

Offered by Councilor Josh Zakim

CITY OF BOSTON



IN THE YEAR TWO THOUSAND FOURTEEN

AN ORDINANCE ESTABLISHING A BOSTON TRUST ACT

WHEREAS, The City of Boston seeks to ensure that all immigrants are able to fully participate in the civic and economic life of their neighborhoods and nurture and grow the spirit of unity in our City; and

WHEREAS, The City of Boston desires to provide opportunity, access, and equality for immigrants, and highlight the essential role immigrants have played and continue to play in moving Boston forward; and

WHEREAS, The federal government's Immigration and Customs Enforcement ("ICE") Secure Communities program uses local law enforcement data to identify suspected immigrants subject to detention who are in local custody; and

WHEREAS, ICE issues civil immigration detainer requests which allow for prolonged detention during which ICE investigates the immigration status of individuals in local custody; and

WHEREAS, In other jurisdictions, honoring civil immigration detainer requests based on less than probable cause has been ruled a violation of the Fourth Amendment, exposing local law enforcement agencies to liability under 42 U.S.C. § 1983; and

WHEREAS, When local law enforcement officials indiscriminately honor all ICE civil immigration detainer requests, including those that target non-criminal aliens, immigrant residents are less likely to cooperate and public trust erodes, hindering the ability and effectiveness of Boston's police force; and

WHEREAS, A local Trust Act is necessary to establish the City's policy for responding to ICE's civil immigration detainer requests;

NOW THEREFORE,

Be it ordained by the City Council of Boston, as follows:

Section 1.

Definitions.

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

(b) “Eligible for release from custody” means that the individual may be released from custody because any of the following conditions has occurred:

- (1) All criminal charges against the individual have been dropped or dismissed;
- (2) The individual has been acquitted of all criminal charges filed against him or her;
- (3) The individual has served all the time required for his or her sentence;
- (4) The individual has posted a bond, or has been released on his or her own recognizance;
- (5) The individual has been referred to pre-trial diversion services;
- (6) The individual has been sentenced to an alternative to incarceration, including a rehabilitation facility;
- (7) The individual is otherwise eligible for release under state or local law.

(c) “ICE administrative warrant” means a warrant issued by a federal immigration officer, not a judicial officer, that does not confer detention authority on a local jurisdiction.

(d) “Law enforcement official” means any City of Boston department, or officer or employee of a City department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

Section 2.

A law enforcement official shall not detain an individual on the basis of a civil immigration detainer request or an ICE administrative warrant after the individual is eligible for release from custody, unless ICE has a criminal warrant, issued by a judicial officer, for the individual.

Section 3.

Reporting.

Beginning no later than January 31, 2016, and no later than January 31 of each subsequent year, the Boston Police Commissioner shall submit a report to the Clerk of the City of Boston, and the Clerk shall forward the report to the Mayor of the City of Boston and shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City Council. The report shall include the following information for the immediately preceding calendar year:

- (a) A statistical breakdown of the total number of civil immigration detainer requests lodged with City law enforcement officials, organized by the reason(s) given for the request;
- (b) The total number of individuals that City law enforcement officials detained pursuant to Section 2;
- (c) The total number of individuals transferred to ICE custody; and
- (d) A statistical breakdown of cost reimbursements received from the federal government pursuant to any granted detainer requests, organized by case.

Section 4.

The provisions of this ordinance shall be effective immediately upon passage.