

REVISED MOTION BY SUPERVISORS HILDA L. SOLIS AND
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September 1, 2020

Ending ICE Transfers Without a Judicial Warrant in LA County

Los Angeles County is home to about 3.6 million immigrants, accounting for 36 percent of the county’s population. The county’s immigrant residents—whether naturalized U.S. citizens, lawful permanent residents, or undocumented—are valued and integral members of our social and economic fabric. Most of the county’s immigrant noncitizen population—nearly 70 percent—has lived in the United States for more than a decade, which has resulted in them building strong roots for themselves, their families, and their communities. For instance, nearly 60 percent of all children born in the county have at least one immigrant parent. Accordingly, immigration has been one of the County of Los Angeles (“County”)’s top priorities. Indeed, in 2017, this Board of Supervisors (“Board”) reaffirmed the County’s bold commitment to immigrant residents and their families by unanimously passing a motion to make immigration a County priority, the highest designation possible, and has followed through with more than 55 motions to further uplift the wellbeing and protect the rights of immigrants and their families who have made the county their home.

MOTION

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In response to COVID-19, aggressive steps have been taken nationwide to reduce jail populations and custodial arrests and to implement safety measures inside jails and prisons to prevent the spread of the virus and save lives. On March 31, 2020, this Board adopted a motion to direct the appropriate County departments to identify and implement measures to prevent the spread of the COVID-19 virus in County jails and to safeguard incarcerated individuals and staff, as well as their families and communities. As a result, the population in the County jails has been significantly reduced from more than 17,000 in early March 2020 to 13,033 as of August 18, 2020.

By contrast, U.S. Immigration and Customs Enforcement (“ICE”) has resisted and refused to significantly change its enforcement and detention practices in the face of the pandemic—imperiling the health and lives of county residents. ICE’s callous disregard for human lives has been decried even by medical doctors from the U.S. Department of Homeland Security and by federal courts across the country. (See, e.g., *Bravo Castillo v. Barr*, No. 20-cv-00605-TJH-AFM, 2020 WL 1502864, *11 (C.D. Cal. Mar. 27, 2020) [“[T]he Government cannot act with a callous disregard for the safety of our fellow human beings.”]; *Hernandez Roman v. Wolf*, No. 5:20-cv-768-TJH, 2020 WL 1952656, at *14-15 (C.D. Cal. April 23, 2020) [finding that ICE is “deliberately indifferent to the potential exposure of [detainees] to COVID-19” and has “acted with callous disregard for [their] safety”].) Courts have found ICE’s conduct to violate the substantive due process rights of its detainees in all five of its California detention facilities. In Los Angeles, the federal district court noted that the conditions of confinement at the Adelanto ICE detention facility are “inconsistent with contemporary standards of human decency.” (*Hernandez Roman v. Wolf*, No.

EDCV2000768TJHPVCX, 2020 WL 1952656, at *8 (C.D. Cal. Apr. 23, 2020).)

Recently, the court agreed to make individual bail determinations for detainees because of ICE's refusal to address risks related to COVID-19. (See *Hernandez Roman v. Wolf*, No. EDCV2000768TJHPVCX, 2020 WL 3481564, at *2 (C.D. Cal. June 17, 2020).)

COVID-19 is spreading through ICE detention facilities across the country at high rates. As of July 14, 2020, ICE's records showed that there were 3,183 positive cases among 13,562 people tested in its custody nationwide. ICE did not clarify whether the remaining tests were confirmed negative or still pending, meaning that a minimum of 23.5 percent of people tested positive through July 14, 2020. As of August 2020, five individuals in ICE custody have died of COVID-19, but this figure only tracks deaths in custody and not those who contract the virus in detention but then die after release or deportation. Importantly, new research suggests that ICE is severely underreporting the prevalence of COVID-19 in its detention facilities; the true infection rate among detainees may be 15 times greater than reported by ICE. Indeed, according to a federal court, evidence shows that ICE has "avoided widespread [COVID-19] testing of staff and detainees . . . not for lack of tests, but for fear that positive test results would require them to implement safety measures that they apparently felt were not worth the trouble." (*Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 4554646, at *1 (N.D. Cal., Aug. 6, 2020).) Although ICE has received about 1,900 COVID-19 test kits for the Adelanto detention facility, it has refused to allow the vast majority of them to be used.

ICE's shocking disregard for the safety and constitutional rights of those it arrests and detains has been well-established even prior to COVID-19. For example, in

September 2019, the federal district court in Los Angeles held that the network of databases on which ICE based its detainers were too error-ridden and incomplete to be reliable sources of information for probable cause determinations. (*Gonzalez v. ICE*, 416 F. Supp. 3d 995 (C.D. Cal. 2019).) The court emphasized that ICE's sole dependence on unreliable databases caused "many U.S. citizens [to] become exposed to possible false arrest" and to be unconstitutionally detained. (*Id.* at 1018.)

In May 2019, the Sheriff's Civilian Oversight Commission ("COC") recommended that the Los Angeles County Sheriff's Department ("Department") should not permit ICE or its contractors to access any Departmental property, including jails, and should not honor ICE requests to cooperate in the transfer of any individual to ICE custody, unless required by federal or state law—that is, unless ICE presents a judicial warrant or judicial probable cause determination. The COC report also noted that the Department spent at least \$1,378,000 a year in employing custody assistants to carry out duties associated with facilitating ICE arrests. The use of these County resources undermines not only the County's investment of \$1.5 million a year in the Los Angeles Justice Fund ("LAJF"), a program designed to provide immigration lawyers to defend families against immigration detention and deportation, but also the County's commitment to protect immigrants, their families, and co-workers from immigration enforcement overreach. In fact, LAJF providers have had to defend County residents who only ended up in ICE detention and deportation proceedings after being transferred from the County jails.

Community and labor advocates have long asked that the Department stop its entanglement with immigration agents. This practice has destroyed community trust and undermined public safety. It has wasted County taxpayer resources that are all too

precious now during this unprecedented public health and economic crisis. It has contributed to thousands of family separations. Notably, these transfers to ICE have led to county residents being detained for prolonged, often indefinite periods in immigration detention while they fight their cases. As a significant number of detained immigrants are workers and often the primary breadwinners in their families, many have lost employment and the ability to provide for their families while detained. In turn, families' financial devastation has increasingly burdened the County's social safety net.

In April 2020, the current Los Angeles County Sheriff ("Sheriff") issued a moratorium on ICE transfers absent a judicial warrant, and the Department extended this moratorium on a monthly basis. On August 3, 2020, the Sheriff made the moratorium permanent under his administration. This policy, however, is not binding on future Sheriffs.

To further the County's ongoing response to the public health emergency, and in the interest of permanently safeguarding the health, safety, and constitutional rights of *all* Angelenos, the County should enshrine the current Sheriff's moratorium on transfers to immigration authorities absent a judicial warrant or judicial probable cause determination into County policy. This action would also extend the County's Sensitive Locations Policy that this Board adopted in 2017 to prohibit immigration authorities' access to County facilities, unless they present a judicial warrant.

WE, THEREFORE, MOVE that the Board of Supervisors:

1. Prohibit the use of any County resources, property, personnel, time, labor, or funds to be used to:

- (a) honor requests by immigration authorities or persons or entities contracted for immigration enforcement purposes to hold, detain, house, transfer, or otherwise facilitate the arrest of any person in Sheriff's Department custody, unless pursuant to a *judicial warrant* or *judicial probable cause determination*, or as otherwise required by federal or state law; or
 - (b) directly communicate with immigration authorities or persons or entities contracted for immigration enforcement purposes regarding an individual's release time, date, or place, or immigration status, or to otherwise participate in any immigration enforcement activities, unless pursuant to a *judicial warrant* or *judicial probable cause determination*, or as otherwise required by federal or state law.
2. Prohibit access to and use of County property—including Sheriff's Department jails, stations, courthouse lockups, and databases—to immigration authorities or persons or entities contracted for immigration enforcement purposes, unless pursuant to a *judicial warrant* or *judicial probable cause determination*, or as otherwise required by federal or state law.
 3. Instruct the Chief Executive Officer, in consultation with the Office of the County Counsel, to prepare and issue a letter to impacted County departments advising them of this directive.
 4. The County defines a "judicial probable cause determination" and "judicial warrant" as defined in Government Code section 7284.4, subdivisions (h) and (i).

5. The County defines “immigration authorities” as defined in Government Code section 7284.4, subdivision ~~section 7284.4~~ (c).
6. The County defines “immigration enforcement” as defined in Government Code section 7284.4, subdivision (f).

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