

THE ALL-IN-ONE GUIDE TO

DEFEATING ICE HOLD REQUESTS

(a.k.a. Immigration Detainers)

APPENDIX 4

LETTERS FROM PUBLIC OFFICIALS
ON DETAINER POLICIES



ALL IN ONE GUIDE TO DEFEATING ICE HOLDS

APPENDIX 4 : Letters from public or elected officials on detainer policies

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U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

JAN 04 2012

Ms. Toni Preckwinkle
President, Cook County Board of Commissioners
118 N. Clark Street, Room 537
Chicago, IL 60602

Dear Ms. Preckwinkle:

I write to express my serious concerns with the Ordinance passed by the Cook County Board of Commissioners on September 7, 2011, entitled "Policy for Responding to ICE Detainers" (the Ordinance). As you know, the Ordinance directs the Sheriff to decline immigration detainer requests, bars U.S. Immigration and Customs Enforcement (ICE) officials from County facilities when enforcing immigration laws, and prohibits County personnel from responding to ICE inquiries. This Ordinance undermines public safety in Cook County and hinders ICE's ability to enforce the nation's immigration laws.

Of great concern is the serious impediment the Ordinance poses to ICE's ability to promote public safety through the identification of deportable criminals. As written, the Ordinance restricts County assistance in all immigration enforcement matters—including those involving individuals convicted of a crime, whether violent or otherwise. As a result, the Ordinance disrupts the federal government's efforts to remove deportable criminal offenders from the country and instead allows for their release back into the community. In light of criminal recidivism rates, the release of so many these individuals to the streets of Cook County is deeply troubling and directly undermines public safety.

Our concern is not an abstract one, as the Ordinance's restrictions have already limited ICE's ability to take custody of criminal aliens detained in Cook County facilities. Since the Ordinance was enacted, ICE has lodged detainers against more than 268 removable aliens in Cook County's custody who have been charged with or convicted of a crime, including serious and violent offenses like assault on a law enforcement officer. Cook County has not honored any of these 268 detainers, however, preventing ICE from considering removal proceedings against all but 15 of these individuals whom we were able to locate independently and arrest following their release into the community. The potential gravity of Cook County's actions is highlighted in very real terms in today's *Chicago Tribune* article concerning the case of Saul Chavez.

In addition to undermining local public safety, the Ordinance may also violate federal law. The Immigration and Nationality Act provides that a "local government entity may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving

from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” See 8 U.S.C. § 1373(a). This provision is designed to ensure that ICE’s ability to enforce immigration law in our communities is not unduly obstructed by state or local laws or policies. The Ordinance nevertheless prohibits County personnel from responding to ICE inquiries or communicating with ICE regarding an individuals’ incarceration status or release date.

The Ordinance also inhibits ICE’s ability to validate Cook County’s annual request for State Criminal Alien Assistance Program (SCAAP) funding. As you are aware, through the SCAAP program, the federal government reimbursed Cook County with nearly \$3.4 million in 2010 and nearly \$4.4 million in 2009 for the cost of detaining criminal aliens in Cook County detention facilities. In administering the SCAAP program, the Department of Justice requires the Department of Homeland Security to verify the immigration status of inmates for whom state and local agencies seek reimbursement. Without access to the Cook County jails, ICE’s ability to accurately verify the immigration status of criminal aliens detained by Cook County becomes more difficult. Moreover, it is fundamentally inconsistent for Cook County to request federal reimbursement for the cost of detaining aliens who commit or are charged with crimes while at the same time thwarting ICE’s efforts to remove those very same aliens from the United States.

Because of the gravity of these concerns, I request that you consider amending the Ordinance to avoid any legal conflict with federal law and to restore sensible cooperation between Cook County and ICE when it comes to the identification and removal of deportable offenders incarcerated in Cook County jails.

Sincerely yours,



John Morton
Director

Mr. John Morton
Director
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

Dear Mr. Morton:

I am in receipt of your letter, date-stamped January 4, 2012, in which you express your concerns regarding Cook County's policy for responding to ICE detainees.

Let me begin by emphasizing that like you, I am firmly committed to the public safety of all residents of Cook County. I also support the U.S. Immigration and Customs Enforcement being able to carry out its duties and responsibilities. What is troubling to me, however, is a policy which treats people differently under the law solely based upon their immigration status.

You raise the concern that the County ordinance poses a threat to ICE's ability to identify deportable criminals. Subsection (a) of the ordinance does not prohibit honoring of ICE detainees if, "...there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed." In other words, the ordinance makes it clear that if your agency agrees in writing to cover the costs for housing the ICE detainees at the jail for the additional 48 hours (or, up to 96 hours over weekends) then the detainer could be honored. It costs the taxpayers of Cook County \$143.00 per day to house an inmate in the Cook County Jail and we cannot justify shouldering the cost of holding detainees beyond their release date. Please be reminded of what is stated in the ordinance itself: "There (is) no legal authority upon which the federal government may compel an expenditure of County resources to comply with an ICE detainer."

Moreover, subsection (b) of the ordinance does not prohibit ICE agents from having access to detainees if, "...ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws..." The ordinance recognizes there may be legitimate public safety reasons for providing access to detainees and provides statutory exceptions for the same. Again, the ordinance does not pose a threat to ICE's ability to identify deportable criminals and the very fact that an ICE detainer is issued means ICE is already aware of an individual's whereabouts.

In your letter, you reference the fact that, "since the Ordinance was enacted, ICE has lodged detainees against more than 268 removable aliens in Cook County's custody who have been charged with or convicted of a crime, including serious and violent offenses..." This raises two points that are troubling to me in light of your public safety argument. First, honoring ICE

detainers would apply to those who have yet to be convicted of a crime. If an individual is charged with a violent offense or is a flight risk then an appropriate bond or no bond should be set to address public safety; immigration status should not be the driving force for detainment. Second, you make it clear that not all of the charges are for serious or violent offenses. Again, it belies your argument that there is a threat to public safety when the charge could be a low-level or non-violent offense.

You also indicate that out of the 268 ICE detainers lodged in Cook County since enacting the ordinance, you were only able to independently locate and arrest 15 of these individuals post-release. As I have previously stated, I fully support ICE's ability to carry out its responsibilities, yet, I firmly believe it must do so through its own due diligence. You refer to Saul Chavez, for example, who was housed in the Cook County Jail for five months after the ICE detainer was issued. As you are well aware, this was not Mr. Chavez's first run-in with the law and prior to the arrest on the most recent charge, he had served out a sentence of probation. ICE was not only aware of Mr. Chavez's whereabouts during those five months he was detained in 2011 and could have pursued deportation efforts, but I imagine ICE was also aware of Mr. Chavez's status upon his prior conviction. The reason his case was not prioritized while under probation or during his 2011 detainment escapes me.

Your letter points out that our ordinance *may* also violate federal law based upon a provision under the Immigration and Nationality Act. In your letter, you quote a portion of 8 U.S.C. Section 1373(a). However, if you were to quote the entire provision of sub-section (a), it reads, "*Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.*" (Italics added) In this instance, there is a local law—our policy for responding to ICE detainers—that outlines limitations for utilizing County staff and resources to respond to ICE inquiries. As previously mentioned, the federal government cannot compel a local agency to use its resources to enforce federal immigration laws. Furthermore, it is my understanding that ICE continues to have personnel in Cook County's criminal courts on a daily basis and that its officials are not prohibited from gathering needed information from other means.

Finally, you reference that the County Ordinance, "...inhibits ICE's ability to validate Cook County's annual request for State Criminal Alien Assistance Program (SCAAP) funding." We are certainly aware of and appreciate being reimbursed by the federal government for the cost of detaining criminal aliens in Cook County detention facilities. However, it is my understanding that SCAAP funding only applies to the time that an individual is rightly detained in our jail. Once that individual posts bond or charges are dismissed, they are to be released—regardless of their immigration status. SCAAP funds do not cover costs of detaining individuals for the

additional 48 hours. Cook County Jail will continue to detain individuals per judge's discretion and, during that time, SCAAP funds should be available if detaining immigrants. It would be unjust to hold someone at the mere request of another governmental entity when that individual has met all prerequisites for being released from the jail. It may be true, as you state in your letter, that ICE's ability to verify immigration status of criminal aliens detained by Cook County "becomes more difficult," but, that certainly does not mean it is impossible.

Mr. Morton, I welcome the opportunity to meet with you directly on these issues. This is not a matter I take lightly and as I have said throughout this process, I continue to be open to thoughtful dialogue and reasoning. If you are interested in scheduling a meeting to discuss this further, please contact me directly.

Respectfully—

Toni Preckwinkle
President

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

February 13, 2012

Toni Preckwinkle
President
Cook County Board of Commissioners
118 N. Clark Street, Room 537
Chicago, IL 60602

Dear Ms. Preckwinkle:

I received your letter dated January 19, 2012, and was pleased to read of your firm commitment to public safety and of your support for the duties and responsibilities of the U.S. Immigration and Customs Enforcement (ICE). I also appreciate your view that the aim of the County ordinance is not to prohibit compliance with ICE detainees, but rather to ensure that the County does not suffer any unreimbursed costs. Having read your letter, I believe there is a simple way to address your concerns in a manner that will permit ICE to enhance public safety in Cook County by enforcing federal immigration law against deportable individuals in the County's custody who are charged with or convicted of criminal activity. To that end, I propose the following three-part plan for your consideration.

First, Cook County would again allow two ICE officers to work in the Cook County Detention Facility. These officers would be permitted to interview detainees and would be provided access to any County records necessary to identify aliens who may be subject to removal proceedings upon release by the County. ICE would bear any costs incurred by the County in providing the officers space to work and access to relevant County records and information.

Second, to prevent the County from incurring any costs as the result of honoring ICE detainees, ICE would agree to take custody of an alien subject to an ICE detainer on the day of the alien's scheduled release from the Cook County jail. In order to facilitate ICE's ability to take custody in this expedited manner, the County would schedule releases during normal business hours and would provide ICE with at least 24 hours advance notice of a pending release. ICE would then coordinate the transfer of released detainees at a time and in a manner negotiated with the Sheriff.

Cook County Board President Toni Preckwinkle
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Third, if for any reason ICE were not able to assume custody of a detainee pursuant to the arrangement negotiated with the Sheriff, ICE would agree to reimburse the County for the expenses incurred by the Sheriff during any period of delay. This reimbursement would be made subject to terms and procedures negotiated with the Sheriff.

Should the County wish to explore this proposal, I would request that we promptly appoint a joint working group consisting of ICE and County employees to address the specifics, resolve any issues, and develop a schedule for implementation. To fully implement this plan, the ordinance of September 7, 2011, would need to be amended or repealed.

I believe this proposal serves our mutual interest in protecting the public safety of Cook County and honoring our nation's immigration laws. I look forward to hearing from you and to restoring good cooperation with Cook County.

Sincerely,

A handwritten signature in black ink, appearing to read "John Morton", with a long horizontal flourish extending to the right.

John Morton
Director
U.S. Immigration and Customs Enforcement



OFFICE OF THE PRESIDENT
BOARD OF COMMISSIONERS OF COOK COUNTY
118 NORTH CLARK STREET
CHICAGO, ILLINOIS 60602
(312) 603-6400
TDD (312) 603-5255

TONI PRECKWINKLE
PRESIDENT

April 9, 2012

Mr. John Morton
Director
U.S. Department of Homeland Security—
Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Dear Mr. Morton:

I am in receipt of your letter dated February 13, 2012. I certainly appreciate your effort to continue the dialogue. At this juncture, I believe convening a joint working group concerning the proposal outlined in your letter is premature. I have several concerns about the ideas set forth in your letter and have strong reservations regarding any proposal that allows for detention by ICE without a warrant.

In review of your proposal, the first point suggests that Cook County would again allow two ICE officers to work in the County detention facility, allow ICE to interview detainees, to have access to County records, and bear any costs relating to same. Under Section 46-37(b) of the Cook County ordinance, there are limited circumstances when ICE agents may have access to individuals or County facilities. County ordinance permits ICE access when ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws. As stated in my previous correspondence, immigration enforcement is not a function of the County. To allow ICE interviews, access to records and detention without a warrant or legitimate law enforcement purpose would cause the County to be involved in matters outside our local jurisdiction and potentially open the County to liability. Once again, in circumstances where a criminal warrant has been issued or when there is some other legitimate law enforcement purpose not related to enforcement of immigration laws, Cook County ordinance does not restrict access. Your offer that ICE bear any costs associated with providing space to work and access to records does not address the prevailing concern that the County would be operating beyond the scope of its role as a local jurisdiction.



The second aspect of your proposal suggests that ICE would agree to take custody of an alien subject to an ICE detainer on the day of the alien's scheduled release from the Cook County Jail. This proposal specifically requires that the County schedule releases during normal business hours and that the County provide ICE with at least 24 hours advance notice pending release. What you are proposing is impractical for many reasons. First, while a release order for a detainee is entered during normal business hours, the actual release of an inmate can happen at any time and is dependent on a number of factors. Inmates may receive a release order from any of our suburban courthouses and have to return to the jail for processing and release. A family member—unbeknownst to the inmate—may post bail at any time. Or, an inmate may be released when his or her charges are dropped. In each of these instances it would be impossible to provide ICE with at least 24 hours advance notice of a pending release. I will reiterate that once a member of our independent judiciary makes a determination that an individual should be released, the County cannot detain them past that point.

Finally, your proposal sets forth the proposition that if ICE is unable to assume custody of a detainee pursuant to agreement with the Sheriff, ICE will agree to reimburse the County for expenses incurred by the Sheriff during any period of delay. This proposal appears overly broad and vague. This proposal does not address any limitations as to the circumstances in which ICE may be unable to assume custody or for what length of time. Detention of an individual in the County correctional facility past the point when an individual is free to go subjects the County to liability for unlawful detention and infringes upon an individual's rights. Though the County has an obligation to protect tax payer interests and operate in a lawful manner that does not infringe on an individual's legal rights; the primary intent of the County ordinance was not fiscal rather it was passed to ensure that detainees in Cook County are granted fair and equitable access to justice, regardless of their immigration status.

The Cook County ordinance addresses the County's obligation to protect tax payer interests; moreover, it ensures that detainees in Cook County are granted fair and equitable access to justice, regardless of their immigration status - the primary intent behind passage.

If you would find it to be helpful, I am still open to meeting with you to further discuss options that will provide fair and equitable access to justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Toni Preckwinkle". The signature is written in a cursive, flowing style.

Toni Preckwinkle
President

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Corrections



Office of the Director

August 17, 2011

The Honorable Phil Mendelson
Chairman
Committee on the Public Safety and the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Suite 420
Washington, D. C. 20004

Reference: ICE Detainees

Dear Chairman Mendelson:

In accordance with your request dated August 15, 2011, please be advised of the following. While 8 C.F.R. 287.7(d) provides that upon a determination by ICE 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 ICE. The provision does not apply to ICE detention facilities. Some ICE facilities are directly under their supervision and control and many are designated through an Intergovernmental Agreement whereby the facility will hold the inmate on behalf of ICE and bill according to an established per diem. The D. C. Department of Corrections (DOC) holds inmates beyond the 48 hour period as per the attached Intergovernmental Agreement IGA 160-00-0016 dated May 1, 2007 and bills ICE the per diem of \$106.62 per day for each ICE inmate held from the day of the sentence expiration or the court ordered release through the day the inmate is picked up by ICE.

The DOC Records Office receives detainers from ICE by a variety of methods: some are received directly from ICE via facsimile, and some are received from the U.S. District Court prior to the inmate being committed or while the inmate is in DOC custody. At times, when the inmate is being committed into the facility (by way of court or other agencies) a copy of an ICE detainer is attached to his commitment. From time to time, ICE requests information from DOC on persons in its custody, which the agency provides and subsequently, an ICE officer may go to the CDF/CTF and interview inmates, research their criminal records, and determine whether to

The Honorable Phil Mendelson

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August 17, 2011

place or lift a detainer. For inmates with active ICE detainers who have projected release dates, the Records Office notifies ICE of the pending release and ICE schedules a pickup date. For inmates with active ICE detainers who are court ordered released (COR), the Records Office notifies ICE of the COR, and ICE schedules a pickup date. In these cases, pick up times may exceed 48 hours (e.g. over a weekend or holiday) but generally do not exceed 72 hours.

Should you or members of your staff have any questions regarding this information, please do not hesitate to contact me at (202) 673-7316 or Ms. Sallie Thomas, Executive Assistant, at (202) 671-2134

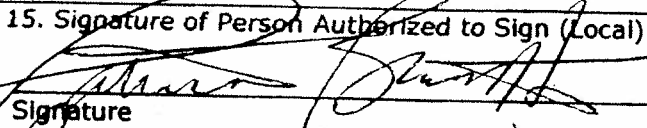
Respectfully,


Thomas Hoev
Interim Director

Enclosure

Multi-Agency Detention Services

Intergovernmental Agreement

1. Agreement Number 16-00-0016	2. Effective Date May 1, 2007	3. Facility Code(s) 3JY	
4. Issuing Federal Agency United States Marshals Service Witness Security & Prisoner Operations Division Washington, DC 20530-1000 Attn: Renita L. Barbee		5. Local Government D.C. Department of Corrections 1901 D Street S.E. Washington, D.C. 20003 Tax ID #0046164-00	
6. Appropriation Data 15X1020		7. Local Contact Person: Patricia Britton, Deputy Director 8. Tel: (202)671-2044 Fax: (202)673-2259 Email: patricia.britton@dc.gov	
9. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.		10. Approximately 255,852	11. \$106.62
12. To Be Used if Prisoner Transportation is being provided.		13. Guard Hour Rate: \$31.03 Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.	
14. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the body governing of the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>		15. Signature of Person Authorized to Sign (Local)  Signature <u>Patricia Britton</u> Name Deputy Director Title 4/13/07 Date	
16. Prisoner & Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female		17. Signature of Person Authorized to Sign (Federal) <u>Renita L. Barbee</u> Signature <u>Renita L. Barbee</u> Name Grants Analyst Title 4/5/07 Date	

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Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Acts of 2001 (Public Law 106-553), this Agreement is entered into between the **United States Marshals Service** (hereinafter *referred to* as the "Federal Government") and **the D.C. Department of Corrections** (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows three (3) Federal Government components, specifically, the United States Marshals Service (USMS) and the Federal Bureau of Prisons (BOP) of the Department of Justice (DOJ); and the United States Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS), to house federal detainees with the Local Government at the **D.C. Jail** (hereinafter referred to as "the facility"). For purposes of this Agreement, the term "Federal Government", as used herein, shall mean any and all of the three Federal Government components responsible for housing federal detainees, e.g. any notices required to be provided to the Federal Government, including invoices, shall be provided to the specific Federal Government component responsible for each federal detainee, or material witness.

The population, hereinafter referred to as "federal detainees," will be individuals sentenced or charged with federal offenses and detained while awaiting trial or sentencing awaiting designation and transport to a BOP facility, a hearing on their immigration status, or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with state and local laws, standards and procedures, or court orders applicable to the operations of the facility, consistent with federal law, policies and regulations. Unless otherwise specified by this Agreement, the Local Government is required, in units housing federal detainees, to perform in accordance with the most current versions of the mandatory standards of the American Correctional Association (ACA) "Standards for Adult Local Detention Facilities (ALDF)", and the essential National Commission on Correctional Health Care (NCCHC) Standards, and the Federal Performance-based Detention Standards (www.usdoj/ofdt/standards.htm). In addition, where ICE federal detainees are housed, the ICE federal detainees are to be housed in accordance with ICE Standards (www.ice.gov/partners/dro/opsmannual/index.htm). In cases where other standards conflict with DOJ/DHS/ICE policy or standards, DOJ/DHS/ICE policy and standards prevail.

Agreement Number 16-00-0016

At all times, the Federal Government shall have access to the facility and to the federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period not less than 3 years.

This Agreement shall not affect any pre-existing, unrelated agreements between the parties or with any other third party or parties.

Period of Performance

This Agreement is effective upon the date of signature of both parties, and remains in effect unless terminated by either party with written notice. The Local Government shall provide no less than 120 calendar days notice of their intent to terminate. Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

Assignment and Outsourcing of Jail Operations

Overall management and operation of a facility housing federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government is financially responsible for all medical treatment provided to federal detainees within the facility. The Local Government shall provide the full range of medical care required within the facility including dental care, mental health care, pharmaceuticals, and record keeping, as necessary to meet the essential standards of the National Commission of Correctional Health Care's Standards for Health Services of Jails (current edition).

The Local Government will submit to the Federal Government requests for approval of all treatment to be provided outside the facility. The Federal Government shall be responsible for the cost of approved outside medical treatment.

In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the federal detainee's illness or injury, type of treatment provided, and the estimated cost thereof.

The Local Government shall promptly forward medical invoices for outside medical care to the Federal Government within 30 days of receipt.

Agreement Number 16-00-0016

The facility shall have in place an adequate infectious disease control program, which includes testing all federal detainees at the facility for tuberculosis (TB) as soon as possible upon intake (not to exceed 14 days) and read within 72 hours. TB testing shall be accomplished in accordance with the latest CDC Guidelines and the results documented on the federal detainee's medical record. The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB so that any scheduled transports or production can be delayed until a physician verifies the federal detainee's TB status.

When a federal detainee is being transferred and/or released from the facility, they will be provided with seven days of prescription medication which will be dispensed from the facility. When possible, generic medications should be prescribed. Medical records must travel with the federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a federal detainee is moved.

Federal detainees may be charged a co-payment for medical services provided by the Local Government. The Local Government shall administer the program in accordance with the Federal Prisoner Health Care Co-Payment Act of 2000 (Title 18 401 3d). This statute does not cover ICE federal detainees; co-payments shall not be collected from ICE federal detainees under ANY circumstances.

Receiving & Discharge of Federal Detainees

The Local Government agrees to accept federal detainees only upon presentation by a law enforcement officer of the Federal Government with proper agency credentials.

The Local Government shall not relocate a federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government.

The Local Government agrees to release federal detainees only to law enforcement officers of the Federal Government agency initially committing the federal detainee (i.e., DEA, ICE, etc.) or to a Deputy United States Marshal (DUSM). Those federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the district

Agreement Number 16-00-0016

United States Marshal (USM).

ICE federal detainees shall not be released to the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.

Guard/Transportation Services to Medical Facility

The Local Government agrees, upon request of the Federal Government in whose custody a prisoner is held, to provide transportation and escort guard services for federal prisoners housed at their facility to and from a medical facility for outpatient care, and transportation and stationary guard services for federal prisoners admitted to a medical facility.

Such services will be performed by at least two armed qualified law enforcement or correctional officer personnel employed by the Local Government under their policies, procedures, and practices. The Local Government agrees to augment such practices as may be requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

The Local Government will continue to be liable for the actions of its employees while they are transporting federal prisoners on behalf of the USMS. Further, the Local Government will also continue to provide workers' compensation to its employees while they are providing this service. It is further agreed that the local jail employees will continue to act on behalf of the Local Government in providing transportation to federal prisoners on behalf of the USMS.

Furthermore, the Local Government agrees to hold harmless and indemnify the USMS and its officials in their official and individual capacities from any liability, including third-party liability or workers' compensation, arising from the conduct of the local jail employees during the course of transporting federal prisoners on behalf of the USMS.

The Federal Government agrees to reimburse the Local Government at the rate stipulated on page one (1) of this agreement. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Guard/Transportation Services to U.S. Courthouse

The Local Government agrees upon request of the USM in whose custody a prisoner is held, to provide transportation and escort guard services for federal prisoners housed at their facility to and from the U.S. Courthouse.

Transportation and escort guard services will be performed by at least two armed qualified officers employed by the Local Government under their policies, procedures, and practices, and will augment such practices as may

Agreement Number 16-00-0016

be requested by the USM to enhance specific requirements for security, prisoner monitoring, and contraband control. Upon arrival at the courthouse, transportation and escort guard will turn federal prisoners over to Deputy U.S. Marshals only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal prisoners to any U.S. Courthouse without a specific request from the USM who will provide the prisoner's name, the U.S. Courthouse, and the date the prisoner is to be transported.

Each prisoner will be restrained in handcuffs, waist chains, and leg irons during transportation.

Such services will be performed by qualified law enforcement or correctional officer personnel employed by the Local Government under their policies, procedures, and practices. The Local Government agrees to augment such practices as may be requested by the USM to enhance specific requirements for security, prisoner monitoring, visitation, and contraband control.

The Local Government will continue to be liable for the actions of its employees while they are transporting federal prisoners on behalf of the USMS. Further, the Local Government will also continue to provide workers' compensation to its employees while they are providing this service. It is further agreed that the local jail employees will continue to act on behalf of the Local Government in providing transportation to federal prisoners on behalf of the USMS.

The Local Government agrees to hold harmless and indemnify the USMS and its officials in their official and individual capacities from any liability, including third-party liability workers' compensation, arising from the conduct of the local jail employees during the course of transporting federal prisoners on behalf of the USMS.

The Federal Government agrees to reimburse the Local Government at the rate specified on page one (1) of this agreement. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a federal detainee. The Local Government shall use all reasonable means to apprehend the escaped federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal

Agreement Number 16-00-0016

Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped federal detainees. Additionally, the

Local Government shall notify the Federal Government as soon as possible when a federal detainee is involved in an attempted escape or conspiracy to escape from the facility.

In the event of the death or assault of a federal detainee, the Local Government shall immediately notify the Federal Government.

Administrative Orders & Agency Instructions

For administrative convenience, the Federal Government may request services not listed in this Intergovernmental Agreement (IGA) (i.e. Guard Service, Transportation, etc). Any individual agency orders with the Local Government shall clearly define the additional services and/or procedures, a reasonable price, if any, and state that all other terms and conditions of this IGA remain in effect.

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: www.arnet.gov.

Federal Acquisition Regulation Clause(s):

- 52.222-41 Service Contract Act of 1965, as Amended (July 2005)
- 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)
- 52.222-43 Fair Labor Standards Act and the Service Contract Act - Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current local government wage rates shall be the prevailing wages unless notified by the Federal Government.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the *per-diem* rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested *per-diem* rate with the independent government estimate for services, otherwise known as the *Core Rate*;

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2. Comparison with *per-diem* rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed *per-diem* rate for services **\$106.62**, and shall not be subject to adjustment on the basis of **D.C. Department of Corrections** actual cost experience in providing the service. The *per-diem* rate shall be fixed for a period from the effective date of the Agreement forward for 36 months. The *per-diem* rate covers the support of one federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

After 36 months, if a rate adjustment is desired, the Local Government shall submit a request through the *eIGA* area of the Detention Services Network (*DSNetwork*). All information pertaining to the jail on *DSNetwork* will be required before a new *per-diem* rate can be considered.

The *per-diem* rate covers the support of one federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each of the Federal Government components responsible for federal detainees housed at the facility.

Addresses for the components are:

United States Marshals Service
District of Columbia – D.C.
U.S. Courthouse, Suite 1400
333 Constitution Avenue, NW
Washington, DC 20001
(202)353-0600

United States Marshals Service
District of Columbia – Superior Court
Superior Courthouse
500 Indiana Avenue, NW Room C-250
Washington, DC 20001
(202)615-8604

Agreement Number 16-00-0016

Federal Bureau of Prisons
400 First Street NW
Second Floor Room 2009
Washington, D.C. 20534

Federal Bureau of Prisons
CBR/CDC Community Programs
Mid-Atlantic Regional Office Suite 100-N
10010 Junction Drive
Annapolis Junction, MD 20701

To constitute a proper monthly invoice, the name and address of the facility, the name of each federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the IGA, and the total amount billed (total days multiplied by the rate per day) shall be listed, along with the name, title, complete address and telephone number of the Local Government official responsible for invoice preparation.

Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government on a monthly basis, promptly after receipt of an appropriate invoice.

The Local Government shall provide a remittance address below:

District of Columbia – Department of Corrections
1923 Vermont Avenue NW Suite N-112
Washington, D.C. 20001
(202)671-2044

Modifications and Disputes

Either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other

Agreement Number 16-00-0016

forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspections of Services

The Local Government agrees to allow periodic inspections of the facility by Federal Government inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement, and levels of services.

Liability

The Local Government shall protect, defend, indemnify, save and hold harmless the Federal Government, DOJ, DHS and its employees or agents, from and against any and all claims, demands, expenses, causes of action, judgments and liability arising out of, or in connection with the performance of this Agreement by the Local Government, its agents, sub-contractors, employees, assignees or any one for whom the Local Government may be responsible. The Local Government shall also be liable for any and all costs, expenses and attorneys fees incurred as a result of any such claim, demand, cause of action, judgment or liability, including those costs, expenses and attorneys fees incurred by the Federal Government, DOJ, DHS and its employees or agents. The Local Government's liability shall not be limited by any provision or limits of insurance set forth in the resulting agreement.

Awarding the Agreement, the Federal Government does not assume any liability to third parties, in awarding and administering this Agreement, the Federal Government does not assume any liability to third parties, nor will the Federal Government reimburse the Local Government for its liabilities to third parties, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of the Agreement or any subcontract under this Agreement.

The Local Government shall be responsible for all litigation, including the cost of litigation, brought against it, its employees or agents for alleged acts or omissions. The Federal Government shall be notified in writing of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within five working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

COUNCILMEMBER MENDELSON
2011 SEP 21 PM 5:06

September 21, 2011

Councilmember Phil Mendelson
Chairman, Committee on the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

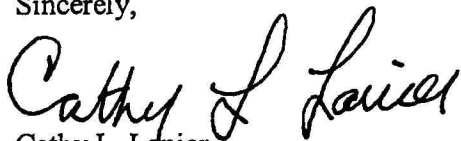
Dear Councilmember Mendelson:

This letter is in response to your August 15 correspondence requesting an update on the status of Secure Communities in the District of Columbia in light of the recent decision of the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), to terminate all existing memoranda of agreement with state and local jurisdictions regarding Secure Communities. The Metropolitan Police Department (MPD) is not an active participant in Secure Communities, and ICE has not contacted the Department regarding future participation.

However, it is important to understand that, as I have consistently reported to the Council, the Federal law enforcement and security agencies are mandated to have fully interoperable systems and information sharing by 2013. Consequently, by 2013 it is expected that fingerprints sent by state and local law enforcement to the Federal Bureau of Investigation will be automatically shared with ICE. Therefore, I must once again urge the Council to reconsider the wisdom of its efforts to prevent me and MPD from working with ICE to craft a program that can work to protect the public safety interests of all residents of the District of Columbia, including our immigrant communities. Before the Council unanimously proposed the *Secure Communities Act of 2010*, the District had the opportunity to be a national leader in structuring our participation in Secure Communities in a just and prudent manner before it was activated nationwide. I was actively working with the community, FBI, and ICE to craft a narrowly-tailored program that would respect the many diverse communities of the District, while ensuring that the Department was using all reasonable tools to safeguard those who visit, work, and reside in the District. To reiterate what I wrote to you in July 2010, I believe we can implement this initiative in a manner consistent with both principles. The Council should take an affirmative step to sanction such an effort so that we can focus on developing a solution that best protects the residents of and visitors to the District.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,


Cathy L. Lanier
Chief of Police

County of Santa Clara County Counsel

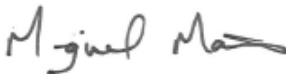


PSJC CC01 090711

Prepared by: Juniper Downs
Deputy County Counsel

DATE: September 7, 2011

TO: Supervisor George Shirakawa, Chairperson
Supervisor Mike Wasserman
Public Safety & Justice Committee

FROM: 
Miguel Marquez
County Counsel

SUBJECT: Report Back regarding Policy on Civil Immigration Detainer Requests

RECOMMENDED ACTION

Consider recommendations from the Office of the County Counsel on behalf of the Civil Detainer Task Force relating to a policy on civil immigration detainer requests, and forward to the Board of Supervisors for consideration. (Referral from December 2, 2010 Public Safety & Justice Committee, Item No. 9)

Possible future action by the Board of Supervisors:

- a. Adopt Board Policy Resolution No. YY-NN adding Board of Supervisors' Policy Manual section 3.54 relating to Civil Immigration Detainer Requests. (Roll Call Vote)
- b. Direct Clerk of the Board to include Policy in Board of Supervisors' Policy Manual.

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FISCAL IMPLICATIONS

Approving the recommended action will have an unknown impact on the General Fund. It is possible that adoption of the proposed policy will result in cost savings for the County by reducing inmate housing costs related to detaining non-criminal and low-level offenders for suspected violations of federal civil immigration provisions. County costs may also be reduced to the extent there is a reduction in the number of children who are placed in the dependency system when their parents are detained in administrative removal proceedings. However, these impacts are very difficult to quantify in advance, as the actual system impacts of the policy are virtually impossible to predict. At the very least, it is likely that the recommended action will create operational flexibility, if not measurable budget savings, and that increased availability of beds in the County's jails will create capacity that will be needed once realignment is implemented.

However, compliance with the policy will require additional work from the Department of Correction (DOC) staff. Because the DOC does not have any excess staff capacity to conduct this work due to recent budget cuts, we anticipate an increase in administrative costs for the DOC to implement the policy, especially in the initial stages when process changes and staff training will be required. DOC staff have conducted a cost study that shows that up to three additional employees may be required to implement the policy as drafted. These costs accrue from implementation of certain aspects of the policy. Namely, virtually all of the DOC's costs arise from the section of the policy that considers prior convictions. As drafted, the policy states that the County will honor detainer requests in one of two situations: 1) If an individual is convicted of a serious or violent felony while in County custody, or 2) If the individual was convicted of a serious or violent felony previously and the conviction was either within the past ten years or the date of release was within the last five years, whichever date is later. The second scenario includes out-of-state convictions that would be considered serious or violent felonies if committed in California. The DOC has estimated the following:

1. In terms of the additional departmental costs, 100% of the staff time required to implement this policy stems from consideration of prior convictions.
2. Of that time, 85% of the costs specifically relate to the "washout period," i.e. checking the date of conviction and release to see if the conviction is older than ten years and, if necessary, whether the date of release was within five years. Attaining the date of conviction and release is the most time-consuming aspect of the work DOC staff would have to complete to implement the proposed policy.

Therefore, there are policy changes the Board could direct staff to consider that would alter the fiscal impacts of the policy being proposed. The cost of implementing the policy will also be affected by how the DOC implements its new responsibilities operationally and by the shifting number of detainer requests the County receives from ICE.

Because the relative financial costs and benefits of the recommended action are virtually impossible to measure in advance, the Board could adopt the proposed policy, provide one-time resources for DOC to implement the policy, and require a report-back on fiscal implications within 6 months. This will allow staff to provide data regarding the actual costs and savings of the policy and will align with the budget cycle so that the permanent costs of the proposed policy can be incorporated into the Fiscal Year 2013 budget process. If the Public Safety and Justice Committee is supportive of this recommendation, County Counsel will work with the Office of Budget and Analysis and the Employee Services

Agency to bring the necessary budget modification and salary ordinance actions to the full Board of Supervisors for consideration along with the adoption of the proposed policy.

REASONS FOR RECOMMENDATION

The staff recommendation regarding a civil immigration detainer policy for the County attempts to balance multiple competing interests. The recommendation was reached by the Civil Detainer Task Force ("Task Force") created by the Public Safety & Justice Committee, which met over a series of months to discuss and receive public comment in order to advise the Board. The attached policy was agreed to by a consensus of the Task Force members at the May 25, 2011 Task Force meeting. The policy reflects several changes that were made during that meeting in response to concerns raised by members of the Task Force. Though District Attorney Jeff Rosen and Sheriff Laurie Smith had to leave to attend to other duties before the final vote was taken, District Attorney Rosen expressed support of the policy and Sheriff Smith stated that she would not withhold consensus on forwarding the attached recommended policy to the Public Safety & Justice Committee.

The Task Force prioritized development of a policy that comports with the Board's June 22, 2010 Resolution on "Advancing Public Safety and Affirming the Separation between County Services and the Enforcement of Federal Immigration Law." To do so, the Task Force scrutinized the County resources implicated by civil detainer requests. The Task Force also aimed to enhance public safety in two ways: 1) protecting local law enforcement from being used to cast an overbroad net for use by ICE, a practice known to erode the trust needed for effective community policing, while also 2) allowing the most serious and violent offenders to be investigated for removal before being released back into the community.

Currently, once the County receives a detainer request from ICE, it immediately applies a hold to the named inmate. Applying civil immigration holds to inmates prevents their release while criminal allegations are pending, even if bond is posted or a State court judge orders the inmate released on his or her own recognizance. The hold also requires that the County detain the inmate for up to 48 hours after his or her sentence is finished or criminal proceedings are completed so that ICE may assume custody. Together this means that the presence of a detainer lengthens the period of detention and imposes non-mandatory costs on the County.

The County houses two groups of inmates for an extended period of time that it could lawfully release:

1. Inmates with pending criminal allegations who have posted bond or have been ordered released by a State court judge. The time period for which these inmates is held is based upon how many days it takes to adjudicate the respective case – at least one study in a different jurisdiction has shown that this period averages more than 70 days per inmate.
2. Inmates who have finished serving a sentence or whose court proceedings have ended. These inmates are held for up to 48 hours not including weekends or holidays.

Neither State nor Federal law requires the County to honor civil detainer requests. Further, ICE has confirmed in its recent correspondence that it will provide no reimbursement or indemnification to the County for housing these inmates on ICE's behalf. The Task Force therefore worked to reduce the County's costs related to civil detainer requests.

To analyze potential ways to limit the costs of civil detainer requests, the Task Force looked at the impacts of the Secure Communities program, which is one of the main information-gathering tools that ICE uses to issue civil detainer requests. In large part as a result of Secure Communities, deportation of undocumented persons with criminal records increased by more than 70% in 2010 as compared to 2008 when ICE began implementing the program. (White House Report: "Building a 21st Century Immigration System," May 2011.) According to official ICE statements, the program is aimed at apprehending undocumented persons convicted of serious criminal offenses. However, Secure Communities is frequently criticized for detaining and removing high percentages of non-criminals and low-level offenders.

The reality is that despite ICE's stated priority of targeting serious criminal offenders, the program primarily results in detaining non-criminal and low-level offenders. In the nine Bay Area counties, for example, serious criminal offenders account for less than 30% of detainees. Since May 2009 when the first California county was activated until January 31, 2011, more than 79% of individuals identified and taken into ICE custody as a result of Secure Communities had never been convicted of serious or violent offenses. (February 24, 2011 News Release by ICE, <http://www.ice.gov/news/releases/1102/110224losangeles.htm>.)

The negative effect of detaining large numbers of non-criminal and low-level offenders on Santa Clara County's large immigrant community extends to the community at large. One-third of County residents are foreign born and two-thirds of households in the County have at least one foreign-born member. Testimony offered by members of the public indicated that the wide net cast by Secure Communities has eroded trust and has negatively impacted community policing efforts. This affects the broader community by impacting public safety generally, and could result in a reduction in the provision of essential services like healthcare to County residents who fear Secure Communities because they live with someone who is undocumented or is in the midst of addressing an immigration matter. By its June 2010 resolution, the Board has committed to fostering an environment of inclusiveness and trust between the County and all of its residents in order to reduce these negative effects on the community at large.

Serious and violent offenders, however, raise different public safety concerns. These offenders pose a greater threat given that the underlying conduct for which they were convicted is particularly egregious, as indicated by the special classification of their crimes in the California Penal Code. Serious and violent offenders also have a greater likelihood of reoffending and potentially doing so with an escalation of criminal conduct. Thus, public safety concerns weigh in favor of detaining these uniquely high-risk offenders upon completion of their criminal sentences to enable other law enforcement agencies to take appropriate actions before they are released into the community.

Since the County has the discretion to determine how to balance the numerous issues raised by civil immigration detainees such as threats to public safety, sustaining community trust, and the use of County resources, the Task Force has developed its recommendation to be consistent with existing County policies and priorities as enunciated by the Board. As described in more detail below, the Task Force recommends that the Board adopt a policy to honor only **27**

those civil immigration detainer requests relating to individuals who have been convicted of a serious or violent felony.

Child Impact Statement

Positive Impact

This action will have a positive impact on children and youth. Releasing inmates into Immigration Customs Enforcement (ICE) custody so that ICE can investigate suspected civil immigration violations unexpectedly separates parents from their children and families for extended periods. Some parents are ultimately deported and their U.S. citizen children are left behind. This separation causes negative effects on children, both psychologically and economically. When both parents are separated from their children, the County must intervene and such children often spend extended time in the dependency system, resulting in significant costs for the County.

BACKGROUND

The question of which civil immigration detainer requests the County should honor was posed to the Task Force against the backdrop of the involuntary activation of Secure Communities in the County and ICE's refusal to honor the Board's vote to opt out of the program. Secure Communities was initiated and implemented by ICE, an agency of the U.S. Department of Homeland Security. Secure Communities creates automated information-sharing technology through which fingerprints collected by local law enforcement officers at booking are submitted by the California Department of Justice to the FBI, which in turn shares those fingerprints with ICE.

ICE compares the fingerprints from the California Department of Justice with its civil immigration status database (IDENT) in an effort to identify and apprehend noncitizens who may not be in compliance with civil immigration law. If ICE identifies such a person, the agency uses a "civil immigration detainer request" to ask the County to hold the individual for up to 48 hours after the individual would otherwise be released so that ICE can assume custody of the individual. The County is not required by law to detain the individual for ICE, and ICE provides no direct reimbursement or indemnification for the additional time the County houses these inmates.

ICE began activating the Secure Communities program on a county-by-county basis in California after the California Department of Justice entered into a Memorandum of Agreement (MOA) with ICE in May 2009. The County learned about Secure Communities in October 2009, when the DOC received an informational packet from ICE.

Although County officials were initially led to believe that participation in the program was voluntary, in April 2010, ICE unilaterally activated Secure Communities in the County. When notified that the Board of Supervisors had not approved participation in this program, ICE stated that Board approval was not necessary. ICE activated the program in our County on May 4, 2010. All California counties are now active.

On June 22, 2010, the Board of Supervisors adopted a Resolution entitled "Advancing Public Safety and Affirming the Separation between County Services and the Enforcement of Civil Immigration Law." Recognizing the deleterious effect on community trust, this resolution prohibits the County from diverting County resources to fulfill the federal government's role of enforcing civil immigration law. According to the Resolution, no County department, agency or employee can initiate any inquiry or enforcement action, or question, apprehend or arrest an individual based on suspected immigration status.

Furthermore, on September 1, 2010, the Public Safety and Justice Committee recommended that the Board of Supervisors direct the County Executive and County Counsel to take all necessary actions to opt out of Secure Communities. Based on this recommendation and ICE's prior statements that local jurisdictions were permitted to decline participation, the Board unanimously voted to opt out of Secure Communities on September 28, 2010. Pursuant to the Board's direction, the County Executive and County Counsel have taken all possible steps to remove the County from the Secure Communities program. ICE officials, however, have refused to honor the Board of Supervisors' decision. Despite allowing other jurisdictions in the country to withdraw from the program, ICE has repeatedly stated that the program is mandatory in California.

After learning that the County would not be allowed to withdraw from the program, the Committee asked County Counsel to provide further information regarding an alternative possible action by the Board. County Counsel advised that the County could exercise its discretion to stop detaining inmates for suspicion of civil immigration violations, or it could form an advisory task force to consider which detainer requests to honor. At its December 2, 2010 meeting, the Public Safety and Justice Committee formed such an advisory task force. There are nine members of the Task Force, which is chaired by the Office of the County Counsel. The membership includes the District Attorney or his designee, Public Defender or her designee, Sheriff or her designee, Chief of Department of Correction or his designee, Chief Probation Officer or her designee, Director of Office of Pretrial Services or his designee, CJIC designee, Director of Office of Budget and Analysis or her designee, and the Presiding Judge of Santa Clara County Superior Court or his designee.

In the last six months, more data and information have been released about the Secure Communities program. Given the high number of non-criminal and low-level offenders affected by the program, there has been growing national discontent regarding the use of local resources to support the program and the harmful effects the program has visited upon local communities. Jurisdictions are beginning to take formal action to push back against the program. The Governor of the State of Illinois, for example, recently ended his State's participation in Secure Communities after ICE statistics showed that in Illinois more than three-quarters of those targeted for deportation through the program were convicted of no crimes or only of minor misdemeanors. The State of Washington negotiated with ICE to ensure that Secure Communities could only be activated in local communities that "opt-in" to participate in the program. To our knowledge, no jurisdiction in Washington has chosen to opt-in. Other local jurisdictions throughout the nation in states such as Virginia, New Mexico, Maryland, and California, are looking for ways to limit the negative effects of the program on their communities and budgets. And Washington D.C. Council members unanimously passed a bill banning Secure Communities in their city.

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Further, the release of internal ICE documents pursuant to a Freedom of Information Act (FOIA) request have shed light on inconsistencies in the public messaging and the implementation of Secure Communities. These documents have

been carefully reviewed and contain ample evidence of ICE changing its message regarding local participation in the Secure Communities program. These contradictory and misleading statements, some made regarding our own jurisdiction, have prompted Congresswoman Zoe Lofgren to call for an investigation into misconduct by ICE or DHS personnel:

"It is unacceptable for government officials to essentially lie to local governments, Members of Congress, and the public. Unfortunately, my review of the e-mails that have been made public suggests that some government personnel have been less than completely honest about this program over the last two years. It is critically important that you thoroughly investigate this matter and that any misconduct result in real consequences." (April 28, 2011 letter from Congresswoman Zoe Lofgren to the Acting Inspector General and the Assistant Director of the ICE Office of Professional Responsibility.)

The County Counsel has been in close contact with Congresswoman Lofgren as she seeks federal accountability regarding the implementation of the Secure Communities program at the local level.

The federal government's most recent response to state and local jurisdictions' attempts to limit their involvement in Secure Communities is their August 2011 announcement that participation in the program is not voluntary. ICE director John Morton officially rescinded the 39 MOAs previously used to initiate the program with states. Instead, Morton announced that participation in the program is considered mandatory for all states and localities. Soon after, the National Immigrant Justice Center filed a federal lawsuit out of Chicago, challenging the constitutionality of detainer holds that are applied without sufficient basis. The White House and ICE have also announced changes to the Secure Communities program, in an attempt to bring the program more in alignment with its stated goals. None of these changes regarding the mandatory nature of participation in the Secure Communities program affect local jurisdictions' discretion to set their own policies regarding detainer requests.

Therefore, in order to limit the impact of the Secure Communities program to the federal government's stated goals of targeting individuals convicted of serious and violent crimes, the Task Force recommends that the County adopt a policy to only honor detainer requests that are issued for individuals who have a current or prior conviction for a serious or violent felony. This will help prevent the County from being implicated in casting a net so wide that it exposes high numbers of non-criminals and low-level offenders to severe immigration consequences. Since the Task Force last met, it has also been suggested that the Recommended Policy include a clause that provides the Sheriff or the Chief of Correction the discretion to make a case-by-case exception to the general policy if deemed necessary for reasons of fairness or public safety. The Committee may also consider adding this provision to the attached policy.

RECOMMENDATION FOR COUNTY OF SANTA CLARA'S CIVIL DETAINER POLICY

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Based on the background information provided above, and the Task Force meetings held to date, the Task Force recommends that the Committee approve and forward the attached policy for consideration by the full Board.

CONSEQUENCES OF NEGATIVE ACTION

The Task Force's recommendation will not be forwarded to the full Board for consideration.

STEPS FOLLOWING APPROVAL

The Public Safety and Justice Committee will forward the Task Force recommendation to the full Board of Supervisors for formal action. If adopted by the Board, the Clerk of the Board will include this policy in the Board's Policy Manual.

ATTACHMENTS

- Policy Resolution with Proposed Board Policy on Civil Immigration Detainer Requests
- April 28, 2011 Letter from Congresswoman Zoe Lofgren to the Acting Inspector General and the Assistant Director of the ICE Office of Professional Responsibility
- September 2010 Letter from ICE Assistant Director David Venturella to County of Santa Clara
- Board Resolution 2010-316 (adopted June 22, 2010)



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF
DAVID O. LIVINGSTON
SHERIFF - CORONER

February 16, 2012

The Honorable John M. Gioia
Supervisor District I
11780 San Pablo Avenue, Suite D
El Cerrito, CA 94530

Dear Supervisor Gioia: *JOHN*

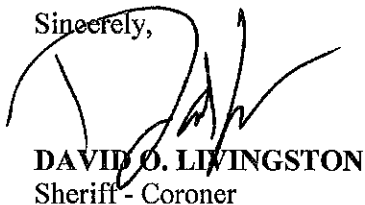
This letter is in response to an e-mail I received January 19, 2012, from Deputy Chief of Staff, Luz Gomez, regarding the Secure Communities Meeting held in your office last year. Below are my responses to the questions that arose as a result of that meeting.

1. Are detainees given the new ICE Hold form I-247?
RESPONSE: Yes
2. Please provide the CCC Secure Communities Task Force with a copy of the Federal Marshal contract or any other contract with a federal agency with the Contra Costa County Sheriff's Office. At the meeting the Sheriff indicated that their ICE contract piggy-backs on the federal marshal contract. If so, please provide a copy of the ICE contract as well.
RESPONSE: See attached.
3. If the contract does not provide this information, please provide the dollar amount that the Sheriff received this past fiscal year from the Federal government for immigration-related costs.
RESPONSE: \$5,697,981.71
4. How much money did the Sheriff receive last fiscal year under the State Criminal Alien Assistance Program?
RESPONSE: \$597,828.00
5. Did the Sheriff receive any other funds from any other federal sources? If so, how much?
RESPONSE: None
6. Thanks for agreeing to look at the Department's U-Visa policy and related procedures. Please let us know if you plan to make any changes. Please provide the number of U-Visa certification (Supplement B to 1918) requests made annually of the Sheriff over the past 5 years. Of those requests, how many did the Sheriff certify?
RESPONSE: The Sheriff receives approximately 30 requests per year. The Sheriff has approved nearly 50% of those requests.
7. How many individuals were transferred to ICE from County jails last year? (Please let us know if you do not have this data, and if so, would you consider collecting it from now on?)
RESPONSE: We do not currently collect that data.

8. What is your policy regarding low-level offenders arrested in the unincorporated areas of the County regarding finger-printing and holding?
RESPONSE: Misdemeanor offenders are booked in to the Martinez Detention Facility, processed, and released with a promise to appear. Except for domestic violence related charges.
9. Approximately what percentage of your ICE-related costs does the Federal Government reimburse? Our contract with the Federal Government covers.
RESPONSE: We do not get reimbursed for the first 48 hours of incarceration on those inmates with ICE holds. However, the Federal contract covers 100% of the detainee's costs in that program.
10. Some counties limit ICE's activities in local jails. Would you consider imposing any such limits locally? For example, Santa Clara County recently voted in a new set of guidelines for civil immigration detainees, which in effect ends the county's collaboration with ICE (i.e., Santa Clara will honor detainer request from ICE if "there is a written agreement with the federal government by which all costs incurred by the County in complying with the ICE detainer will be reimbursed.")
RESPONSE: We are not anticipating changing any processes currently in place with ICE.
11. How and at what point are detainees informed of their civil rights?
RESPONSE: During the booking process each inmate watches an orientation video (Spanish and English) which covers civil rights.
12. You mentioned the Detention Dialogues Program. How do detainees request to speak to one of their volunteers? Considering that the process of visitors requires for the inmate to request the visitor by name.
RESPONSE: This program would allow volunteers who have been previously approved through our Custody Administrative Services to visit the West County Detention Facility on a routine basis. This would allow for ongoing dialogue with their Federal Detainees.

Please contact me if I can be of further assistance.

Sincerely,



DAVID O. LIVINGSTON
Sheriff - Coroner

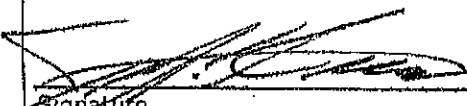

DOL:mw

Attachment

Cc: Luz Gomez, Deputy Chief of Staff, District I

U. S. Department of Justice
United States Marshals Service

Detention Services
Intergovernmental Agreement

1. Agreement Number 11-09-0024		2. Effective Date See Block 19		3. Facility Code(s) 9BM		4. DUNS Number 00-766-9216	
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Office of Interagency Agreements Washington, DC 20530-1000				6. Local Government Contra Costa County Martinez Detention Facility 1000 Ward Street Martinez, CA 94553 Tax ID#: 94-6000509			
7. Appropriation Data 15X1020				8. Local Contact Person Elizabeth Arbuckle, Supervising Accountant			
				9. Tel: (925) 335-1601 Email: earbu@so.cccounty.us			
Services				Estimated Number of Federal Beds		Per-Diem Rate	
10. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.				11. 25		12. \$85.00	
13. Optional Guard/Transportation Services to: <input checked="" type="checkbox"/> Medical Facility <input type="checkbox"/> U.S. Courthouse				14. Guard/Transportation Hourly Rate: \$N/A Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.			
15. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the body governing the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>				16. Signature of Person Authorized to Sign (Local)  Signature Joseph Caruso Print Name Commander Title Aug 12, 2009 Date			
17. Prisoner and Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female		18. Other Authorized Agency User <input checked="" type="checkbox"/> BOP <input type="checkbox"/> ICE		19. Signature of Person Authorized to Sign (Federal)  Signature Mary Horsey Print Name Grants Specialist Title AUG 17 2009 Date			

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Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Acts of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and **Contra Costa County** (hereinafter referred to as the "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows the United States Marshals Service (USMS) to house federal detainees with the Local Government at the **Martínez Detention Facility** (hereinafter referred to as "the facility").

The population (hereinafter referred to as "federal detainees") will include individuals charged with federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the facility. Detainees shall also be housed in a manner that is consistent with federal law and the Federal Performance-Based Detention Standards.

The USMS ensures the secure custody, care, and safekeeping of USMS detainees. Accordingly, all housing or work assignments, and recreation or other activities for USMS detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

At all times, the Federal Government shall have access to the facility and to the federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period going back three (3) years from the date of request by the Federal Government.

Period of Performance

This Agreement is effective upon the date of signature of both parties, and remains in effect unless terminated by either party with written notice. The Local Government shall provide no less than one-hundred twenty (120) calendar days notice of their intent to terminate. Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

Assignment and Outsourcing of Jail Operations

Overall management and operation of the facility housing federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government shall provide federal detainees with the full range of medical care **inside** the detention facility. The level of care inside the facility should be the same as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided **inside** the facility to federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over the counter prescriptions and, any prescription medications routinely stocked by the facility which are provided to federal detainees. The cost of all of the above-referenced medical care is covered by the federal per diem rate. However, if dialysis is provided within the facility, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided **outside** the facility to federal detainees. The Federal Government must be billed directly by the medical care provider **not** the Local Government. In order to ensure that Medicare rates are properly applied, medical claims for federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms in order to be re-priced at Medicare rates in accordance with Title 18, USC Section 4006. The Local Government is required to immediately forward all medical claims for federal detainees to the Federal Government for processing.

All **outside** medical care provided to federal detainees must be pre-approved by the Federal Government. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the federal detainee's illness or injury as well as the types of treatment provided.

Medical care for federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with USMS Inspection Guidelines, Form USM-218 Detention Facility Investigative Report. The Local Government is responsible for all associated medical recordkeeping.

The facility shall have in place an adequate infectious disease control program which includes testing of all federal detainees for Tuberculosis (TB) as soon as possible after intake (not to exceed 14 days). When Purified Protein Derivative (PPD) skin tests are used, they shall be read between 48 and 72 hours after placement.

TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the federal detainee's

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medical record. Special requests for expedited TB testing and clearance (to include time-sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable disease such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a federal detainee is being transferred and/or released from the facility, they will be provided with seven (7) days of prescription medication which will be dispensed from the facility. When possible, generic medications should be prescribed. Medical records must travel with the federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent federal prisoners.

Receiving and Discharge of Federal Detainees

The Local Government agrees to accept federal detainees only upon presentation by a law enforcement officer of the Federal Government with proper agency credentials.

The Local Government shall not relocate a federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government.

The Local Government agrees to release federal detainees only to law enforcement officers of the Federal Government agency initially committing the federal detainee (i.e., Drug Enforcement Administration, Immigration and Customs Enforcement, etc.) or to a Deputy United States Marshal (DUSM). Those federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the district United States Marshal (USM).

Optional Guard/Transportation Services to Medical Facility

If Medical Facility in block 13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at their facility to and from a medical facility for outpatient care, and transportation and stationary guard services for federal detainees admitted to a medical facility.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local USM.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services has been agreed upon to reimburse the Local Government, It will be stipulated on page one (1) of this Agreement. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block 13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local U.S. Marshal.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guards will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to any U.S. Courthouse without a specific request from the USM who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

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If an hourly rate for these services has been agreed upon to reimburse the Local Government, it will be stipulated on page one (1) of this Agreement. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a federal detainee. The Local Government shall use all reasonable means to apprehend the escaped federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a federal detainee is involved in an attempted escape or conspiracy to escape from the facility.

In the event of the death or assault of a federal detainee, the Local Government shall immediately notify the Federal Government.

Prisoner Rape Elimination Act (PREA)

The facility is requested to post the Prisoner Rape Elimination Act brochure/bulletin in each housing unit of the facility. All detainees have a right to be safe and free from sexual harassment and sexual assaults. (See Attached)

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: www.arnet.gov.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act – Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the Independent government estimate for detention services, otherwise known as the Core Rate;
2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is **\$85.00**, and shall not be subject to adjustment on the basis of **Contra Costa COUNTY** actual cost experience in providing the service. **The per-diem rate shall be fixed for a period from the effective date of the Agreement forward for thirty-six (36) months.** The per-diem rate covers the support of one (1) federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

After thirty-six (36) months, if a rate adjustment is desired, the Local Government shall submit a request through the Electronic Intergovernmental Agreements area of the Detention Services Network (DSNetwork). All information pertaining to the jail on the DSNetwork will be required before a new per-diem rate can be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for federal detainees housed at the facility.

Addresses for the components are:

**United States Marshals Service
Northern District of California
U.S. Courthouse/Philip Burton Bldg.
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 436-7677**

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**Bureau of Prisons
Community Corrections Office
501 I Street, Suite 9-400
Sacramento, CA 95814
(916) 930-2010**

To constitute a proper monthly invoice, the name and address of the facility, the name of each federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per-diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the per-diem rate per day) shall be listed, along with the name, title, complete address and telephone number of the Local Government official responsible for invoice preparation.

Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government on a monthly basis, promptly after receipt of an appropriate invoice. The Local Government shall provide a remittance address below:

**Contra Costa County
1000 Ward Street
Martinez, CA 94553**

Modifications and Disputes

Either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both parties agree they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

The Local Government agrees to allow periodic inspections of the facility by Federal Government inspectors. Findings of the inspection will be shared with the facility administrator to promote improvements to facility operations, conditions of confinement, and levels of services.

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Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and be provided copies of any pleadings filed or said litigation within five (5) working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.