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TONI PRECKWINKLE
PRESIDENT

January 19, 2012

Mr. John Morton
Director
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

Dear Mr. Morton:

I am in receipt of your letter, date-stamped January 4, 2012, in which you express your concerns regarding Cook County's policy for responding to ICE detainers.

Let me begin by emphasizing that like you, I am firmly committed to the public safety of all residents of Cook County. I also support the U.S. Immigration and Customs Enforcement being able to carry out its duties and responsibilities. What is troubling to me, however, is a policy which treats people differently under the law solely based upon their immigration status.

You raise the concern that the County ordinance poses a threat to ICE's ability to identify deportable criminals. Subsection (a) of the ordinance does not prohibit honoring of ICE detainers if, "…there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed." In other words, the ordinance makes it clear that if your agency agrees in writing to cover the costs for housing the ICE detainees at the jail for the additional 48 hours (or, up to 96 hours over weekends) then the detainer could be honored. It costs the taxpayers of Cook County $143.00 per day to house an inmate in the Cook County Jail and we cannot justify shouldering the cost of holding detainees beyond their release date. Please be reminded of what is stated in the ordinance itself: "There (is) no legal authority upon which the federal government may compel an expenditure of County resources to comply with an ICE detainer."

Moreover, subsection (b) of the ordinance does not prohibit ICE agents from having access to detainees if, "…ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws…" The

ordinance recognizes there may be legitimate public safety reasons for providing access to detainees and provides statutory exceptions for the same. Again, the ordinance does not pose a threat to ICE's ability to identify deportable criminals and the very fact that an ICE detainer is issued means ICE is already aware of an individual's whereabouts.

In your letter, you reference the fact that, "since the Ordinance was enacted, ICE has lodged detainers against more than 268 removable aliens in Cook County's custody who have been charged with or convicted of a crime, including serious and violent offenses..." This raises two points that are troubling to me in light of your public safety argument. First, honoring ICE detainers would apply to those who have yet to be convicted of a crime. If an individual is charged with a violent offense or is a flight risk then an appropriate bond or no bond should be set to address public safetey; immigration status should not be the driving force for detainment. Second, you make it clear that not all of the charges are for serious or violent offenses. Again, it belies your argument that there is a threat to public safety when the charge could be a low-level or non-violent offense.

You also indicate that out of the 268 ICE detainers lodged in Cook County since enacting the ordinance, you were only able to independently locate and arrest 15 of these individuals post-release. As I have previously stated, I fully support ICE's ability to carry out its responsibilities, yet, I firmly believe it must do so through its own due diligence. You refer to Saul Chavez, for example, who was housed in the Cook County Jail for five months after the ICE detainer was issued. As you are well aware, this was not Mr. Chavez's first run-in with the law and prior to the arrest on the most recent charge, he had served out a sentence of probation. ICE was not only aware of Mr. Chavez's whereabouts during those five months he was detained in 2011 and could have pursued deportation efforts, but I imagine ICE was also aware of Mr. Chavez's status upon his prior conviction. The reason his case was not prioritized while under probation or during his 2011 detainment escapes me.

Your letter points out that our ordinance *may* also violate federal law based upon a provision under the Immigration and Nationality Act. In your letter, you quote a portion of 8 U.S.C. Section 1373(a). However, if you were to quote the entire provision of sub-section (a), it reads, "*Notwithstanding any other provision of Federal, State, or local law,* a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." (Italics added) In this instance, there is a local law—our policy for responding to ICE detainers—that outlines limitations for utilizing County staff and resources to respond to ICE inquiries. As previously mentioned, the federal government cannot compel a local agency to use its resources to enforce federal immigration laws. Furthermore, it is my understanding that ICE continues to have personnel in Cook County's criminal courts on a daily basis and that its officials are not prohibited from gathering needed information from other means.

Finally, you reference that the County Ordinance , "...inhibits ICE's ability to validate Cook County's annual request for State Criminal Alien Assistance Program (SCAAP) funding." We are certainly aware of and appreciate being reimbursed by the federal government for the cost of detaining criminal aliens in Cook County detention facilities. However, it is my understanding

that SCAAP funding only applies to the time that an individual is rightly detained in our jail. Once that individual posts bond or charges are dismissed, they are to be released—regardless of their immigration status. SCAAP funds do not cover costs of detaining individuals for the additional 48 hours. Cook County Jail will continue to detain individuals per judge's discretion and, during that time, SCAAP funds should be available if detaining immigrants. It would be unjust to hold someone at the mere request of another governmental entity when that individual has met all prerequisites for being released from the jail. It may be true, as you state in your letter, that ICE's ability to verify immigration status of criminal aliens detained by Cook County "becomes more difficult," but, that certainly does not mean it is impossible.

Mr. Morton, I welcome the opportunity to meet with you directly on these issues. This is not a matter I take lightly and as I have said throughout this process, I continue to be open to thoughtful dialogue and reasoning. If you are interested in scheduling a meeting to discuss this further, please contact me directly.

Sincerely,

Toni Preckwinkle
President