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May 13, 2025

Chair Kapenga, Vice-Chair Jacque, and Honorable Members of the Senate Committee on Licensing, Regulatory Reform, State and Federal Affairs:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 24/Senate Bill 57.

There are roughly 159,000 immigrants living in Wisconsin who are not yet U.S. citizens—many have been living here for years or even decades.¹ Their immigration status runs from permanent resident, DACA recipient, refugee, to holders of work and student visas, humanitarian parolee, Temporary Protected Status (TPS), U-visa and T-visa applicants, as well as others who are undocumented. They work in a wide variety of jobs, including being the backbone of the state's dairy and farming industry. They live in communities throughout Wisconsin and are our neighbors, friends, and family members. And all of them run the risk of being deported through some contact with the criminal legal system.

In addition to exacerbating Wisconsin's jail-to-deportation pipeline,² AB-24 forces local law enforcement into harmful roles they were never meant to play – tools of mass deportation – under threat of losing shared revenue funding for essential county services. When considering the sweeping impacts of this bill, it's important to keep in mind the dehumanizing practices employed by U.S. Immigration and Customs Enforcement (ICE) that implicate the Fourth Amendment's protection against unreasonable searches and seizures, the constitutional guarantee of due process, and the constitutional guarantee of equal protection and freedom from discrimination based on race, ethnicity, and national origin.

"If you don't have enough evidence to charge someone criminally but you think he's illegal, we can make him disappear."

**-Jim Pendergraph, Former Executive Director,
ICE's Office of State and Local Coordination**

¹ "Immigration Data Profile for State of Wisconsin," Migration Policy Institute, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI/>; "Immigrants in Wisconsin," American Immigration Council, <https://map.americanimmigrationcouncil.org/locations/wisconsin/>.

² "Report: Wisconsin's Jail-to-Deportation Pipeline," ACLU of Wisconsin (August 25, 2022), <https://www.aclu-wi.org/en/publications/report-wisconsins-jail-deportation-pipeline>.

Specifically, Assembly Bill 24, as amended by Assembly Amendment 1 mandates that county sheriffs:

1. Request proof of the citizenship status of anyone in jail alleged to have committed any felony, and report anyone to ICE who fails to have ready access to an acceptable form of proof or anyone who invokes their Fifth Amendment right to remain silent; and
2. Without a warrant signed by a judge, hold any individual “confined in the jail for an offense punishable by a felony” for 48 hours after they should have otherwise been released if the individual “reasonably appears to be” someone ICE requests to pick up through a voluntary detainer request.

Mandatory Investigation of Citizenship Status

For individuals booked into jail on felony allegations under the proposal, sheriffs “shall request proof...of whether the individual is lawfully present in the United States,” only accepting specific items enumerated in the bill’s proposed § 59.28(3)(a)1. This scheme functionally compels all people in the state of Wisconsin, citizens and non-citizens alike, to carry identification documents on them at all times to prove their citizenship or immigration status. Notably, a 2024 survey found that nearly one in 10 American citizens do not have proof of citizenship – a passport, birth certificate, or naturalization papers – readily available.³

Even if someone who was arrested had ready access to one of the acceptable forms of proof of status, law enforcement officers are not trained to identify the validity of these items. The bill also lacks any standard outlining the level of effort or timeline required for a sheriff to verify the information provided. **Ultimately, for any person who fails to have access to the specific documents listed or any person who invokes their Fifth Amendment right to remain silent, sheriffs “shall immediately” report them to ICE.**

Mandatory Compliance with Detainer Requests Not Signed by a Judge

The bill language, as amended, states, “If the sheriff receives a detainer and administrative warrant from the federal department of homeland security that *reasonably appears to be* for an individual who is confined in the jail for an offense punishable by a felony, the sheriff shall comply with the requests of the detainer.” [emphasis added]

To be clear—this means sheriffs must honor any detainer request not signed by a judge for *anyone* booked into jail (or anyone who “reasonably appears to be” a person confined in the jail) for an alleged felony, before conviction of a crime, and in some cases before a crime is even charged. Federal immigration proceedings are civil—not criminal—matters. Rarely, if ever, are ICE detainer requests accompanied by a warrant signed by a neutral judicial official. Most

³ “Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available,” Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>.

often, detainers are simply signed by an ICE officer and lack the approval of a judicial authority reviewing the basis for a detention. ICE also admits that its detainers are only “requests” to local law enforcement, not mandatory.

For context, data from the Wisconsin DOJ Criminal History Repository indicates 55,030 felony arrests and 91,514 misdemeanor arrests were made by Wisconsin law enforcement agencies across the state in 2023.⁴

Civil Rights Concerns with Existing ICE/Sheriff Cooperation Programs

When local law enforcement plays the role of federal immigration agents, they have to make judgments about complex areas of federal law without the appropriate resources and training. Recent studies show the risk: **The more law enforcement officers are required to investigate and interpret complex federal immigration laws, the greater the risk of racial profiling.**

A 2022 ACLU report⁵ detailed the how existing voluntary ICE/sheriff cooperation programs—particularly the 287(g) program—have a long history as a vehicle for racism and targeting of immigrant communities, despite being advertised as public safety initiatives:

- At least 65% of 287(g)-participating agencies have records of a pattern of racial profiling and other civil rights violations, including excessive use of force;
- Numerous studies show that being in the business of immigration enforcement leads local law enforcement to target immigrants for minor violations and pretextual arrests, generating book-ins to local custody that can then lead to deportations;
- Local law enforcement use “foreign-sounding” last names, place of birth, or racial appearance as a reason for stops, investigation, and arrest;
- A 2021 Washington Post analysis found that 287(g)-participating sheriff’s departments “saw a major increase in low-level arrests per officer starting in 2016”;
- Studies of the 287(g) program have long shown that it undermines public safety by decreasing trust in local law enforcement and diverting resources away from investigation of serious crimes, and many law enforcement leaders have joined civil rights groups in calling for its termination.

⁴ “Arrests Submitted to the Criminal History Repository,” Wisconsin Department of Justice, <https://www.doj.state.wi.us/dles/bjia/arrests-submitted-criminal-history-repository>.

⁵ “License to Abuse: How ICE’s 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations,” ACLU, https://www.aclu.org/sites/default/files/field_document/2022-04-26-sheriffresearch.pdf.

Open records obtained by ACLU of Wisconsin have raised significant concerns about close relationships between Wisconsin law enforcement agencies and ICE. For example:

Walworth County Jail employees frequently and proactively reached out to ICE. In dozens of emails, most with the subject line ‘foreign born,’ these employees notified a deportation officer working within ICE’s Criminal Alien Program that an immigrant had come into contact with the criminal justice system. The Walworth jail staff contacted ICE regarding people with a range of immigration statuses, including naturalized *U.S. citizens*, persons protected under the Deferred Action for Childhood Arrivals or “DACA” program, Lawful Permanent Residents, and individuals who were undocumented. The county employees proactively supplied ICE information regarding these individuals, facilitated the issuance of detainers for immigrants incarcerated in other counties, coordinated the pick-up of immigrants by ICE at jails and prisons, and helped ICE fill out its databases with people who legally could not be deported, including citizens.⁶

In addition to the specific mandatory provisions of the bill, AB-24 will exacerbate the routine practice of information sharing between local law enforcement and ICE that increases surveillance of immigrant communities and invites reliance on stereotypes, race, ethnicity, and language in law enforcement interactions with community members. Despite AB-24 including a provision to limit a law enforcement agency’s criminal or civil liability, this bill does not address the potential liability sheriffs will face due to constitutional violations occurring under this statutory scheme.

By removing local sheriffs’ discretion, AB-24 undermines community safety by diminishing trust in law enforcement by immigrants and others who may be presumed to be “foreign.” Everyone’s safety, including citizens’, is put in jeopardy when victims and witnesses don’t feel safe coming forward with critical information about crimes committed against them, their families, or members of the larger community. Increasing access to critical resources at the county level, especially for critical human services programs addressing mental health, children and families, aging and disability, and housing is what makes communities safer—not threats to cut this funding unless sheriffs do ICE’s bidding.

The ACLU of Wisconsin strongly urges committee members to vote against this proposal. Thank you.

⁶ “Report: Wisconsin’s Jail-to-Deportation Pipeline,” ACLU of Wisconsin (August 25, 2022), <https://www.aclu-wi.org/en/publications/report-wisconsins-jail-deportation-pipeline>.”