

To: Los Angeles County Board of Supervisors

From: Signatories

Date: March 4, 2020

Re: Instead of Funding the Sheriff's Department's Entanglement with ICE, the Los Angeles County Board of Supervisors Should Expand the Los Angeles Justice Fund

I. Background

From the Muslim ban to family separation and attempts to end DACA and TPS, we have witnessed the extent to which the Trump administration will go to dehumanize our fellow human beings. In its latest ploy to gain political points, the administration will deploy Customs and Border Protection tactical unit agents to Los Angeles and other immigrant-rich municipalities.¹ This action, combined with Immigration and Customs Enforcement (ICE)'s increasingly aggressive and deceptive tactics, will further undermine public safety.²

In Los Angeles and California, we have fought the Trump administration's racist, unconstitutional mass deportation agenda time and time again. Three years ago, California took a significant step in passing SB 54, a law that has protected thousands of families from the clutches of ICE. The Los Angeles Police Department (LAPD) took these protections further—by requiring ICE to present a judicial warrant in order to access LAPD jail facilities to arrest and deport immigrant Angelenos.³

It is time for the County of Los Angeles to also require ICE to secure a judicial warrant in order to access Sheriff's Department (LASD) jail facilities, stations, and courthouse lockups. In furtherance of both the recognition that immigration is one of the County's top priorities⁴ and the recommendations of the Sheriff's Civilian Oversight Commission (COC),⁵ the Board of Supervisors (Board) should take a strong stand here. Instead of funding LASD's facilitation of ICE arrests and deportations, the County should reinforce its commitment to defending against ICE arrests and deportations by expanding the Los Angeles Justice Fund.

II. LASD's Entanglement with ICE Wastes Precious County Taxpayer Dollars, Undermines the Los Angeles Justice Fund, and Furthers Family Separation

LASD has continued the destructive practice of handing over our community members to ICE, only replacing ICE agents with for-profit contractors to handle these arrests on behalf of ICE. What's more, LASD is expending nearly \$1.5 million a year of precious county taxpayer dollars to facilitate these ICE arrests and deportations—undermining the County's investment of \$1.5 million a year in the Los Angeles Justice Fund, a program designed to provide immigration lawyers to *defend families against deportation*.⁶ Under the current sheriff, LASD has handed over to ICE people who have subsequently been represented through the Los Angeles Justice Fund in their fight to remain here with their families.

Take, for example, Immigrant Defenders' client Manuel,⁷ a TPS recipient, respected kids soccer coach, and father of five U.S. citizen children, who has lived in South Central Los Angeles since age nine. In March 2019, LASD turned him over to ICE contractors, who hauled him away to the Adelanto immigration prison. Separated from his wife and children, he was detained at Adelanto for about eight months, until his Immigrant Defenders attorney was able to secure his release through bond.

CARECEN's client Carlos⁸ was brought to the United States when he was only one year old and became a lawful permanent resident (LPR) when he was three. His entire family, including his parents and five siblings, are either LPRs or U.S. citizens. LASD arrested him for a probation violation and handed him over to ICE. After three months at Adelanto, CARECEN took on his representation through the Los Angeles Justice Fund. He won his immigration case, but he should not have had to go through his harrowing experience in the first place.

III. LASD's Entanglement with ICE Undermines Public Safety

LASD's entanglement with ICE undermines public safety. Notably, in a recent national study, the University of California, Davis, found no correlation between deportations and public safety; in particular, deportations had no effect on violent or property crime, regardless of how aggressive deportations were in a given area.⁹ What is clear, however, is that law enforcement entanglement with ICE has made immigrant community members far more distrusting of law enforcement.¹⁰

IV. LASD's Entanglement with ICE Raises Serious Legal Concerns and Exposes the County to Greater Risks for Financial Liability

LASD's continued detention of individuals beyond their time of release—even if for a brief moment—constitutes a new arrest, and probable cause of a crime is required;¹¹ ICE detainers, however, are not supported by probable cause.¹² On this subject, the County Counsel and County Executive of Santa Clara County have opined that the sheriff's department cannot accurately determine whether an individual falls under an SB 54 exception without delaying the individual's release in many cases.¹³ Furthermore, the practice of honoring ICE detainers lacking probable cause has led to U.S. citizens being unconstitutionally detained and turned over to ICE, and even deported.¹⁴ For example, at the behest of ICE, LASD detained Gerardo Gonzalez, a U.S. citizen born in Pacoima, California.¹⁵ Thus, LASD's practice of transferring individuals to ICE based on ICE detainers raises serious legal concerns, exposing the County to greater risks for financial liability.¹⁶

In light of these serious legal concerns, many jurisdictions throughout California have refused to honor ICE detainers, including requests for notifications and transfers, unless they are accompanied by a judicial warrant or other documentation establishing probable cause of a crime.¹⁷ In Santa Clara County, the Sheriff may not facilitate the transfer of an individual to ICE unless ICE "presents a valid arrest warrant signed by a federal or state judicial officer, or other

signed writ or order from a federal or state judicial officer authorizing ICE’s arrest of the [individual].”¹⁸ The City of Santa Ana prohibits the use of resources to comply with ICE detainees, including requests for notifications and transfers, unless required by law.¹⁹ In addition, as mentioned above, LAPD also requires ICE to present a judicial warrant.

V. Recommendations

Motivated by genuine budgetary concerns, including the efficient use of County resources to advance County priorities and prevent potential financial liabilities, the Board should use its significant budgetary authority.²⁰ The Board should prohibit LASD’s use of County resources to identify, investigate, arrest, detain, or otherwise facilitate ICE’s arrest of a person, unless it is pursuant to a *judicial warrant or judicial probable cause determination*, or otherwise required by federal or state law. Furthermore, whether ICE agents or private contractors working on behalf of ICE, ICE should not be given access to LASD property or be allowed to use its databases, facilities, or equipment.

As the county with one of the richest and most diverse immigrant communities, the County of Los Angeles should no longer be complicit in LASD’s furthering family separation right here in Los Angeles. Instead, the County should reinforce its commitment to defending against the Trump administration’s racist, unconstitutional mass deportation agenda by expanding the Los Angeles Justice Fund.

Signatories

A New Way of Life Reentry Project	California Immigrant Policy Center (CIPC)
ACLU of Southern California	California Immigrant Youth Justice Alliance (CYIJA)
Advancement Project California	Central American Resource Center – Los Angeles (CARECEN-LA)
African Communities Public Health Coalition	Centro CSO
AFSCME Local 148 – LA County Public Defender Union	CLEAN Carwash Campaign
American Indian Movement – Southern California & California	Clergy & Laity United for Economic Justice (CLUE)
Anti Recidivism Coalition (ARC)	Community Coalition
API Rise	Democratic Socialists of America – Los Angeles (DSA-LA)
Asian Americans Advancing Justice – Los Angeles	Detention Watch Network
Asian Pacific Policy and Planning Council	Dignity and Power Now
Bend the Arc: Jewish Action	DREAM Team Los Angeles
Black Alliance for Just Immigration (BAJI)	Esperanza Community Housing Corporation
Black and Brown Clergy	Esperanza Immigrants’ Rights Project
Black Jewish Justice Alliance	Fair Chance Project
Black Lives Matter – Los Angeles (BLM-LA)	Familia: Trans Queer Liberation Movement
Brothers, Sons, Selves	

Families United to End LWOP (FUEL)
Filipino Migrant Center
First Unitarian Church of Los Angeles
Food Chain Workers Alliance
Food Empowerment Project
Freedom for Immigrants
Gabriela South Bay
Ground Game LA
Homeboy Industries
Homies Unidos
Human Impact Partners
Human Rights First
ICE out of California
Idle No More SoCal
Ikar
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Immigration Center for Women and Children
Immigration Resource Center of San Gabriel Valley
Indivisible
Inner City Struggle
Instituto de Educación Popular del Sur de California (IDEPSCA)
Justice LA
Khmer Girls in Action
Kol Tikvah Temple
Koreatown Immigrant Workers Alliance (KIWA)
Los Angeles Center for Law and Justice
LA Forward
LA LGBT Center
LA Progressive
LA Voice
Leo Baeck Temple
Long Beach Immigrant Rights Coalition
Long Beach Sacred Resistance
March & Rally LA
MPower Change

National Day Laborer Organizing Network (NDLON)
National Immigration Law Center (NILC)
National Lawyers Guild – Los Angeles (NLG-LA)
New City Church of LA
Occupy/Abolish ICE LA
Our Gov LA
Pacoima Beautiful
Pangea Legal Services
Pasadena Mennonite Church
People Organized for Westside Renewal (POWER)
Pilipino Workers Center
Pomona Economic Opportunity Center
Public Counsel
PUSH LA Coalition
Resilience Orange County
Sanctuary Long Beach Coalition
Services, Immigrant Rights & Education Network (SIREN)
South Asian Network
Southwestern Law School Removal Defense Clinic and Pro Bono Removal Defense Program
St. John's Well Child and Family Center
Strategic Actions for a Just Economy (SAJE)
The Church Without Walls
The Strategy Center
UCLA Downtown Labor Center
UCLA Law Students for Immigrant Justice
UCLA School of Law Criminal Defense Clinic
UCLA School of Law Immigrants' Rights Policy Clinic
Unrig LA
Urban Peace Institute (UPI)
Youth Justice Coalition (YJC)
#MeToo Survivors
#MeToo Survivors' March International

Endnotes

¹ See Caitlin Dickerson & Zolan Kanno-Youngs, *Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities*, N.Y. TIMES, available at <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

² For example, just two weeks ago, a plainclothes ICE agent shot an immigrant community member in the face at point blank range. Annie Correal & Ed Shanahan, *Shooting of Man in the Face by ICE Turns Into a Trump-New York Fight*, N.Y. TIMES, available at <https://www.nytimes.com/2020/02/11/nyregion/ice-officer-shooting.html>.

As more and more immigrants know their rights, ICE has also stepped up ruses, primarily passing as local police to ensnare our immigrant neighbors. Nausicaa Renner, *As Immigrants Become Aware of Their Rights, ICE Steps Up Ruses and Surveillance*, THE INTERCEPT (July 25, 2019), <https://theintercept.com/2019/07/25/ice-surveillance-ruse-arrests-raids/>.

³ Office of the Chief of Police, Notice 1.14, “Immigration Enforcement Procedures” p. 5 (Dec. 29, 2017) (“Department personnel shall not permit US-ICE agents access to Department jail facilities to transfer arrestees except: To transfer custody pursuant to a *judicial warrant or judicial probable cause determination* for a criminal offense that authorizes a law enforcement officer to arrest and take into custody the individual for a federal criminal immigration offense . . .”) (emphasis added).

⁴ Motion by Supervisors Hilda L. Solis and Sheila Kuehl (Sep. 12, 2017) (“We, therefore, move that the Chief Executive Officer recognize immigration as the sixth priority, along with Sheriff’s Department reform, Child Welfare System, Health Services Integration, Homelessness, and Environmental Health Oversight and Monitoring, in the County governance.”).

⁵ The COC’s May 2019 report includes the following key recommendations:

Recommendation 9. LASD should not provide ICE, or persons or entities contracted through ICE with access to the Inmate Reception Center (IRC) or other areas within the jail, or other LASD properties such as courthouse lockups and station jails, unless required by federal or state law.

Recommendation 10. LASD should not honor ICE detainers, including requests by ICE to hold, detain, house, or transfer any inmate, unless specifically required by federal or state law.

CNTY. OF L.A. SHERIFF CIVILIAN OVERSIGHT COMM’N, L.A. COUNTY SHERIFF CIVILIAN SHERIFF’S DEPARTMENT COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT 5 (May 21, 2019), available at http://file.lacounty.gov/SDSInter/bos/commissionpublications/report/1055898_ImmigrationFinalReport-5-21-2019.pdf.

⁶ *Id.* at 20, Addendum A. The Los Angeles County Sheriff’s Department (LASD) spends at least \$1,378,000 every year in work related to the U.S. Immigration and Customs Enforcement (ICE). *Id.* LASD employs 13 custody assistants to carry out duties associated with ICE civil detainer requests, for example, by reviewing detainers to determine if the person in question meets the hundreds of felony and misdemeanor offenses qualifying for transfers under SB 54. *Id.* As of 2019, the annual salary and benefits for each custody assistant amounted to approximately \$106,000 per year. *Id.*

Los Angeles County has contributed \$3 million to the Los Angeles Justice Fund over a two-year period. See, e.g., Supervisor Hilda L. Solis, *Los Angeles County Expands LA Justice Fund to Separated Children* (July 3, 2018), <https://hildalsolis.org/los-angeles-county-expands-la-justice-fund-to-separated-children/>.

⁷ For privacy and confidentiality reasons, Manuel is not the client’s real name.

⁸ For privacy and confidentiality reasons, Carlos is not the client’s real name.

⁹ See, e.g., Anna Flagg, *Deportations Reduce Crime? That’s Not What the Evidence Shows*, N.Y. TIMES (Sept. 23, 2019), available at <https://www.nytimes.com/2019/09/23/upshot/deportations-crime-study.html>.

¹⁰ When local law enforcement agencies work with ICE, unauthorized immigrants are dramatically less likely to trust that law enforcement will keep their communities safe. See, e.g., Tom K. Wong et al., *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, U.S. IMMIGRATION POL’Y CTR., UC SAN DIEGO (Apr. 3, 2019), available at <http://usipc.ucsd.edu/publications/usipc-working-paper-2.pdf>. For example, in Los Angeles in 2017, reports of domestic violence among the Latinx community dropped by 10 percent and reports of sexual assault by 25 percent, declines that former LAPD Chief Charlie Beck said were due to fear of the federal government. Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y. TIMES (Apr. 30, 2017), available at <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?module=inline>; see also Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. TIMES (June 3, 2018), available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>. In addition, 80 percent of county residents said that contact with a government agency or program

increased the risk of deportation. MikeMcPhate, *California Today: Worries Over Deportation*, N.Y. TIMES (Apr. 5, 2017), <https://www.nytimes.com/2017/04/05/us/california-today-worries-over-deportation.html>.

¹¹ See *Roy v. Cnty. of Los Angeles*, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018), *reconsideration denied*, 2018 WL 3439168 *23 (July 11, 2018) (“Because any continued detention constitutes a new arrest under the Fourth Amendment, LASD could only arrest these individuals if LASD officers had probable cause to suspect that the individuals were involved in criminal activity.”); see also *Miranda-Olivares v. Clackamas Cnty.*, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (holding that where a “continued detention exceed[s] the scope of the Jail’s lawful authority over the released detainee,” the detention “constitute[s] a new arrest, and must be analyzed under the Fourth Amendment.”).

¹² A “detainer is a request that [another law enforcement] agency advise [ICE], prior to release of the [individual], in order for [ICE] to arrange to assume custody” of the individual. 8 C.F.R. § 287.7(a). “Thus, the sole purpose of a detainer is to request the continued detention of an [individual] so that ICE officials may assume custody of that [individual] and investigate whether to initiate removal proceedings against her.” *Morales v. Chadbourne*, 793 F.3d 208, 214–15 (1st Cir. 2015). “[F]ederal law leaves compliance with immigration holds wholly within the discretion of states and localities.” *Flores v. City of Baldwin Park*, 2015 WL 756877, at *4 (C.D. Cal. Feb. 23, 2016).

Courts “have universally . . . interpreted *Arizona v. United States* as precluding local law enforcement officers from arresting individuals solely based on known or suspected civil immigration violations.” *Santos v. Frederick Cnty. Bd. of Comm’rs*, 725 F.3d 451, 465 (4th Cir. 2013) (citing 567 U.S. 387 (2012)). “The rationale for this . . . is straightforward[:] A law enforcement officer may arrest a suspect only if the officer has probable cause to believe that the suspect is involved in criminal activity.” *Id.* (quoting *Brown v. Texas*, 443 U.S. 47, 51 (1979)) (internal quotation marks omitted). “Because civil immigration violations do not constitute crimes, suspicion or knowledge that an individual has committed a civil immigration violation, by itself, does not give a law enforcement officer probable cause to believe that the individual is engaged in criminal activity.” *Id.*

ICE detainers—and immigration arrests based on such detainers—must also be supported by probable cause. The Fourth Amendment applies to immigration arrests on detainers. See e.g., *Tejeda-Mata v. INS*, 626 F.2d 721, 724–25 (9th Cir. 1980) (applying “the constitutional requirement of probable cause” to immigration arrests); *Morales*, 793 F.3d at 211 (holding an ICE agent must have probable cause to issue an immigration detainer). The Fourth Amendment’s protection against unreasonable seizure in the context of a warrantless detainer serves an exceedingly important function in the immigration context because many of the backstops that exist in the criminal justice system are absent in the immigration system. *Gonzalez v. Immigration & Customs Enf’t*, 2019 WL 4734579, at *16 (C.D. Cal. Sept. 27, 2019).

In *Gonzalez*, the sister case to *Roy*, the Court found that the electronic databases ICE depends on to issue detainers are too error-ridden and incomplete to be reliable sources of information for probable cause determinations. Thus, the Court permanently enjoined ICE from issuing detainers based solely on database information, where there is no removal order, no ongoing proceedings, and no prior interview. *Id.* at *18–22. The Court also permanently enjoined ICE from issuing detainers to states whose laws do not expressly authorize state and local law enforcement to make arrests for civil immigration purposes; California is one such state. *Id.* at *18.

¹³ Memorandum from County Executive Jeffrey V. Smith & County Counsel James R. Williams, Use of County Resources to Assist U.S. Immigration and Customs Enforcement, (June 4, 2019).

¹⁴ See *Gonzalez*, 2019 WL 4734579, at *20; see also *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975); AARTI KOHLI ET AL., SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS 2 (2011), https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf (“3,600 United States citizens have been arrested by ICE through the Secure Communities program.”); Jacqueline Stevens, U.S. *Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, UNIV. OF VIRGINIA JOURNAL OF SOC. POL’Y AND LAW, 18, 606 (2011), available at <https://jacquelinestevens.org/US-Unlawfully-Detaining.StevensVSP18.32011.pdf>; Paige St. John & Joel Rubin, *ICE held an American man in custody for 1,273 days. He’s not the only one who had to prove his citizenship*, L.A. TIMES (Apr. 27, 2018), available at <http://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmlstory.html>.

¹⁵ *Gonzalez*, 2019 WL 4734579, at *1.

¹⁶ The County is already facing the prospect of significant financial liability to a class of thousands of individuals whom LASD illegally subjected to continued detention based on ICE detainers. See *Roy*, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018), *reconsideration denied*, 2018 WL 3439168 (July 11, 2018).

In neighboring San Bernardino County, the County agreed to pay \$35,000 to settle a lawsuit by Guadalupe Plascencia, a U.S. citizen, for facilitating her transfer to ICE by placing her in a location where she did not feel free to leave and delaying her release by about 10 minutes. ACLU So. Cal., *Guadalupe Plascencia, a U.S. Citizen*

Unlawfully Detained by ICE, Wins Settlement (Oct. 26, 2019), <https://www.aclusocal.org/en/press-releases/guadalupe-plascencia-us-citizen-unlawfully-detained-ice-wins-settlement>.

¹⁷ Unlike criminal arrest warrants, administrative arrest warrants are neither issued by a judge nor based on sworn testimony, and the statute and regulation that mention these warrants identify no standard of proof for their issuance. *See* 8 U.S.C. § 1226(a) (2012); 8 C.F.R. § 287.5(e)(3) (2017).

¹⁸ CTY. OF SANTA CLARA, BOARD POLICY 3.54 RELATING TO CIVIL IMMIGRATION DETAINER REQUEST, *available at* <https://www.sccgov.org/sites/scc/gov/CountyPolicies/Board-Policy-3.54-Cooperation-with-U.S.-Immigration-and-Customs-Enforcement.pdf>.

¹⁹ CITY COUNCIL OF CITY OF SANTA ANA, ORDINANCE NO. NS-2908, *available at* https://library.municode.com/ca/santa_ana/ordinances/code_of_ordinances?nodeId=811808.

²⁰ The Board has the authority to determine the sheriff's budget and personnel. "While the Sheriff, no doubt along with most heads of governmental offices, would understandably prefer to determine for himself the funding and personnel to be allocated to the agency for which he is responsible, that authority is vested in the Board." *County of Butte v. Superior Court*, 176 Cal. App. 3d 693, 699 (Cal. Ct. App. 185). The Board can reduce the sheriff's staff and pay if the Board's action is motivated by genuine budgetary concerns. *See id.* The Board cannot "obstruct the investigative function of the sheriff of the county," but the section does not "limit the budgetary authority of the board of supervisors over the district attorney or sheriff." Cal. Gov't Code § 25303.

Indeed, the Board has recently exercised its power of the purse by freezing a part of the sheriff's budget. Matt Stiles & Alene Tchekmedyan, *In a sharp rebuke, L.A. County supervisors vote to freeze sheriff's spending*, L.A. TIMES (Oct. 1, 2019), *available at* <https://www.latimes.com/california/story/2019-09-26/1-a-county-supervisors-sheriff-budget-freeze>.