

**SANTA CLARA COUNTY**  
**Forum for Immigrant Rights and Empowerment (FIRE) Coalition**  
*Restoring Trust for a Safe and Unified Community*

October 5, 2015

**Supervisor and President of the Board, Dave Cortese, District 3**

**Supervisor Mike Wasserman, District 1**

**Supervisor Cindy Chavez, District 2**

**Supervisor Ken Yeager, District 4**

**Supervisor Joe Simitian, District 5**

*Board of Supervisors, Santa Clara County*

County Government Center, E Wing

70 West Hedding, 10<sup>th</sup> Floor

San Jose, CA 95110

Dear County Board of Supervisors,

The Bail and Release Work Group was created by the Board of Supervisors in 2014 to research and analyze the County's current policies and practices for incarceration, bail, screening, and supervision of criminal defendants. Thus, allowing the County's Bail and Release Work Group to review and address underlying issues and impacts of the Priority Enforcement Program (PEP) and Supervisor Cortese's proposal in an open and transparent manner will give community members the opportunity to be part of the conversation and shape a policy that truly promotes public safety without scapegoating immigrants.

We write to you from the Santa Clara County Forum for Immigrants Rights and Empowerment (FIRE) Coalition. We are a multi-ethnic, multi-racial coalition comprised of immigrant rights organizations, legal service providers, community organizations, civil liberties organizations, faith-based institutions, and youth organizations. In light of court decisions affirming the unconstitutionality of detainers, rising above the misplaced anti-immigrant sentiment, and responding to the need to further immigration reform without compromising public safety, we offer the following comments to Supervisor Dave Cortese's proposed changes to the SCC Detainer Policy:

**We unequivocally agree with Supervisor Cortese's proposal to not submit to ANY detainer request.** Federal courts have already ruled that detainers are unconstitutional in that they violate 4<sup>th</sup> Amendment rights. Supervisor Cortese raised these issues long before the decision, and we applaud this change.

**We strongly oppose the County's response to any request for notification by Immigration and Customs Enforcement (ICE) officials.** The difference between detainers and notifications

is artificial in the eyes of the community. That is because they have the same intent and effect - to facilitate transfer of a person into ICE custody for deportation.

The tool that ICE uses to request notifications comes in the form of ICE notification form I-247N. The new detainer form does not cure the legal deficiencies of previous immigration detainer forms, which courts have found violate the Fourth Amendment and expose local law enforcement agencies to liability. The new notification form may also expose the County to liability for extended detentions and transfers of custody that do not meet the Fourth Amendment's requirements.

Other law enforcement agencies request the custody of individuals that may be in the custody of the County. In those instances, those agencies produce arrest warrants -- warrants that have been requested by law enforcement and then reviewed by a judge, or court orders -- documents also reviewed by a judge. ICE should not get a special pass to request notification. If that is the case, then it opens the doors for other jurisdictions to request simple, unreviewed notifications and allows for greater abuse of power by authority.

While a Memorandum of Understanding (MOU) that contains a strong enforcement mechanism can be a tool in ensuring that both parties are held accountable to the terms of their partnership, entering into a MOU with ICE – an agency that has proven itself to be untrustworthy and deceptive – will not afford us any protection that ICE will not violate those agreements. We can only turn to our County's history of trying to get clarification from ICE in the opt-out procedures laid out by the now failed Secure Communities Program. In 2010, when the County asked and then implemented the procedures to opt-out as told by ICE, our County was then told the program was mandatory. In fact, policies such as PEP have no meaningful oversight nor regulations making accountability nearly non-existent. There is no evidence that ICE would honor any MOU that it enters into with the County.

**Notifying ICE of individuals who have been previously convicted of serious and violent felonies undermines the criminal justice system and its actors who have already reviewed, deliberated, and acted on any public safety concerns of that individual.** While not perfect, the criminal justice system has many levels that address public safety: from the police officer who arrests the individual, the pre-trial probation officer who reviews potential for release, the judge who reviews bail, the district attorney who prosecutes the case, the defense attorney who defends the individual, the judge or jury who decides on the facts of the case, the probation officer who recommends sentencing, the judge who determines sentencing, the sheriff or warden who guards the jail or prison they are sentenced to, and the parole and/or probation officer who supervises the individual during their out-of-custody sentence. That doesn't count the individual's family and community resources who are presently providing services and support to help that individual address any prior underlying issues that may have contributed to the crime in the first place.

The only thing ICE and a county-wide implementation of PEP would add is fear and uncertainty. ICE claims they will only be arresting and deporting serious/violent criminals; however, their track record indicates that they have lied and deported non criminals, and even gone as far as following children home from school to lead them to their suspected undocumented parents.

**This policy will undermine community trust in law enforcement.** Countless immigrants have been victims or witnesses of crime - sometimes heinous crimes - but have never reported it for fear of deportation if they cooperate with the police. Furthermore, immigrants, especially undocumented immigrants, will not come near any local government office if they know ICE and local law enforcement are collaborating. In fact, the Santa Clara County Domestic Violence Council has raised serious questions with the impact of working with ICE including how it would impact the rates of immigrant victims reporting abuse, the toll on the well-being of children separated from parents due to deportation, and the willingness of abuse victims to access the court system and community-based services. Our own Trust Index, conducted by the FIRE Coalition to gauge the level of trust when the County does not allow ICE access to the jails. In that survey, 94% of respondents believe that immigrants should not be treated differently than non-immigrants in the criminal justice system, and 88% of respondents would support our local leaders' efforts to maintain our current policy of stopping ICE from entering our jails. The community does not make a distinction between notifications and detainers, any entanglement with ICE is reason enough to undermine community trust in law enforcement and consequently weaken community policing and jeopardize public safety.

Responding to ICE notifications is also out of step with the County's well-rounded efforts of immigrant integration -- from welcoming unaccompanied minors and families who flee violence and abject poverty, to providing health care services for all residents regardless of immigration status, to providing outreach and support to those eligible for immigration relief under DACA or DAPA.

We urge you to continue to build a County that respects the rights and well-being of all its residents through sound and principled policies, and reject PEP and ICE notifications in our community.

On behalf of the Santa Clara County FIRE Coalition,

Bea Pangilinan  
*Asian Law Alliance*

Maria Teresa Blum-Sullivan  
*People Acting in Community Together (PACT)*

Eunice Hernandez  
*Sacred Heart Community Service*

Priya Murthy  
*Services, Immigrant Rights and Education Network*

Charisse Domingo  
*Silicon Valley De-Bug*