000 in attorney fees); *Valdez-Sandoval v. Walcher* (Colorado 2014) (Arapahoe County pays \$30,000 to settle detainer case before lawsuit is filed); *Uroza v. Salt Lake County*, No. 11-cv-713 (D. Utah settled 2014) (Salt Lake County settles detainer case for \$75,000).

⁴ *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

proper legal authority.⁵ The federal government does not indemnify local governments for these costs.

HB 2315 is even more constitutionally problematic than such voluntary decisions, because the legislation *requires* local officers to arrest pursuant to detainers, without any exceptions, even when officers doubt that they have legal authority or probable cause to make the arrest. The legislation prohibits any policy or practice, formal or informal, which “[r]estricts in any way, or imposes any conditions on” immigration detainers. That prohibition applies not just to government boards and policymaking entities, but also to individual agents and employees. Thus, an individual police officer or sheriff’s deputy is barred from *in any way* restricting his “compliance with detainers” — even if he does so only through an informal practice of declining detainers when, in his judgment, the circumstances warrant.

The Fourth Amendment implications of this blanket command to comply with all detainers under all circumstances are extremely troubling. Under the Fourth Amendment, local police officers are ultimately responsible for the seizures they conduct.⁶ Yet an officer who has serious doubts about the existence of probable cause to arrest pursuant to a detainer, or even one who conclusively *knows* that such probable cause is lacking, is nonetheless commanded by HB 2315 to conduct that arrest. Indeed, were the legislation not already clear enough in this regard, it explicitly prohibits local officers from demanding that ICE “demonstrate probable cause before complying with detainers” — even though federal courts have been clear that probable cause is required in all cases.⁷ The legislation therefore puts local officers in an unconscionable bind between complying with state law and honoring their duty to uphold the U.S. Constitution.

⁵ Mistakes in issuing detainers are disturbingly common. For example, immigration officials have mistakenly issued detainers for *hundreds* of U.S. citizens in recent years. *See, e.g.,* Syracuse Univ., *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, Feb. 20, 2013 (documenting 834 times immigration officials asked local officers to detain U.S. citizens), <http://trac.syr.edu/immigration/reports/311/>; Eyder Peralta, *You Say You’re an American, but What If You Had to Prove It or Be Deported?*, NPR, Dec. 22, 2016 (documenting “693 U.S. citizens [who] were held in local jails on federal [immigration] detainers”), <https://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.

⁶ *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 568 (1971).

⁷ *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015).



In fact, the lack of an exception in HB 2315 sets it apart from a Texas law the Fifth Circuit recently addressed.⁸ In upholding a mandate to comply with detainers, the Fifth Circuit emphasized a statutory exception that would permit officers to refuse detainers “where facts negate probable cause.”⁹ That exception was key to the Fifth Circuit’s decision. In this legislation, by contrast, there is no exception at all — only a command to arrest pursuant to detainers without restriction and without any conditions (even those required by the Constitution).

These are serious constitutional concerns. Detainers raise grave questions, even when officers rely on them voluntarily. A mandate to arrest pursuant to detainers is even more concerning. And this legislation, creating an exceptionless mandate, is the most constitutionally problematic of all.

Your administration has always focused on promoting economic development, educational opportunities and creating a welcoming and inclusive state. We urge you to veto HB2315 to protect those principles that have guided you during your tenure as Tennessee’s 49th governor.

Please contact us if you have any questions. With appreciation for your thoughtful consideration of our request to veto HB2315.

Sincerely,



Hedy Weinberg
Executive Director



Thomas H. Castelli
Legal Director

⁸ *City of El Cenizo, Texas v. Texas*, 885 F.3d 332, 356 (5th Cir. 2018). The ACLU of Tennessee believes *El Cenizo* was wrongly decided, but even if it were right, the decision underscores the problems with this bill.

⁹ *Id.* at 357.

