



TESTIMONY OF  
**RAYMOND RICO**  
BOARD MEMBER, AMERICAN CIVIL LIBERTIES UNION OF KANSAS  
**IN OPPOSITION TO SB 157**  
KANSAS SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
FEBRUARY 15, 2017

Thank you, Chairman LaTurner, and members of the Federal and State Affairs Committee for affording us the opportunity to provide testimony on SB 157. The American Civil Liberties Union (ACLU) of Kansas is a non-partisan, non-political membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas. We work to preserve and strengthen our constitutional rights and freedoms through policy advocacy, litigation, and education. We proudly serve over 10,000 supporters in Kansas and represent more than 1 million supporters nationwide.

**The ACLU of Kansas vigorously opposes SB 157.** The bill requires that the Kansas Highway Patrol execute a memorandum of agreement with the U.S. Department of Homeland Security. That memorandum of agreement would deputize the Kansas Highway Patrol to become a front-line enforcer of federal immigration law. We encourage the committee to reject SB 157 because:

- **Enforcement of immigration law is a federal responsibility.** Under the American federal system, the different levels of government have different responsibilities. This is true for both the creation of law and policy, but also in the enforcement of existing law. When the federal government attempts to take on enforcement of state law, or vice versa, it is both antithetical to the principle of federalism and problematic on a pragmatic level. Immigration is very clearly a federal responsibility. Courts have repeatedly and emphatically ruled that the regulation of immigration is a power that belongs exclusively to the federal government. As such, enforcement of immigration-related laws and regulations lies squarely with the federal government. The reason that the Immigration and Customs Enforcement (ICE) agency of the U.S. Department of Homeland Security exists at all is in order to perform federal enforcement of these federal laws. By deputizing members of the Kansas Highway Patrol as immigration enforcement officers, Kansas would be making an ill-advised intrusion into responsibilities that historically, and rightly, belong exclusively to the federal government.
- **The bill would divert scarce resources away from Kansas's public safety priorities.** Routine, front-line enforcement of immigration law is an expensive proposition, which will cost the state significant resources in money, energy, staff, and time. The Kansas Highway Patrol's responsibilities are already substantial and reflect state-level law enforcement priorities. The Highway Patrol expends its resources on public safety issues that fall within the purview of state government. Resources are scarce and finite, and there is no indication that the federal government will provide adequate additional funding for the responsibilities that deputized Highway Patrol officers would be assuming. Adding immigration enforcement to the Highway Patrol's mandate will only result in a diversion of resources away from the pressing public safety priorities that do exist in Kansas and for which the Highway Patrol is the primary enforcement agency. That will make Kansas a less safe place.

- **The bill would replicate a deeply flawed, already-failed government program that produced widespread abuses of civil liberties and civil rights.** SB 157 would authorize state-level participation in something similar to the notorious “287(g)” program, a government program which has become synonymous with poor oversight, abysmal implementation, and widespread abuse of the public trust. Named for the section of the Immigration and Nationality Act that created it, the 287(g) program established memoranda of agreement with local law enforcement agencies deputizing them to perform immigration enforcement tasks for ICE. Implementation of that program began in 2002, but quickly encountered massive implementation difficulties.

The Office of Inspector General of the U.S. Department of Homeland Security released a scathing report on the 287(g) program, providing reams of evidence that the program and the model it seeks to implement are fundamentally flawed. Among the deficiencies in the model itself identified by the fully independent Office of Inspector General were:

- Failure to focus on noncitizens who pose a threat to public safety or are a danger to the community
- Failure to provide adequate guidance and supervision to the deputized agencies
- Failure to provide meaningful oversight
- Failure to consistently weigh civil rights and civil liberties
- Failure to collect data that would allow civil rights violations to be addressed
- Failure to adequately train officers
- Failure to provide accurate program information
- Failure to provide a transparent complaint process

Despite the fact that these findings were issued several years ago, no meaningful changes have been made to the program. A new memorandum of agreement was released, but failed to meaningfully address the substantive criticism made by the Officer of Inspector General. The Department of Homeland Security has taken no steps to provide more oversight or training, or to ensure that widespread violations of civil liberties and civil rights are prevented.

**SB 157 would require the Kansas Highway Patrol to participate in this program, which has been an unrelenting, unmitigated failure in both its conceptual design and its implementation.**

- **The design of the “deputizing” program makes routine, troubling violations of civil liberties much more likely.** There is significant evidence to show that the “deputizing” power that would be conferred by SB 157 results in widespread violations of civil liberties and civil rights. Multiple governmental, academic, and non-profit research reports have provided ample evidence that the 287(g) program, for example, was used primarily to process individuals for pretextual arrests. Racial profiling, in particular, became widespread in jurisdictions that operated under the program. The program design itself dramatically increases the likelihood that civil liberties violations will take place, even in well-intentioned and highly professional agencies like the Kansas Highway Patrol.
- **The bill will make the Kansas Highway Patrol more vulnerable to legal challenge.** When law enforcement agencies violate civil liberties, they can be held financially liable. SB 157 would compel the Kansas Highway Patrol to participate in a program that has already resulted in widespread violations of civil liberties, including many examples of wrongful detention of American citizens. The high probability of civil liberties violations is an essential part of the program design, which means the Kansas Highway will become more vulnerable to legal challenge and findings of financial liability.

We urge you to **oppose SB 157** on these grounds.