
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 43,000,000 immigrants, or foreign-born individuals, which is
12 13.5 per cent of the total United States population. An
13 estimated 11,000,000 of these individuals are undocumented. In
14 Hawai'i, there are 253,000 immigrants, of which an estimated
15 21,000 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. Additional relevant facts
16 about immigrants include the following:

17 (1) Almost sixty per cent of undocumented immigrants have
18 been in the United States for ten years or more, and
19 another twenty-three per cent have been present for
20 five to nine years, according to the Migration Policy
21 Institute; these are individuals who live and work



1 within our communities and pay taxes and many have
2 married citizens and many more have children who are
3 citizens by birth;

4 (2) Citizenship, under current law, is virtually
5 unattainable for most undocumented immigrants, as many
6 do not meet the requisite criteria of employment,
7 family reunification, or humanitarian protection such
8 as refugee or asylum status, and thus are unable to
9 "get in line" and instead live in a state of limbo
10 fearing deportation;

11 (3) Eighty per cent of Americans support a pathway to
12 citizenship for undocumented immigrants, according to
13 a spring 2017 McClatchy-Marist Poll, provided they
14 meet certain criteria such as being willing to learn
15 English, paying any fines caused by their undocumented
16 status, being employed, and paying taxes; and

17 (4) Numerous studies show that immigrants have a crime
18 rate that is lower than that of native-born United
19 States citizens and there is an inverse relationship
20 between crime and immigration; and these studies hold
21 true for undocumented immigrants.



1 The legislature understands that immigration is a federal
2 function and state and local agencies have significant
3 discretion regarding whether and how to respond to requests for
4 assistance with immigration enforcement. The enforcement of
5 immigration law is carried out by the federal Immigration and
6 Customs Enforcement agency, known as ICE, and the Customs and
7 Border Protection agency, known as CBP, both of which are
8 components of the federal Department of Homeland Security.
9 *Federal law does not require state and local entities to*
10 *cooperate with ICE and CBP. Rather, federal law, at title 8*
11 *United States Code section 1373, limits state and local*
12 *governments from enacting laws or policies that restrict*
13 *communication with federal immigration authorities concerning*
14 *"information regarding the citizenship or immigration status,*
15 *lawful or unlawful, of any individual". There is no affirmative*
16 *duty for state and local governments to collect or share this*
17 *information, and there is no prohibition against preventing the*
18 *communication of other non-public information, such as when a*
19 *detained individual will be released or the individual's*
20 *address. Further, state and local agencies that do participate*
21 *in federal immigration enforcement do not receive any funding or*



1 reimbursement for their efforts. In a sense, the federal
2 government is attempting to impose an unfunded mandate on our
3 State and counties.

4 The legislature also finds that President Trump issued
5 three executive orders early in his presidency relating to
6 immigration and immigration enforcement, entitled as follows:

7 (1) "Enhancing Public Safety in the Interior of the United
8 States";

9 (2) "Border Security and Immigration Enforcement
10 Improvements"; and

11 (3) "Protecting the Nation from Foreign Terrorist Entry
12 into the United States."

13 Relevant to undocumented immigrants already in the United
14 States, the executive orders encourage state and local law
15 enforcement agencies to voluntarily honor ICE and CBP
16 administrative detainers. These "administrative detainers" are
17 requests by ICE and CBP for state and local law enforcement to
18 keep an individual in custody for forty-eight hours beyond when
19 the state or local entity would have released the person. More
20 troubling is the fact that these detainers are not reviewed and
21 signed by a judge nor are they warrants.



1 The legislature furthermore finds that state and local
2 agencies must adhere to the United States and Hawai'i
3 Constitutions, such as the Fourth Amendment prohibition on
4 unreasonable searches and seizures. Several federal courts have
5 held that ICE detainers do not provide probable cause for arrest
6 or detention under the Fourth Amendment to the United States
7 Constitution and that the state or local law enforcement agency
8 may be liable for monetary damages for unlawful detention. In
9 addition, a number of jurisdictions have paid monetary awards,
10 either as judgments or settlements, to individuals who claimed
11 that they were unlawfully held based on ICE detainer requests.
12 An example of a recent settlement is that agreed to by San Juan
13 County, New Mexico, and approved by a federal judge, to pay
14 \$724,000 to one hundred ninety-three individuals and their
15 attorneys.

16 The legislature additionally finds that, unlike policies
17 under President Obama that prioritized deportation actions on
18 immigrants who had committed serious crimes, the executive
19 orders issued by President Trump seek to deport virtually all
20 undocumented immigrants, including individuals who have not been
21 charged or convicted of a crime. The orders also seek to



1 deputize local law enforcement as federal immigration agents,
2 which would allow them to ask everyone they come into contact
3 with about their immigration status. These actions may cause
4 undocumented immigrants - and others - to be fearful that
5 contact with the police and other law enforcement personnel will
6 lead to deportation and other immigration-based actions, and to
7 become reluctant to report crimes or come forth as witnesses,
8 making our communities less safe. As a result, more than three
9 hundred cities, counties, and states have limited their law
10 enforcement agencies from cooperating with ICE and CBP.

11 The legislature similarly finds that the executive orders
12 issued by President Trump attempt to improperly coerce
13 jurisdictions into cooperating with ICE and CBP by threatening
14 to withhold federal grants from jurisdictions that "willfully
15 refuse" to comply. The law is clear that the federal government
16 may not commandeer states and their subdivisions in this manner.
17 In cases such as *Printz v. United States*, 521 U.S. 898 (1997),
18 and *New York v. United States*, 505 U.S. 144 (1992), the United
19 States Supreme Court has held that the Tenth Amendment to the
20 United States Constitution prohibits federal "commandeering" of
21 state or local governments to help enforce federal law. Several



1 federal courts have already moved to block implementation of
2 President Trump's executive order to withhold federal grants
3 from jurisdictions that do not provide immigration authorities
4 access to detained individuals or advance notice of their
5 release. These include:

- 6 (1) *Chicago v. Sessions*, 2017 WL 4081821 (N.D. Ill.
7 Sept. 15, 2017) (nationwide preliminary injunction);
- 8 (2) *Philadelphia v. Sessions*, 2017 WL 5489476 (E.D. Penn.
9 Nov. 15, 2017) (preliminary injunction); and
- 10 (3) *Cty. Of Santa Clara v. Trump*, 2017 WL 5569835 (N.D.
11 Cal. Nov. 20, 2017) (nationwide permanent injunction
12 following 4/25/2017 preliminary injunction).

13 The legislature recognizes the numerous contributions of
14 individuals of various immigration statuses who have sought a
15 better life by immigrating to Hawai'i and elsewhere in the United
16 States. While the legislature does not condone immigration
17 without legal authorization, it finds that the effects of trying
18 to deport all undocumented immigrants greatly outweigh any
19 negative consequences their presence in our country and State
20 might have. The involvement of state and local law enforcement
21 officers in federal deportation programs and activities will



1 alienate members of the State's many communities from Hawaii's
2 law enforcement agencies and undermine relationships with law
3 enforcement that are necessary to secure the peace and
4 successfully resolve criminal investigations. In order to
5 ensure a safe, secure, and welcoming community for everyone,
6 including immigrants of every status, to promote respectful
7 relations and collaboration between community members and
8 agencies providing public safety services, the purpose of this
9 Act is to prohibit, except as required by law, state and local
10 police and other local law enforcement agencies from cooperating
11 with the federal government for immigration purposes.

12 SECTION 2. The Hawaii Revised Statutes is amended by
13 adding a new chapter to be appropriately designated and to read
14 as follows:

15 "CHAPTER

16 HO'OKIPA WELCOMING POLICY ACT

17 § -1 Findings. The legislature finds and declares that
18 the State of Hawai'i is home to people of diverse ethnic, racial,
19 and national backgrounds which includes immigrants who are
20 valuable and important members of our community. It is
21 essential to the public safety of all residents that there is a



1 relationship of trust and cooperation among members of the
2 immigrant community and state and local law enforcement
3 agencies. This relationship is undermined when state and local
4 law enforcement voluntarily act at the request of federal
5 immigration officials. Voluntary enforcement of federal
6 immigration law is not a wise and effective use of state and
7 local resources.

8 This Act is intended to conserve state and local resources
9 and protect the public safety of all residents of our State.

10 § -2 **Definitions.** As used in this chapter:

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

13 "Civil immigration detainer", "civil immigration warrant"
14 or "immigration hold" means an immigration detainer issued
15 pursuant to title 8 Code of Federal Regulations section 287.7 or
16 any similar request from ICE or CBP for detention of an
17 individual suspected of violating civil immigration law.

18 "Hawaii law enforcement agency" means any agency of the
19 State or any of its political subdivisions, or officer of such
20 an agency, that is authorized to enforce criminal laws, operate
21 correctional facilities, or maintain custody of individuals in



1 correctional facilities, and any individual or agency authorized
2 to operate juvenile detention facilities or to maintain custody
3 of individuals in juvenile detention facilities.

4 "ICE" means United States Immigration and Customs
5 Enforcement, a component of the United States Department of
6 Homeland Security.

7 "Judicial warrant" means a warrant based on probable cause
8 and issued by an Article III federal judge or a federal
9 magistrate judge that authorizes federal immigration authorities
10 to take into custody the individual who is the subject of the
11 warrant. "Judicial warrant" does not include a civil
12 immigration warrant, administrative warrant, or other document
13 signed only by ICE or CBP officials.

14 § -3 Certain activities solely for the purpose of
15 enforcing federal immigration laws. A Hawaii law enforcement
16 agency shall not:

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

19 (A) Actual or suspected immigration or citizenship
20 status; or



1 (B) A civil immigration warrant, administrative
2 warrant, or immigration detainer in the
3 individual's name, including those identified in
4 the National Crime Information Center database;

5 (2) Inquire about the immigration status of an individual,
6 including a crime victim, a witness, or an individual
7 who calls or approaches the police seeking assistance,
8 unless necessary to investigate criminal activity by
9 that individual; or

10 (3) Perform the functions of a federal immigration officer
11 or otherwise engage in the enforcement of federal
12 immigration law, including pursuant to title 8 United
13 States Code section 1357(g).

14 § -4 Prohibition against honoring detainer requests;
15 exceptions. (a) A Hawaii law enforcement agency shall not
16 comply with a civil immigration detainer from ICE or CBP to
17 detain or transfer an individual for immigration enforcement or
18 investigation purposes; provided that the law enforcement agency
19 may respond affirmatively if the detainer request is accompanied
20 by a judicial warrant or as set forth in subsection (b).



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

- 5 (1) The individual has been convicted of a felony; and
6 (2) There is probable cause to believe that the individual
7 has or is engaged in terrorist activity;

8 **§ -5 Prohibition against honoring requests for**
9 **information; exceptions.** (a) A Hawaii law enforcement agency
10 shall not comply with an ICE or CBP request for non-public
11 information about an individual, including but not limited to
12 non-public information about an individual's release, home
13 address, or work address, except as set forth below.

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

- 16 (1) The information request is accompanied by a judicial
17 warrant;
18 (2) The individual has been convicted of a felony;
19 (3) The individual has been convicted of any misdemeanor
20 specified in section 706-606.5(5) within the prior
21 five years;



1 (4) 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 (5) There is probable cause to believe that the individual
5 has or is engaged in terrorist activity;

6 (6) 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 (7) The individual is currently registered as a covered
11 offender under chapter 846E.

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

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

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



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

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

11 § -6 Prohibition against providing access to individuals
12 in custody for questioning or interviewing principally for
13 immigration enforcement purposes. A Hawaii law enforcement
14 agency shall not provide ICE or CBP with access to an individual
15 in the agency's custody or the use of agency facilities to
16 question or interview such individual if ICE or CBP's principal
17 purpose is enforcement of federal immigration law, unless the
18 individual requests to meet with ICE or CBP.

19 § -7 Due process rights; federal immigration enforcement
20 requests. (a) A Hawaii law enforcement agency shall not delay
21 bail or the release from custody upon posting of bail solely



1 because of an individual's immigration or citizenship status, a
2 civil immigration warrant, or an ICE or CBP request for
3 notification about, transfer of, detention of, or interview or
4 interrogation of that individual for immigration enforcement
5 purposes.

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

12 (c) Individuals in the custody of a Hawaii law enforcement
13 agency shall be subject to the same booking, processing,
14 release, and transfer procedures, policies, and practices of
15 that agency, regardless of actual or suspected citizenship or
16 immigration status.

17 § -8 Prohibition on use of public resources. No agency
18 of the State or any of its political subdivisions shall use
19 moneys, facilities, property, equipment, or personnel of the
20 State or any of its political subdivisions to investigate,
21 enforce, or assist in the investigation or enforcement of any



1 federal program requiring registration of individuals on the
2 basis of race, gender, sexual orientation, religion, ethnicity,
3 or national origin.

4 § -9 Access to benefits and services. No agency of the
5 State or any of its political subdivisions shall inquire about
6 or request proof of immigration status or citizenship when
7 providing services or benefits, except where the receipt of such
8 services or benefits are contingent upon the individual's
9 immigration or citizenship status or where inquiries are
10 otherwise lawfully required by federal, state, or local laws.

11 § -10 Data collection. (a) All Hawaii law enforcement
12 agencies shall record, solely to create the reports described in
13 subsection (b), the following information for each immigration
14 detainer, notification, transfer, questioning or interview, or
15 interrogation request received from ICE or CBP:

- 16 (1) The subject individual's race, gender, and place of
17 birth;
- 18 (2) Date and time that the subject individual was taken
19 into a Hawaii law enforcement agency's custody, the
20 location where the individual was held, and the arrest
21 charges;



- 1 (3) Date and time of the Hawaii law enforcement agency's
- 2 receipt of the request;
- 3 (4) The requesting agency;
- 4 (5) Immigration or criminal history indicated on the
- 5 request form, if any;
- 6 (6) Whether the request was accompanied by any
- 7 documentation regarding immigration status or
- 8 proceedings such as a judicial warrant;
- 9 (7) Whether a copy of the request was provided to the
- 10 individual and, if so, the date and time of
- 11 notification;
- 12 (8) Whether the individual consented to the request;
- 13 (9) Whether the individual requested to meet with ICE or
- 14 CBP;
- 15 (10) Whether the individual requested to confer with
- 16 counsel regarding the request;
- 17 (11) The Hawaii law enforcement agency's response to the
- 18 request, including any decision not to fulfill the
- 19 request;



1 (12) If applicable, the date and time that ICE or CBP took
2 custody of, or was otherwise given access to, the
3 individual; and

4 (13) The date and time of the individual's release from the
5 Hawaii law enforcement agency's custody.

6 (b) All Hawaii law enforcement agencies shall provide
7 semi-annual reports to the state attorney general regarding the
8 information collected in subsection (a) in an aggregated form
9 that is stripped of all personal identifiers in order that the
10 Hawaii law enforcement agency and the community may monitor the
11 Hawaii law enforcement agency's compliance with all applicable
12 law. The attorney general shall make the reports public and
13 post the reports on its website."

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

17 SECTION 4. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 5. This Act shall take effect on January 1, 2050.

4



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 federal, state, or local law.
Takes effect 1/1/2050. (SD1)

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not legislation or evidence of legislative intent.*

