

File No. 190009

Committee Item No. 1

Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date January 23, 2019

Board of Supervisors Meeting

Date January 29, 2019

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <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 |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 700 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vacancy Notice |
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OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date Jan. 18, 2019
Completed by: *[Signature]* Date _____

1 [Authorizing Request for Parole Entry to the Agreement - Department of Homeland Security -
2 District Attorney and Sheriff]

3 Ordinance authorizing the District Attorney and Sheriff to enter an agreement with the
4 send a Request for Parole Entry to the United States Department of Homeland Security
5 ("DHS") under which DHS would agree to facilitate parole entry into the United States
6 of a criminal defendant for prosecution in San Francisco, and excluding the agreement
7 from certain requirements in Chapters 12H and 12I of the Administrative Code, and
8 authorizing the District Attorney and Sheriff to notify DHS immediately if the defendant
9 posts bail or is acquitted, or if no probable cause determination is found.

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

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

18 Section 1. Findings and Background.

19 (a) On June 29, 2018, following an initial investigation by the San Francisco Police
20 Department, the Superior Court for the County of San Francisco issued a warrant of arrest for
21 a defendant on charges of violating California Penal Code Sections 261(a)(3) and
22 261(a)(4)(A) (San Francisco Superior Court Criminal Case No. 170861188). The defendant is
23 currently in Canada, where the Canadian Ministry of Justice is holding him in custody pending
24 possible extradition to the United States for criminal prosecution consistent with the arrest
25 warrant. If the defendant is paroled to the United States, he will be housed in the San

1 Francisco County Jail in the custody of the Sheriff, and the District Attorney will prosecute the
2 criminal charges against him.

3 (b) The District Attorney has requested that the United States Department of
4 Homeland Security ("DHS") approve parole entry to allow the defendant to be transported to
5 San Francisco to facilitate the criminal prosecution. DHS has informed the District Attorney
6 that it will not approve parole entry for the defendant unless the District Attorney and the
7 Sheriff agree send a Request for Parole Entry to DHS, which includes assurances that they
8 will to notify DHS immediately if the defendant posts bail, if the defendant is acquitted, or if no
9 probable cause determination is found, or is otherwise to be released from custody either
10 before or after the conclusion of the criminal proceeding. Upon receiving the notification from
11 the District Attorney or Sheriff, DHS could take action to effect the removal of the defendant
12 from the United States.

13 (c) This ordinance does not modify or alter any Sections of Administrative Code
14 Chapters 12H and 12I in any way, maintaining the integrity and purpose of all Administrative
15 Code Sections in Chapters 12H and 12I. This ordinance serves to narrowly address this rare
16 criminal case involving extradition of a foreign national and to authorize two City departments
17 to submit a conditional request for parole entry in this one case.

18
19 Section 2. Authorization to Submit Request for Parole EntryEnter Agreement.

20 (a) The District Attorney and the Sheriff are hereby authorized to enter an
21 agreement with send a Request for Parole Entry to DHS to facilitate parole entry for the
22 defendant in San Francisco Superior Court Criminal Case No. 170861188. Notwithstanding
23 Administrative Code Sections 12H.2(c) and 12I.3(c), the District Attorney and/or the Sheriff
24 may, pursuant to the request for parole entry, under the terms of the agreement, (1) respond
25 to a notification request, as that term is defined in Section 12I.2, regarding the defendant's

1 pretrial release or disposition, and (2) provide information to DHS regarding the release status
2 or other personal information regarding the defendant's pretrial release or disposition, as
3 those terms are defined in Section 12I.2. All other requirements of Chapters 12H and 12I
4 shall apply, and the District Attorney and Sheriff may not agree to forgo any of those
5 requirements.

6 (b) Within 30 days of an agreement with DHS being fully executed by all
7 parties submitting the request for parole entry, the District Attorney shall provide the final
8 agreement letter to the Clerk of the Board for inclusion in File No. 190009.

9
10 Section 3. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

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

18 By:


19 JON GIVNER
Deputy City Attorney

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25

LEGISLATIVE DIGEST
(Revised 01/23/19)

[Authorizing Request for Parole Entry to the Department of Homeland Security - District Attorney and Sheriff]

Ordinance authorizing the District Attorney and Sheriff to send a Request for Parole Entry to the United States Department of Homeland Security (“DHS”) to facilitate parole entry into the United States of a criminal defendant for prosecution in San Francisco, and authorizing the District Attorney and Sheriff to notify DHS immediately if the defendant posts bail or is acquitted, or if no probable cause determination is found.

Existing Law

Under existing law, City employees may not use City resources to provide information to the United States Department of Homeland Security (“DHS”) about the release status or personal information of any individual in City custody, except in limited circumstances.

Amendments to Current Law

In June 2018, the San Francisco Superior Court issued an arrest warrant for a suspect who is now in the custody of the Canadian Ministry of Justice. The District Attorney has requested that DHS approve parole entry (extradition) of this individual to the United States for criminal prosecution. DHS has informed the District Attorney that it will not approve parole entry for the defendant unless the District Attorney and the Sheriff agree to notify DHS immediately if the defendant posts bail or is acquitted, or if no probable cause determination is found. The proposed ordinance would authorize the District Attorney and Sheriff to agree to notify DHS in this case.

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George Gascón
District Attorney

TO: BOS Legislation

DATE: January 7, 2019

RE: Submission of Ordinance for Introduction: Authorizing
Parole Entry Agreement - Department of Homeland Security -
District Attorney and Sheriff

Attached are a proposed ordinance and legislative digest authorizing the District Attorney and Sheriff to enter an agreement with the United States Department of Homeland Security ("DHS") under which DHS would agree to facilitate parole entry into the United States of a criminal defendant for prosecution in San Francisco, and excluding the agreement from certain requirements in Chapters 12H and 12I of the Administrative Code. The criminal defendant is currently being held in Canada pending our extradition request. His release date from Canadian custody is January 28, 2019 absent action taken allowing for this ordinance.

Contacts:

Cristine DeBerry, Chief of Staff
Cristine.Deberry@sfgov.org (415) 553-1747

Sharon Woo, Chief Assistant
Sharon.woo@sfgov.org (415) 553-1368

The District Attorney requests that the Clerk arrange for introduction of this ordinance at the January 15, 2019 meeting.



GEORGE GASCÓN
District Attorney

January 22, 2019

Via E-Mail

Mr. Norman Foy
Homeland Security Investigations
Acting Unit Chief, Parole and Law Enforcement Program
Washington, D.C.

RE: Parole Entry of Mohamed Ben Azaza

Dear Mr. Foy:

Mr. Mohamed Ben Azaza, a citizen of Tunisia, is wanted to stand trial in the Superior Court of the State of California on the following charges:

Count I: Rape of an intoxicated person, in violation of California Penal Code Section 261(a)(3); and

Count II: Rape of an unconscious person, in violation of California Penal Code Section 261(a)(4)(A).

On June 29., 2018, a warrant of arrest was issued for Mr. Ben Azaza on a no bail basis. Since the issuance of the warrant, Mr. Ben Azaza has fled to Canada where he is being held on this warrant pending extradition by the Canadian Ministry of Justice. I am informed and believe that Mr. Ben Azaza is not opposed to this extradition.

If paroled to the United States, Mr. Ben Azaza will be housed at the San Francisco County Jail in San Francisco, California. The San Francisco Sheriff's Department is the law enforcement agency which runs the jail and will oversee Mr. Ben Azaza's custody there until the case is concluded. My office, the San Francisco District Attorney's Office, will prosecute Mr. Ben Azaza on the above-referenced charges.

The San Francisco Sheriff and the San Francisco District Attorney hereby assure the Department of Homeland Security, Immigrations and Customs Enforcement [ICE], of the following:

1. If a Detainer is issued by ICE, the Detainer will follow Mr. Ben Azaza and be part of his legal documents no matter which jurisdiction he is transferred to.

2. Pursuant to California law, Senaté Bill 54, following a finding of probable cause made by a magistrate, the San Francisco Sheriff's Department assures ICE that they will honor the terms of the Detainer by notifying ICE immediately should Mr. Ben Azaza post bail or otherwise be scheduled to be released from custody.
3. The parties understand that if Mr. Ben Azaza posts bail, ICE will take immediate action to affect the removal of Mr. Ben Azaza which may result in him being removed from the U.S. before the criminal case is adjudicated.
4. The parties also provide an assurance that if Mr. Ben Azaza is acquitted or if no probable cause is found, they will immediately notify ICE.

The undersigned certify that they have the full power and authority to make the above stated assurances.

Very truly yours,

GEORGE GASCÓN
DISTRICT ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

By: _____
SHARON L. WOO
Chief Assistant
San Francisco District Attorney

VICKI HENESSEY
SHERIFF
CITY AND COUNTY OF SAN FRANCISCO

By: _____
Mark Nicco
Chief Counsel
San Francisco Sheriff's Department