SENATE DOCKET, NO. 1596 FILED ON: 1/20/2017

SENATE . . . . . No. 1305

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect the civil rights and safety of all Massachusetts residents.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
James B. Eldridge	*Middlesex and Worcester*	
Juana B. Matias	*16th Essex*	
Jack Lewis	*7th Middlesex*	*1/24/2017*
Jason M. Lewis	*Fifth Middlesex*	*1/24/2017*
Michael J. Barrett	*Third Middlesex*	*1/26/2017*
Marjorie C. Decker	*25th Middlesex*	*1/26/2017*
Sonia Chang-Diaz	*Second Suffolk*	*1/26/2017*
Ruth B. Balser	*12th Middlesex*	*1/27/2017*
Frank I. Smizik	*15th Norfolk*	*1/27/2017*
Cynthia Stone Creem	*First Middlesex and Norfolk*	*1/27/2017*
Mike Connolly	*26th Middlesex*	*1/27/2017*
Joseph A. Boncore	*First Suffolk and Middlesex*	*1/30/2017*
William N. Brownsberger	*Second Suffolk and Middlesex*	*1/30/2017*
Daniel J. Ryan	*2nd Suffolk*	*1/30/2017*
John J. Lawn, Jr.	*10th Middlesex*	*1/30/2017*
Kenneth J. Donnelly	*Fourth Middlesex*	*1/30/2017*
Denise Provost	*27th Middlesex*	*1/30/2017*
Barbara A. L'Italien	*Second Essex and Middlesex*	*1/30/2017*

Chris Walsh	*6th Middlesex*	*1/30/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/30/2017*
Steven Ultrino	*33rd Middlesex*	*1/30/2017*
José F. Tosado	*9th Hampden*	*1/31/2017*
Michelle M. DuBois	*10th Plymouth*	*1/31/2017*
Jay R. Kaufman	*15th Middlesex*	*1/31/2017*
Kay Khan	*11th Middlesex*	*1/31/2017*
Cory Atkins	*14th Middlesex*	*1/31/2017*
Paul R. Heroux	*2nd Bristol*	*1/31/2017*
Adam G. Hinds	*Berkshire, Hampshire, Franklin and Hampden*	*1/31/2017*
Kenneth I. Gordon	*21st Middlesex*	*1/31/2017*
Byron Rushing	*9th Suffolk*	*2/1/2017*
Thomas M. Stanley	*9th Middlesex*	*2/1/2017*
Linda Dorcena Forry	*First Suffolk*	*2/1/2017*
Thomas M. McGee	*Third Essex*	*2/1/2017*
Julian Cyr	*Cape and Islands*	*2/1/2017*
Mary S. Keefe	*15th Worcester*	*2/1/2017*
Patricia D. Jehlen	*Second Middlesex*	*2/1/2017*
David M. Rogers	*24th Middlesex*	*2/2/2017*
Paul W. Mark	*2nd Berkshire*	*6/26/2017*
Natalie Higgins	*4th Worcester*	*2/2/2017*
Solomon Goldstein-Rose	*3rd Hampshire*	*2/2/2017*
Lori A. Ehrlich	*8th Essex*	*2/2/2017*
Jennifer E. Benson	*37th Middlesex*	*2/2/2017*
Carolyn C. Dykema	*8th Middlesex*	*2/3/2017*
James J. O'Day	*14th Worcester*	*2/3/2017*
Elizabeth A. Malia	*11th Suffolk*	*2/3/2017*
Peter V. Kocot	*1st Hampshire*	*2/3/2017*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	*2/3/2017*
Gailanne M. Cariddi	*1st Berkshire*	*2/3/2017*
Nick Collins	*4th Suffolk*	*2/7/2017*
Carmine L. Gentile	*13th Middlesex*	*2/24/2017*
Daniel Cullinane	*12th Suffolk*	*6/26/2017*
Dylan Fernandes	*Barnstable, Dukes and Nantucket*	*5/12/2017*
Sean Garballey	*23rd Middlesex*	*6/7/2017*
Harriette L. Chandler	*First Worcester*	*6/7/2017*
Cindy F. Friedman	*Fourth Middlesex*	*8/3/2017*

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SENATE . . . . . No. 1305

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1305) of James B. Eldridge, Juana Matias, Jack Lewis, Jason M. Lewis and other members of the General Court for legislation to protect the civil rights and safety of all Massachusetts residents. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to protect the civil rights and safety of all Massachusetts residents.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. This act shall be known and may be cited as the "Safe Communities Act".

SECTION 2. Chapter 126 of the General Laws is hereby amended by inserting after section 39 the following section:-

Section 40. Definitions

As used in sections 40 to 43, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Administrative warrant", a warrant, notice to appear, removal order, or warrant of deportation, issued by an agent of a federal agency charged with the enforcement of immigration laws or the security of the borders, including Immigration and Customs Enforcement and Customs and Border Protection. An administrative warrant is not one issued by a judicial officer.

"Civil immigration detainer request", a request, including one using federal form I-247D or I-247N, issued by a federal immigration officer authorized under 8 C.F.R. section 287.7 or by any other authorized federal immigration officer to a local law enforcement official to, among other things, maintain custody of a person once that person is released from local custody or to notify the United States Department of Homeland Security of the person's release.

"United States Department of Homeland Security", the United States Department of Homeland Security and its component agencies, including Immigration and Customs Enforcement, the former Immigration and Naturalization Service, Customs and Border Protection, and any other federal agency charged with the enforcement of immigration laws.

"Immigration enforcement", any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal immigration law. Such purposes do not include verification of an applicant's eligibility for state or federal programs or services.

"Limited English proficient", individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

"Law enforcement agency", police departments of political subdivisions of the Commonwealth, sheriffs' departments, houses of correction, courts, the Massachusetts State Police, the Massachusetts Department of Corrections, the Massachusetts Probation Service, the Office of Community Corrections, and the Massachusetts Trial Court Community Service Program, school, college and university campus police, and any other entity in the commonwealth, other than federal agencies, that are charged with the enforcement of laws, the operation of jails or prisons, or the custody of detained persons.

"Released from local custody", when a person may be released from the custody of a Massachusetts law enforcement agency because any of the following conditions has occurred:

(a) Criminal charges against the person have been dropped or dismissed;

(b) The person has been acquitted of criminal charges filed against the person;

(c) The person has served the time required for the person's sentence;

(d) The person has posted a bail or bond, or has been released on the person's own recognizance;

(e) The person has been referred to pre-trial diversion services;

(f) The person has been sentenced to an alternative to incarceration, including a rehabilitation facility;

(g) The person has been released from custody under probation; or

(h) The person is otherwise eligible for release under state or local law.

SECTION 3. Chapter 126 of the General Laws is hereby amended by inserting after section 40 the following section:-

Section 41. Standards for Communicating and Interacting with Federal Immigration Enforcement Agencies

(1) No officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth or any political subdivision thereof, shall use funds, resources, facilities, property, equipment, or personnel for immigration

enforcement purposes; provided, however, that nothing in this subsection shall prohibit houses of correction from entering into Inter-Governmental Service Agreements with the United States Department of Homeland Security in which persons in Immigration and Customs Enforcement custody are housed at the house of correction and the United States Department of Homeland Security pays a daily fee for each person detained there.

(2) No law enforcement agency shall inquire about a person's immigration status, unless such information is required by law, or is an element in a crime for which the law enforcement agency is investigating the person.

(3) Neither a law enforcement agency nor the Massachusetts Registry of Motor Vehicles shall make any information in its databases or other record-keeping systems available to any entity for enforcement of any federal program requiring registration of persons on the basis of race, gender, sexual orientation, religion, or national or ethnic origin. Any agreements inconsistent with this section are null and void; provided, however, that nothing in this subsection shall prohibit or restrain a law enforcement agency or the Massachusetts Registry of Motor Vehicles from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

(4) No officer or employee of a law enforcement agency shall arrest or detain a person solely for immigration enforcement purposes or solely on the basis of a civil immigration detainer request or an administrative warrant; provided, however, that nothing in this subsection shall prevent an officer or employee of a law enforcement agency from arresting or detaining a person in the course of a criminal investigation or prosecution supported by probable cause that

the person has committed a crime, consistent with constitutional standards applicable to all people in the commonwealth.

(5) No officer or employee of a law enforcement agency shall continue to detain a person solely for immigration purposes or solely on the basis of a civil immigration detainer request or an administrative warrant once that person has been released from local custody. Nothing in this subsection shall prevent an officer or employee of a law enforcement agency from continuing to detain a person in the course of a criminal investigation or prosecution supported by probable cause that the person committed a crime, consistent with constitutional standards applicable to all people in the commonwealth.

(6) No officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth or any political subdivision thereof shall perform the functions of an immigration officer, whether pursuant to 8 U.S.C. section 1357(g) or any other law, regulation, or policy, whether formal or informal. Any agreements inconsistent with this section are null and void.

(7) The presence of a civil immigration detainer request or administrative warrant shall not be considered in any bail determination.

(8) An interview between a United States Department of Homeland Security agent and a person in the custody of a law enforcement agency conducted for immigration enforcement purposes shall take place only if the person in custody has given consent. Before the interview, the law enforcement agency shall provide the person in custody with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney

present; provided, however, that a law enforcement agency shall not be responsible for the payment of the person's attorney's fees and expenses. If the person in custody declines the interview, no law enforcement agency shall allow United States Department of Homeland Security agents to conduct the interview. If the person indicates that the person wishes to have an attorney present, the law enforcement agency shall facilitate the presence of such attorney, and in the case that no attorney can be present, the interview shall not take place; provided, however, that the law enforcement agency shall not be responsible for the payment of the person's attorney's fees and expenses. If the person is limited English proficient, an interpreter shall be timely offered free of charge. The written consent form shall be available in English, Arabic, Spanish, Portuguese, Chinese, Haitian Creole, Vietnamese, and Khmer or Cambodian. The provision of oral interpretation and the written consent form shall be consistent with 42 U.S.C. section 2000d et seq., as amended, and 28 C.F.R. section 42.405(d)(1).

(9) If any person is subject to a civil immigration detainer request or an administrative warrant, the law enforcement agency having custody of the person shall provide the person with a copy of the civil immigration detainer request or administrative warrant, and any other documentation pertaining to the person's case that is presented to the law enforcement agency by United States Department of Homeland Security agents.

(10) No law enforcement agency shall provide or allow United States Department of Homeland Security agents access to booking lists or information regarding the incarceration status or release date of a person in its custody, unless such person is serving a sentence for a serious violent felony. For the purpose of this subsection, "serious violent felony" means a violent felony for which there is no district court jurisdiction pursuant to section 26 of Chapter 218. Law enforcement agencies shall not otherwise notify the United States Department of

Homeland Security about a person's pending release from custody and shall not respond to requests from the United States Department of Homeland Security for publicly-available information regarding a person in custody, including requests pursuant to federal form I-247N; provided, however, that nothing in this section shall prohibit or restrain any state or local agency from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

SECTION 4. Chapter 126 of the General Laws is hereby amended by inserting after section 41 the following section:-

Section 42. Transport of persons subject to civil immigration detainer requests or administrative warrants

Law enforcement officials shall not transport a person who is in local custody to any facility in order to place the person into United States of Homeland Security custody; provided, however, that nothing in this section shall be construed as prohibiting a law enforcement agency from transporting a person who is in United States Homeland Security custody. Nothing in this section shall be construed as limiting or changing the duties of Sheriffs in section 24 of chapter 37, except that United States Department of Homeland Security facilities or United States Department of Homeland Security custody shall not be considered non-correctional for the purposes of subsection (c) of that section.

SECTION 5. Chapter 126 of the General Laws is hereby amended by inserting after section 42 the following section:-

Section 43. Data Collection

All law enforcement agencies shall retain copies of immigration detainer requests and administrative warrants received along with accompanying information, and record the following for any person subject to either one: race, gender, date and time of arrest, arrest charges, date and time of receipt of a civil immigration request or administrative warrant; date and time that the person was taken into custody by federal immigration agents; immigration or criminal history known or marked on the civil immigration detainer request form; whether the civil immigration detainer request was accompanied by additional documentation regarding immigration status or proceedings; and, whether a copy of the forms were provided to the person.

All law enforcement agencies that receive civil immigration detainer requests shall report all information collected pursuant to this section to the civil rights division of the attorney general's office every 6 months. Such information, with the exception of criminal offender record information, as defined in section 167 of chapter 6, shall be a public record, within the meaning of section 3 of chapter 66 and clause Twenty-sixth of section 7 of chapter 4.

SECTION 6. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.