

SUMMARY OF MODEL IMMIGRATION PROTECTION ORDINANCE

The model ordinance consists of eleven key substantive sections, each of which can stand independently, an enforcement provision, a definitions section, and two procedural provisions.

1. LEAs should not stop or interrogate people based solely on their suspected immigration status, and should not inquire about the immigration status of crime victims or witnesses unless necessary to investigate criminal activity unrelated to enforcing immigration laws.
2. Absent a judicial warrant, LEAs should not honor U.S. Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) detainer requests except in limited, specified circumstances.
3. Absent a judicial warrant, LEAs should generally not honor ICE or CBP requests for certain non-public, sensitive information about an individual.
4. Absent a judicial warrant, LEAs should not provide ICE or CBP with access to individuals in their custody for questioning solely for civil immigration enforcement purposes.
5. LEAs should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.
6. Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, gender identity or expression, religion, ethnicity, or national origin.
7. Municipalities should limit collection of immigration-related information and ensure nondiscriminatory access to benefits and services.
8. LEAs should adopt limits in participating in the surveillance of political or religious groups in the absence of specific criminal investigatory criteria.
9. LEAs should have procedures in place to help undocumented crime victims apply for nonimmigrant visas specifically designated for such victims.
10. Municipal school districts should adopt formal policies on dealing with immigration agency requests for information about students’ immigration status and cooperating with such requests only to the extent required by federal law.
11. LEAs should collect and report data to the public regarding detainer and notification requests from ICE or CBP in order to monitor their compliance with applicable laws.
12. Legal remedies should be available for violations of the restrictions in the ordinance.
13. The ordinance should not be construed to restrict certain information-sharing activity as designated by federal law.
14. Definitions and a routine severability clause are included.



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Dear Members of the [City/Town] Council:

As you are undoubtedly aware, the issue of immigration has taken center stage in the first two months of the Trump Administration. Nationally, the ACLU has challenged – successfully so far – the President’s travel bans on refugees and Muslims and been deeply critical of other aspects of his immigration agenda, especially with regard to interior immigration enforcement, which is the subject of this letter.

Here in Rhode Island, our organization has seen an outpouring of concern from residents of the state, as well as some public officials, about the Trump Administration’s efforts to encourage, if not compel, local jurisdictions to directly support federal immigration enforcement. In response, with assistance from our National office, we have drafted a comprehensive ordinance that your municipality can adopt to protect your residents from some of those efforts. The ordinance is based largely on model guidance prepared by New York’s state Attorney General.¹

It is important to emphasize that local officials have no obligation under federal law to participate in the enforcement of federal immigration laws. Indeed, on at least one matter that the President has been promoting – local enforcement of Immigration and Customs Enforcement (ICE) detainers² – your municipality faces a clear prospect of legal liability in accepting his invitation.³

In order to preserve the Constitutional rights of all persons in the United States, our draft ordinance includes such provisions as requiring judicial warrants before honoring ICE detainers; assisting victims of crime who may be eligible for special immigration status; rejecting participation in a program, known as 287(g), that essentially deputizes local police to serve as immigration agents; and avoiding other forms of engagement in federal immigration enforcement that can adversely affect public safety and undermine good police-community relations. This model ordinance is fully consistent with federal law. It in no way bars your police officers from continuing to cooperate with ICE in enforcing immigration law *when backed by judicial authority or otherwise properly mandated by federal law*.

There are a number of reasons that an increasing number of states and localities across the nation have opted – even before President Trump announced his mass deportation plans – to leave the immigration enforcement business to the federal government and focus their resources on protecting the community from the negative impact that overzealous federal enforcement can have.

¹ Guidance Concerning Local Authority Participation In Immigration Enforcement And Model Sanctuary Provisions.
https://ag.ny.gov/sites/default/files/guidance_and_supplement_final3.12.17.pdf

² An “ICE detainer” is a written request that local law enforcement detain an individual for an additional 48 hours after he/she would otherwise be released, and have been used to provide ICE additional time to examine an individual’s immigration status, decide whether to take the individual into custody, and/or 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.

³ *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. 2014); 793 F.3d 208 (1st Cir. 2015); 2017 WL 354292 (D.R.I. 2017).

Perhaps most important of all, ordinances like this one promote public safety by maintaining and encouraging positive police-community relations. Residents serve as witnesses, report crime, and otherwise assist law enforcement. 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 other crimes fail to contact the police.⁴ These outcomes are not limited to the undocumented population, since many of them have U.S. citizen spouses and children who may also think twice about cooperating with police. And because citizens and immigrants with legal status often fall victim to mistakes by ICE, their views toward local officials can sour as well.

Local enforcement of immigration law can also lead to legal exposure, as it already has in our state. In Rhode Island, we successfully sued on behalf of a Providence resident who was the subject of an unlawful ICE detainer and, consequently, illegally held at the ACI by Department of Corrections' officials.⁵ She was harassed and subjected to a humiliating strip-search while being detained overnight. To add insult to injury, she was a United States citizen, a victim of the type of civil detainer errors that are not infrequent in light of the minimal standards used by ICE bureaucrats in requesting detainer "holds."⁶ Given the Trump Administration's pledge to expand ICE personnel for more immigration enforcement, these types of mistakes are sure to increase.

The Trump Administration has threatened to strip federal funds from jurisdictions that decline to direct their personnel and resources toward federal immigration priorities – a set of jurisdictions the Administration has lumped under the undefined characterization of "sanctuary jurisdictions." However, prior court decisions indicate that the Administration will encounter substantial constitutional hurdles if it attempts to follow through on that pledge. We are prepared to take action to back your immigrant-supportive policies and practices, as needed.

The draft ordinance and a one-page summary of its contents are enclosed. They can also be found on our website, www.riaclu.org. The ACLU also remains a resource for any additional information you may need on immigration-related matters. Please feel free to either call or send an email to immigrants@riaclu.org with any questions.

In closing, we hope you find this model ordinance useful and will take favorable action upon it. We also encourage your police department to adopt substantive policies in accordance with the provisions in the model ordinance. Thank you in advance for considering this, and we look forward to hearing from you.

Sincerely,

Steven Brown
Executive Director

cc: [Mayor/Town Manager]
[Police Chief]

⁴ There are already reports across the country about this apparent impact. See, e.g., "L.A. police see drop in Latino reports of crime amid deportation fears," Steve Gorman, Reuters, March 21, 2017. <http://www.reuters.com/article/us-california-immigration-idUSKBN16T07O>

⁵ See fn. 3.

⁶ In discovery conducted during the Morales case, the former field director of ICE's regional office acknowledged that an ICE agent does not have to make a determination that a person is in the country illegally before issuing a detainer.