



BOARD OF SUPERVISORS

RICHARD VALLE
Supervisor, District 2

Agenda April 23, 2013

Revised

April 17, 2013

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

Subject: Approve the Resolution Regarding Civil Immigration Detainer Requests

RECOMMENDATION:

It is recommended that your Board approve the Resolution Regarding Civil Immigration Detainer Requests to recognize that ICE Detainer requests are not mandatory but discretionary as stated by ICE and California Attorney General Kamala Harris. Detainer requests are issued by U.S. Immigration and Customs Enforcement (ICE) to detain individuals at local jails to allow ICE to determine if immigration enforcement is needed. The detainers often extend the individual's sentence and results in additional County costs, family separations and distrust among immigrant communities toward the County and Sheriff's Office.

DISCUSSION/SUMMARY:

We are a country of immigrants. Many immigrants do the work and have jobs that are low paying service industry jobs and they work hard for themselves and their families. Working hard to support our family is the cornerstone of our country. I believe hard work should be rewarded with great benefits regardless of immigration status. California is very quickly becoming a majority-minority state and Alameda County is home to persons of diverse racial, ethnic, and national backgrounds, including many immigrants. Approximately 31% of all County residents are foreign born, and approximately 43% speak a language other than English at home, and approximately 55% of children in the County live in families with at least one foreign-born parent.

The federal immigration enforcement program which has been labeled "Secure Communities" enlists our local law enforcement to engage in federal civil immigration enforcement and this has shown to be problematic. For example, people in immigration proceedings don't have a right to legal counsel. Too many people are deported unjustly because of this flawed program "Secure Communities." It becomes easy then to deport people causing the families to be separated. Everyone deserves a fair trial and a fair hearing. The immigration policy of the country is in need of repair. Supporting this resolution is one way that Alameda County can have a voice.

Alameda County effectuates deportation of community members by treating "ICE holds" as mandatory, when the California Attorney General and Immigration and Custom Enforcement (ICE) have gone on record stating they are merely *requests*.

Individuals with an "ICE hold" or "detainer" spend, on average, 7 days longer in Alameda County than similarly situated individuals without an "ICE hold". This is a financial burden on our County and brings hardship to families who are separated from their loved ones.

Public safety is a shared responsibility between the Sheriff and the Board of Supervisors and both the Sheriff and Board of Supervisors must cooperate to maintain public safety.

I ask the Board to support the resolution stating the Alameda County Board of Supervisors does not support any law enforcement policy that denies due process or equal protection based on an individual's civil immigration status and that the Board does not support the use of the Sheriff's Office personnel and County resources responding to ICE unless ICE agents have a criminal warrant. The resolution also states that the Board does not support ICE agents being given access to inmates held in criminal custody or using County facilities for investigative interviews with such inmates.

SELECTION CRITERIA

N/A

FINANCING:

Approval of the attached resolution will have no impact on the County General Fund.

Sincerely,



Richard Valle
Supervisor, District 2

cc: Auditor-Controller
County Administrator
County Counsel

**RESOLUTION NUMBER: R-2013-
Resolution Regarding Civil Immigration Detainer Requests**

WHEREAS, the County of Alameda is home to persons of diverse racial, ethnic, and national backgrounds, including many immigrants; and

WHEREAS, approximately 31% of all County residents are foreign born, and approximately 43% speak a language other than English at home, and approximately 55% of children in the County live in families with at least one foreign-born parent; and

WHEREAS, the Board of Supervisors recognizes that fostering a relationship of trust, respect, and open communication between County employees and County residents is essential to the County's core mission of ensuring public safety and serving the needs of the entire community; and

WHEREAS, the federal immigration enforcement program which has been labeled "Secure Communities" enlists local law enforcement to engage in federal civil immigration enforcement through the sharing of biometric data at the point of arrest and/or booking at county jails undermines this trust and harms public safety by increasing fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement; and

WHEREAS, public safety is a shared responsibility between the Sheriff and the Board of Supervisors and both the Sheriff and Board of Supervisors must cooperate to maintain public safety; and

WHEREAS, "Secure Communities" results in the deportation of many individuals who have no criminal conviction on their record, and in Alameda County as of January 2013, 76% percent of the 1,947 Alameda County residents deported through "Secure Communities" had no criminal convictions or had convictions involving only minor offenses¹; and

WHEREAS, "Secure Communities" has resulted in the separation of families, more than one-third of those targeted by "Secure Communities" have a U.S. citizen spouse or child, meaning that approximately 88,000 families with U.S. citizen members have been negatively impacted by "Secure Communities" nationwide; and

WHEREAS, Immigration and Customs Enforcement (ICE) has falsely detained approximately 3,600 U.S. citizens as a result of "Secure Communities"ⁱⁱ; and

WHEREAS, impacted communities are concerned that "Secure Communities" incentivizes racial profiling, including the disproportionate targeting of Latino men, and that Latinos make up 93% of those detained through "Secure Communities" although they account for only 75% of the undocumented population in the U.S.ⁱⁱⁱ; and

WHEREAS, involvement in civil immigration enforcement diverts limited local resources away from other county priorities because ICE requests result in additional incarceration costs resulting from additional incarceration time^{iv} in comparison to those without ICE requests, which is not reimbursed by the Federal Government, aside from partial reimbursement from State Criminal Alien Assistance Program (SCAAP) funding, the requirements for which do not cover all ICE requests^v, and the average reimbursement amount which covers only a fraction of incarceration costs^{vi}; and

WHEREAS, the enforcement of immigration laws is a responsibility of the federal government; and

WHEREAS, Alameda County effectuates deportation of community members by treating "ICE holds" as mandatory, when the California Attorney General and ICE have gone on record stating they are merely requests for local law enforcement to advise immigration authorities when an individual is due to be released from custody and to hold the individual beyond the scheduled time of release in order for ICE to arrange to assume custody to initiate deportation proceedings^{vii}; and

WHEREAS, individuals with an "ICE hold" or "detainer" spend, on average, 7 days longer in Alameda County than similarly situated individuals without an "ICE hold"^{viii}; and

WHEREAS, "ICE holds" have been improperly issued by ICE and have even been imposed on U.S. citizens by mistake, as well as on immigrants who are not deportable; and

WHEREAS, ICE will not indemnify local agencies for costs or liability incurred as a result of wrongfully placed "ICE holds"; and

WHEREAS, "ICE holds" requests result in the use of local resources including jail space and jail staff, but the federal government does not fully reimburse for those costs^{ix}; and

WHEREAS, the federal government spends more on civil immigration enforcement than all federal criminal law enforcement combined^x and therefore, limited local funds should not be expended to further federal civil immigration enforcement efforts, but rather on essential local County programs; and

WHEREAS, the Board of Supervisors acknowledges that California law authorizes the Sheriff to exercise independent, constitutionally and statutorily designated functions that this Board may not obstruct, and recognizes that the decision to comply with ICE detainer requests is discretionary and is within the Sheriff's sole and exclusive authority to keep the jail and the prisoners in it,

NOW, THEREFORE BE IT RESOLVED, THAT:

- A. By means of this resolution, Alameda County stands in support of states, counties, and cities across the nation including Berkeley, California, Cook County, Illinois and Santa Clara County, California, that are informed about the discretionary nature of "ICE holds" and therefore decline to enforce them.
- B. The Alameda County's Sheriff's role is to reduce crime and protect public safety while respecting the constitutional principles of equal protection and due process of law for all individuals.
- C. The Board of Supervisors does not support any law enforcement policy that would deny or limit due process of law or equal protection of the laws to any individual because of the individual's civil immigration status or the presence of any Immigration Customs and Enforcement (ICE) hold "request," also known as a federal immigration detainer.
- D. The Board of Supervisors encourages the Sheriff not to honor requests by the United States Immigration and Customs Enforcement (ICE) to detain an inmate for suspected violations of civil federal immigration law.
- E. The Board of Supervisors does not support the use of Sheriff's Office personnel and County time or resources responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates, unless ICE agents have a criminal warrant, or the Sheriff's Office has a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, nor does this Board support ICE agents being given access to inmates held in criminal custody or using County facilities for investigative interviews with such inmates.

PASSED AND ADOPTED by the Board of Supervisors of the County of Alameda, State of California, on _____, 2013 by the following vote:

AYES:
NOES:
EXCUSED:

KEITH CARSON, President
Board of Supervisors

ATTESTED TO:

Clerk of the Board of Supervisors

APPROVED AS TO FORM
Donna R. Ziegler, County Counsel

By:  County Counsel

¹ Immigration and Customs Enforcement, *Secure Communities Monthly Statistics through January 31, 2013 IDENT/IAFIS Interoperability* (January 2013), http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf.

ⁱⁱ Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," October 2011 (finding based upon federal data that approximately 3,600 United States citizens have been arrested by ICE through the Secure communities program).

ⁱⁱⁱ *Id.*

^{iv} Judith A. Greene, *The Cost of Responding to Immigration Detainers in California, Preliminary Findings*, Justice Strategies, August 22, 2012; Kathy A. White & Lucy Dwight, *Misplaced Priorities: SB90 & The Costs to Local Communities*, The Colorado Fiscal Institute (December 1, 2012).

^v SCAAP funding is limited to covering incarceration costs incurred for *undocumented* people who have received at least one felony or two misdemeanor *convictions* and have been incarcerated for at least four consecutive days. Bureau of Justice Assistance, State Criminal Alien Assistance Program (SCAAP), Updated Requirement's for Fiscal year 2012, available at: https://www.bja.gov/Funding/12SCAAP_Guidelines.pdf.

^{vi} According to the Department of Justice, the average 2012 per diem cost reimbursed by SCAAP was \$28.16. Bureau of Justice Assistance, State Criminal Alien Assistance Program (SCAAP), Updated Requirement's for Fiscal year 2012, available at: https://www.bja.gov/Funding/12SCAAP_Guidelines.pdf.

^{vii} Attorney General Kamala Harris, Attorney General, *Responsibilities of Local Law Enforcement Agencies under Secure Communities*, Information Bulletin, December 4, 2012.

^{viii} Letter from Sheriff Ahern to ACLU April 11, 2012 response to Information Request Item 3: D: Average total length of incarceration of an inmate subject to ICE detainer: 27 days vs. 22 days for an inmate not subject to ICE detainer:

^{ix} Letter to Miguel Marquez, County Counsel, County of Santa Clara, from David Venturella, Immigration and Customs Enforcement Assistant Director, dated 2010 (stating that "[p]ursuant to 8 C.F.R. section 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodge until 'actual assumption of custody'").

^x Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute (January 2013), <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>