

BACKGROUND ON THE SAFE COMMUNITIES ACT

An Act to Protect the Civil Rights and Safety of All Massachusetts Residents
S.1305 / H.3269

On January 23, 2017, the Trump administration introduced an aggressive immigration enforcement agenda that relies on the conscription of state and local law enforcement and facilities to identify and detain immigrants. This agenda is already having far-reaching consequences in our immigrant communities, and raises major public safety, public health, economic and civil rights concerns.

The Executive Orders on Immigration

The executive orders vastly expand collaboration with state and local law enforcement, including use of state and local jails to hold people in civil detention for U.S. Immigration and Customs Enforcement (ICE).¹ These orders:

- **Target all undocumented immigrants for deportation, including long-term, law-abiding members of our communities.** The new policies prioritize anyone suspected of “acts that constitute a chargeable criminal offense,” such as people suspected of crossing the border without entry documents (a misdemeanor). **These policies invite racial and ethnic profiling of legal residents and U.S. citizens.**
- **Reintroduce the discredited Secure Communities program,** which conscripts state and local police as “force multipliers” to hold people in police custody based solely on civil immigration violations. Under this program, a minor traffic infraction was often the first step to deportation. The program was so plagued by litigation over constitutional and civil rights violations that it was ended in 2014.²
- **Expand 287(g) collaboration agreements** with ICE and U.S. Customs and Border Protection (CBP) that delegate immigration enforcement powers to local police and county sheriffs, at local and county expense.³
- **Impose mandatory detention** or deportation for arriving asylum seekers⁴ and unaccompanied children. Mandatory detention for prolonged periods will require a **significant increase in detention facilities,**⁵ **including increased pressure on local jails.**

WHY SAFE COMMUNITIES?

The Safe Communities Act would ensure that Massachusetts tax dollars are devoted to protecting our communities, not enforcing federal immigration law, and prohibit participation in a Muslim registry. Over 400 localities, including California, Connecticut, Illinois and Rhode Island, and eight MA cities have similar policies.

Keep crime rates low and economies strong. Recent research shows that jurisdictions that limit collaboration with ICE have lower crime rates and stronger economies than jurisdictions that do not.⁶ When police become immigration agents, victims and witnesses stop reporting crimes and assisting police investigations, which jeopardizes the safety of surrounding communities. 70% of undocumented immigrants in one study reported they would not contact police if they were victims of crime.⁷ In Massachusetts, immigrant victims of domestic violence are twice as likely to be killed as native-born victims,⁸ in part because of fears that reporting abuse to police could lead to permanent separation from children or other family members through deportation.

Support community policing. Involving police in immigration enforcement disrupts community policing, which depends on cultivating trust between law enforcement and the communities they serve. **In February, 61 law enforcement heads from 25 states including Massachusetts told Congress that immigration enforcement is best left to the federal government.**⁹

Protect local governments from liability. A string of federal and state courts have ruled that detainer-based detention violates the Fourth Amendment. The First Circuit has found that police detentions based solely on civil detainers (an ICE request) amount to a second arrest without probable cause, and a single justice of the SJC found that police lack authority for such arrests. Litigation on the legality of these detentions is pending before the SJC.¹⁰

Protect public health. The Massachusetts Public Health Association believes the immigration orders pose a health threat to individuals, families and entire communities. The current climate of fear is already compromising the health of documented and undocumented immigrants alike, particularly children, and driving families away from prevention like vaccines and prenatal care, and from treatment for communicable diseases like TB.¹¹

Protect our local economies. About two thirds of undocumented adults have lived here 10 years or longer,¹² revitalizing downtowns as business owners, consumers, tenants, and homeowners. In some rural counties, they are

the sole source of population growth.¹³ **Deporting law-abiding state residents destabilizes families and communities.** A third of undocumented adults live with at least one U.S. citizen child. **Almost 500 U.S. citizen children in Boston annually lose a parent to deportation,** often leading to placement in foster care or with relatives.¹⁴

Protect county and municipal budgets. Mandatory detention would reverse recent progress in ending costly mass incarceration in state and local facilities. The Boston office of U.S. Customs and Border Protection has already asked local police departments to provide bed space for immigration detention.¹⁵

Protect civil and constitutional rights. The Executive Orders don't only threaten undocumented people, but also their children and other family members who are legal residents or U.S. citizens, as well as anyone perceived to be undocumented based on skin color or other factors.

Would NOT jeopardize federal funding. The Administration's threats to cut federal funding to cities and towns that limit collaboration with ICE (so-called "Sanctuary Cities") have no legal basis, according to 292 legal scholars.¹⁶ The federal government cannot compel state and local governments to enforce federal immigration law.¹⁷

STATEWIDE LEGISLATION IS THE ONLY EFFECTIVE SOLUTION

- **Only statewide legislation can limit the collaboration of our state police,** which has concurrent jurisdiction with local police in our towns and cities.
- **Only statewide legislation can limit the participation of local sheriffs in immigration enforcement.** Massachusetts already has 287(g) agreements with the sheriffs of Bristol and Plymouth counties, who receive significant funding from state coffers.
- **Only statewide legislation preserves local control over law enforcement.** A patchwork of local ordinances would leave the rest of Massachusetts police departments and county sheriffs open to getting their marching orders directly from the federal government, instead of our elected officials.

¹ Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017). See also Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

² Memorandum from Jeh Johnson, Secretary, U.S. Dept. of Homeland Security, to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, (Nov. 20, 2014) (announcing the replacement of Secure Communities with the Priority Enforcement Program) (hereafter, "Secretary Johnson Memo"), at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

³ See, e.g., Memorandum of Agreement between U.S. Immigration and Customs Enforcement and Bristol County Sheriff's Office (Jan. 18, 2017), at 5 (no federal payment for salaries, overtime, or benefits), at https://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/Bristol_MOA_01182017.pdf.

⁴ Detention and deportation of asylum seekers without due process violates U.S. obligations under the Refugee Convention and domestic law, and risks either summary return to countries where they would face persecution and torture or indefinite detention in ICE custody

⁵ See, e.g., Alan Neuhauser, Supreme Court to Consider Indefinite Detention for Immigrants, U.S. News and World Report (Nov. 29, 2017), at <https://www.usnews.com/news/national-news/articles/2016-11-29/supreme-court-to-consider-indefinite-detention-for-immigrants>.

⁶ Center for American Progress, The Effects of Sanctuary Policies on Crime and the Economy (Jan. 26, 2017), at <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

⁷ Nik Theodore, Dept. of Urban Planning and Policy, Univ. of Ill. At Chicago (May 2013), at http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁸ Massachusetts Dept. of Health, telephone interview (Oct. 20, 2016).

⁹ Law Enforcement Immigration Task Force, Letter to the U.S. Senate (Feb. 28, 2017) (signatories include **Middlesex County Sheriff Koutoujian, Boston Police Commissioner Evans, and Chelsea Police Chief Kyes**), at <https://www.theguardian.com/us-news/2017/mar/01/police-chiefs-letter-trump-deportation-immigrants>.

¹⁰ See, respectively, Secretary Johnson Memo, *supra* at n.2; *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); Judgment, *Moscoso v. Justice of the E. Boston Div. of the Boston Mun. Ct.*, No. SJ-2016-0168 (May 26, 2016); *Lunn v. Commonwealth*, **SJC-12276**.

¹¹ MPHA Statement, (Jan. 31, 2017), <https://mapublichealth.org/2017/01/31/mpha-statement-in-support-of-ag-healey-lawsuit-against-executive-order-on-immigration/>. 75% of attendees of a recent meeting convened by MIRA of residents and faculty of major Boston teaching hospitals said deportation fears were already impacting delivery of care. Community health centers serving immigrant communities report a sharp increase in missed medical appointments.

¹² Migration Policy Institute, Profile of the Unauthorized Population, at <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

¹³ Editorial, The Berkshire Eagle, "Our Opinion: Pittsfield, county need immigrant community" (Mar. 12, 2017), at <http://www.berkshireeagle.com/stories/our-opinion-pittsfield-countyneed-immigrantcommunity,501026>.

¹⁴ Boston's Immigrant Justice Initiative: An Overview (Jan. 2017) (on file with the MIRA Coalition).

¹⁵ The Boston office of U.S. Border and Custom Protection has already requested use of additional bed space for people in custody. Milton J. Valencia, Customs Officials in Boston Ask Police for Space for Detainees, Boston Globe (Mar. 1, 2017), at <https://www.bostonglobe.com/metro/2017/02/28/customs-officials-ask-local-police-for-space-house-detainees-awaiting-deportation/ten91QYEVWivHslKrJDK/story.html>.

¹⁶ Letter from 292 legal scholars to President Donald J. Trump (Mar. 13, 2017), https://www.ilrc.org/sites/default/files/resources/2017-03-13_law_professor_letter_re_eo_13768_sanctuary_jurisdictions_finalv2.pdf.

¹⁷ See, e.g. *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 188 (1992).

THE SAFE COMMUNITIES ACT

(An Act to Protect the Civil Rights and Safety of All Massachusetts Residents)

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