



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
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Department Name: 5th District Supervisor
Department No.: 011
For Agenda Of: 9/22/2015
Placement: Departmental
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Supervisor Steve Lavagnino
Contact: Cory Bantilan (x2187)

SUBJECT: Arrest, Detention and Removal Process of Undocumented Immigrants

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

Receive and file a report on the procedure in which undocumented immigrants are detained and released by the Santa Barbara County Sheriff's Office, who is slated for priority removal by Immigration and Customs Enforcement and what laws pertain to those decision making processes.

Background:

Santa Barbara County Sheriff's Office (SBSO) and Immigration and Customs Enforcement (ICE) are the two primary agencies responsible for detaining, releasing and/or removing convicted criminals who are citizens of a foreign nation. Several State and Federal laws as well as policy directives and court rulings govern their actions. These include but are not limited to: ICE's Priority Enforcement Program (PEP), California Trust Act, Miranda-Olivares v. Clackamas Co. (Clackamas) and Prop. 47. The purpose of this board agenda letter and hearing is to better understand the relationship between County, State and Federal agencies in their processes and priorities when dealing with undocumented immigrants.

Arrest, Detention and Removal Process under PEP

Every person arrested is fingerprinted (multiple times if booked first by a city) and checked against a national database used by law enforcement agencies to check backgrounds, including ICE. When an

inmate is booked into Santa Barbara County Jail, they are asked their name and nation of citizenship, among other things. When an inmate is determined to be of foreign nationality, SBSO notifies ICE, whose staff visit the jail multiple times per week. ICE staff then interviews the inmate at the jail using a standard questionnaire form and determines their level of priority. In addition to the interview, in most cases the fingerprint database allows for a quick identification and prioritization process for ICE.

Depending on the severity of current and prior offenses as outlined under PEP, ICE will request either an immigration hold *or* a notification of release from SBSO so that the inmate can be transferred into ICE custody. Under PEP, the scope of individuals targeted for removal is narrower and more defined than Secure Communities, a program of broader scope which was replaced by PEP. Another difference between PEP and Secure Communities is the type of request made by ICE. Under Secure Communities, ICE would request an immigration hold on an individual beyond their scheduled release date, something that the Clackamas court said, if complied with, would create constitutional issues and liability to SBSO and Santa Barbara County. Under PEP, ICE asks for an immigration hold in specific circumstances, but more frequently requests the notification which allows for transfer of an inmate after they have served their time in county jail. Sheriff Bill Brown and SBSO support and participate in the PEP program.

Another element of PEP occurs outside of SBSO jurisdiction. That is, ICE conducts their own arrests of individuals identified as priorities under PEP and who are not transferred to or from SBSO custody. Whether an ICE priority individual is transferred from SBSO custody or arrested by ICE on the street, the process afterward remains the same. When in ICE custody, an individual is transferred to an ICE facility in either Santa Maria or Camarillo, depending on whether the arrest occurred in northern or southern portion of the county. At those locations they are processed before being transported to Los Angeles to appear before a federal immigration judge. They are then immediately seen by the court who decides whether they will be removed to their country of citizenship or released in Los Angeles. If there has been a previous deportation ordered for the individual in question, that person may be deported without an immigration hearing.

Ice Enforcement Priorities under PEP (adapted from a November 20 Homeland Security memo)

Priority 1 (threats to national security, border security and public safety)

Undocumented immigrants engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

Undocumented immigrants apprehended at the border or ports of entry while attempting to unlawfully enter the United States;

Undocumented immigrants convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. 521(a), or those not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;

Undocumented immigrants convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was their immigration status; and

Undocumented immigrants convicted of an “aggravated felony,” as that term is defined in section 101(a)(43) of the Immigration and Nationality Act at the time of the conviction.

Priority 2 (misdemeanants and new immigration violators)

Undocumented immigrants convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element was their immigration status, provided the offenses arise out of three separate incidents;

Undocumented immigrants convicted of a “significant misdemeanor,” which for these purposes is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence);

Undocumented immigrants apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and

Undocumented immigrants who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

Priority 3 (other immigration violations)

Priority 3 individuals are those undocumented immigrants who have been issued a final order of removal on or after January 1, 2014. Those described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Priority 3 individuals should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

Clackamas Decision (from CA Attorney General)

The Miranda-Olivares court held that local authorities can choose to comply with a request from ICE, but are not required to do so by law. The court also held that because compliance with an ICE detainer is voluntary rather than mandatory, a local agency could violate the Fourth Amendment by detaining an individual solely based on the request of ICE, without some other probable cause for arrest.

No state or federal court with California jurisdiction has yet ruled on whether detentions authorized under the TRUST Act, but solely based on the request of ICE, violate the Constitution. If a California court adopts the reasoning of the district court in Miranda-Olivares, local jurisdictions may be held liable for damages for such a detention.

Further, compliance with the TRUST Act may not immunize local jurisdictions from liability. As described above, the TRUST Act permits a law enforcement official to detain an individual on the basis of an immigration hold after that individual becomes otherwise eligible for release from custody only if the continued detention would “not violate any federal law” (Gov. Code, § 7282.5, subd. (a).) If continued detention is found to violate the Fourth Amendment, it would therefore likely be no defense for the local jurisdiction to argue that it was acting under the authority of the TRUST Act.

California Trust Act

The California Trust Act is a piece of legislation that restricts the ability of law enforcement to comply with ICE requests, requiring that continued detention under ICE detainers must meet conditions laid out in state law. First, continued detention by state and local law enforcement agencies must "not violate any federal, state, or local law, or any local policy," and second, the detainee's criminal history must include serious or violent crimes, federal charges, or inclusion in the California Sex and Arson Registry among other conviction criteria. Only if both of these conditions are met, then local law enforcement may continue to detain the individual.