

Written Testimony in Opposition to HB 2717
Missouri-Kansas Chapter of the American Immigration Lawyers Association

The Missouri-Kansas Chapter of the American Immigration Lawyers Association (AILA) represents approximately 200 lawyers in Missouri, Kansas and Southern Illinois dedicated to the practice of U.S. immigration law. AILA is the preeminent national association of more than 15,000 attorneys and law professors who practice and teach immigration law both in and outside the United States.

We write to oppose the passage of HB 2717 for several reasons.

Immigration enforcement properly falls strictly within the purview of the federal government. However, this bill would effectively “deputize” any willing or interested law enforcement person to enforce, without limit or oversight, any perceived immigration law at will. Further, this legislation establishes a vague requirement on all local governments in Kansas to cooperate with and assist the federal government in its immigration enforcement duties. At the same time, the proposed legislation fails to establish or permit any future guidance as to what actions are required or permitted to be taken by local jurisdictions. The legislation only prohibits interference with any jurisdiction’s “cooperation”, whatever form or shape or to whatever extent that “cooperation” may take or by whom. In effect, this legislation permits, even encourages, any law enforcement person or office to take any action, no matter what overreach, and prohibits any commonsense policy or limitation from being placed on any act construed to be “cooperation” – just so long as it, ostensibly, is related to immigration.

By way of example, how far and how deeply a Kansas state or local authority may be allowed to intrude into the business operations of any U.S. citizen-owned business in Kansas is presumably left without limit. No state or local jurisdiction is permitted, under this legislation, to impose any restriction on any act of “obtaining or maintaining information” or sharing any such information obtained, in any manner whatsoever, with any other government entity under the sun. No city, county or state authority is permitted to engage in any commonsense (or liberty-protecting) measure of oversight or limitation.

Equally true the converse. Any federal law enforcement effort, no matter how intrusive, must be left unchecked by any Kansas state/federal delimitation so long as the federal agency action is directly or tangentially related in some way to immigration. This bill assures that in the arena of immigration law, local and state jurisdictions throughout Kansas are hamstrung from limiting any federal effort to intrude into state and local Kansas communities and the lives of their citizens so long as such efforts are deemed to be immigration-related. Under this bill, any demand made on any Kansas local or state entity by the federal government, in the name of immigration enforcement, must be left unchecked and must be complied with. Any local or state effort to condition its cooperation, no matter how reasonable, would evidently be null and void. For example, a state or local government policy to not detain any person on which the federal government places an “immigration hold” (referred to as an “ICE Detainer”) for as long as the federal government requests, without compensation from the federal government, is prohibited under this legislation as refusing to “cooperate”. This legislation assures that there can be no

limitation or restriction placed on this intrusion. This flies in the face of the Kansas legislature's usual concern with federalism and state / federal government separation of powers.¹

In addition, permitting (or requiring) local law enforcement agencies (or even individuals within a local jurisdiction) to undertake attempted enforcement of a federal law – something for which local law enforcement agencies are not funded or trained – without limit or oversight is dangerous. Not only are local law enforcement agencies already stretched too thin, but permitting agencies, or individuals within law enforcement agencies, to choose when to enforce immigration law would cause a chilling effect on the reporting of crime in immigrant communities. Noncitizen crime victims, or U.S. citizen Kansans living in mixed-status households, would report crimes – and cooperate in the investigation of crimes – far less often out of fear that they or their family members would be placed in Immigration & Customs Enforcement (ICE) custody as a result. Not only would victims not report crimes, but perpetrators would gain a sense of impunity, knowing they could prey on members of the immigrant community, and their U.S. citizen family members, without consequence.

Moreover, this bill would essentially prevent local governments from setting priorities and exercising oversight over the law enforcement agencies under their jurisdictions. It eviscerates the Kansas people's right of oversight over police authority in their Kansas communities and ends a local community's inherent authority to decide how best to focus its resources within its own community. Even ICE exercises prosecutorial discretion, which it defines as “the longstanding authority of an agency charged with enforcing the law to decide where to focus its resources and whether or how to enforce, or not to enforce, the law against an individual.”²

In short, the proposed language in HB 2717 appears intended to assure that no restraint, guidance or limitation may ever be asserted over any Kansas law enforcement agency, or individual law enforcement officer, so long as the exercise of police power claims a relationship to immigration. Kansas has never countenanced unbridled police power over its citizens or residents. The quintessential check on police overreach and protection of Kansas citizens has always been the oversight, and if necessary, restraint of police by local government. With this legislation, oversight is prohibited, and there can be no doubt that police power will rage unchecked. That this cannot end well for Kansans should be self-evident.

¹ For example, the Kansas Legislature created a Special Committee on Government Overreach and the Impact of COVID-19 Mandates. In addition, the Kansas Attorney General's own website asserts that his office has focused on, among other things, “standing up against illegal overreach by the federal government.” <https://ag.ks.gov/about-the-office/ag-derek-schmidt>. The Kansas House is also currently attempting to add Kansas to a list of states calling for a constitutional convention with the intent of proposing amendments to the U.S. Constitution that would “impose fiscal restraints on the federal government and limit its authority.” *See, e.g.*, <https://kansasreflector.com/2022/03/08/constitutional-convention-effort-gets-preliminary-ok-in-kansas-house-but-still-needs-supermajority/>

² [https://www.ice.gov/about-ice/opla/prosecutorial-discretion#:~:text=Prosecutorial%20Discretion%20\(PD\)%20is%20the,the%20law%20against%20an%20individual](https://www.ice.gov/about-ice/opla/prosecutorial-discretion#:~:text=Prosecutorial%20Discretion%20(PD)%20is%20the,the%20law%20against%20an%20individual)

We hope the above will be helpful as you consider the best course for HB 2717. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to be 'K. Schmitt', with a long horizontal flourish extending to the right.

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A handwritten signature in blue ink, appearing to be 'Genevra Alberti', with a long horizontal flourish extending to the right.

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