



June 18, 2010

The Honorable Phil Bredesen  
State Capitol  
First Floor  
Nashville, TN 37243

Dear Governor Bredesen,

The American Civil Liberties Union of Tennessee (ACLU-TN) is writing to express its strong opposition to SB 1141/HB 670 and to urge you to veto this dangerous legislation.

ACLU-TN has a long history protecting and promoting civil liberties, including ensuring equal treatment and protection under the law and working to end racial profiling. Unfortunately, SB 1141/HB 670 challenges the values of fairness and equality, invites disparate treatment of minority groups and encourages racial profiling. This legislation requires local sheriffs to send booking information to Immigration and Customs Enforcement (ICE) for those persons arrested who are unable to prove their legal status. The legislation effectively creates a police state by requiring individuals (ie., all Latino residents and others who look and sound foreign) to carry documentation at all times so that they can prove they are in this country legally in case they are arrested.

Under SB 1141/HB 670, local sheriffs are directed to carry out the complex task of acting as federal immigration agents. However, the legislation provides no access to funding, federal databases or training for these law enforcement officers who will be required to attempt to identify undocumented persons. Essentially, the legislation requires jailers in 92 counties<sup>1</sup> to report to ICE those arrested persons who cannot prove their immigration status. Using local law enforcement officers who are untrained in the complexities and proper enforcement of federal immigration law is a recipe for racial profiling.

The bill invites racial profiling at two junctures—on the street and at the jail. Anecdotal reports indicate that racial profiling frequently takes place when law enforcement officers are deciding whether or not to stop and/or arrest an individual. There is a greater likelihood that racial profiling will take place by officers on the streets once they learn about this type of immigration enforcement program. In fact, based on a study of the Tennessee Highway Patrol, disparate treatment of Hispanics is already occurring in Tennessee. A 2007 report by the Office of Research and Education Accountability (OREA) showed that Latinos in Tennessee were arrested at a higher rate than other drivers when compared to drivers stopped for any violation and that they were being

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<sup>1</sup> Three counties that already have existing arrangements with ICE are exempt from SB 1141/HB 670: Davidson County [which has the 287(g) program]; Knox County (which has the Secure Communities program); and Shelby County (which has the Criminal Alien Program). While we do not support these programs, they adhere to ICE guidelines that ensure that local law enforcement officers are not authorized to determine immigration status without access to the ICE database and unless designated by ICE and trained.

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searched at the highest rate and the lowest productivity.<sup>2</sup> As the OREA report concluded that Hispanic drivers in Tennessee were overrepresented both in traffic stops and in post-stop law enforcement activity, it seems likely that race was a factor in the decision to pull people over, to arrest them and to levy charges against them. SB 1141/HB 670 will likely exacerbate the racial profiling of Hispanics statewide.

Under this legislation, local law enforcement might be more likely to arrest an individual for a minor infraction rather than to issue a citation in order to trigger an immigration investigation. A law that encourages arrest in order to check people's immigration status creates the potential for racial bias in the application of Tennessee's citation v. arrest statute.<sup>3</sup>

In addition, ACLU-TN has already received reports by immigration attorneys and advocates who have witnessed police stating that they stopped Latino males for "looking suspicious" when they were simply going about their daily lives, further supporting the potential for racial profiling during the stop process. One well-known example of this is the case of Jose Estrada, who was sitting in front of a building waiting for his employer to arrive when an officer stopped and questioned him. The officer testified that he wanted to determine Mr. Estrada's immigration status, despite having no authority to do so.<sup>4</sup> Ultimately, the officer arrested him on a bogus criminal impersonation charge. While that charge was dismissed, Mr. Estrada had already been processed under Davidson County's 287(g) program and detained under an ICE hold for days, unable to care for his autistic son.

Under SB 1141/HB 670, once the individual is arrested, it becomes the responsibility of the jailer to attempt to determine that person's immigration status. It is likely that absent documentation of lawful presence, the jailer will rely on the arrested person's appearance, race, ethnicity, accent and language to attempt to determine the individual's legal status and whether or not to report the person to ICE.

A review of Davidson County's 287(g) program indicates that nearly 40 percent of the people detained and processed during a three year period (between 04/16/07 and 05/31/10) were U.S. citizens or were in the country legally. Under SB 1141/HB 670, it is likely that many more U.S. citizens or legal residents will be arrested and detained simply because they are suspected of being foreign-born and they do not happen to have documentation of their status on their person at all times. Such detention policies and practices will expose Tennessee sheriffs' departments to potentially significant legal liability.

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<sup>2</sup> Gordon, Nneka. Office of Research and Education Accountability. "Tennessee Highway Patrol Vehicle Stops During 2006." <http://www.comptroller1.state.tn.us/repository/RE/vehiclestops2007.pdf>. Accessed 06/14/10.

<sup>3</sup> Tennessee law provides that police officers should issue citations rather than arrest unless certain objectively reasonable exceptions are met, such as the inability to prove identification or a likelihood that the suspect will not appear in court (T.C.A. § 40-7-118; *State v. Walker*, 12 S.W.3d 460). The officer must make "all reasonable efforts" to ascertain identity. Identifying documents need not be government-issued. The arresting officer must be able to articulate the reasons that arrest is necessary over citation and arrest cannot be based on perceived membership in a protected class (i.e. an arrest cannot be made instead of a citation simply because a person appears Hispanic or does not speak English fluently). Furthermore, officers generally cannot inquire about immigration status [*U.S. v. Urrieta*, 520 F.3d 569 (6<sup>th</sup> 2008)].

<sup>4</sup> Mot. Dismiss Hr'g Tr., September 29, 2008.

This legislation also invites violations of detainees' constitutional rights. The bill is silent relating to any authority a jailer may or may not have to detain people beyond release from their criminal charge. Under current law, jailers only have authorization to hold people until they have cleared their criminal charge, whether by dismissal, plea, posting bond or trial. Jailers do not have authorization to hold people beyond clearance of their criminal charge, and SB 1141/HB 670 does not give them such authority. For example, if someone has had his criminal charge dismissed, but the jailer is still waiting to hear back from ICE on his immigration status, by law the jailer must release that person. However, particularly since the bill lacks a specific training mandate, there is a danger that jailers will believe (wrongfully) that they are authorized to detain people pending immigration investigation. By encouraging this misperception, SB 1141/HB 670 threatens due process rights.

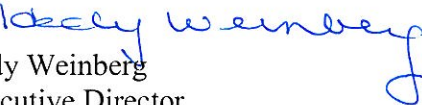
Finally, SB 1141/HB 670 will make undocumented immigrants less likely to report crimes to the police, to cooperate with police investigations or to seek assistance when needed for fear of being arrested themselves and facing possible detention and deportation. This legislation will fuel already existing community mistrust of law enforcement and exacerbate public safety concerns. Indeed, ACLU-TN has already received numerous reports of community members in Davidson County too afraid to report crimes they witness to law enforcement or to seek assistance for fear of being arrested and processed through the Davidson County Sheriff's Department's 287(g) program. These include a family who was threatened by a drug dealer who chose to move rather than report the threat to the police; numerous examples of domestic violence victims unwilling to report the abuse; parents fearful for their runaway children scared to seek support in getting them back; and multiple thefts of property even when the victims knew who had committed the crime.

SB 1141/HB 670 is disturbingly similar to elements of Arizona's racial profiling law in that it would require individuals in Tennessee to effectively "carry their papers" at all times so that they can prove their legal immigration status. As you know, ACLU and other groups have filed a lawsuit challenging the Arizona law and the Department of Justice is also considering a lawsuit. Please do not let Tennessee follow Arizona's shameful lead.

It is also worth noting that within two weeks of Arizona's bill being signed by Governor Brewer, the State lost between \$6 and \$10 million in projected business revenue according to the Arizona Hotel and Lodging Association. The full economic impact on the State remains to be seen, though some estimates place the eventual cost, including lost taxes and purchasing power, boycotts and lawsuits, in the billions.

On behalf of Tennesseans committed to moving Tennessee forward and retaining its standards of fairness and due process, we urge you to veto SB 1141/HB 670.

With many thanks for your consideration,

  
Hedy Weinberg  
Executive Director