

File No. 130764

Committee Item No. 2

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Neighborhood Services & Safety

Date September 5, 2013

Board of Supervisors Meeting

Date October 1, 2013

Cmte Board

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Completed by: Derek Evans Date 8/28/13

Completed by: Derek Evans Date 9/12/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Administrative Code - Due Process Ordinance for All on Civil Immigration Detainers]

Ordinance amending the Administrative Code by adding Chapter 12I to prohibit law enforcement officials from detaining individuals on the basis of an civil immigration detainer after they become eligible for release from custody, except for individuals who have a prior conviction for a violent felony within a certain period of time, are currently being charged with a violent felony, and may pose a public safety risk.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*striketrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Administrative Code is hereby amended by adding Chapter 12I, Sections 12I.1 through 12I.67, to read as follows:

CHAPTER 12I: CIVIL IMMIGRATION DETAINERS

SEC. 12I.1. FINDINGS.

The City and County of San Francisco (the "City") is home to persons of diverse racial, ethnic, and national backgrounds, including a large immigrant population. The City respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status. Fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to the City's core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants. The purpose of this Chapter is to foster respect between law enforcement and residents, to protect limited local resources, and to ensure family unity, community security, and due process for all.

1 Our federal immigration system is in dire need of comprehensive reform. The federal
2 government should not shift the burden of federal civil immigration enforcement onto local law
3 enforcement by requesting that local law enforcement agencies continue detaining persons based on
4 non-mandatory civil immigration detainees. It is not a wise and effective use of valuable City resources
5 at a time when vital services are being cut.

6 The United States Immigration and Customs Enforcement's ("ICE") controversial Secure
7 Communities program (also known as "S-Comm") shifts the burden of federal civil immigration
8 enforcement onto local law enforcement. S-Comm comes into operation after the state sends
9 fingerprints that state and local law enforcement agencies have transmitted to California Department
10 of Justice ("Cal DOJ") to positively identify the arrestees and to check their criminal history. The FBI
11 forwards the fingerprints to the Department of Homeland Security ("DHS") to be checked against
12 immigration and other databases. To give itself time to take a detainee into immigration custody, ICE
13 sends an Immigration Detainer – Notice of Action (DHS Form I-247) to the local law enforcement
14 official requesting that the local law enforcement official hold the individual for up to 48 hours after
15 that individual would otherwise be released ("civil immigration detainees"). Civil immigration
16 detainers may be issued without evidentiary support or probable cause by border patrol agents,
17 aircraft pilots, special agents, deportation officers, immigration inspectors, and immigration
18 adjudication officers.

19 Given that civil immigration detainers are issued by immigration officers without judicial
20 oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of
21 proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal
22 warrants, which must be supported by probable cause, there is no such requirement for the
23 issuance of a civil immigration detainer. Unlike criminal detainers, which are supported by a
24 warrant and require probable cause, there is no requirement for a warrant and no established
25 standard of proof, such as reasonable suspicion or probable cause, for issuing an requesting

1 a civil immigration detainer request. At least one federal court in Indiana has ruled that because
2 civil immigration detainers and other ICE "Notice of Action" documents are issued without probable
3 cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law
4 enforcement officials to arrest and hold an individual in custody.

5 On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the
6 responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that
7 S-Comm does not require state or local law enforcement officials to determine an individual's
8 immigration status or to enforce federal immigration laws. The Attorney General also clarified that
9 civil immigration detainers are voluntary requests to local law enforcement agencies that do not
10 mandate compliance. California local law enforcement agencies may determine on their own whether
11 to comply with a voluntary non-mandatory civil immigration detainers. Other jurisdictions,
12 including Berkeley, California; Richmond, California; Santa Clara County, California; Washington,
13 D.C., and Cook County, Illinois, have already acknowledged the discretionary nature of civil
14 immigration detainers hold requests and are declining to hold people in their jails for the additional
15 forty-eight (48) hours as requested by ICE. under immigration detainers. Local law enforcement
16 agencies' responsibilities, duties, and powers are regulated by state law. However, complying with
17 voluntary non-mandatory civil immigration detainers falls outside the scope of those responsibilities
18 and frequently raises due process concerns.

19 According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not
20 reimbursed by the federal government for the costs associated with civil immigration detainers alone.
21 The full cost of responding to a civil immigration detainer can include, but is not limited to, extended
22 detention time, the administrative costs of tracking and responding to detainers, and the legal liability
23 for erroneously holding an individual who is not subject to a civil immigration detainer. Compliance
24 with civil immigration detainers and involvement in civil immigration enforcement diverts limited local
25 resources from programs that are beneficial to the City.

1 The City seeks to protect public safety, which is founded on trust and cooperation of community
2 residents and local law enforcement. However, civil immigration detainers undermine community trust
3 of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and
4 cooperate with local law enforcement agencies. A 2013 study by the University of Illinois, entitled
5 "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,"
6 found that at least 40 percent of Latinos surveyed are less likely to provide information to police
7 because they fear exposing themselves, family, or friends to a risk of deportation. Indeed, civil
8 immigration detainers have resulted in the transfer of victims of crime, including domestic violence
9 victims, to ICE. According to a national 2011 study by the Chief Justice Earl Warren Institute on Law
10 and Social Policy at UC Berkeley, entitled "Secure Communities by the Numbers: An Analysis of
11 Demographics and Due Process" ("2011 Warren Institute Study"), ICE has falsely detained
12 approximately 3,600 U.S. citizens as a result of S-Comm. Thus, S-Comm leaves even those with legal
13 status vulnerable to civil immigration detainers issued without judicial review or without proof of
14 criminal activity, in complete disregard for the due process rights of those subject to the civil
15 immigration detainers.

16 The City has enacted numerous laws and policies to strengthen communities and keep families
17 united. In contrast, ICE civil immigration detainers have resulted in the separation of families.
18 According to the 2011 Warren Institute Study, it is estimated that more than one-third of those targeted
19 by S-Comm have a U.S. citizen spouse or child. Complying with the civil immigration detainers thus
20 results in the deportation of potential aspiring U.S. citizens. According to the 2011 Warren Institute
21 Study, Latinos make up 93% of those detained through S-Comm, although they only account for 77% of
22 the undocumented population in the U.S. As a result, S-Comm has a disproportionate impact on
23 Latinos.

24 The City has enacted numerous laws and policies to prevent its residents from becoming
25 entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of

1 the federal government. A December 2012 ICE news release stated that deportations have hit record
2 figures each year. According to the Migration Policy Institute's 2013 report, entitled "Immigration
3 Enforcement in the United States: The Rise of a Formidable Machinery," the federal government
4 presently spends more on civil immigration enforcement than all federal criminal law enforcement
5 combined. Local funds should not be expended on such efforts, especially because such entanglement
6 undermines community policing strategies.

7
8 **SEC. 12I.2. DEFINITIONS.**

9 "Eligible for release from custody" means that the individual may be released from custody
10 because one of the following conditions has occurred:

- 11 (1) All criminal charges against the individual have been dropped or dismissed.
12 (2) The individual has been acquitted of all criminal charges filed against him or her.
13 (3) The individual has served all the time required for his or her sentence.
14 (4) The individual has posted a bond, or has been released on his or her own recognizance.
15 (5) The individual has been referred to pre-trial diversion services.
16 (6) The individual is otherwise eligible for release under state or local law.

17 "Civil immigration detainer" means a non-mandatory request issued by an authorized federal
18 immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law
19 enforcement official to maintain custody of an individual for a period not to exceed forty-eight (48)
20 hours, excluding Saturdays, Sundays, and holidays, and advise the authorized federal immigration
21 officer prior to the release of that individual.

22 "Convicted" means state of having been proved guilty in a judicial proceeding, unless
23 the convictions have been expunged or vacated pursuant to applicable law. The date that an
24 individual is Convicted starts from the date of release.

1 "Firearm" means a device, designed to be used as a weapon, from which is expelled
2 through a barrel, a projectile by the force of an explosion or other form of combustion as
3 defined in Penal Code Section 16520.

4 "Law enforcement official" means any City Department or officer or employee of a City
5 Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or
6 maintain custody of individuals in jails; and operate juvenile detention facilities or to maintain custody
7 of individuals in juvenile detention facilities.

8 "Violent Felony" means any crime listed in Penal Code Section 667.5(c); human
9 trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as
10 defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon,
11 machinegun, or .50 BMG rifle, while committing or attempting to commit a felony that is
12 charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and
13 12022.5.

14
15 **SEC. 121.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

16 (a) Except as provided in subsection (b), A a law enforcement official shall not detain an
17 individual on the basis of a civil immigration detainer after that individual becomes eligible for release
18 from custody.

19 (b) Law enforcement officials may continue to detain an individual in response to a civil
20 immigration detainer for up to forty-eight (48) hours after that individual becomes eligible for
21 release if the individual meets both of the following criteria:

22 (1) The individual has been Convicted of a Violent Felony in the seven years
23 immediately prior to the date of the civil immigration detainer; and

1 (2) A magistrate has determined that there is probable cause to believe the
2 individual is guilty of a Violent Felony and has ordered the individual to answer to the same
3 pursuant to Penal Code Section 872.

4 In determining whether to continue to detain an individual based solely on a civil
5 immigration detainer as permitted in this subsection (b), law enforcement officials shall
6 consider evidence of the individual's rehabilitation and evaluate whether the individual poses
7 a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes,
8 but is not limited to: the individual's ties to the community, whether the individual has been a
9 victim of any crime, the individual's contribution to the community, and the individual's
10 participation in social service or rehabilitation programs.

11 This subsection (b) shall expire by operation of law on October 1, 2016, or upon a
12 resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the
13 federal government has enacted comprehensive immigration reform that diminishes the need
14 for this subsection (b), whichever comes first.

15 (c) Law enforcement officials shall make good faith efforts to seek federal
16 reimbursement for all costs incurred in continuing to detain an individual, after that individual
17 becomes eligible for release, in response each civil immigration detainer.

18
19 **SEC. 12I.4. PURPOSE OF THIS CHAPTER.**

20 The intent of this Chapter is to address requests for non-mandatory civil immigration
21 detainers requests. Nothing in this Chapter shall be construed to apply to matters other than those
22 relating to federal civil immigration detainers. In all other respects, local law enforcement agencies
23 may continue to collaborate with federal authorities to protect public safety. This collaboration
24 includes, but is not limited to, participation in joint criminal investigations that are permitted under
25

1 local policy or applicable city or state law that are permitted under local policy or applicable
2 city or state law.

3
4 **SEC. 12I.5. ANNUAL REPORT.**

5 By no later than July 1, 2014, the Sheriff and Juvenile Probation Officer shall each
6 provide to the Board of Supervisors and the Mayor a written report stating the number of
7 detentions that were solely based on civil immigration detainers during the first six months
8 following the effective date of this Chapter, and detailing the rationale behind each of those
9 civil immigration detainers. Thereafter, the Sheriff and Juvenile Probation Officer shall each
10 annually submit a written report to the Board of Supervisors and the Mayor, by July 1st of
11 each year, addressing the same issues for the time period covered by the report.

12
13 **SEC. 12I.65. SEVERABILITY.**

14 If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I, or its
15 application, is for any reason held to be invalid or unconstitutional by a decision of any court of
16 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
17 Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and
18 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
19 unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently
20 declared invalid or unconstitutional.

21
22 **SEC 12I.76. UNDERTAKING FOR THE GENERAL WELFARE.**

23 In enacting and implementing this Chapter 12I, the City is assuming an undertaking only to
24 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
25

1 obligation for breach of which it is liable in money damages to any person who claims that such breach
2 proximately caused injury.

3
4 Section 2. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the "Note" that appears under
14 the official title of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By:

19 
ALICIA CABRERA
Deputy City Attorney

20 n:\legana\as2013\1400139\00873746.doc

LEGISLATIVE DIGEST

(Updated following Board of Supervisors meeting, September 24, 2013)

[Administrative Code - Due Process Ordinance for All on Civil Immigration Detainers]

Ordinance amending the Administrative Code by adding Chapter 12I to prohibit law enforcement officials from detaining individuals on the basis of an civil immigration detainer after they become eligible for release from custody, except for individuals who have a prior conviction for a violent felony within a certain period of time, are currently being charged with a violent felony, and may pose a public safety risk.

Existing Law

No City law prohibits law enforcement officials from continuing to hold an individual, after the individual becomes eligible for release, solely based on a civil immigration detainer.

Amendments to Current Law

As originally proposed, this ordinance (Chapter 12I of the Administrative Code) would prohibit local law enforcement officials from detaining an individual solely based on a civil immigration detainer after that individual becomes eligible for release from custody.

The intent of this Chapter is to address civil immigration detainer requests. Nothing in this Chapter shall be construed to apply to matters other than those relating to federal civil immigration detainers. In all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations.

Committee Amendments

On September 5, 2013, the Neighborhood Services and Safety Committee adopted technical amendments that clarified the intent and purpose of this Chapter.

Board Amendments

On September 24, 2013, the Board of Supervisors adopted amendments that would require local law enforcement officials to continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if: (1) the individual has been convicted of a Violent Felony within a specified period of time; and (2) a magistrate has determined that there is sufficient cause to believe the individual is guilty of a Violent Felony and ordered the individual to answer to the same pursuant to Penal Code section 872; and (3) the local law enforcement official considers evidence of rehabilitation and concludes the individual poses a public safety risk. If, however, the individual waives his or

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her right to a preliminary hearing or the grand jury returns an indictment, the exception does not apply and the general rule, that local law enforcement officials may not detain an individual solely based on an immigration detainer after that individual becomes eligible for release from custody, will govern.

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532



(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION MEMORANDUM

TO: Honorable Mayor Edwin M. Lee
Honorable Members, Board of Supervisors

CC: Angela Calvillo, Clerk of the Board
Jason Elliott, Director of Legislative & Government Affairs, Mayor's Office
Hydra Mendoza, Mayor's Families & Children's Advisor
Derek Evans, Committee Clerk, Board of Supervisors

FROM: Youth Commission

DATE: September 12, 2013

RE: Youth Commission's support and statement on Board of Supervisors file no. 130764 proposed Due Process for All ordinance.

At our special inaugural meeting on September 9th, 2013 the Youth Commission voted unanimously to support the following motion:

To support file no. 130764, a proposed ordinance which would amend the Administrative Code, by adding Chapter 12I, to prohibit law enforcement officials from detaining individuals on the basis of an immigration detainer after they become eligible for release from custody.

We would like to give you some context for the position expressed above.

Our motion to unanimously support the proposed action by the Board of Supervisors to provide due process for all comes from the consensus amongst Youth Commissioners that federal immigration enforcement and our criminal justice system should be separate and should treat all residents equally regardless of immigration status, and that these tenets form the basis of a strong relationship of trust between local law enforcement and residents that is in the interest of public safety.

During discussion on this item, Youth Commissioners proposed the following comment and recommendations regarding this legislation:

The Youth Commission supports the framing of this legislation as a due process issue, and supports due process for all, regardless of immigration status or background.

Should the proposed ordinance pass, the Youth Commission urges the Board of Supervisors to request or prepare a report following one year after the ordinance takes effect to see how the ordinance has worked and how trust is being restored between immigrant communities and local law enforcement.

The Youth Commission urges the Board of Supervisors to undertake an extensive outreach campaign to reach immigrant communities throughout San Francisco, as well as people detained, that would include multilingual resources regarding their rights in the criminal justice system and with local law enforcement. Some recommendations to include in an outreach campaign include, but are not limited to a bus ad campaign, pamphlet distribution in public spaces and through community based organizations, through ethnic media, and school-based announcements.

If you have any questions about these recommendations or anything related to the Youth Commission, please don't hesitate to contact our office at (415) 554-6446 or your Youth Commissioner.

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page

From: Michael Lyon [mlyon01@comcast.net]
Sent: Tuesday, September 17, 2013 9:53 AM
To: Avalos, John; Campos, David; Cohen, Malia; Kim, Jane; Tang, Katy; Yee, Norman (BOS); Breed, London; Chiu, David; Farrell, Mark; Mar, Eric (BOS); Wiener, Scott; Board of Supervisors; Lee, Mayor; Suhr, Greg
Subject: SF Supervisors: No Amendments to SF's "Due Process for All" Ordinance
Attachments: 2013-09-17-michael- proposed GP letter opposing amendments to Due Process for All Ordinance.doc
Importance: High

Gray Panthers of San Francisco
2940 16th Street, Room 200-3
San Francisco CA, 94103
415-552-8800, graypanther-sf@sonic.net

Supervisors: Say No to Amendments to SF's "Due Process for All" Ordinance

SF Gray Panthers has long opposed Secure Communities (S-COMM), a federal program that has resulted in deportation of over 142,000 undocumented immigrants. Under S-COMM, fingerprints of ANYONE arrested by local police are sent to the immigration authority, ICE, which screens the fingerprints for undocumented immigrants and request local police to hold them for deportation, even if the charges for arrest are dropped or the person could have been bailed out or released on their own recognizance. Racial profiling and arrests on false pretext have soared under S-COMM, leading to a national outcry, as thousands of families have been broken up and children separated from their parents.

In response, States and Cities have passed laws directing their police and jail systems to ignore ICE requests that jailed undocumented immigrants be held without release options so they can be deported. San Francisco's proposed "Due Process for All" Ordinance, scheduled for a first Supervisor's Hearing on September 17, is such a law. The legislation prohibits law enforcement officials from detaining individuals solely in response to immigration detainer requests issued by immigration authorities under S-COMM. The Ordinance is needed: In 2012, 542 people were turned over to ICE on detainers in San Francisco.

However, Mayor Ed Lee, Supervisor Katy Tang, and Police Chief Greg Suhr are trying to introduce amendments weakening the "Due Process for All" ordinance by creating "carve-outs," exceptions to the prohibition, or allowing the Sheriff discretion to follow an ICE detainer request, in cases where undocumented immigrants are convicted and serve prison terms for serious or violent crimes. Gray Panthers of San Francisco is skeptical of this slippery slope, because S-COMM has always been promoted as targeting dangerous and violent immigrants, even though 60% of S-COMM deportees committed no violent or major crimes, and 29% committed no crime at all. Federal authorities have promised on several occasions to use prosecutorial discretion and only use S-COMM to deport violent and dangerous criminals, but this has not happened. But the real issue is bigger.

Those favoring amendments to the Due Process for All Ordinance argue that undocumented immigrants convicted of felonies or violent crimes should be detained for deportation following completion of their prison

terms, or if they re-offend. We disagree: people, even violent offenders, should not be discriminated against because of their documentation status. Due Process for All means that citizens, documented and undocumented are all treated alike, regardless of how or whether they committed a crime. We need to focus on rehabilitation of violent offenders in prison, not their immigration status. If we are worried about undocumented violent offenders not being rehabilitated in prison, we should be more worried about release of the much larger number of citizen violent offenders.

The Amendments are unnecessary: The Ordinance explicitly says it does not apply to criminal offenses ("Unlawful" residence in the US is a civil, not criminal offense), and that "local law enforcement may continue to collaborate with federal authorities to protect public safety." (Read the law at <http://tinyurl.com/nlgea6u>)

Approved September 17, 2013
Gray Panthers of San Francisco Board

From:
Sent: Wednesday, September 18, 2013 11:47 AM
To: BOS-Supervisors
Subject: FW: File No. 130764: Avalos: Deliberately Destructive or just Clueless?

From: toreador103@aol.com [mailto:toreador103@aol.com]
Sent: Wednesday, September 18, 2013 9:58 AM
To: Board of Supervisors
Cc: Lee, Mayor
Subject: Avalos: Deliberately Destructive or just Clueless?

Dear Supervisors:

That San Francisco is a "sanctuary" for illegal aliens is bad enough. Preventing those accused of crimes from being detained for possible deportation is worse. And protecting even potentially violent criminals from being sent home is downright moronic. **The loudly-expressed sentiments of the "crowd" in the Supervisor's chambers notwithstanding, San Francisco's compulsion to self-destruct was in full flower yesterday.**

It seems necessary to remind Avalos et al that people who are in the U.S. illegally are, by definition, law-breakers. Those who favor keeping potentially violent illegal aliens in the country either want to destroy the country or are, more likely, unthinking buffoons. Kim and the other "compromisers" aren't much better.

When the Avalos's and Kim's of the world start getting their way, America's erstwhile unity, integrity, civility and sense of responsibility wane. God protect us from unthinking political hacks!

N Wong
A Gu
San Francisco

From: Board of Supervisors
To: BOS-Supervisors
Subject: Immigration reform

From: Catherine Groody [mailto:catherinegroody@gmail.com]
Sent: Monday, September 16, 2013 12:03 PM
To: Board of Supervisors
Subject: Immigration reform

Board of Supervisors and David Campos,

The new immigration policy being touted by the Board of Sup. and various other city politicians is very deceptive. Allowing illegal immigrants with multiple felony convictions to take harbor in our city is just wrong. The true intention of immigration reform is being undermined, this reform was meant to help families who contribute, who work, who want to participate in school, work and city government without fear of retribution. Instead what we have are city politicians deceiving unknowing citizens, voters are not seeing the large picture because it is being kept hidden from them. Allowing convicted felons (not DV related), gang members and fugitives from other states to reside here carte blanc is a shame and I (as a taxpayer, voter and resident of San Francisco) will be paying to support this group of unsavory characters. This only makes me want to move, I'll be reviewing my options. And certainly not voting for anyone involved in approving this current fiasco.

Sincerely,

Catherine Groody

From: Tamara.Aparton@sfgov.org
Sent: Monday, July 22, 2013 12:31 PM
To: Avalos, John
Cc: angelac@advancingjustice-alc.org; lpolstein@carecensf.org; Caldeira, Rick; Calvillo, Angela; Mar, Eric (DPH); Farrell, Mark; Chiu, David; Tang, Katy; Breed, London; Kim, Jane; Yee, Norman (BOS); Wiener, Scott; Campos, David; Cohen, Malia; Redondiez, Raquel; Pollock, Jeremy
Subject: Detainer Ordinance Letter from Public Defender Jeff Adachi
Attachments: detainerordinancesupportletter1.pdf

Dear Supervisor Avalos,
Please find a letter in support of Detainer Ordinance Chapter 12I, attached. Don't hesitate to contact me with any questions.

Best,

Tamara Barak Aparton
Communication and Policy Assistant
San Francisco Public Defender's Office
415-575-4390
tamara.aparton@sfgov.org

SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



July 22, 2013

Supervisor John Avalos
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca 94102-4689

Re: Detainer Ordinance Chapter 12I – SUPPORT

Dear Supervisor Avalos:

As the Public Defender of the City and County of San Francisco, I write in strong support of the Detainer Ordinance (amending Chapter 12I of the San Francisco Administrative Code) which will address the detrimental effects of San Francisco's participation in the deeply problematic Secure Communities (S-Comm) deportation program. This reform will enhance public safety and protect the civil liberties of thousands of San Franciscans who happen to be immigrants.

Under S-Comm, a person's fingerprints are electronically run through Immigration and Custom Enforcement's (ICE's) immigration database at the time of booking in the county jail. This allows ICE to identify noncitizens, including legal immigrants and permanent residents, and potentially subject them to deportation proceedings. Because it targets people at the time of arrest, Secure Communities ensnares those who will never be charged with a crime. Particularly vulnerable under this policy are people who have been subject to unconstitutional or erroneous arrests. My concerns echo those of officials across the country who have warned that S-Comm invites racial profiling by law enforcement.

The Detainer Ordinance will send a clear message to our diverse immigrant communities that in San Francisco, anyone may access the justice system and receive equal protection under the law, as guaranteed by the Fourteenth Amendment. The knowledge that we oppose any use of local law enforcement resources to enforce the broken federal immigration system will be an important step to mend trust and increase cooperation between immigrants and police. It will lead to more immigrants reporting crimes, seeking protection from domestic violence and serving as witnesses.

The Detainer Ordinance will also ease the unfair burden by which the program has saddled our local government by ending our city's participation in the constitutionally questionable practice of holding people for extra time for ICE. Due process is undermined when people are held in jail for extra time, simply because of an ICE hold request.

Adult Division - HOJ
555 Seventh Street
San Francisco, CA 94103
P: 415.553.1671
F: 415.553.9810
www.sfpublicdefender.org

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7601
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpublicdefender.org/services

Reentry Council
P: 415.553.1593
www.streentry.com

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.563.5207
www.momagic.org

SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI — PUBLIC DEFENDER
MATT GONZALEZ — CHIEF ATTORNEY



S-Comm has led to the deportation of almost 100,000 Californians as of May 2013, which is more than any other state.¹ In addition, more than 780 San Franciscans have been torn from their families through this program. Many are among the 25,000 people my office serves annually.

The Detainer Ordinance will not lead to violent criminals being turned loose onto our streets. Those who are convicted of serious crimes, with very few exceptions, remain in custody despite the ICE hold being removed due to high bails and many are sentenced to state prison. Complying with Secure Communities on a local level imperils only those arrested for minor offenses, many of whom will never be convicted of a crime. They are separated from families when transferred to immigration detention centers, often across the country, and then permanently torn apart through deportation.

As public defenders, my colleagues and I regularly come into contact with people who are wrongly arrested or detained with little evidence. Thus, we strongly support passage of local ICE hold reform.

Sincerely,

Jeff Adachi
San Francisco Public Defender

CC: Via Email: Board of Supervisors, Board Clerk, Angela Chan—Asian Americans Advocating Justice.

¹ See U.S. Immigration and Customs Enforcement, Secure Communities IDENT/IAFIS Interoperability Monthly Statistics October 27, 2008 through May 31, 2013. http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf.

Adult Division - HOJ
555 Seventh Street
San Francisco, CA 94103
P: 415.553.1671
F: 415.553.9810
www.sfpUBLICDEFENDER.org

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7601
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpUBLICDEFENDER.org/services

Reentry Council
P: 415.553.1593
www.sfreentry.com

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.563.5207
www.momagic.org



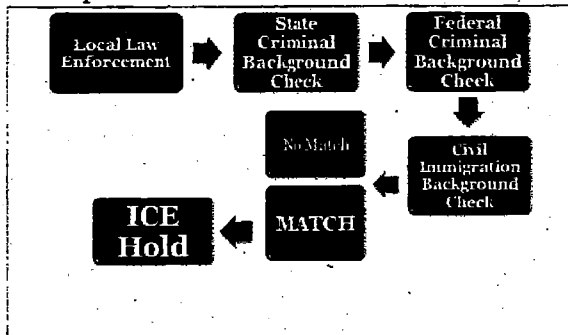
San Francisco Due Process for All Ordinance

IN BRIEF

The Due Process for All Ordinance will affirm San Francisco's role as a national leader in advancing policies that champion equal protection under the law for all, including our immigrant community members.

BACKGROUND

Secure Communities (S-Comm) is a misguided Immigration and Customs Enforcement (ICE) program that automatically sends fingerprints taken by local police at the point of arrest to federal immigration officials, with no regard for the basic principle of due process. Immigration officials can request that any individual, regardless of immigration status, be detained on an immigration hold, at local expense.



Federal case law, federal regulations and California's Attorney General all confirm that responding to ICE's hold requests is voluntary.¹

THE PROBLEM

70% of undocumented immigrants are less likely to contact law enforcement if they are victims of crime for fear of deportation.²

S-Comm Violates Basic Constitutional Principles

ICE hold requests deprive San Franciscans of their freedom without any due process of law. ICE hold requests are not reviewed or signed by a judge, and are not based on any legal standard, such as probable cause. That is why ICE holds have even been placed on US citizens. Operating

¹ The federal regulation applying to immigration detainers clearly states in section (a), entitled "detainers in general" that "[t]he detainer is a request." 8 C.F.R. § 287.7(a); see also Attorney General Kamala Harris, "Responsibilities of Local Law Enforcement Agencies Under Secure Communities," Information Bulletin, Dec. 4, 2012 ("[I]mmigration detainers are not compulsory. Instead, they are merely requests enforcement at the discretion of the agency holding the individual arrestee.").

² See Nik Theodore, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," University of Chicago, May 2013.

unchecked, the program flies in the face of our most deeply held constitutional values – due process and equal protection for all.

S-Comm Is A Burden on Local Resources: Because ICE does not fully reimburse localities for participating in S-Comm, local jails bear the brunt of the costs of responding to hold requests triggered by the program.

California taxpayers spent an estimated **\$65 million** annually to detain people for ICE.³

S-Comm Undermines Public Safety: Immigrant residents who are victims or witnesses to crime fear cooperating with police because any contact with law enforcement can result in separation from their families and deportation. This erosion of community trust in police makes it harder for law enforcement officers to conduct their duties and keep San Franciscans safe.



Norma, a San Francisco resident and mother, desperately wanted to call the police when her partner hit her but was afraid. When she finally called the police to help her, she was **held on an immigration detainer** and placed in deportation proceedings.

THE SOLUTION

The Due Process for All Ordinance will disentangle San Francisco's law enforcement from federal immigration enforcement and restore due process protections for all individuals who have been arrested, including immigrants.

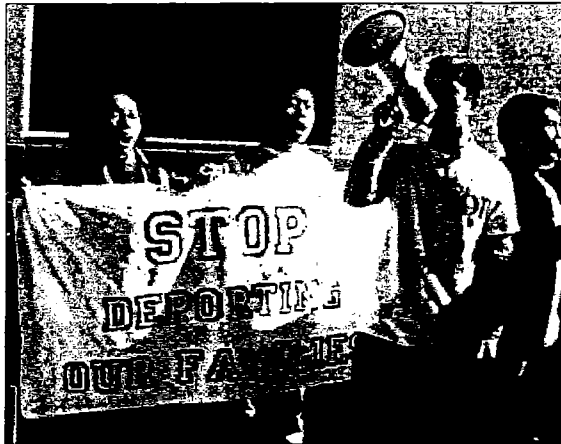
Under this ordinance, San Francisco law enforcement will no longer respond to ICE's cruel and costly immigration hold requests.

This ordinance will end the extended detention and wrongful deportation of San Francisco's aspiring citizens, including parents, children, domestic violence survivors and

³ See Judith Greene, "The Cost of Responding to Immigration Detainers in California," Justice Strategies Report, August 22, 2012.

⁴ See <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425> (April 25, 2011).

workers. The ordinance will also free San Francisco from the burden of responding to ICE hold requests and improve trust between immigrant communities and local law enforcement.



Immigrant communities are part of the fabric of San Francisco and S-Comm only serves to tear these communities apart, at local taxpayers' expense. The Due Process for All Ordinance will protect all San Franciscans by ending San Francisco's participation in this irreparably broken program.

SUPPORT FOR THIS ORDINANCE

Individuals

Supervisor John Avalos, author
 Supervisor London Breed, co-sponsor
 Supervisor David Campos, co-sponsor
 Supervisor David Chiu, co-sponsor
 Supervisor Malia Cohen, co-sponsor
 Supervisor Jane Kim, co-sponsor
 Supervisor Eric Mar, co-sponsor
 Supervisor Norman Yee, co-sponsor
 Sheriff Ross Mirkarimi
 Archbishop Salvatore Cordileone
 975 Community Members⁵

Organizations

Asian Americans Advancing Justice – Asian Law Caucus
 Arab Organizing and Resource Center
 Bill of Rights Defense Committee
 California Immigrant Policy Center
 Causa Justa: Just Cause
 Central American Resource Center
 Chinese for Affirmative Action
 Community United Against Violence
 Dolores Street Community Services
 Immigrant Legal Resource Center
 Irish Immigration Pastoral Center

⁵ Signed petition available at <http://org.credaction.com/petitions/san-francisco-get-out-of-the-immigrant-detention-deportation-business>.

SUPPORT FOR THIS ORDINANCE *cont.*

Lawyers Committee for Civil Rights
 Mujeres Unidas y Activas
 National Lawyers Guild
 Pangea Legal Services
 People Organized to Win Employment Rights
 San Francisco Domestic Violence Consortium
 San Francisco Organizing Project
 Young Workers United



FOR MORE INFORMATION

Angela Chan, Senior Staff Attorney
 Asian Americans Advancing Justice – Asian Law Caucus
 (415) 848-7719 | angelac@advancingjustice-alc.org

Cinthya Muñoz, Regional Lead Organizer
 Causa Justa: Just Cause
 (510) 318-7398 | cinthya@cjjc.org

Laura Polstein, Staff Attorney
 Central American Resource Center
 (415) 642-4412 | lpolstein@carecensf.org

Josué Argüelles, Co-Director
 Young Workers United
 (415) 621-4155 | josue.ywu@gmail.com

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Youth Commission
FROM: Derek Evans, Assistant Clerk
DATE: August 19, 2012
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File: 130764

Ordinance amending the Administrative Code, by adding Chapter 12I, to prohibit law enforcement officials from detaining individuals on the basis of an immigration detainer after they become eligible for release from custody.

Please return this cover sheet with the Commission's response to **Derek Evans, Clerk, Neighborhood Services and Safety Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

_____ **No Comment**

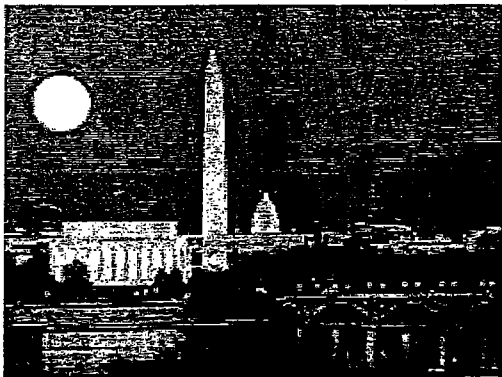
_____ **Recommendation Attached**

Chairperson, Youth Commission

Why other local governments are saying **no** to ICE holds

WASHINGTON, DC

Council member Phil Mendelson (D-At Large), chair of the public safety and judiciary committee.



Councilmember Mendelson said the legislation is needed to keep the federal government from “using local government for federal immigration enforcement.” “That works against community policing,” Mendelson said. “We want people who are victims to report crime, and we want witnesses to report crime.”

“DC Council votes to limit reach of federal effort aimed at illegal immigration” by Mihir Zaveri. *Washington Post* June 5, 2012. http://articles.washingtonpost.com/2012-06-05/local/35460677_1_illegal-immigration-federal-immigration-enforcement-report-crime

COOK COUNTY, ILLINOIS



Chicago Sun-Times Editorial:

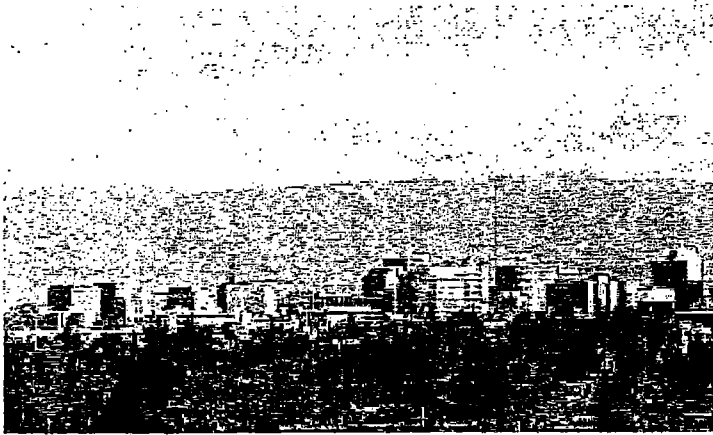
“It’s a basic American legal principle: We don’t hold people in prison without a legal reason for doing so.”

“Editorial: Preckwinkle takes high road on jail detainees. *Chicago Sun-Times*. April 11, 2012.

<http://www.suntimes.com/opinions/11838801-474/editorial-preckwinkle-takes-high-road-on-jail-detainees.html>

SANTA CLARA COUNTY, CA

Supervisor Dave Cortese, Acting Public Defender Molly O'Neal, and Domestic Violence Advocacy Consortium director Cynthia Hunter.



"How would you feel if friends or family members were denied bail, or timely release from jail, even though a judge or jury acting within the judicial system had already approved their release? Given the separation of powers established by the Constitution, a legislative

body such as the board should not be allowed to honor civil detainers that override the judicial powers of a judge or jury.

In the first year of the policy, organizations in our community coalition have seen a marked reduction of fear in immigrant communities."

"Santa Clara County should keep current immigration policy" By Dave Cortese, Molly O'Neal and Cynthia Hunter. San Jose Mercury News Op-Ed, January 29, 2013. http://www.mercurynews.com/opinion/ci_22474917/dave-cortese-molly-oneal-and-cynthia-hunter-santa

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- ☐ 2. Request for next printed agenda without reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning "Supervisor [] inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☐ 8. Substitute Legislation File No. []
- ☐ 9. Request for Closed Session (attach written motion).
- ☐ 10. Board to Sit as A Committee of the Whole.
- ☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

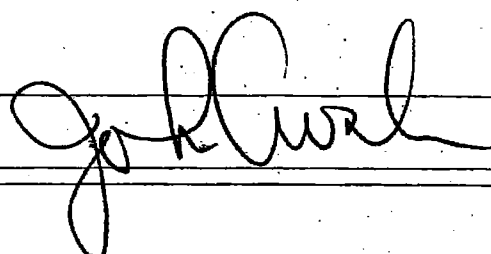
- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**Sponsor(s):**

Supervisor John Avalos

Subject:

Ordinance - Administrative Code - Due Process Ordinance on Immigration Detainers

The text is listed below or attached:Signature of Sponsoring Supervisor: **For Clerk's Use Only:**