

THE ALL-IN-ONE GUIDE TO

DEFEATING ICE HOLD REQUESTS

(a.k.a. Immigration Detainers)

APPENDIX 11

Sample Campaign Flyers and Fact Sheets



ALL IN ONE GUIDE TO DEFEATING ICE HOLDS

APPENDIX 11

Sample Campaign Flyers and Fact Sheets

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Of the 1,000,000 ICE Holds Issued in Obama's First Four Years...



The Vast Majority Were for People Not Convicted of Any Crime
Enough Lies. No More Deportations.

Immigration Detainers in Massachusetts

What is an Immigration Detainer (aka ICE hold)?

In Massachusetts, police and sheriffs regularly hold some individuals in jail after they are supposed to be released. They do this on the basis of notices they receive from Immigration and Customs Enforcement (ICE), the federal immigration agency, requesting that they hold certain individuals so that ICE may come take custody of the person. These notices are called immigration detainers, or ICE holds.

Technically, an immigration detainer is a request from federal authorities to local law enforcement to do two things: 1) notify ICE when the person of interest is scheduled to be released, and 2) hold that person for an extra 48 hours, not including weekends and holidays, so that ICE has time to come take custody.

ICE may transfer that person to immigration detention and pursue deportation proceedings against them. However, the immigration detainer is only notification that ICE is investigating the person, and is not proof of the person's immigration status. It does not mean that ICE will necessarily come take custody, nor that such person is a priority for the agency to detain or put in deportation proceedings.

ICE Issued Over 5000 Detainers in Massachusetts from 2008 to 2011

More than 75% of the thousands of ICE detainers issued in Massachusetts were put on individuals who had no criminal conviction or criminal history. Several of the detainers were issued on children under eighteen.

Hundreds of the individuals subjected to prolonged detention in Massachusetts were Lawful Permanent Residents. Hundreds more had other forms of lawful immigration status. A handful were actually U.S. citizens.

ICE Detainers Undermine Due Process in Massachusetts

ICE issues detainers without probable cause, often upon people who are not legally deportable at all. When Massachusetts detains people solely on the basis of an ICE detainer, this is an arrest without probable cause.

Many Massachusetts jails do not inform individuals that detainers have been lodged against them, or provide a review process for someone to show that the detainer is erroneous.

ICE detainers regularly prevent people from being released on bail, limit their access to treatment programs, and result in longer jail time, even if all the charges against the person are dropped. This happens because if there is a detainer, instead of releasing the individual, the jails hold them for ICE instead.

Massachusetts pays for any costs associated with extended detention of individuals as a result of ICE detainers. ICE does not reimburse for these costs, which counties in other states have estimated to be in the millions.

How Does This Relate to the Secure Communities Program?

The Secure Communities Program helps ICE issue more detainers, faster.

By checking all fingerprints in Massachusetts with immigration databases, ICE now issues detainers within minutes, with minimal investigation of the person who will be subjected to detention. As a result, deportations of non-criminal and low-level offenders under the Secure Communities program have continued to increase.

Contact: Jose Palma - masstrustact@gmail.com

Secure Communities Deportations in Massachusetts

ICE's Secure Communities Program Punishes Hard Working Immigrant Families

The Secure Communities program (S-Comm) turns Massachusetts law enforcement into immigration agents, and has resulted in hundreds of deportations across the Commonwealth, in turn separating Massachusetts families and undermining community police work. S-Comm began as a pilot program in the city of Boston in 2006, and the federal government unilaterally expanded the program across the state in May 2012.

Immigration and Customs Enforcement (ICE) promotes S-Comm as a tool for removing “dangerous criminals” from our communities. However, the facts have never supported ICE’s theory. ICE has other programs for identifying individuals who have been convicted of crimes and sentenced to jail. S-Comm, in contrast, is a dragnet that enables racial profiling and targets all immigrants for deportation. S-Comm is deporting hundreds of Massachusetts residents, pulling apart our families, schools, congregations, unions, and communities.

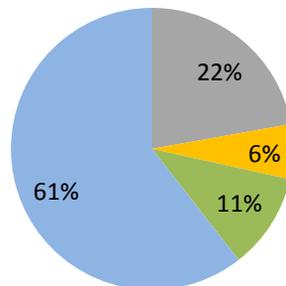
61% of Individuals Deported Under S-Comm had No Criminal History

Since the Secure Communities Program was activated across Massachusetts in May, 2012, it resulted in 446 deportations (as of March 31, 2012). 270 individuals deported had no criminal history or convictions. Another 49 had committed low-level offenses, such as traffic violations. Less than ¼ of individuals had been convicted of an offense categorized as Level 1.

Secure Communities Deportations in Massachusetts

March 31 2012 - March 31 2013

■ Level 1 Conviction ■ Level 2 Conviction ■ Level 3 Conviction ■ No Criminal History



The vast majority of individuals deported by the Secure Communities Program in Massachusetts were hard-working immigrants contributing to our economy, our labor force, our culture and society.

The Massachusetts Trust Act Will Protect Our Communities

The Massachusetts Trust Act is a bill to stop the federal government from turning Massachusetts public safety officers into deportation agents. This will stop unlawful detentions and reduce the unfair deportations that tear apart Massachusetts families and communities.

SUPPORT THE MASSACHUSETTS TRUST ACT!

Contact: Jose Palma at masstrustact@gmail.com

House Bill 1874

Washington State Trust Act

The Basics

HB 1874 (Trust Act) will address the harmful impact of the federal government's controversial "Secure Communities" (S-Comm) and related programs. The bill will provide essential safeguards to address serious concerns raised by the programs' detrimental effects on public safety, community policing, and civil liberties.

What Are the Problems with S-Comm?

S-Comm Undermines Public Safety – while Immigration and Customs Enforcement (ICE)'s stated mission for S-Comm is to target individuals convicted of serious offenses, the program casts far too wide a net. This means immigrant residents who are victims or witnesses to a crime now fear cooperating with the police since any contact with law enforcement can result in separation from their families and deportation. Even US citizens, survivors of domestic violence, and immigrants arrested for selling street food without a permit have been detained at local expense due to S-Comm. In Washington State, only 25% of individuals deported as a result of S-Comm have been convicted of serious offenses.

Lack of Transparency and Accountability – S-Comm has failed to provide accountability and transparency. ICE has been contradictory and inconsistent in response to questions from Congress, media, and local jurisdictions.

Burden on Local Resources – Local jails bear the brunt of the costs of responding to ICE holds or "civil immigration detainer" requests triggered by the program. ICE holds ask local authorities to hold individuals in local jails for a longer time purely for civil immigration enforcement purposes. S-Comm does not reimburse localities for the cost of participating in the program.

S-Comm Divides Families – S-Comm and related programs have been part of an approach to immigration enforcement that has led to the separation of thousands of families throughout the country.

HB 1874 Will Make Our Communities Safer

The Trust Act will rebuild the trust that S-Comm has undermined between immigrant communities and local police by establishing statewide standards for responding to burdensome ICE hold requests. Specifically, the bill:

- Sets a clear statewide standard for local governments to not submit to ICE's request to detain an individual unless the individual has a serious or violent felony conviction.

This standard will prevent the prolonged detention of people who would otherwise be released from the custody if not for ICE's request. This bill will ease the unfair burden currently placed on local governments and bring participation in S-Comm back in line with the program's original stated goals of focusing on individuals with serious felony backgrounds.

Background on S-Comm

S-Comm is an ICE program that enlists local law enforcement to engage in civil immigration enforcement by sharing fingerprints at the point of arrest. The S-Comm initiative started in 2008 and has been extended to most local jurisdictions across the country as of 2012.ⁱ ICE activated Secure Communities in all jurisdictions in Washington State on April 3, 2012. Under Secure Communities, local law enforcement agencies run the fingerprints of every single person arrested through a federal immigration database. Federal immigration enforcement authorities (ICE) then issue an immigration detainer to the local agency requesting that they hold the person for up to 48 hours (often much longer in practiceⁱⁱ), even if they have not been charged with a crime.ⁱⁱⁱ Detained people are then turned over to ICE, where they face continued detention and possible deportation proceedings.

Facts on ICE Holds

**An ICE hold should not be confused with a criminal detainee. Criminal detainees are supported by a warrant and require probable cause. In contrast, there is no requirement for a warrant and no established standard of proof or probable cause for issuing an ICE detainee request. ICE detainees have erroneously been placed on US citizens as well as immigrants who are not deportable.*

**ICE holds are not issued to keep people charged with or convicted of certain crimes off the street. Bail determinations by criminal court judges are the criminal justice system's mechanism for keeping people who may be a flight risk or pose a danger to public safety in jail while their case proceeds.*

**ICE hold requests are not even evidence that someone is deportable. In fact, they are not even evidence that someone is not a citizen. There is no established standard of proof or probable cause requirement for the issuance of an ICE hold request, and they have erroneously been placed on US citizens as well as immigrants who are not deportable.*

**ICE can conduct immigration enforcement without relying on ICE holds – HB 1874 does not interfere with the ability of ICE to conduct immigration enforcement on their own without draining local resources and burdening local law enforcement.*

Who Supports HB 1874?

(As of February 12, 2013)

American Federation of Teachers 189

American Immigration Lawyers Association WA

Casa Latina

Campos Avelar Law

Church Council of Greater Seattle

Coalition of Anti-Racist Whites

Comité Pro-Reforma

Community to Community

Council on American-Islamic Relations WA

Entre Hermanos

Faith Action Network

Forks Human Rights

InfoCenter South Park

Latino Advocacy, LLC

Latino Civic Alliance

Latino Community Fund

Main Street Alliance

May 1st Action Coalition

National Employment Law Project

National Day Laborer Organizing Network

NW Laborers

NW Immigrant Youth Alliance

Progreso

Resurrection Church Mt. Vernon

Robbins Immigration Law Firm

SEIU 775

Skagit Immigrant Rights Council

Teamsters Local 117

Teamsters Local 117/ Comité Latino

United Farm Workers

Washington Defenders Association

Washington CAN

WA New Sanctuary Movement

Washington State Labor Council

WA State Unitarian Universalist Voices for Justice

Working WA

For more information contact: Maru Mora-Villalpando maru@latinoadvocacy.org, Colin Maloney colin.f.maloney@gmail.com, Roberta Ray robertasaquic@aol.com, Cariño Barragan carino@casa-latina.org

References:

ⁱ Immigration and Customs Enforcement (2012). Secure Communities: Activated Jurisdictions.

ⁱⁱ Aguilasocho, E., Rodwin, D., & Ashar, S. (2012) MISPLACED PRIORITIES: The Failure of Secure Communities in Los Angeles County.

ⁱⁱⁱ Immigration and Customs Enforcement (2012). Ice Detainers: Frequently Asked Questions.

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Oregon New Sanctuary Movement

Because Love Has No Borders

Dear Noel,

 [Friend on Facebook](#)

 [Forward to a Friend](#)

We need your help in taking a stand to keep immigrant families together in Multnomah County.

As many of you know, the ONSM has been working with the ACT Network to urge Multnomah County Sheriff Dan Staton to adopt a policy to [not honor ICE holds](#) in Multnomah County jails for low-level criminal offenses.

Sheriff Staton needs to hear from you. He needs to know that the community believes that deportations are inhumane and that we want to stop the deportation pipeline by not honoring ICE holds in our jails.

[Will you be there?](#) Can you invite 3 friends to join you?

Stop Honoring ICE Holds in Multnomah County

Rally & Press Conference

Monday, October 22nd

12pm

Multnomah Building, 501 SE Hawthorne

[Share the flyer.](#)

For more information, contact VOZ at 503.233.6787.

[friend on Facebook](#) | [forward to a friend](#)

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The Trust Act (AB 1081)

Facts on ICE Holds

WHAT IS THE TRUST ACT?

The Federal Immigration and Customs deportation program called Secure Communities, or S-Comm, has had a devastating effect on communities across the state of California. The TRUST Act will rebuild the trust that S-Comm has undermined between immigrant communities and local police by creating a desperately needed "bright line" between local police and the scandal-plagued ICE. Specifically, the bill:

- (1) Sets a clear minimum standard for local governments not to detain people for deportation unless the individual has a serious or violent felony conviction.
- (2) Provides key safeguards against profiling and the wrongful detention of citizens. Localities that detain individuals with serious convictions for deportation will develop plans to ensure citizens are not subject to immigration holds, guard against profiling, and ensure crime victims are not discouraged from reporting crimes.

These standards will prevent the prolonged detention of people who would otherwise be released from custody if it were not for ICE's request. This bill will ease the unfair burden currently placed on local governments and bring participation in S-Comm back in line with the program's original stated goals of focusing on individuals with serious felony convictions.

- **ICE hold requests are *optional or voluntary* for local law enforcement.** Submitting to an ICE hold request is at the discretion of local law enforcement. This is supported by federal case law, federal regulations, and federal statutes.
 - ➔ **Federal Court Case** – In *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905, 911 (S.D. Ind. 2011), the federal court held that “A detainer is not a criminal warrant, but rather a voluntary request . . .” The court in *Buquer* came to this conclusion based on the language of § 287.7 as a whole. *See id.*
 - ➔ **Federal Regulations** - The federal regulation applying to immigration detainers states clearly in section (a), entitled “detainers in general” that “[t]he detainer is a request.” 8 C.F.R. § 287.7(a); see also *id.* (describing a detainer as a means to “advise another law enforcement agency” of ICE’s interest in a person in their custody).
 - ➔ **Federal Statutes** - The federal statutory provisions that federal regulation § 287.7 purports to implement do not authorize ICE to mandate compliance with detainers. Instead, the statutes cited authorize ICE to support and cooperate with those localities that *chose* to participate in immigration enforcement. *See* 8 U.S.C. § 1103(a) (“The Attorney General . . . is authorized . . . to enter into a *cooperative agreement* with any state . . . for . . . detention services in any State or unit of local government which *agrees to provide* guaranteed bed space for persons detained by the Service.”); (“The Commissioner may enter into *cooperative* agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws.”); 8 U.S.C. § 1357(d) (providing for the issuance of an immigration detainer upon “*request[]*” from a state or local law enforcement official).
- **ICE holds undercut public safety.** ICE hold requests are purely a tool for ICE to more easily apprehend immigrants through reliance on local law enforcement resources. As a result, responding to ICE holds creates fear in immigrant communities of coming forward to report crimes to local police.
 - ➔ *An ICE hold should not be confused with a criminal detainer.* Criminal detainers are supported by a warrant and require probable cause. In contrast, there is no requirement for a warrant and no established standard of proof or probable cause for issuing an ICE detainer request. ICE detainers have erroneously been placed on U.S. citizens as well as immigrants who are not deportable.
 - ➔ ICE holds are not issued to keep people charged with or convicted of certain crimes off the street. Bail determinations by criminal court judges are the criminal justice system’s mechanism for keeping people who may be a flight risk or pose a danger to public safety in jail while their case proceeds
 - ➔ *ICE hold requests are not even evidence that someone is deportable.* In fact, they are not even evidence that someone is not a citizen. There is no established standard of proof or probable cause requirement for issuing an ICE hold request, and they have erroneously been placed on US citizens as well as immigrants who are not deportable.



The Trust Act (AB 1081)

Facts on ICE Holds

- **ICE holds and the Secure Communities Program places an unfair burden on local law enforcement** – ICE views the Secure Communities program as a mechanism whereby local police are used as “force multipliers.”¹ Secure Communities unfairly shifts the burden and responsibility of federal civil immigration enforcement onto local law enforcement while undercutting community policing strategies. Local resources, which are increasingly strained, should not be used to carry out civil immigration enforcement; rather, this is a federal responsibility. To operate Secure Communities, ICE relies on local law enforcement to hold individuals for additional time beyond when they would be eligible for release by issuing ICE detainer requests.
- **ICE can conduct immigration enforcement without relying on ICE holds** – The TRUST Act does not interfere with the ability of ICE to conduct immigration enforcement on their own without draining local resources and burdening local law enforcement.
- **ICE detainees are a drain on local resources** – State and local law enforcement agencies are not reimbursed for the full cost of responding to a detainer, which can include, but is not limited to, extended detention time and the administrative costs of tracking and responding to detainees.
- **SCAAP funding does not cover the costs of ICE holds and has not been impacted by new ICE hold policies.** The State Criminal Alien Assistance Program (SCAAP) is a federal grant program that only partially reimburses states for money spent incarcerating undocumented immigrants. SCAAP funds do not cover all detention of noncitizens. Eligibility is limited to costs incurred for detaining undocumented immigrants who have been convicted of a felony or two misdemeanors and served at least four days sentence in jail. The funds are allocated to state and county departments of corrections, according to how many undocumented immigrants were detained who fit the statutory criteria.
 - ➔ There is no instance so far of a community receiving less SCAAP funds because of an ICE hold policy they enacted. In fact, the SCAAP program is administered by the Department of Justice, so it is unclear how much influence ICE has over the grant decisions.

For More Information: Angela Chan at angelac@asianlawcaucus.org

Massachusetts Trust Act Testimony: Guadalupe's Story

Guadalupe was deported just days before Christmas 2012. She was on a family shopping trip on midnight Black Friday at the Holyoke Mall. She went to pay for her purchases with a debit card. When the clerk asked her for an ID, she didn't have one. Rather than allow her to walk away, the clerk called security and had her arrested for shoplifting. Though she had stolen nothing, they held her at the mall until the local police department showed up to arrest her.



Distraught, her family immediately went to the police station where she was being held. After her bail was assigned, her family rushed to the bank, but when they arrived back at the police station at around 6:30AM, she was not allowed to pay the bail. Her family was informed that she was going into court that same morning.

When her case was called, the judge immediately dropped the charges and ordered her released. **However, because Immigration and Customs Enforcement (ICE) had issued a civil immigration detainer, the police refused to release her, and continued to hold her until the arrival of ICE officials.** She spent four weeks in immigration detention before she was deported on Friday, December 21, 2012. While she was detained, her daughter thought she was away for work. Although she now knows her mother is in Mexico, she still asks every day, "Is Mommy coming home soon?"

Guadalupe's whole family is suffering. Her story is the reason we need the Trust Act to be passed in Massachusetts. Although the criminal charges against Guadalupe were dropped, the police chose to comply with an optional civil immigration detainer request (also known as an ICE hold). If the Trust Act were law, the police would have let Guadalupe go home to her family.

The Trust Act (HD2620 and SD1116) is a piece of legislation that would change the outcome of countless stories like Guadalupe's. It is designed to keep people like Guadalupe safe in their homes and communities with their families, and to promote trust between the immigrant community and local law enforcement. The Trust Act will protect Massachusetts resources and improve civil rights. Guadalupe is only one of many families in Massachusetts destroyed by unjust deportations.

Support the Trust Act to keep our communities safe and whole.

**For more information regarding the Trust Act, and Just Communities of Western Massachusetts please contact Bliss@wmjwj.org or at 774-722-1511.*

MASSACHUSETTS TRUST ACT 2012

The Problem:

In Massachusetts, despite the vocal opposition of Governor Patrick to Immigration and Customs Enforcement's "Secure Communities" (S-Comm) deportation program, the federal government forced activation statewide in May 2012.

S-Comm and other deportation program active in the state of Massachusetts are destroying trust in local law enforcement, separating families, and opening the door to racial profiling.

The Solution:

We are asking our officials to protect our families and public safety by drawing a bright line between police and civil immigration enforcement.

Specifically we ask them to reject unjust ICE hold requests. When an individual gets caught up in the deportation dragnet, ICE asks the local law enforcement agency to hold that individual for a 48 hour period to facilitate transfer to ICE. We ask local officials to break ICE's hold on our community by ignoring these voluntary requests. In doing so, they can restore trust and protect thousands of families from the threat of deportation.

A growing number of cities have already set the example for progressive policies, including Washington DC, Santa Clara, CA, and Cook County, Illinois the state of Connecticut and more.

Restoring trust is possible and necessary.

What is the Massachusetts TRUST Act?

In Massachusetts a broad coalition of faith, labor, immigration advocacy, and civil rights groups working with immigrant communities and survivors of domestic violence are asking the legislature to pass a state bill to address the serious problems caused by the "Secure Communities" and other similar deportation programs.

The bill will be called the Massachusetts TRUST Act modeled after a similar bill in California aimed at restoring trust with immigrant communities. The bill addresses the problems created by S-Comm by declining ICE's administrative hold requests and allowing families to stay together. The bill will preserve state and local resources for Massachusetts' public safety needs and promote fairness in the criminal justice system.

How will the Trust Act help?

Protect all Residents: S-Comm makes us all less safe

S-Comm is a dragnet that unfairly sweeps up community members for deportation, even survivors of domestic violence who call police for help. The Trust Act will keep local law enforcement and public safety work independent from ICE.

Immigrants want to live in safe communities, but making **victims and witnesses** of crime vulnerable to deportation undermines community trust in police. Crime victims and domestic

violence survivors have been swept into deportation by S-Comm, sending the message that it's unsafe to report abuse.

ICE's focus for this program does not take into account community safety or local concerns. Furthermore, in Boston more than 50% of the people deported under S-Comm had no convictions or were arrested over issues as minor as driving without a license. Since S-Comm was implemented across the state, an even higher percentage of individuals with no criminal history have been detained and deported under this program.

Equal Treatment: Reject ICE Holds

Secure Communities' dragnet can only function if our local law enforcement and our officials agree to participate in the discredited deportation program. ICE Holds are optional requests to detain people in extended incarceration. It's not just wrong to do so, it may be unconstitutional. The decision of whether or not to do so is voluntary, it's a local one.

Protect our Budget: S-Comm is an unfair burden on local governments

ICE forced S-Comm on Massachusetts with no transparency, oversight or funding. A federal judge even found ICE had "gone out of [its] way to mislead the public" on the program last year.

Under S-Comm, ICE pressures locals to hold community members in jail for extra time at local expense, when they would otherwise be released and allowed to go home to their families. Immigration detainers instead keep them locked up, and divert them to deportation proceedings.

We shouldn't use our precious resources to **unfairly trap** parents, students, crime victims, and even citizens in local jails.

Promote Fairness In the Criminal Justice System

Breaking ICE's hold on our local law enforcement will ensure that citizens and non-citizens alike are treated equally in our criminal justice system. It does not interfere with the safeguards already put in place by the criminal justice system uphold due process and to protect public safety.

Limiting responses to ICE holds would not allow for the release of any individual into the community who would not otherwise be released because he or she has served his or her time or been ordered released on bail or recognizance by a criminal court judge.

FAQ:

Q: Aren't immigration detainers mandatory?

A: Immigration detainers are NOT mandatory. According to the Tenth Amendment and case law, requests such as this are not mandatory in nature. ICE as well as state and local governments in places like Cook County, Santa Clara County, New York City, San Francisco, Santa Fe, and the state of Connecticut have acknowledged that civil immigration detainers are merely requests and that state and local governments have discretion as to whether to comply with them.

Q: How do I respond to accusations that we are letting criminals back out on the street?

A: A detainer discretion policy doesn't change anything about how your jurisdiction punishes crime. When someone is due to be released from your custody, that is because a court or local law enforcement official has determined that he or she should be allowed to go free at that time. If, after receiving due process of law, a person is determined to be dangerous, he or she will still be incarcerated and punished just the same as ever. But people will not be subjected to additional incarceration and punishment based solely on a civil immigration detainer that is issued by ICE with no standard of proof.

Q: How does not responding to immigration detainers benefit us?

A: Declining to use local government resources to funnel local residents into a broken immigration detention and deportation system will result in restored trust between local law enforcement and the immigrant community. That trust is what makes community policing possible and effective. A immigration detainer discretion policy also keeps families intact and reduces local and state spending.

Q: What happens to people if we decide not to comply with immigration detainers placed on them?

A: Those people will be treated like any other person in local custody. If they post bail or are otherwise eligible for release from criminal custody, they will be released.

Q: What is S-Comm and how does it work?

A. S-Comm is a fundamentally flawed federal program that pressures local law enforcement officers to enforce federal immigration laws, to the detriment of public safety. This happens through the sharing of fingerprint data with immigration officials – at the point of arrest, without the basic right to a day in court. ICE then pressures local authorities to detain immigrants at local expense until ICE picks them up, tears them from their families, and puts them in deportation proceedings. But those cruel requests to hold immigrants in local jails for extra time are *optional*. To restore community trust in police and ease this program's burden on local governments, we need to pass the TRUST Act.

Why do we need a Massachusetts Trust Act?

Background: Massachusetts is not Arizona. Nonetheless, immigration enforcement at the state level causes problems here as well. In Massachusetts, the federal government interferes in local policing and seeks to use Massachusetts law enforcement resources for detaining and deporting people, regardless of the brutal effects on our families and communities. Last May, the federal government activated the so-called “Secure Communities” program, over the objections of Governor Patrick, Mayor Menino, and others. This program undermines the local work of Massachusetts police departments and drives a wedge between police officers and the constituents and communities they serve. The results of increased civil immigration enforcement in our state are:

- **Broken Families:** Detention and deportations by the federal government are tearing Massachusetts families and communities apart.
- **Misuse of Local Resources:** The federal government has coopted local and state law enforcement agencies into doing their work for them, which diverts local resources from our own public safety priorities.
- **Damaged Public Safety:** The entanglement of local police and civil immigration enforcement undermines community relations and public safety efforts, because individuals become reluctant to report crimes or serve as witnesses for fear of deportation. Collaboration between the police and the community is essential in combatting and preventing crimes.
- **Unequal Access to Justice:** In Massachusetts, local and state law enforcement officers’ assistance with federal immigration enforcement has resulted in the unlawful seizure and detention of Massachusetts residents without charges or probable cause to detain them. Submission to federal immigration detainer requests has led to many Massachusetts residents receiving unequal access to justice within the criminal justice system, unequal treatment by law enforcement officials, unfair bail forfeitures, and barriers to accessing police protection.
- **Worst of all, non-citizens who have called the police for help have instead ended up in deportation proceedings.**

What is the Massachusetts Trust Act?

The Trust Act is proposed state legislation that will ease the unfair burden currently placed on local governments and improve public safety for everyone by establishing that Massachusetts law enforcement officials are not involved in immigration enforcement. This will promote:

- ✓ Family Unity
- ✓ Public Safety
- ✓ Fiscal Responsibility
- ✓ Equal Rights

Specifically, the bill will:

1. Provide that individuals ordered released by Massachusetts judges and magistrates will not be detained for ICE in spite of the court’s release order.
2. Clarify that it is not the responsibility of Massachusetts law enforcement agencies to enforce federal immigration law, and direct Massachusetts law enforcement officers not to arrest, detain, or transport individuals for federal immigration purposes.

SUPPORT THE MASSACHUSETTS TRUST ACT! Contact: Jose Palma at masstrustact@gmail.com

INTRODUCTION TO THE ISSUE

A current practice of federal immigration agents is to issue immigration detainer requests to local, state and federal law enforcement agencies across the country. An immigration detainer is a notice to a local or state law enforcement agency that Immigration and Customs Enforcement (ICE) is investigating someone currently in the custody of that agency. The detainer requests that the agency notify ICE when the person is due to be released, and hold that person for an additional 48 hours (not counting weekends and federal holidays) to allow ICE to take custody.

These immigration detainers, unlike criminal detainers, are not issued by a judge or any neutral magistrate, and are not subject to any standard of proof, but rather are issued pending a mere investigation. They lack basic due process protections of notice or any opportunity to challenge their issuance. U.S. Citizens and Lawful Permanent Residents, as well as other immigrants who are not deportable, have nonetheless been subject to unlawful detention on the basis of immigration detainers.

In Massachusetts, as a result of immigration detainers and collaboration between ICE and local law enforcement agencies, residents who have called the police for help have instead ended up in immigration proceedings. The actual and perceived assistance in immigration enforcement by Massachusetts police has drastically undermined community relations. Victims of domestic violence are at terrible risk when seeking protection from the police could result in deportation proceedings for them or their children.

The federal government's "Secure Communities" program, which increases information sharing and primarily results in hundreds or thousands more detainers being issued to Massachusetts and other states, was activated over Governor Patrick's objection in May, 2012. Since May 2012, over 400 people from Massachusetts have been deported as a result of this program, the majority of whom had no criminal record at all. The Secure Communities program increases racial profiling, threatens victims of crime, and causes increased detention costs to Massachusetts for federal purposes that are at odds with local and state interests.

Many state and local law enforcement officials around the country confuse immigration detainer requests with criminal detainers, and incorrectly believe that they are mandatory. This is mistaken; even the Department of Homeland Security does not take the position that immigration detainers are mandatory for local law enforcement. The Attorney General of California recently issued a memorandum declaring that immigration detainers are not mandatory, and that all California law enforcement agencies have discretion to comply with immigration detainers or not.

In Massachusetts, compliance with immigration detainer requests has resulted in many Massachusetts residents receiving unequal access to justice within the criminal justice system, unequal treatment by law enforcement officials, unfair bail forfeitures and warrants for failure to appear in court because they were in immigration custody, and barriers to accessing police protection. Immigration detainers have caused the unlawful seizure and detention of Massachusetts residents without charges or probable cause to detain them. Individuals have been kept in jail to wait for ICE even when their charges were dismissed or they were granted bail by a judge.

Immigration detainers claim to provide authority to hold the subject of the detainer beyond the time that they would otherwise be entitled to liberty, and therefore the legality and constitutionality of such detention is in question. Pending litigation in Connecticut, California, and Illinois challenges the constitutionality of immigration detainers on various Fourth, Fifth, Tenth, and Fourteenth Amendment grounds. In addition, local jails around the country have been held liable for unlawful detention pursuant to federal immigration detainers, amounting to hundreds of thousands of dollars in damages.

CONTENTS OF THE BILL

The Massachusetts Trust Act generally seeks to limit the unfair and prejudicial effects of immigration detainers in Massachusetts by restricting their application as to individuals in Massachusetts custody, and establishing due process protections for individuals in Massachusetts custody. The bill also ensures that Massachusetts state, county, and municipal law enforcement agencies do not arrest or detain individuals for civil immigration purposes in excess of their legal authority.

1. Massachusetts law enforcement agencies shall not hold any individual solely on the basis of an immigration detainer if that individual has been acquitted, ordered released, or granted bail by a Massachusetts judge or magistrate.
2. Massachusetts courts and law enforcement agencies may hold someone on the basis of an immigration detainer if the individual is over 18 years of age, the detainer is accompanied by a DHS Form I-862 Notice to Appear or a prior order of removal, the individual has been confined to a state prison for at least five years for a conviction of a violent crime, and the federal government has agreed to reimburse all expenses associated with the continued detention of that individual.
3. No one shall be denied bail solely because of an immigration detainer.
4. Inmates must have an opportunity to have counsel present and must sign a written consent form before agreeing to an interview with ICE agents.
5. ICE agents shall not have access to interview inmates who are hospitalized or on suicide watch.
6. Whenever a detainer is placed on an individual in custody in Massachusetts, the individual must be provided notice of that detainer and any substantive information therein.
7. Law enforcement officials and jail staff shall not expend time and resources investigating inmates' status for ICE or providing criminal case status or release information to ICE agents.
8. Massachusetts law enforcement officials shall not arrest or detain individuals based on administrative immigration warrants in the NCIC database.
9. Law enforcement officials in Massachusetts shall not arrest or transport inmates for purposes of federal civil immigration enforcement, except pursuant to a formal detention contract with DHS.
10. Law enforcement officials shall collect and report data regarding what inmates receive immigration detainers, what were their charges, how long they spend in custody, and whether the detainer was accompanied with additional information.

MA TRUST ACT BACKGROUND

Immigration Detention and Deportation in Massachusetts

The federal government's system for detention and deportation of immigrants impedes Massachusetts' economic development, destroys Massachusetts families, and even co-opts Massachusetts' own resources for its work. Last May, the federal government activated the so-called "Secure Communities" program, over the objections of Governor Patrick, Mayor Menino, and others. This program sucks up Massachusetts law enforcement resources for detaining and deporting people, regardless of the brutal effects on our families and communities. Moreover, immigration detainer requests, which are the mechanism for detaining individuals for deportation, have disrupted the criminal justice process, created inequality and unfairness in our courts, and continue to undermine the work of Massachusetts police.

To provide a clear line between public safety officers and immigration enforcement, Massachusetts should enact the Trust Act, establishing clear guidelines for working with the federal government, protecting Massachusetts resources, and improving public safety. Maintaining Massachusetts police and sheriffs' autonomy from Immigration and Customs Enforcement is important for several reasons.

- **Police participation in immigration enforcement undermines community trust in local law enforcement.** When the public fears that they, or their friends or family members, could end up in deportation proceedings as a result of interactions with the police, they are much less likely to report crimes or testify as witnesses. Non-citizens may be more likely to flee from the scene of an accident, regardless of whether they are at fault or are a victim who is seriously injured. Police compliance with immigration detainers leaves victims without recourse and enables further criminal activity, which decreases, rather than increases, security in the community.
- **Holding individuals on immigration detainers puts the city or county at serious risk of liability for unlawful detention.** Jails and police departments around the country have been held liable for illegal detention of immigrants who had been held beyond the 48 hour limit. Furthermore, because most immigration detainers are not supported by probable cause of any crime, any extended detention on an immigration detainer may constitute unlawful seizure in violation of the Fourth Amendment. ICE does not reimburse cities or counties for any costs associated with immigration detainers.
- **Submitting to immigration detainers allows ICE to put Massachusetts police officers in the middle of immigration enforcement operations and politics.** ICE depends on police submitting to immigration detainers for the "Secure Communities" program to work. But there is no need for Massachusetts police to do ICE's job, particularly when the Governor and the people of Massachusetts oppose the program. Immigration is not the responsibility of Massachusetts, and state and local resources shouldn't be spent identifying and detaining immigrants for ICE. Massachusetts police have plenty of other more important responsibilities.
- **Submitting to immigration detainers does nothing to improve safety or security in Massachusetts.** Immigration detainers are not a public safety tool; they are a vehicle for deportation. Individuals who face criminal charges can be detained, prosecuted and sentenced regardless of an immigration detainer or immigration status. A policy not to hold individuals on ICE detainers will not interfere with any normal law enforcement or security operations. Those facing charges may be detained by the county or be released on bail in exactly the same manner as they always have been, regardless of any immigration requests.

SUPPORT THE MASSACHUSETTS TRUST ACT! {HD2620 and SD1116}

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