

THE ALL-IN-ONE GUIDE TO

DEFEATING ICE HOLD REQUESTS

(a.k.a. Immigration Detainers)

APPENDIX 5

TALKING POINTS AND MESSAGING MATERIALS



ALL IN ONE GUIDE TO DEFEATING ICE HOLDS

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“SECURE COMMUNITIES” ADVOCACY POINTS OF UNITY

Demand: NY State must immediately rescind the S-Comm Memorandum of Agreement.

What to Say About S-Comm

- S-Comm **automatically checks fingerprints** of every arrested person taken at booking against immigration databases
 - Based on these database checks, Immigration and Customs Enforcement (ICE) then transfers people suspected of being deportable straight into the detention and deportation system from the criminal justice system
 - In the deportation system, people are often sent far away to remote detention centers— with **no loved ones or even lawyers to help defend against deportation**
- New York’s Division of Criminal Justice Services (DCJS) signed a Memorandum of Agreement (MOA) with ICE on May 18, 2010 with **no public input**.
- S-Comm and other collaborations between ICE and local police:
 - **Jeopardize our safety** by creating a climate of mistrust between communities and law enforcement and encouraging immigrants both to not report crimes and to not cooperate.
 - **Offend values of liberty, due process, and justice** by forcing immigrants to get treated differently from US Citizens in criminal proceedings and funneling people into the unjust deportation system where they have no “fair day in court”
 - **Encourage racial profiling** by giving the police incentives to make pretextual arrests in order to transfer people into deportation
 - **Impose significant costs** on our localities by forcing them to absorb costs of mass incarcerations
 - Force local taxpayers to fund the costs of illegal detentions and deportations
- ICE is an agency that offers **no accountability**. All **liabilities fall on local governments and local law enforcement agencies**
 - There is **no recourse available** to people whose rights are violated
- People who get caught in the S-Comm have already **“paid their debt to society”**
 - Deportation strips away family and community **support systems and breadwinners**
- New Yorkers deserve a chance to have **meaningful input and debate** to ensure that S-Comm will not **endanger our communities, violate our rights, and divert scarce resources**

What NOT to Say or Focus Unduly On and Why

- We should NOT say it is OK to deport “dangerous or violent criminals”
 - **Deportation is not the answer** for people in the criminal justice system
 - Deportation **should not come as a second punishment** to those who have done their time

New York State Working Group Against Deportation

- Our goal is to bring attention to how **unjust the detention and deportation system is** overall. We undermine our work by advocating for the deportation of any particular group
- Our work on S-Comm is just one part of our **broader work to change immigration laws** to stop deportations. We need immigration reform that provides all, not just some, immigrants an opportunity to live lawfully in the US and that, at a minimum, gives immigrants a fair day in court
- We should NOT criticize S-Comm primarily because innocent people or low-level offenders make up the majority of those swept into S-Comm
 - Our immigrant communities **shouldn't be divided into the "deserving" and "undeserving"** to be deported
 - We are **not fighting for S-Comm to work efficiently**—i.e., to do what ICE says it's supposed to be doing (catching the "dangerous criminals")—but rather to put an end to the collaborations between local law enforcement agencies and ICE that are tearing apart families
- We should NOT emphasize that S-Comm is problematic because of its potential for errors—for example, that green card holders (aka lawful permanent residents) without convictions and US Citizens get caught up in S-Comm
 - We **don't want to privilege certain groups** over others
 - Again, we are not fighting for S-Comm to work efficiently and according to ICE's stated goals
- We should NOT call for increased policing by local law enforcement
 - Many immigrant communities are already **overly targeted** by the police
- We should NOT call for "comprehensive immigration reform" to solve immigration problems
 - We need reform, but **current CIR proposals increase deportations, and include ratcheting up S-Comm** and similar programs
 - We need immigration reform that provides all, not just some, immigrants an opportunity to live lawfully in the US and that, at a minimum, gives immigrants a fair day in court

October 3, 2011

Jacqueline Esposito, Esq.
New York Immigration Coalition, Director of Immigration Advocacy
New York City Council Committee on Immigration
Hearing regarding Int. No. 656, A Local Law to amend the Administrative Code of the
City of New York, in relation to persons not to be detained

Introduction

My name is Jacqueline Esposito and I am the Director of Immigration Advocacy at the New York Immigration Coalition (NYIC). The NYIC is an umbrella policy and advocacy organization for nearly 200 groups in New York State that work with immigrants and refugees. The NYIC aims to achieve a fairer and more just society that values the contributions of immigrants and extends opportunity to all. In my prior capacity, I was a Staff Attorney at the Criminal Defense Division of the Legal Aid Society in Manhattan where I witnessed firsthand the impact of the rapidly expanding merger of immigration enforcement with the criminal justice system. I appreciate the opportunity to testify before you today about Int. No. 656, A Local Law to amend the Administrative Code of the city of New York, in relation to persons not to be detained. This proposed amendment is an important first step toward protecting the rights of immigrants because it imposes some limits on the Department of Corrections collaboration with U.S. Immigrations and Customs Enforcement (ICE), the interior immigration enforcement bureau of the Department of Homeland Security (DHS).

The merger of the civil immigration system and criminal justice system is nowhere more apparent than the Criminal Alien Program (CAP). In New York City, CAP allows federal immigration agents to interview immigrants in Department of Corrections (DOC) custody, share DOC inmate database information with ICE, and jail immigrants for up to 48 hours after their scheduled release from DOC custody based upon non-binding “immigration detainers”¹ for what I.C.E. calls “investigative purposes.” Those subject to detainers include undocumented immigrants, as well as lawful permanent residents² and even those with valid claims for immigration relief.

Immigration detainers have severe consequences for immigrants held in jails. Detainers directly impact an individual’s due process rights and can have severe collateral consequences in a person’s criminal case. New York City also incurs significant costs as

¹ The term “detainer” in this context can be misleading. In the criminal justice system, a detainer is issued by a law enforcement agency, approved by a judge, and thus constitutes a mandatory arrest warrant. However, in the immigration context, a detainer is not an arrest warrant issued or approved by a judge; it is merely a non-binding request by ICE to detain an individual without actual evidence that the person has committed a crime or is unlawfully present in the country.

² Immigration law provides that lawful permanent residents and other legal visa holders may be deportable for minor violations and misdemeanors. Immigrants may even be deported retroactively for past criminal convictions. For example, a non-citizen arrested for a current traffic violation may be subject to an immigration detainer and later deported for a crime committed in the past, even when that act was not a deportable offense at the time committed, and even where the sentence has been served.

October 3, 2011

a result of prolonged incarceration of immigrants who could have otherwise been released from DOC custody.

The widespread use of detainers has resulted in disparate treatment of immigrants in the criminal justice system.

ICE's indiscriminate issuance of detainers has led to rapidly increasing numbers of non-citizen defendants being subjected to significantly longer periods of incarceration. For example, a detainer often affects a non-citizen's ability to be released on bail pending criminal charges. When ICE issues a detainer, courts sometimes consider the detainer an adverse factor when determining a bail amount or whether to set bail at all. This not only leads to prolonged pre-trial detention but also significantly interferes with a non-citizen defendant's ability to defend against criminal charges. According to preliminary research conducted by Justice Strategies, a non-profit research organization, non-citizens in DOC custody with an immigration detainer spend 73 days longer in detention, on average, than individuals not subject to an immigration detainer facing similar charges.³

Individuals subject to a detainer are also effectively disqualified from participating in drug or alcohol treatment programs, or other jail diversion programs. Notwithstanding the fact that such programs often allow defendants an opportunity to enter treatment instead of incarceration and have been proven successful in reducing recidivism and lowering the costs to the criminal justice system.⁴

The use of detainers has led to greater numbers of immigrants being held in DOC custody for prolonged periods of time at great expense.

Longer detention periods mean that more local tax dollars are spent on detaining immigrants. The unreimbursed cost to New York City of this prolonged detention is estimated to be in the tens of millions of dollars.⁵ The practice of jailing non-citizens based upon immigration detainers also exposes local governments to significant financial liability. In some cases, inmates held under detainers longer than 48 hours have successfully obtained civil damages from the detaining authority. In 2009, an immigrant obtained a \$145,000 settlement with the City of New York after being held unlawfully for more than a month on an immigration detainer.

Collaboration between local law enforcement and ICE undermines public safety.

³ Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" Justice Strategies (Oct. 2010), *available at* http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_0.pdf.

⁴ Association of the Bar of the City of New York, "Immigration Detainers Need Not Bar Access to Jail Diversion Programs." (June 2009), *available at* http://www.nycbar.org/pdf/report/NYCBA_Immigration%20Detainers_Report_Final.pdf.

⁵ National Immigration Forum, "Immigrants Behind Bars: How, Why, and How Much?" (Mar. 2011), *available at* <http://www.immigrationforum.org/research/enforcement>.

October 3, 2011

Detainers are the keystone of programs like CAP and Secure Communities, which increasingly rely on collaboration between local law enforcement and ICE. When local law enforcement agencies, like the NYPD and Department of Corrections, collaborate with federal immigration enforcement agents, immigrant communities become fearful that any kind of interaction with the police will lead to detention and deportation. As noted by federal, state and local law enforcement officials, fear of local enforcement of immigration laws discourages members of immigrant communities from reporting crimes and cooperating in the investigation of crimes, making citizens and non-citizens alike less safe.

Conclusion

The expansive use of detainers has allowed DHS to vastly increase deportations at local communities' expense. Countless families have been torn apart. The trust between local police and the communities they serve has been badly damaged. And the fairness of the criminal justice system has been severely compromised. The proposed amendment to the Administrative Code is a welcome first step in addressing these challenges.

May 24, 2011

Santa Clara County Detainer Task Force
C/o Micael Estremera
70 W. Hedding Street
San Jose, CA 95112

Re: Santa Clara County Immigration Hold Policies

The Santa Clara County Coalition against Secure Communities is a coalition of community-based, faith-based, labor, legal groups and immigrant advocacy organizations. As such, we urge the Civil Detainer Task Force to reflect the commitment of the Board of Supervisors to not use county resources to assist Immigration and Customs Enforcement (ICE) in the enforcement of federal immigration laws by not submitting to immigration hold requests. On September 28, 2010, the Board of Supervisors voted unanimously to opt out of Secure Communities. ICE has refused to respect that local decision, but Santa Clara County can still effectively opt out by declining to submit to discretionary immigration hold requests (Form I-247's) from ICE, otherwise known as detainers.

I. The Santa Clara County Board of Supervisors has adopted a resolution that the county will not participate in immigration enforcement.

When the Arizona law SB 1070 was passed, Santa Clara County sought to distinguish itself by sending a message to its residents that it will not participate in immigration enforcement. We applaud the Board of Supervisors in making a distinction between civil immigration law which is a function of the federal government and our criminal justice system that operates within the county. On June 28, 2010, the Board of Supervisors unanimously adopted a resolution based on the concept that enforcement of federal civil immigration law is the responsibility of the federal government and not of the county, thus:

WHEREAS, the enforcement of federal civil immigration law is the responsibility of the federal government and not of the County; and

WHEREAS, consistent with the U.S. Constitution's prohibition on the federal commandeering of local resources, the Board of Supervisors has long opposed measures that would deputize local officials and divert County resources to fulfill the federal government's role of enforcing civil immigration law;

The resolution makes it clear that the Board of Supervisors believes the county is not responsible for the enforcement of federal civil immigration law. It follows that any recommendations providing for how local law enforcement agencies in the county should assist federal immigration officers in detaining and removing county residents violates the spirit of the resolution.

II. Immigration Holds are requests and compliance by the county is not required by federal law.

When the county was investigating the possibility of opting out of Secure Communities, County Counsel submitted its report to the Public Safety and Justice Committee regarding options for participation in the Secure Communities program. The pertinent portion thereof is [emphasis added]:

“There is no statutory or regulatory requirement that DOC[2] provide any information to ICE. The federal regulation governing the use of immigration detainers describes the detainer ‘as a request’ that the facility inform ICE prior to the release of the specified individual so that ICE can assume custody. 8 C.F.R. §287.7(a). Although other language in this regulation is ambiguous, **the language that pertains to providing information is clearly voluntary language.**

Similarly, **the immigration hold itself (Form I-247) states [emphasis added] ‘[i]t is requested that you...[n]otify this office of the time of release at least 30 days prior to release or as far in advance as possible...[n]otify this office in the event of the inmate’s death or transfer to another institution.’** Nothing in this language suggests that such information sharing is mandatory.

Unless ICE provides further clarification that any or all of these actions are mandatory under Secure Communities, and provides a legal basis for this authority, County Counsel believes that there is no obligation for the County to provide information on individuals’ identities and locations to ICE.”[3]

In response to County Counsel’s letter requesting that Santa Clara be allowed to opt out, ICE responded that it “views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released for up to 48 hours...” What the response highlighted was the fact that immigration holds are

mere **requests** for the law enforcement agency to detain individuals. To this date, ICE has not provided any legal authority requiring the County to submit to immigration holds. Immigration holds are not mandatory and do not need to be enforced by localities.

III. The County's goals reflected in its decision to opt out of Secure Communities can be met by not submitting to immigration holds.

On September 28, 2010, Santa Clara County became among the first in the country to say no to implementing Secure Communities after the Board of Supervisors unanimously voted to authorize efforts to opt out of the program. The Board also agreed that implementation of Secure Communities in the county conflicts with its policy not to participate in enforcement of federal immigration law. If ICE had followed the steps it outlined for Santa Clara County to opt out, then immigration holds would not be enforced in the County right now as the result of booking fingerprints being sent to the Federal Bureau of Investigation. The way the County can achieve its previous objective of not participating in immigration enforcement without ICE's cooperation is to not submit to immigration hold requests and instead use those county resources to ensure public safety by strengthening the trust between law enforcement agencies and the community.

Conclusion

As a coalition, we recognize that public safety is an important value to our county. However, our current law enforcement system already has mechanisms to safeguard public safety that do not have to include enforcing federal immigration law on top of criminal justice system policies. Submitting to immigration hold requests detracts from our law enforcement's priorities to protect the community. We recognize that the Detainer Task Force was created by the County Committee on Public Safety and Justice to develop an immigration hold policy for the County of Santa Clara. Nevertheless, since the County has already affirmed its position that immigration enforcement is the responsibility of the federal government and signified its intent to opt out of Secure Communities, proposals from the Detainer Task Force should be consistent with these resolutions.

Jerry Schwarz (jerry@acm.org)
on behalf of the following organizations

ACLU Mid Peninsula Chapter

ACLU of Northern California
Asian Americans for Community Involvement
Asian Law Alliance
CLESPA (Community Legal Services of East Palo Alto)
Justice for Palestinians
Maria Marroquin, Day Worker Center of Mountain View
Mexican American Political Association
San Jose JACL (San Jose Japanese American Citizens League)
San Jose Peace and Justice Center
Silicon Valley Latino Democratic Forum
SIREN (Services, Immigrant Right & Education Network)
SVAIR (Silicon Valley Alliance for Immigration Reform)
Teatro Vision

George Shirakawa: Santa Clara County's decision on immigrant detainees is morally right and good public policy

By George Shirakawa

Special to the Mercury News

Posted: 11/04/2011 07:31:58 PM PDT

As chair of Santa Clara County's Public Safety and Justice Committee, it's my responsibility to develop public policy that strengthens community safety while ensuring that justice is served equally to all residents. In this county, those convicted of serious, violent, or sex-related crimes will be prosecuted to the fullest extent of the law. This county also ensures that those accused of a crime are afforded their constitutional rights of due process.

The recent board of supervisors' decision to not collaborate with federal Immigration, Customs and Enforcement (ICE) on civil detainee requests without federal reimbursement has raised questions about the county's commitment to public safety. The critics of this policy have attempted to frame the argument as a tough on crime versus soft on crime issue. That's just not the case. The board's action on civil detainee requests is good public policy that has a basis in moral integrity.

Let's start with the public policy issue. The policy has no impact on how the county deals with crime. For every individual booked into county custody on criminal charges, the courts impose and oversee appropriate punishment. The criminal justice system has adequate safeguards to protect public safety, and those safeguards will remain in place.

The board did not vote to release anyone into the community who is not otherwise eligible to be released. Inmates are only released from custody once they have served their time and have earned their freedom. Or, while charges are pending, a judge may determine that it is safe to release an inmate on bail or on their own recognizance until they are ordered to appear in court.

What this policy does is ensure that everyone in our system is treated equally. United States citizens charged with crimes are released on bail every day. There is no justifiable reason to treat people's criminal cases differently just because they are suspected of having civil immigration issues. The county has no authority to enforce civil immigration laws. Immigration enforcement is ICE's job.

The board's decision is good public policy. If the county is seen as an extension of ICE, the county loses the community's trust, and people are less likely to report crime or to serve as witnesses. Thus crimes go unreported, compromising public safety. We ought to spend resources focusing on serious crimes, not determining the immigration status of people. ICE has many other ways of investigating persons of interest. Spending county resources to do ICE's job is irresponsible public policy.

There are those who believe that being undocumented is a crime. To subscribe to the belief that the undocumented have no rights in this country because they are here illegally, one would have to start with the premise that all laws are morally right. History is littered with laws that were morally wrong, tore apart families, and were ultimately overturned by the American people. Mexican repatriation in the 1930s, segregation, and Japanese-American internment are just a few that fall into this category.

The U.S. Constitution outlines how those accused of crimes should be treated. Treating those accused of a criminal offense differently because they crossed our borders illegally fundamentally violates the sacred American principles of equality and fairness. As the country wrestles with immigration reform, the American people have not made a final judgment on the legal issues. However, the moral issue of treating people equally is clear.

While the federal government continues to struggle with immigration reform, the County of Santa Clara has taken a position that all those accused of a crime will be treated equally without compromising public safety and without regard to immigration status.

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GEORGE SHIRAKAWA represents District 2 on the Santa Clara County Board of Supervisors. He wrote this for mercurynews.com

Jeff Rosen: On immigration issue, Santa Clara County task force had it right the first time

By Jeff Rosen

Special to the Mercury News

Posted: 10/29/2011 08:00:00 PM PDT

As the son and grandson of Holocaust survivors and those who lost their lives to Nazi tyranny, I know there is no greater symbol of government oppression than a midnight knock on the door by an authority figure asking for identification papers. Fortunately, the Bill of Rights protects any individual on American shores from that sort of intimidation by government, and our Constitution provides due process for anyone suspected of violating federal immigration laws.

So, needless to say, I carefully considered my response to the recent decision by the Santa Clara County Board of Supervisors to ignore all civil detainer requests from the federal government and allow undocumented violent felons to be set free -- despite a request by federal law enforcement to hold them in custody -- unless federal authorities pay the cost of an additional day's incarceration.

The immigration policy of the federal government is as complex and multifaceted as are the opinions of how to best reform immigration policy. I personally believe that if undocumented individuals or families have lived in the United States for some time, followed our laws and become productive residents, then they have earned a path to American citizenship.

But my opinion on federal immigration policy is simply that, an opinion. As district attorney, my job is to make judgments about the prosecution and sentencing of criminals to ensure a safe and peaceful community for all. With that crucial responsibility in mind, I cannot support any decision to allow violent offenders to be returned to Santa Clara County neighborhoods sooner than necessary under the law. While I understand in the abstract that unfunded mandates are unfair to local government, this dispute isn't about money. The federal government provided the county \$1.3 million this year toward the cost of incarcerating undocumented criminals. Rather, I believe this policy to ignore all civil detainer requests is about specifics -- about potential assaults, robberies, rapes, child molestations, shootings and murders. It is about keeping all Santa Clara County residents, documented or not, safe from dangerous criminals.

My office is prosecuting several recent cases concerning undocumented individuals from countries as diverse as India, Mexico and the Czech Republic. One defendant was charged with rape, another threatened a female prosecutor and her family, and another molested a child. Once criminals have committed these types of violent offenses, studies demonstrate they are more likely to victimize again. We cannot justify allowing any undocumented violent felon to be freed if we have the ability to detain them longer so that the federal government can determine whether to begin deportation proceedings.

While I respect our county supervisors and our county executive, I strongly disagree with them regarding this issue. I encourage them to follow the recommendation of the Civil Detainer Task Force that they commissioned, and on which the sheriff and I served, and restore the policy of detaining violent undocumented felons for 24 hours prior to their release. That policy is balanced and respects people's civil rights because it does not apply to nonviolent offenders. It prioritizes public safety. Isn't that something we can all agree on?

JEFF ROSEN is district attorney of Santa Clara County. He wrote this for this newspaper.



Asian Law Alliance

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January 18, 2011

Office of Supervisor George Shirakawa
County of Santa Clara, Second District
70 West Hedding Street, West Wing
San Jose, CA 95110

Re: Minimizing the Effects of Secure Communities in Santa Clara County

Dear Supervisor Shirakawa:

We are a coalition of organizations working with immigrant communities in Santa Clara County. Further to our meeting with you on December 13, 2010, we are submitting this report to give support to the County's plans to limit or avoid participation in Secure Communities. Our goal is to have this report initiate our discussion with the County to minimize the effects of Secure Communities on our residents.

I. Factual and Procedural Background of the Secure Communities Program

In May 2009, the California Department of Justice entered into a Memorandum of Agreement with Immigration and Customs Enforcement (ICE) instituting the Secure Communities program. The program allows ICE officers to collect fingerprints of arrested persons in local jails. Once in possession of these fingerprints, the officers will check them against the Department of Homeland Security's Automated Biometric Identification System (IDENT) and other FBI databases to determine if ICE should institute removal proceedings against the arrested person.

Based on inquiries made with ICE, a letter from the Director of the Secure Communities program, and a letter sent to Congresswoman Zoe Lofgren, Santa Clara County was made to believe that counties could opt out of the program. As a result, the Santa Clara County Board of Supervisors voted unanimously to opt out of Secure Communities on September 28, 2010.

On November 9, 2010, David Venturella, the Director of the Secure Communities program met with Santa Clara's County Counsel and informed him that no county could opt out.

II. Procedure for Individuals taken into custody

Any procedure Santa Clara County utilizes should maintain the rights of incarcerated persons, especially those with immigration concerns. Specifically, we propose that Santa Clara County should consider the following procedures when a person is arrested by local

law enforcement agencies:

(1) Do not hold persons beyond the time they would otherwise be released from local custody based solely on a detainer request from ICE. This should be especially true when the request is issued against a minor. Arrested persons should never be held solely on a detainer request from ICE. ICE detainees are not mandatory and do not impose any legal obligations on state and local law enforcement agencies. *People v. Jacinto*, 49 Cal.4th 263, 348 (2010); *Los Angeles County v. Cline*, 185 Cal. 299, 302 (Cal. 1921) (“The right of the United States to commit prisoners to the jails or prisons of a state is purely a matter of comity extended by the states and is subject to such demands for compensation as may be determined by contract with the proper authorities”); *see also* Cal. Atty. Gen. Op. 83-902, 67 Op. Cal. Att’y Gen. 331 at 4 (there is no duty for state and local officials to enforce the civil aspects of the federal immigration laws). Moreover, *California Penal Code* § 4005 provides that if a state or local law enforcement agency holds a person, that agency must receive federal compensation for the costs of maintaining custody.

However, federal government grants reimbursement only for a small portion of ICE detainees. Under the State Criminal Alien Assistance Program (SCAAP) state and local law enforcement receive federal compensation only for incarcerating undocumented criminal aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the reporting period. Detainers, however, include individuals who do not fall under the above mentioned criteria. Since only a few of the ICE detainees would fall under SCAAP and result in federal compensation to the county, California state and local authorities should not honor detainers generally because doing so would violate § 4005 of the Penal Code.

(2) Neither the arresting officers nor the booking sheets should ask for an individual’s country of birth or origin. Traditionally, local authorities have inquired into an individual’s country of origin to facilitate support from a foreign consulate. However, the community is becoming increasingly concerned with the targeting and reporting to ICE of immigrants who disclose that they are foreign nationals. Instead of asking about country of birth or nationality, law enforcement agencies could inform the detainee that they could be provided with information on how to get help from foreign consulates or offices upon request. Agencies could also make a folder with all the consulate contact information readily available for detainees to use.

(3) Ensure that the rights of arrested persons are protected. The county should emphasize a policy of informing inmates of possible immigration consequences of their arrest or conviction. When an inmate is not yet represented by the Public Defender, they should be given access to advocates who could discuss immigration issues and effectively communicate to the individual his or her rights. Advocates could include those from Victim Witness and Domestic Violence programs, local community-based and faith-based organizations, and the like. The Public Defender’s Office could work with community members to develop an advocate program for inmates.

(4) Maintain data on crucial data sets. The county should implement a comprehensive data collecting system that will record statistics concerning detained persons. This system is beneficial because it will enable the County to measure the impact of changes in policy by

it or ICE. Please see Annex A for events and aggregate statistics the county should record.

(5) Create an oversight committee to ensure that individuals are under local custody only during the period required by law. The Public Safety and Justice Committee should oversee the custody process and the collection of data on detained persons. The data should be made available to the public through a monthly report made in a spreadsheet format.

(6) Any detainee charged with a bondable offense should be allowed to do so. Although a judge will decide whether or not the detainee could post bail during the bail hearing, the County County should make it a policy not to take into account requests for detainers in determining whether an individual is entitled to post bail.

(7) Do not give ICE access to the person in custody unless the detainee has consented to ICE questioning. Since the jail is an inherently coercive environment and providing ICE access to facilities can be administratively costly, the County should not allow ICE access to inmates **until a public defender has been assigned to the inmate.** Furthermore, ICE should not question **them unless they receive the inmate's and/or attorney/advocate's informed consent.** Prior to facilitating a meeting or any telephone communication between an inmate and an ICE official, the inmate and his or her attorney/advocate should be informed that:

- a. He or she will be interviewed by an ICE agent. The ICE agent should be dressed in an official uniform and identify himself or herself as an agent of ICE;
- b. The inmate has a right not to answer any questions;
- c. The inmate has a right to an attorney at his/her own expense;
and
- d. The inmate can decline to participate in the meeting with ICE.

Materials informing inmates of these rights should be available in multiple languages and given to inmates upon booking. Community members could assist in the translation of their materials in different languages.

(8) Ensure that all arrested individuals have access to healthcare or other programs and services offered to inmates in the holding facility. Special protections should be given to arrested or incarcerated youth who should also be given access to educational services while in custody. The child's parents or guardian should also be immediately notified.

III. Conclusion

The organizations signed on to this letter and the other members of our coalition would like to continue working with you on this issue. We request that the Santa Clara County Board of Supervisors take into account the procedures listed when an individual is arrested by

local law enforcement agencies. We believe these measures are in keeping with the county's long-standing practice of making Santa Clara County a haven for its residents. Thank you for your consideration.

Sincerely,



Beatrice Ann M. Pangilinan
Staff Attorney, Asian Law Alliance



Nicholas Kuwada
Staff Attorney, Asian Law Alliance

For the Santa Clara County Coalition against Secure Communities:

American Civil Liberties Union Mid-Peninsula Chapter
American Civil Liberties Union of Northern California
Asian Law Alliance
Coalition for Justice and Accountability
Immigrant Legal Resource Center
Justice for Immigrants, Diocese of San Jose
People Acting in Community Together
San Jose Peace and Justice Center
Services, Immigrant Rights, and Education Network
Silicon Valley Alliance for Immigration Reform
Silicon Valley De-Bug

Purpose of Data Collection

Whatever policy the county adopts with regards to ICE detainers it needs to understand how ICE is interacting with the county. The county may in the future decide to revise its policies or ICE may change its policies. If either of those things happens then collecting this data now will be useful in understanding the effects of any such changes.

Events

The following events are of interest. The coalition is recommending that some of these things (such as person being held by a detainer) should not happen but they are listed here in case the county does not adopt such policies or adopts them in part.

All these events are related to a particular booking, and the information collected for each event must be tied to all other events related to that booking

Here are the events and the information that should be collected for each event.

- Booking: Reason for the booking. In particular the charges and their category (infraction, misdemeanor, felony)
- Whenever a match in the immigration database results after the arrested person's fingerprints are taken
- Detainer received: What boxes are checked on the detainer. In particular the reason ICE gives for issuing the detainer.
- Whether a person would have been released but is held by virtue of detainer.
- Whether ICE interviews a person while he or she is in custody.
- Whether ICE picks up a person being held.
- Whether a person is released or transferred: Reason for the release or transfer (for instance, sentence is served, charges are dismissed, acquittal, bail, ICE picks up inmate, etc.)

Aggregate Statistics

The data for the events listed in the previous section is detailed and should be retained for future analysis. For now the following information seems useful and should be accumulated each month.

- For each kind of event listed in the previous section the number of events.
- For each kind of event and for each possible booking reason the number of events.
- For each kind of event that occurs in a given month the length of time (in hours) from booking until the event. That is, the number of times it took one hour, the number of times it took two hours... and so on. For events which can occur after a detainer is issued, separate counts should be made for those who had detainers issued and those who didn't.
- The length of time it takes ICE to show up and take into custody the person being held. That is how often it took one hour, how often it too two hours, etc.

TALKING POINTS

Central point: The Mayor and Council must take *immediate action* to defend DC residents against harmful federal immigration enforcement program like “Secure Communities” that tear families apart and erode civil rights and public safety. The Mayor should issue an Executive Order addressing this issue and the Council should make it into law.

Why this Ordinance is Important?

The purpose of the ordinance is to protect the civil rights of our community members by limiting Immigration and Customs Enforcements’ ability to contact and detain people being held in DC jails.

This ordinance makes us safer. When local police get involved in federal immigration enforcement it erodes the trust between police officers and law-abiding immigrants; fewer people are willing to report crimes and serve as witnesses. Many of the people getting caught up in immigration enforcement are hard-working families with U.S. citizens children who pose no danger.

This bill does not violate any federal law The District has full legal authority to use its discretion on whom it want to hold for ICE. The Federal courts themselves have held that ICE detainers are not criminal warrants, and may even violate the Constitution (Buquer v.City of Indianapolis). Cook County, Illinois in response to coerced Secure Communities participation, narrowed the categories for which the county would submit to ICE holds.

This bill modernizes long-standing DC policy For decades the District of Columbia has had policies that created a "bright line" between Immigration and Custom's Enforcement and local police. Mayor Marion Barry issued an executive order in 1984 and Mayor Kelly re-issued it later. It’s time to modernize our local policies to continue to protect DC residents’ public safety and civil rights.

What does this ordinance do?¹

Directs the Department of Corrections and D.C. Metropolitan Police Department as well as *all* District agencies:

- Not to inquire about a person’s immigration status unless the person’s immigration status is central to an investigation of a criminal activity. This includes crime victims, witnesses, or others who call or approach the police seeking assistance.
- To establish a policy to ensure that D.C. incarcerated youth and adults are not made available for immigration interviews in-person, over the phone or by video *unless* there is a court order. Not to detain persons solely on the belief that he or she is not present legally in the United States, or that he or she has committed a civil immigration violation.
- To remove the place of birth field from the arrest booking form.

¹ This ordinance will further improve the 1984 Mayor’s Orders 84-41 and 92-49 by delineating the responsibilities of local agencies, preserving limited resources of District agencies, and closing loopholes that facilitate the unwarranted transfer of citizenship and place of birth information to federal agencies.

- Only hold individuals on Immigration detainers (ICE holds) if immigration status is central to a *criminal* investigation. Immigration detainers, or ICE hold requests, do not impose any obligation on the department, and shall be understood as requests.

What is S-Comm?

S-Comm transforms local police into a primary gateway for deportation. Through SComm booking information is automatically searched against immigration databases. If ICE determines that an individual may be deportable, it requests that the local law enforcement agency detain an individual for transfer to ICE and possible deportation *regardless if* the arrest is pre-textual, minor, or whether charges are dropped.

There is strong opposition to S-Comm:

Last year DC city counsel *unanimously* co-sponsored a bill to stop S-Comm, making DC the *first* city in the nation to reject the failed program. Since then major newspaper editorial boards, congressional leaders, local law enforcement, major cities as well as the Governors of New York, Massachusetts, and Illinois have rejected the program citing concerns about S-Comm's negative effects on community policing, risks of racial profiling, burden on cash-strapped communities, and failure to stick to its stated target of deporting dangerous criminals.

Opposition to S-Comm is Rooted in Common Sense-

Counties and states across the country rely on relationships of the communities they serve to combat and solve crimes. Its foolish to sever this tie in order to enforce civil immigration law. *Law enforcement experts believe S-Comm may actually result to "greater levels of crime" because people fear reporting crimes and cooperating with police.*² The federal government should not force cities and states to divert resources to do their job during these tough economic times and definitely not at the cost of public safety.

DC is under imminent threat of S-Comm: Act NOW!!

ICE initially presented S-Comm a voluntary program. But when states and localities began to push back, ICE declared the program would be mandatory. The feds may force activation any day now. We need immediate action from the Mayor and Council.

For more information about this ordinance, please contact Mackenzie Baris at mbaris@dclabor.org

² "Deportation Program Sows Mistrust, U.S. is Told" Julia Preston, *New York Times*, Sep. 15, 2011;

**Public Testimony by Heidi Altman, Supervising Attorney at Georgetown Law School's
Center for Applied Legal Studies¹**

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

I would like to begin by thanking the members of the Judiciary Committee for supporting the Immigration Detainer Compliance Amendment Act and for inviting public comment on the bill. My name is Heidi Altman, and I serve as a Supervising Attorney at a legal services clinic for indigent asylum seekers at Georgetown Law School. I am speaking today in my own capacity and my views do not represent that of Georgetown Law School.

Today I will outline three proposed amendments that are vital to the efficacy of the Act. These changes are:

First: The Act is currently only binding on the D.C. Department of Corrections (DOC). We propose that it be extended to the D.C. Metropolitan Police Department (MPD).

ICE may issue a detainer to any local law enforcement agency, not only jails. In fact, we know that MPD already receives and complies with ICE detainers. This practice will become commonplace when Secure Communities is implemented in the District. As you know, Secure Communities is an information sharing program between ICE and local law enforcement agencies. The program works quickly. When an individual is arrested and booked at the local precinct, his fingerprints are sent to ICE. ICE can then – on even the flimsiest suspicion of unlawful presence – issue a detainer and assume custody of the individual. This process often unfolds before the individual has even seen a criminal judge.

Under the Act as it is currently drafted, MPD will be free to comply with detainers for individuals who have been targeted by ICE before they have even been arraigned by a judge on their current charges. Applying the Act's restrictions to DOC and not to MPD will result in an arbitrary policy that does not reflect the District's fiscal or ethical priorities.

Second: The Act currently allows for local jails to comply with immigration detainers for those recently convicted of a dangerous crime or a crime of violence, both defined by D.C. law. However, as drafted this category includes some minor offenses. We therefore recommend an additional requirement of an imposed sentence of three years or longer, excluding suspended sentences.

Although the categories "dangerous crime" and "crime of violence" sound quite sinister, in actuality they encompass some minor offenses for which most D.C. criminal court judges would not require a defendant to serve any time in jail. For example, an individual arrested and convicted for setting fire to a trash can might be convicted of a "dangerous crime" if that fire accidentally spread to the shingles of a nearby home. This misdemeanor offense would likely

¹ Institutional affiliation is provided for identification purposes only.

not carry any sentence of imprisonment, but under the Act as currently worded the individual would be transferred to the immigration detention and deportation system.

The solution to this problem is to limit the category of those subject to detainers by requiring that a sentence of three years or longer have been imposed for the crime. This requirement must exclude suspended sentences. Suspended sentences are extremely common in D.C. courts and are ordered by a judge when he believes a defendant is not a risk to the community and deserves to be given a second chance and released under the supervision of probation.

It is in the District's best interests to let the criminal justice system do its job and to respect the decisions of our criminal judges. As the Act currently stands, the District will continue handing D.C. residents over to federal immigration enforcement even when a D.C. criminal judge has determined they do not pose a danger to our community.

Third: The Act should require MPD to remove “place of birth” information from its booking form and require DOC to remove such information from its detention classification form.

There is no legitimate law enforcement function to be served by seeking place of birth information on booking and detention classification forms, which traditionally gather identifying information such as name, date of birth, and social security number. In fact, including such information only leaves the District vulnerable and legally liable to claims of racial profiling.

We know that MPD and DOC currently share information with ICE and will do so on a much larger scale after Secure Communities. What we don't know is on what basis ICE makes determinations of unlawful presence after this information has been shared. Our best guess is that “place of birth” information is often used as a proxy for unlawful status. Yet nearly 40% of the District's foreign-born residents are naturalized United States citizens.² Recent reports document a terrifying trend across the country, where local jails are wrongfully holding United States citizens on the basis of unlawful immigration detainers.³ By removing place of birth information from our booking forms, the District will make clear it wants no part in this shameful practice.

Thank you for your time.

² These numbers are made available by the United States Census Bureau 2010 American Community Survey 1-Year Estimates, Selected Social Characteristics, at <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

³ See, for example, Julia Preston, “Immigration Crackdown Also Snares Americans,” New York Times, Dec. 13, 2011.

Public Testimony Paromita Shah, Associate Director of the National Immigration Project of the National Lawyers Guild¹

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

I am the Associate Director of the National Immigration Project of the National Lawyers Guild, and a nine-year resident of Washington, DC. For the last 40 years, the National Immigration Project, a national membership organization, has provided training and technical assistance to advocates and attorneys, many of whom are in DC, who specialize in deportation defense and damages actions for abuses suffered by immigrants. We also train public defenders and criminal defense counsel on the immigration consequences of criminal convictions. I am an author of a national practice advisory for state criminal defense counsel, titled “Understanding Immigration Detainers: An Overview for State Defense Counsel,” and recently spoke about immigration detainers in a DC Bar Continuing Legal Education seminar titled, “Criminal Defense of Noncitizens: Immigration Consequences of Criminal Activities and Convictions.”

I am also a member of the D.C. Immigrants Rights coalition in the District of Columbia, a coalition of domestic violence, labor, and civil rights organizations that support Bill 19-585, the Immigration Detainer Compliance Act. In short, the DC Immigrants Rights coalition applauds the Council’s decision to introduce this bill but ask that the Council consider amending the Act to ensure that the bill fulfills its objectives – namely the protection of District residents from overbroad and overaggressive immigration enforcement within District agencies. Immigration enforcement should be left to immigration agencies. (My colleague Heidi Altman will go through our proposed changes.)

Why do we need this bill?

The time is right to introduce this bill. Secure Communities, an immigration enforcement program that operates with the assistance of police and jails, will be activated in the District by 2013. Despite the Council’s best efforts to prevent its implementation, we expect that Secure Communities will generate a huge spike in the use of immigration detainers. Detainers impose significant costs on the District’s already overburdened criminal justice system. The reasonable alternative is to leave questions of immigration enforcement where they belong: with the federal government.

What is a detainer?

The immigration detainer is the principle mechanism for Immigration and Customs Enforcement (ICE), the enforcement arm of the Department of Homeland Security (DHS), to

¹ Paromita Shah has served as Associate Director of the National Immigration Project since 2005, specializing in immigration detention and enforcement. She is a contributing author and co-presenter of the “Deportation 101” curriculum, participates in regular advocacy efforts with ICE officials, and has created an abundance of resources for communities affected by heightened immigration enforcement efforts. Previously, Paromita served as director of Capital Area Immigrants’ Rights (CAIR) Coalition in Washington, DC, where she conducted presentations in regional county jails, trained attorneys, assessed detainee claims for relief, and conducted liaison meetings with DHS and DOJ. She also worked as a staff attorney at Greater Boston Legal Services. She can be reached at 202-272-2286 or at Paromita@nationalimmigrationproject.org.

obtain custody over suspected immigration violators in the custody of state or local law enforcement officials. When ICE learns that a suspected immigration violator is in a state prison or local jail, ICE issues a detainer form, I-247 which is attached to my submitted testimony. The detainer lapses 48 hours after the person would otherwise be released from criminal custody.

“A detainer *serves to advise* another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.” 8 C.F.R. § 287.7(a).(emphasis added)

“The detainer is a *request* that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate custody is either impracticable or impossible.” 8 C.F.R. § 287.7(a) (emphasis added)

There are many common misconceptions about immigration detainers. For example, an immigration detainer is not an arrest warrant, is not authorization for ICE custody, does not mean that a person is presently in ICE custody, and is not dispositive evidence that a person is a noncitizen or is deportable from the United States. It is not a criminal detainer and is not governed by the Interstate Agreement on Detainers Act. As a result of this confusion, courts, jails and police treat immigration detainers as evidence that the person is a noncitizen and that an ICE agent can have unfettered access to an inmate or arrestee.

What are some problems with ICE detainers?

ICE does not adhere to any evidentiary standards in issuing detainers and often relies on spurious and unreliable evidence. A mere admission of foreign birth can result in a detainer being dropped; additionally, reports have surfaced that foreign-sounding names, clothing styles, and behavior result in detainers being issued.

An immigration detainer does not indicate anything about an individual’s status. Immigration detainers are routinely used without any judicial determination that the person is in the country illegally and are frequently applied to people who have no immigration violations. As a result, detainers have been issued on U.S. citizens. This raises serious concerns about the legality of imprisoning a person for the 48 hour period without any probable cause that the person is subject to detention and removal.

Second, ICE historically checks off one box on the detainer form. “Investigation has been initiated to determine whether this person is subject to removal from the United States.”² Of course, an investigation into deportability is not the same as a charge of deportability.

What has been the District’s history of recording and complying with immigration detainers?

The Department of Corrections’ responses to questions on detainers are deeply troubling. DOC has stated that they do not have any policies regarding the strict limitations governing immigration holds.³ Furthermore, DOC’s responses suggest that detainer violations have already occurred, resulting in DOC unlawfully detaining people who should have been released.

² See Form I-247 (attached to this submission).

³ Department of Corrections Performance Responses, March 2011, p. 38.

http://dcclims1.dccouncil.us/mendelson/archive_pr/COJ%20performance%20and%20budget%20materials/DOC%20Performance%20Responses%2003.07.11.pdf

According to DOC data, a total of 185 inmates were held in CY 2010 on an ICE detainer for an average of 288 days – far beyond the 48 hours. I have also heard reports that ICE agents routinely interrogate DOC inmates – many with detainees without informing counsel.

Is the District required to comply with immigration detainees?

The federal government cannot force local governments to comply with immigration detainees. Not only does the regulation describe the detainer as a “notice” and “request,” the I-247 detainer form contains language stating the detainer is nothing more than a request or notice. On several occasions, ICE officials have stated in writing to Congress and other NGOs that detainees are requests.⁴

Does the District receive federal money for the period of time that they spend on a detainer?

No. The District of Columbia expends funds for the period of time that the individual spends on an ICE detainer. Also, the District of Columbia is liable for any violations of the program. (ICE officials have stated that they do not have reimbursement agreements for ICE detainees.)

Will this Act undermine public safety?

This bill does not change our bail laws or court procedures. The District of Columbia courts and criminal justice system assess whether a defendant is a flight risk or a public safety threat. This Act does not release anyone into the community who is not otherwise eligible to be released. Inmates are only released from custody once they have served their time and have earned their freedom. Or, while charges are pending, a judge may determine that it is safe to release an inmate on bail or on their own recognizance until they are ordered to appear in court.

This policy ensures that everyone in our system is treated equally. United States citizens charged with crimes are released on bail every day. There is no justifiable reason to treat people’s criminal cases differently just because they are suspected of having civil immigration issues.

Will this Act undermine the District’s ability to protect our national security?

The detainer is an immigration tool. If District officials believe that someone presents a national security threat, they can act on it. But they should do it based on evidence, not speculation and innuendo.

⁴ *National Day Laborer Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE)*, Case 1:10-cv-03488-SAS. Under documents obtained in FOIA litigation, documents revealed the following. ICE FOIA 2674.017695 includes: "Is an ICE detainer a request or a requirement? Answer: It is a request. There is no penalty if they don't comply." ICE 2 FOIA2674.020612 includes: "Local LE are not mandated to honor a detainer, and in some jurisdictions they do not." ICE FOIA 2674.017773 includes: "A detainer serves only to advise another law enforcement agency that ICE seeks an opportunity to interview and potentially assume custody of an alien presently in the custody of that agency." These documents are on file with the author or available at www.uncoverthetruth.org. See also *Buquer v. City of Indianapolis*, --- F.Supp.2d ---, 2011 WL 2532935 (S.D. Ind. 2011)(“A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency ‘advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.’”)

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- Initiated an investigation to determine whether this person is subject to removal from the United States.
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____.
(Date)
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____.
(Date)
- Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel the detainer previously placed by this Office on _____.
(Date)

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

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(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局，表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求，根据对你的刑事起诉或判罪的基础，在本当由州或地方执法当局释放你时，继续拘留你，为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留，你应该联系你的监管单位 (现在拘留你的执法当局或其他单位)，询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉，请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center)，电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人，请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center)，告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

**Public Testimony by Tim Curry, Supervising Attorney,
Criminal Division, D.C. Law Students in Court**

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

Thank you to the Members of the Committee for supporting this important legislation. My name is Tim Curry. I am a Supervising Attorney in the Criminal Division of D.C. Law Students in Court, where I represent indigent adults charged with misdemeanors and juveniles charged with delinquent acts in D.C. Superior Court. I also teach a criminal defense clinical seminar at George Washington and Catholic University law schools.

I am here today to discuss how immigration detainers operate in the District in light of my experience as an actor within the D.C. criminal justice system. To be honest, it has always been a bit of a mystery to me how ICE manages its detainer operations because it appears, in practice, to be almost entirely haphazard. The one consistent feature of the program my colleagues and I have observed is that when Immigration and Customs Enforcement (ICE) takes one of our clients they always do so before the criminal justice system has adjudicated his or her case.

One example is a recent client of mine who was arrested on misdemeanor charges of assault against his roommate and picked up by ICE directly from arraignment court. He had not yet even had the opportunity to see a judge. Ultimately, the judge was forced to dismiss the charges against him because the government couldn't even find where he was being held. In this case, not only did ICE preclude the criminal justice system from doing its job, it also stripped my client of his right to counsel, a right protected by the Sixth Amendment of the United States Constitution.

There are many ways in which the District's blanket policy of compliance with ICE detainers disrupts the proper functioning of the criminal justice system.

First, unlimited compliance with ICE detainers renders meaningless the authority granted to D.C.'s criminal court judges during bail proceedings. By statute, a D.C. judge may not release an individual on bail unless he determines that individual does not pose a danger to the community and does not pose a risk of flight. However, a judge may make such a determination only to see the individual held nonetheless on a civil immigration detainer. That detainer is not a criminal warrant, yet current policy gives D.C. DOC and MPD the authority to give it greater weight than the determination of a criminal court judge.

Second, blanket compliance with ICE detainers takes away the local police's ability to exercise discretion during the arrest process. When an MPD officer makes an arrest, he has the discretion to choose whether to hold the individual until his arraignment or to issue a citation, releasing the individual with a notice to return to court in two weeks. Under current policy, however, a police officer may determine an individual not to pose any threat to public safety and

issue a citation only to learn that he is nonetheless required to hold the individual on a civil immigration detainer.

Third, the mere presence of an immigration detainer handicaps the operation of innovative alternative to incarceration programs that allow my clients to receive deeply needed drug [and mental health?] treatment programs. Because these programs require an individual's release into treatment, they simply cannot operate for those with ICE detainers. For example, an individual with no prior arrests picked up on charges of drinking from an open container would ordinarily be automatically referred to an alcohol treatment program instead of being subjected to incarceration. However, if this individual is undocumented and placed under an ICE detainer, he would not even be eligible for such a program.

These concerns are all real today. But the driving force that brings me here today is my fear that these problems will explode out of our control when Secure Communities is implemented in the District. We know from localities where Secure Communities is already active that the number of detainers issued to DOC and MPD will skyrocket when the program comes to the District. In the District, we trust our local police officers and our local criminal court judges to use their discretion to determine who poses a risk to public safety and who does not. Secure Communities will upend these determinations. The implications are wide ranging, including overcrowding in the prisons, ballooning MPD and DOC budgets, and a community increasingly distrustful of local law enforcement.

I urge you to support the Immigration Detainer Compliance Amendment Act of 2011 so that our criminal justice system can continue to do the job our communities trust it to do.

To: XXXXXXXX
From: Coalition concerned with immigration enforcement
Re: Elements for proposed legislation to address immigration enforcement in District Agencies
Date: 10/28/2011

We would like the legislation to incorporate the following language.

- District Agencies shall not comply with immigration detainer requests.
- District Agencies shall remove the place of birth field from their booking forms.
- District Agencies shall establish a policy to ensure that District of Columbia-incarcerated youth and adults are not made available for immigration interviews in-person, over the phone, or by video without a court order.
- District Agencies and their officials and employees shall not inquire about a person's immigration status or contact United States Immigration and Custom Enforcement ("ICE") unless required by a court order.

Background

I. Why we need a bill

Immigration and Customs Enforcement will activate Secure Communities in the District of Columbia by 2013.

The District of Columbia should be committed to limiting the District's entanglement with civil immigration enforcement because Secure Communities has been shown to cast too broad a net, detainers impose significant costs on the District's already overburdened criminal justice system, and the reasonable alternative is to leave questions of immigration enforcement where they belong: with the federal government.

II. Background on the federal government's role in immigration enforcement

Immigration enforcement is ICE's job¹. The District of Columbia has no authority to enforce civil immigration laws.

¹ See *DeCanas v. Bica*, 424 U.S. 351, 354–55 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power."); see also *Kleindienst v. Mandel*, 408 U.S. 753 (1972); *Fiallo v. Bell*, 430 U.S. 787 (1977); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952).

III. Background on immigration detainers

An immigration detainer does not indicate anything about an individual's status. Immigration detainers are routinely used without any judicial determination that person is in the country illegally, are frequently applied to people who have no immigration violations. Moreover, there is no evidentiary standard for detainer issuances. This raises serious concerns about the legality of imprisoning a person for the 48 hour period without any probable cause that the person is subject to detention and removal.

An immigration detainer is not an arrest warrant, not a custodial determination, and not a judicial order.² The presence of a detainer does not mean that ICE will assume custody. Unlike warrants, civil immigration detainers issued by ICE have not been reviewed by a judge or magistrate. The overwhelming majority of detainer requests show that one box is checked: "Investigation has been initiated to determine whether this person is subject to removal from the United States." We do not know whether the District of Columbia is given any information about whether the person is here illegally or why ICE wants to investigate them.

Immigration detainer requests are not mandatory and the District of Columbia is not legally required to honor them. The regulations support this reading. Moreover, the federal government cannot compel local governments to comply with immigration detainers.

The District of Columbia expends funds for the period of time that the individual spends on an ICE detainer.³ Also, the District of Columbia is liable for any violations of the program.

IV. ICE officials have made statements to public officials that detainers are not mandatory.

ICE has stated in the past and in several documents obtained through litigation that local jurisdictions are not required to comply with ICE detainers.⁴ Also, Form I-247 states that the detainer is a request. (see attached)

² 8 C.F.R. §287.7

³ 8 C.F.R. §287.7(e)

⁴ National Day Laborer Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE), Case 1:10-cv-03488-SAS. ICE FOIA 2674.017695 includes: "Is an ICE detainer a request or a requirement? Answer: It is a request. There is no penalty if they don't comply." ICE 2 FOIA2674.020612 includes: "Local LE are not mandated to honor a detainer, and in some jurisdictions they do not." ICE FOIA 2674.017773 includes: "A detainer serves only to advise another law enforcement agency that ICE seeks an opportunity to interview and potentially assume custody of an alien presently in the custody of that agency."

V. These policies do not impact how the District of Columbia deals with crime.

For every individual booked into DC custody on criminal charges, the courts impose and oversee appropriate punishment.

The criminal justice system has adequate safeguards to protect public safety and those safeguards will remain in place.

This policy does not release anyone into the community who is not otherwise eligible to be released. Inmates are only released from custody once they have served their time and have earned their freedom. Or, while charges are pending, a judge may determine that it is safe to release an inmate on bail or on their own recognizance until they are ordered to appear in court.

This policy ensures that everyone in our system is treated equally. United States citizens charged with crimes are released on bail every day. There is no justifiable reason to treat people's criminal cases differently just because they are suspected of having civil immigration issues.

VI. ICE has many other ways of investigating persons of interest. It is not necessary to spend District resources doing ICE's job.

Doing ICE's job erodes the District's trust and credibility in the community. If the District of Columbia is seen as an extension of ICE, people are less likely to report crime or to serve as witnesses. This applies not only to people with immigration issues but to U.S. citizens who may have undocumented family members or other reasons to fear becoming an ICE target.

The federal government grants reimbursement only for a small portion of individuals in state or local custody who are suspected of being noncitizens. Under the State Criminal Alien Assistance Program (SCAAP) state and local law enforcement receive federal compensation only for incarcerating undocumented criminal aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the reporting period. Detainers, however, include individuals who do not fall under the above mentioned criteria. The SCAAP program and ICE detainers are not programmatically connected.



Sheriff Thomas J. Dart
Cook County Sheriff's Office
50 W. Washington
Chicago, Illinois 60602

November 16, 2011

Honorable Cook County Sheriff Thomas J. Dart:

Your actions in the debate over the ICE Detainer Ordinance have demonstrated bad faith toward the immigrant and Latino communities. We call on you to stop engaging in public fear-mongering about immigrants and sit down at the table with Commissioner Garcia to hash out real solutions.

Despite its characterization in the media, this ordinance is a common-sense measure to save precious County dollars, protect immigrant families, uphold constitutional due process protections, and restore public trust between the Sheriff's office and the immigrant community. The law simply requires that if ICE wishes to detain someone in Cook County jail beyond the term prescribed by local judges and prosecutors, ICE must reimburse the jail for doing so.

Since your public statements in favor of such an ordinance this summer, your bad faith actions toward the Latino and immigrant community have told a different story:

- **Weeks after you helped to write the ICE Detainer ordinance, you withdrew your support on the day it was to be voted on by the Cook County Board.**
- **Over 2 months, you refused repeated requests from Commissioner Garcia to meet and discuss your new concerns.**
- **Rather than directly addressing your concerns to Commissioner Garcia and members of the immigrant community, your representative went public in the Chicago Tribune with the worst kind of fear-mongering comments that equate immigration with terrorism**
[\(\[http://articles.chicagotribune.com/2011-11-11/news/ct-met-cook-county-immigration-ordinance-20111111_1_immigration-ordinance-illegal-immigrants-county-sheriff-tom-dart\]\(http://articles.chicagotribune.com/2011-11-11/news/ct-met-cook-county-immigration-ordinance-20111111_1_immigration-ordinance-illegal-immigrants-county-sheriff-tom-dart\)\)](http://articles.chicagotribune.com/2011-11-11/news/ct-met-cook-county-immigration-ordinance-20111111_1_immigration-ordinance-illegal-immigrants-county-sheriff-tom-dart).

Our Sheriff should be working with our community and our leaders, not disparaging them. Again, we call on you to stop engaging in public attacks against immigrants and sit down with Commissioner Garcia to discuss your concerns and make this the best ordinance it can be for Cook County.

Sincerely,

Joshua W. Hoyt
Illinois Coalition for
Immigrant and Refugee
Rights

Maria Pesqueira
Mujeres Latinas en Accion

Fr. Brendan Curran
St. Pius V Church

Ahlam Jbara
Council of Islamic
Organizations of Greater
Chicago

Juan Salgado
Instituto del Progreso Latino
(IdPL)

Raul Raymundo
The Resurrection Project

Mike Rodriguez
ENLACE Chicago

Yesenia Sanchez
PASO / West Suburban
Action Project
(Melrose Park)

Jane Ramsey
Jewish Council on Urban
Affairs

Ana Guajardo
Centro Trabajadores Unidos

Fr. Chuck Dahm
St. Pius V. Church

Sik Son
Korean-American Resource
and Cultural Center

Hector Rico
Latino Organization of the
Southwest

Cristine Pope
Interfaith Leadership Project
(Cicero/ Berwyn)

Jeff Bartow
Southwest Organizing Project

Itedal Shalabi
Arab-American Family
Services (Bridgeview)

Celena Roldan
Erie Neighborhood House

Rev. CJ Hawking
Euclid Ave. United Methodist
Church

Adam Kader
Arise Chicago

Fr. Larry Dowling

St. Agatha Church

Jenny Arwade
Albany Park Neighborhood
Council

Paul Yun
Hanul Family Alliance (Mt.
Prospect)

Nancy Aardema
Logan Square Neighborhood
Association

Jose Luis Gutierrez
NALACC

Jerry Clarito
AFIRE (Skokie)

Rachel Heuman
Immigrant Advocacy Project
(Evanston)

Pastor Walter Bohorquez
El Taller Del Maestro

Artemio Arreola
Mexican-American Coalition
for Immigration Reform

Esther Wong
Chinese-American Service
League

Sr. Rose Mary Meyer
Project Irene
(Berwyn)

Inchul Choi
Korean-American
Community Services

Rev. Walter Coleman
Lincoln United Methodist
Church

Emma Lozano

Centro Sin Fronteras

Mayte Martinez
FEDECFMI

Monika Starczuk
Polish Initiative of Chicago

Fabian Morales
Federacion de Guerrerenses

Josina Morita
United Congress of
Community and Religious
Organizations

Maricela Garcia
National Council of La Raza

C.W. Chan
Coalition for a Better
Chinese-American
Community

Julio Cesar Cortez
CONFEMEX

Oscar Chacon
NALACC

Arcadio Delgado
Cicero Area Project

Carlos Arango
Casa Aztlan

Salvador Pedroza
Little Village Chamber of
Commerce

Idida Perez
Westtown Leadership United

Rami Nashashibi
Inner-City Muslim Action
Network

Tuyet Le

Asian-American Institute

Maria de Los Angeles Torres
Latino Studies, UIC

Sylvia Puente
Latino Policy Forum

Pastor Ron Taylor

Neighbors United

Bryan Echols
Metropolitan Area Groups
for Igniting Civilization

Bill Yoshino
Japanese American Citizens
League

Hipolito 'Paul' Roldan
Hispanic Housing
Development Corporation

Ric Estrada
Metropolitan Family Services

Cc Commissioner Jesus Garcia, President Toni Preckwinkle, States Attorney Anita Alvarez, and media organizations

ICE detainers costly, unfair

September 16, 2011

By Jesus "Chuy" Garcia

Chicago Sun Times

Anti-immigrant activists already are hard at work muddying the waters about a simple Cook County ordinance that passed 10-5 last week.

It prohibits the county sheriff from continuing to comply with detainer requests from U.S. Immigration and Customs Enforcement unless the federal government agrees to reimburse the county for the costs associated with holding individuals in jail beyond their authorized time of release. These costs are estimated to exceed \$15.7 million a year.

The county ordinance was the product of a collaborative effort by my office, County Board President Toni Preckwinkle, State's Attorney Anita Alvarez and Sheriff Tom Dart.

In the past, local officials complied with these requests from ICE as a matter of course, and taxpayers footed the bill because they believed that compliance was mandatory, but it is not. Thanks to a recent federal court decision, it is clear that these detainers are merely intergovernmental requests for cooperation — requests that the sheriff can legally decline.

There is a widespread misconception that ICE detainer requests serve a public safety function, and that this ordinance will result in the indiscriminate release of dangerous criminals into our communities. Although that is what anti-immigrant activists would like you to think, that is not the case. Detainers are not criminal warrants. Our criminal justice system already guards against the release of dangerous criminals.

Although we pride ourselves in having a system that presumes everyone is innocent until proved guilty, no one is released from the sheriff's custody on bond unless and until a judge determines that person does not pose a significant risk to public safety. The law makes no exception for people born in other countries. This ordinance would not result in the release of anyone who is not already entitled to their freedom.

This ordinance represents a return to the American values that we hold in highest regard; values that are rooted in our founders' aspirations for our great nation; values that are codified in the Constitution of the United States: equal protection and justice for all. Ours is not a nation that distinguishes between individuals based on race, creed or national origin when it comes to due process.

By passing this ordinance, Cook County affirms that it will not perpetuate a practice that plunders our limited resources. Here are the facts:

Before this ordinance went into effect, Cook County was spending an estimated \$15.7 million of your hard-earned tax dollars a year to keep in custody people whose charges had been dropped, or whose cases had been dismissed, or who had been found eligible for bond by a judge.

Local law enforcement reported that their cooperation with federal immigration enforcement had a chilling effect that discouraged victims and key witnesses of crimes from coming forward. This culture of silence put all of us at risk because it made it harder to investigate and fight crime.

Most of the people who were targeted by ICE were never convicted of a crime, and much less a serious one.

What is worse is that the sheriff held more than 200 individuals pursuant to these detainers on a daily basis, but ICE regularly picked up only three to nine. When it costs Cook County more than \$143 a night to house each detainee, and ICE picks up fewer than 5 percent of the people it asks us to hold, that quickly adds up to a lot of wasted money.

At a time like this, when Cook County anticipates a \$315 million shortfall for the next fiscal year and is struggling to provide quality services without laying off essential personnel, we cannot continue to divert local taxpayer dollars to foot the bill for the federal government's indulgence.

Cook County Commissioner Jesus "Chuy" Garcia represents the 7th District.

County won't pay for baseless deportations

September 22, 201

By Jesus "Chuy" Garcia and Joshua Hoyt

Chicago Tribune

Rigo Padilla is an honor student at the University of Illinois at Chicago who was placed in deportation while in Cook County Jail after a misdemeanor driving offense. Federal Immigration and Customs Enforcement officials stationed at the jail placed a deportation detainer on him although he had been convicted of nothing and although a Cook County judge had determined that he did not pose a threat to public safety and found him eligible for release on bond.

In fact, Rigo was not released until after he had signed an ICE expedited deportation order, without understanding its consequences. Rigo's detention and processing cost Cook County taxpayers thousands of dollars.

The sum of expenses incurred by the county's taxpayers in complying with this wholly unfunded federal mandate in similar cases is estimated at approximately \$15.7 million per year. It took many months, a grass-roots campaign led by his fellow students and professors, and the supportive intervention of both the Chicago City Council and five congressmen to stop Rigo's deportation and his permanent separation from his family.

Thanks to a Cook County ordinance passed Sept. 7 by a 10-5 vote, Cook County will require ICE to reimburse the county for holding people like Rigo beyond the time required by state law.

A recent federal court ruling (*Buquer v. City of Indianapolis*) makes it clear that ICE detainers are not criminal warrants, and that local jurisdictions can legally decline to comply. Commissioner Garcia, Cook County Board President Toni Preckwinkle, Cook County Sheriff Tom Dart and Cook County State's Attorney Anita Alvarez helped craft the measure — making sure it saved tax dollars, respected federal law and preserved public safety.

But Cook County government has also sent a strong message that our taxpayers will not subsidize the needless destruction of families.

ICE, of course, liked the old way better. Anti-immigrant activists have already begun a campaign of lies about this narrow, cost-saving measure. They say it will set dangerous criminals free. That's simply not true. Cook County judges carefully consider whether someone poses a threat to public safety before setting bond, and suspected criminals who pose a danger to society are not bond eligible (meaning they will not be released before trial under any circumstance). Then, once someone has been convicted of a serious crime, he or she goes to state prison, where ICE automatically puts deportation detainers on prisoners, who are deported after they serve their time. Additionally ICE may still arrest anyone it suspects of immigration violations.

Jesus "Chuy" Garcia, D-Chicago, is a Cook County Board commissioner.

Joshua Hoyt is executive director of the Illinois Coalition for Immigrant and Refugee Rights.

Father Jon Pedigo and Richard Konda: Community trust in police is crucial to fighting crime

By Father Jon Pedigo and Richard Konda
Special to the Mercury News
Posted: 11/05/2011 08:00:00 PM PDT

Together with our faith community and fellow advocates for a fair judicial system, we applaud Santa Clara County's new detainer policy that addresses what is most needed by our communities: respect for the rights of all people. This will restore trust in local law enforcement.

Aggressive immigration enforcement has created fear among many residents in our county. We have witnessed the effects of our nation's broken immigration system whose enforcement-only measures have separated parents from young children and forced spouses to live apart. It imposes hardship not only on undocumented immigrants but also on lawful permanent residents who likewise are the subject of immigration detainers.

In a county where two-thirds of the population is composed of immigrants and many families are of mixed status, U.S. citizens are also adversely affected when their family members become the target of flawed immigration policies. No matter how many resources our support groups dedicate to minimizing the devastating effects of removal of a parent, relative, co-worker or friend, our efforts cannot make families whole and restore a sense of security in the community as long as the county assists in the enforcement of federal immigration laws.

The key to public safety is to create an environment where the community and law enforcement work together as partners. Policies that instill fear and suspicion of authority are not the answer. When the county decided to honor civil immigration detainers, our local police and immigration agents became one and the same in the community's eyes. Immigrants live in every neighborhood, so this mistrust of law enforcement creates a serious breach in public safety.

Immigrants are among our most vulnerable in the community. When they fear the very people who are supposed to keep them safe, the crimes against them will go unchecked. Victims have begun a destructive pattern of not reporting crimes because they are too afraid to come forward as witnesses.

To be clear, because there are already existing safeguards within the criminal justice system against the release of hardened criminals, the new detainer policy will not compromise community safety. To say otherwise is a misleading and irresponsible interpretation of this policy, which will only create more division and fear in our community. People convicted of serious and violent offenses under California law go to state prison, where immigration authorities could choose to place holds on them.

Locally, when Santa Clara County's district attorney prosecutes crimes, the courts administer justice with public safety as the primary consideration to minimize risk to county residents. We do not believe that one's citizenship should be used to profile whether a person has a propensity to commit another crime. To factor in citizenship status is nothing short of profiling immigrants as dangerous and untrustworthy.

All persons should be treated equally under the law. Once they have served their time or been acquitted of the charges against them, they should be released. This policy is an affirmation of this county's commitment to due process protections for all.

The way to fight crime is not Immigration and Customs Enforcement collaboration but, rather, investment in local programs to prevent crime. Our tax dollars should be spent on county services and improving the criminal justice system. Our priority should be to work toward community alternatives that decrease crime and reduce recidivism rates.

There is no choice to be made between immigrant rights and public safety. Protecting immigrant rights means achieving public safety.

FATHER JON PEDIGO is a pastor at St. Julie Billiart Parish and director for the Justice for Immigrants Campaign of the Diocese of San Jose. RICHARD KONDA is executive director of the Asian Law Alliance and a member of the Coalition for Justice and Accountability. They wrote this for this newspaper.

The Buck Stops Here: How the LA County Sheriff's Participation in Immigration Enforcement is Hurting Community Policing and Public Safety

February 16, 2012

Arturo Venegas, Jr., Former Sacramento Police Chief, Director of the Law Enforcement Engagement Initiative
Huffington Post

For the last few years, I have been engaging fellow law enforcement leaders in a dialogue about sensible immigration reform. Immigration is an issue that affects our work as cops on a daily basis. But, sometimes I'm asked whether the fact that law enforcement is engaged in immigration enforcement really has an impact on victims or witnesses coming forward or not. The tragedy of sexual abuse of school children at Miramonte Elementary School, a part of the Los Angeles Unified School district and located in a largely poor Latino neighborhood, has, sadly, answered that question once and for all.

The case involves two longtime teachers at the school who were arrested for committing lewd acts toward a number of students in disturbing instance of sexual abuse that occurred over several years. Many of the students at Miramonte and/or their parents are undocumented immigrants. Last week as the abuse story was unfolding, parents at the school told the Associated Press that they were afraid to talk to the police about the case because they feared deportation through the "Secure Communities" program. Alejandra Manuel, the mother of a student in one of the accused teacher's class, said "We're afraid to speak with the Sheriff and be deported. Anything can happen." The mother added, "We don't even want to go to the meetings at the school because they're full of police." (Translation is mine.)

The school falls within an unincorporated section of Los Angeles County that is patrolled by the L.A. County Sheriff's Office (LASO). Sheriff Lee Baca has long been a supporter of the Immigration and Customs Enforcement (ICE) programs that target undocumented immigrants. One such program was the 287g that operated in the jail. Under an agreement between LASO and ICE, his personnel were trained to do interviews of people arrested, and if the officers discovered that the person was unauthorized to be in the country, they would refer them to ICE for deportation proceedings. The Sheriff later had a spat with ICE when ICE changed the 287g agreements without consulting him and he refused to operate under the new agreement.

However, when ICE began implementing the other program, Secure Communities (S-Comm), the Sheriff was one of the first in line in California to make the program happen. The S-Comm program takes the fingerprints of everyone booked into jail and sends them to ICE. ICE then evaluates them and determines whether or not to request a detainer on the person, which often times ends up in the deportation of the individual.

The 287g program is in place in only about 70 agencies nationwide, while Secure Communities will be in place across the entire country by next year. 287g has always been voluntary and Secure Communities started out the same, but ICE announced last year that it will be mandatory and the Sheriff has been one of the program's strongest proponents. S-Comm was supposed to be a program to target the most serious of offenders, but the figures of those arrested, processed and deported, tell a different story. In fact, the majority of people deported through S-Comm have either committed only a minor offense or no crime at all.

ICE and the Sheriff would tell you that the program has identified quite a few serious criminals. What they fail to acknowledge is that these offenders would have been identified any way through other programs and processes in place. What they don't want to acknowledge is that this program has been an inexpensive way (since the counties, not the federal government, pay for detaining the immigrants) for ICE to claim that the Administration is being tough on immigration enforcement, and to rapidly increase deportations. Since this Administration took over in 2009, deportations have been higher than any previous administration. But the negative impact on families, police-community relations and community policing, that has proven to be a

significant asset in reducing crime and violence across our country, have been enormous. And, when a victim or a witness fears the police, the whole community suffers. This is why every major law enforcement association has taken a position in favor of limiting local participation in immigration enforcement. The Major Cities Chiefs Association, assessed the issue, stating, "without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear."

This point could not be better illustrated than by the cases at Miramonte Elementary School. The number of cases is mind-boggling and many of the parents are fearful of coming forward for fear they will be discovered by ICE and deportation action taken against them. Are the arrested teachers guilty or sexual predators? That's for the prosecution and the courts to determine, but they need victims and witnesses willing to come forward. For the criminal cases to be properly investigated and prosecuted it's simply not an option to have victims or witnesses fear to come forward. The sad state of affairs is that they may very well end up with victims and witnesses afraid to come forward and help prosecute child sexual abuse cases, due to the Sheriff's unwavering and vocal support of ICE's flawed immigration enforcement programs.