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## Anti-Immigrant SB 101 Encourages Unconstitutional Imprisonment and Harms Community Safety

On February 15, 2021, NC Senators filed anti-immigrant bill [SB 101, "Require Cooperation with ICE 2.0."](#) Like HB 370, which failed last session, this bill interferes with communities' and sheriffs' decisions about local resources and priorities, exposes sheriffs and counties to expensive lawsuits for constitutional violations, and erodes community trust in law enforcement. This bill could dramatically increase the number of people detained and deported from our state, and ignores the COVID-19 crisis in our jails by increasing our jail populations.

### SB 101 raises serious constitutional and policy concerns:

- **Current North Carolina law requires jails to investigate the immigration status of every person brought to jail who is charged with any felony or with impaired driving.** If the jail cannot determine the person's immigration status, then they are required to notify Immigration and Customs Enforcement (ICE). (N.C.G.S. 162-62.)
- **SB 101 requires compliance with voluntary ICE detainer requests, yet does nothing to cure the constitutional concerns with ICE detainers, and will likely expose sheriffs and counties to liability.** Under this bill, if ICE submits a detainer request, the jail *must* comply with it for any person charged with a broad list of crimes.<sup>1</sup> This means holding a person for 48 hours *after* they would otherwise be released under state law. Even if the court has permitted the person to be released until their trial, the jail would be required to hold them for two additional days to give ICE time to arrest them.

Local governments around the country have settled expensive lawsuits for detaining people under ICE detainers that lacked the probable cause required by the Fourth Amendment.<sup>2</sup> Moreover, ICE has a bad track record of issuing detainers for U.S. citizens.<sup>3</sup> Reports show

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<sup>1</sup> G.S. 90-95 (All drug offenses); Ch 14, Art 6 (homicide); Article 7B (rape); Article 8 (assault, including domestic violence); Article 10A (human trafficking); Article 13A (Gang activity).

<sup>2</sup> List of cases: [https://www.aclu.org/sites/default/files/field\\_document/recent\\_ice\\_detainer\\_damages\\_cases\\_2018.pdf](https://www.aclu.org/sites/default/files/field_document/recent_ice_detainer_damages_cases_2018.pdf).

<sup>3</sup> A Cato Institute study found that 3.3% of all detainer requests issued in Travis County, TX, had U.S. Citizenship claims and Social Security numbers. David Bier, "U.S. Citizens Targeted by ICE," Cato Institute, Aug. 29, 2018, <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>; see also Jerry Iannelli, "ICE Issued False Deportation Requests for 420 U.S. Citizens in Miami-Dade, ACLU Reports," Miami New Times, Mar. 20, 2019.

that ICE also has a pattern and practice of forging administrative warrants.<sup>4</sup> By denying sheriffs discretion in complying with ICE's demands, this bill compels sheriffs to do ICE's bidding even if it means violating the Constitution.

- **The bill threatens sheriffs and their staff who don't comply with ICE demands with criminal prosecution.** The bill creates a new Class 1 misdemeanor to punish any jail administrator who does not notify ICE and/or comply with an ICE detainer request. A conviction could lead to as much as 120 days in prison, depending on prior record.
- **Local jails will shoulder the expense of doing the federal government's work under this proposal.** This will overburden already busy jail staff with extra work and waste local county resources. ICE does not generally reimburse jails for holding people on detainers.
- **Provides no protections for witnesses and crime victims, including domestic violence survivors.** Requiring absolute compliance with ICE's demands will further erode community trust in law enforcement, especially for witnesses of crimes and victims of domestic violence. Research shows that when police and sheriffs coordinate with federal immigration agents, it discourages immigrants—along with their U.S.-citizen children, neighbors, co-workers, and friends—from reporting crimes and serving as witnesses. Law enforcement leaders all over the country have explained that attaching immigration consequences to police interactions makes ordinary police work more difficult.<sup>5</sup>
- **SB 101 would waste limited resources by requiring jail administrators to report compliance with this law to the Joint Legislative Oversight Committee on Justice and Public Safety.**

**SB 101 would encourage courts to use actual or perceived immigration status to justify unconstitutional imprisonment of people who are presumed innocent.**

- SB 101 would amend the factors that the court should consider when determining conditions of pretrial release to include "circumstances that may (i) increase the likelihood of the defendant failing to appear at a court proceeding and (ii) increase the difficulty in locating the defendant upon a failure to appear . . . ." These changes could be used to justify excessive unaffordable bail disproportionately for people perceived to be immigrants, encouraging court officials to racially profile defendants, and leading to unconstitutional detention of people who have yet to have their day in court. Notably, this provision would apply to any charge, and could result in significantly longer periods of pretrial detention than an ICE detainer. See N.C.G.S. 15A-534(c).

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<sup>4</sup> <https://www.cnn.com/2019/03/13/us/ice-supervisors-dont-always-review-deportation-warrants-invs/index.html>

<sup>5</sup> See Nat'l Imm. Law Ctr., *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement* (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement).