

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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TO: All Councilmembers

FROM: Councilmember Phil Mendelson *Phil Mendelson* OFFICE THE CLERK
Chairman, Committee on the Judiciary

DATE: May 8, 2012

SUBJECT: Report on Bill 19-585, "Immigration Detainer Compliance Amendment Act of 2012"

The Committee on the Judiciary, to which Bill 19-585, the "Immigration Detainer Compliance Amendment Act of 2012" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

Bill 19-585, the "Immigration Detainer Compliance Amendment Act of 2012," will limit the circumstances under which the District will comply with a civil detainer request from United States Immigration and Customs Enforcement (ICE). Bill 19-585 provides that the District of Columbia is only authorized to hold inmates for an additional 24-hour period after they would otherwise be released, and only if there exists a prior written agreement that the federal government will reimburse the District for all costs incurred in complying with ICE detainers. Bill 19-585 limits those individuals who may be held pursuant to an ICE detainer to those 18 years of age or older, and who have been convicted of a dangerous crime or crime of violence either for which they are currently in custody or for which they have been convicted within 10 years of the detainer request, or for which they were released after having served a sentence within 5 years of the request, whichever is later. A detainer request may be honored for an individual who has been convicted of a homicide regardless of when the conviction occurred.

Bill 19-585 also states that the District shall not provide use of its facilities for ICE to perform generalized searches or inquiries of inmates, and requires that if an inmate has counsel, that counsel have an opportunity to be present for an ICE interview.

The Secure Communities program is a federal initiative that involves the sharing of law enforcement data between the Federal Bureau of Investigation (FBI) and U.S. Immigration and Customs Enforcement (ICE). Local law enforcement already shares fingerprint data with the FBI to assist in determining the criminal history of an individual in law enforcement custody. The Secure Communities program would, at the federal level, involve the additional step of this data also being transferred from the FBI to ICE.¹ The purpose of the data sharing is to aid in determining the immigration status and potential removal of individuals from the United States.² This connection between local law enforcement activity – the taking of fingerprints at a police station – and eventual provision of data to ICE has predictably evoked substantial concern among District residents. Particularly, concern has spread among members of and advocates for the District's immigrant communities.

In response to community concerns surrounding the implementation of Secure Communities in the District, two years ago the Council introduced Bill 18-795, the "Secure Communities Act of 2010." This measure, introduced by all 13 sitting Councilmembers, simply stated that the District shall not transmit arrest data for an individual to ICE. At the hearing on Bill 18-795, witnesses testified to the detrimental effects on community policing and public safety if Secure Communities were activated in the District. The concerns centered around the idea that many in the immigrant community have an inherent fear of the police based on experiences in their home country. The eventual transmission of local law enforcement data to ICE could amplify this fear by creating the perception that local police are agents of ICE.³ This could further heighten distrust of the police among immigrant communities. Unfortunately, this could have the disastrous consequence of inhibiting the reporting of crimes as well as the willingness of witnesses to come forward or otherwise aid in criminal investigations.⁴ These

¹ See Secure Communities, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, http://www.ice.gov/secure_communities/ (last visited January 18, 2012) (Explaining that under the Secure Communities program, the FBI automatically submits fingerprints to ICE to check against its immigration databases to determine whether an individual is "unlawfully present in the United States or otherwise removable due to a criminal conviction," in which case "ICE takes enforcement action....").

² *Id.*

³ See, e.g., *Bill 18-795, Secure Communities Act of 2010: Hearing Before the Council of the District of Columbia Committee on the Judiciary*, Jul. 12, 2010 [hereinafter *Bill 18-795 Hearing*] (written statement of Advisory Neighborhood Commission 1D) (on file with the Committee on the Judiciary); *Bill 18-795 Hearing* (written testimony of Anonymous Client of AYUDA) (on file with the Committee on the Judiciary). The Committee hearing on Bill 18-795 can be viewed on the Council website at the following link: <http://dccouncil.washington.dc.us/granicus>.

⁴ See, e.g., *Bill 18-795 Hearing*, *supra* note 3 (written testimony of Asian Pacific Islander Domestic Violence Resource Project) (on file with the Committee on the Judiciary); *Bill 18-795 Hearing*, *supra* note 3 (written testimony of Benjamin Ordoñez, Union de Trabajadores de Washington, DC) (on file with the Committee on the Judiciary).

risks are heightened when a member of an immigrant community is also a victim of domestic violence.⁵

In response to the pending Bill 18-795, MPD terminated discussions to obtain a memorandum of agreement with ICE on June 23, 2010.⁶ Nevertheless, there is a federal mandate that the Secure Communities program be implemented nationwide by 2013.⁷ In order to tailor implementation of the program to specific localities, some jurisdictions had memoranda of understanding with ICE in place, similar to what the District sought. In August 2011, however, ICE announced that it was terminating all existing memoranda of understanding with jurisdictions regarding the program, in order to eliminate confusion and convey that participation in the program is not optional.⁸ Soon after, all 13 members of the D.C. Council sent a letter to Janet Napolitano, Secretary of the Department of Homeland Security expressing disapproval over this decision.⁹ Understanding that eventual implementation of the Secure Communities program in the District is imminent, shortly afterward, Mayor Vincent Gray issued a Mayor's Order emphasizing the District's policy that employees of public safety agencies in the District shall not inquire about a person's immigration status or engage in the enforcement of civil immigration law.¹⁰

At the hearing on Bill 19-585, witnesses echoed the concerns regarding the Secure Communities program that were voiced at the hearing on Bill 18-795 a year and a half before. Several witnesses again testified to the risk that implementation of the Secure Communities program will detrimentally effect police/community relations.¹¹ Again, witnesses pointed to the

⁵ See, e.g., *Bill 18-795 Hearing* (written testimony of Asian/Pacific Islander Domestic Violence Resource Project) ("There are many barriers that prevent survivors of DV from calling the police and reaching out for help. Barriers increase when there are cultural and linguistic concerns for LEP/NEP populations."); *Bill 18-795 Hearing, supra* note 3 (written testimony of Anonymous Client of AYUDA) (describing her experience as an immigrant to the District from El Salvador who was abused by the American father of her child, and her reluctance to call the police, and stating that "[e]ven if one person were deported as a result of Secure Communities, the news would spread fast, and immigrant victims of crime would be even more afraid to call the police." *Id.* at 2-3.).

⁶ See Letter from Cathy L. Lanier, Chief of Police, Metropolitan Police Department, to Councilmember Phil Mendelson (Jul. 22, 2010) (on file with the Committee on the Judiciary).

⁷ See, e.g., Letter from Cathy L. Lanier, Chief of Police, Metropolitan Police Department, to Councilmember Phil Mendelson (Sept. 21, 2011) (on file with the Committee on the Judiciary) (stating that "the Federal law enforcement and security agencies are mandated to have fully interoperable systems and information sharing by 2013. Consequently, by 2013 it is expected that fingerprints sent by state and local law enforcement to the Federal Bureau of Investigation will be automatically shared with ICE.").

⁸ See Tara Bahrapour, *Immigration Authority Terminates Secure Communities Agreements*, WASH. POST, Aug. 7, 2011, http://www.washingtonpost.com/local/immigration-authority-terminates-secure-communities-agreements/2011/08/05/gIQA1wx80I_story.html (describing a letter sent to state governors by ICE director John Morton terminating the agreements in order "to avoid further confusion.").

⁹ Letter from the Council of the District of Columbia to Janet Napolitano, Secretary, Department of Homeland Security (Sept. 28, 2011) (on file with the Committee on the Judiciary).

¹⁰ See Mayor's Order 2011-174 (2011).

¹¹ See, e.g., *Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011: Hearing Before the Council of the District of Columbia Committee on the Judiciary*, Jan. 6, 2012 [hereinafter *Bill 19-585 Hearing*] (written testimony of Ivania Teran, Small Business Projects Specialist, Latino Economic Development Corporation); *Bill 19-585 Hearing* (written testimony of Jaime Farrant, Executive Director, Ayuda).

perception among immigrant residents that if local police are working with ICE, then any contact with the police, even to report a crime, may result in deportation.¹²

The Metropolitan Police Department has gone a long way in its community policing efforts, where it has found that its strong patrol presence in District neighborhoods along with direct engagement with District residents, including at community meetings, has encouraged more and quicker reporting of crimes. Forming these relationships has likely been more difficult and delicate with the District's immigrant communities, and there are clear public safety implications if these relationships are damaged. Confusion has also existed regarding whether or not local jurisdictions had the ability to opt-out of the program, and after ICE terminated the memoranda of understanding with all jurisdictions in August 2011, it was clear to state and local jurisdictions that they did not have a say in its implementation. This jeopardizes local law enforcement.

From the outset, the Secure Communities program has been riddled with confusion and controversy. While ICE has stated that the program was meant to target the most serious criminals,¹³ there are reports nationwide of individuals who were arrested – not even convicted – for minor crimes, and then were held under an ICE detainer and eventually caught up in deportation proceedings. Indeed, ICE lists its enforcement priorities as “the identification and removal of those that have broken criminal laws, recently crossed our border, repeatedly violated immigration law or are fugitives from immigration court.”¹⁴ Yet an ICE memorandum on file with the Committee regarding when prosecutorial discretion by the agency should be used in enforcement proceedings describes “negative factors” that would affect the determination of when prosecutorial discretion should be exercised in a given case:

individuals who pose a clear risk to national security; serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind; known gang members or other individuals who pose a clear danger to public safety; and individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.¹⁵

¹² See, e.g., *Bill 19-585 Hearing*, *supra* note 11 (written testimony of Alison Miles-Lee, Public Witness).

¹³ A fact sheet on the Secure Communities program put out by ICE on September 1, 2009 states that the initiative “supports public safety by strengthening efforts to identify and remove the most dangerous criminal aliens from the United States,” and that the agency “is focusing efforts first and foremost on the most dangerous criminal aliens currently charged with, or previously convicted of, the most serious criminal offenses,” prioritizing offenses including “crimes involving national security, homicide, kidnapping, assault, robbery, sex offenses, and narcotics violations carrying sentences of more than one year.” (on file with the Committee on the Judiciary).

¹⁴ Department of Homeland Security, *ICE, Removal Statistics*, www.ice.gov/removal-statistics (last visited April 5, 2012).

¹⁵ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement to All Field Office Directors, All Special Agents in Charge, and All Chief Counsel re: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 5 (Jun. 17, 2011) [hereinafter ICE Prosecutorial Discretion Memo] (on file with the Committee on the Judiciary).

Under ICE's policy, these individuals should likely not be given any type of reprieve during enforcement proceedings. Additionally, ICE lists several factors that would positively affect the exercise of favorable discretion regarding an individual, including long-time, lawful permanent residents, minors and elderly individuals, victims of domestic violence, trafficking, or other serious crimes;¹⁶ and individuals who suffer from a serious mental or physical disability.¹⁷ Theoretically, these individuals would positively receive favorable prosecutorial discretion in the handling of their case. While it is useful that ICE has enforcement guidelines that are allegedly based up on the agency's enforcement priorities, the same memorandum emphasizes that "there is no guarantee that the agency will ultimately exercise discretion favorably."¹⁸ Further, there are documented cases where individuals who initially made contact with the criminal or civil justice systems regarding minor offenses, including minor traffic violations, ended up in deportation proceedings.¹⁹

In addition to the reported problems and fears surrounding the Secure Communities program, when local DOC facilities house inmates on behalf of the federal government beyond the time period of their sentence, the District incurs these costs. Under the State Criminal Alien Assistance Program (SCAAP), state and local law enforcement receive compensation from the federal government for the incarceration of some individuals pursuant to ICE civil immigration detainers.²⁰ However, this program covers only a minority of those individuals held – specifically, only those individuals who have at least one felony or two misdemeanor convictions – and who are incarcerated for at least 4 consecutive days.²¹ The Director of the DOC, Thomas Faust, has stated that DOC is currently only holding individuals under ICE detainers for the maximum of 48 hours after they would otherwise be released pursuant to federal law. So, any individuals that DOC is currently housing under ICE detainers would not be eligible for SCAAP funding. Further, DOC has stated to the Committee that the agency is no longer applying for SCAAP funds in light of the October Mayor's order, since the agency is not permitted to inquire regarding an individual's immigration status. Thus, the District's liability for the costs of housing inmates pursuant to ICE detainers is a real issue. Additional costs to the District could result from legal liability resulting from holding the inmates on behalf of the federal government, since if issues were to arise that resulted in a lawsuit, the inmates would have been under the District's care and control.

¹⁶ A separate memorandum reminds all "ICE officers, special agents, and attorneys" to "exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints." Memorandum John Morton, Director, U.S. Immigration and Customs Enforcement to All Field Office Directors, All Special Agents in Charge, and All Chief Counsel re: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs 2 (Jun. 17, 2011) (on file with the Committee on the Judiciary).

¹⁷ ICE Prosecutorial Discretion Memo, *supra* note 15.

¹⁸ *Id.*

¹⁹ See AMERICAN IMMIGRATION LAWYERS ASSOCIATION, IMMIGRATION ENFORCEMENT OFF TARGET: MINOR OFFENSES WITH MAJOR CONSEQUENCES 3-4 (2011) (discussing that in a study of 127 cases where individuals were stopped, questioned, or arrested by police officers for minor offenses that led to removal proceedings, 66 cases involved individuals placed in removal proceedings after they were arrested or cited for minor traffic violations).

²⁰ U.S. Department of Justice, Bureau of Justice Assistance, State Criminal Alien Assistance Program (SCAAP), https://www.bja.gov/ProgramDetails.aspx?Program_ID=86 (last visited May 4, 2012).

²¹ *Id.*

Civil immigration enforcement is the realm of the federal government, and as evidenced by the Committee's hearings surrounding this issue, even perceived collusion between local police and ICE can have devastating consequences on the community's trust that the local police department is looking out for their safety, and not facilitating an inquiry into their immigration status. At the hearing on Bill 19-585, many witnesses testified to the importance of maintaining a clear line between the duties of local law enforcement and federal civil immigration enforcement.²² The Committee recognizes that MPD, in its policing and public safety functions, will need to interact with federal agencies during the course of its work. This will include, in certain situations, interactions with ICE. Thus the Committee does not extend the bill to cover MPD and restrict communications with ICE. It is the Committee's understanding that the practice is for ICE detainers to be issued regarding inmates who are already in the custody and care of DOC.

Implementation of the Secure Communities program in the District of Columbia is imminent. Recognizing this fact, Bill 19-585 aims to preemptively put a policy into place that draws clear lines regarding the individuals whom the District will or will not hold in its correctional facilities pursuant to ICE detainer requests. While ICE has made clear that Secure Communities will be implemented nationwide, the District can act regarding its use of city resources, and the bill targets a clear area where the use of District resources is required – the housing of inmates at DOC facilities pursuant to ICE detainer requests. Several jurisdictions have implemented policies similar to Bill 19-585 in order to limit the use of local resources in detaining individuals under ICE detainers, including Cook County, Illinois;²³ Santa Clara County, California;²⁴ New York, NY;²⁵ Taos County, New Mexico; and the state of Connecticut.²⁶ The District hopes to join the growing list of jurisdictions that are standing up and limiting the circumstances under which they will hold inmates, who would otherwise be free, pursuant to a civil (not criminal) request from ICE. Bill 19-585 ensures that DOC holds of inmates pursuant to ICE detainers are not longer than 24 hours, are pursuant to a written agreement for reimbursement by ICE, and encompass only those who are the most serious of criminals. Thus, the Committee recommends approval of Bill 19-585.

II. LEGISLATIVE CHRONOLOGY

²² See, e.g., *Bill 19-585 Hearing*, *supra* note 11 (written testimony of Sarahi Uribe, National Day Laborer Organizing Network); *Bill 19-585 Hearing* (written testimony of Monica Kamen, Community Organizer and AVODAH Corps Member, Jews United for Justice).

²³ COOK COUNTY, IL., CODE OF ORDINANCES, Sec. 46-37 (2011).

²⁴ Santa Clara, CA, Proposed Amendment to Detainer Task Force Recommendation (Oct. 18, 2011).

²⁵ NEW YORK CITY ADMINISTRATIVE CODE, § 9-131 (effective May 20, 2012).

²⁶ See State of Connecticut Department of Correction, Administrative Directive: Inmate Admissions, Transfers and Discharges (effective Apr. 16, 2012) (requiring corrections staff to document findings such as whether the inmate has ever been convicted of a felony, is under an active warrant, has been identified as a gang member, is flagged in terrorist screening, or removal proceeding have been initiated, and if the inmate does not fall within a proscribed category, then the inmate will not be held under an ICE detainer).

- May 4, 2010 Bill 18-795, "Secure Communities Act of 2010," is introduced by Chairman Vincent Gray and Councilmembers Mendelson, Alexander, Barry, Bowser, K. Brown, Catania, Cheh, Evans, Graham, M. Brown, Thomas, and Wells, and is referred to the Committee on Public Safety and the Judiciary.
- November 15, 2011 Bill 19-585, "Immigration Detainer Compliance Amendment Act of 2011," is introduced by Chairman K. Brown and Councilmembers Mendelson, Catania, M. Brown, Orange, Graham, Evans, Cheh, Bowser, Thomas, Jr., Wells, Alexander, and Barry, and is referred to the Committee on the Judiciary.
- November 25, 2011 Notice of Intent to act on Bill 19-585 is published in the *District of Columbia Register*.
- November 25, 2011 Notice of a Public Hearing is published in the *District of Columbia Register*.
- December 23, 2011 Revised and Abbreviated Notice of a Public Hearing is published in the *District of Columbia Register*.
- January 6, 2012 The Committee on the Judiciary holds a public hearing on Bill 19-585.
- May 8, 2012 The Committee on the Judiciary marks-up Bill 19-585.

III. POSITION OF THE EXECUTIVE

Paul Quander, Deputy Mayor for Public Safety & Justice, testified on behalf of the Executive at the January 6, 2012 hearing. Mr. Quander stated that the Administration is generally supportive of Bill 19-585, but recommended modifying the bill. Mr. Quander recommended excepting releases that occur on holidays or Sundays from the 24-hour requirement, and pointed out that an assessment of whether an adult has been convicted of a crime in another jurisdiction which if committed in the District would fall under D.C. Official Code § 23-1331(3) or (4) would require legal support and would extend the release process. Regarding Section 7(c) of the bill, Mr. Quander pointed out that the bill does not leave any discretion to the District whether to hold an individual who has been convicted of a homicide crime, and "homicide crime" should be defined. Finally, regarding Bill 19-585's definition of "adult," Mr. Quander pointed out that DOC would not be able to hold juveniles adjudicated as adults or 18-20 year olds on ICE detainers, even if previously convicted of a homicide crime, and he suggested modifying the bill to apply to individuals in DOC custody. The Committee Print reflects some of these recommendations.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee on the Judiciary held a public hearing on Bill 19-585 on Friday, January 6, 2012. The testimony summarized below is from that hearing. A copy of this testimony is attached to this report.

Paromita Shah, Associate Director, National Immigration Project of the National Lawyers Guild testified generally in support of Bill 19-585, with the amendments proposed by Heidi Altman. Ms. Shah explains that ICE detainers are requests that do not require local compliance, and the District currently does not receive federal funding for ICE detainers.

Heidi Altman, Clinical Teaching Fellow, Center for Applied Legal Studies, Georgetown Law School, testified generally in support of Bill 19-585, with proposed amendments to: extend the bill to MPD as well as DOC, limit its coverage to convictions with 3-year or longer sentences excluding suspended sentences, and require MPD and DOC to remove "place of birth" information from their booking and detention forms.

Jaime Contreras, District Director, SEIU 32BJ testified in support of Bill 19-585, but recommended amendments including stating explicitly that the act applies only with convictions of a serious criminal offense, and that MPD and DOC remove "place of birth" from their booking and detention forms.

Michael Sindram, Public Witness, testified in support of the bill. Mr. Sindram spoke to the dangers associated with quotas, including at ICE, and emphasized the fact that our nation is made up of foreigners and no one should be singled out.

Tim Curry, Supervising Attorney, Criminal Division, D.C. Law Students in Court, testified in support of the bill with amendments extending it to MPD and limiting it to those with sentences of three years or longer including suspended sentences. Mr. Curry also spoke to the issues surrounding ICE detainers, feared to increase with the implementation of Secure Communities.

Philip Fornaci, Director, DC Prisoners' Project, Washington Lawyers' Committee for Civil Rights & Urban Affairs, testified in strong support of Bill 18-585, pointing to the risk of

legal liability and overcrowding issues that result from DOC's current practice regarding ICE detainees.

Ivania Teran, Small Business Projects Specialist, Latino Economic Development Corporation, testified in strong support of Bill 19-585. Ms. Teran stated that local involvement in immigration enforcement risks alienating District residents, who lose trust in the police or fail to report crimes or act as witnesses for fear that they will be reported to immigration authorities.

Andrea Rodriguez, Legal Director, Central American Resource Center, testified in support of Bill 19-585. Ms. Rodriguez discussed her representation of clients in immigration matters and testified to their hesitation regarding the police due to fear of deportation. She also spoke to the financial burden of local collaboration with ICE and its separation of families.

Amy Loudermilk, Senior Policy Specialist, DC Coalition Against Domestic Violence, testified in support of the bill with expanded scope to include MPD. Ms. Loudermilk pointed to the risks to immigrant victims of domestic violence when local police collaborate with ICE, including fear of calling police to report abuse.

Jaime Farrant, Executive Director, Ayuda, testified in support of Bill 19-585, and requested that MPD be added to the agencies impacted by the bill's requirements. Mr. Farrant stated that police need to make immigrants less fearful of them and not more, citing an example of an abused immigrant woman who was investigated by ICE after calling 911.

Alison Miles-Lee, Public Witness, testified in support of Bill 19-585, with an expanded scope to include MPD. Ms. Miles-Lee emphasized that survivors of domestic violence need to be able to call the police without fearing deportation of their abuser, citing an example of a client whose abuser ended up in ICE custody after the client finally called 911.

Ronald E. Hampton, Executive Director, Black Law Enforcement in America, testified in support of Bill 19-585. Mr. Hampton stated that the enforcement of civil immigration violations is the responsibility of the federal government, and the implementation of Secure Communities will impact community policing in the District.

Kathryn M. Doan, Executive Director, Capital Area Immigrants' Rights Coalition, testified in support of the bill, urging amendments to extend the bill to MPD, limit it to those convicted of crimes with a sentence of at least 3 years exclusive of suspended sentences, and removal of "place of birth" from MPD and DOC's forms. Ms. Doan spoke to the significant increase in detained immigrants in Virginia after implementation of Secure Communities there.

Sheetal Patel, Public Witness, thanked the Committee for supporting Bill 19-585. Ms. Patel spoke to the fear of the police among her clients, who are asylum seekers. She pointed to the opportunity for workplace abuses when immigrants fear reporting to the police, and stated that the perception of local involvement in immigration enforcement increases that fear.

Sarahi Uribe, National Day Laborer Organizing Network, testified in support of the bill. Ms. Uribe pointed to similar policies in other jurisdictions, including in Cook County, IL; Santa Clara County, CA; and New York City, and emphasized the need to maintain a clear line between local law enforcement and ICE and protect families from deportation.

Cindy Zavala, Public Witness, testified regarding the distrust of the legal system in DC among immigrant communities, stating that friends and cousins of hers do not report crimes or serve as witnesses because they see it as too high of a risk. Ms. Zavala also remarked on the importance of stopping ICE detainers and the Secure Communities program in the District.

Prerna Lal, Co-Founder, DreamActivist, testified in support of Bill 19-585, with amendments proposed earlier in the hearing. Ms. Lal cited several examples of undocumented youth detained and caught up in deportation proceedings for minor infractions as a result of Secure Communities.

Jose Alvarado, Member, Union de Trabajadores, testified to the importance of maintaining separation between ICE and the police. Mr. Alvarado stated that the Secure Communities program has separated families and will create a rift between police and the community.

Monica Kamen, Community Organizer and AVODAH Corps Member, Jews United for Justice, testified that Bill 19-585 will restore fair treatment of the immigrant communities in the District and alleviate harm already done by Secure Communities. Ms. Kamen stated that the bill will ensure that police are not engaged in federal immigration enforcement.

Shahid Buttar, Executive Director, Bill of Rights Defense Committee, testified in support of Bill 19-585, and recommended extending its provisions to include MPD. Mr. Buttar pointed to problems with Secure Communities, including misleading information about whether jurisdictions could opt out, and the eventual erosion of MPD's relations with the community.

Rev. Craig C. Roshaven, Witness Ministries Director, Unitarian Universalist Association of Congregations, testified in support of Bill 19-585, but recommended expanding its scope to include MPD. Rev. Roshaven testified that Secure Communities spreads insecurity, and the bill ensures inclusion among members of the community.

Jim McGrath, DC Tenants Advocacy Coalition, testified in support of Bill 19-585. Mr. McGrath pointed to the story of Jai Shanker, a fellow witness, who after reporting a crime to the police, became caught up in deportation proceedings.

Jai Shanker, Public Witness, testified regarding his experience in calling the police and then being subject to scrutiny for his immigration status. Mr. Shanker spoke to the issue of racial profiling, and stated that decisions made in the nation's capital implicate the rest of the world.

Paul Quander, Deputy Mayor for Public Safety and Justice, testified on Bill 19-585 on behalf of the Executive. His testimony is summarized in Section III above.

VI. IMPACT ON EXISTING LAW

Bill 19-585 amends D.C. Official Code § 24-211.01 *et seq.* to add a new section entitled “District compliance with federal immigration detainers.” This new section outlines the circumstances under which the District will entertain an immigration detainer request from ICE and hold an inmate after they would otherwise be released. Those parameters are that, pursuant to a written request from ICE, an individual can only be held for an additional 24-hour period, excluding weekends and holidays, after he or she would ordinarily be released, if there exists a prior written reimbursement agreement with the federal government. Additionally, the only individuals who can be held pursuant to an ICE detainer are those who are 18 years of age or older; who have been convicted of a dangerous crime or crime of violence either for which he or she is currently in custody; which was committed within 10 years of the detainer request or for which the individual was released after serving a sentence within 5 years of the request, whichever is later; or a crime in another jurisdiction which if committed in the District would qualify as a dangerous crime or crime of violence. If an individual was convicted of a homicide, then there are no time restrictions on when the conviction occurred and the District may detain the individual on behalf of ICE. The new section emphasizes that in all cases of written detainer requests from ICE, the District shall exercise its discretion regarding whether to comply with the request, and may only comply if the above requirements are met.

Bill 19-585 also provides that the District shall not provide an office, booth, or any facility or equipment to an ICE agent for the purposes of general searches or inquiries regarding inmates. Additionally, pursuant to the bill, the District shall not permit an individual interview of an inmate if the inmate has not had the opportunity to have counsel present, if the inmate already has retained counsel.

VII. FISCAL IMPACT

The attached April 10, 2012 fiscal impact statement from the District’s Chief Financial Officer states that funds are sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the bill. According to the CFO, the bill’s provisions limit the DOC’s requirements to comply with ICE detainers, and there are no costs associated with implementation of the bill.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1

States the short title of Bill 19-585.

Section 2

Amends the law creating the Department of Corrections by adding a new section 7 entitled "District compliance with federal immigration detainers."

Subsection (a) Provides that the District is only authorized to comply with civil detainer requests from ICE by holding inmates for an additional 24 hours after they would otherwise be released (excluding weekends and holidays), and only in accordance with the parameters in subsection (b).

The Committee Print adds the exclusion for weekends and holidays based on testimony from Deputy Mayor for Public Safety and Justice Paul Quander that with the Bill's reduction of the time period that DOC is authorized to hold individuals on ICE detainers from 48 hours to 24 hours, detainer requests that expire on holidays and Sundays²⁷ could not be honored, because DOC does not employ staff for processing releases on those days.

Subsection (b) Specifies the requirements for when the District may comply with a written immigration detainer request from ICE. Those requirements are that (1) there exists a prior written agreement with the federal government that all costs to the District in complying with the detainer shall be reimbursed; (2) the inmate is 18 years or older; and (3) the inmate has been *convicted* of either a dangerous crime or crime of violence for which he or she is currently in custody; a dangerous crime or crime of violence within 10 years of the detainer request or was released after having served a sentence within 5 years of the request, whichever is later; or a crime in another jurisdiction that would qualify as a dangerous crime or crime of violence if committed in the District.

The Committee Print changes the definition of adult as applicable to this bill from an individual 21 years of age or older to an individual who is 18 years of age or older. This is in part in response to testimony from Deputy Mayor Quander that the bill as introduced would mean that DOC could not hold juveniles adjudicated as adults or 18-20 year olds on ICE detainers, even if they had previously been convicted of a homicide.

Subsection (c) Provides that the District may honor an ICE detainer request for an individual convicted of a homicide regardless of when the conviction occurred.

²⁷ Mr. Quander's testimony referred to "holidays and Sundays," but the DOC confirmed for the Committee that DOC does not release inmates on weekends or holidays. If an inmate's release date falls on Saturday, Sunday, or a holiday, DOC is required to make the release on the prior weekday.

Bill 19-585 as introduced stated that the District “shall” honor an ICE detainer for an individual who has been convicted of a homicide, regardless of when the conviction occurred. In response to Deputy Mayor Quander’s testimony that as written the provision did not allow the District any discretion regarding whether or not to comply with detainer requests in such a situation, the Committee Print changes “shall” to “may.” A core element of Bill 19-585 is recognizing that the District can exercise its discretion. Additionally, in response to Mr. Quander’s testimony regarding the lack of a definition of “homicide crime,” the Committee Print cites to the particular Act and citation in the Code which covers homicide crimes in the District.

Subsection (d) States that the District shall not provide an office, booth, or any facility or equipment to an ICE agent in order to conduct generalized searches or inquiries regarding inmates. Additionally, this subsection states that an individual interview of an inmate by ICE shall not be permitted unless that inmate has the opportunity to have counsel present, if the individual has already retained counsel.

The Committee Print revised this subsection in response to concerns by immigration advocates. The Committee was informed that in other jurisdictions that have passed similar laws, ICE has been setting up booths or offices in detention facilities in order to interview and otherwise inquire regarding inmates for immigration enforcement purposes. Additionally, this subsection builds on the recent Mayor’s Order on a similar subject by requiring the opportunity for an inmate’s attorney to be present if the inmate has an attorney. Bill 19-585 as introduced more generally restricted the District’s ability to communicate with ICE regarding the incarceration status or release dates of inmates not covered by the bill. However, the Committee believes that this subsection as reflected in the Print is more tailored to what is occurring between ICE and local jurisdictions, and does not unduly inhibit communications between ICE and DOC where those communications might be necessary.

Section 3 Adopts the Fiscal Impact Statement.

Section 4 Establishes the effective date by stating the standard 60-day Congressional review language.

IX. COMMITTEE ACTION


On May 8, 2012, the Committee on the Judiciary met to consider Bill 19-585, the "Immigration Detainer Compliance Amendment Act of 2012." The meeting was called to order at 2:06 pm, and Bill 19-585 was the second item on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Bowser and Cheh present, Councilmembers Barry and Evans absent), Chairman Mendelson moved the print with an amendment with leave for staff to make technical and conforming changes. The amendment adds subsection 7(d) to the bill. During an opportunity for discussion, Councilmember Bowser stated that this legislation is a step in the right direction so that immigrants in the District will know that if they call the police, the police are there to assist them and are not instead going to get them caught up in immigration issues. Councilmember Cheh asked Chairman Mendelson how the bill compares to the Mayor's Order on this subject, and whether the bill spoke to collection of information by ICE. The Chairman stated that it did not; rather, the bill pertains to District policy with regard to ICE detainers. Councilmember Cheh stated that the broader issue of collection of information by ICE might need to be visited separately. After an opportunity for further discussion, the vote on the print (with the amendment) was unanimous (Chairman Mendelson and Councilmembers Bowser and Cheh voting aye, Councilmembers Barry and Evans absent). The Chairman then moved the report with leave for staff to make technical, editorial, and conforming changes. After an opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Bowser and Cheh voting aye, Councilmembers Barry and Evans absent). The meeting adjourned at 2:17 pm.

X. ATTACHMENTS

1. Bill 19-585 as introduced.
2. Written testimony and comments.
3. Fiscal Impact Statement
4. Committee Print for Bill 19-585.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council

From: Nyasha Smith, Secretary to the Council
Date: November 16, 2011
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, November 15, 2011. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Immigration Detainer Compliance Amendment Act of 2011", B19-0585

INTRODUCED BY: Councilmembers Mendelson, Catania, Orange, Evans, Bowser, Wells, Barry, M. Brown, Graham, Cheh, Thomas, Alexander and Chairman K. Brown

The Chairman is referring this legislation to the Committee on the Judiciary.

Attachment

cc: General Counsel
Budget Director
Legislative Services

K. P. R

Chairman Kwame Brown

David Catania

Councilmember David Catania

Vincent B. Orange

Councilmember Vincent B. Orange

Jack Evans

Councilmember Jack Evans

Muriel Bowser

Councilmember Muriel Bowser

Tommy Wells

Councilmember Tommy Wells

Marion S. Barry

Councilmember Marion S. Barry

Phil Mendelson

Councilmember Phil Mendelson

Michael A. Brown

Councilmember Michael A. Brown

Jim Graham

Councilmember Jim Graham

Mary M. Cheh

Councilmember Mary M. Cheh

Harry Thomas, Jr.

Councilmember Harry Thomas, Jr.

Yvette Alexander

Councilmember Yvette Alexander

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Phil Mendelson introduced the following bill which was referred to the
Committee on _____.

To amend An Act To create a Department of Corrections in the District of Columbia to limit the
circumstances under which the District will comply with an immigration detainer request
from United States Immigration and Customs Enforcement.

1 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
2 act may be cited as the "Immigration Detainer Compliance Amendment Act of 2011".

3 Sec. 2. Section 6 of An Act To create a Department of Corrections in the District of
4 Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.01 *et seq.*), is
5 amended by adding a new Section 7 to read as follows:

6 "Sec. 7. District compliance with federal immigration detainers.

7 "(a) The District of Columbia is authorized to comply with civil detainer requests from
8 United States Immigration and Customs Enforcement (ICE) by holding inmates for an additional
9 24-hour period after they would otherwise be released, but only in compliance with the
10 requirements of subsection (b) of this section.

11 "(b) Upon written request by an ICE agent to detain a District of Columbia inmate for
12 suspected violations of federal civil immigration law, the District shall exercise discretion
13 regarding whether to comply with the request and may comply only if:

14 "(1) There exists a prior written agreement with the federal government by which
15 all costs incurred by the District in complying with the ICE detainer shall be reimbursed; and

16 "(2) The individual sought to be detained:

17 "(A) Is an adult, as defined in D.C. Official Code § 16-2301(5); and

18 "(B) Has been convicted of:

19 "(i) A dangerous crime as defined in D.C. Official Code § 23-
20 1331(3) or crime of violence as defined in D.C. Official Code § 23-1331(4), for which he or she
21 is currently in custody;

22 "(ii) A dangerous crime as defined in D.C. Official Code § 23-
23 1331(3) or crime of violence as defined in D.C. Official Code § 23-1331(4) within 10 years of

1 the detainer request, or was released after having served a sentence for such dangerous crime or
2 crime of violence within 5 years of the request, whichever is later; or

3 “(iii) A crime in another jurisdiction which if committed in the
4 District of Columbia would qualify as an offense listed in D.C. Official Code § 23-1331(3) or
5 (4).

6 “(c) Notwithstanding subsection (b)(2)(B)(ii) of this section, a detainer request for an
7 individual who has been convicted of a homicide crime shall be honored regardless of when the
8 conviction occurred.

9 “(d) Except as otherwise required by this law or unless ICE agents have a criminal
10 warrant, District personnel shall not expend District resources responding to ICE inquiries or
11 communicating with ICE regarding individuals’ incarceration status or release dates.”.

12 Sec. 3. Fiscal impact statement.

13 The Council adopts the fiscal impact statement in the committee report as the fiscal
14 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
15 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

16 Sec. 4. Effective date.

17 This act shall take effect following approval by the Mayor (or in the event of veto by the
18 Mayor, action by the Council to override the veto), a 60-day period of Congressional review as
19 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
20 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
21 Columbia Register.

Public Testimony Paromita Shah, Associate Director of the National Immigration Project of the National Lawyers Guild¹

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

I am the Associate Director of the National Immigration Project of the National Lawyers Guild, and a nine-year resident of Washington, DC. For the last 40 years, the National Immigration Project, a national membership organization, has provided training and technical assistance to advocates and attorneys, many of whom are in DC, who specialize in deportation defense and damages actions for abuses suffered by immigrants. We also train public defenders and criminal defense counsel on the immigration consequences of criminal convictions. I am an author of a national practice advisory for state criminal defense counsel, titled "Understanding Immigration Detainers: An Overview for State Defense Counsel," and recently spoke about immigration detainers in a DC Bar Continuing Legal Education seminar titled, "Criminal Defense of Noncitizens: Immigration Consequences of Criminal Activities and Convictions."

I am also a member of the D.C. Immigrants Rights coalition in the District of Columbia, a coalition of domestic violence, labor, and civil rights organizations that support Bill 19-585, the Immigration Detainer Compliance Act. In short, the DC Immigrants Rights coalition applauds the Council's decision to introduce this bill but ask that the Council consider amending the Act to ensure that the bill fulfills its objectives – namely the protection of District residents from overbroad and overaggressive immigration enforcement within District agencies. Immigration enforcement should be left to immigration agencies. (My colleague Heidi Altman will go through our proposed changes.)

Why do we need this bill?

The time is right to introduce this bill. Secure Communities, an immigration enforcement program that operates with the assistance of police and jails, will be activated in the District by 2013. Despite the Council's best efforts to prevent its implementation, we expect that Secure Communities will generate a huge spike in the use of immigration detainers. Detainers impose significant costs on the District's already overburdened criminal justice system. The reasonable alternative is to leave questions of immigration enforcement where they belong: with the federal government.

What is a detainer?

The immigration detainer is the principle mechanism for Immigration and Customs Enforcement (ICE), the enforcement arm of the Department of Homeland Security (DHS), to

¹ Paromita Shah has served as Associate Director of the National Immigration Project since 2005, specializing in immigration detention and enforcement. She is a contributing author and co-presenter of the "Deportation 101" curriculum, participates in regular advocacy efforts with ICE officials, and has created an abundance of resources for communities affected by heightened immigration enforcement efforts. Previously, Paromita served as director of Capital Area Immigrants' Rights (CAIR) Coalition in Washington, DC, where she conducted presentations in regional county jails, trained attorneys, assessed detainee claims for relief, and conducted liaison meetings with DHS and DOJ. She also worked as a staff attorney at Greater Boston Legal Services. She can be reached at 202-272-2286 or at Paromita@nationalimmigrationproject.org.

obtain custody over suspected immigration violators in the custody of state or local law enforcement officials. When ICE learns that a suspected immigration violator is in a state prison or local jail, ICE issues a detainer form, I-247 which is attached to my submitted testimony. The detainer lapses 48 hours after the person would otherwise be released from criminal custody.

"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." 8 C.F.R. § 287.7(a). (emphasis added)

"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 custody is either impracticable or impossible." 8 C.F.R. § 287.7(a) (emphasis added)

There are many common misconceptions about immigration detainers. For example, an immigration detainer is not an arrest warrant, is not authorization for ICE custody, does not mean that a person is presently in ICE custody, and is not dispositive evidence that a person is a noncitizen or is deportable from the United States. It is not a criminal detainer and is not governed by the Interstate Agreement on Detainers Act. As a result of this confusion, courts, jails and police treat immigration detainers as evidence that the person is a noncitizen and that an ICE agent can have unfettered access to an inmate or arrestee.

What are some problems with ICE detainers?

ICE does not adhere to any evidentiary standards in issuing detainers and often relies on spurious and unreliable evidence. A mere admission of foreign birth can result in a detainer being dropped; additionally, reports have surfaced that foreign-sounding names, clothing styles, and behavior result in detainers being issued.

An immigration detainer does not indicate anything about an individual's status. Immigration detainers are routinely used without any judicial determination that the person is in the country illegally and are frequently applied to people who have no immigration violations. As a result, detainers have been issued on U.S. citizens. This raises serious concerns about the legality of imprisoning a person for the 48 hour period without any probable cause that the person is subject to detention and removal.

Second, ICE historically checks off one box on the detainer form. "Investigation has been initiated to determine whether this person is subject to removal from the United States."² Of course, an investigation into deportability is not the same as a charge of deportability.

What has been the District's history of recording and complying with immigration detainers?

The Department of Corrections' responses to questions on detainers are deeply troubling. DOC has stated that they do not have any policies regarding the strict limitations governing immigration holds.³ Furthermore, DOC's responses suggest that detainer violations have already occurred, resulting in DOC unlawfully detaining people who should have been released.

² See Form I-247 (attached to this submission).

³ Department of Corrections Performance Responses, March 2011, p. 38.
http://dcclims1.dccouncil.us/mendelson/archive_pr/COJ%20performance%20and%20budget%20materials/DOC%20Performance%20Responses%2003.07.11.pdf

According to DOC data, a total of 185 inmates were held in CY 2010 on an ICE detainer for an average of 288 days – far beyond the 48 hours. I have also heard reports that ICE agents routinely interrogate DOC inmates – many with detainees without informing counsel.

Is the District required to comply with immigration detainees?

The federal government cannot force local governments to comply with immigration detainees. Not only does the regulation describe the detainer as a “notice” and “request,” the I-247 detainer form contains language stating the detainer is nothing more than a request or notice. On several occasions, ICE officials have stated in writing to Congress and other NGOs that detainees are requests.⁴

Does the District receive federal money for the period of time that they spend on a detainer?

No. The District of Columbia expends funds for the period of time that the individual spends on an ICE detainer. Also, the District of Columbia is liable for any violations of the program. (ICE officials have stated that they do not have reimbursement agreements for ICE detainees.)

Will this Act undermine public safety?

This bill does not change our bail laws or court procedures. The District of Columbia courts and criminal justice system assess whether a defendant is a flight risk or a public safety threat. This Act does not release anyone into the community who is not otherwise eligible to be released. Inmates are only released from custody once they have served their time and have earned their freedom. Or, while charges are pending, a judge may determine that it is safe to release an inmate on bail or on their own recognizance until they are ordered to appear in court.

This policy ensures that everyone in our system is treated equally. United States citizens charged with crimes are released on bail every day. There is no justifiable reason to treat people's criminal cases differently just because they are suspected of having civil immigration issues.

Will this Act undermine the District's ability to protect our national security?

The detainer is an immigration tool. If District officials believe that someone presents a national security threat, they can act on it. But they should do it based on evidence, not speculation and innuendo.

⁴ *National Day Laborer Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE)*, Case 1:10-cv-03488-SAS. Under documents obtained in FOIA litigation, documents revealed the following. ICE FOIA 2674.017695 includes: "Is an ICE detainer a request or a requirement? Answer: It is a request. There is no penalty if they don't comply." ICE 2 FOIA2674.020612 includes: "Local LE are not mandated to honor a detainer, and in some jurisdictions they do not." ICE FOIA 2674.017773 includes: "A detainer serves only to advise another law enforcement agency that ICE seeks an opportunity to interview and potentially assume custody of an alien presently in the custody of that agency." These documents are on file with the author or available at www.uncoverthetruth.org. See also *Buquer v. City of Indianapolis*, --- F.Supp.2d ---, 2011 WL 2532935 (S.D. Ind. 2011) ("A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency 'advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.'")

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:**

- ☐ Initiated an investigation to determine whether this person is subject to removal from the United States.
- ☐ 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 flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **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 the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (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 the Department 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 or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

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)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un periodo no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).

Avís au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenu après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903.

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (现在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

**Public Testimony by Heidi Altman, Supervising Attorney at Georgetown Law School's
Center for Applied Legal Studies¹**

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

I would like to begin by thanking the members of the Judiciary Committee for supporting the Immigration Detainer Compliance Amendment Act and for inviting public comment on the bill. My name is Heidi Altman, and I serve as a Supervising Attorney at a legal services clinic for indigent asylum seekers at Georgetown Law School. I am speaking today in my own capacity and my views do not represent that of Georgetown Law School.

Today I will outline three proposed amendments that are vital to the efficacy of the Act. These changes are:

First: The Act is currently only binding on the D.C. Department of Corrections (DOC). We propose that it be extended to the D.C. Metropolitan Police Department (MPD).

ICE may issue a detainer to any local law enforcement agency, not only jails. In fact, we know that MPD already receives and complies with ICE detainers. This practice will become commonplace when Secure Communities is implemented in the District. As you know, Secure Communities is an information sharing program between ICE and local law enforcement agencies. The program works quickly. When an individual is arrested and booked at the local precinct, his fingerprints are sent to ICE. ICE can then – on even the flimsiest suspicion of unlawful presence – issue a detainer and assume custody of the individual. This process often unfolds before the individual has even seen a criminal judge.

Under the Act as it is currently drafted, MPD will be free to comply with detainers for individuals who have been targeted by ICE before they have even been arraigned by a judge on their current charges. Applying the Act's restrictions to DOC and not to MPD will result in an arbitrary policy that does not reflect the District's fiscal or ethical priorities.

Second: The Act currently allows for local jails to comply with immigration detainers for those recently convicted of a dangerous crime or a crime of violence, both defined by D.C. law. However, as drafted this category includes some minor offenses. We therefore recommend an additional requirement of an imposed sentence of three years or longer, excluding suspended sentences.

Although the categories "dangerous crime" and "crime of violence" sound quite sinister, in actuality they encompass some minor offenses for which most D.C. criminal court judges would not require a defendant to serve any time in jail. For example, an individual arrested and convicted for setting fire to a trash can might be convicted of a "dangerous crime" if that fire accidentally spread to the shingles of a nearby home. This misdemeanor offense would likely

¹ Institutional affiliation is provided for identification purposes only.

not carry any sentence of imprisonment, but under the Act as currently worded the individual would be transferred to the immigration detention and deportation system.

The solution to this problem is to limit the category of those subject to detainers by requiring that a sentence of three years or longer have been imposed for the crime. This requirement must exclude suspended sentences. Suspended sentences are extremely common in D.C. courts and are ordered by a judge when he believes a defendant is not a risk to the community and deserves to be given a second chance and released under the supervision of probation.

It is in the District's best interests to let the criminal justice system do its job and to respect the decisions of our criminal judges. As the Act currently stands, the District will continue handing D.C. residents over to federal immigration enforcement even when a D.C. criminal judge has determined they do not pose a danger to our community.

Third: The Act should require MPD to remove "place of birth" information from its booking form and require DOC to remove such information from its detention classification form.

There is no legitimate law enforcement function to be served by seeking place of birth information on booking and detention classification forms, which traditionally gather identifying information such as name, date of birth, and social security number. In fact, including such information only leaves the District vulnerable and legally liable to claims of racial profiling.

We know that MPD and DOC currently share information with ICE and will do so on a much larger scale after Secure Communities. What we don't know is on what basis ICE makes determinations of unlawful presence after this information has been shared. Our best guess is that "place of birth" information is often used as a proxy for unlawful status. Yet nearly 40% of the District's foreign-born residents are naturalized United States citizens.² Recent reports document a terrifying trend across the country, where local jails are wrongfully holding United States citizens on the basis of unlawful immigration detainers.³ By removing place of birth information from our booking forms, the District will make clear it wants no part in this shameful practice.

Thank you for your time.

² These numbers are made available by the United States Census Bureau 2010 American Community Survey 1-Year Estimates, Selected Social Characteristics, at <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

³ See, for example, Julia Preston, "Immigration Crackdown Also Snares Americans," New York Times, Dec. 13, 2011.



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Testimony in Support of the Immigration Detainer Compliance Amendment Act of 2011

Jaime Contreras
District Director, SEIU 32BJ

Good afternoon Chairman Mendelson and members of the committee. Thank you for inviting me to speak in support of the Immigration Detainer Compliance Amendment Act of 2011. My name is Jaime Contreras. I am the 32BJ Capital Area Director and SEIU Maryland-DC State Council President. 32BJ members come from 64 different countries, speak 28 different languages, and represent a microcosm of immigrants across the country. In the District of Columbia, our members are the janitors and security officers who work hard every day to maintain the safety and cleanliness of the city's office buildings, and universities.

I am here today because the wellbeing of our members and the communities in which they live is jeopardized by immigration policies that shift the burden of immigration law enforcement from the federal government to localities. An increasing number of states and localities have succumbed to federal pressures to act as enforcement agents of national immigration policy. The adoption of such policies, like detainer requests by ICE, creates a bifurcated justice system with disparate penalties for immigrants and non immigrants and unnecessarily separates dependent children from their parents.

With so much at stake D.C. should not follow blindly in this vein. Passing the Immigration Detainer Act would place common-sense conditions on ICE requests so that D.C. residents imprisoned for minor offences are not subject to detainment. Towards this end, the act should go further in explicitly specifying that detainers are only complied with in cases where there is a conviction of serious criminal offence. The Act should also require the Metropolitan Police Department and Department of Correction remove "place of birth" from their booking and detention forms. Adopting these amendments could lessen the unnecessary diversion of resources towards harsh punitive measures that do more harm than good for the broader community.

Additionally, by more clearly delineating the role of local police and federal immigration enforcement this legislation supports the ability of D.C. police to fulfill their primary charge and protect the public. The implementation of punitive measures like compliance with detainer requests in other states and localities fosters a distrust of law enforcement and prevents local residents from coming forward with serious public safety concerns for fear of deportation.

The immigration Detainer Compliance Amendment Act of 2011 will ensure that local law enforcement is able to focus on maintaining the public safety without deferring scarce resources to divisive tactics that carry a high cost for immigrants and their families. This legislation is a significant step towards a broader re-balancing of state and federal enforcement of the nation's immigration laws.

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**Public Testimony by Tim Curry, Supervising Attorney,
Criminal Division, D.C. Law Students in Court**

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

Thank you to the Members of the Committee for supporting this important legislation. My name is Tim Curry. I am a Supervising Attorney in the Criminal Division of D.C. Law Students in Court, where I represent indigent adults charged with crimes and juveniles charged with delinquent acts in D.C. Superior Court. I also teach a criminal defense clinical seminar for law students at George Washington and Catholic University law schools.

I am here today to discuss how immigration detainers operate in the District in light of my experiences. To be honest, it has always been a bit of a mystery to me how ICE manages its detainer operations because it appears, in practice, to be entirely haphazard. What I do know is that, even under the current system, if ICE decides to act against one of our clients prior to their trial, the criminal justice system is completely side-stepped.

One example is a recent client of mine who was arrested on misdemeanor charges of assault against his roommate and who was picked up by ICE directly from arraignment court. For weeks, my students and I tried to locate this client, to no avail. Despite the fact that we were his attorneys in that case, we were given no information as to his location or whereabouts, and our efforts to contact ICE were rebuffed at every turn. Ultimately, the US Attorney's Office was forced to dismiss the charges against my client because even their office was unable to find where he was being held. In this case, not only did ICE preclude the criminal justice system from doing its job, it also stripped my client of his right to counsel, a right protected by the Sixth Amendment of the United States Constitution.

There are many ways in which the District's blanket policy of compliance with ICE detainers disrupts the proper functioning of the criminal justice system.

First, unlimited compliance with ICE detainers renders meaningless the authority granted to D.C.'s criminal court judges during initial detention proceedings. By statute, a D.C. judge may not release an individual unless he determines that individual does not pose a danger to the community and does not pose a risk of flight. However, with the introduction of ICE detainers, a judge may find a defendant is not a danger and not a flight risk only to see that individual sent off to jail regardless because of a civil immigration detainer. That detainer is not a criminal warrant, yet current policy gives D.C. DOC and MPD the authority to give it greater weight than the determination of a criminal court judge.

Second, blanket compliance with ICE detainers takes away the local police's ability to exercise discretion during the arrest process. When an MPD officer makes an arrest, he has the discretion to choose whether to hold the individual until his arraignment or to issue a citation, releasing the individual with a notice to return to court at a later date. Under current policy, however, a police officer may determine an individual not to pose any threat to public safety and

issue a citation only to learn that he is nonetheless required to hold the individual on a civil immigration detainer.

Third, the mere presence of an immigration detainer handicaps the operation of innovative alternative to incarceration programs that allow my clients to receive deeply needed drug and mental health treatment programs. Each of these "diversion" programs requires that defendants be released into the community so that they can receive some kind of services, such as out-patient drug treatment, psychological counseling, or to participate in restorative justice programs like mediation, which tackle the community-based conflicts that may have led to the violations. Because these programs require an individual's release, those with ICE detainers are automatically ineligible for these programs.

These concerns are all real today. But the driving force that brings me here today is my fear that these problems will explode out of our control when Secure Communities is implemented in the District. We know from localities where Secure Communities is already active that the number of detainers issued to DOC and MPD will skyrocket when the program comes to the District. In the District, we trust our local police officers and our local criminal court judges to use their discretion to determine who poses a risk to public safety and who does not. Secure Communities will upend these determinations. The implications are wide ranging, including overcrowding in the prisons, ballooning MPD and DOC budgets, and a community increasingly distrustful of local law enforcement.

By blindly complying with all immigration detainer requests, our local government is complicit in all the ways in which ICE interferes with our criminal justice system. I urge you to support the Immigration Detainer Compliance Act and to ensure that it is passed with the necessary provisions in place so that our criminal justice system can continue doing the job our communities trust it to do – namely extending the Act's restrictions to the MPD, and limiting those subject to detainers to those with sentences of three years or longer, excluding suspended sentences.

Thank you.

Ivania Teran
Latino Economic Development Corporation
2316 18th St
Washington, DC 20009

Chairperson Phil Mendelson, Committee on the Judiciary
Public Hearing: Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good afternoon, my name is Ivania Teran. On behalf of the Latino Economic Development Corporation, I am here to voice our strong support for the Immigration Detainer Compliance Amendment Act of 2011. For 20 years, LEDC has equipped Latinos and other DC-area residents with the skills and financial tools to create a better future for their families and communities. Participants in our programs learn how to buy and stay in a home, take control of the decisions affecting their apartment buildings, and start or expand small businesses. Thank you for this opportunity to testify.

At LEDC, a big part of our success in working with the immigrant community is connected to the trust we have built with the people who walk through our doors every day. We work every year with hundreds of working families that deserve to live in affordable homes and own successful small businesses, and many have realized their dreams because we speak in their language and provide them with the skills and tools to make significant contributions to the local economy. Whether we work with entrepreneurs, renters, or homeowners, we earn that trust by creating an environment in which we recognize their inherent value and contributions to their communities as DC residents regardless of their immigration status.

Unfortunately, these successes are put in peril when programs like Secure Communities create distrust within a diverse community that prides itself on treating citizens and non-citizens equally. We believe the Immigration Detainer Compliance Act is a valuable measure to save the District dollars, keep families together, uphold basic principles of fairness, and restore public trust between local police and the immigrant community. Our values coincide with this legislation that ensures that local jails will not facilitate deportation for D.C. residents with only minor or old criminal convictions. When immigrants live in stable housing and own thriving businesses, they create economic opportunity for their children and future generations, and we need to do everything we can to make sure that D.C. youth will not be funneled into the immigration detention and deportation system from local jails.

DC residents deserve better. When D.C. residents see local police and local jails delivering their loved ones into the hands of federal immigration enforcement, they lose trust in the police and the criminal justice system. They become afraid to report crime or to serve as witnesses. They don't realize their full potential and strengthen the roots they have in their community. This is true not only for non-citizens but for the many D.C. residents who are U.S. citizens but have close family members who are not.

We are proud to support this Act that will ensure that citizens and non-citizens alike are treated equally by the District's criminal justice system. By handing D.C. residents over to a broken immigration detention and deportation system, the District shattering its own communities and uprooting years of economic opportunity that have benefited the District for decades. Thank you.

**Immigration Detainer Compliance Amendment Act of 2011
Bill 19-585
Committee on the Judiciary
January 6, 2012**

**Testimony of
Phillip Fornaci
Director, D.C. Prisoners' Project
And Laura Varela,
Director, Immigrant and Refugee Rights Project
Washington Lawyers' Committee for Civil Rights & Urban Affairs
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Thank you for this opportunity to provide testimony on Bill 19-585, the "Immigration Detainer Compliance Amendment Act of 2011." It is heartening that this bill has the full support of the Mayor and the entire D.C. Council. As advocates for D.C. prisoners and immigrants, we join the Council and Mayor in strongly supporting Bill 19-585.

As this Committee is aware, the DC Department of Corrections (DOC) has for many years been holding immigrants at the request of U.S. Immigration and Customs Enforcement (ICE) in the D.C. Jail. Such informal detainers were, and remain, illegal bases upon which to incarcerate someone who would otherwise not be held at the Jail. The DOC has held people for six months and longer, using questionable legal reasoning. Even now, prior to enactment of this bill, the practice of incarcerating detainees on an ICE detainer who would otherwise not be held is illegal. It is disturbing that the DOC carried on such a practice for so many years, despite its legal liability for doing so.

Because these informal detainers do not provide a legal basis for detention, and due to the growing attention to this issue in D.C., it is very likely that the DOC would face expensive litigation and court-awarded damages in some of these matters if the law remained unchanged. The mere fact that such litigation had not previously been brought against the District should in no way detract from the inexcusable fact that the practice remains illegal. This bill will save D.C. from potential damage claims in the future, with potentially significant costs of litigation and ensuing legal damages claims. But more importantly, the bill will ensure that the DOC will discontinue this illegal and inhumane practice.

We and many other advocates for DC prisoners and detainees also support this bill because holding ICE detainees in the D.C. Jail adds to overcrowding pressures. Overcrowding is a constant problem at the Jail. Even in the best of circumstances, the Jail is a difficult facility to manage. When overcrowded, pressures on staff, resources, and prisoners become acute. Although we understand that current figures are a bit lower, as of October 2011, the Jail population was running slightly below its maximum capacity of 2,164 figure. It is important to

recognize that this maximum capacity number significantly is higher than the 1,674 population cap imposed through 2002 by the federal District Court in *Campbell v. McGruder*. Even at today's current "lower" population level, the Jail is still very crowded. Adding ICE detainees to this population makes the Jail a more dangerous and unmanageable place. For many ICE detainees, English is not their first language, adding communication and cultural challenges to the other stresses on the Jail environment. Ending the practice of holding detainees at the Jail is a small, but commonsense solution.

The bill's bar on making incarcerated persons available for ICE interviews without a court order clarifies the very different roles of the DOC and ICE. The function of the DOC is to hold its population in a safe and humane environment, providing basic services while also providing programs and services to help released inmates reintegrate into society. The DOC can play a productive role in maintaining public safety and improving the lives of DC residents by working within its legal mandate. Working outside that mandate, at the behest of federal agencies, complicates the work of the DOC and creates unnecessary complications. Allowing the DOC to also facilitate immigration detention and, ultimately, deportation actions complicated the mission of the DOC, left it open to unnecessary litigation, and caused unnecessary suffering for those ensnared in this practice.

We also commend the remarks of DOC Director Faust in response to Committee questions prior to his confirmation hearing. In those remarks, Mr. Faust committed his full support to the bill, and to the Mayor's executive order on the same topics. This is a welcome change of policy at DOC, and in the District as a whole.

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**Testimony of Andrea L. Rodriguez, Esq., Director of Legal Services for CARECEN
to the Committee on the Judiciary, on the Immigration Detainer compliance Amendment
Act of 2011, Bill 19-585:**

January 6, 2012

Washington, DC

Thank you Councilmembers for the opportunity to speak to this committee on the Immigration Detainer Compliance Amendment Act of 2011.

My name is Andrea Rodriguez, I am the Director of Legal Services at CARECEN, a community-based organization in Washington, DC. CARECEN was established in 1981 to protect the rights of refugees from Central America and provide direct legal services that would ease their transition in this country and city. Over time the organization has evolved and grown with the population serving all Latinos and into broader areas of community service and economic development, and continues to provides legal services in immigration law to Latinos in the District. Primarily, we work to unite family members by helping clients navigate the confusing and skewed world of immigration law. We also guide clients who are victims of violent crimes through the Crime Victims Compensation Program and accompany them to police precincts and the court. If necessary, we refer them to counseling, and crisis centers as well. We also work with family members whose loved ones are detained by Immigration and Customs Enforcement and in the process of deportation. We regularly represent clients in Immigration Court and work to avoid deportation of individuals in order to keep families together. To someone who's parent, or loved-one is in ICE custody, it's more than a potential deportation, it's

a banishment from this country, a world of loss, and uncertainty as to whether you'll see your child, your parent, or husband/wife, ever again.

Some, whether documented or undocumented, express fear and nervousness when it comes to police matters, just because they fear deportation. Some even seek advice as to whether they should report a crime committed against them. This fear is not unrealistic. Picture this, a man left unconscious and bleeding on the street after being violently robbed. A police officer arrives at the scene and checks his identification. As he lays unconscious, the officer searches his background finds an old deportation order under his name, and reaches ICE to see if they want to pick him up. Lucky for him, they advise the officer to call for medical attention first. All this occurs before calling an ambulance. It was later found that he had a cracked skull, broken jaw, and now suffers permanent visual loss. This man had never been arrested for a crime. This is not an uncommon story, nor a surprising one in the immigrant community. We worked with this gentleman to obtain a U-Visa, which provides temporary immigration status to victims of certain qualifying offenses.

CARECEN supports passage of Bill 19-585, the Immigration Detainer Compliance Amendment Act because it sets reasonable limitations on the collaboration between the city and ICE in order to avoid further harm to D.C. residents. We base our concern on the real impact this collaboration has had in the community and the residents we serve. For the sake of public safety, the city cannot afford a continued "chilling effect" when it comes to reporting crimes, cooperating with police, and serving as witnesses. Not only does it impose a financial burden on the city, but it thwarts the trust between immigrant communities and the police, jeopardizing the effectiveness of the criminal justice system. Most importantly however, it avoids the unnecessary, and devastating separation of family members. Again, we support passage of Bill

19-585 by limiting collaboration between the City and ICE, given its adverse effects on the community. It will save valuable resources for the city, but will also protect D.C. Immigrants from a broken and skewed federal enforcement policy.

Thank you for listening.



Committee on the Judiciary Hearing on

B19-585, Immigration Detainer Compliance Amendment Act of 2011

January 6th, 2012

Testimony of:

Amy Loudermilk, Senior Policy Specialist

DC Coalition Against Domestic Violence

Good afternoon. My name is Amy Loudermilk, Senior Policy Specialist for the District of Columbia Coalition Against Domestic Violence. Thank you, Chairman Mendelson, Councilmember Graham and members of the Committee, for your leadership in protecting the rights of immigrant citizens of the District including survivors of domestic violence. Today's hearing on the Immigration Detainer Compliance Amendment Act of 2011 ("the Act") reflects your commitment, but needs to go further to provide complete protection for survivors of domestic violence. We strongly urge the Council to pass this bill as soon as possible and to expand its scope by adding the Metropolitan Police Department to the agencies impacted by the requirements of this bill.

In 2010, the Council acted swiftly to stop the implementation of Secure Communities in the District. By doing so, the Council recognized the importance of creating a strong barrier between local law enforcement and federal immigration enforcement. The Secure Communities program jeopardizes public safety for all District residents, especially survivors of domestic violence. The legislation before us today is another critical step in strengthening that barrier and ultimately protecting victims of domestic violence.

When an immigrant victim is in an abusive relationship, the abuser can use their own or the victim's immigration status as a tool to threaten and control them, keeping them from reaching out for life-saving help for fear of immigration repercussions. In one survey of Latina immigrants who experienced domestic violence in the area, 21.7% listed fear of being reported to immigration as their primary reason for remaining in an abusive relationship and/or not seeking police protection.¹ Immigrant victims of domestic violence are more likely to face dual arrests when police are called, often due to language barriers. This means that the police arrest both the abuser and victim because they cannot determine which party is the primary aggressor. In the District this often means that the U.S. Attorney's Office then does additional investigation to determine who is the true aggressor and drops the charges against the victim. Local police and Immigration & Customs Enforcement (ICE) collaborations that target individuals at the time of arrest rather than at the time of conviction thus end up penalizing true victims of domestic violence in addition to abusers. Immigrant survivors also fear calling police to report domestic violence because they fear the legal consequences. If an abuser is deported, survivors can lose the sole income that supports their family, and the deportation of an abuser can ultimately increase the danger to the survivor if the abuser re-enters the country.

It is imperative that this legislation also cover the Metropolitan Police Department so that survivors of domestic violence can call for the help they need without fearing the worst for themselves or their family. The Act's current reach over the Department of Corrections (DOC) will ensure that abusers serving terms or arrested and transferred to DOC for common domestic violence crimes like simple assault will not easily face

deportation. However, it is imperative that an abuser or survivor in MPD's custody is afforded the same rights; at that point, they have not even been convicted of a crime. Covering MPD will give survivors greater protection from ICE intervention and allow them more assurance and better outcomes – both in terms of safety and security.

Today you'll hear from domestic violence experts in the District and one survivor's harrowing story of the perils of ICE involvement.

Jaime Farrant, the Executive Director of Ayuda, an agency that specializes in serving immigrant survivors, will explain further why immigrant survivors hesitate before reaching out to law enforcement and will give perspective on what they have seen happen to their clients in the District.

Elisabeth Olds, Co-Executive Director of SAFE, will share statistics about the increase in fear among immigrant survivors as Secure Communities and other local police/ICE collaborative programs are implemented. She will also share stories about what happens after an abuser is deported, how it increases fear and actual danger.

And finally Sandra Lopez Alvarenga will share the story of what happened when MPD arrested her abuser and then he suddenly disappeared from their custody. It is precisely because of cases like hers that we are asking the Committee to amend this bill to also apply to MPD.

Acting quickly to increase public safety by passing this bill will do help protect all residents of the District, and expanding the bill to include MPD custody will give the District the best possible safeguards for victims of domestic violence. Thank you for the opportunity to testify today and I'm happy to answer any questions you may have.

¹ Marry Ann Dutton et al., Characteristics of Help--Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas, 7 Geo. J. on Poverty L. & Policy 245, 271 (2000)

AYUDA
Executive Director Jaime Farrant's Testimony to the Honorable Council of the
District of Columbia in Support of the Immigration Detainer Compliance
Amendment Act of 2011, B19-585
January 6, 2012

My name is Jaime Farrant, and I serve as Ayuda's Executive Director. Ayuda is a Washington DC registered non-profit organization that, since its founding in 1973, has existed to protect the rights of low income immigrants in the Washington DC area. We are here today to express our support of the Immigration Detainer Compliance Amendment Act of 2011, B19-585. We believe that it is a good first step towards both protecting DC taxpayers from seeing their taxpayer dollars go to unnecessary detention costs instead of education and healthcare and a needed initiative to protect our immigrant community, and particularly, those who are victims of violence, so that they do not heed to abusers' threats and instead seek justice for them and their families.

Immigrants arrive to our nation - and District - carrying fears and experiences from their home countries. One of the life lessons many carry is that police cannot be trusted and that, when you are in trouble and need help, you must run away from instead of towards them, as they are seen as corrupt and unhelpful. Consequently, in cities such as ours, where we have a thriving global community that includes people from across the globe, authorities must be especially thoughtful in their interactions with immigrant communities, so that trust is built and immigrants can abandon their fears of authority as they adapt to life in our country. If their fears of authority are not overcome, crimes will not be denounced and criminals will be able to roam freely and with impunity. When local authorities attempt to enforce immigration law, many immigrants and people with mixed status families will be needlessly afraid of them, which will only make our communities less safe. When this happens, we all suffer.

Ayuda recently worked with an immigrant DV victim, who we will call Ms. H, which shows the need to have police that can effectively work with immigrants. Ms. H lived in VA for the last 7 years with her U.S. citizen partner and father of her three children. For years, he was physically abusive to her, often punching and shoving her in front of the children. Ms. H's partner, a US citizen, spoke English well and regularly told her that police would never believe her if she ever denounced the abuse, as he was an American who spoke English and she was an undocumented immigrant who did not. He would often tell her that police would arrest and deport her if she ever denounced him. In late 2010, after her partner tried to choke her, Ms. H called 911. The police responded 15 minutes later but did not bring an interpreter. Due to the language

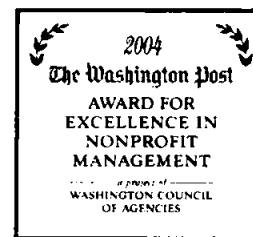
barrier, Ms. H was unsuccessful in communicating with them. However, the police did speak to the abuser, and as he predicted, police left after talking to him.

He then began to beat her as punishment for calling authorities. Ms. H called 911 a second time and asked for a Spanish interpreter. The police showed up again without one. Once again, Ms. H tried to no avail to communicate with them. The police left the scene after speaking with her attacker. Ms. H left the house and went to a neighbor, who drove her to the hospital where she was treated for scratches and bruises from the beating. Ms. H was released from the hospital the next day and came back to the house, hoping to see her children and an end to the violence. Her partner had been drinking that day and was furious with her for spending the night at the hospital. He began hitting and punching her again. Ms. H decided to call 911 a third time. Once again, the police showed up without an interpreter. This time, Ms. H's partner spoke with the officers for an extended period of time in English. Once they finished talking, the officers placed Ms. H under arrest, despite the fact that she had bruises and scratches on her body. Later, Ms. H learned that her partner had accused her of stealing \$2,000 in cash from him. She was then detained at a local jail while awaiting trial. When she finally came before a judge, the charge against Ms. H was dismissed and the judge criticized the prosecutor for "wasting his time." However, by that time, she had already been summoned to appear before immigration officials, effectively turning a victim into a *de facto* criminal, while her accuser roamed free.

Passage of the Act will allow people like Ms. H to be less fearful of authorities when seeking help. It will allow police to tell immigrant communities that they are encouraged to seek help. Finally, it will help DC's taxpayers, who will not have to incur in detention costs for people that clearly do not belong in prison. In sum, all sides win.

However, the bill is not as effective as we would like it to be. Although it is much welcomed, we certainly would like for it to be drafted in a way that allows women like Ms. H to be 100% fully confident in their knowledge that they will not face extended queries and possible discrimination stemming from their birthplace or immigration status, and that they can be fully protected from their abusers.

In conclusion, we thank the Council for filing this bill and strongly call on it to pass B 19-585 as soon as possible. However, we also respectfully request the Council to expand the Act by adding the Metropolitan Police Department to the agencies impacted by the bill's requirements and by ensuring that persons in situations such as Ms. H can be as fully protected as they can be from worries, threats and danger. That way, we can continue working together towards having a better, safer and healthier District.



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**Testimony of Allison Miles-Lee
Staff Attorney, Bread for the City
D.C. Council Committee on the Judiciary
Public Hearing on B19-585: Immigration Detainer Compliance Amendment Act
of 2011**

Good afternoon. My name is Allison Miles-Lee. I am a staff attorney at Bread for the City, a not-for-profit organization in Washington, D.C. As a domestic violence attorney working with the immigrant community, I am concerned about the potential impact of the threat of Immigration and Customs Enforcement (ICE) detainers on my domestic violence survivor clients.

One client's experience in particular illustrates this potential problem. Sonia is a young woman who I recently represented in obtaining a Civil Protection Order (CPO) against her ex-boyfriend, Miguel, the father of her three-month old daughter. During the course of her four year relationship with Miguel, Sonia suffered extreme physical and emotional abuse. Miguel told Sonia that if she ever called the police and he got deported to El Salvador as a result, he would find her family in El Salvador and hurt them. Miguel was detained and deported once before, but he was back in D.C. within two weeks. Sonia knew that if Miguel were ever deported because of her, he could not only harm her family in El Salvador, but he could find her in the U.S. and hurt her, too. So, she never called the police for help.

After Sonia's daughter was born this fall, Miguel's abuse towards her only worsened. One evening, he attacked her while she was holding their sleeping baby-throwing a plate at Sonia's head and punching her in the face. Another night, he became enraged while drinking and punched her in the jaw. Following Sonia into the apartment building hallway while she screamed for help, Miguel dragged her by the hair and grabbed her arm, body slamming her into the doorway. Sonia was terrified. When Miguel left that night, she was able to get her baby and flee to a friend's place. She decided to leave Miguel for good, but she was still scared to call the police.

Miguel still wouldn't leave Sonia alone. He called and harassed her for days. He burned the belongings she left behind in their apartment, and sent her text message photos of her things on fire. Finally, Sonia's friend convinced her to call the police. Miguel was arrested, and the next day Sonia went to court to file for a CPO.

I agreed to represent Sonia in her CPO case, and immediately set about trying to locate Miguel. We had proof that he was served the CPO in MPD custody, and it appeared that he had been released. However, Miguel's friends were calling Sonia and telling her that he was in immigration detention. She didn't know if the phone calls were meant to trick her so that she would let her guard down. I could find no trail for Miguel after he was released by MPD. I called the Department of Corrections and they had no record of him. I wasn't able to initially confirm whether

he was in ICE detention. Sonia was terrified, not knowing where Miguel was. We finally found Miguel in a Virginia ICE detention center, using an alias, and Sonia got a default CPO that protects her for one year. Now, though, she doesn't feel any safer. After all, the last time Miguel was deported, he was back in D.C. within two weeks. This time, he will blame her for his deportation.

Secure Communities is not even in effect yet in D.C., but somehow Miguel's arrest by MPD triggered an ICE detainer. Survivors should be able to call the police without fear that their action will lead to the abuser's deportation. We strongly urge the Council to pass this bill as soon as possible and to expand its scope by adding the Metropolitan Police Department to the agencies impacted by the requirements of this bill. Thank you.

Ronald E. Hampton, Executive Director
Blacks in Law Enforcement in America

Testimony

Bill 19-585
Immigration Detainer Compliance Amendment Act of 2011
Washington, DC City Council

Friday, January 6, 2012

My name is Ronald E. Hampton, executive director of Blacks in Law Enforcement in America. Additionally, I am a twenty-four year retired veteran of the Washington, DC Metropolitan Police Department. I spend my law enforcement career working and living in our city's most culturally diverse police district.

The Third Police District's Latino population was at that time and probably now the largest in Washington, DC and sometimes a very difficult community to work in because of the lack of understanding the language and culture of the Latino community.

First of all, I would like to commend Mayor Vincent Gray's Executive Order continuing to identify Washington, DC as a safe place for our immigrant community and its members.

Along with the mayor's executive order, Blacks in Law Enforcement in America would like to go on the record in support of Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011.

Local police departments should not be tricked into the enforcement of immigration civil violations that is legally the job of the Federal Government and should be conducted by federal agents. These activities are counter productive to a community policing police department.

Community policing calls for the building of problem-solving partnerships between the police and the communities they serve. In essence, it is designed to solve community problems rather than just react to them. It redefines the role of the officer on the street, from crime fighter to problem solver.

Permitting Secure Communities will prevent our police department from successfully and properly carrying out the community policing problem solving philosophy. Secure Communities will not provide the necessary relationship and partnership building foundation needed to create trust and confidence needed by law enforcement for real public safety. The lack of trust and confidence in the police by our immigrant communities will enable crimes and other public safety related concerns to go unreported.

Finally, this legislation (Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011) closes the loop not covered by Mayor Gray's Executive Order. In that regard, the Blacks in Law Enforcement in America supports Bill 19-585 and its passage.

Thank you for the opportunity to present our testimony. I am available if you have any questions.



*Working to ensure all immigrants are treated with fairness,
dignity and respect for their human and civil rights.*

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**Testimony of Kathryn M. Doan, Executive Director,
Capital Area Immigrant's Rights Coalition
in support of Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012**

Good afternoon,

My name is Kathy Doan and I am the executive director of the Capital Area Immigrant's Rights Coalition, also known as CAIR Coalition. I have also been a resident of the District of Columbia for nearly 30 years. I am here to testify in support of the Immigration Detainer Compliance Amendment Act of 2011.

For the last decade, CAIR Coalition, a non-profit organization based in DC, has been at the forefront of immigrant advocacy and coalition building in the greater Washington, DC area. We have three program areas which serve immigrants from DC, Maryland and Virginia. These program areas include direct legal services, education and training and advocacy/coalition building.

CAIR Coalition is the only non-profit organization in the Washington area with a legal services program dedicated exclusively to assisting detained immigrants. We currently provide detained immigrants who are being held by Immigration and Customs Enforcement (ICE) in jails in Virginia and Maryland with a variety of legal services, including group legal orientations, individual consultations, brief counsel and advice, self-help workshops and placement with *pro bono* counsel. In 2010, we expanded our legal services program to include unaccompanied immigrant children being detained in two juvenile facilities in Virginia.

Because ICE does not maintain a detention facility in DC, any immigrant arrested by ICE in the District is held at one of three jails in Virginia. The two facilities holding the majority of ICE Detainees from Virginia and DC are the Hampton Roads Regional Jail in Portsmouth, VA which is 200 miles from the District, and a privately owned jail in Farmville, VA which is 170 miles from the city.

Currently, only a small percentage of immigrant detainees in Virginia are from the District. However, we can expect this number to grow significantly if the DC Council fails to pass the Immigration Detainer Compliance Amendment Act of 2011. This Act is a common-sense measure that seeks to mitigate the devastating impact that ICE's Secure Communities program will have on District residents and their families if the program is allowed to function in the District without any restrictions.

We have already seen how the implementation of the Secure Communities program in Virginia has led to a significant increase in the number of immigrants in ICE detention. At the time Virginia implemented Secure Communities state-wide in June 2010, the average daily population of detained immigrants in Virginia was around 550. A year and a half later, the average daily population of detained immigrants is over 850.

ICE has repeatedly justified the Secure Communities program by saying that it prioritizes the removal of criminal aliens who pose a threat to public safety. However, according to data from the Department of Homeland Security, in FY 2011, 55% of those immigrants deported under the Secure Communities program had only misdemeanor convictions or no criminal record at all. Thus, the majority of immigrants detained under the Secure Communities program are not violent criminal offenders - ostensibly the target of the program.

The fact that over a quarter of the individuals arrested under the Secure Communities program had no criminal convictions at all strongly suggests that many of these individuals were the victims of racial profiling or of pretextual arrests in which the goal of the arresting police officer was not to charge the detainee with a crime but to have their prints run for immigration purposes. Such actions not only serve to make members of the community afraid to call the police lest they end up in removal proceedings, but it also is a misuse of law enforcement resources.

The provisions of the proposed Immigration Detainer Compliance Amendment Act of 2011 simply help to insure that the Secure Communities programs operates as intended by only responding to detainer requests pertaining to those individuals who truly pose a danger to the community. The act will also safeguard District resources by insuring that law enforcement dollars are expended on legitimate law enforcement activities and not in enforcing civil immigration laws. CAIR Coalition also encourages the DC Council to further strengthen the proposed Act by adding the following three amendments:

- Extending the Act's restrictions to the DC Metropolitan Police Department
- Limiting the Department of Corrections and the Metropolitan Police Department's Compliance with ICE detainers to those individuals convicted of a recent dangerous crime or a crime of violence for which a sentence of imprisonment of three years or longer was imposed, exclusive of suspended sentences.
- Requiring the District's law enforcement agencies to remove "place of birth" information on MPD's booking form and from DOC's detention classification form.

In talking about the Secure Communities program, it's important to remember that immigration detention not only has a profound impact on the detained individual, it can also have a devastating impact on the individual's family. According to a report issued by the University of California at Berkley's Chief Justice Earl Warren Institute on Law and Social Policy in

October 2011, 39% or more than one third of the individuals arrested through Secure Communities have a U.S. citizen spouse or child, meaning that approximately 88,000 families with U.S. citizen members have been affected by Secure Communities. If you add to that number, children and spouses who are legal permanent residents or in some other lawful immigration status, the extent of the impact becomes exponentially even greater.

During our weekly jail visits, CAIR Coalition staff members regularly see the fall-out from the Secure Communities program in VA. Let me share two stories that illustrate why it's so important that the DC Council pass the Immigration Detainer and Compliance Amendment Act of 2011 with the amendments recommended above.

Recently, one of our staff attorneys spoke with a group of five women in immigration detention in VA. The women were from various Central American countries and several of them had been in the United States for over a decade. All of them have children in the U.S. One morning they were on their way to a house cleaning job in Virginia when they accidentally made a wrong turn onto a local military installation. They made a U turn in an attempt to turn around and leave and were stopped by the police. As a result, the women, one of whom has a child who is seriously ill, are now in removal proceedings.

These women are not violent criminals; they do not pose any type of threat to public safety. They are hard working, contributing members of our community. They are most assuredly not - by ICE's own admission - the type of immigrants who are to be targeted by Secure Communities. Yet, without proper safeguards, we can expect that once Secure Communities is implemented in DC, these types of pretextual arrests by law enforcement will become commonplace in our city as well.

The second story involves an immigrant who was minding his own business in a local VA suburb when he witnessed a hit and run accident. He called the police and stayed there until their arrival. The police questioned him and ended up arresting him, charging him with being drunk in public. The gentleman is now in removal proceedings. It only takes a few such stories to circulate in an immigrant community before people stop calling the police. We do not want these stories to start circulating in DC. We want District residents to reach for the phone without hesitation when they or someone else needs help. Unfortunately, without the appropriate safeguards, the Secure Communities program, once it comes to DC, will inevitably result in far fewer immigrants reaching for the phone, meaning that crimes will go unpunished and people will go without the help they need.

In conclusion, if the District of Columbia is to remain a welcoming place for immigrants, the DC Council needs to insure that if it cannot stop the Secure Communities program from being implemented in DC, then at least the Council can insure that its scope is limited to impacting only those individuals who truly pose a threat to public safety. As a DC resident I am proud of my city's history of safeguarding the rights of immigrants by refusing to enter into the types of ICE/local law enforcement agreements that have lead to so much heartache elsewhere. If we are going to have something imposed on us, then at least we can take a stand and do everything legally permissible to blunt its impact on our immigrant neighbors so that we remain an open and welcoming city.

Thank you,

Public Testimony by Dr. Sheetal Patel Licensed Psychologist at Advocates for Survivors of Torture and Trauma¹

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

I would like to begin by thanking the members of the Judiciary Committee for supporting the Immigration Detainer Compliance Amendment Act and for inviting public comment on the bill. My name is Sheetal Patel, and I serve as a staff psychologist at Advocates for Survivors of Torture and Trauma (ASTT), which provides comprehensive mental health care and social services to survivors of torture and war trauma. An estimated 40,000 survivors live in the greater Washington DC area, many of whom reside in the District. I am speaking today in my own capacity, and my views do not represent those of ASTT.

Based on my experiences providing direct services to refugees and asylum seekers in Washington, D.C., I will discuss my concerns about the public safety implications of a cooperation among U.S. Immigration and Customs Enforcement, local jails, and District police. The clients we treat are seeking asylum through the Immigration Court system because their lives are threatened in their home countries, and they have a credible fear of persecution and even death. My clients have experienced torture and political persecution, at the hands of the government - including police officers - in their respective home countries. While feeling relief that they are in the United States and safe, my clients often report being afraid and wary of police officers. There has been a lot of recent attention put towards ICE, Secure Communities and deportations, which has led to an increase in anxiety and fearfulness. Clients do not know what their rights are here in the United States. They question if the law protects them, whether they are "illegals", are the police a source of safety and follow the law or is it acceptable for officers to treat people in ways that are inconsistent with the law?

Several clients have reported to me that they believe they are "illegals" (they are not as they are in a legal process for the right to stay) and do not know on what grounds they could be deported, if at all. This fear of deportation is a recurrent issue, due to media reports on the link among ICE, Secure Communities and deportations, as well as the role of local police in immigration. Furthermore, stories spread fast in immigrant communities about others who have been deported; the uneasiness and anxiety increases with every report heard. For our clients, the biggest fear held is deportation, since they left home to save their lives. Deportation is often seen as a death sentence.

One consequence of this climate of fear is immigrant vulnerability to workplace abuses. One client of mine with work authorization has been working for a home health aide agency, common for many of our female clients. This client shared with me that the company has been withholding wages from her, giving various excuses, such as a lack of funds or that they will pay her in the future. She, like many of our clients, lives paycheck to paycheck, and has suffered a great deal of distress not knowing if she will be paid that week. She had been experiencing this for months, and she finally left the agency when she realized that they were not going to provide

¹ Institutional affiliation is provided for identification purposes only.

consistent payment. She has demanded back-payment many times from the agency, with little success. When her case manager and I suggested she seek legal consultation, she became frightened, saying that she does not want to "make any trouble" with the law, due to her fear of deportation and need for safety. Consequently, her wages are still being withheld and from my understanding, this agency has engaged in similar criminal acts with other refugees and asylees. She has said repeatedly that the agency "does not do this to Americans", because it knows that immigrant populations are more vulnerable due to their fears of police and deportation. Simply put, they are less likely to report crimes to local police. I've heard several clients say they do not want to make trouble with the law, and that they do not want to be seen as criminals or as "bad" - for fear of adverse consequences in their asylum process or immigration status. Another client with work authorization was not paid the hourly rate he was promised from a local fast food chain. Again, I suggested legal consultation when his attempts to confront the manager failed; again, he refused because he was afraid of any negative affects to his immigration status. Another example is a client of mine who was victim to a violent crime and witnessed his friend and coworker murdered during a robbery in Southeast D.C. He is currently cooperating with detectives in the investigation, but he is terrified of retribution from the perpetrator and for his safety. He is reticent to speak to the detective on the case about this his rights or any possible protection, as he does not see the local police as an agency committed to public service. This is in part due to what he has heard from other immigrants about the role of the local police in other states - that they are immigration enforcers and have the power to deport.

The uncertainty of the relationship between the Metro Police Department and ICE, and the perception that local police are involved in immigration enforcement has led to greater fear and anxiety among the clients I see. There is a chain reaction among immigrant populations when they hear about the spike in deportations due to Secure Communities, which creates deep feelings of fear and insecurity. This often leads to greater psychological distress, a decrease in the reporting of crimes, and an increase in vulnerability to being re-victimized.

Public Testimony by Sarahi Uribe, National Campaign Coordinator at National Day Laborer Organizing Network, Ward 1 Resident

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act on
January 6, 2012 1:00 p.m.**

My name is Sarahi Uribe. I am a Ward 1 Resident and National Coordinator with the National Day Laborer Organizing Network. At NDLOM I lead a national advocacy effort to stop and reverse the harmful consequences of local police and Immigration and Customs Enforcement collusion. Locally, I lead a broad based coalition of community members and organizations that includes groups against domestic violence, civil rights, immigrant rights, labor, and faith groups concerned with family separation and deportations in the District.

I'd like to thank the Council for their leadership in unanimously supporting a bill to stop the implementation S-Comm last year, making DC the *first* city in the nation to reject the failed program. DC set off a wave of opposition by other cities and states in the metro area and the nation that also valued public safety and immigrant families. I would again like to thank the Council for unanimously co-sponsoring Bill 19-585, Immigration Detainer Compliance Amendment Act—a policy that protects hundreds of DC families from the threat of deportation.

I am glad to report that this policy is beginning to spread across the country in other cities that recognize the importance of immigrant communities and community policing. Cook County, Illinois, which includes the city of Chicago and one of the largest jails in the nation, was one of the first places to adopt such policy. Shortly after, Santa Clara County, California adopted a similar policy. And most recently the city of New York. In San Francisco County the Board of Supervisors passed a resolution last year urging the Sheriff to expand their existing ICE detainer policy. And several others jurisdictions are beginning to contemplate the policy, including the City of Los Angeles where recently the Congressional delegation asked the City Council to adopt the Santa Clara immigration detainer policy and “take immediate steps to mitigate the negative effects of Secure Communities on our constituents, citizens and immigrants alike.”

Enacting Bill 19-585 in DC would preserve trust with local police, protect hard-working families with US citizens children who pose no threat to public safety, and reinforce and modernize long standing DC policies that draw a bright line between local police and our criminal justice system and Immigration and Customs Enforcement.

On a personal note, this bill is dear to my heart because of my families' experiences with deportation. When I was in highschool my father was deported to Mexico after coming into contact with the criminal justice system. He left behind three US citizen daughters. My father was not present at my highschool graduation and he died the summer after I graduated from Yale University. Since then, I've lived in Washington DC—a place where

I have built a community and a place I am proud to call home.

Over the years I have seen the District do what's right by defending the rights of gays, women, immigrants, and its own right to have statehood. I am proud that DC is willing to stand up for itself and for its people. I urge the Council to swiftly pass this bill and continue its legacy of being a beacon for justice across the country.

I thank you for your time and look forward to working with the Council to pass this bill.

My name is Cindy Zavala. I am 19 years old and currently live in Ward 3 as a student at American University. I currently serve as Co- Director of the Latino and American Student Organization, where we hope to inform students at American University about immigration issues impacting DC. I have lived in the DC metropolitan area my whole life. Both of my parents immigrated to the United States from El Salvador. They settled down in Alexandria, Virginia, where I was born and raised along with my three younger brothers, Wilson, Kelvin, and David.

Living in the DC metropolitan area, my brothers and I learned about how privileged we were to have been born in the United States. We never had to experience the fears some of our friends and cousins go through. However, a few weeks ago my brother Wilson got into a car accident and he experienced what it was like to not appear on a record. Wilson was not appearing under my parents' car insurance and he did not understand why he did not seem to exist. It turned out that because Wilson had just started driving, my parents had not had the time to notify their car insurance yet. The fear he went through is the fear that one of our friends or cousins who are undocumented would have gone through, but worse. At the end of the day, my brother did have records to prove that he existed. Unfortunately, at the end of everyday many of our friends and family members do not have any identification to show to a police officer like we do. They are the reason why I support the Immigration Detainer Compliance Amendment Act of 2011.

Some of my friends and cousins do not trust our legal system in DC because they know that one simple encounter with a police officer could change their whole entire lives. For this reason, they live their lives avoiding the police and the criminal justice system at all cost. They feel that reporting crimes or serving as witnesses are too big of a risk for them. These feelings of fear spread and hurt members of our communities in DC.

In order to create safer communities in DC, it is crucial that we work to stop ICE detainers and its Secure Communities program throughout the District. Our law enforcement is suppose to be there to make us feel secure and for our support when criminal activity occurs. But with the presence of ICE Detainers, we instead feel threatened. We do not feel safe and this weakens our entire legal system.

Thank you for your time. I look forward to the Council addressing this very pressing issue that is impacting all members of our communities throughout DC.

TESTIMONY OF PRERNA LAL, COFOUNDER, DREAMACTIVIST.ORG

Dear Council Members,

Thank you for giving me a chance to speak on the Detainer Compliance Bill in front of you today. I just flew back to D.C. from California to make it to this hearing today.

My parents immigrated to this country when I was about 14 and they became legal residents over time. Right now, I am pursuing my second graduate degree at GW Law. And despite the fact that I appear accomplished on paper, I'm undocumented. I'm one of the thousands of immigrant youth who have grown up in this country and know no other home. And since I live in D.C., I am taxed without representation twice over.

Today I am representing thousands immigrants like me across the country, who have been targeted, placed in deportation proceedings due to Secure Communities, and fighting to live in the only country we call our home. Every X-Mas and New Year, when my law school peers are on vacation, I remain busy getting undocumented youth across the country out of detention facilities. Currently, I'm working on the case of Hadi Zaidi -- a young man with a lot of promise who is locked up in a detention facility awaiting deportation to Pakistan -- a country he has not seen since he was brought here at the age of 4. His grandmother is a U.S. citizen and his parents are legal permanent residents so why is he locked up in a detention facility without possibility of bail? Because he was born in Pakistan. That's what ICE officials tell us. Let us get one thing straight - Hadi is no criminal. He does not even have a speeding ticket!

I don't know how many of us can say that about ourselves but the reality is that undocumented youth can be detained and deported for as little as a traffic violation, due to Secure Communities. In Texas, Benny Veliz—who was a high school valedictorian at the age of 16—was pulled over by the police for a broken tail-light. Since she did not have driver's license, the local police held her in jail overnight and handed her over to ICE. This was two years ago. Benny has no criminal record but she is still fighting deportation proceedings as a law student.

The stories are many. The circumstances are similar. It's hard to ignore the truth that this country has made criminals out of thousands of people like Hadi and Benny. And me.

"Secure Communities" is not about finding and deporting "dangerous criminals." It's about "securing the country" from the growing presence of immigrants who are mostly brown-skinned. And the real fugitive of this story is Immigration and Customs Enforcement (ICE) -- an agency that is keen on deporting anyone who looks different regardless of their immigration status. Last year, our wonderful friends at ICE deported a 4-year old U.S. citizen girl to Guatemala and a 14-year old U.S. citizen teenager to Colombia. And these are not the only U.S. citizens they have deported. But like any agency, ICE has a litany of excuses.

TESTIMONY OF PRERNA LAL, COFOUNDER, DREAMACTIVIST.ORG

We are mistakenly racially profiled. We are mistakenly arrested. We are mistakenly rounded up and sent to private detention facilities away from our homes and families. We are mistakenly deported thousands of miles to a foreign country, with little hope of ever seeing our families again. Mistakenly.

It may be a mistake for local police and maybe even ICE, but that one mistake costs us our whole lives. That mistake is the difference between whether a child ends up in foster care or has a stable family home. That mistake is the difference between a mother fighting to survive after the deportation of her son or a mother who is able to fund her daughter's education so that the whole family can beat the cycle of poverty. That one mistake is the difference between my presence in front of you today or my deportation to a country where I can be killed for my sexual orientation.

As an undocumented resident who lives, works and attends school in the District, Secure Communities is a misnomer that only serves to make me insecure. If I am a victim of a crime, I cannot go local law enforcement with a program like Secure Communities in place for fear that they would report me to ICE. If I witness an accident, I am too terrified to come forward and help with a police investigation. If I get into an accident, my first reaction is to flee the scene regardless of how hurt I am because the police may do more damage.

Logic then dictates that the real mistake is the so-called Secure Communities program, which makes entire communities insecure and undermines both law enforcement efforts and community policing.

Therefore, I strongly urge the DC City Council to pass the detainer compliance bill so that hard-working, productive people like me are not turned over to ICE by local police for minor infractions.

For some of us, it is a question of life and death.

Public Testimony by José Alvarado, Member of the Unión de Trabajadores

**Before the Council of the District of Columbia Committee on the Judiciary
Hearing on Bill 19-585, Immigration Detainer Compliance Amendment Act of 2011
January 6, 2012 at 1:00 p.m.**

Hello, my name is Jose Alvarado. I am a student, a Ward 1 resident, and a member of the Unión de Trabajadores, a union of day laborers in Washington DC. I am here today because I believe that ICE and the police should be two institutions that work separately, because together these institutions will bring fear and distrust to our communities. Because for example if someone saw a fight in the street, no one would want to call the police because they wouldn't know the fighters' immigration status situation or if they have a family to support.

I believe that this program will cause separation within our families, given that Secure Communities has already separated families around our country. I also believe that this will cause separation between the police and our communities because no one will want to call the police, because they will be scared of the consequences that calling the police will bring.

We are not people who came to this country to rob or cause harm to our neighbors. We are people who came to this country to better ourselves as people and push forward our families. Although not everyone was able to be here today, because they are working, I know that in my neighborhood there are many people who share my opinion of rejecting the collaboration between ICE and the police.

Thank you for your attention.

Hola, me llamo José Alvarado yo soy un estudiante, residente de Ward 1, y miembro de la Unión de Trabajadores, que es un sindicato de jornaleros en la ciudad de Washington. Yo estoy aquí porque yo creo que la policía y la ICE deberían de ser dos instituciones que trabajen por separadas, porque unidas estas instituciones va a traer miedo y desconfianza a nuestras comunidades, porque si por ejemplo alguien ve una pelea en la calle nadie va a querer a llamar a la policía porque no sabemos la situación en la que se encuentran estas personas si tienen en regla sus papeles o si tiene familia que mantener

Puesto que esto va a causar separaciones entre nuestras familias ya que este programa de comunidades seguras ya esta separando familias alrededor de nuestra país. Y también va a causar separaciones entre la policía y nuestras comunidades porque nadie va a querer a llamar a la policía, por que va a tener miedo de las consecuencias que esto le va a traer a nuestras familias.

Nosotros no somos personas que venimos a este país a robar ni a causarle daño a nuestros

vecinos, si no que venimos a este país a superarnos como personas y sacar adelante nuestras familias. Aunque no todos pueden estar aquí presentes en este momento por que están trabajando, pero yo sé que en mi vecindario hay muchas personas que comparten mi opinión de rechazar esta colaboración entre ice y la policía.

Gracias por su atención.

Detainer Compliance Bill Testimony:

My name is Monica Kamen. I'm a community organizer with Jews United for Justice, a Washington-based volunteer-driven organization that represents thousands of people in the local Jewish community who are fighting for social and economic justice in the DC area. The work of Jews United for Justice is founded on the Jewish concept of *tikkun olam*, repairing the world, which teaches us that we have a responsibility to stand up for the principles of justice, fairness, and dignity, both within and outside of our community.

We are also a community descended from immigrants. My own great-grandparents came to this country in the beginning of the 20th century, fleeing religious persecution in Russia and looking for greater economic opportunity here in America. They settled in South Jersey, Pennsylvania, and Maine, and though speaking only Russian and Yiddish, they opened up small businesses and worked tirelessly to provide for their families. Ultimately, they prospered, and my family became fully integrated Americans, many of whom served in the military during World War II.

My story is very typical of the Jewish community here in America. Because of our community's immigration history, combined with the Biblical mandate not to oppress immigrants in our midst, we care deeply that today's immigrant communities receive the same protections and opportunities that our own families received when they immigrated to America. The Immigration Detainer Compliance Act will help move DC one step closer toward that goal.

This Act is about restoring basic fairness to the treatment of immigrant communities here in DC, helping to mitigate the harm already done by the Secure Communities program, which causes more harm to our immigrant communities than it secures them. It will also help keep DC's families together, as they should be, by slowing the rapid and unnecessary deportation of the hard-working immigrant parents of American-born children. Most critically, the Immigration Detainer Compliance Act will restore public trust in our criminal justice system, allowing the police to focus on their rightful job of keeping our city safe and secure, rather than forcing them to do the job of Federal immigration policy enforcement.

We trust that you will do the right thing and do everything in your power to protect DC's immigrant communities and families, as well as all of us who live in DC. Thank you for your time and your thoughtful consideration.

**Testimony before
the Council of the District of Columbia
Committee on the Judiciary**

January 6, 2012

**Shahid Buttar
Executive Director
Bill of Rights Defense Committee**

Good afternoon, Council Members. My name is Shahid Buttar, and I lead the Bill of Rights Defense Committee (BORDC) as executive director. BORDC is a national grassroots network that organizes support at the local level for constitutional rights and liberties increasingly ignored and undermined by our federal government.

The DC City Council would be well served to enact Bill 19-585, the Immigration Detainer Compliance Amendment Act of 2011, whether to defend the District's budget, the civil rights of our residents, or the public safety mission of our criminal justice system.

For a city long denied home rule and congressional representation, compliance with ICE detainer requests makes little sense. Chairman Mendelson appeared in today's *Washington Post* noting "the need of the council and government to restore the public trust" – which is even more widely eroded by visibly lawless detention practices than through secret embezzlement of public funds.

First, Immigration & Customs Enforcement (ICE), the federal agency requesting the cooperation of local officials, is an essentially rogue agency whose programs around the country have long been criticized—by both the US Department of Justice and the US Department of Homeland Security (DHS)—for facilitating racial profiling in violation of federal policy.

If the Council does not act, a controversial program misleadingly presented as the "Secure Communities Initiative" (S-COMM) will become fully operational just next year. The program has proven itself an abject failure, from which the Council should disassociate the District.

When DHS and ICE first introduced S-COMM, they presented it, like other ICE programs involving cooperating local agencies, as a voluntary program from which local jurisdictions could opt out. That assurance proved to be false.

Worse yet, when a coalition of advocacy groups and a law school clinic sought information about S-COMM, they discovered a disturbing plan stretching beyond ICE, and including the FBI, to create a mandatory national ID system based on biometric data. This plan lacks any statutory mandate, checks & balances to prevent potential (or rectify documented) racial profiling, or mechanisms to ensure institutional accountability. Instead, ICE has thumbed its nose at communities around the country, as well as the agencies risking the trust of those communities to facilitate summary mass deportation.

This betrayal of public trust will predictably erode community relations with the Metropolitan Police Department (MPD), unless the Council extends the protections embodied in the current

version of the Immigration Detainer Compliance Amendment Act to include the MPD. Local jails are certainly the tip of the spear, but ICE also submits detainer requests to police agencies. The expanding roll out of S-COMM, in spite of widespread civil rights concerns, threatens to expand this pipeline and further embroil the MPD in the controversy surrounding our nation's immigration policy—but the Council can prevent that from happening by expanding the set of institutions covered by the Act.

The increasingly infamous dysfunction that has gripped Congress should not impede the Council from doing its job. That includes protecting the civil rights of District residents, as well as MPD's ability to gain statements from victims and witnesses otherwise intimidated by fear.

This Council's job also includes allocating City resources. Even if the federal government did reimburse the District for the substantial costs we have incurred to comply with detainer requests (which it does not), reasons would remain to object and limit the District's participation. Given the federal government's insistence on forcing the District to pay the costs of the federal government's dirty work, the decision to enact Bill 19-585, the Immigration Detainer Compliance Amendment Act of 2011, should be an easy one for the Council.

Thank you for this opportunity to submit our views.

Government of the District of Columbia



Office of the Deputy Mayor for Public Safety and Justice

Testimony
of

Deputy Mayor Paul Quander

Public Hearing
on

**Bill 19-585, Immigration Detainer Compliance Amendment
Act of 2011**

Before
the

Council of the District of Columbia

Committee on the Judiciary
The Honorable Phil Mendelson, Chairman

Friday, January 6, 2012

Council Chambers
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

1:00 p.m.

Good morning Chairman Mendelson and members of the Council’s Committee on the Judiciary (“Committee”). I am Paul Quander, Deputy Mayor for Public Safety and Justice. I appreciate the opportunity to appear before the Committee on behalf of Mayor Vincent C. Gray to address Bill 19-585, the “Immigration Detainer Compliance Amendment Act of 2011.”

The District of Columbia is home to a diverse population. Ensuring the safety and protecting the rights of all who reside in and visit the District is an extraordinarily high priority of Mayor Gray’s Administration. As noted in the Mayor’s Order of October 19, 2011, “Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies,” the Administration is committed to preserving “the tradition of ensuring that immigrants and noncitizens are treated equitably at any stage where they seek services from the District of Columbia, provide services to the District of Columbia, or have contact with the criminal justice system.”

The purpose of the Mayor’s Order is to establish District-wide policies and procedures concerning the disclosure of immigration status, and to ensure that District resources are not used for federal civil immigration enforcement activities. The Order establishes clear mandates for District of Columbia public safety agencies. Among other things, public safety agencies shall not inquire about a person’s immigration status or contact the United States Immigration and Customs Enforcement Agency (ICE) for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation. It further establishes a policy that precludes public safety agencies from inquiring

about the immigration status of crime victims, witnesses, and others who call or approach the police seeking assistance.

As well, public safety agencies must establish a policy to ensure that District of Columbia incarcerated youth and adults are not made available for immigration interviews related to immigration status without a criminal nexus, in person, over the phone, or by video without a court order. Moreover, in accordance with the Order, no person shall be detained by District public safety agencies solely on the belief that he or she is not present legally in the United States or that he or she has committed a civil immigration violation. Law enforcement officers shall not make arrests solely based on administrative warrants for arrest or removal entered by ICE into the National Crime Information Center database of the Federal Bureau of Investigation, including administrative immigration warrants for persons with outstanding removal, deportation, or exclusion orders. Finally, the Mayor’s Order states unequivocally that enforcement of the civil provisions of United States immigration law is the responsibility of federal immigration officials.

The purpose and policy objectives of Mayor Gray’s Order are consistent with the objectives of Bill 19-585. Thus, the Administration is generally supportive of Bill 19-585. The bill in its current form, however, requires some modifications, which I outline below.

Currently, DOC complies with ICE detainer requests, which ask that jurisdictions maintain custody of the person detained for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays. Bill 19-585 authorizes the

District of Columbia, namely DOC, "to comply with civil detainer requests from [ICE] by holding inmates for an additional 24-hour period after they would otherwise be released." The 24-hour time period included in Bill 19-585 would reduce by 24 hours the time period in which DOC could hold a subject for whom ICE has issued a detainer request. As such, detainer requests that expire on holidays and Sundays could not be honored at all, regardless of the seriousness of the crimes, as DOC does not employ staff for processing releases on those days. Thus, the Administration recommends carving out an exception for releases on holidays and Sundays.

Bill 19-585 also states in Section 7(b)(2)(B)(iii) that the District may comply with an ICE detainer for an adult who has been convicted of a crime in another jurisdiction which if committed in the District would qualify as an offense listed in D.C. Official Code §§ 23-1331(3) or (4). These sections of the D.C. Code contain the lists of "dangerous crimes" and "crimes of violence" that are recognized in the District. ICE detainers are received by DOC Records Office personnel who would be required to seek support from legal staff in order to determine if the crimes committed in other jurisdictions would be crimes contained in the D.C. Code if committed here. Adding such a step to the Records Office's protocol would inevitably extend the release process.

Further, Bill 19-585 states in Section 7(c) that a detainer request for an individual who has been convicted of a homicide crime shall be honored regardless of when the conviction occurred. This language does not give the District any discretion; it requires DOC to hold an individual for 24 hours if they

have ever been convicted of a "homicide crime." However, the bill does not define "homicide crime" and, thus, is unclear if it includes manslaughter charges, felony murder charges, and inchoate crimes involving a homicide.

Also, under the current form of the statute, the District may comply with ICE detainers only if, among other things, the individual sought to be detained is an adult as defined by D.C. Code § 16-2301 (5). Under this section of the D.C. Code, an adult is an individual who is twenty-one years of age or older. As such, DOC would not be able to hold juveniles adjudicated as adults or 18 to 20-year-olds on ICE detainers, even if they have previously been convicted of a homicide crime. We advise that the Committee modify this part of the bill so that it applies to individuals in DOC custody.

With the revisions suggested in my testimony, we believe that the goals of Bill 19-585 can be achieved in the most efficient and prudent manner. The Mayor pledges the Administration's support to work with you and your staff on this very important legislation.

Mr. Chairman, this concludes my testimony. I want to thank you again for the opportunity to appear before the Committee and provide the Administration's comments on this important matter. We are prepared to answer any questions you may have concerning the legislation.



SURVIVORS AND ADVOCATES FOR EMPOWERMENT

Supporting and empowering domestic violence survivors since 1997

ACCION

Apoyando a victimas de violence doméstica desde 1997

Testimony before the City Council of the District of Columbia

Committee on the Judiciary

Hearing on the Immigration Detainer Compliance Amendment Act of 2011, B19-585

By Elisabeth Olds, Co-Executive Director on behalf of SAFE, Inc.

January 6, 2012

Chairman Mendelson and members of the Committee, I want to thank you for holding this hearing and the opportunity to submit testimony. My name is Elisabeth Olds and I am the Co-Executive Director of Survivors and Advocates for Empowerment (SAFE), a non-profit organization serving over 5,000 victims of domestic violence in the District each year. SAFE strongly supports the **Immigration Detainer Compliance Amendment Act of 2011** restricting cooperation with immigration detainers by the DC Department of Corrections. We would like to request two amendments: that the same restrictions extend to the Metropolitan Police Department and also include a restriction on contacting ICE prior to the existence of a detainer. We also support the removal of "place of birth" from MPD's booking form as it serves no legitimate identification or law enforcement function.

SAFE provides the only around the clock access to immediate crisis intervention services for victims of domestic violence in the District. Part of SAFE's On Call Advocacy Program Response Line is a separate 1-800 number distributed solely to the District's Spanish-speaking community. Since the program's inception in 2008, the ACCION Line has served 975

Survivors and Advocates for Empowerment (SAFE), Inc.

A 501(c)(3) Nonprofit Organization

PO Box 7412 • Washington, DC 20044 • phone: 202-408-1476 • fax: 202-821-4937 • www.dcsafe.org

Spanish- speaking immigrant victims of domestic violence. Last year, SAFE served 550 immigrant victims of domestic violence through all of our programming.

While the majority of the calls we receive from the District on this line were from Spanish-speakers who had already contacted MPD and were given the number by them, were from Spanish-speaking officers calling on behalf of an immigrant victim, or were victims contemplating calling police. Our calls from Spanish-speakers outside of the District were very different. These victims were and remain terrified to talk to police or sometimes even to seek medical care for injuries because they fear deportation. Calls from Charles County, Montgomery and Prince George's County, MD, Prince William County and Fredericksburg, VA, and even callers from New Jersey, Connecticut and Texas all came from callers in life-threatening situations who felt they could not contact law enforcement for fear of being locked up themselves for immigration charges or exposing their entire family to this risk.

One such call came in on January 1, 2010. A woman called and stated that she needed help because her husband was outside in his car and had come to kill her. She fled DC to her brother's home in Alexandria, VA several days before. While the advocate was speaking with the caller about what her safety options were, the woman's husband began banging on the door and yelling. Although the caller repeatedly stated that she feared immediately for her life because her husband had gone to prison for killing his previous wife, she did not want the advocate to call police. She had heard that police in Virginia would deport immigrants and although she was here legally because she was married to a US citizen, her brother and his entire family were undocumented. Fearing for the woman's immediate safety after hearing her husband's threats, the advocate called 911 and gave the address that the woman had given her at

the beginning of the call in spite of the client's protests. Police arrived and found the husband sitting in his car across the street with a gun in his possession. He was arrested.

When the Alexandria Police spoke to the advocate on the phone, they stated that they realized the victim was afraid of them, and reiterated that they were only interested in her welfare and nothing more in spite of Virginia's cooperation with ICE. Their sensitivity was reassuring, but did not prevent a woman in mortal danger from calling a hotline instead of 911 for help. Call from outside of the District make up 11% of the calls received on the ACCION Line, and that percentage shows no sign of decreasing.

Fear of police is easy to trigger. When the media announced in that MPD was going to implement Secure Communities, we not only began receiving calls from victims in life-threatening situations better suited to 911 from immigrants in the District, but our call volume dropped noticeably almost over night. This is reflected in SAFE's call volume for 2009, 2010 and 2011. In 2009, SAFE received calls from 259 Spanish speakers. By 2010, while SAFE and MPD's Latino Liaison Unit were both conducting the same level of community outreach, our call volume had dropped to 198 – a 28% reduction from 2009. Fortunately, our calls have increased in 2011 to 307 callers. These numbers do not include the victims who are seeking assistance through the Domestic Violence Intake Centers without calling the ACCION Line first. It is not only fear of police generated by any appearance of cooperation with federal immigration authorities, but fear of seeking any type of help at all.

Based on the Spanish-speaking population size in the District of approximately 56,000¹ individuals, our call volume should always be far higher. If we assume that like the rest

¹ US Census Bureau, United States Census, 2010.

of the US population, 1.7% of females and 0.9% of males experience domestic violence every year,² then we would expect to see a call volume of approximately 1,456 individuals from this population each year, with the understanding that those calls might come to us, to 911, or to other service providers.

The primary barrier to seeking help or calling police stated by all immigrant victims of domestic violence is the fear of being deported. Immigrant victims often have to be in immediate fear for their lives before they will call anyone for help. They will also attempt to withstand far more abuse than they otherwise would if they felt safe reporting abuse sooner. In a survey of two months of SAFE's calls from Spanish-speakers, their scores on lethality assessments are at least five points higher than their White or African-American counterparts.³ While the cases drawn from two months of SAFE's client population do not constitute statistical significance in a strict sense, the uniform pattern displayed in the lethality assessment scores is a strong indicator of the differences between the help-seeking patterns of Latina immigrant victims in the District.

All else being equal, SAFE would have no objection to domestic violence offenders being deported. We view even an arrest for a domestic violence misdemeanor to be serious and deserving of the criminal justice systems full weight and attention regardless of the immigration status of the offender or the victim. However, deportation does not work to enhance victim safety even when the victim wants the abuser deported. In fact, the most vicious of these suspects will

² [Tjaden, P., & Thoennes, N. (July 2000). *Full report of the prevalence, incidence, and consequences of violence against women*. (Publication #NCJ83781).

Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Available from <http://www.ojp.usdoj.gov/bjs>].

³ Every SAFE client is given a lethality assessment to determine their risk of homicide based on factors determined to be statistically significant predictors of risk. This assessment was developed at Johns Hopkins University by Dr. Jacqueline Campbell.

either return to the US after deportation with relative ease even angrier than before, or return to their native country to threaten and/or harm the victim's family. In three recent cases, offenders have returned literally within one to three months of deportation and in two of those cases located and re-assaulted the victim.

SAFE has a close working relationship with MPD. They have worked hard to dispel fear of police in the immigrant communities in the District and are supportive of SAFE's complimentary efforts through the ACCION Line. By explicitly including MPD in this bill and prohibiting them from contacting ICE, the city can send a clear and understandable signal to immigrant victims that it is safe to report the violence to police. Without this amendment, the bill will do a tremendous amount of good, but the Department of Corrections is too far removed from the consciousness of immigrant victims to convey any meaningful message of safety or trust in the authorities, authorities they see wearing an MPD uniform. SAFE will continue to provide assistance to this population through the ACCION Line to ensure that domestic violence is reported to police whenever possible and that it is done confidently and safely.

Thank you for your unprecedented support of immigrant victims of domestic violence by holding this hearing and supporting this legislation.



Practical Solutions for Immigrants and for America

To: Chairman Mendelson
Councilmember
Committee on Judiciary
1350 Pennsylvania Avenue NW,
Suite 402
Washington, DC 20004

Community and Courtroom Responses to Immigration Detainers

I. Overview

Collaboration between local law enforcement agencies and the Department of Homeland Security (DHS) has been rapidly expanding in recent years, especially under the speedy deployment of Immigration and Customs Enforcement's (ICE) "Secure Communities" program, which checks all fingerprints taken by participating jails and prisons against federal immigration databases. This collaboration has come under new scrutiny in the context of the current economic climate and increasing awareness of the negative effect such collaboration has on community policing. Recent criticisms have led to some changes. In response to repeated and widespread violations of detainer regulations (for example, some jurisdictions have been holding individuals far beyond the 48-hour maximum), ICE recently adopted a new detainer form emphasizing that detainers are a "request," listing a hotline for detained individuals to call, requiring that individuals receive notice of a detainer issued against them, and reiterating that the individual should be held no longer than 48 hours on the detainer.¹ Over the last year, several jurisdictions—including New York City, Sonoma County, California, Santa Clara County, California, San Francisco County, California, and Cook County, Illinois—have announced that they will honor ICE detainers only if certain conditions are met. Additionally, lawsuits have been filed in over a half a dozen states challenging lengthy detentions by local authorities based on ICE detainers.

How do immigration detainers work? When a fingerprint check or an interview with an individual in the custody of a local law enforcement agency reveals that the person is sought by ICE, the immigration agency will send the local law enforcement agency a piece of paper known as an immigration detainer, which can extend an individual's time in custody for up to two days beyond the completion of time served in the criminal justice system, excluding weekends and holidays. Local taxpayers absorb the costs. (The National Immigration Forum has previously looked at this issue in depth with its paper, Immigrants Behind Bars: How? Why? And How Much? That paper provides explanations of the ways that immigrants end up in local custody and are held there on the basis of their immigration status. It also explores the associated costs for states and counties. In this paper, the Forum examines reactions to ICE detainers, including litigation.)

II. Abuse of Immigration Detainers

Extended detention of non-citizens in the criminal justice system is primarily triggered by an immigration detainer. An immigration detainer, also known as an "ICE hold," is a *request* that another Federal, State or local law enforcement agency hold an individual for up to an additional 48 hours beyond their scheduled release. This extended detention is requested by ICE to give the

¹ New ICE detainer form, available at: <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>; See also, ICE Press Release, "ICE establishes hotline for detained individuals, issues new detainer form" December 29, 2011, available at: <http://www.ice.gov/news/releases/1112/111229washingtondc.htm>.

agency the opportunity to investigate or take custody of the subject of a detainer.² The key in understanding ICE detainers is that they are not mandatory. Specifically, a federal district court in Indiana found that an ICE detainer “is not a criminal warrant, but rather a voluntary request that the law enforcement agency advise DHS prior to the release of the alien.”³

A few counties and localities are starting to reconsider how they respond to ICE detainers. Taos County and San Miguel County in New Mexico took action in early 2011 when they said they will not follow ICE detainers unless, at minimum, ICE will reimburse the counties for the cost.⁴ In June of 2011, the San Francisco County Sheriff's Department decided to stop honoring ICE detainers for certain inmates.⁵ In September 2011, Cook County, Illinois, passed an ordinance stating that the Sheriff's Office will honor certain ICE detainers under limited circumstances, among them: when ICE will reimburse Cook County for all the costs incurred; when ICE has a criminal warrant; or when Cook County has a law enforcement purpose not related to immigration to hold the person.⁶ In October 2011, Santa Clara County, California, passed an ordinance saying it would not honor ICE detainers unless all costs incurred by the County to comply with these requests are reimbursed.⁷ In November 2011, Washington, D.C., proposed a bill that will limit cooperation with ICE regarding detainers. The bill would limit non-criminal detainers to a 24-hour hold period, would require federal reimbursement for the District's costs, and only permit the detainment of individuals who have been convicted of dangerous and violent crimes.⁸

However, the majority of localities honor ICE detainers without question, and many impermissibly detain individuals beyond the 48 hour limit set forth in 8 C.F.R. § 287.7(d), essentially continuing detention until ICE assumes custody. It is important to note DHS and ICE are not the custodians of individuals held on an ICE detainer. Instead, individuals held solely on an ICE detainer remain legally in the custody of the local law enforcement agency until ICE apprehends them and custody is transferred.

These localities are not only incurring extra detention costs—which can run more than \$60 a day in Texas and \$170 a day in New York⁹ and are not reimbursed by DHS—but they are also violating federal law, which may result in lawsuits against the local jurisdictions. This is not an improbability.

² 8 CFR 287.7(a) (2011).

³ *Buquer v. City of Indianapolis*, 2011 U.S. Dist. LEXIS 68326 (S.D. Ind. June 24, 2011).

⁴ Warden Patrick Snedeker, Letter to Marcela Diaz, Dated December 16, 2010. Taos Jail Policy, Taos County Adult Detention Center Policies and Procedures Dated January 4, 2011.

⁵ Barbara Taylor, “SF Sheriff To Stop Holding Low-Level Inmates For Deportation” CBS San Francisco (May 6, 2011) available at, <http://sanfrancisco.cbslocal.com/2011/05/06/san-francisco-sheriff-to-stop-holding-low-level-inmates-for-deportation/>.

⁶ Policy for Responding to ICE detainers, Cook County, Illinois, Passed on September 7, 2011. Available at: http://cookcountygov.com/ll_lib_pub_cook/cook_ordinance.aspx?WindowArgs=1501.

⁷ Fernando Perez, Raj Jayadev, “Santa Clara County Ends Collaboration with ICE, Creates Local Protections Against Controversial “Secure Communities” Program,” Silicon Valley De-Bug, available at; <http://www.siliconvalleydebug.org/articles/2011/10/18/santa-clara-county-votes-end-collaboration-IC>

⁸ Immigration Detainer Compliance Amendment Act of 2011, Bill Number 19-585 Proposed November 2011, Washington, DC.

⁹ National Immigration Forum, “Immigrants Behind Bars: How? Why? And How Much? (March 2011) available at; http://www.immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf.

In many cases, local governments have been forced to settle, sometimes paying out tens of thousands of dollars. For example, in September 2009, New York City settled a suit with an immigrant inmate for \$145,000 in damages after the city unlawfully held him at the state correctional facility on Rikers Island under the auspices of an expired immigration detainer for more than a month.¹⁰ Partly as a result of this case, in November of 2011, New York City reformed its detention policy.¹¹ The Department of Corrections will not comply with ICE detainers unless the immigrant has a criminal record, faces pending charges somewhere in the US, has an outstanding warrant of removal from ICE, has previously been subject to a final order of removal by an immigration court, or is on the terrorism watch list. In September 2010, Washington State settled a similar case with a Mexican immigrant for damages of \$35,000.¹² There the individual was held for 20 days after a traffic accident under the auspices of an ICE detainer. The criminal case against the immigrant was dismissed and he was ordered released by the judge. In July 2011, Sonoma County, California settled a lawsuit with two different plaintiffs for a total of \$8,000 and agreed to completely overhaul its policy surrounding its collaboration with federal immigration enforcement.¹³ Under the agreement, the "Sheriff's office will no longer participate in joint field operations with ICE unless ICE refrains from arresting or taking custody of persons solely based on a suspicion that they are unlawfully present in the country." The Sonoma County Sheriff also agreed "not to volunteer information about people who are in the County's custody due solely to traffic infractions or driving without a license to ICE."¹⁴

In addition to cases that have reached settlement, there are at least a dozen detainer-related cases pending in several states including: Colorado, Florida, Louisiana, Indiana, Utah, Pennsylvania, and Tennessee (see Appendix A below). In these cases, allegedly unlawful detentions of individuals due to ICE detainers range from a week over the statutory maximum holding period of 48 hours all the way up to 164 days. In some states this appears to have become quite prevalent. In Lake County, Florida the ACLU claims this has happened to hundreds of people over the last few years.¹⁵ In Rutherford County, Tennessee there is so much concern that detainer abuse has become routine that that one of the pending cases was filed as a class action lawsuit.¹⁶

Recently, immigrant advocacy groups took these lawsuits a step further in the summer of 2011 when the Heartland Alliance's National Immigrant Justice Center (NIJC) filed a class action

¹⁰ NYU Immigrant Rights Clinic, "City Settles Rikers Lawsuit Alleging Violations of Immigrant's Rights" (Sept. 1, 2009) available at <http://www.lawso.ucsb.edu/faculty/jstevens/113/harveypressrelease.pdf>.

¹¹ New York City Council, Law Number 656-A, Enacted November 22, 2011.

¹² Northwest Immigrants Rights Project, "Northwest Immigrant Rights Project & Center for Justice Achieve Settlement in Case of Immigrant Detained Unlawfully," (Sept. 17, 2010).

¹³ Committee for Immigrant Rights of Sonoma County "Sonoma County Sheriff to Limit Involvement in Immigration Cases" (July 21, 2011) available at http://www.aclunc.org/cases/active_cases/asset_upload_file403_9271.pdf.

¹⁴ American Civil Liberties Union of Northern California, "ACLU Announces Settlement of Case to Protect Immigrants' Rights in Sonoma County" (July 21, 2011) available at http://www.aclunc.org/news/press_releases/aclu_announces_settlement_of_case_to_protect_immigrants_rights_in_sonoma_county.shtml.

¹⁵ American Civil Liberties Union, "Lake County Sheriff's Office Investigation Of Immigrant Mother's Unlawful Arrest And Detention A Whitewash, Says ACLU," April 2, 2009 available at <http://www.aclu.org/immigrants-rights/lake-county-sheriffs-office-investigation-immigrant-mothers-unlawful-arrest-and-de>.

¹⁶ Charles Maldando, The City Paper, "Rutherford County Sheriff's Office facing two civil lawsuits" available at <http://nashvillecitypaper.com/content/city-news/rutherford-county-sheriffs-office-facing-two-civil-rights-lawsuits>.

lawsuit against DHS for causing the unlawful detention of immigrants and U.S. citizens identified through local law enforcement agencies.¹⁷ It has been unusual for DHS to be sued in detainer-related suits because the agency is not the custodian.

III. Effect on Bond and Diversion Programs

An individual charged in a criminal matter might ordinarily be released on bond pending his or her criminal proceedings. However, if ICE has placed a detainer on that individual, he or she would not be released on the criminal bond. Additionally, a local law enforcement agency might assume there is a major risk of flight, and consequently increase the bond or deny bond altogether. Some bail bondsmen believe that cases where an immigration detainer has been filed are too high risk. They fear that ICE will take custody of the individual as soon as bond has been posted, or that the individual will be deported, thus missing future criminal court dates and resulting in a revocation of the bond.

If that individual is subject to an immigration detainer, he or she might be denied placement in diversion programs.¹⁸ When people are not released on bond, or are not placed in a diversion program because of an ICE detainer, the effect on the jurisdiction is higher incarceration costs.

IV. Lawsuits and Bail Bondsmen

The confusion generated by the interplay between immigration detainers and the posting of a criminal bond has led to a good deal of litigation on the issue. The majority of these cases center on arguments from bail bondsmen posting criminal bonds that it is impossible for them to get the individual to the court date because, once out on bond, the individual may either be deported by ICE or taken into custody by ICE (and thus not at liberty to make his or her criminal court appearance).

When a defendant fails to appear in court, he or she forfeits the bond. Over the last few years, federal districts and the state of California have ruled that a person does not forfeit bond as long as ICE or some other authority retains custody, even if the person “fails to appear” for a scheduled court proceeding.¹⁹ On the other hand multiple state courts, including those in New Jersey, North Carolina, and Georgia have ruled the other way—a person forfeits bond for failing to appear at a scheduled court appointment even if they are in ICE custody.²⁰ This split between jurisdictions has only added to the confusion among bail bondsmen and individuals subject to ICE detainers.

¹⁷ National Immigrant Justice Center “NIJC Sues Department of Homeland Security Over Key Component of Secure Communities Program” (August 12, 2011) available at http://www.immigrantjustice.org/court_cases/jimenez-et-al-v-napolitano-et-al.

¹⁸ *People v. Lexington Nat. Ins. Corp.*, 181 Cal.App.4th 1485, (Cal.App. February 02, 2010).

¹⁹ *United States v. Montoya-Vasquez*, 2009 U.S. Dist. LEXIS 2148, at 14 (D. Neb. Jan. 13, 2009); *United States v. Urquiza*, F. Supp. 2006 WL2691074 (E.D. Wis. Dec. 19, 2006); *People v. Lexington Nat. Ins. Corp.*, 181 Cal.App.4th 1485, (Cal.App. February 02, 2010).

²⁰ *State v. Ventura*, 196 N.J. 203, (N.J. 2008); *State v. Lazaro*, 190 N.C.App. 670, (N.C.App. 2008); *Gomez-Ramos v. State*, 297 Ga.App. 113 (Ga.App. 2009).

There have been lawsuits filed against bail bondsmen who failed to return the bond money given to them by the detained individual's family after the bondsman was unable to obtain the individual's release due to an immigration detainer. According to most bail bondsmen state regulations, bondsmen are either supposed to ask the subject of the detainer for additional funds to secure any second bond, often an immigration bond, to obtain release or they are supposed to refund the money due to their inability to obtain the release when the first bond was posted. Failure to follow this basic procedure, which exists in most states, may result in the revocation of the bail bondsmen's license, as it has in the State of Arkansas.²¹

V. Conclusion

There is no shortage of strong opinions, confusion and even abuse surrounding ICE detainers. It is not likely the new ICE detainer form will completely eliminate detainer problems. There are substantial financial costs for local jurisdictions that continue to detain individuals as a courtesy to ICE. These costs are compounded when a jurisdiction must defend itself against or pay to settle lawsuits when procedures go awry. Other local law enforcement agencies have begun to address immigration detainer practices as they contemplate whether to collaborate with controversial immigration enforcement programs. Recently, some jurisdictions have opted not to honor ICE detainers, finding them too pricey, too burdensome, or too politically untenable. In the growing storm of controversy surrounding immigration detainers, the winds of litigation and politics are just beginning to swirl. This is one weather pattern that shows no sign of dissipating without answers to America's bigger immigration questions.

²¹ *Curen v. Arkansas Professional Bail Bondsmen Licensing Board*, 79 Ark. App. 43 (Ark App. 2003)

Appendix A: Known Lawsuits

1. Lengthy Detentions Due to ICE hold:

California: In July 2011, Sonoma County settled a lawsuit with two different plaintiffs for a total of \$8,000 after unlawfully holding them at a correctional facility. Neither of these individuals were charged with any violation of state law and were only booked on “immigration detainees.” As part of the settlement, Sonoma County also agreed to overhaul its detainer policy.

Colorado: Colorado resident Luis Quezada sued the Jefferson County Sheriff for illegally imprisoning Mr. Quezada for 47 days in 2009 on an immigration detainer, after Mr. Quezada had already resolved the traffic charges against him. When ICE finally took custody of Mr. Quezada, they immediately released him on bond while his case was pending in immigration court. Mr. Quezada seeks compensation from Sheriff Mink for false imprisonment and violation of rights under the Fourth, Eighth, and Fourteenth Amendments. The ACLU filed suit on his behalf in April 2010, and due to multiple similar complaints in Colorado, the ACLU has written advisories to all the sheriffs in the state regarding the 48 hour limitation on detainees.

Florida

- 1) Jose Bernabe was held for 7 days in Miami-Dade County Jail after he posted bail. In August 2010, Bernabé's Miami attorney, John de León, sued Miami-Dade County jail officials for refusing to release his client even after immigration officials failed to take him into custody within the prescribed detainer deadline. Mr. De Leon has now teamed up with Miami's famed immigration attorney Ira Kurzban to monitor detainer cases and assemble a class-action lawsuit.
- 2) Rita Cote was detained by the Lake County Sheriff's Office without charge, both before an immigration detainer was lodged against her, and after it expired. The ACLU filed a habeas corpus petition on her behalf, and has collected information on hundreds of people unlawfully arrested and held in Lake County in similar circumstances.

Louisiana: In February 2011, Antonio Ocampo, who was held for almost 3 months on an immigration detainer until finally ordered released by U.S. District Chief Judge Sarah Vance, filed a civil rights complaint against the Sheriff for his unlawful detention. Co-plaintiff Mario Cacho was also held in Orleans Parish Prison for even longer—approximately 164 days—and was only released after filing a complaint with the DHS Office for Civil Rights and Civil Liberties.

New York: In September 2009, New York City settled a suit with Cecil Harvey, an immigrant inmate, for \$145,000 in damages after unlawfully holding him at the correctional facility of Rikers Island under the auspices of an expired detainer for more than a month. As a result of this case, Rikers Island has reformed its detention policy and now adheres strictly to the 48 hour limitation on ICE detainees.

Tennessee

- 1) Carlos Ramos-Macario was held for over four months by Rutherford County Sheriff's Office based on the presence of an ICE detainer. Cases like this are so common that in

September 2010, Tennessee attorney Elliot Ozment filed a federal class-action lawsuit in U.S. District Court for Middle Tennessee against the Sheriff's Office for racial profiling.

- 2) Also in September 2010, U.S. permanent resident Benigno Guzman-Ornelas, was unlawfully held by the Warren County Sheriff for 7 days because of an ICE detainer. A Warren County judge ordered Mr. Guzman-Ornelas released after the case was brought to his attention.

Washington: In September 2010, Spokane County settled a suit with Enoc Arroyo-Estrada, an immigrant from Mexico, for \$35,000 in damages after unlawfully holding him at a correctional facility for 20 days after being involved in a minor traffic accident.

2. Lengthy Detention Due to ICE Hold Even After Posting Bond:

Illinois: In August 2011, the National Immigrant Justice Center brought a class action lawsuit in federal court in the Northern District of Illinois against DHS. The two lead plaintiffs are Jose Jimenez Moreno, a U.S. Citizen (who is not deportable), and Maria Jose Lopez, who has been in the United States since she was four-years-old and is the main caregiver for three children. The lawsuit states that DHS's use of immigration detainers and their effects on individuals violates the Fourth, Fifth and Tenth Amendments of the United States Constitution.

Indiana: In June 2010, Wendy Melendrez-Rivas sued LaGrange County's Sheriff's Department for holding her after her immigration detainer had expired and after she posted bond. The suit, filed by the Mexican American Legal Defense and Educational Fund (MALDEF), accuses the Sheriff's Department of violating Melendrez-Rivas's due process rights. The lawsuit also seeks damages to cover economic loss, emotional distress, and deprivation of her constitutional rights, as well as costs and attorney fees.

Pennsylvania: Ernesto Galarza, a U.S. Citizen born in New Jersey, was held illegally in Lehigh County Prison in Pennsylvania on an ICE detainer. Although Galarza posted bail in his criminal matter, he was not released because of an ICE detainer. His Pennsylvania drivers' license and social security card were in his wallet at the time. As a result of his incarceration over the weekend, Galarza lost a job and missed wages he would have earned. He filed suit in the Eastern District of Pennsylvania in November 2010.

Utah: Enrique Antonio Uroza, a 22-year-old Weber State University student, was booked on suspicion of forgery and theft by deception. He posted bail, but was subject to an immigration detainer, and was subsequently held for an additional 39 days. The American Civil Liberties Union of Utah filed a lawsuit on August 5th, 2011, over the illegal detention.

Appendix B: Local Government Responses

Cook County, Illinois: In September 2011, Cook County, Illinois, passed an ordinance stating that the Sheriff's Office shall only honor certain ICE requests under limited circumstances. Those circumstances being: (a) ICE will reimburse Cook County for all the costs incurred; (b) if ICE has a criminal warrant; or (c) Cook County has a law enforcement purpose not related to immigration to hold the person.

District of Columbia: In November 2011, Washington, D.C., proposed a bill that will limit cooperation with ICE regarding detainers. The bill would limit non-criminal detainers to a 24-hour hold period, would require federal reimbursement for the District's costs, and only permit the detainment of individuals who have been convicted of dangerous and violent crimes. There is a hearing on this bill scheduled for early January 2012.

New York City, New York: In November 2011, New York City passed an ordinance stating that the Department of Corrections will not comply with ICE detainers in instances where the immigrant: has no criminal record; faces no pending charges anywhere in the US; has no outstanding warrant of removal from ICE; has not previously been subject to a final order of removal by an immigration court; and is not on the terrorism watch list.

San Francisco County, California: In June of 2011, the San Francisco County Sheriff's Department decided to stop honoring ICE detainers for certain individuals. This includes those who aren't being charged with a crime and those who were brought in after reporting a domestic violence incident, as long as they don't have a criminal history.

Santa Clara County, California: In October 2011, Santa Clara County, California, passed an ordinance saying it would not honor ICE detainers unless all the costs incurred by the county to comply with these requests will be reimbursed by ICE.

San Miguel and Taos County, New Mexico: In December 2010 and January 2011, respectively, the detention centers in these counties adopted a policy of not honoring ICE detainers unless, at minimum, the person has been convicted of a felony or at least two misdemeanors. Under current law, a jurisdiction may have its detention costs reimbursed from the federal government if it holds a person with these requisite convictions.

Sonoma County, California: In July 2011, Sonoma County settled a lawsuit and agreed to overhaul its policy surrounding its collaboration with ICE. Under the agreement, the Sheriff's Office agreed it will no longer participate in joint field operations with ICE unless ICE refrains from arresting or taking custody of persons solely based on a suspicion that they are unlawfully present in the country. The Sheriff's Office also agreed not to volunteer information to ICE about people who are in the County's custody due solely to traffic infractions or driving without a license.

January 2012

To: Jessica Jacobs
Re: Additional information to supplement record on amendments to Bill 19-585,
Immigration Detainer Compliance Act
From: DC Immigrants Rights Coalition
Date: January 25, 2012

Dear Ms. Jacobs,

We hope that this supplemental information will clarify our positions on the proffered amendments. We have attempted to address Councilmember Mendelson's concerns raised during the meeting.

1. Under the proposed Immigration Detainer Compliance Act, the Department of Corrections can comply with detainers if there is a federal reimbursement agreement for the individual, the individual is an adult, *and* the person has been convicted of an enumerated offense described in D.C. Code § 23-1331(3) ("dangerous crimes") or § 23-1331(4) ("crimes of violence"), for which he or she is currently in custody. Moreover, convictions committed within specified time periods can also trigger the provision.

Both D.C. Code §§23-1331(3) and 1331(4) are located in the pre-trial chapter of the DC code. These sections were designed to supplement the Bail Reform Act and assist judges in their determinations as to whether a person was entitled to bail.¹ DC§ 23-1331(4) incorporates more 'serious' offenses than the "dangerous" crime provision.

While several offenses covered in DC Code§23-1331(3) are limited to felony offenses, this same limitation does not exist for crimes covered in DC Code§23-1331(4). Because D.C. Code §1331(4) is not limited to felony offenses and thus can include convictions where the person receives a sentence of less than a year to incarceration. Additionally, D.C. Code §§23-1331(3) and 1331(4) include convictions for inchoate offenses such as attempt or conspiracy; this means the bill will sweep in attempt and conspiracy charges. In summary, our concern is that both categories (1) include offenses that carry potential sentences of less than a year and (2) do not differentiate between suspended sentences and prison time.

Practically speaking, the sentencing guidelines may mitigate some of the problems raised by this language, but it does not eliminate the possibility that misdemeanor offenses or sentences of less than a year will be included. First, the sentencing guidelines are not mandatory. Additionally, the District intended for many serious offenses to have a wide range of sentences because the District created minimum sentences for several offenses. For example, a conviction for robbery carries a minimum sentence of 2 years. However, crimes involving assault or manslaughter carry no such

¹ The courts use a "categorical approach" when determining whether a crime is a crime of violence, meaning that the "court could look only to statutory definition of offense itself and not to specific circumstances under which alleged offense was committed." *United States v. Gloster*, 969 F. Supp. 92, 96-97 (D. D.C. 1997).

minimum. This distinction is likely intentional and was meant to provide judges with the discretion to sentence someone to a shorter sentence depending on a wide range of factors such as their criminal history, mitigating circumstances and personal attributes of the defendant.

Some examples:

- The "dangerous" provision section includes a misdemeanor offense of neglect to a child under 14. *See* D.C. Code §22-1102.
- "Assault to commit another offense" is included as a "crime of violence" (D.C. Code §23-1331(4)). This crime is defined in D.C. Code §22-403 and carries a maximum penalty of five years. There is no minimum sentence. A person convicted of this offense may get a suspended sentence of less than a year. As a result, an individual could get a detainer because the statute requires a conviction, not a conviction limited to felony offenses of over a year.
- "Criminal gang recruitment" is an offense covered by D.C. Code §23-1331(4). The crime of criminal gang recruitment can be found in DC Code § 22-951, criminal street gangs. Under DC Code §22-951(c)(2), a person convicted of "recruiting" someone into a criminal street gang using or threatening to use force or violence can be fined not more than \$10,000 or sentenced up to 10 years. There is no statutory minimum. A fine is not the equivalent of being sentenced to jail time. We do not think it is appropriate that someone sentenced to a fine can be subject to an immigration detainer.

Recommendation 1: We propose that DC refer to individuals with a conviction for which a sentence of imprisonment of three years or longer has been imposed, excluding suspended sentences. Alternatively, DC can refer individuals with a conviction for which a sentence of imprisonment of one year or more has been imposed, excluding suspended sentences. We believe this differentiation will help exclude convictions where the person received a sentence of less than a year.

2. The place of birth field does not help the District ascertain whether the person is a public safety threat or a flight risk, which is the purpose of the booking form. Knowing that someone was born in another country does not mean that you are a noncitizen, nor does it mean that you have fewer ties to your community.

Moreover, place of birth should not be used to assist DOC during their detention classification process. The Deputy Mayor of Public Safety and Justice Paul Qwander suggested that DOC collects place of birth information to limit the likelihood that rival gangs would be placed in the same area. Place of birth is an unreliable indicator of gang affiliations. Field interviews, interviews with other inmates are better indicators than place of birth.

Recommendation 2: Remove the place of birth field on the booking form and the detention classification form.

3. We believe that the locus of immigration enforcement will shift to the MPD after Secure Communities is activated. Advocates and directly impacted individuals testified that DC MPD does hold noncitizens for ICE. DC MPD admits that because of their inability to differentiate federal warrants, they sometimes arrest noncitizens on immigration violations.


Recommendation 3: The Act's restrictions should be extended to the D.C. Metropolitan Police Department.

JUN 17 2011



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton 
Director

SUBJECT: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

Purpose:

This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties. In these cases, ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice. This memorandum builds on prior guidance on the handling of cases involving T and U visas and the exercise of prosecutorial discretion.¹

Discussion:

Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. In practice, the vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure

¹ For a thorough explanation of prosecutorial discretion, see the following: Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from William J. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (Oct. 24, 2005); Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service, Exercising Prosecutorial Discretion (Nov. 17, 2000).

Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.

To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor.

In deciding whether or not to exercise discretion, ICE officers, agents, and attorneys should consider all serious adverse factors. Those factors include national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety. Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate. Discretion may also take different forms and extend to decisions to place or withdraw a detainer, to issue a Notice to Appear, to detain or release an alien, to grant a stay or deferral of removal, to seek termination of proceedings, or to join a motion to administratively close a case.

In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA),² its subsequent reauthorization,³ and the Violence Against Women Act (VAWA).⁴ These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes,⁵ and victims of human trafficking.

Victims of domestic violence who are the child, parent, or current/former spouse of a U.S. citizen or permanent resident may be able to self-petition for permanent residency.⁶ A U nonimmigrant visa provides legal status for the victims of substantial mental or physical abuse as

² Pub. L. No. 106-386, §§101-113, 114 Stat. 1464, 1466 (codified as amended in scattered sections of the U.S.C.).

³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁴ Pub. L. No. 106-386, §§1001-1603, 114 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁵ For a list of the qualifying crimes, see INA §101(a)(15)(U)(iii).

⁶ See INA §101(a)(51).

a result of domestic violence, sexual assault, trafficking, and other certain crimes.⁷ A T nonimmigrant visa provides legal status to victims of severe forms of trafficking who assist law enforcement in the investigation and/or prosecution of human trafficking cases.⁸ ICE has important existing guidance regarding the exercise of discretion in these cases that remains in effect. Please review it and apply as appropriate.⁹

Please also be advised that a flag now exists in the Central Index System (CIS) to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief. These cases are reflected with a Class of Admission Code "384." When officers or agents see this flag, they are encouraged to contact the local ICE Office of Chief Counsel, especially in light of the confidentiality provisions set forth at 8 U.S.C. § 1367.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ See INA §101(a)(15)(U).

⁸ See INA §101(a)(15)(T).


⁹ See Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, Interim Guidance Relating to Officers Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007).

JUN 17 2011



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton
Director 

SUBJECT: Exercising Prosecutorial Discretion Consistent with the Civil
Immigration Enforcement Priorities of the Agency for the
Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum provides U.S. Immigration and Customs Enforcement (ICE) personnel guidance on the exercise of prosecutorial discretion to ensure that the agency's immigration enforcement resources are focused on the agency's enforcement priorities. The memorandum also serves to make clear which agency employees may exercise prosecutorial discretion and what factors should be considered.

This memorandum builds on several existing memoranda related to prosecutorial discretion with special emphasis on the following:

- Sam Bernsen, Immigration and Naturalization Service (INS) General Counsel, Legal Opinion Regarding Service Exercise of Prosecutorial Discretion (July 15, 1976);
- Bo Cooper, INS General Counsel, INS Exercise of Prosecutorial Discretion (July 11, 2000);
- Doris Meissner, INS Commissioner, Exercising Prosecutorial Discretion (November 17, 2000);
- Bo Cooper, INS General Counsel, Motions to Reopen for Considerations of Adjustment of Status (May 17, 2001);
- William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (October 24, 2005);
- Julie L. Myers, Assistant Secretary, Prosecutorial and Custody Discretion (November 7, 2007);
- John Morton, Director, Civil Immigration Enforcement Priorities for the Apprehension, Detention, and Removal of Aliens (March 2, 2011); and
- John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011)

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

The following memoranda related to prosecutorial discretion are rescinded:

- Johnny N. Williams, Executive Associate Commissioner (EAC) for Field Operations, Supplemental Guidance Regarding Discretionary Referrals for Special Registration (October 31, 2002); and
- Johnny N. Williams, EAC for Field Operations, Supplemental NSEERS Guidance for Call-In Registrants (January 8, 2003)

Background

One of ICE's central responsibilities is to enforce the nation's civil immigration laws in coordination with U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS). ICE, however, has limited resources to remove those illegally in the United States. ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency's enforcement priorities, namely the promotion of national security, border security, public safety, and the integrity of the immigration system. These priorities are outlined in the ICE Civil Immigration Enforcement Priorities memorandum of March 2, 2011, which this memorandum is intended to support.

Because the agency is confronted with more administrative violations than its resources can address, the agency must regularly exercise "prosecutorial discretion" if it is to prioritize its efforts. In basic terms, prosecutorial discretion is the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual. ICE, like any other law enforcement agency, has prosecutorial discretion and may exercise it in the ordinary course of enforcement¹. When ICE favorably exercises prosecutorial discretion, it essentially decides not to assert the full scope of the enforcement authority available to the agency in a given case.

In the civil immigration enforcement context, the term "prosecutorial discretion" applies to a broad range of discretionary enforcement decisions, including but not limited to the following:

- deciding to issue or cancel a notice of detainer;
- deciding to issue, reissue, serve, file, or cancel a Notice to Appear (NTA);
- focusing enforcement resources on particular administrative violations or conduct;
- deciding whom to stop, question, or arrest for an administrative violation;
- deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition;
- seeking expedited removal or other forms of removal by means other than a formal removal proceeding in immigration court;

¹ The Meissner memorandum's standard for prosecutorial discretion in a given case turned principally on whether a substantial federal interest was present. Under this memorandum, the standard is principally one of pursuing those cases that meet the agency's priorities for federal immigration enforcement generally.

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

- settling or dismissing a proceeding;
- granting deferred action, granting parole, or staying a final order of removal;
- agreeing to voluntary departure, the withdrawal of an application for admission, or other action in lieu of obtaining a formal order of removal;
- pursuing an appeal;
- executing a removal order; and
- responding to or joining in a motion to reopen removal proceedings and to consider joining in a motion to grant relief or a benefit.

Authorized ICE Personnel

Prosecutorial discretion in civil immigration enforcement matters is held by the Director² and may be exercised, with appropriate supervisory oversight, by the following ICE employees according to their specific responsibilities and authorities:

- officers, agents, and their respective supervisors within Enforcement and Removal Operations (ERO) who have authority to institute immigration removal proceedings or to otherwise engage in civil immigration enforcement;
- officers, special agents, and their respective supervisors within Homeland Security Investigations (HSI) who have authority to institute immigration removal proceedings or to otherwise engage in civil immigration enforcement;
- attorneys and their respective supervisors within the Office of the Principal Legal Advisor (OPLA) who have authority to represent ICE in immigration removal proceedings before the Executive Office for Immigration Review (EOIR); and
- the Director, the Deputy Director, and their senior staff.

ICE attorneys may exercise prosecutorial discretion in any immigration removal proceeding before EOIR, on referral of the case from EOIR to the Attorney General, or during the pendency of an appeal to the federal courts, including a proceeding proposed or initiated by CBP or USCIS. If an ICE attorney decides to exercise prosecutorial discretion to dismiss, suspend, or close a particular case or matter, the attorney should notify the relevant ERO, HSI, CBP, or USCIS charging official about the decision. In the event there is a dispute between the charging official and the ICE attorney regarding the attorney's decision to exercise prosecutorial discretion, the ICE Chief Counsel should attempt to resolve the dispute with the local supervisors of the charging official. If local resolution is not possible, the matter should be elevated to the Deputy Director of ICE for resolution.

² Delegation of Authority to the Assistant Secretary, Immigration and Customs Enforcement, Delegation No. 7030.2 (November 13, 2004), delegating among other authorities, the authority to exercise prosecutorial discretion in immigration enforcement matters (as defined in 8 U.S.C. § 1101(a)(17)).

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

Factors to Consider When Exercising Prosecutorial Discretion

When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including, but not limited to—

- the agency's civil immigration enforcement priorities;
- the person's length of presence in the United States, with particular consideration given to presence while in lawful status;
- the circumstances of the person's arrival in the United States and the manner of his or her entry, particularly if the alien came to the United States as a young child;
- the person's pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degrees at a legitimate institution of higher education in the United States;
- whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard, with particular consideration given to those who served in combat;
- the person's criminal history, including arrests, prior convictions, or outstanding arrest warrants;
- the person's immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud;
- whether the person poses a national security or public safety concern;
- the person's ties and contributions to the community, including family relationships;
- the person's ties to the home country and conditions in the country;
- the person's age, with particular consideration given to minors and the elderly;
- whether the person has a U.S. citizen or permanent resident spouse, child, or parent;
- whether the person is the primary caretaker of a person with a mental or physical disability, minor, or seriously ill relative;
- whether the person or the person's spouse is pregnant or nursing;
- whether the person or the person's spouse suffers from severe mental or physical illness;
- whether the person's nationality renders removal unlikely;
- whether the person is likely to be granted temporary or permanent status or other relief from removal, including as a relative of a U.S. citizen or permanent resident;
- whether the person is a victim of or witness to domestic violence, human trafficking, or other crime; and
- whether the person is currently cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, the U.S. Attorneys or Department of Justice, the Department of Labor, or National Labor Relations Board, among others.

This list is not exhaustive and no one factor is determinative. ICE officers, agents, and attorneys should always consider prosecutorial discretion on a case-by-case basis. The decisions should be based on the totality of the circumstances, with the goal of conforming to ICE's enforcement priorities.

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

That said, there are certain classes of individuals that warrant particular care. As was stated in the Meissner memorandum on Exercising Prosecutorial Discretion, there are factors that can help ICE officers, agents, and attorneys identify these cases so that they can be reviewed as early as possible in the process.

The following positive factors should prompt particular care and consideration:

- veterans and members of the U.S. armed forces;
- long-time lawful permanent residents;
- minors and elderly individuals;
- individuals present in the United States since childhood;
- pregnant or nursing women;
- victims of domestic violence, trafficking, or other serious crimes;
- individuals who suffer from a serious mental or physical disability; and
- individuals with serious health conditions.

In exercising prosecutorial discretion in furtherance of ICE's enforcement priorities, the following negative factors should also prompt particular care and consideration by ICE officers, agents, and attorneys:

- individuals who pose a clear risk to national security;
- serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- known gang members or other individuals who pose a clear danger to public safety; and
- individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.

Timing

While ICE may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing the enforcement proceeding. As was more extensively elaborated on in the Howard Memo on Prosecutorial Discretion, the universe of opportunities to exercise prosecutorial discretion is large. It may be exercised at any stage of the proceedings. It is also preferable for ICE officers, agents, and attorneys to consider prosecutorial discretion in cases without waiting for an alien or alien's advocate or counsel to request a favorable exercise of discretion. Although affirmative requests from an alien or his or her representative may prompt an evaluation of whether a favorable exercise of discretion is appropriate in a given case, ICE officers, agents, and attorneys should examine each such case independently to determine whether a favorable exercise of discretion may be appropriate.

In cases where, based upon an officer's, agent's, or attorney's initial examination, an exercise of prosecutorial discretion may be warranted but additional information would assist in reaching a final decision, additional information may be requested from the alien or his or her representative. Such requests should be made in conformity with ethics rules governing

Exercising Prosecutorial Discretion Consistent with the Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens

communication with represented individuals³ and should always emphasize that, while ICE may be considering whether to exercise discretion in the case, there is no guarantee that the agency will ultimately exercise discretion favorably. Responsive information from the alien or his or her representative need not take any particular form and can range from a simple letter or e-mail message to a memorandum with supporting attachments.

Disclaimer

As there is no right to the favorable exercise of discretion by the agency, nothing in this memorandum should be construed to prohibit the apprehension, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of ICE or any of its personnel to enforce federal immigration law. Similarly, this memorandum, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

³ For questions concerning such rules, officers or agents should consult their local Office of Chief Counsel.

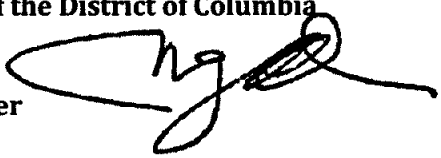
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: April 10, 2012

SUBJECT: Fiscal Impact Statement - "Immigration Detainer Compliance
Amendment Act of 2012"

REFERENCE: Bill 19-585, Draft Committee Print shared with OCFO on April 4, 2012

Conclusion

Funds are sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

In October 2011, the Mayor issued an administrative order¹ to the District's public safety agencies² to prohibit the initiation of civil immigration proceedings with U.S. Immigration and Customs Enforcement (ICE), to limit ICE access to District inmates, to prohibit detentions based on a belief about immigration status, or to arrest based on administrative warrants in the National Crime Information Center database³ unless it is directly related to a criminal investigation. Currently, ICE sends detainer requests to public safety agencies requesting detention of an individual suspected of immigration violations for 48 hours, pending a full status check.

¹ Mayor's Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies.

² Public Safety Agencies: Department of Corrections, Fire and Emergency Medical Services, Metropolitan Police Department, the Office of the Attorney General, the Office of Returning Citizen Affairs, the Office of Victim Services, the Department of Youth Rehabilitation Services, and all other agencies under the direction of the Mayor that employ law enforcement officers.

³ This is a national electronic clearinghouse of crime data maintained by the Federal Bureau of Investigation.

The Honorable Kwame R. Brown

FIS: Bill 19-585, "Immigration Detainer Compliance Amendment Act of 2012," Draft Committee Print shared with OCFO on April 4, 2012

The bill establishes detailed requirements as to when the Department of Corrections (DOC) should comply with ICE detainer requests. The bill allows DOC to comply with a detainer request for a period of 24 hours, excluding weekends and holidays, if the following conditions are met:

- A written agreement is in place whereby a federal agency will reimburse the District for costs incurred; and
- The individual sought is 18 years of age or older and has been convicted in the last 10 years or released after serving a sentence in the last 5 years for a dangerous crime⁴ or crime of violence⁵ in the District or another jurisdiction, or has been convicted of a homicide crime⁶ in the District or another jurisdiction at any point.

Financial Plan Impact

Funds are sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the bill. The bill's provisions, as with the Mayor's Order, limit the Department of Corrections requirements to comply with Immigration and Customs Enforcement detainers. DOC complies with the Mayor's Order and there are no costs associated with implementation of the bill.

⁴ As defined in Title 23 (Criminal Procedure), Chapter 13 (Pretrial Services Agency and Pretrial Detention), D.C. Official Code § 23-1331(3), Definitions.

⁵ As defined in Title 23 (Criminal Procedure), Chapter 13 (Pretrial Services Agency and Pretrial Detention), D.C. Official Code § 23-1331(4), Definitions.

⁶ Pursuant to Title 22 (Criminal Offenses and Penalties), Chapter 21 (Murder, Manslaughter), D.C. Official Code § 22-2101 *et seq.*

1 COMMITTEE PRINT

2 Committee on the Judiciary

3 May 8, 2012

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8 A BILL

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11 19-585

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14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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19 To amend An Act To create a Department of Corrections in the District of Columbia to limit the
20 circumstances under which the District will comply with an immigration detainer request
21 from United States Immigration and Customs Enforcement.

22
23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
24 act may be cited as the "Immigration Detainer Compliance Amendment Act of 2012".

25 Sec. 2. An Act To create a Department of Corrections in the District of Columbia,
26 approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.01 *et seq.*), is amended by
27 adding a new Section 7 to read as follows:

28 "Sec. 7. District compliance with federal immigration detainers.

29 "(a) The District of Columbia is authorized to comply with civil detainer requests from
30 United States Immigration and Customs Enforcement (ICE) by holding inmates for an additional
31 24-hour period, excluding weekends and holidays, after they would otherwise be released, but
32 only in accordance with the requirements set forth in subsection (b) of this section.

1 “(b) Upon written request by an ICE agent to detain a District of Columbia inmate for
2 suspected violations of federal civil immigration law, the District shall exercise discretion
3 regarding whether to comply with the request and may comply only if:

4 “(1) There exists a prior written agreement with the federal government by which
5 all costs incurred by the District in complying with the ICE detainer shall be reimbursed; and

6 “(2) The individual sought to be detained:

7 “(A) Is 18 years of age or older; and

8 “(B) Has been convicted of:

9 “(i) A dangerous crime as defined in D.C. Official Code § 23-
10 1331(3) or a crime of violence as defined in D.C. Official Code § 23-1331(4), for which he or
11 she is currently in custody;

12 “(ii) A dangerous crime as defined in D.C. Official Code § 23-
13 1331(3) or crime of violence as defined in D.C. Official Code § 23-1331(4) within 10 years of
14 the detainer request, or was released after having served a sentence for such dangerous crime or
15 crime of violence within 5 years of the request, whichever is later; or

16 “(iii) A crime in another jurisdiction which if committed in the
17 District of Columbia would qualify as an offense listed in D.C. Official Code § 23-1331(3) or
18 (4).

19 “(c) Notwithstanding subsection (b)(2)(B)(ii) of this section, a detainer request for an
20 individual who has been convicted of a homicide crime, pursuant to An Act To establish a code
21 of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Code § 22-
22 2101 *et seq.*) or a crime in another jurisdiction which if committed in the District of Columbia
23 would qualify as a homicide crime, may be honored regardless of when the conviction occurred.

“(d) The District shall not:

“(1) Provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates; or

“(2) Permit an individualized interview of an inmate without giving the inmate an opportunity to have counsel present, if the inmate already has counsel.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3))

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.