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NEW HAMPSHIRE IMMIGRANT RIGHTS NETWORK

BY ELECTRONIC DELIVERY

January [], 2025

Representative Terry Roy, Chair
House Criminal Justice and Public Safety Committee
New Hampshire State House
107 N. State St.
Concord, NH 03301

RE: Opposition to HB 511-FN – An Act Relative to Cooperation with Federal Immigration Authorities.

Dear Representative Roy and Members of the House Criminal Justice and Public Safety Committee:

We are submitting this letter on behalf of the NH Immigrant Rights Network (NHIRN), a coalition of New Hampshire organizations and individuals working with and within immigrant communities to improve lives and ensure just treatment. We are adamantly **opposed** to SB 511-FN and we urge the members to vote it “inexpedient to legislate.”

The proposed legislation is unwanted and unnecessary

There is no “sanctuary” in New Hampshire when a person, including a noncitizen, commits a crime. They are, and should be, arrested and charged by state or local law enforcement officials. There are similarly no laws in New Hampshire that prevent federal law enforcement entities from enforcing federal law within the state. But this bill goes further in requiring state and local officials to hold people for alleged civil immigration violations that are not actually criminal in nature.

It is important to note that there are significant federal resources already available to enforce civil immigration violations, including in New Hampshire. While the status of being undocumented is not a federal crime, anyone in the U.S. without lawful status is subject to removal through the federal civil immigration law system. New Hampshire has a full complement of federal law enforcement officers, including immigration enforcement agents, who regularly interact with their local and state law enforcement partners. A state law dictating the nature of such interactions when a crime has not occurred is both unnecessary and ill-advised.

Many New Hampshire municipalities and law enforcement departments have created policies and standards that are meant to ensure the lawful and equal treatment of all residents, including those within immigrant communities. Of that, we should be proud and New Hampshire

communities should be permitted to serve their constituents in ways that benefit all. These communities and their law enforcement departments should also be shielded from unwise state law mandates that expose them to civil liability.

The proposed legislation is rooted in fear-mongering and anti-immigrant sentiment and would undermine principles of justice and equity in New Hampshire

We must turn our backs to the tirades of those who attempt to spread anti-immigrant sentiment by soundly rejecting bills like SB 511-FN and the harm they would bring to our State. Immigrants are significant contributors to the quality of life state residents and visitors enjoy.¹ We believe that the people of New Hampshire value principles of diversity and acknowledge the many contributions immigrants have made and continue to make.² The fact of the matter is that our State needs newcomers, as it always has, and immigrants are a key factor in the modest population growth the State has experienced in recent years.³ We need workers to keep our economy healthy, and immigrants play an important role in New Hampshire's workforce.

Members of NHIRN and their allies have worked to ensure immigrants are welcomed and recognized as valuable members of our communities. To this end, we have collaborated with diverse groups to promote equity and inclusion within state and local institutions including cities and towns, law enforcement departments, and community organizations. As a result, many

¹ Richard Ober, *Immigrants Bring Enormous Value to New Hampshire*, New Hampshire Charitable Foundation (Apr. 20, 2021) at <https://www.nhcf.org/what-were-up-to/immigrants-bring-enormous-value-to-newhampshire/#:~:text=Immigrants%20contribute%20hundreds%20of%20millions,after%2Dtax%20income%20in%202018>.

² "New Hampshire has a small but vital community of immigrants. About 5.9 percent of the state's residents are foreign-born, and 2.2 percent of its U.S.-born residents live with at least one immigrant parent. Immigrants make up 7.0 percent of New Hampshire's labor force and support the state's economy in many ways. They account for 11.3 percent of the manufacturing workforce and 13.4 percent of STEM workers in the state. As neighbors, business owners, taxpayers, and workers, immigrants are an integral part of the state's diverse and thriving communities and make extensive contributions that benefit all." *Immigrants in New Hampshire*, American Immigration Council (2025) at <https://map.americanimmigrationcouncil.org/locations/new-hampshire/>.

³ "Maine and New Hampshire continued to gain population last year, just as they have since 2020, although neither's past-year gain was as large as those in Massachusetts, Rhode Island, or Connecticut. However, between 2020 and 2024, Maine and New Hampshire's population gains have been the largest in the region. Most of their population gains were due to an influx of domestic migrants from other states, but each state also benefited from (international) immigration. These net migration gains offset a continuing excess of deaths over births in each state. Yet, domestic migration to both states has diminished recently, while immigration has increased. Future migration patterns are of increasing importance to each state because their older populations and lower birth rates diminish the likelihood of future natural increase." *New England is Gaining Population Due to Immigration*, Carsey School of Public Policy, University of New Hampshire (Dec. 19, 2024) at [https://carsey.unh.edu/publication/new-england-gaining-population-due-immigration#:~:text=However%2C%20between%202020%20and%202024,benefited%20from%20\(international\)%20immigration](https://carsey.unh.edu/publication/new-england-gaining-population-due-immigration#:~:text=However%2C%20between%202020%20and%202024,benefited%20from%20(international)%20immigration).

communities have taken steps to ensure that immigrants know that they are welcome in the State and that they can expect to be treated fairly and without bias.

These gains will be undermined if such an insidious law as SB 511-FN is passed. It will cause a collapse of many of the inroads made within our State and will promote bias and suspicion of immigrants. It will put New Hampshire residents at risk of unlawful detentions. The wellbeing of our municipalities will suffer as their autonomy is undermined. SB 511-FN will prohibit local communities and law enforcement agencies from exercising discretion in policies concerning the recognition and enforcement of civil immigration detainers.

SB 511-FN unjustly and dishonestly targets immigrant families. Our laws should not be promulgated based on anti-immigrant animus. Unfounded fear and anxiety about the presence of immigrants in communities has been fanned by legislation such as SB 511-FN and contributes to the rise in hate and injustice. Our legislature must not be influenced by anti-immigrant sentiments and disinformation and should enact laws that promote the welfare of all our residents, respect our governmental institutions, and uphold our state's commitment to justice and equity.

The proposed legislation runs afoul of state and federal constitutional protections

SB 511-FN would elevate federal civil immigration law enforcement over state and local public safety priorities. It would essentially force New Hampshire law enforcement officials to hold a person suspected of being unlawfully present in the U.S. for immigration authorities.⁴ It is very important to note that it is generally not a crime for a migrant to be in the U.S. without permission, even when such migrants are subject to the civil processes of removal or deportation.⁵ Removal from the U.S. is carried out through a civil administrative law process, not through criminal prosecution. People in removal proceedings may well have defenses that will allow them to remain in the United States and pursue a pathway to citizenship. The bill's definition of "immigration detainer" omits the significance of the civil and nonjudicial nature of these instruments. The bill provides no warning of the jeopardy that New Hampshire law enforcement authorities who seize a migrant under non-judicial civil immigration detainers may find themselves:

[D]etainers are not criminal detainers or criminal arrest warrants. They do not charge anyone with a crime, indicate that anyone has been charged with a crime, or ask that anyone be detained in order that he or she can be prosecuted for a crime. Detainers like this are used to detain individuals because the Federal

⁴ See, written testimony submitted by Gilles Bissonnette, Litigation Director of ACLU of New Hampshire (2/1/24) in opposition to SB 563 which contained virtually the same language as HB 511. "Make no mistake, this language *requires* that a local police department comply with requests by the federal government to hold people believed to be undocumented. This is because, under this bill's sweeping text, any local police department that elects to, in its discretion, not hold people who the federal government wants detained would now likely be deemed to either (i) have a "policy, practice, procedure, or custom ... which prohibits or impedes a law enforcement agency from ... cooperating with a federal immigration agency" under the bill's delineated provisions (see Page 2, Lines 6-9) or (ii) have not used "best efforts to support the enforcement of federal immigration law." See Page 2, Lines 27-28."

⁵ *Arizona v. United States*, 567 U.S. 387, 407 (2012).

authorities believe that they are civilly removable from the country.⁶

A state law requiring New Hampshire law enforcement authorities to enforce civil immigration detainers would trigger a direct conflict with civil liberties protections guaranteed by our Federal and State Constitutions and would expose those authorities to civil liability. New Hampshire has not yet had a case that specifically addresses the issue of immigration detainers, but the New Hampshire ACLU has brought several lawsuits challenging the civil detention of migrants by New Hampshire law enforcement personnel. In those cases, ACLU-NH successfully sued and settled civil rights actions against police agencies that detained immigrants they suspected of being undocumented, a status that is not a crime.⁷

The proposed legislation also covers the state's Department of Corrections and the County Correctional Departments. Holding an inmate on a civil immigration detainer for even one hour after their sentence is complete would also trigger the same constitutional concerns as police arrests on immigration detainers.

The proposed legislation is unnecessary and interferes with the autonomy of municipal authorities and with law enforcement agencies' obligations to serve their communities

We urge members of this Committee to take note of the fact that SB 511-FN is not being advanced by those in law enforcement or local government. In fact, in years past, multiple law enforcement and local government leaders have taken a public stand in opposition to similar bills.

SB 511-FN conflicts with New Hampshire's Fair and Impartial Policing Standards and the policies of many other police agencies. The New Hampshire State Police (NHSP), the Police Standards and Training Council (PTSC), the New Hampshire Department of Justice as well as other New Hampshire law enforcement agencies are aware of the unconstitutionality of seizing a person based on immigration detainers. In 2019, the NHSP, after advocacy by the New Hampshire Immigrant Rights Network and the ACLU-NH, issued a policy on Fair and Impartial Policing. An appendix to the policy, available through the PTSC, specifically addresses the issue of immigration detainers and the policy does not permit NHSP officers to hold someone based on an immigration detainer.⁸

The New Hampshire Department of Justice 2020 Law Enforcement Manual also incorporates these standards.⁹ These principles of fairness will be compromised if New Hampshire law enforcement officials are mandated to enforce civil immigration law. Importantly, SB 511-FN, if

⁶ *Lunn v. Commonwealth*, 477 Mass. 517, 518 (2017).

⁷ See *Godoy-Ramirez v. Town of Merrimack*, 1:19-cv-01236 (D.N.H. 2019), *Perea v. Town of Northwood*, 1:18-cv-01066 (D.N.H. 2018), *Awadeh v. Town of Exeter*, 1:18-cv-00852 (D.N.H. 2018). See also, *Lunn*, *supra*, fn. 4, which is a 2017 Massachusetts case that deals directly with the issue of seizure of a person based on an immigration detainer.

⁸ *Fair and Impartial Policing Appendix*, New Hampshire State Police (Feb. 2019) available at <https://www.pstc.nh.gov/publications/documents/policing-fair-impartial-nhsp-appendix.pdf>.

⁹ *Law Enforcement Manual: 2020 Edition*, New Hampshire Department of Justice (2020) at www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/Law%20enforcement%20manual%202020.pdf.

enacted, would outlaw the directive prohibiting arrest based on a civil immigration detainer but the law would likely not protect law enforcement officers from liability.

The proposed bill interferes with municipalities and law enforcement agencies' obligations to serve all members of their community. The cities and towns of our state and their police departments must be able to make sound and just decisions that serve all of their residents within the context of existing law and not be subject to a statute that promotes suspicion of and animus toward migrants. They also have obligations to protect the civil rights of all of their constituents and guarantee fair and equal treatment.

Many law enforcement leaders in New Hampshire have created community engagement opportunities with immigrant communities in order to quell unease people may have toward police and to build trust. Likewise, many municipalities have made concerted efforts to ensure that all members of their communities, including migrants, feel welcome and appreciated. These efforts would be likely be deemed violative of this legislation, if enacted.

The proposed legislation will suppress reporting of serious crime and place victims and witnesses of crimes at risk and will chill immigrant community/law enforcement relationships

The bill includes a provision that purports to exclude victims and witnesses of certain crimes “if the victim or witness timely and good faith responds to the entity’s or agency’s request for information and cooperation . . .” But the bill’s “best efforts” language undermines any safe harbor.¹⁰ Victims and witnesses to crimes are excepted only to the extent they help in a “timely and good faith” manner with information and cooperation in investigation or prosecution or if they are or have been “a necessary witness or victim.” This language is so coercive: victims/witnesses risk being reported to ICE if the law enforcement agency does not believe they cooperated quickly enough or with enough good faith or do not turn out to be “necessary.” Anyone representing a noncitizen victim or witness would have to advise them that they risk being reported to ICE by law enforcement if they come forward/report a crime.

Every person from every community should feel free to engage law enforcement for any reason whatsoever, even if they are not a victim of (or have not witnessed) a crime. This includes engaging the police to come to a community event, helping the police solve a crime even if they were not a witness, asking the police to conduct more patrols down their street, reporting a crime that they heard about but did not witness (including a hate crime), or expressing feedback to police more broadly. All of these are critical interactions that depend on public trust in law enforcement that would be damaged by this bill and make this state less safe for everyone.

The proposed legislation raises risks of unequal treatment and bias and conflicts with New Hampshire values

¹⁰ “A law enforcement agency shall use best efforts to support the enforcement of federal immigration law.” SB 511-FN p. 2, lines 27- 28.

SB 511-FN, if enacted, would trigger the risk of increased racial/ethnic profiling, and animosity and distrust of those perceived to be immigrants. The 2009 Police Foundation Study on the consequences of state and local law enforcement participation in immigration enforcement cited the potential for negative public safety consequences such as an increase in racial profiling and its attendant liability risks, a decrease in community trust of the police and a rise in tension between law enforcement and members of migrant populations.¹¹

Local police must serve and protect *all* residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. As police agencies move away from their core role of ensuring public safety and begin taking on civil immigration enforcement activities, the perception immigrants have of the role of police moves from protection to arrest and deportation, thereby jeopardizing local law enforcement's ability to gain the trust and cooperation of immigrant communities.¹²

Such predictable outcomes are not in keeping with New Hampshire values that emphasize liberty, the protection of individual rights and respect for our neighbors.

In June 2020, in the aftermath of the homicide of George Floyd, Gov. Sununu created a Commission to study law enforcement accountability and transparency.¹³ The overarching goal was to establish policing principles and standards that would encourage all community members to have confidence in the law enforcement community. The Commission's report included in its appendices a copy of the NHSP Fair and Impartial Policing policy as a model for law enforcement agencies, an undeniable indication that laws such as those proposed by SB 511-FN are unwanted and unwelcome.¹⁴

SB 511-FN is the Antithesis of Good Government Principles

This proposed legislation is unnecessary and unjust. It requires that state and local law enforcement authorities prioritize and enforce federal civil immigration law by honoring and enforcing civil "immigration detainer requests" and nonjudicial "immigration warrants." It bars state and local governments from creating policies that limit inquiries into immigration status; prohibits state and local governments from limiting information exchanges with the Department of Homeland Security (DHS) or other federal agencies; and constrains the ability of state and local governments from deciding how and when to interact with federal law enforcement entities.

¹¹ *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Foundation Executive Summary, The Police Foundation, pp. 4-5 (Apr. 2009).

¹² *Id.* at p. 5.

¹³ Adam Sexton, *Sununu creates commission to examine police transparency, accountability*, WMUR News (June 16, 2020) <https://www.wmur.com/article/sununu-creates-commission-to-examine-police-transparency-accountability/32883582>.

¹⁴ *Report and Recommendations*, Commission on Law Enforcement Accountability, Community and Transparency, App. C., pp. 51-57 (Aug. 31, 2020).

If enacted, it also would entangle the state attorney general's office in frivolous investigations aimed at determining whether a governmental entity was sufficiently attending to unjust state-mandated immigration policies.

This proposed legislation is anathema to New Hampshire values and it would be a grave disservice to the people and communities of this State to enact this bill. Enactment of SB 511-FN will not advance interests of New Hampshire municipalities or law enforcement, and will certainly not serve the people of New Hampshire. Members of this Committee must unanimously reject this bill, recognizing it as undemocratic, anti-immigrant and unacceptable for our State.

We therefore ask that this Committee vote this bill "inexpedient to legislate."

Sincerely,