February 6, 2017

VIA EMAIL, FAX AND FIRST CLASS MAIL

Miami-Dade Board of County Commissioners
Stephen P. Clark Government Center
111 NW 1st Street
Miami, Florida 33128

RE: Immigration detainer requests in Miami-Dade County

Dear Miami-Dade Board of County Commissioners:

On behalf of the undersigned organizations, we write to urge you to uphold the Board of County Commissioners' policy regarding detainer requests pursuant to Resolution 1008-13. This policy saves significant County dollars, supports the stability of immigrant families (including U.S. citizen children), and strengthens trust between immigrant communities and law enforcement officers by clearly separating the boundaries of local law enforcement and immigration enforcement. By maintaining this policy, Miami-Dade will remain one among hundreds of jurisdictions across the United States that have refused to spend taxpayer dollars on immigration enforcement that undermines community safety.[1]

It has come to our attention that Resolution 1008-13 is under threat as a result of an Executive Order signed by President Trump, which provides for the withdrawal of federal funds from "sanctuary jurisdictions." The President and his Administration have used the promulgation of this Executive Order in an effort to coerce jurisdictions like Miami-Dade into once again detaining noncitizens at the unfunded behest of federal immigration authorities.

The County should not give in to President Trump's bluster. Although Mayor Gimenez and others may have been misled to believe otherwise, Miami-Dade does not risk the loss of any federal funding under President Trump's Executive Order because Resolution 1008-13 does not make Miami-Dade a "sanctuary jurisdiction" as the Executive Order uses that term. Miami-Dade, therefore, does not risk loss of a single cent of federal dollars as a result of President Trump's Executive Order. Neither the order nor any other provision of federal law requires the County Commission to repeal Resolution 1008-13 to preserve the County's access to federal funds. Further, well-established legal principles substantially limit the scope of any cuts to County funding the federal government may seek to impose in the future.

By contrast, the Resolution's repeal would inflict immediate and substantial fiscal and public policy costs on the County. Although the Mayor has suggested that a return to a policy of

[1] Immigrant Legal Resource Center, Detainer Policies (Aug. 20, 2015), https://www.ilrc.org/detainer-policies (listing these jurisdictions and their policies).

honoring detainers will cost the County only an estimated $50,000 per year, that figure is wildly inaccurate. According to Mayor Gimenez's own report, the County directly spent over $620,000 per year on additional detention costs in 2012 – the last full year the County honored detainers prior to Resolution 1008-13's adoption.[2] Even that figure substantially underestimates the true fiscal cost to the County because it does not include the additional detention costs the County incurs when noncitizens subject to detainers refuse to post bond and remain in County custody when they know that doing so will result in their transfer to federal immigration detention.

On top of these financial burdens, a return to Miami-Dade's enforcement of immigration detainers would expose the County to substantial damages liability for unlawful detention that will be inflicted on Miami-Dade residents as a result of holding them beyond the time authorized by criminal law.[3] Courts have found that detainer requests violate the probable cause requirement of the Fourth Amendment of the Constitution and exceed ICE's authority to make warrantless arrests and detain individuals without a neutral determination regarding the likelihood of escape.[4] Local law enforcement agencies have repeatedly been held liable for unconstitutionally detaining individuals in response to ICE hold requests.[5]

Most importantly, a return to detainer compliance would make Miami-Dade's neighborhoods less safe by undermining trust between immigrant communities and law enforcement officials. Since Resolution 1008-13 was enacted in 2013, the relationship between Miami-Dade law enforcement and the immigrant community has substantially improved. Although there is still much work to be done, the County's decision to extricate itself from immigration enforcement by refusing to honor immigration detainers has given Miami-Dade's

---

[2] *See* Carlos A. Gimenez, Memorandum to Honorable Sally A. Heyman, Commissioner, Miami-Dade Board of County Commissioners (June 20, 2013), attached as **Exhibit A**.

[3] *See, e.g.*, *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) (finding that local jurisdiction could be held liable for Fourth Amendment violation by honoring ICE detainer); *Flores v. City of Baldwin Park*, No. CV 14–9290–MWF (JCx), 2015 WL 756877, at *4 (Feb. 23, 2015) ("[F]ederal law leaves compliance with immigration holds wholly within the discretion of states and localities."); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014) (holding the county liable for unlawful detention pursuant to ICE detainer request).

[4] *See, e.g.*, *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 807 (N.D. Ill. 2014) (rejecting dismissal of Fourth Amendment claims concerning an ICE hold issued "without probable cause that Villars committed a violation of immigration laws"); *Morales v. Chadbourne*, No. 1:12-cv-00301-M-LDA, at *1 (D.R.I. Jan. 24, 2017) (holding federal immigrant agents liable for the unlawful issuance of an immigration detainer against a United States citizen in violation of her Fourth Amendment rights).

[5] *See, e.g.*, *Morales*, No. 1:12-cv-00301-M-LDA, at *1 ("[Ms. Morales'] twenty-four hour illegal detention revealed dysfunction of a constitutional proportion at both the state and federal levels and a unilateral refusal to take responsibility for the fact that a United States citizen lost her liberty due to a baseless immigration detainer through no fault of her own."); *Moreno v. Napolitano* No. 11 C 5452, 2016 WL 5720465, at *8-*9 (N.D. Ill. Sept. 30, 2016) (concluding that ICE's issuance of the plaintiffs' immigration detainers exceeds its statutory authority and declaring the immigration detainers issued against the plaintiffs to be void); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 EL 1414305, at *1 (D. Or. Apr. 11, 2014) (holding the county liable for seizure without probable cause in violation of the Fourth Amendment when the held Ms. Miranda-Olivares pursuant to an ICE hold).

immigrant community confidence that they can report crimes to Miami-Dade police without fear of endangering their own immigration status or that of their family and friends. Resolution 1008-13's repeal would, in an instant, undo that trust.

Jurisdictions across the country have adopted an even stronger stance to protect its immigrant residents in the wake of the Executive Order.[6] Miami-Dade, as a county made up of diverse immigrant communities, should be one of the jurisdictions leading such efforts. For the reasons detailed below, we strongly urge you to continue to protect Miami-Dade residents and families and to continue the practice of refusing to honor immigration detainers pursuant to Resolution 1008-13.

We ask to meet with you at your earliest convenience to discuss this critical matter.

Background

A. Miami-Dade County Resolution 1008-13

On January 1, 2014, Miami-Dade County's unanimously adopted resolution declining to honor immigration detainers issued by federal immigration authorities became effective. The resolution recognized the substantial fiscal costs associated with honoring non-mandatory detainer requests, and that "a policy of blanket compliance with [honoring] Detainers could undermine trust between local police officers and the immigrant community of Miami-Dade County."[7] In adopting Resolution 1008-13, the Board noted that the majority of immigration detainers issued in 2011 and 2012 in Miami-Dade County involved individuals facing low-level offenses.[8] The Resolution further acknowledged that many of the noncitizens deported under the federal government's deportation policies are parents of U.S. citizen children.[9]

---

[6] *See, e.g.*, Eric T. Schneiderman, New York State Attorney General, Guidance Concerning Local Authority Participation in Immigration Enforcement and Model Sanctuary Provisions (Jan. 2017), https://ag.ny.gov/sites/default/files/guidance.concerning.local_.authority.particpation.in_.immigration.enforcement.1.19.17.pdf; *see also* Lauren Walsh, *Birmingham City Council unanimously passes sanctuary city resolution,* ABC33 (Jan. 31, 2017), http://abc3340.com/news/local/birmingham-city-council-unanimously-passes-sanctuary-city-resolution; Emanuella Grinberg, *San Francisco challenges Trump's sanctuary city order*, CNN Politics (Jan. 31, 2017), http://www.cnn.com/2017/01/31/politics/san-francisco-sanctuary-city-lawsuit/.

[7] *See* Miami-Dade Cty. Bd. of Comm'rs, Resolution 1008-13 ("Resolution 1008-13") at 3-4 (Dec. 3, 2013).

[8] *Id.* at 3-4 (Dec. 3, 2013) (stating that compliance cost the County $1,002,700 in 2011, 57% of immigration detainers in 2011 and 61% of immigration detainers in 2012 involved individuals not charged with felonies).

[9] *Id.* at 4; *see also* Applied Research Ctr., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 11 (2011), http://www.asph.sc.edu/cli/word_pdf/ARC_Report_Nov2011.pdf (22% of persons deported in 2011 had U.S. citizen children).

Under the Resolution, the Miami-Dade Corrections and Rehabilitation Department honors detainer requests only when the federal government agrees in writing to reimburse the County for any and all costs of honoring detainer requests *and* either (1) the incarcerated person subject to such a request has a previous conviction for a forcible felony, defined by Florida statute; or (2) the incarcerated person who is subject to the request faces a charge for a non-bondable offense, regardless of whether bond is eventually granted.[10]

Because the federal government has refused to agree in writing to reimburse Miami-Dade for the cost of honoring detainers, the Corrections Department has – in compliance with the resolution – treated immigrants in criminal custody like all other Miami-Dade residents, and released them once the legal basis of their criminal detention ended. (*e.g.* their case was dismissed, they paid a bond, or they finished their jail sentence).

Although Resolution 1008-13 prevents the County from detaining people for federal immigration enforcement, nothing in the Resolution restricts county officials from sending *information* regarding its detainees to any federal immigration agency.

B. Mayor Gimenez's January 26, 2017 Directive

On January 26, 2017, Miami-Dade County Mayor Carlos Gimenez issued a memorandum to Daniel Junior, the Interim Director of the Corrections and Rehabilitation Department.[11] The memorandum directs Mr. Junior and his staff "to honor all immigration detainer requests received from the Department of Homeland Security." The directive was issued "[i]n light of the provisions of the Executive Order" issued the previous day by President Donald Trump. The memorandum did not mention Resolution 1008-13, but it stated that the mayor "will partner with the Board of County Commissioners to address any issues necessary to achieve th[e] end" of "comply[ing] with federal law."

Analysis

A. Repeal of Resolution 1008-13 is Unwarranted Because the Resolution Poses No Immediate Threat to any Federal Funding.

Mayor Gimenez appears to have issued his January 26, 2017 directive on the premise that the County must immediately begin to honor immigration detainers in order to "compl[y] with federal law" and President Trump's January 25, 2017 Executive Order. That premise, however, is fundamentally mistaken. Although the Trump administration may have attempted to sow confusion on this issue, nothing in Resolution 1008-13 violates federal law or threatens Miami-Dade's access to federal funds.

As a preliminary matter, the federal government cannot mandate Miami-Dade to honor immigration detainers because the Tenth Amendment to the U.S. Constitution prohibits the

[10] Resolution 1008-13, at 5.

[11] Attached as **Exhibit B**.

federal government from commandeering local resources.[12] The County's attorney expressly recognized this principle before Resolution was enacted,[13] and the Trump administration has not suggested otherwise.

What Trump *has* suggested, first on the campaign trail and now as President, is that he will bully localities like Miami-Dade into honoring detainers by threatening to deprive them of federal funds unless they agree to do the federal government's bidding. It appears that these threats motivated Mayor Gimenez to issue the January 26, 2017 memorandum which directs the Corrections Department to honor immigration detainers, notwithstanding Resolution 1008-13.

Regrettably, the Mayor appears to have been duped. Resolution 1008-13 does not conflict with the Executive Order of January 25, 2017, nor does the Order imperil Miami-Dade's access to federal funds as a result of Resolution 1008-13.

Although Trump has used the term "sanctuary city" broadly in various campaign speeches and has branded Miami-Dade with this label, the relevant section of his Executive Order uses the term "*sanctuary jurisdiction*," which the Order defines narrowly as a "jurisdiction[] that willfully refuse[s] to comply" with a specific federal statute, 8 U.S.C. § 1373.[14] Only jurisdictions that violate this federal statute "are not eligible to receive Federal grants" under the Order.[15]

The federal statute (8 U.S.C. § 1373) referenced in Trump's Executive Order is very narrow; specifically, it states:

> (a) [A] Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or

---

[12] *See Printz v. United States*, 521 U.S. 898, 935 (1997) ("The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program . . . such commands are fundamentally incompatible with our constitutional system of dual sovereignty."); *see also* Erwin Chemerinsky, Annie Lai & Seth Davis, *Trump can't force 'sanctuary cities' to enforce his deportation plans*, The Washington Post (Dec. 22, 2016), https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.07614267a1ea (explaining that the anti-commandeering clause of the Tenth Amendment protects "sanctuary" states and cities that decline to participate in the Trump administration's deportation plan).

[13] *See* R.A. Cuevas, Jr., County Attorney, Memorandum to Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (July 15, 2013), attached as **Exhibit C** (explaining that ICE detainer requests are voluntary and not mandated by federal law or regulations).

[14] *See* Executive Order: Enhancing Public Safety in the Interior of the United States § 9(a) (Jan. 25, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

[15] *Id.*

> receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
>
> (b) [N]o person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
> (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
> (2) Maintaining such information.
> (3) Exchanging such information with any other Federal, State, or local government entity.

Section 1373, in other words, prohibits restrictions on *information sharing* between localities and federal immigration authorities[16] – not restrictions on the *detention* of individuals at the federal government's behest.

Resolution 1008-13 does not conflict with 8 U.S.C. § 1373 because it does not restrict the flow of information to immigration authorities.[17] It only establishes a policy that Miami-Dade County will not use its residents' tax dollars to fund the continued detention of individuals at the federal government's behest after the criminal justice system mandates that they be released.

---

[16] In fact, the statute does not even prohibit all forms of information sharing. *See Steinle v. City & Cty. of San Francisco*, No. 16-CV-02859-JCS, 2017 WL 67064, at *12 (N.D. Cal. Jan. 6, 2017) (holding that a locality's refusal to provide ICE with the release date of an inmate subject to a detainer request did not violate § 1373 because the "statute, by its terms, governs only 'information regarding the citizenship or immigration status, lawful or unlawful, of any individual," and "no plausible reading of 'information regarding ... citizenship or immigration status' encompasses the release date of an undocumented inmate.").

[17] The Department of Justice Office of Inspector General issued a Memorandum last year that suggested that some localities with policies that limit cooperation with federal immigration officials may potentially be violating Section 1373, even if their policies do not prohibit the exchange of immigration status information outright. *See* Memorandum from Michael H. Horowitz, Inspector General, to Karol V. Mason, Assistant Attorney General for the Office of Justice Programs 8 (May 31, 2016), https://oig.justice.gov/reports/2016/1607.pdf. Importantly, the OIG Memo is *not* a legal opinion and does not constitute guidance from the Department of Justice about the proper interpretation of § 1373. Rather, the OIG Memo documents the results of an OIG investigation, conducted in response to a request from Congressman John Culberson, into whether certain grant recipients were complying with § 1373. The OIG Memo did not determine that any recipients were violating § 1373 and did not recommend withholding any grant funds. Although the memorandum listed Miami-Dade County as a jurisdiction with a detainer policies inconsistent with the "intent" of § 1373, the Memo's approach to assessing compliance with Section 1373 does *not* suggest that the County's policy is in violation of that Section. Rather, it suggests that any law or policy that is *applied* "in a manner that prohibits or restricts cooperation with ICE in *all* respects,"—including by restricting the exchange of information about immigration status—would be in tension with § 1373. *See* OIG Memo, at 8 (emphasis added). Because Miami-Dade's Resolution prohibits only additional *detention* at County expense and not information exchange with the federal government, the County's policy is not in conflict with § 1373.

Although President Trump and his Administration may want the County to believe otherwise, repeal of Resolution 1008-13 is unnecessary to ensure that Miami-Dade County will continue to receive full access to federal funds.[18]

Finally, it is worth noting that there are significant restrictions on the federal government's ability to cut Miami-Dade's access to federal funds *in the future*. The Constitution places important limits on the amount and type of federal funding that can be conditioned on collaboration in immigration enforcement, which likely accounts for the narrow scope of the Executive Order President Trump recently released.[19] Further, before the federal government can impose any new conditions on federal funding, a state or locality must have the opportunity to "voluntarily and knowingly accept the terms" of the funding restriction.[20] The federal government cannot, in other words, impose a funding condition without sufficient notice to states and localities of that condition. This notice requirement means that the Trump administration cannot spring new funding conditions on Miami-Dade without first providing it with a meaningful opportunity to consider whether to forgo federal funds or to change its policies before federal funds are cut. Thus, there is no basis for the County to repeal Resolution 1008-13 now based on the possibility that some as-yet-unknown federal policy will be enacted in the future.

B. Repeal of Resolution 1008-13 Will Inflict Substantial Fiscal and Social Costs on the County.

[18] In addition to addressing funding and section 1373, the Executive Order also directs the Attorney General more broadly to "take appropriate enforcement action against any entity . . . which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law." *See* Executive Order, § 9. This provision is nothing more than pure bluster couched in legalese. In our system of federalism, the federal government is not superior in status to the states or their political subdivisions; there is no "enforcement action" it can lawfully take against Miami-Dade County for exercising its Tenth Amendment right to refuse to allow its resources to be commandeered to enforce federal immigration law. The County should not allow itself to be bullied into doing the federal government's bidding by such empty threats.

[19] First, there are limits to the *amount* of federal funding Congress could threaten to withdraw. *See Nat'l Fed'n of Indep. Bus. v. Sebelius,* 132 S. Ct. 2566, 2604 (2012) (when conditions do not simply restrict the use of federal funds, but instead "take the form of threats to terminate other significant, independent grants, the conditions are properly viewed as a means of pressuring the State to accept policy changes."). Second, Congress cannot condition funding that is unrelated to immigration enforcement, such as funding for schools or health care, on localities' participation in immigration enforcement. *New York v. United States*, 505 U.S. 144, 167 (1992) (spending "conditions must (among other requirements) bear some relationship to the purpose of the federal spending"). Third, the federal government cannot use its spending power "to induce the States to engage in activities that would themselves be unconstitutional." *South Dakota v. Dole,* 483 U.S. 203, 210 (1987). This requirement prohibits Congress from conditioning funding on a requirement that localities detain individuals on the basis of immigration detainers because such detention has itself been held unconstitutional. *See, e.g., Miranda-Olivares*, 2014 WL 1414305, at *10.

[20] *Sebelius,* 132 S. Ct. at 2602; *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981) ("The crucial inquiry" in examining the sufficiency of prior notice is whether "the State could make an informed choice.").

The County Commission should also resist the repeal of Resolution 1008-13 because a return to the practice of honoring detainers will cost the County hundreds of thousands – and likely millions – of dollars annually.

Mayor Gimenez has publicly stated that a return to the practice of honoring detainers will cost the County taxpayers only $50,000 per year.[21] This figure wildly underestimates the true costs. First, the Mayor's calculation appears to be based on the premise that the County will continue to receive only about 200 detainer requests per year, as it has in the years since Resolution 1008-13 took effect. That assumption is unreasonable. It ignores that federal immigration authorities will issue substantially more detainer requests once it knows that the County will honor them. It ignores that Trump has resurrected the controversial "Secure Communities" Program ("SCOMM") which Obama previously halted in November 2014 and which makes immigration detainers central to ICE's enforcement. It ignores that President Trump has vastly expanded the categories of noncitizens targeted for deportation. And, it ignores Mayor Gimenez's own assessment of the costs of detainer compliance before the Resolution took effect, when the County was paying $624,708 annually for the additional detention costs inflicted by the County's prior policy of honoring detainers. [22]

Indeed, the $624,708 figure represents but a *fraction* of the costs the County will incur if it returns to its prior policy of honoring detainers. As the Public Defender and the defense bar have noted, individuals subject to a detainer in the County's custody have a strong incentive *not* to post bond if they know that the County will honor the detainer. If the County returns to a policy of honoring detainers, these individuals know that by posting bond, they will "trigger" the detainer and ICE may well take them into immigration detention. Thus, instead of posting bond, such individuals languish in County jail at the County taxpayer's expense while awaiting a disposition on their case. In fact, it is estimated that individuals subject to detainers spent on average an extra 35 extra days in County custody under the County's former policy of detainer compliance, largely as a result of these incentive effects.[23] When the costs of this additional period of detention are considered, the true annual fiscal impact of detainer compliance rises into the millions of dollars.[24]

C. The County's Commitment to Promoting Stability and Building Trust

[21] *See* Cristiano Lima & Marc Caputo, *Miami-Dade mayor: Trump should pay immigration jail costs*, Politico (Jan. 26, 2017), http://www.politico.com/story/2017/01/report-miami-dade-mayor-citing-trump-guts-countys-immigrant-sanctuary-234244.

[22] *See* **Exhibit A**.

[23] *See* Edward F. Ramos, *Fiscal Impact Analysis of Miami-Dade's Policy on 'Immigration Detainers'*, available at http://bit.ly/2iDr5Hd.

[24] *Id.* at 6-7

Most importantly, Mayor Gimenez's actions undermine the County's obligation to uphold the law and provide for the welfare of all its residents. This commitment should not waiver under dubious threats of revocation of federal funding.

In the 2013 Resolution, the Board recognized the significance of fostering trust between immigrant communities and local law enforcement and noted that "a blanket compliance with Immigration and Customs Enforcement detainers could undermine trust between local police officers and the immigrant community of Miami-Dade County."[25] The conflation of local law enforcement and immigration enforcement generates distrust of local law enforcement officers, an effect heightened in our diverse communities. Furthermore, anti-detainer policies protect not only immigrant communities, but all communities. A recent study examining the impact of these policies on crime and the economy determined that counties with anti-detainer policies have lower crime rates than comparable counties without them.[26]

In Miami-Dade County, we must work together to protect families from aggressive deportation programs that do not consider whether immigrants have children or dependent relatives in the United States, their connections to the United States, or their significant contributions to the community. Between 2009 and 2013, more than half a million parents of U.S. citizen children were deported.[27] Researchers who conducted field surveys in multiple states, including Florida, found that children of deported parents experience economic hardship, as well as emotional and psychological distress.[28] Thus, the harm of deportation affects not only those who are deported, but their children and their surrounding communities.

Jurisdictions across the country have joined the efforts to protect immigrant communities and to continue to combat ICE hold requests.[29] Miami-Dade should continue to stand among

---

[25] Resolution 1008-13 at 5.

[26] Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress (Jan. 26, 2017), https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/.

[27] Lydia DePillis, *The U.S. has deported more than half a million parents since 2009. Here's what happens to their kids*, The Washington Post (Sept. 21, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/09/21/this-is-what-would-happen-to-the-children-of-11-million-illegal-immigrants-if-president-trump-deported-them/?utm_term=.c7b3e8778778.

[28] Urban Institute & Migration Policy Institute, *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* (Sept. 2015), http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents.

[29] *See, e.g.*, Maeve Reston, *Big city mayors confident they'll remain sanctuaries*, CNN Politics (Jan. 27, 2017), http://www.cnn.com/2017/01/26/politics/donald-trump-sanctuary-cities/ (stating that the mayors of Los Angeles, Boston, and New York question the constitutionality of revoking funding for cities that maintain policies limiting compliance with immigration detainers); Liz Robbins, *'Sanctuary City' Mayors Vow to Defy Trump's Immigration Order*, N.Y. Times (Jan. 25, 2017),

them. For the safety of our communities, we strongly urge you to continue to protect Miami-Dade residents and families and to continue the practice of refusing to honor immigration detainers pursuant to Resolution 1008-13.

Thank you for your attention and consideration to this important matter. We look forward to your response and to the opportunity to meet with you in person to discuss this issue further. Please contact us at Jonathan Fried, jonathan@we-count.org, 305-508-0788 and Michelle Llosa, michelle.llosa@splcenter.org, 786-347-2056, so we may arrange a time to meet.

Encls: Exhibits A-C

CC: Miami-Dade County Board of Commissioners
Miami-Dade County Attorney, Abigail Price-Williams

Sincerely,

Howard Simon, Executive Director
Nancy Abudu, Deputy Director
American Civil Liberties Union of Florida

Executive Board
Miami-Dade Progressive Caucus

Lucio Perez, Area Coordinator
American Friends Service Committee

B. Lowe, Communications Director
Mijente

Cheryl Little, Executive Director
Michelle Ortiz, Deputy Director
Americans for Immigrant Justice

Lis-Marie Alvarado, Board
National Day Laborer Organizing Network

Rebecca Sharpless, President
American Immigration Lawyers Association, South Florida Chapter

Aidil Oscariz, President
National Lawyers Guild, South Florida Chapter

Jennifer Hill
Advocacy Partners Team, Inc.

Gihan Perera, Executive Director
New Florida Majority

Aidil Oscariz, Vice President of Policy & Advocacy
Catalyst Miami

Hashim Yeomans-Benford, Director
Power U Center for Social Change

Randy McGrorty, Esq., CEO
Catholic Legal Services

SEIU Florida State Council

Meena Jagannath, Co-Director

Michelle Estlund, Esq., Co-Chair

---

https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html?_r=0 (explaining that the mayors of New York, Chicago, New Haven, and Austin, among others, are prepared to retain their policies of declining to honor immigration detainers).

Alana Greer, Co-Director
Charles Elsesser, Board Member
Community Justice Project

SLAY Our Vote

The Dream Defenders

Naomi Tsu, Deputy Legal Director, Immigrant Justice Project
Michelle Llosa, Community Advocate
Southern Poverty Law Center

Khurrum Wahid, National Chairperson
Emerge USA

Jeanette Smith, Executive Director
South Florida Interfaith Worker Justice

Marlene Bastien, Executive Director
FANM/Haitian Women of Miami

Roman Lyskowski and Maria E. Lino
Rise Up Florida!

Brian Kirlew, President
Florida Association of Criminal Defense Lawyers, Miami Chapter

Maria Bilbao
United Families

Maria Rodriguez, Executive Director
Francesca Menes, Director of Policy and Advocacy
Florida Immigrant Coalition

Cristina Jimenez, Executive Director
United We Dream

Gaby Garcia-Vera, Field and Advocacy Manager
Charo Valero, Policy Director
Florida Latina Advocacy Network

Mariano Ariel Corcilli, Esq., President
Veterans Bar Association

Sui Chung
Immigration Law & Litigation Group

Wendi Adelson, Esq.
Wendi J. Adelson, PA

Ira J. Kurzban, Partner
Kurzban, Kurzban, Weinger, Tetzeli & Pratt, P.A.

Andrea Cristina Mercado, Chair
We Belong Together

Alan Levine, Special Counsel
LatinoJustice PRLDEF

Jonathan Fried, Executive Director
We Count!

John Martinez
Centro Campesino

Marcia Olivo, Executive Director
Miami Workers Center

Ricardo Bascuas, Professor of Law
University of Miami School of Law

David Abraham, Professor of Law
University of Miami School of Law

Craig Trocino, Lecturer in Law
University of Miami School of Law

Patricia D. White, Dean and Professor of Law
University of Miami School of Law

Tamara Rice Lave, Associate Professor of Law
University of Miami School of Law

Donna Coker, Professor of Law
University of Miami School of Law

Patrick Gudridge, Professor of Law
University of Miami School of Law

Elizabeth Iglesias, Professor of Law
Director of the Center for Hispanic and Caribbean Legal Studies
University of Miami School of Law

Marni B. Lennon, Lecturer in Law
University of Miami School of Law

Kunal Parker
Professor of Law and Dean's Distinguished Scholar
University of Miami School of Law

Irwin P. Stotzky, Professor of Law
University of Miami School of Law

Romy Lerner, Associate Director & Lecturer in Law
Immigration Clinic, University of Miami School of Law

Memorandum

MIAMI-DADE COUNTY

Date: June 20, 2013

To: Honorable Sally A. Heyman
Commissioner, District 4

From: Carlos A. Gimenez
Mayor

Subject: United States Immigration and Customs Enforcement Holds

---

The following information is provided in response to the May 14, 2013 Finance Committee directive requesting that Miami-Dade Corrections and Rehabilitation Department (MDCR) provide additional information regarding the funding gap resulting from the United States Immigration and Customs Enforcement's 48-hour immigration hold placed on arrested individuals.

During the 2012 calendar year, monthly invoices were submitted to Immigration and Customs Enforcement (ICE) reflecting costs associated with housing inmates whose local charges had been satisfied and continued to be held pending ICE taking custody. The Department billed ICE a total of $347,853 for 1,683 inmates who accumulated 4,221 days in our custody at the federal rate of $82.41. In 2006, MDCR worked with the U.S. Marshal's Service to establish a per diem rate. The rate agreed to at that time was $82.41, and is applied for billing purposes for ICE inmates. This rate is currently being renegotiated with the U.S. Marshals to be in alignment with the Department's daily inmate cost of $148. If ICE were billed at the daily rate of $148, the cost for housing these inmates would have been $624,708. Although MDCR has continued to bill ICE over the years, no reimbursement has been received.

Please be aware that the MDCR has recouped some costs associated with immigration holds. For several years, the Department has applied for and received funding from the State Criminal Alien Assistance Program, which is administered by the Bureau of Justice Assistance in conjunction with the Bureau of Immigration and Customs Enforcement and Citizenship and Immigration Services, Department of Homeland Security. The State Criminal Alien Assistance Program provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens.

The criteria for reimbursement eligibility stipulates that *inmates must have been convicted of a felony or second misdemeanor for violations of state or local law, and housed in the applicant's state or local correctional facility for four or more consecutive days during the reporting period. Once a person meets these criteria, all pretrial and post-conviction time served from July 1, 2010 through June 30, 2011 may be included in the FY 2012 application.* The State Criminal Alien Assistance Program awards to Miami-Dade County for the last five fiscal years are as follows:

FY 2008	$106,704
FY 2009	$ 83,150
FY 2010	$141,433
FY 2011	$121,690
FY 2012	$ 59,120

EXHIBIT
tabbies
A

Recently, it has come to our attention that ICE may no longer mandate local jurisdictions to honor these holds. As such, a legal opinion has been requested from the Office of the County Attorney to determine Miami-Dade County's obligation regarding these holds. Please be assured that my office is working with the Miami-Dade Corrections and Rehabilitation Department to determine any possible policy and funding implications regarding these immigration holds.

Should you have any questions, or need further information, please feel free to contact Director Timothy P. Ryan, at telephone number 786-263-6010.

c: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
Robert A. Cuevas, County Attorney
Genaro "Chip" Iglesias, Deputy Mayor
Timothy P. Ryan, Director, Miami-Dade Corrections and Rehabilitation Department
Christopher Agrippa, Clerk of the Board

Memorandum

MIAMI-DADE COUNTY

Date: January 26, 2017

To: Daniel Junior, Interim Director
Corrections and Rehabilitation Department

From: Carlos A. Gimenez
Mayor

Subject: Executive Order: Enhancing Public Safety in the Interior of the United States

---

Yesterday, January 25, 2017, President Donald J. Trump issued Executive Order: Enhancing Public Safety in the Interior of the United States.

In light of the provisions of the Executive Order, I direct you and your staff to honor all immigration detainer requests received from the Department of Homeland Security.

Miami-Dade County complies with federal law and intends to fully cooperate with the federal government. I will partner with the Board of County Commissioners to address any issues necessary to achieve this end.

c: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
Honorable Harvey Ruvin, Clerk of the Court
Abigail Price-Williams, County Attorney
Geri Bonzon-Keenan, First Assistant County Attorney
Office of the Mayor Senior Staff
Christopher Agrippa, Clerk of the Board

EXHIBIT
tabbies
B

Memorandum

MIAMI-DADE COUNTY

Date: July 15, 2013

To: Honorable Carlos A. Gimenez, Mayor
Miami-Dade County, Florida

From: R. A. Cuevas, Jr.
County Attorney

Subject: Immigration and Customs Enforcement Detainer Policy and Miami-Dade Corrections and Rehabilitation Department

---

You have asked about immigration detainer requests issued by U.S. Immigration and Customs Enforcement ("ICE") to the Miami-Dade Corrections and Rehabilitation Department ("MDCR"). Specifically you ask what is "the legal requirement for MDCR to hold inmates, whose charges have been resolved, with an ICE immigration detainer for up to 48 hours." The current policy of MDCR is to hold in-custody inmates who have an immigration detainer placed by ICE. As explained below, it is my conclusion that compliance with ICE detainer requests is voluntary and not mandated by federal law or regulations.

ANALYSIS

ICE immigration detainer requests are issued pursuant to 8 CFR § 287.7. An immigration detainer pursuant to Section 287.7(d) is a "mechanism by which federal immigration authorities may ***request*** that another law enforcement agency temporarily detain an alien "in order to permit assumption of custody by the Department [of Homeland Security]." *United States v. Uribe-Rios*, 558 F.3d 347,359 fn. 1 (4th Cir. 2009) (citing 8 C.F.R. § 287.7(d)) (emphasis added). This detainer, or "hold request" is no more than a request from the Department of Homeland Security that a detainee be held for up to 48 hours. *See Buquer v. City of Indianapolis*, 2013 WL 1332158 at 3, (S.D. Indiana 2013) ("ICE may issue a detainer ***requesting*** that the law enforcement agency hold the individual for up to 48 hours beyond the time that the detainee would otherwise be released in order to allow ICE to assume custody, if it chooses to do so.") (emphasis added); *See also, Euroza v. Salt Lake County*, 2013 WL 653968 at 1 (C. D. Utah 2013) (finding that Form I-247 is a hold request that a detained continue to be detained pending an investigation.)

EXHIBIT
tabbies
C

The text of Section 287.7(d) supports this conclusion since it is titled "Temporary detention at department ***request***." (emphasis added). 8 CFR § 287.7(d). In addition, the form used by the Department, DHS Form I-247, titled "Immigration Detainer- Notice of Action" contains a section where the Department can "check off" a box "requesting" that a certain agency maintain custody over a subject for a period not to exceed 48 hours. (A copy of Form I-247 is attached hereto).

Furthermore, when asked the question "[i]s it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?", David Venturella, the Assistant Director of ICE, responded that "ICE views an immigration detainer as a request...." (see letter attached from David Venturella, Assistant Director of ICE).

CONCLUSION

Consistent with the plain meaning of the word "request" and based on the analysis above, including the interpretation of ICE officials themselves, an immigration detainer pursuant to 8 CFR § 287.7 is merely a request to a local law enforcement agency to notify ICE prior to the release of a certain detainee as well as a request that the law enforcement agency maintain custody of that detainee for a period not to exceed 48 hours to allow ICE to take the detainee into custody. MDCR is not obligated to comply with such a request. It may, however, choose to comply with the request as a matter of policy. In the event, that MDCR decides to hold a detainee for up to 48 hours pursuant to one of these detainer requests the regulations do not mandate federal fiscal responsibility for such detainer.

cc: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
Timothy P. Ryan, Director of Miami-Dade Corrections & Rehabilitation

Memorandum

Date: April 9, 2013

To: Robert Cuevas
County Attorney

VIA: Genaro "Chip" Iglesias
Deputy Major/Chief of Staff

From: Timothy P. Ryan, Director
Miami-Dade Corrections and Rehabilitation Department

Subject: Immigration (ICE) Detainer Policy (re: MDCR Policy and Practice)

It is the current practice of the Miami-Dade Corrections and Rehabilitation Department (MDCR) to hold in-custody inmates who have an immigration detainer placed by US Immigration and Customs Enforcement (ICE). This means that whenever an inmate's local charges have been resolved (i.e., bails, released in court, etc.), MDCR notifies ICE that the inmate must be picked up no later than 48 hours, excluding weekends. If the inmate is not picked by ICE within the stipulated time frame, the inmate is released.

During a recent meeting with the Public Defender's Office, it has now come to our attention, due to a reinterpretation of the law, that the immigration detainer may not be a legal mandate but rather simply a request from ICE. Attached, for your convenience, is information provided during this meeting. Therefore, a legal opinion is requested as to the legal requirement for MDCR to hold inmates, whose charges have been resolved, with an ICE immigration detainer for up to 48 hours.

If you have any questions, or need further information, please feel free to contact Mr. Tyrone Williams, Senior Legal Advisor, at telephone 786.263.5939.

TPR/vms

Attachment

custody of the record or by an authorized deputy.

[50 FR 37834, Sept. 18, 1985, as amended at 54 FR 39337, Sept. 26, 1989; 54 FR 48351, Nov. 28, 1989]

§ 287.7 Detainer provisions under section 287(d)(3) of the Act.

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I–247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(c) *Availability of records.* In order for the Department to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Department of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Department with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Department request.* Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

(e) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter I shall incur any fiscal obligation on the part of the Department, until actual assumption of custody by the Department, except as provided in paragraph (d) of this section.

[68 FR 35279, June 13, 2003]

§ 287.8 Standards for enforcement activities.

The following standards for enforcement activities contained in this section must be adhered to by every immigration officer involved in enforcement activities. Any violation of this section shall be reported to the Office of the Inspector General or such other entity as may be provided for in 8 CFR 287.10.

(a) *Use of force*—(1) *Non-deadly force.* (i) Non-deadly force is any use of force other than that which is considered deadly force as defined in paragraph (a)(2) of this section.

(ii) Non-deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(1)(iv) of this section, has reasonable grounds to believe that such force is necessary.

(iii) A designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

(iv) The following immigration officers who have successfully completed

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):

- ☐ has a prior a felony conviction or has been charged with a felony offense;
- ☐ has three or more prior misdemeanor convictions;
- ☐ has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- ☐ has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- ☐ has illegally re-entered the country after a previous removal or return;
- ☐ has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- ☐ otherwise poses a significant risk to national security, border security, or public safety; and/or
- ☐ other (specify): _____.

☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).

☐ Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

☐ Maintain custody of the subject for a period NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, you are not authorized to hold the subject beyond these 48 hours. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

☐ Provide a copy to the subject of this detainer.

☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

☐ Consider this request for a detainer operative only upon the subject's conviction.

☐ Cancel the detainer previously placed by this Office on _____ (date).

_____ _____

(Name and title of Immigration Officer) (Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

_____ _____

(Name and title of Officer) (Signature of Officer)

Secure Communities

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

Mr. Miguel Márquez
County Counsel
County of Santa Clara
70 West Hedding Street, Ninth Floor
San Jose, CA 95110-1770

Dear Mr. Márquez:

Thank you for your August 16, 2010, letter regarding U.S. Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I appreciate the opportunity to discuss ICE's immigration enforcement policies with you and to respond to your questions.

As an overview, Secure Communities is ICE's comprehensive strategy to improve and modernize the identification and removal of criminal aliens from the United States. As part of the strategy, ICE uses a federal biometric information sharing capability to more quickly and accurately identify aliens when they are booked into local law enforcement custody. ICE uses a risk-based approach that prioritizes immigration enforcement actions against criminal aliens based on the severity of their crimes, focusing first on criminal aliens convicted of serious crimes like murder, rape, drug trafficking, national security crimes, and other "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act (INA). Under this strategy, ICE maintains the authority to enforce immigration law. The activation of biometric information-sharing capability in new jurisdictions enables ICE to identify criminal aliens before they are released from law enforcement custody into our communities, which strengthens public safety. ICE works with state identification bureaus to develop deployment plans for activating the biometric information sharing capability in their jurisdictions. Your specific questions about Secure Communities are answered below.

1. **Is there a mechanism by which localities can opt out?**

   As part of the Secure Communities activation process, ICE conducts outreach to local jurisdictions, which includes providing information about the biometric information sharing capability, explaining the benefits of this capability, explaining when the jurisdiction is scheduled for activation, and addressing any concerns the jurisdiction may have. If a jurisdiction does not wish to activate on the scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing by email, letter, or facsimile. Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date or removing the jurisdiction from the deployment plan.

a) Can you provide information on the Statement of Intent referenced in the cover letter accompanying the 2009 MOA?

ICE does not require local jurisdictions to sign Statements of Intent or any other document to participate in Secure Communities. The reference to the Statement of Intent in the cover letter to the MOA was an oversight. The MOA signed by the state of California makes no mention of a Statement of Intent, and ICE has advised the California Department of Justice that it will not be utilizing Statements of Intent.

b) Do you view the State of California as having the ability to exempt certain counties from the program under the 2009 MOA signed by ICE and the California Department of Justice?

ICE recognizes the California Department of Justice as the agency having the responsibility for the management and administration of the state's criminal data repositories, which includes development of and adherence to policies and procedures that govern their use and how information is shared with other state and federal agencies. Therefore, ICE defers to the California State Attorney General on how state, county, and local law enforcement agencies within the state of California will share biometric data under the MOA.

c) Have you allowed other localities of law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

The Washington, D.C. Metropolitan Police Department is the only jurisdiction to date that has terminated its signed Memorandum of Agreement. As referenced by your letter, activated jurisdictions do not have to receive the "match responses" and Secure Communities, in coordination with the state identification bureaus and the FBI's Criminal Justice Information Services (CJIS) Division, has accommodated jurisdictions that requested not to receive that information.

d) What is the purpose of receiving the "match messages"? Do they require or authorize counties to take action with respect to arrested individuals?

The purpose of local law enforcement receiving a 'match message' is to provide any additional identity information about the subject, including aliases, from the DHS biometric database storing over 100 million records that may not have been available based only on a criminal history check. Additional identity information may further a law enforcement officer's open investigations and lead to improved officer safety. Receiving a 'match message' does not authorize or require any action by local law enforcement.

2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and identification?

   a) Is it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?

ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released for up to 48 hours (excluding Saturdays, Sundays, and holidays). This provides ICE time to assume custody of the alien.

   b) Who bears the costs related to detaining individuals at ICE's request?

Pursuant to 8 C.F.R. § 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodged until "actual assumption of custody." The exception provided in section 287.7(e) stating that ICE shall not incur "fiscal obligation...except as provided in paragraph (d) of this section" only serves to authorize payment but does not require it. To the extent a payment is considered, it should only be made pursuant to a written agreement because, under INA § 103(a)(11), ICE pays detention costs when aliens are in its custody pursuant to "an agreement with a State or political subdivision of a State."

   c) Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Will ICE indemnify localities for any liability incurred because of that detention?

ICE does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual. Further, ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.

3. Is it ICE's position that localities where Secure Communities is deployed are legally required to:

   i. Inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer? If so, what is the legal basis for such a requirement?

The notification to ICE of inmate transfer or release within thirty days is pursuant to ICE's request for that information. It is not a statutory requirement.

ii. Allow ICE agents and officers access to detainees to conduct interviews and serve documents? If so, what is the legal basis for such a requirement?

INA § 238, 8 U.S.C. 1228, provides for the availability of special removal proceedings at federal, state, and local correctional facilities for aliens convicted of certain criminal offenses. Such programs require ICE officers to conduct inmate interviews to determine alienage and any possibilities for relief or protection from removal. The statute does not require state or local jurisdictions to participate in such programs.

iii. **Assist ICE in acquiring information about detainees? If so, what is the legal basis for such a requirement?**

Assisting ICE in acquiring detainee information is not a legal requirement.

Thank you again for your letter. If you have any additional questions, please feel free to contact me at (202) 732-3900.

Sincerely yours,

David J. Venturella

David Venturella
Assistant Director