

March 10, 2017

Via First-Class and Electronic Mail

The Honorable Members of the Judiciary Committee
Pennsylvania House of Representatives

Re: Senate Bill 10

Dear Representatives of the House Judiciary Committee:

Senate Bill 10 proposes a legislative scheme that targets so-called “sanctuary cities.” SB10 interferes with municipalities, counties, and local law enforcement without providing guidance or defining key terms. It puts municipalities in an untenable, no-win situation that will hurt us all. SB10 would harm municipalities and all of their residents, regardless of citizenship or documented status. As is always the case, it is incumbent upon you, as legislators, to consider the proposed legislation in the context of current, controlling law.

SB10 would force municipalities to violate the Fourth Amendment or risk losing state funding. The United States Court of Appeals for the Third Circuit made clear in *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2013),¹ that compliance with ICE detainer requests is voluntary. Accordingly, municipalities can be held liable for causing an unlawful detention, even if the detention is made pursuant to an ICE detainer request from authorized federal officials, when the detainee is otherwise entitled to release under state law. This could result because federal law does not currently require ICE detainer requests be supported by a judicial warrant that comports with the requirements of the United States Constitution. Many municipalities, therefore, have instituted the policy that they will comply with ICE detainer requests only when such requests are supported by a warrant that comports with the Fourth Amendment. Instituting a policy of detaining individuals pursuant to an ICE detainer request when it is accompanied with a judicial

¹ Ernesto Galarza is a U.S. citizen who was arrested for a drug offense, posted bail, and instead of being released, was held in custody by Lehigh County under an ICE detainer request. The detainer was accompanied by neither a warrant nor an affidavit of probable cause. Three days after Galarza posted bail, immigration officials learned that he was a U.S. citizen and he was released on bail. A jury later acquitted him of the drug charge.

The Honorable Members of the Judiciary Committee
Pennsylvania House of Representatives
Page 2

warrant is sound procedure that respects the Constitution and avoids exposure to monetary liability and ICE gets it wrong, as it did with Ernesto Galarza when he was unlawfully detained.

Consider the proposed legislation in the context of this legal landscape. SB10 creates a lose-lose proposition for municipalities and counties by exposing them to liability for failing to comply with a detainer request from ICE even if the request is not supported by a warrant. SB10, thereby, forces municipalities into a position where they are exposed to liability no matter what action they take.

Our organizations join in urging you to vote no on SB10.

Respectfully,

Kay Kyungsun Yu
United Voices for Philadelphia

K. Naroen Chhin, Co-Director
1Love Movement

Reggie Shuford, Executive Director
ACLU-PA

Morgan Keller, Marlee Stefanelli & Laura Keller
Action Together Northeastern PA

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The Honorable Members of the Judiciary Committee
Pennsylvania House of Representatives
Page 3

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The Honorable Members of the Judiciary Committee
Pennsylvania House of Representatives
Page 4

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Unitarian Universalist PA Legislative Advocacy Network (UUPLAN)

Peter Gonzales, President & CEO
The Welcoming Center for New Pennsylvanians

c: Governor Tom Wolf