
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawai'i is
2 justifiably proud of its rich immigrant heritage, which has
3 woven our many people into a valued tapestry of races, ancestral
4 groups, religions, cultures, and languages from many parts of
5 the world. Our state and county governments cultivate a culture
6 of inclusion when they ensure that all people in our communities
7 receive equal protection of the laws and respectful treatment
8 without regard to race, national origin, ancestry, or
9 citizenship status. According to the Migration Policy
10 Institute, in the United States today, there are more than
11 forty-three million immigrants, or foreign-born individuals,
12 which is 13.5 per cent of the total United States population.
13 An estimated eleven million of these individuals are
14 undocumented. In Hawai'i, there are 253,000 immigrants, of which
15 an estimated twenty-one thousand are undocumented.

16 The legislature additionally finds that unlawful presence
17 in the United States is not, by itself, a criminal offense, as



1 recognized by the United States Supreme Court in *Arizona v.*
2 *United States*, 567 U.S. 387 (2012). A person's undocumented
3 status can result from crossing a border into the United States
4 without being processed, which is a federal misdemeanor, or from
5 entering the United States with a visa and then overstaying the
6 length of the visa, which is not a crime. It is believed that
7 the great majority of undocumented immigrants living in Hawai'i
8 overstayed their visas.

9 The legislature moreover finds that Hawaii's inclusionary
10 and peaceful culture is now threatened by inflammatory rhetoric
11 and harsh federal policies that vilify immigrants, divide
12 communities and families, and create fear and suspicion among
13 different racial, ethnic, and ancestral groups. Various efforts
14 have been made to render federal immigration law more humane,
15 however those efforts have failed.

16 Almost sixty per cent of undocumented immigrants have been
17 in the United States for ten years or more, and another twenty-
18 three per cent have been present for five to nine years,
19 according to the Migration Policy Institute. These are
20 individuals who live and work within our communities and pay
21 taxes and many have married citizens and many more have children



1 who are citizens by birth. Citizenship, under current law, is
2 virtually unattainable for most undocumented immigrants, as many
3 do not meet the requisite criteria of employment, family
4 reunification, or humanitarian protection such as refugee or
5 asylum status. They are therefore unable to "get in line" and
6 instead live in a state of limbo fearing deportation. Eighty
7 per cent of Americans support a pathway to citizenship for
8 undocumented immigrants, according to a spring 2017 McClatchy-
9 Marist Poll, provided they meet certain criteria such as
10 willingness to learn English, payment of any fines caused by
11 their undocumented status, employment, and payment of taxes.
12 Numerous studies show that immigrants have a crime rate that is
13 lower than that of native-born United States citizens and there
14 is an inverse relationship between crime and immigration. These
15 studies hold true for undocumented immigrants.

16 The legislature understands that immigration is a federal
17 function and state and local agencies have significant
18 discretion regarding whether and how to respond to requests for
19 assistance with immigration enforcement. The enforcement of
20 immigration law is carried out by the federal Immigration and
21 Customs Enforcement agency, known as ICE, and the Customs and



1 Border Protection agency, known as CBP, both of which are
2 components of the federal Department of Homeland Security.
3 Federal law does not require state and local entities to
4 cooperate with ICE and CBP. Rather, federal law, at title 8
5 United States Code Section 1373, limits state and local
6 governments from enacting laws or policies that restrict
7 communication with federal immigration authorities concerning
8 "information regarding the citizenship or immigration status,
9 lawful or unlawful, of any individual." There is no affirmative
10 duty for state and local governments to collect or share this
11 information, and there is no prohibition against preventing the
12 communication of other non-public information, such as when a
13 detained individual will be released or the individual's
14 address. Further, state and local agencies that do participate
15 in federal immigration enforcement do not receive any funding or
16 reimbursement for their efforts. In a sense, the federal
17 government is attempting to impose an unfunded mandate on the
18 State and counties.

19 The legislature also finds that, early in his presidency,
20 President Trump issued three executive orders relating to
21 immigration and immigration enforcement entitled "Enhancing



1 Public Safety in the Interior of the United States", "Border
2 Security and Immigration Enforcement Improvements", and
3 "Protecting the Nation from Foreign Terrorist Entry into the
4 United States".

5 Relevant to undocumented immigrants already in the United
6 States, the executive orders encourage state and local law
7 enforcement agencies to voluntarily honor ICE and CBP
8 administrative detainers. These administrative detainers are
9 requests by ICE and CBP for state and local law enforcement to
10 keep an individual in custody for forty-eight hours beyond when
11 the state or local entity would have released the person. More
12 troubling is the fact that these detainers are not reviewed and
13 signed by a judge nor are they warrants.

14 The legislature furthermore finds that state and local
15 agencies must adhere to the United States and Hawai'i
16 Constitutions, such as the Fourth Amendment prohibition on
17 unreasonable searches and seizures. Several federal courts have
18 held that ICE detainers do not provide probable cause for arrest
19 or detention under the Fourth Amendment to the United States
20 Constitution and that the state or local law enforcement agency
21 may be liable for monetary damages for unlawful detention. In



1 addition, a number of jurisdictions have paid monetary awards,
2 either as judgments or settlements, to individuals who claimed
3 that they were unlawfully held based on ICE detainer requests.
4 An example of a recent settlement is that agreed to by San Juan
5 County, New Mexico, and approved by a federal judge, to pay
6 \$724,000 to one hundred ninety-three individuals and their
7 attorneys.

8 The legislature additionally finds that, unlike policies
9 under President Obama that prioritized deportation actions on
10 immigrants who had committed serious crimes, the executive
11 orders issued by President Trump seek to deport virtually all
12 undocumented immigrants including individuals who have not been
13 charged or convicted of a crime. The orders also seek to
14 deputize local law enforcement as federal immigration agents,
15 which would allow them to ask everyone they come into contact
16 with about their immigration status. These actions may cause
17 undocumented immigrants and others to be fearful that contact
18 with the police and other law enforcement personnel will lead to
19 deportation and other immigration-based actions, and so they
20 will be reluctant to report crimes or come forth as witnesses,
21 making our communities less safe. As a result more than three



1 hundred cities, counties, and states have limited their law
2 enforcement agencies from cooperating with ICE and CBP.

3 The legislature similarly finds that the executive orders
4 issued by President Trump attempt to improperly coerce
5 jurisdictions into cooperating with ICE and CBP by threatening
6 to withhold federal grants from jurisdictions that "willfully
7 refuse" to comply. The law is clear that the federal government
8 may not commandeer states and their subdivisions in this manner.
9 In cases such as *Printz v. United States*, 521 U.S. 898 (1997),
10 and *New York v. United States*, 505 U.S. 144 (1992), the United
11 States Supreme Court has held that the Tenth Amendment to the
12 United States Constitution prohibits federal "commandeering" of
13 state or local governments to help enforce federal law. Several
14 federal courts have already moved to block implementation of
15 President Trump's executive order to withhold federal grants
16 from jurisdictions that do not provide immigration authorities
17 access to detained individuals or advance notice of their
18 release. These include:

19 (1) *Chicago v. Sessions*, 2017 WL 4081821 (N.D. Ill.

20 Sept. 15, 2017) (nationwide preliminary injunction);



- 1 (2) *Philadelphia v. Sessions*, 2017 WL 5489476 (E.D. Penn.
2 Nov. 15, 2017) (preliminary injunction); and
3 (3) *Cty. Of Santa Clara v. Trump*, 2017 WL 5569835 (N.D.
4 Cal. Nov. 20, 2017) (nationwide permanent injunction
5 following 4/25/2017 preliminary injunction).

6 The legislature recognizes the numerous contributions of
7 individuals of various immigration statuses who have sought a
8 better life by immigrating to Hawai'i and elsewhere in the United
9 States. While the legislature does not condone immigration
10 without legal authorization, it finds that the effects of trying
11 to deport all undocumented immigrants greatly outweigh any
12 negative consequences their presence in our country and State
13 might have. The involvement of state and local law enforcement
14 officers in federal deportation programs and activities will
15 alienate members of the State's many communities from Hawai'i's
16 law enforcement agencies and undermine relationships with law
17 enforcement that are necessary to secure the peace and
18 successfully resolve criminal investigations. In order to
19 ensure a safe, secure, and welcoming community for everyone,
20 including immigrants of every status, to promote respectful
21 relations and collaboration between community members and



1 agencies providing public safety services, the purpose of this
2 Act is to prohibit, except as required by law, state and local
3 police and other local law enforcement agencies from cooperating
4 with the federal government for immigration purposes.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 "CHAPTER

9 HO'OKIPA WELCOMING POLICY ACT

10 § -1 Findings. The legislature finds and declares that
11 the State of Hawai'i is home to people of diverse ethnic, racial,
12 and national backgrounds including immigrants who are valuable
13 and important members of the community. It is essential to the
14 public safety of all residents that there is a relationship of
15 trust and cooperation among members of the immigrant community
16 and state and local law enforcement agencies. This relationship
17 is undermined when state and local law enforcement voluntarily
18 act at the request of federal immigration officials. Voluntary
19 enforcement of federal immigration law is not a wise and
20 effective use of state and local resources.



1 This Act is intended to conserve state and local resources
2 and protect the public safety of all residents of the State.

3 **§ -2 Definitions.** As used in this chapter:

4 "CBP" means United States Customs and Border Protection, a
5 component of the United States Department of Homeland Security.

6 "Civil immigration detainer", "civil immigration warrant"
7 or "immigration hold", means an immigration detainer issued
8 pursuant to title 8 Code of Federal Regulations section 287.7 or
9 any similar request from ICE or CBP for detention of an
10 individual suspected of violating civil immigration law.

11 "Hawaii law enforcement agency" means any agency of the
12 State or any of its political subdivisions, or any officer of
13 such an agency, that is authorized to enforce criminal laws,
14 operate correctional facilities, or maintain custody of
15 individuals in correctional facilities, and any individual or
16 agency authorized to operate juvenile detention facilities or to
17 maintain custody of individuals in juvenile detention
18 facilities.

19 "ICE" means United States Immigration and Customs
20 Enforcement, a component of the United States Department of
21 Homeland Security.



1 "Judicial warrant" means a warrant based on probable cause
2 and issued by an Article III federal judge or a federal
3 magistrate judge that authorizes federal immigration authorities
4 to take into custody the individual who is the subject of the
5 warrant; provided that "judicial warrant" does not include a
6 civil immigration warrant, administrative warrant, or other
7 document signed only by ICE or CBP officials.

8 § -3 Certain activities solely for the purpose of
9 enforcing federal immigration laws. A Hawaii law enforcement
10 agency shall not:

11 (1) Stop, question, interrogate, investigate, or arrest an
12 individual based solely upon:

13 (A) Actual or suspected immigration or citizenship
14 status; or

15 (B) A civil immigration warrant, administrative
16 warrant, or an immigration detainer in the
17 individual's name, including those identified in
18 the National Crime Information Center database;

19 (2) Inquire about the immigration status of an individual,
20 including a crime victim, a witness, or an individual
21 who calls or approaches the law enforcement agency



1 seeking assistance, unless necessary to investigate
2 criminal activity by that individual; or

- 3 (3) Perform the functions of a federal immigration officer
4 or otherwise engage in the enforcement of federal
5 immigration law, including pursuant to title 8 United
6 States Code section 1357(g).

7 **§ -4 Prohibition against honoring detainer requests;**
8 **exceptions.** (a) A Hawaii law enforcement agency shall not
9 comply with a civil immigration detainer from ICE or CBP to
10 detain or transfer an individual for immigration enforcement or
11 investigation purposes; provided that the law enforcement agency
12 may respond affirmatively if the detainer request is accompanied
13 by a judicial warrant or as set forth in subsection (b).

14 (b) A Hawaii law enforcement agency may detain an
15 individual for up to forty-eight hours on a civil immigration
16 detainer request in the absence of a judicial warrant in the
17 following circumstances:

- 18 (1) The individual has been convicted of a felony;
19 (2) The individual has been convicted of any misdemeanor
20 specified in section 706-606.5(5) within the prior
21 five years;



1 (3) The individual has been arrested for a felony and a
2 judge has made a finding of probable cause pursuant to
3 section 805-7;

4 (4) There is probable cause to believe that the individual
5 has or is engaged in terrorist activity;

6 (5) There is probable cause to believe that the individual
7 has illegally re-entered the United States after a
8 previous removal or return as defined by title 8
9 United States Code section 1326(b)(2); or

10 (6) The individual is currently registered as a covered
11 offender under chapter 846E.

12 **§ -5 Prohibition against honoring requests for**
13 **information; exceptions.** (a) A Hawaii law enforcement agency
14 shall not comply with an ICE or CBP request for non-public
15 information about an individual, including but not limited to
16 non-public information about an individual's release, home
17 address, or work address, except as set forth below.

18 (b) A Hawaii law enforcement agency may comply with an
19 information request in the following circumstances:

20 (1) The information request is accompanied by a judicial
21 warrant;



1 (2) The individual has been convicted of a felony;

2 (3) The individual has been convicted of any misdemeanor
3 specified in section 706-606.5(5) within the prior
4 five years;

5 (4) The individual has been arrested for a felony and a
6 judge has made a finding of probable cause pursuant to
7 section 805-7;

8 (5) There is probable cause to believe that the individual
9 has or is engaged in terrorist activity;

10 (6) There is probable cause to believe that the individual
11 has illegally re-entered the United States after a
12 previous removal or return as defined by title 8
13 United States Code section 1326(b)(2); or

14 (7) The individual is currently registered as a covered
15 offender under chapter 846E.

16 (c) A Hawaii law enforcement agency shall limit the
17 information collected from individuals concerning immigration or
18 citizenship status to that necessary to perform agency duties.

19 (d) Nothing in this section shall prohibit a Hawaii law
20 enforcement agency from:



(1) Sending to or receiving from any local, state, or federal agency information regarding an individual's country of citizenship or a statement of the individual's immigration status pursuant to title 8 United States Code section 1373;

(2) Disclosing information about an individual's criminal arrests or convictions, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order; or

(3) Disclosing information about an individual's juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order.

§ -6 Prohibition against providing access to individuals in custody for questioning or interviewing principally for immigration enforcement purposes. A Hawaii law enforcement agency shall not provide ICE or CBP with access to an individual in the agency's custody or with the use of agency facilities to question or interview such individual if ICE or CBP's principal



1 purpose is enforcement of federal immigration law, unless the
2 individual requests to meet with ICE or CBP.

3 **§ -7 Due process rights; federal immigration enforcement**
4 **requests.** (a) A Hawaii law enforcement agency shall not delay
5 bail or an individual's release from custody upon posting of
6 bail solely because of an individual's immigration or
7 citizenship status, a civil immigration warrant, or an ICE or
8 CBP request for notification about, transfer of, detention of,
9 or interview or interrogation of that individual for immigration
10 enforcement purposes.

11 (b) Upon receipt of an ICE or CBP detainer, transfer,
12 notification, interview or interrogation request, a Hawaii law
13 enforcement agency shall provide a copy of that request to the
14 individual named therein and inform the individual whether the
15 Hawaii law enforcement agency will comply with the request
16 before communicating its response to the requesting agency.

17 (c) Individuals in the custody of a Hawaii law enforcement
18 agency shall be subject to the same agency booking, processing,
19 release, and transfer procedures, policies, and practices,
20 regardless of actual or suspected citizenship or immigration
21 status.



1 § -8 **Prohibition on use of public resources.** No agency
2 of the State or any of its political subdivisions shall use
3 moneys, facilities, property, equipment, or personnel of the
4 State or any of its political subdivisions to investigate,
5 enforce, or assist in the investigation or enforcement of any
6 federal program requiring registration of individuals on the
7 basis of race, gender, sexual orientation, religion, ethnicity,
8 or national origin.

9 § -9 **Access to benefits and services.** No agency of the
10 State or any of its political subdivisions shall inquire about
11 or request proof of immigration status or citizenship when
12 providing services or benefits, except where the receipt of such
13 services or benefits are contingent upon the individual's
14 immigration or citizenship status or where inquiries are
15 otherwise lawfully required by federal, state, or local laws.

16 § -10 **Data collection.** (a) All Hawaii law enforcement
17 agencies shall record, solely to create the reports described in
18 subsection (b), the following information for each immigration
19 detainer, notification, or request for transfer, questioning or
20 interview, or interrogation received from ICE or CBP:



- 1 (1) The subject individual's race, gender, and place of
2 birth;
- 3 (2) The date and time that the subject individual was
4 taken into Hawaii law enforcement agency custody, the
5 location where the individual was held, and any arrest
6 charges;
- 7 (3) The date and time of the Hawaii law enforcement
8 agency's receipt of the detainer, notification, or
9 request;
- 10 (4) The requesting agency;
- 11 (5) Immigration or criminal history indicated on the
12 request form, if any;
- 13 (6) Whether the detainer, notification, or request was
14 accompanied by any documentation regarding immigration
15 status or proceedings such as a judicial warrant;
- 16 (7) Whether a copy of the detainer, notification, or
17 request was provided to the individual and, if so, the
18 date and time it was provided;
- 19 (8) Whether the individual consented to the detainer,
20 notification, or request;



- 1 (9) Whether the individual requested to meet with ICE or
2 CBP;
- 3 (10) Whether the individual requested to confer with
4 counsel regarding the detainer, notification, or
5 request;
- 6 (11) The Hawaii law enforcement agency's response to the
7 detainer, notification, or request, including any
8 decision not to comply with it;
- 9 (12) If applicable, the date and time that ICE or CBP took
10 custody of, or was otherwise given access to, the
11 individual; and
- 12 (13) The date and time of the individual's release from the
13 Hawaii law enforcement agency's custody.
- 14 (b) All Hawaii law enforcement agencies shall provide
15 semi-annual reports to the attorney general regarding the
16 information collected in subsection (a) in an aggregated form
17 that is stripped of all personal identifiers in order that the
18 Hawaii law enforcement agency and the community may monitor the
19 compliance with all applicable law. The attorney general shall
20 make the reports public and post the reports on its website."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Federal Immigration Enforcement; Law Enforcement Agencies;
United States Customs and Border Protection; United States
Immigration and Customs Enforcement

Description:

Prohibits state law enforcement agencies from complying with
federal immigration detainers or honoring requests for non-
public information unless specifically required to do so by a
warrant signed by a judge or provisions of federal, state, or
local law. (HB1994 HD1)

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