

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Testimony in Support of H.B. No. 7039

March 30, 215

Senator Coleman, Representative Tong, and members of the Judiciary Committee,

The Worker and Immigrants Rights Advocacy Clinic at Yale Law School represents the Connecticut Immigrant Rights Alliance (CIRA), a statewide coalition of immigrant, faith, labor, youth, community, and business organizations dedicated to improving the lives of Connecticut's diverse immigrant community. We are here today to emphasize how critical it is to amend the 2013 TRUST Act to end the enforcement of civil immigration detainers, and restore trust and cooperation between Connecticut law enforcement and immigrant communities across the state.

Immigration and Customs Enforcement (ICE) uses civil immigration detainers to request that local and state law enforcement hold individuals for the agency while it investigates their immigration status and decides whether or not to assume custody of them. This practice has effectively conscripted states like Connecticut into carrying out federal immigration policy, subjecting local law enforcement to liability, and wasting public resources on unlawful detentions and racial profiling. Additionally, the enforcement of these detainers is unlawful. In *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014), the Third Circuit concluded that requiring local law enforcement to hold individuals solely on the basis of ICE detainers was a violation of the Tenth Amendment's anti-commandeering principle. Even ICE has conceded to Congress that detainers are not legally binding on state and local officials. Additionally, a U.S. District Court in Oregon held in *Miranda-Olivares v. Clackamas Cnty.*, 2014 WL 1414305, No. 3:12-CV-02317-ST (D. Or. Apr. 11, 2014) that confining someone pursuant to a civil immigrant detainer constitutes a warrantless arrest in violation of the Fourth Amendment. Here in Connecticut, when two residents recently sued ICE for damages based on their brief detention pursuant to ICE detainers, ICE agreed to terminate deportation proceedings against both men in exchange for a release of claims. See *Villanueva-Ojanama v. United States*, No. 3:13-cv-1617-JCH (D. Conn.).

In 2013, CIRA worked with the Judiciary Committee to pass the TRUST Act, making this state the first in the nation to limit the enforcement of ICE detainers. The 2013 TRUST Act was an important first step towards eliminating the harmful effects that ICE detainers have on Connecticut communities, but subsequent developments have made it clear that we need to strengthen the TRUST Act in several key ways.

The pathbreaking 2013 TRUST Act generally prohibited the enforcement of ICE detainers, but it contained a number of exceptions, so that, for example, state and local officials could enforce an ICE detainer against a person subject to a prior deportation order. In December 2014, Governor Malloy and Commissioner of Corrections Scott Semple voluntarily directed the Department of Corrections to cease exercising its discretion under some of the 2013 TRUST Act exceptions that had resulted in many of the remaining instances of detainer enforcement, such as against those with a final order of removal. The revised DOC Administrative Directive 9.3, however, could be

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withdrawn at any time by this or future administrations. Moreover, the DOC directive does not apply to other state and local law enforcement agencies, including local police and judicial marshals.

Additionally, a 2013 state-wide settlement with the Connecticut Department of Corrections in a challenge to its enforcement of ICE detainees, *Brizuela v. Feliciano*, No. 3:12-cv-226-JBA (D.Conn.), created administrative safeguards to protect those affected, including 1) notice to those targeted; 2) the release of monthly data by the Department of Corrections; and, 3) an option for dispute resolution with review by the U.S. District Court. However, these safeguards will expire when the settlement concludes in 2017.

Lastly, in the 2014 settlement of *Chacon v. E. Haven Police Dep't*, No. 3:10CV1692 JBA (D. Conn. Sept. 2, 2011), a lawsuit challenge anti-Latino profiling and violence by the East Haven Police Department, the Town of East Haven agreed not to enforce any ICE detainees at all. The U.S. Department of Justice approved this new policy, in connection with its role in monitoring its own settlement of litigation with East Haven. The *Chacon* settlement has made East Haven the most forward-looking municipality in the state with regard to ICE detainees—indeed, one of the most forward-looking in the nation. We urge you to follow East Haven's lead by passing this bill and standardizing the non-enforcement of ICE detainees not only by all Connecticut law enforcement officers like judicial marshals, but also by probation officers.

The current version of HB 7039 takes important steps to bring Connecticut in line with these legal and policy developments. It is enormously positive that the bill explicitly holds that no law enforcement officer will enforce an ICE detainer for any individual. This move would represent a crucial step toward increasing trust and cooperation between our local law enforcement and the residents they police, and closing the loopholes in the system left by the 2013 TRUST Act.

Respectfully, we have identified two areas of concern with the proposed language. First, Section 1 of HB 7039 would amend subsection (c) of Conn. Gen. Stat. 54-192h to prohibit communication to ICE regarding the custody status or release of an individual, but only if that individual is “subject to a civil immigration detainer.” Insertion of the phrase “subject to a civil immigration detainer” is a problem because it invites ICE to circumvent this subsection merely by changing the names of its forms or its mode of communication with state law enforcement officials. The legislature should not invite such mischief. We understand the intent of this provision to be to limit communication with ICE regarding release of certain persons. This valid purpose is better realized by the deletion of the phrase “subject to a civil immigration detainer” to close the loophole in the current amendments and clearly communicate the legislature's intent.

More generally, HB 7039 fails fully to achieve its goal of rebuilding relationships between Connecticut law enforcement and immigrant communities because it limits the scope of its new confidentiality provision—Section 1 creates a new subsection (d) of Conn. Gen. Stat. 54-192(h)—to individuals subject to ICE detainees. By restricting its reach to only those “who [are] subject to a civil immigration detainer,” the law does not

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protect the confidentiality of immigration status or other private information for *anyone else* who interacts with law enforcement. CIRA and immigrant groups across the state can testify in detail about the extent to which community members feel isolated and unable to contact local police out of fear of being targeted for their race or ethnicity, potentially triggering adverse immigration investigations against themselves and loved ones. The loss of trust by immigrants not only discourages them from seeking police protection, but also undermines public safety since key community members have been unable to report landlord abuse, workplace abuse, and other crimes in our state.

There is a simple and straightforward fix. We urge the Judiciary Committee to remove the portion of newly introduced subsection (d) limiting its application only to individuals subject to ICE detainers, and to instead broaden it to a general confidentiality policy. This confidentiality policy, with immigration status as one subset of protected private information, would comply with federal law and ensure that Connecticut's immigrant communities have equal access to and protection by local law enforcement.

Since Connecticut first adopted the TRUST Act in 2013, nearly 300 jurisdictions throughout the country have adopted similar policies. Gov. Malloy and Comm. Semple have voluntarily limited enforcement of detainers even further, and localities like East Haven have adopted simple, across-the-board bans, which have the added virtue of ease of administration, as law enforcement officials need not sort through ICE records and state statutory exemptions to determine whether to enforce a particular ICE detainer. There is no more urgent time for Connecticut to update the TRUST Act of 2013 with HB 7039. By ending all enforcement of ICE detainers and keeping critical private information confidential from ICE, this bill would make Connecticut a leader in the protection of immigrant rights and send a clear message that our state prioritizes public safety, community support, and trust.

Respectfully,

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