



October 29, 2013

Via Electronic and U.S. Mail

Santa Clara County Board of Supervisors
70 W. Hedding Street, 10th Floor
San Jose, CA 95110

Supervisor Mike Wasserman, District 1
mike.wasserman@bos.sccgov.org

Supervisor Cindy Chavez, District 2
cindy.chavez@bos.sccgov.org

Supervisor Dave Cortese, District 3
dave.cortese@bos.sccgov.org

Supervisor Ken Yeager, District 4
ken.yeager@bos.sccgov.org

Supervisor Joe Simitian, District 5
joe.simitian@bos.sccgov.org

Re: Santa Clara County's Policy Limiting Enforcement of Immigration Detainers

Dear Members of the Board of Supervisors:

The American Civil Liberties Union of Northern California urges Santa Clara County to retain its current policy regarding local enforcement of civil immigration detainer requests and to reject District Attorney Rosen's recommendation to adopt a policy that would allow enforcement of immigration detainers based on a broad array of past criminal convictions and current charges. Community members report that the policy has increased community trust in the police, with important gains for public safety, and Sheriff Smith has cited the policy as beneficial to her office's investigation of a young girl's kidnapping and murder. The current policy helps the County avoid the cost of immigration-based detention as well as liability for the kind of constitutional defects in detainer enforcement that have led to ACLU lawsuits around the country. However, we write today to focus your attention on two fundamental reasons why exceptions should not be created to authorize enforcement

MICHELLE A. WELSH, CHAIRPERSON | DENNIS MCNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH J. SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR | REBECCA FARMER, COMMUNICATIONS DIRECTOR
ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, LINNEA NELSON, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

immigration detainees in Santa Clara County. First, the County *must* rely on its criminal justice system—rather than federal civil immigration enforcement—to ensure safety and fairness for its residents. Second, immigration detainees are grounded in a flawed and unjust immigration enforcement scheme, and any enforcement of immigration detainee requests will constitute acquiescence and participation in that broken system.

The District Attorney proposes to use standards set forth in the recently passed TRUST Act (AB 4 – Ammiano) as Santa Clara County's own standards for immigration detainee enforcement. The TRUST Act was an important step forward for immigrant communities throughout California and the ACLU was a co-sponsor of the bill. However, it is the result of compromises that Santa Clara County need not and should not adopt as its own. In fact, the TRUST Act was explicit about setting a *minimum* standard of protection for immigrant communities, allowing detainee enforcement only where it "would not violate any federal, state or local law, *or local policy.*" AB 4, proposed amendment to Government Code § 7282.5(a) (emphasis added). Santa Clara County's particular commitments to civil and constitutional rights, public safety, and the health and well-being of immigrant communities supported its initial decision to adopt the current detainee policy. Two years later, the same commitments call for the same result.

You are being asked to consider allowing enforcement of immigration detainee requests for some community members based on past convictions or current charges. However, the criminal justice system that Santa Clara County and our society broadly rely on to mete out appropriate punishments and create incentives against reoffending applies equally to all residents, regardless of immigration status. That system recognizes and supports efforts of past offenders to rehabilitate, end their criminal behavior, seek assistance as necessary, become employed, and continue to participate in civil society. We rely on the criminal justice system to make appropriate decisions to set bail or grant release on one's own recognizance based on the likelihood someone will appear on his or her charges or violate the law while awaiting trial. There is no reason to treat immigrants differently with respect to either the consequences of past offenses or the appropriate calculation of risk associated with pretrial release.

On the contrary, treating immigrants differently leads to extremely harsh and unfair results, unsupported by any public safety need. Our current federal immigration system has evolved to drastically limit consideration of rehabilitation, ties to the community, and harm to U.S. citizen children and spouses in removal proceedings. Since 1996, a broad array of even minor criminal offenses results in *mandatory* deportation, including the deportation of long-term legal residents. Immigration judges have extremely limited discretion to provide relief from deportation for even the most worthy former offenders or people who are simply present without authorization. The County's compliance with immigration detainees for community members with past convictions or current charges would thus affirmatively submit each of these individuals to an inflexible and

harsh immigration detention and deportation system, in all likelihood subjecting them to deportation regardless of their contributions to the community or steps toward rehabilitation. Given the lack of discretion available to provide relief from deportation in immigration court, the County can only justify enforcing immigration detainers based on certain convictions or charges if those enumerated offenses and as-yet-unproven charges are sufficient to require deportation, regardless of individual circumstances. If it chooses to comply with immigration detainers based on past convictions or current charges, Santa Clara County will effectively sentence certain residents to punishment entirely out of proportion with the offenses they have or are charged with committing—banishment. The families of these community members will in turn suffer greatly, facing a terrible choice between leaving their country and being separated for the rest of their lives from a parent or spouse.

Santa Clara's detainer policy has been a beacon for immigrants' rights throughout the United States since it was adopted in 2011. Rather than turning residents over to a deeply flawed immigration enforcement system based on their past offenses or charges, Santa Clara County can and should rely on its criminal justice system to decide questions of pretrial detention and post-conviction consequences for criminal conduct. By retaining its current immigration detainer policy, Santa Clara County will live up to its long-standing principles and policies of staying out of civil immigration enforcement and protecting public safety and civil and constitutional rights.

Sincerely,

A handwritten signature in black ink that reads "Julia Harumi Mass". The signature is written in a cursive, flowing style.

Julia Harumi Mass

Staff Attorney