

File No. 130764

Committee Item No. 2

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Neighborhood Services & Safety Date September 5, 2013

Board of Supervisors Meeting Date \_\_\_\_\_

### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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### OTHER (Use back side if additional space is needed)

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Completed by: Derek Evans Date 8/28/13

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

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

1 [Administrative Code - Due Process Ordinance on Immigration Detainers]

2  
3 **Ordinance amending the Administrative Code, by adding Chapter 12I, to prohibit law**  
4 **enforcement officials from detaining individuals on the basis of an immigration**  
5 **detainer after they become eligible for release from custody.**

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

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

14 Section 1. The Administrative Code is hereby amended by adding Chapter 12I,  
15 Sections 12I.1 through 12I.6, to read as follows:

16 **Chapter 12I: Immigration Detainers**

17 **SEC. 12I.1. FINDINGS.**

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

Our federal immigration system is in dire need of comprehensive reform. The federal  
government should not shift the burden of federal civil immigration enforcement onto local law

1 enforcement by requesting that local law enforcement agencies continue detaining persons based on  
2 non-mandatory immigration detainers. It is not a wise and effective use of valuable City resources at a  
3 time when vital services are being cut.

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

16 Given that immigration detainers are issued by immigration officers without judicial oversight,  
17 and the regulation authorizing detainers provides no minimum standard of proof for their issuance,  
18 there are serious questions as to their constitutionality. Unlike criminal detainers, which are supported  
19 by a warrant and require probable cause, there is no requirement for a warrant and no established  
20 standard of proof, such as reasonable suspicion or probable cause, for issuing an immigration detainer  
21 request. At least one federal court in Indiana has ruled that because immigration detainers and other  
22 ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not  
23 meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold  
24 an individual in custody.

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

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

21           The City seeks to protect public safety, which is founded on trust and cooperation of community  
22 residents and local law enforcement. However, immigration detainers undermine community trust of  
23 law enforcement by instilling fear in immigrant communities of coming forward to report crimes and  
24 cooperate with local law enforcement. A 2013 study by the University of Illinois, entitled "Insecure  
25 Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," found that at

1 least 40 percent of Latinos surveyed are less likely to provide information to police because they fear  
2 exposing themselves, family, or friends to a risk of deportation. Indeed, immigration detainers have  
3 resulted in the transfer of victims of crime, including domestic violence victims, to ICE. According to a  
4 national 2011 study by the Chief Justice Earl Warren Institute on Law and Social Policy at UC  
5 Berkeley, entitled "Secure Communities by the Numbers: An Analysis of Demographics and Due  
6 Process" ("2011 Warren Institute Study"), ICE has falsely detained approximately 3,600 U.S. citizens  
7 as a result of S-Comm. Thus, S-Comm leaves even those with legal status vulnerable to detainers  
8 issued without judicial review or without proof of criminal activity, in complete disregard for the due  
9 process rights of those subject to the detainers.

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

17 The City has enacted numerous laws and policies to prevent its residents from becoming  
18 entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of  
19 the federal government. A December 2012 ICE news release stated that deportations have hit record  
20 figures each year. According to the Migration Policy Institute's 2013 report, entitled "Immigration  
21 Enforcement in the United States: The Rise of a Formidable Machinery," the federal government  
22 presently spends more on civil immigration enforcement than all federal criminal law enforcement  
23 combined. Local funds should not be expended on such efforts, especially because such entanglement  
24 undermines community policing strategies.

1                   **SEC. 121.2. DEFINITIONS.**

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

4                   (1) All criminal charges against the individual have been dropped or dismissed.

5                   (2) The individual has been acquitted of all criminal charges filed against him or her.

6                   (3) The individual has served all the time required for his or her sentence.

7                   (4) The individual has posted a bond, or has been released on his or her own recognizance.

8                   (5) The individual has been referred to pre-trial diversion services.

9                   (6) The individual is otherwise eligible for release under state or local law.

10                  "Immigration detainer" means a request issued by an authorized federal immigration officer  
11 under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law enforcement official to  
12 maintain custody of an individual for a period not to exceed forty-eight (48) hours, excluding  
13 Saturdays, Sundays, and holidays, and advise the authorized federal immigration officer prior to the  
14 release of that individual.

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

19                   **SEC. 121.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

20                  A law enforcement official shall not detain an individual on the basis of an immigration  
21 detainer after that individual becomes eligible for release from custody.

22                   **SEC. 121.4. PURPOSE OF THIS CHAPTER.**

23                  The intent of this Chapter is to address civil immigration detainer requests. Nothing in this  
24 Chapter shall be construed to apply to matters other than those relating to federal civil immigration  
25 detainers. In all other respects, local law enforcement agencies may continue to collaborate with

1 federal authorities to protect public safety. This collaboration includes, but is not limited to,  
2 participation in joint criminal investigations that are permitted under local policy or applicable city or  
3 state law.

4 **SEC. 12I.5. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I, or it  
6 application, is for any reason held to be invalid or unconstitutional by a decision of any court of  
7 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this  
8 Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and  
9 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or  
10 unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently  
11 declared invalid or unconstitutional.

12 **SEC 12I.6. UNDERTAKING FOR THE GENERAL WELFARE.**

13 In enacting and implementing this Chapter 12I, the City is assuming an undertaking only to  
14 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
15 obligation for breach of which it is liable in money damages to any person who claims that such breach  
16 proximately caused injury.

17  
18 Section 2. Effective Date. This ordinance shall become effective 30 days after  
19 enactment.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:

24   
Alicia Cabrera  
Deputy City Attorney

25 n:\legana\as2013\1300376\00861983.doc

**LEGISLATIVE DIGEST**

[Administrative Code - Due Process Ordinance on Immigration Detainers]

**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.**

Existing Law

No City law prohibits law enforcement officials from complying with a civil immigration detainer request to continue to detain an individual after the individual becomes eligible for release from custody.

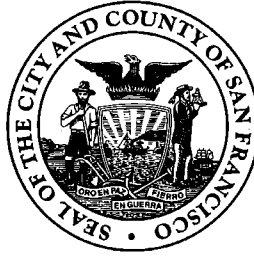
Amendments to Current Law

This legislation would prohibit law enforcement officials from detaining an individual on the basis of an 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 that are permitted under local policy or applicable city or state law.



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**

# 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

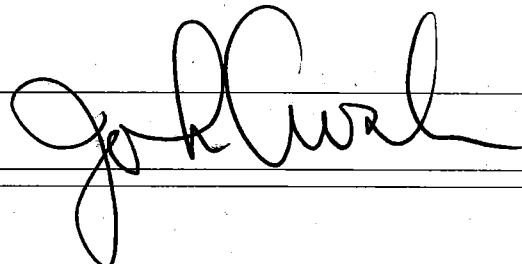
**Subject:**

Ordinance - Administrative Code - Due Process Ordinance on Immigration Detainers

**The text is listed below or attached:**

[Empty box for text listing]

Signature of Sponsoring Supervisor:



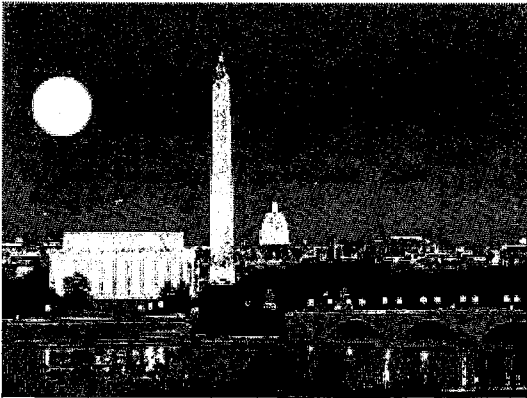
For Clerk's Use Only:

130764

## 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](http://articles.washingtonpost.com/2012-06-05/local/35460677_1_illegal-immigration-federal-immigration-enforcement-report-crime)

### COOK COUNTY, ILLINOIS

*Chicago Sun-Times Editorial:*

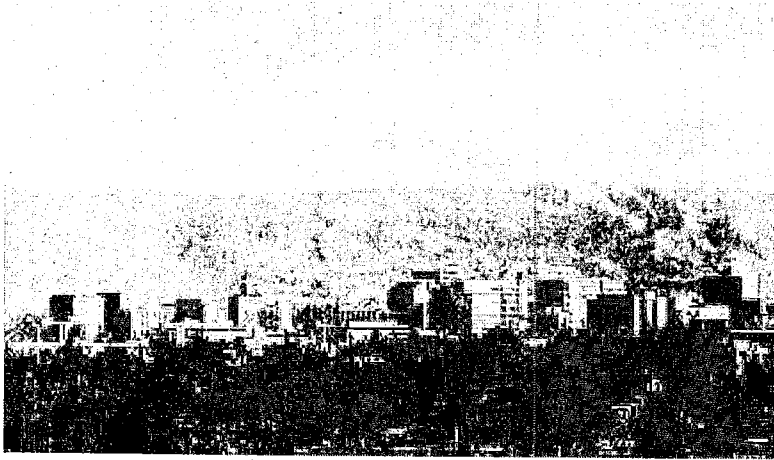


“It’s a basic American legal principle: We don’t hold people in prison without a legal reason for doing so.”

“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](http://www.mercurynews.com/opinion/ci_22474917/dave-cortese-molly-oneal-and-cynthia-hunter-santa)

---

**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](mailto: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](http://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](http://www.sfpUBLICDEFENDER.ORG/services)

**Reentry Council**  
P: 415.553.1593  
[www.sFREENTRY.COM](http://www.sFREENTRY.COM)

**Bayview Magic**  
P: 415.558.2428  
[www.bayviewmagic.org](http://www.bayviewmagic.org)

**MoMagic**  
P: 415.563.5207  
[www.momagic.org](http://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.<sup>1</sup> 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,

A handwritten signature in black ink, appearing to read "Jeff Adachi".

Jeff Adachi  
San Francisco Public Defender

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

<sup>1</sup> 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](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf).

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P: 415.563.5207  
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