

I am here today opposed to SB 901 simply because Section 287g of the Immigration and Nationality Act provides ICE officers the authority to arrest aliens without a judicial warrant.

No judge has the authority to issue a warrant for civil immigration violation. Congress, by statute, vested this authorization solely to supervisory immigration officers.

SB 901 has shown up in previous sessions as the Trust Act, then the Safe Act and others; yet all of these iterations are merely an avenue for sanctuary jurisdictions to cover their lack of interest in utilizing the full power of the U.S. government to enforce the law against criminal aliens.

Sanctuary policies, which is essentially what this bill proposes use the theory of requiring judicial warrants as a smoke screen to disguise the assertion that sanctuary jurisdictions might well comply with ICE detainers if they are accompanied by a judicial warrant. Yet, there simply is no form to a file to obtain such a warrant as is requested in this bill. There is no procedure of which I am aware to seek one; and no body of law for judges to rely on in the issuance of said document. Thus, according to Federal Immigration Law, immigration judicial warrants don't actually exist, and I suspect the sponsors of this bill already know this.

I live in Montgomery County, one of the worst sanctuary jurisdictions in the nation. Our County Executive stated the following in his unconstitutional declaration that, "Immigration detainers, not accompanied by judicial warrants, are civil detainers for which the federal government bears sole responsibility."

I have no idea what exactly "sole responsibility" consists of as immigration detainers are civil detainers....because immigration proceedings are civil, as opposed to criminal in nature. Immigration detention is, however, detention, and the authority for such detention has been recognized as valid since the 19th century. (*Wong Wing v. United States*, 163 U.S. 228 (1896))

<https://supreme.justia.com/cases/federal/us/163/228/>

(The United States can forbid aliens from coming within their borders, and expel them from their territory, and can devolve the power and duty of identifying and arresting such persons upon executive or subordinate officials.)

Yet, the MoCo Executive states:

"No agent or department may arrest or detain a person based on an Administrative Warrant, an Immigration Detainer, or any other directive by DHS, on a belief that the person is not present legally in the United States or has committed a civil immigration violation."

As set forth below, detainers are not issued "on a belief that the person is not present legally in the United States or has committed a civil immigration violation", but rather upon probable cause of those facts. And in particular if the alien has been ordered deported or committed a crime.

Detainers are governed by 8 C.F.R. §287.7(a), which states:

Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the [Immigration and Nationality] Act [INA] and this chapter 1. Any authorized immigration officer may at any time issue a Form

*I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. **The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.***

Also pertinent is 8 C.F.R. §287.7(d):

Temporary detention at Department request. Upon a determination by the Department [of Homeland Security (DHS)] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

Warrant, an Immigration Detainer, or any other directive by DHS, on a belief that the person is not present legally in the United States or has committed a civil immigration violation.

As set forth below, detainers are not issued "on a belief that the person is not present legally in the United States or has committed a civil immigration violation", but rather upon probable cause of those facts.

Section 287 of the INA is more circumscribed and intended for the specific benefit of other federal agencies, states, and localities. In fact, section 236 of the INA specifically references a warrant issued by the AG, now the Secretary of Homeland Security. The [regulations](#) specifically stipulate who may issue such a detainer:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the [INA] in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the USCIS.

Detainers are — and have been for generations — a standard protocol for asking cooperation from law enforcement agencies when seeking to take custody of aliens. What's more, the filing of detainers, colloquially known as "holds", is a standard practice throughout U.S. law enforcement at every level.

Virtually all agencies seek such assistance from one another, knowing that if the system of cooperation breaks down, then all public safety is compromised.

Exactly what kind of "court order" are ICE agents to seek when asking authority to detain an alien? There is no provision in the INA — no provision whatsoever — for judicial orders. Nor do they exist in any other federal statute. What the INA does specifically provide for is arrest of aliens, with or without warrant, for violations of the immigration laws — but the warrants authorized by Congress are not judicial warrants, and deliberately so.

Again, there is no regulatory provision for a federal judge to issue a detainer, let alone a warrant.

Neither of those provisions provides for, or more importantly requires, a "judicial warrant".

In reality, reference to "judicial warrants" is simply a fig leaf relied upon by sanctuary jurisdictions to cover their lack of interest in utilizing the full power of the U.S. government against criminal aliens. There is no form to a file to obtain such a warrant; again, no procedure of which I am aware to seek one; and no body of law for judges to rely on in the issuance of said document.

All of that is just a thought. The fact is, though, that judicial warrants for the detention of aliens do not now exist, have never existed in the immigration context, and likely never will.

Thus, it is time to open our eyes and admit that the emperor really doesn't have any clothes. This bill is nothing more than a shtick to assert that sanctuary jurisdictions would comply with detainer requests that are accompanied by "judicial warrants". In essence, lawmakers would like to adhere to federal law, but we just can't. I would advise this committee to pay no attention to the man behind the curtain as we all know, that in the context of immigration, there is no such a thing as "judicial warrants".