File No. 130764 Committee Item No. 2
Board Item No. 10

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Neighborhood Services & Safety **Date** September 5, 2013

Board of Supervisors Meeting **Date** September 24, 2013

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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.

FILE NO. 130764 ORDINANCE NO.

[Administrative Code - Due Process for All Ordinance 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.

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 ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough 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.6, 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.

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

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

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

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

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

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

The City seeks to protect public safety, which is founded on trust and cooperation of community residents and local law enforcement. However, civil *immigration detainers undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement* agencies. *A 2013 study by the University of Illinois, entitled*

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

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

The City has enacted numerous laws and policies to prevent its residents from becoming entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of the federal government. A December 2012 ICE news release stated that deportations have hit record figures each year. According to the Migration Policy Institute's 2013 report, entitled "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," the federal government presently spends more on civil immigration enforcement than all federal criminal law enforcement

combined. Local funds should not be expended on such efforts, especially because such entanglement undermines community policing strategies.

SEC. 12I.2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.

A law enforcement official shall not detain an individual on the basis of a ~~n~~civil *immigration detainer after that individual becomes eligible for release from custody.*

/

SEC. 12I.4. PURPOSE OF THIS CHAPTER.

The intent of this Chapter is to address requests for non-mandatory *civil immigration detainers* ~~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.~~

SEC. 12I.5. SEVERABILITY.

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

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

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

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

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

By: _____
Alicia Cabrera
Deputy City Attorney

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FILE NO. 130764

LEGISLATIVE DIGEST

[Administrative Code - Due Process for All Ordinance 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 a civil 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.

Committee Amendments

On September 5, 2013, Supervisor Avalos introduced technical amendments that clarified the intent and purpose of this Ordinance.

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 amidst 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.

File 130764
Grage

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 n 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

FILE # 130764

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 immmigration 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 goverment 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 ony 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

File # 130764

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.sfreentry.com

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.563.5207
www.momagic.org

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.

Rec'd in Committee
9/5/13 File No. 130764

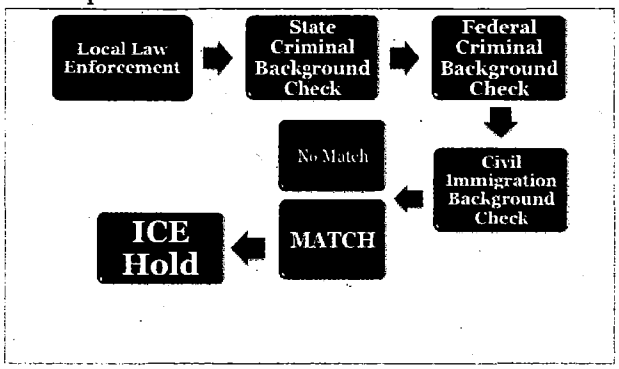
San Francisco Due Process for All Ordinance

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 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.**[4]

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

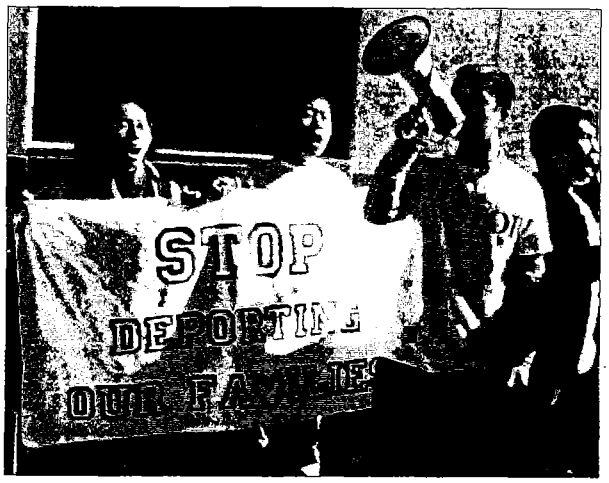
[1] The federal regulation applying to immigration detainers clearly states in section (a), entitled "detainers in general" that "[t]he detainer is a request." 8 C.F.R. § 287.7(a); *see also* Attorney General Kamala Harris, "Responsibilities of Local Law Enforcement Agencies Under Secure Communiites," 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.

[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 Members[5]

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

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

[5] Signed petition available at http://org.credoaction.com/petitions/san-francisco-get-out-of-the-immigrant-detention-deportation-business.

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**

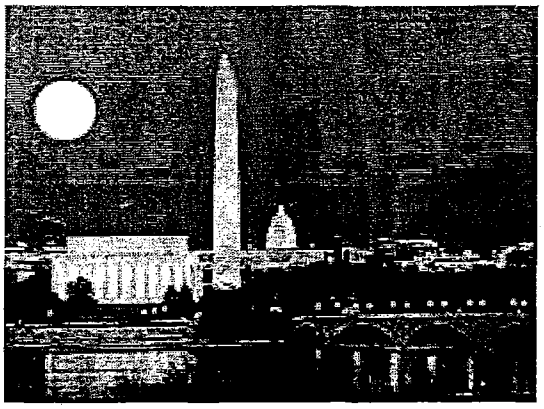
____ **Recommendation Attached**

_____
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

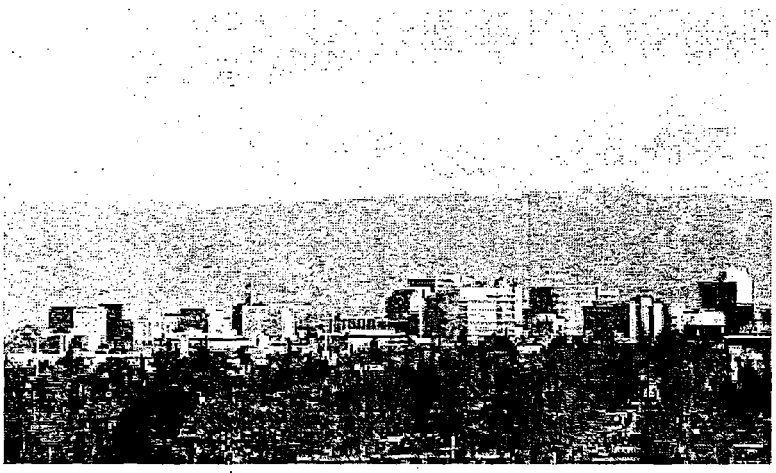
Chicago Sun-Times Editorial:

"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

Print Form

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:

130764