



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2290, RELATING TO LAW ENFORCEMENT.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Thursday, February 1, 2018 **TIME:** 1:35 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Nishihara and Members of the Committee:

The Department of the Attorney General ("the Department") submits comments.

The purpose of this bill is to prohibit, except in certain circumstances, state and county law enforcement agencies from assisting or cooperating with federal government efforts to enforce immigration laws.

On page 14, lines 1-6, the bill provides that law enforcement agencies shall not comply with a request from the Immigration and Customs Enforcement agency (ICE) or the Customs and Border Protection agency (CBP) for "non-public" information about an individual. The term "non-public" is not clear and should be defined.

On page 15, lines 15-19, the bill allows a law enforcement agency to disclose information about an individual's arrests or convictions, if otherwise permitted by state law or required pursuant to subpoena or court order. This exception should not be limited to arrest and conviction information, but should apply to any information required to be disclosed.

On page 16, proposed section -6 prohibits law enforcement agencies from providing ICE with access to an individual to interview the individual for purposes of enforcement of immigration law. On page 16, proposed section -7(b) requires law enforcement agencies to provide a copy of an ICE detainer, transfer, notification, interview, or interrogation request to the detained individual named in the request.



There are no exceptions provided for either section, but the exceptions previously provided in proposed section -5(b), on pages 14-15, may be reasonable and appropriate.

The Department appreciates the opportunity to provide comments on this measure.



Committee: Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date/Time: Thursday, February 1, 2018, at 1:35 p.m.
Place: Conference Room 229
Re: Testimony of the ACLU of Hawai'i with comments on S.B. 2290.
Relating to Law Enforcement's Involvement in Federal Immigration Enforcement

Dear Chair Nishihara, Vice Chair Wakai, and Committee Members:

The American Civil Liberties Union of Hawai'i (the "**ACLU**") writes **with comments** on S.B. 2290, which sets rules for the involvement of Hawai'i law enforcement agencies in federal immigration enforcement.

The ACLU strongly supports the provisions of S.B. 2290 seeking to separate federal immigration enforcement from local law enforcement. Local law enforcement has traditional priorities that include responding to emergencies, patrolling neighborhoods to prevent crime, facilitating certain functions of the court system, and numerous other duties. To effectively protect public safety, local law enforcement needs cooperation from local communities. The foundation for this cooperation can often be destroyed when local police are viewed as an extension of the immigration system. Survivors of domestic violence refrain from reporting offenses; individuals with key information about burglaries fail to contact the police; hate crimes will go unreported and unpunished. These outcomes are not limited to the undocumented population. Many undocumented immigrants have U.S. citizen spouses and children. There are also immigrants with legal status—like many of the migrants living in Hawai'i under COFA¹—who will not seek help from local authorities fearing that they too will become targets of a criminal investigation and later deported.

While the ACLU supports many of the protections in S.B. 2290, it has serious concerns about some of the exceptions to the prohibition against honoring immigration detainers and honoring requests for non-public information.² An "ICE detainer" is a written request that local law enforcement detain an individual for an additional 48 hours after he or she would otherwise be released, and have been used to provide Immigration and Customs Enforcement ("**ICE**") additional time to examine an individual's immigration status, decide whether to take the individual into custody, and facilitate transfer into federal custody. These detainers are typically issued without a judicial warrant supported by probable cause. In consequence, once the traditional basis for criminal detention has lapsed, continued detention violates the Fourth Amendment's bar on unlawful detentions.

Most often, detainers are merely the beginning of an investigation into someone's status, and that investigation often goes nowhere. The detainers are also not an indication that the person being detained has committed any crime. In a four-year period, the Obama Administration placed detainer requests on 834 U.S. citizens—who are categorically *not* subject to removal. Similarly, in Hawai'i, of 1,144 documented detainers issued between 2004-2016, less than half (543) resulted in ICE taking custody of the person after the detainer was issued—meaning over 50 percent of people

¹ "COFA" refers to the Compact of Free Association between the United States and the Federated States of Micronesia, the Marshall Islands, and Palau.

² In this respect, unlike the U.S. Constitution, the Hawai'i Constitution includes an explicit right to privacy. Haw. Const., Art. I, Section 6.


American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

detained were held for no apparent reason.³ Given the Trump Administration's pledge to radically expand immigration enforcement, it is inevitable that these types of mistakes will increase. In this respect, it is important to note that ICE detainer requests are voluntary, not mandatory. In fact, many localities refuse to honor them unless supported by a judicial warrant and in Hawai'i, that should also be the law.

The ACLU of Hawai'i has serious concerns that the non-warrant exceptions to the prohibition against honoring immigration detainers are contrary to the 4th Amendment and therefore, unconstitutional.⁴ The continued detention on an ICE detainer constitutes a new seizure for 4th Amendment purposes, requiring a valid basis for such seizure separate from that allowing the original arrest. The exceptions to the warrant requirement in S.B. 2290 do not constitute valid reasons for not obtaining a judicial warrant under the 4th Amendment. Thus, we suggest that your Committee amend Sections 4 and 5 to strike out exceptions (b)(2) through (b)(7) to ensure ICE detainers in Hawai'i are always accompanied with a constitutionally required judicial warrant.

Thank you for the opportunity to testify.

Sincerely,


Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

LATE

³ TRAC, Tracking Immigration and Customs Enforcement Detainers, available at <http://trac.syr.edu/phptools/immigration/detain/>.

⁴ See ACLU, Recent ICE Detainer Cases, available at <https://www.aclu.org/other/recent-ice-detainer-cases?redirect=recent-ice-detainer-cases>.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

LATE



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR SENATE BILL 2290, RELATING TO LAW ENFORCEMENT

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Hon. Clarence K. Nishihara, Chair

Hon. Glenn Wakai, Vice Chair

Thursday, February 1, 2018, 1:35 PM

State Capitol, Conference Room 229

Honorable Chair Nishihara and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong support of Senate Bill 2290, relating to law enforcement.

Immigrants and refugees of all nations have contributed to the health, well-being, and general welfare of Hawai'i as families and neighbors. Similarly, immigrants and refugees of many nations have contributed to the prosperity of Hawai'i as workers and taxpayers. Many of Hawai'i's residents are the descendants of Chinese, Filipino, and Japanese immigrants who came to the islands during the nineteenth and early twentieth centuries to work on plantations. Discrimination based on national origin, race, ethnicity, or religion or perceived national origin, on the other hand, is a chronic aspect of life for immigrant and refugee populations of the United States and a problem faced by immigrants in the islands, as well.

Unfortunately, but unsurprisingly, the number of violent acts against committed against immigrant communities and religious minorities has been rising in recent years, especially in the wake of the 2016 presidential election. Chronic discrimination undergirding and propounded by acts of violence leads to community disengagement, diminished opportunities for integration, increased stigmatization, and greater incidents of health morbidity. Put simply, discrimination and violence is a violation of human rights, civil liberties, and the principles of economic growth. Promoting health, well-being, and general welfare are core obligations of state government. Moreover, individual and societal prosperity require harnessing all of Hawai'i's available labor, skills, and ideas to grow the state's economy and expand opportunities. Every Hawai'i resident should be treated with compassion and respect regardless of national origin or citizenship status, and given opportunities to succeed.

LATE

Legally speaking, the 14th Amendment of the Constitution of the United States guarantees all persons due process, equal protection of the laws. In the case of *Plyler v. Doe* (1982) and reaffirmed in *Zadvydas v. Davis* (2001), the Supreme Court of the United States held that that the Due Process and Equal Protection clauses of the 14th Amendment apply to all persons in the United States whose presence maybe or is unlawful, involuntary or transitory. Section 5 of Article I of the Hawaii State Constitution also guarantees every person due process and equal protection of the laws, and prohibits denying the enjoyment of a person's civil rights based on race, religion, sex or ancestry.

Contravening the established legal protections afforded to immigrant populations, President Donald Trump has issued repeated executive orders relating to the deportation of immigrants that expand the definition criminal alien to include individuals who enter the country without authorization or commit acts that constitute any chargeable criminal offense, even if they have not yet been convicted of a crime. On March 6, 2017, the administration of President Donald Trump ordered a ban on immigration from six Muslim majority nations, furthering the current presidential administration's anti-immigrant agenda. That ban has since been legally challenged, to which Trump has responded by revising and expanding its nefarious tenets. The Trump administration's immigration policies have, accordingly, been condemned as harmful by numerous human rights and advocacy organizations, including Human Rights Watch, The Leadership Conference on Civil and Human Rights, the American Civil Liberties Union, and the National Immigration Law Center.

Our aloba spirit demands not only respect for diversity, but defense of people who are under siege for their heritage. Thus, we strongly endorse recognition that immigration is a federal function and this measure's request that local law enforcement agencies decline to work with federal immigration agencies, as well as a restriction of state or county funds by from law enforcement activities that collaborate with ICE or any other federal law enforcement agency in connection with the deportation of undocumented immigrants, including many of the human trafficking victims with whom we work each day and who have been brought to the United States against their will or under false pretenses. We must ensure a safe, secure, and welcoming community for everyone, including immigrants of every status, to promote respectful relations and collaboration between community members and agencies providing public safety services.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

SB-2290

Submitted on: 1/31/2018 9:09:21 PM

Testimony for PSM on 2/1/2018 1:35:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Erendira Aldana		Support	No

Comments:

This bill is necessary to help protect what the constitution makes clear: federal government may not coerce States or their subdivisions to conduct immigration functions. Immigration is a federal function.

Allowing them to cooperate means that trust between the police and undocumented immigrants has been severed. Undocumented immigrants are now reluctant to report crimes or suspected crimes to the police, and they are reluctant to come forth as witnesses to crimes. As a result, our communities less safe for everyone.

Hawai'i has a rich immigrant heritage. Waves of immigrants have come to Hawaii's shores for more than 100 years. Immigrants were determined to work hard to make better lives for themselves and their children, and many succeeded. Our unique culture in Hawai'i is due in large measure to the contributions of immigrants. We must protect that.

I SUPPORT SB2290

-Eréndira Aldana

LATE

SB-2290

Submitted on: 2/1/2018 10:50:03 AM

Testimony for PSM on 2/1/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Gellatly		Support	No

Comments:

Mahalo, committee members, for addressing this critical, sensitive issue. In Hawaii, tens of thousands of families are affected, and SB2290, the Ho'okipa bill, offers them hope.

There are two ways to approach the matter of undocumented immigransts: kind and practical, or not. President Trump has chosen the latter because it is his nature to do so. We have a chance to do better, simply by following the law ourselves.

The Ho'okipa bill requires that local law enforcement remain local, letting federal agents do their job as our police officers do theirs. Forcing local personnel to work with ICE — as Trump would have it— is illegal, as is honoring ICE detainers unsupported by judicial warrants. In these respects, the Ho'okipa bill asks only that we follow the law. To proceed otherwise is unnecessary.

We all have heard of families torn apart by Trump's initiatives. He does not care about their pain. Some of us do. The Ho'okipa bill allows us to honor our consciences. To be practical, as well: Millions of people are living in America without proper paperwork. They have American families, children, homes and jobs. They are more law-abiding than native-born Americans. What is the practical purpose of rounding them up, shipping them off to places they typically left for good reason, and destroying many more millions of lives thereby? Who gains? Who is willing to throw the stone? Not me.

SB-2290

Submitted on: 2/1/2018 11:59:46 AM

Testimony for PSM on 2/1/2018 1:35:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
David Gustafson		Support	No

Comments:

Submitted by: Faye Kennedy, chair

Hawaii Friends of Civil Rights (HFCR)

HFCR supports this bill because it is consistent with the goals for diversity and inclusion of all persons in our state and law enforcement requirements using local resources to enforce federal immigration. I also support HFCR's position on this bill.

LATE

SB-2290

Submitted on: 1/31/2018 2:14:20 PM

Testimony for PSM on 2/1/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keola		Oppose	No

Comments:

LATE

SB-2290

Submitted on: 1/31/2018 9:13:22 PM

Testimony for PSM on 2/1/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kristina Kleyer		Oppose	No

Comments:

SB-2290

Submitted on: 2/1/2018 11:02:00 AM

Testimony for PSM on 2/1/2018 1:35:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Elsie Ryder		Oppose	No

Comments:

We need to remember that Hawaii's population is increasing, poverty and homelessness is an issue. We receive homeless people from the other 49 States yearly. This problem has not been solved and seeking to open our islands as a Pu`uhonua for people from places that need refuge may be a noble thing to do, but have you created a plan and solutions to help them? Or will they be displaced and end up adding more to what our State already has on our plate?

Please consider the moves you make for the best outcome for all the people of Hawaii. Opposed.

LATE

SB-2290

Submitted on: 2/1/2018 1:20:08 PM

Testimony for PSM on 2/1/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Oda		Oppose	No

Comments:

What part of illegal doesn't everyone understand? Legal immigration is welcome; illegal not so much

LATE

SB-2290

Submitted on: 2/1/2018 10:53:05 PM

Testimony for PSM on 2/1/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
nalia polvado		Oppose	No

Comments:

As a descendant of Hawaii and citizen of the US, I refuse to support the governments efforts in turning Hawaii into a state that hinders President Trumps efforts with regards to imposing tighter restrictions and vetting process of illegal immigrants. Furthermore, as a descendent Hawaii I am disgusted with the efforts brought forth by AG Douglas Chin as I feel his efforts to block the Presidents order does our citizens and generational Hawaiians more harm to our state especially considering our rise in housing cost and homeless situation.