

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KS 66612
(785) 296-7667
brett.fairchild@house.ks.gov

130 NW 60TH STREET
ST. JOHN, KANSAS 67376



BRETT FAIRCHILD
112TH DISTRICT

Thank you, Mr. Chairman, for the opportunity to provide written neutral testimony on HB 2771. I believe in the rule of law, and I support enforcing immigration laws. For example, last year I voted in favor of SCR 1602, which encourages the Governor to fully cooperate with federal enforcement of immigration laws. I believe that it's important to deport criminal illegal immigrants. One positive aspect of this bill is that it allows law enforcement officers to enter into ICE 287 (g) agreements, rather than requiring them to do so. Requiring them to enter into this agreement would represent an unfunded mandate on our counties, and I'm glad that this legislation gives our law enforcement officers the flexibility to enter into these agreements with ICE, rather than requiring them to do so.

However, the issue I have with this bill is that allows law enforcement officers to hold individuals without charges for 48 hours without a warrant signed by a judge. The legislation simply requires an administrative warrant signed by ICE, rather than a judicial warrant signed by an independent judge. I acknowledge that this is how ICE has traditionally operated. However, I don't believe that these types of warrants are consistent with the beliefs and writings of our founders. Immigration agencies like ICE and CBP are the only government agencies that are allowed to write and sign their own warrants to make arrests. Government agencies such as the IRS and FBI are required to obtain a warrant signed by a judge in order to make arrests.

Some will argue that the reason for this is because immigration violations are usually civil rather than criminal, and some will argue that this allows the government to bypass the Fourth Amendment requirement to obtain a warrant signed by a judge in order to make arrests. However, I would just note that while these individuals may not be criminally charged in most instances, they're still being arrested, put in jail, and deprived of their liberty. I would argue that even if specific charges are only civil rather than criminal, any time that an individual is arrested and placed in prison or in a detention facility, law enforcement officers should be required to obtain a warrant signed by a judge in order to make arrests.

In addition, the federal government is increasingly using procedures to deport individuals suspected of being in the country illegally without even granting them a deportation hearing. Created in 1996, Expedited Removal allows an ICE or CBP officer to order a person deported almost immediately. As of January 2025, the use of this authority has been expanded to its full legal limit. It now applies to people apprehended anywhere in the U.S. who can't prove that they have been continuously present in the country for at least two years. There's no judge and no appeal in this situation. The officer determines if the person is inadmissible, and if so, they are deported within 24 to 48 hours. Since this bill allows an individual to be detained based on an ICE detainer, that person might be destined for one of these "no-hearing" deportations. By amending this bill to require a judicial warrant for the initial 48-hour hold, we would ensure that at least one judge in Kansas has looked into the case before the person is handed over to a federal system that might not give them a hearing at all.

In addition, our Founding Fathers' writings, particularly surrounding the Fourth Amendment and colonial experiences with British writs of assistance, strongly suggest they would oppose arrests based solely on administrative warrants issued by executive agencies like ICE, without judicial oversight. Their core concern was preventing arbitrary government intrusions into personal liberty, requiring warrants to be specific, based on probable cause and supported by oath and affirmation, and issued by a neutral magistrate rather than executive officials. This opposition stemmed from experiences with general warrants and writs of assistance, which were broad, non-specific authorizations often issued with minimal review, allowing unchecked executive power—much like modern administrative warrants.

The Fourth Amendment was drafted as a direct response to colonial abuses under British rule, where writs of assistance empowered customs officers to conduct searches and seizures without specific evidence or judicial scrutiny. These writs were issued by courts but functioned as administrative tools, lasting for the monarch's reign and granting broad discretion to executive agents. The Founders viewed them as tyrannical, violating natural rights and English common law principles that a person's home is their castle.

James Otis, a Massachusetts lawyer, argued in court that these writs "are the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book." He argued that only specific warrants, issued upon oath, with probable cause, and describing specific places and persons, were legal. Otis emphasized that such unchecked executive authority could lead to tyranny, imprisonment, or murder, and insisted courts should void laws authorizing them as contrary to reason and natural rights. This speech influenced the Bill of Rights and

highlights the Founders' demand for judicial interposition to curb executive overreach in searches and seizures (including arrests)

John Adams, who witnessed Otis's speech, later wrote that it sowed the seeds of independence by rallying against "arbitrary Claims of Great Britain." In his notes and correspondence, Adams echoed the view that warrants must be specific and judicially authorized to protect against executive abuse, linking this to broader liberties. In the Declaration of Independence, Thomas Jefferson listed grievances against King George III, including "transporting us beyond Seas to be tried for pretend offences," reflecting opposition to extrajudicial executive actions that bypassed due process

Administrative warrants for immigration arrests, issued by ICE officials without a judge's review, mirror the writs the Founders condemned: they are executive-issued, often based on internal assessments rather than sworn probable cause before a neutral magistrate, and can authorize broad actions. Historical legal treatises and Founding-era practices show that arrests generally required judicial warrants except in narrow cases like pursuing known felons in the act. There is scant evidence from the era supporting executive-issued warrants for arrests or home entries. The Founders' emphasis on separating powers, preventing the executive from acting like a judge, would likely view ICE's practice as unconstitutional, prioritizing judicial warrants to ensure reasonableness and protect against arbitrary detention.

In addition, there are also some court rulings that back up my argument that ICE immigration detainers should require a judge's signature under the Fourth Amendment. For example, in *Galarza v. Szalczyk*, a U.S citizen was wrongly held for days on an ICE detainer. The court ruled that detainers are voluntary requests, not mandatory, and local agencies can be held liable for unlawful detention if they honor them without independent probable cause or authority. This emphasized that detainers alone do not compel holds and can lead to Fourth Amendment violations if they result in extended custody without proper basis. In *Morales vs. Chadbourne*, the court ruled that detaining someone beyond their release date solely on an ICE detainer constitutes a new "arrest" under the Fourth Amendment. The court required ICE to have probable cause to issue such requests, and local compliance without it violates protections against unreasonable searches and seizures.

In *Miranda-Olivares v. Clackamas County*, the court held that an ICE detainer does not provide sufficient probable cause for local jails to detain someone. Holding the plaintiff violated her Fourth Amendment rights, as the detainer lacked judicial backing or reliable evidence of removability, leading to liability for the county. In *Lunn v. Commonwealth*, the court echoed Fourth Amendment concerns: Extending detention on a detainer without

judicial warrant or probable cause of a crime is an unlawful arrest. It barred Massachusetts officials from honoring detainers absent stronger safeguards. Lower courts (especially in the 1st, 3rd, and 9th Circuits) have consistently found that ICE administrative warrants and self-declared probable cause on detainers lack the neutral magistrate review required for most seizures. Honoring detainers can create new Fourth Amendment violations by local officials, exposing them to liability. These precedents strongly support the view that this bill risks encouraging unconstitutional detentions without adequate due process.

There are some who argue that illegal immigrants don't have any rights under our Constitution, that only U.S citizens are covered by the Bill of Rights. This claim ignores the reality that the Bill of Rights is designed to protect everyone. Without legal protections designed to protect everyone, the government could simply claim that a U.S citizen is here illegally and deport that person to a country that they've never even been to. Due process requirements for detaining and deporting individuals accused of being in the country illegally are designed to protect U.S citizens from potential errors committed by the government. Due process is necessary to ensure that U.S citizens aren't being detained and deported out of the country in error, ensuring that U.S citizens aren't being deprived of liberty and their Constitutional rights.

Therefore, I'm asking the committee to introduce and pass an amendment to this bill, which would require law enforcement officers to acquire a judicial warrant signed by a judge before any Kansas citizen can be arrested and detained for 48 hours.

Brett Fairchild

Brett Fairchild-State Representative-113th District