



December 27, 2017

**VIA E-MAIL ONLY**

Hon. Desley Brooks (dbrooks@oaklandnet.com)  
Hon. Noel Gallo (ngallo@oaklandnet.com)  
Hon. Abel Guillen (aguillen@oaklandnet.com)  
Hon. Larry Reid (lreid@oaklandnet.com)  
Oakland City Council  
1 Frank H. Ogawa Plaza  
Oakland, CA 94612

Re: Non-Cooperation With ICE

Dear Honorable Members of the Public Safety Committee:

I write in my capacity as an individual commissioner, as a member of Oakland Privacy, and as part of a large sanctuary coalition, and request that you vote Yes on the “Resolution Supplementing And Amending Resolutions 63950, 80584 And 86498 In Order To Strengthen The Policy Of The City Of Oakland Not To Cooperate With Or Provide Support For Immigration And Customs Enforcement Actions.”

I have again enclosed our July 6, 2017 coalition support letter for your reference, wherein we endorsed termination of the agreement with ICE. This coalition represents thousands of Oakland voters that passionately voiced their belief that Oakland’s relationship with Homeland Security Investigations/ICE should be severed.

The non-cooperation proposal sponsored by Councilmembers Kaplan, Brooks, and Gallo, and endorsed by the Privacy Advisory Commission, is very reasonable and clear: OPD may not proactively assist ICE, but they may respond if an emergency arises. If OPD does respond, the proposal requires that they provide a report to the Public Safety Committee, thereby ensuring that information is provided to the public in a timely manner.

Following is a non-exhaustive list of reasons to support the proposal:

### **ICE HAS LITTLE TO DO WITH CRIME FIGHTING**

An East Bay Express analysis of federal court records revealed that no human trafficking convictions have occurred in Oakland during the last ten years.<sup>1</sup> The Transactional Records Access Clearinghouse (“TRAC”), part of Syracuse University, has examined federal immigration records for many years. Their examination reveals that deportation programs like Secure Communities have mostly removed folks not guilty of committing any violent crime.<sup>2</sup>

TRAC’s analysis of October 2017 court records (the most recent month available) indicate that 5,044 immigration criminal convictions (which includes traffic violations) occurred nationwide, a 36.8% *decrease* from the 2013 peak under President Obama.<sup>3</sup> The most frequent charge for a violent crime was in the category of firearms violations, and resulted in only three convictions.

Closer to home, TRAC’s examination of court records revealed that 41,332 new deportation proceedings were filed in California for FY2017. Of those, 2,117 (5%) were related to criminal charges, which includes traffic violations.<sup>4</sup> This follows the national trend, where just over **5% of filings seeking removal are based on alleged criminal activity.**<sup>5</sup>

### **COOPERATION WITH ICE IS ITSELF A PUBLIC SAFETY THREAT**

Like Oakland, Houston and Los Angeles prohibit their officers from enforcing immigration laws due to the ‘guilt by association’ impact felt in immigrant communities. The presence of ICE in those cities, with large immigrant populations, is already leading to dramatic changes in reporting of crimes to local police departments, as the chilling effect from President Trump’s inflammatory rhetoric takes hold. Houston’s Chief Acevedo is reporting that Hispanics reporting sexual assault have dropped 43% compared to last year; reported robberies and aggravated assaults are each down 12%.<sup>6</sup> Los Angeles Chief Beck is reporting that sexual assault reports from the Hispanic population have dropped 25% compared to last year.<sup>7</sup> The lack of reporting

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<sup>1</sup> See Robert Gammon, “Why Oakland Should Cut Off Ice”, East Bay Express November 22, 2017, <https://www.eastbayexpress.com/oakland/why-oakland-should-cut-off-ice/Content?oid=11028169>.

<sup>2</sup> See Transactional Records Access Clearinghouse (“TRAC”), “Secure Communities and ICE Deportation: A Failed Program?”, Syracuse University, April 8, 2014, <http://trac.syr.edu/immigration/reports/349/>.

<sup>3</sup> See TRAC, “Immigration Convictions for October 2017”, Syracuse University, November 28, 2017, <http://trac.syr.edu/tracreports/bulletins/immigration/monthlyoct17/gui/>.

<sup>4</sup> See TRAC, “New Deportation Proceedings Filed in Immigration Court”, Syracuse University, last accessed December 2017, [http://trac.syr.edu/phptools/immigration/charges/deport\\_filing\\_charge.php](http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php).

<sup>5</sup> See TRAC, “Nature of Charge in New Filings Seeking Removal Orders through October 2017”, Syracuse University, last accessed December 2017, [http://trac.syr.edu/phptools/immigration/charges/apprep\\_newfiling\\_charge.php](http://trac.syr.edu/phptools/immigration/charges/apprep_newfiling_charge.php).

<sup>6</sup> See Brooke A. Lewis, “HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year,” Houston Chronicle, April 6, 2017, <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>.

<sup>7</sup> See James Quelly, “Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says,” Los Angeles Times, March 21, 2017, <http://beta.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

(and subsequent lack of enforcement) of these crimes will embolden criminals to continue preying upon vulnerable immigrant populations.

OPD is already facing an uphill battle at garnering community trust due to its participation in the August 16 ICE raid. Word went through the community immediately that a removal operation was initiated on that date, and folks are well aware that no one has been charged with a crime resulting from the raid.

Houston's Chief Acevedo took a very public stance against SB4, a partially blocked anti-sanctuary law in Texas (presently before the Fifth Circuit Court of Appeals) that prohibited local governments from adopting sanctuary policies or limiting cooperation with immigration officials.<sup>8</sup> Los Angeles Chief Charlie Beck publicly endorsed SB54, our state sanctuary law.<sup>9</sup>

Here, OPD has made no such public statements regarding SB54, or a like-minded SB31 (anti-registry law). It is critical that City policy (and OPD's adherence to it) provide clear and comforting direction to our large immigrant population – that Oakland will not cooperate with ICE. Both the International Association of Chiefs of Police, and the Major Cities Chiefs Association disfavor commingling of local police with federal immigration efforts.<sup>1011</sup>

### **THE CITY OF OAKLAND COULD BE FINANCIALLY LIABLE FOR ASSISTING ICE**

The Federal government cannot compel jurisdictions to take part in immigration enforcement. Under the Tenth Amendment of the United States Constitution, the federal government “may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”<sup>12</sup> However, ICE sometimes issues detainer requests to local law enforcement agencies.

Primarily resting on Fourth Amendment violations, municipalities that honor detainers may be found liable for unlawfully holding an individual and may be found liable for monetary damages.<sup>13</sup> OPD's current Immigration Policy Section 415.5 allows for discretion as to whether

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<sup>8</sup> See Megan Flynn, “Houston’s Chief Acevedo, Defiant and Introspective, Rails Against SB 4”, April 28, 2017, Houston Press, <http://www.houstonpress.com/news/hpd-chief-acevedo-lambasted-sb4-in-defiant-candid-monologue-9394376>.

<sup>9</sup> See Sen. Kevin De Leon, “LAPD Chief Charlie Beck Endorses SB 54”, June 19, 2017, <http://sd24.senate.ca.gov/news/2017-06-19-lapd-chief-charlie-beck-endorses-sb-54>.

<sup>10</sup> See International Association of Chiefs of Police, “Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement,” last accessed December 2017, <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf>.

<sup>11</sup> See Craig E. Ferrell, Jr. et al. “M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Policy Agencies”, Major Cities Chiefs Association, 2006, [https://www.majorcitieschiefs.com/pdf/news/MCC\\_Position\\_Statement.pdf](https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf).

<sup>12</sup> See Kate M. Manuel, “Immigration Detainers: Legal Issues,” *Congressional Research Service*, R42690, May 7, 2015, <https://fas.org/sgp/crs/homesecc/R42690.pdf>.

<sup>13</sup> See ACLU “Recent court decisions relating to ICE detainers”, September 28, 2012, <https://www.aclu.org/other/recent-ice-detainer-cases?redirect=recent-ice-detainer-cases>. (*Galarza v. Szalcyk* 2012,

an ICE detainer request should be honored. Although the policy lists criteria that must be considered before honoring such a request, the muddied waters from the exercise of such discretion poses a risk to the City of Oakland. The Department of Homeland Security has acknowledged that “federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers...”<sup>14</sup>

### **SANCTUARY JURISDICTIONS HAVE LOWER CRIME RATES**

A 2017 report examined sanctuary counties (likely because of the traditional cooperation between Sheriffs and federal immigration officers), and found that sanctuary counties “have lower crime rates and higher economic indicators than non-sanctuary counties”, finding on average that 35.5 fewer crimes were committed per 10,000 people in the sanctuary jurisdiction.<sup>15</sup>

### **CONCLUSION**

The data demonstrates that ICE is being used a political weapon, in furtherance of longstanding prejudices and racist policies, not as an effective crime fighting tool. ICE does not keep Oakland safe. Cooperating with ICE makes Oakland less safe. Assisting ICE places the City at risk of violating the civil rights of Oaklanders, and could make us financially liable to those harmed. There is no good reason for us to assist ICE, nor to divert scarce City resources from other law enforcement efforts.

Sincerely,



Brian Hofer  
Member, Oakland Privacy

Attachment

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Pennsylvania: federal defendants paid \$25,000, City of Allentown paid \$25,000, Lehigh County paid \$95,000; *Del Agua v. Jones* 2015, Sacramento: County of Sacramento paid \$25,000; *Harvey v. City of New York* 2009, New York: City of New York paid \$145,000).

<sup>14</sup> See Jeh Charles Johnson, Secretary U.S. Department of Homeland Security, “Secure Communities”, November 20, 2014, [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>15</sup> See Tom K. Wong, “The Effects of Sanctuary Policies on Crime and the Economy”, Center for American Progress, 2017, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.