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April 9, 2019

Chairman Beau LaFave  
Members of the Committee  
House Committee on Military, Veterans and Homeland Security  
124 North Capitol Avenue  
Lansing, MI 48933

**Re: House Bills 4083 and 4090, sanctuary policy prohibition acts (2019)**

Dear Members of the Committee on Military, Veterans and Homeland Security,

The Michigan Immigrant Rights Center (MIRC) is a statewide, legal resource center for Michigan's immigrants. MIRC strongly opposes House Bills 4083 and 4090. Not only would they create powerful incentives for racial profiling in our communities, but these bills would siphon valuable local resources for federal immigration enforcement, and limit the ability of democratically elected local leaders to set priorities.

These bills would place tremendous financial and administrative burdens on local government to assume federal immigration law enforcement duties. Currently, localities retain the discretion to choose when and how to contact federal immigration authorities, and when and how to cooperate with their requests. These bills would take away that discretion in Michigan and effectively make cooperation and information-sharing mandatory in all circumstances.

**Cooperation and communication with ICE is discretionary under federal law**

The law is extremely clear that cooperation with ICE detainers is "discretionary rather than mandatory."<sup>1</sup> Just last year, in *Lopez Lopez v. County of Allegan*, Judge Maloney of the Western District of Michigan, emphasized that cooperation with federal immigration enforcement is *optional*.<sup>2</sup> Judge Maloney explains that Congress has vested authority in the Department of Homeland Security, through Immigration and Customs Enforcement (ICE), to carry out federal immigration law. He further explains that local authorities may only cooperate in response to a request, or with approval or instruction from the federal government. He makes clear "[w]hen ICE agents issue valid detainers and administrative warrants to local law enforcement, they are *requesting* that the local law enforcement 'provide operational support by executing a warrant.' § 1357(g)(10). Under ICE's current policy, the detainer satisfies the request element because *cooperation by local law enforcement is optional*." (emphasis added).<sup>3</sup>

<sup>1</sup> *Lopez Lopez v. County of Allegan*, 321 F.Supp.3d 794 (W.D. Mich. 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## **Exposure to litigation for local government and public officials**

The broad and vague nature of these bills would greatly expand counties' and local governments' exposure to litigation, both from supporters and from individuals who may be harmed by the bill. As introduced, the bills would ban counties (HB 4090) and local units of government (HB 4083) from enacting or enforcing any law or policy that limits or prohibits "communicating or cooperating" with federal officials concerning the immigration status of an individual in the state of Michigan. "Communication and cooperation" is a concept that is not defined in this bill or in federal law. By design, the bills would subject cities and counties to costly and complex litigation<sup>4</sup> from anti-immigrant individuals and groups who do not perceive that their local units of government are engaging in sufficient "communicating and cooperating" with ICE. The bills provide for enforcement through litigation brought, not only by the Attorney General, but by individual residents of a county or local unit of government.

From the other side, if officials do not properly interpret the immigration law, or use racial profiling methods to target suspected immigration violators, they expose themselves to another form of legal liability. Immigration enforcement by local jurisdictions increases the risk of racial profiling in our communities.<sup>5</sup> Michigan is a state with diverse communities. Local officials who are tasked with the extra burden of enforcing immigration laws are more likely to target community members for enforcement based on race, either due to officers' intentional acts based on profiling<sup>6</sup> or unconscious bias.<sup>7</sup>

## **Local police chiefs and sheriffs are locally accountable and should maintain their discretion**

There are numerous, well-documented reasons local governments can and should elect not to volunteer their county resources to federal immigration enforcement efforts. Local police chiefs and sheriffs should maintain control over how to best prioritize their resources and create clear directives for their officers and staff.

The broad mandate in these bills, along with increased legal liability, would impede local governments from meeting their primary goals: ensuring public safety in their communities, and delivering essential services and resources. The kind of ICE collaboration the bills require would put incredible strain on already sparse local budgets and resources. We pay local taxes to fund local operations, and federal taxes to fund federal operations. ICE is a multi-billion dollar-a-year federal immigration enforcement agency that does not need to take away from city and county

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<sup>4</sup> The bill provides for mandatory remedies if a violation is found, including: 1) an injunction restraining the county or local unit of government from enforcing the law, ordinance, policy, or rule; 2) mandatory repeal of the law, ordinance, policy, or rule, and an award of actual damages and costs; and 3) reasonable attorney fees to the party challenging the law, ordinance, policy, or rule. HB 4083 further provides for an additional mandatory civil penalty to be imposed against an elected or appointed official who knowingly or willfully violates the law.

<sup>5</sup> The Negative Consequences of Entangling Local Policing and Immigration Enforcement, Center for American Progress, <https://www.americanprogress.org/issues/immigration/reports/2017/03/21/428776/negative-consequences-entangling-local-policing-immigration-enforcement/>

<sup>6</sup> See, e.g. Police in Grand Rapids called a Latino Marines veteran 'loco' and alerted ICE, Detroit Free Press, <https://www.freep.com/story/news/local/michigan/2019/02/27/grand-rapids-police-marines-veteran-loco/2991359002/>

<sup>7</sup> Civil Rights Concerns Continue Over 287(g) Immigration Enforcement Program, American Immigration Council, <http://immigrationimpact.com/2017/08/22/civil-rights-concerns-enforcement-program/>

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immigration fail to rise to the level of “communication and cooperation” that resident believes is required by this bill.

These bills are not, as the names suggest, about prohibiting counties and local governments from “harboring” certain immigrants and “shielding” them from immigration enforcement. Harboring is already illegal and regularly prosecuted and local responsibilities are already addressed under federal law (8 U.S.C. § 1324; 8 U.S.C. § 1373 (a)). ICE remains completely free to operate in communities that have adopted policies limiting cooperation. These bills go much further. They seek to take autonomy from local elected officials and co-opt the valuable resources of our local governments for an ever expanding “deportation force.”<sup>13</sup>

### **Understanding the intention of these bills**

Chairman LaFave has recently stated in various media forms that these bills are only about protecting police from discipline if they call Immigration and Customs Enforcement.<sup>14</sup> Either these statements are woefully disingenuous or these bills are these bills are incredibly poorly drafted.

By looking at the relevant, operative language from HB 4083 (the one that pertains to local units of government), we can clearly see the breathtaking scope of these bills.

Sec. 5. A local unit of government shall not enact or enforce any law, ordinance, policy, or rule that limits or prohibits a peace officer or local official, officer, or employee from communicating or cooperating with appropriate federal officials concerning the immigration status of an individual in this state. Any law, ordinance, policy, or rule that violates this act is void 15 and unenforceable.

By its plain terms the bill expressly prohibits local units of government from passing any law or ordinances or even a policy, or just a rule, that “limits” (in any way) any “employee” (not just police, any employee of a local unit of government) from communicating with ICE. There are legitimate reasons why local governments would want to prohibit information sharing with Immigration and Customs Enforcement—which has no business acquiring access to personal information about residents going about their daily business—such as acquiring public documents, or accessing city services like water and waste disposal. This bill is not narrow. It’s breadth is startling and the fact that it gives an enforcement role to every day citizens who are not beholden to ethical obligations of legal interpretation, will bankrupt our local units of government.

Further, the bill does not, and should not, create ultimate immunity for officers who communicate with ICE for illegitimate reasons, such as profiling based on race or national origin. Again, we have learned this lesson by the actions of police officers in Grand Rapids and it resulted in the illegal detention of a decorated military veteran. It’s pretty terrifying to think that

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<sup>13</sup> Trump’s ‘deportation force’ begins to take shape, ABC News, <https://abcnews.go.com/Politics/president-trumps-deportation-force-begins-shape/story?id=46789016>

<sup>14</sup> Bills would keep local governments out of ICE Cooperation, WoodTV, <https://www.woodtv.com/news/grand-rapids/bills-would-keep-local-gov-ts-out-of-ice-cooperation/1898432437>

will be the way he tries to spin it. And that spin also doesn't make sense because it would still be illegal under the Elliot Larsen Civil Rights Act for the police to call ICE only on individuals with a certain skin, color, accent or last name. Also, again, terrifying because this thing can be enforced by arming every day residents with the right to file complaints directly in circuit court. We will literally bankrupt our local jurisdictions with these lawsuits from anyone who feels that immigrants are being protected, and again, because you can't tell someone's immigration status by looking at them, it will disproportionately impact communities of color. The bill doesn't mention anything, anywhere about threatening to fire or discipline police officers.

On behalf of MIRC, thank you for your consideration and attention to these concerns.

Sincerely,

Hillary Scholten  
Attorney  
Michigan Immigrant Rights Center