



March 25, 2021

House Judiciary Committee
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of HB 3265, the Sanctuary Promise Act

Chair Bynum, Vice-Chairs Noble and Power, and members of the Committee,

Thank you for the opportunity to share support for HB 3265 on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,415 members statewide.

Oregon's sanctuary law is the nation's oldest and has formed part of our state identity for 34 years. This law has been reaffirmed at every level of government — from executive orders by the governor, pronouncements, and new laws from the legislature, to the more than 18 sanctuary resolutions passed by cities and counties across Oregon. Also, in 2018, Oregon voters overwhelmingly voted in favor of Oregon's sanctuary law.

Now the 2021 Legislature can make Oregon's sanctuary law stronger — protecting Oregon families and preserving local resources.

- **HB 3265 strengthens Oregon's sanctuary law — the oldest sanctuary law in the United States — to protect Oregon families.**

In the 1980s, local law enforcement carried out numerous raids and roadblocks in collaboration with federal immigration authorities that targeted Oregon's Latinx community. To help protect Oregonians, in the 1987 legislative session, Rep. Rocky Barilla sponsored HB 2314 with the support of Latinx and civil liberties organizations, and it was passed with nearly unanimous bipartisan support.

HB 3265, the Sanctuary Promise Act, extends and strengthens HB2314 and protects Oregonians from racial profiling and ensures that local police and resources will not be used for federal immigration enforcement in key ways:

Disentanglement: Builds trust in Oregon communities by clearly prohibiting local law enforcement and governments from working with and communicating with federal agents for immigration enforcement.

Prohibition of detention contracts: Prohibits state and local correctional facilities from contracting with the federal government for immigration detention.

Prohibition of private detention centers: Prohibits private entities like for-profit corporations from operating private prisons for immigrant detention.

Access to justice: Protects Oregon's justice system by enshrining into law the current state court rule that prohibits warrantless civil arrests in and around Oregon courthouses.

Private right of action: Allows community members to seek accountability when the law is violated.¹

- **Oregon cannot fix the broken federal immigration system, but we can strengthen the law that protects Oregonians from racial profiling and contributes to thriving communities where people are treated with dignity.**

Isidro Andrade-Tafolla is a father, husband, and youth soccer coach. He has lived in Washington County since he was a teenager, and he has worked for Washington County for more than two decades. Mr. Andrade-Tafolla has been a U.S citizen for 25 years.

On September 17, 2017, Mr. Andrade-Tafolla was illegally arrested by a group of Immigration and Customs Enforcement (ICE) agents on the public streets outside the Washington County Courthouse as Mr. Andrade-Tafolla and his wife were walking to their car. It was not clear that the agents were real federal agents because they were in street clothes, did not show identification, and were in unmarked vehicles. The agents harassed and intimidated Mr. Andrade-Tafolla and his wife, and the agents refused to identify themselves even after they were asked multiple times to identify themselves, including by an ACLU of Oregon Legal Observer who was recording the ICE agents' harassment, intimidation, and illegal actions towards Mr. Andrade-Tafolla. The harrowing experience of Mr. Andrade-Tafolla and his wife can be viewed at www.bitly.com/acluor-iat-video.

Given that ICE agents had no legal basis for detaining Mr. Andrade-Tafolla as he is a U.S. Citizen, it is evident that ICE agents' harmful and unlawful treatment of him was based on the color of his skin, i.e., racial profiling and targeting.

¹ In 2016, the Oregon Court of Appeals concluded that without an express provision for a private right of action, a man illegally jailed under an immigration detainer in violation of ORS 181A.820 had no remedy. See *Cabrera-Cruz v. Multnomah County*, 279 Or. App. 1, 24 (2016). This is why it is needed for the Legislature to create a private right of action under Oregon's sanctuary law.

Racial profiling in immigration enforcement efforts is an unfair and unjust practice that predates the Trump administration.² However, the Trump administration ramped up executive orders and other actions that encouraged federal law enforcement agencies to target people of color. For example, in January 2017, the Trump administration issued the first of several executive orders publicly referred to as the “Muslim bans” — which orders restricted immigration from predominantly Muslim countries with perceived non-white people.³ As well, many of the Trump administration’s immigration orders, policies, and enforcement actions appeared directed at immigrants in Latinx communities in the United States and at immigrants and refugees from Central and South America at the southern border.⁴ Particularly seared into our memories are the reports of predominantly brown children placed in chain link cages by ICE at the southern border; it is estimated that during the Trump administration, almost half a million immigrant and refugee children were detained.⁵

Oregon’s sanctuary law needs to be strengthened because Oregonians have been harassed, intimidated, and treated illegally by federal immigration officers. Mr. Andrade-Tafolla’s experience was not an aberration. Rather, it was part of a pattern and practice of ICE targeting immigrants at Oregon state courthouses.⁶ Through legal observers and documents obtained via a FOIA lawsuit, the ACLU of Oregon has documented civil immigration enforcement activity in state courthouses in Lane, Marion, Multnomah, Clackamas, Umatilla, Morrow, Sherman, Gilliam, Wheeler, Wasco, Hood River, Josephine, Lincoln, Clatsop, Washington, and Yamhill counties. These are courthouses that together serve 3 million Oregonians.

Information about ICE’s tactics during the past several years also show that many immigrants apprehended by ICE did not have criminal records and were apprehended as “collateral damage” as the family members and children of individuals targeted for detention.⁷ In addition to racial profiling, the ICE interactions too-often involved the use of physical force and violence against individuals, their families, and bystanders.⁸

To protect access to justice in Oregon, Chief Justice of the Oregon Supreme Court Martha Walters announced a new rule in November 2019 to stop warrantless, civil

²https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1055&context=hastings_race_poverty_law_journal

³https://www.americanbar.org/content/dam/aba/administrative/immigration/trump_immigration_agenda_timeline.pdf

⁴*Id.*

⁵<https://apnews.com/article/6e04c6ee01dd46669eddba9d3333f6d5>;

<https://www.bbc.com/news/world-us-canada-44518942>;

<https://www.themarshallproject.org/2020/10/30/500-000-kids-30-million-hours-trump-s-vast-expansion-of-child-detention>

⁶ <https://www.youtube.com/watch?v=0MCSWthEFqU>

⁷<https://www.vox.com/2017/8/2/16076742/ice-raid-immigration>

⁸<https://aclu-or.org/en/press-releases/aclu-files-complaint-against-ice-officers-unlawful-detention-racial-profiling>; <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>;

<https://www.niskanencenter.org/mistaken-detainment-racial-profiling-and-discrimination-how-ice-fails-to-protect-communities/>

arrests in Oregon’s courts.⁹ **HB 3265 codifies this important protection into state law.**

- **HB 3265 is consistent with the legal authorities provided to state governments by the U.S. Constitution.**

The “anti-commandeering doctrine” — a doctrine established by the U.S. Supreme Court — reflects a fundamental structural decision incorporated into the U.S. Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States. When the original States declared their independence, they claimed the powers inherent in sovereignty — in the words of the Declaration of Independence, the authority “to do all . . . Acts and Things which Independent States may of right do.”¹⁰

Although the legislative powers granted to Congress under the U.S. Constitution are sizable, those powers are not unlimited. The U.S. Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as confirmed by the Tenth Amendment of the U.S. Constitution.¹¹

When state legislatures have passed laws related to federal immigration processes, questions have been raised about the extent and reach of state legislative powers as related to the anti-commandeering doctrine and related areas. Court decisions support that the sanctuary law protections for Oregonians extended by HB 3265 are consistent with the legal authority of state governments under the U.S. Constitution. Specifically:

Disentanglement:

- The Ninth Circuit held that a state could prohibit state and local law enforcement agencies from transferring an individual to federal immigration authorities unless authorized by judicial warrant or judicial probable cause determination. *United States v. California*, 921 F.3d 865 (2019).
- The Ninth Circuit held that a state could implement certain information sharing restrictions between local and state agencies and federal immigration authorities. *United States v. California*, 921 F.3d 865 (2019).

Prohibitions related to private detention centers:

- During declaratory relief and preliminary injunction proceedings, the District Court for the Southern District of California upheld a California statute that prohibited new or renewal contracts with private detention facilities used by ICE. *Geo Group, Inc. v. Newsom*, 2020 WL 5968759 (S.D. Cal. 2020).

⁹ https://www.courts.oregon.gov/rules/UTCR/CJO_2019-095.pdf

¹⁰ *Murphy v. National Collegiate Athletic Assn.*, 584 U.S. _ (2018).

¹¹ *Id.*

- During summary judgment proceedings, the District Court for the Western District of Washington upheld a City of Tacoma ordinance that restricted the ability of correctional and detention facilities to expand or modify their existing facilities in certain urban zones, after the restrictions were challenged by a private detention center used by ICE. *Geo Group v. City of Tacoma*, 2019 WL 5963112 (W.D. Wa. 2019).

Access to justice:

- The District Court for the Southern District of California enjoined federal immigration officials from making a civil immigration arrest of any individual appearing in federal court in the Southern District of California while that individual was present in, or traveling to or from, court. The District Court stated, “Here, the public interest is served by allowing Plaintiffs to attend their court proceedings free of the threat of civil immigration arrest.”
- The District Court for the Southern District of New York held that the common law privilege against civil arrest in and around courthouses applied to ICE’s arrests of people at New York state courthouses, that federal immigration law did not preempt this common law privilege, and that federal immigration directives resulting in targeting of individuals around state courthouses may violate the State of New York’s rights under the Tenth Amendment.

As the decisions by these courts show, the protections of HB 3265 are not just needed to safeguard the rights of Oregonians but consistent with the law.

* * *

HB 3265 is about the values that we share as Oregonians — the value of an inclusive and respectful Oregon where all Oregonians are treated fairly, equitably, and with dignity. It is wrong for Oregonians of color to be fearful anywhere — from their workplaces, to houses of worship, to courthouses — about harassment, discrimination, and detention by federal immigration officials based on the color of their skin. **The ACLU of Oregon urges your support of HB 3265.**

Thank you,



Sandy Chung
Executive Director
ACLU of Oregon