County of Santa Clara
Board of Supervisors
Supervisorial District Two
Supervisor George Shirakawa

BOS2-100511-1

DATE: October 5, 2011

TO: Supervisor George Shirakawa, Chairperson
Supervisor Mike Wasserman
Public Safety & Justice Committee

FROM: George Shirakawa
Supervisor, District 2

SUBJECT: Proposed Alternative Civil Detainer Policy

RECOMMENDED ACTION
Consider amended recommendation relating to Board Policy regarding civil immigration detainers in the County jail.

Possible action:

a. Adopt Board Policy Resolution No. YY-NN amending / adding / deleting Board of Supervisors' Policy Manual section 3.54 relating to civil immigration detainer policy. (Roll Call Vote)

b. Direct Clerk of the Board to include Policy in Board of Supervisors' Policy Manual.

REASONS FOR RECOMMENDATION
I support the thoughtful recommendations put forward by the Detainer Task Force. Leaders of

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss
County Executive: Jeffrey V. Smith
the public safety and justice departments carefully considered the County's perspective on civil immigration enforcement which was clearly articulated in the Board of Supervisors unanimous support of the June 2010 resolution directing the organization to not entangle criminal law enforcement with the enforcement of civil immigration law. Civil immigration law is clearly the purview of the federal government.

The federal government provides local government with the latitude to consider honoring requests made by the Homeland Security Department, Immigration, Customs, and Enforcement (ICE) division to detain an individual within the County's custody. The scenarios in which the County could or should honor detainers was given careful consideration by the Detainer Task Force. Rightfully, the Task Force recommends honoring those detainer requests for individuals who were convicted of a serious or violent crime as detailed in the California Penal Code or convicted of a crime equivalent outside the jurisdiction of California during the recommended time threshold.

Now, I recommend a further provision be added to the Task Force's recommendation. I urge the Board of Supervisors to approve this recommendation so long as the County is guaranteed reimbursement for costs associated with working with ICE. My proposed amendment makes it clear that without prior express written agreement for federal reimbursement, no County employee shall spend any time or resources related to civil immigration enforcement and ICE agents would no longer have access to County jail unless a criminal warrant is made available.

The costs associated with honoring detainers is neither the County's priority or in the County's best interest. A decade of significant budget cuts to public safety and safety net services, along with the new shift of responsibility from the State to the County for a large population of parolees and new sentencing requirements make ICE detainers a resource-intensive burden. As a precondition to honoring the federal governments' request that we hold individuals for civil immigration purposes, reimbursement should be required by the County of Santa Clara.

**BACKGROUND**

On December 2, 2010, the Public Safety and Justice Committee directed County Counsel to convene a Detainer Task Force made up of the County's public safety and justice leaders to advise the Board of Supervisors on the question of which civil immigration detainer requests the County should honor. This question was posed against the backdrop of the involuntary activation of the Secure Communities program in the County and ICE's refusal to honor the Board's vote on September 28, 2010 to opt out of the program. Previously, the Board of
Supervisors

The Detainer Task Force was chaired by the Office of the County Counsel. Its membership included the District Attorney, Public Defender, Sheriff, Chief of Correction, Chief Probation Officer, Director of Pretrial Services, Presiding Judge of Superior Court, CJIC designee, and Director of Budget and Analysis, or their designees.

On May 25, 2011, the Detainer Task Force agreed by general consensus on their recommended policy and brought forward the recommendation to Public Safety and Justice Committee on September 7, 2011. Earlier that same day, Cook County, Illinois (Chicago) passed an ordinance which agreed to honor ICE detainers only upon prior written agreement with the federal government for reimbursement of costs associated with the detention. Supervisor Shirakawa requested that the recommendation be held based upon the new information from Cook County.

ATTACHMENTS

• Board Resolution June 22, 2010

• Proposed Amended Detainer Policy
POLICY RESOLUTION NO. 2011-504

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADDING BOARD POLICY 3.54 RELATING TO CIVIL IMMIGRATION DETAINER REQUESTS

WHEREAS, the Board of Supervisors wishes to give direction and set policy for such matters for which the responsibility of decisions is placed on it by virtue of State codes, County Charter or specific ordinances and resolutions or relates to its broad policy-making authority to matters regarding Santa Clara County; and

WHEREAS, the Board of Supervisors wishes to clearly state and compile policies and to provide for distribution of these policies to affected decision-makers; and

WHEREAS, the Policy Manual is not set by ordinance, is not legally binding, and can be changed by adoption of a resolution approved by a majority of the Board of Supervisors and is intended to give guidance to staff and future members of the Board of Supervisors;

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Resolution Adding
Board Policy 3.54 relating to
Civil Immigration Detainer Requests

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OCT 18 2011
NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Santa Clara, State of California, that the Board of Supervisors’ Policy Manual is hereby amended by adoption of this resolution to add Section 3.54, Civil Immigration Detainer Requests, attached hereto as Exhibit “A” and incorporated herein, and the Clerk of the Board is directed to incorporate the policy into the manual so that it is available to all County staff.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on OCT 18, 2011, by the following vote:

AYES: CORTESE, KNIS, SHIRAKAWA, WASSERMAN, YEAGER
NOES: WASSERMAN
ABSENT: KNIS
ABSTAIN: —

DAVE CORTESE, President
Board of Supervisors

ATTEST:

Maria Marin
MARIA MARINOS
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Juniper Downs
Lead Deputy County Counsel

Exhibit to this Resolution:
A – Board Policy 3.54 for Civil Immigration Detainer Requests

446351

Resolution Adding
Board Policy 3.54 relating to
Civil Immigration Detainer Requests
Civil Immigration Detainer Requests

It is the policy of Santa Clara County (County) to honor civil detainer requests from the United States Immigration and Customs Enforcement (ICE) by holding adult inmates for an additional 24-hour period after they would otherwise be released in accordance with the following policy, so long as there is a prior written agreement with the federal government by which all costs incurred by the County in complying with the ICE detainer shall be reimbursed:

1. Upon written request by an Immigration Customs and Enforcement (ICE) agent to detain a County inmate for suspected violations of federal civil immigration law, the County will exercise its discretion to honor the request if one or more of the following apply:

   a. The individual is convicted of a serious or violent felony offense for which he or she is currently in custody.

      i. For purposes of the policy, a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code and a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code.

   b. The individual has been convicted of a serious or violent felony within 10 years of the request, or was released after having served a sentence for a serious or violent felony within 5 years of the request, whichever is later.

      i. If the individual has been convicted of a homicide crime, an immigration detainer request will be honored regardless of when the conviction occurred.

      ii. This subsection also applies if the Santa Clara County Department of Corrections has been informed by a law enforcement agency, either directly or through a criminal justice database, that the individual has been convicted of a serious or violent offense which, if committed in this state, would have been punishable as a serious or violent felony.

2. In the case of individuals younger than 18 years of age, the County shall not apply a detainer hold.

3. Except as otherwise required by this policy or unless 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, ICE agents shall not be given access to individuals or be allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend County time or resources responding to ICE inquiries or communicating with ICE regarding individuals’ incarceration status or release dates.