

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Mayor's Office, City Attorney's Office and Oakland Police Department
DATE: May 15, 2007
RE: **Resolution (1) Calling on the Federal Government to Impose a Moratorium on Federal Immigration Raids and to Adopt Fair, Comprehensive and Humane Federal Immigration Reforms, (2) Affirming that Oakland is a City of Refuge for Immigrants, and (3) Declaring the City's Policy Against Local Enforcement of Civil Immigration Laws While Permitting Cooperation with Federal Agents in Situations involving Public Safety and Serious Crimes**

SUMMARY

Federal immigration agencies are once again conducting immigration raids in California and throughout United States. In the Bay Area these raids have targeted mostly Hispanic immigrants. The immigration raids, coupled with the federal government's recent legislative attempts to mandate that state and local police agencies enforce federal civil immigration laws, have created fear and confusion within local communities, especially immigrant populations, against local police agencies. This resolution calls upon the federal government to impose a moratorium on federal immigration raids and to adopt fair, comprehensive and humane immigration reforms. It also affirms the City's policy against local enforcement of civil immigration laws, affirms that Oakland is a City of Refuge for immigrants from all countries, and provides for the police department to cooperate with federal agents in situations involving public safety and criminal activities.

FISCAL IMPACT

Not applicable.

BACKGROUND

In June 2006 the Department of Homeland Security, Immigration and Customs Enforcement agency (ICE), formerly the Immigration and Naturalization Service (INS), began to conduct immigration raids again. According to media accounts ICE has conducted hundreds of raid operations throughout the country, many of which have taken place in Northern California and in the Bay Area. ICE states that its "Operation Return to Sender" pursuant to which these raids are conducted only targets immigrants who have been convicted of crimes or who are under a deportation order.

Contrary to ICE's representations, immigrant and civil rights advocates and media outlets report that the raids conducted in the Bay Area since June 2006 have resulted in the arrests of about 18,000 people, most of whom did not have a criminal history. For example, in a recent article of

the San Francisco Chronicle, ICE reported that of 119 immigrants arrested in January 2007 during raids conducted in Contra Costa County, only 18 had criminal records. Civil rights and immigrant-rights activists such as the ACLU and the Lawyer's Committee on Civil Rights also report that the raids are conducted through illegal entry and searches of residences and other locations; by racially profiling individuals; and by committing Fourth Amendment violations against immigrants involving unlawful detentions and arrests.

This aggressive approach by ICE has prompted the American Civil Liberties Union, the Lawyers Committee for Civil Rights, and the Bay Area Guardian to join in a Freedom of Information Act request for information and documents explaining the agency's protocol and procedures for conducting the raids.

While civil rights advocates and humanitarians probe into the actions of ICE and challenge the immigration raids in court, anti-immigrant groups and proponents of "federalizing" local police are actively promoting the passage of federal laws that would mandate state and local police to enforce immigration laws. Two recent bills would have imposed an affirmative duty on state and local police to enforce immigration laws; these bills failed.

Many national experts on immigration law agree that the country's immigration policy is broken, inconsistent, and needs reform. Thus any attempt to enforce these broken and inconsistent laws through overreaching raids is ill advised and likely to result in violation of immigrants' civil and human rights.

Given the confusion created by the immigration raids and the uncertainty with respect to local law enforcement's involvement in enforcing civil immigration laws, it is important that the City Council clarify the City's policies on these subjects.

KEY ISSUES AND IMPACTS

The City Should Oppose the Immigration Raids and Urge the U.S. Congress to Adopt Comprehensive and Humane Immigration Reform.

The recent raids conducted by federal immigration officials in the Bay Area have targeted mostly immigrants of Hispanic descent. However, we recognize that other immigrant groups are vulnerable to such raids and potential violations of their constitutional rights. In cities like San Francisco, Palo Alto and Redwood City these operations have caused immigrant communities to fear local police. Although ICE states that its operations are limited to arresting undocumented immigrants who have criminal records or have already violated a deportation order, humanitarians and civil rights leaders and the media dispute this claim. Moreover, the raids may be unconstitutional if they target persons of a certain race, do not comport with the requirements of the Fourth Amendment, or unnecessarily interfere with the rights of legal immigrants. Of significant concern to local police is that federal agents while conducting raids identify themselves as "police." As a result local residents mistakenly believe the local police are conducting the raids or, at a minimum, that the city itself is condoning the raids. These raid activities and federal agents' identification of themselves as "police" erode the efforts of local police to win the trust and cooperation of immigrants on whom local police must rely to successfully conduct their criminal investigations and violence suppression projects.

The City of Oakland recognizes the significant contributions that immigrants make and have made to the City, regardless of their legal status. Over the years the City Council has supported the fair and equitable treatment of immigrants and has declared its position on various immigration-related matters. On September 17, 2002, the Council approved a resolution urging then governor Gray Davis to sign AB 60 which would have removed impediments for immigrants to obtain drivers' licenses and identification cards. On July 8, 1986 the Council passed a resolution declaring the City of Oakland a "City of Refuge" to immigrant refugees from Haiti, South Africa, El Salvador and Guatemala, noting that the City has "a diverse cultural heritage and multi-national population of which the City is proud." The City Council also passed a resolution approving the use of identification cards issued by Consular offices to be used by state agencies and local police as proper identification cards.

The City has a long history of vigorously advocating for the civil rights of all its residents regardless of immigration status. Consistent with the City's history and in recognition of the consensus opinion of national leaders and experts that immigration policy is broken and urgently needs reform, it is recommend that Council oppose the current immigration raids in order to protect the City's residents and immigrant communities from any possible abuses of their civil and constitutional rights. Furthermore, it is recommended that Council call upon the federal government to impose a moratorium on immigration raids until such time as the Congress implements comprehensive immigration reforms that are fair and humane and which recognize the economic and cultural contributions of immigrants.

Local legislative action is a very important way for cities and immigration and civil rights advocates to impact federal policy and laws as the national dialogue about immigration reform continues. Therefore, consistent with the consensus of national experts and policy makers, and with the June 2006 Major Cities Chiefs' Association recommendations, all of which conclude that this country's federal immigration policy is broken, inconsistent, and in need of reform, and in consideration of the contributions made by immigrants to this country, it is recommended that the City Council join the growing chorus urging the United States government to adopt comprehensive immigration reforms that are fair and equitable and which recognize the contributions of immigrants to this country.

Enforcement of Civil Immigration Laws Should Remain the Responsibility of the Federal Government

Current law provides that the enforcement of civil immigration law is a federal responsibility. Nevertheless anti-immigrant and other conservative groups continue their efforts to have the Congress approve federal laws which would "federalize" local police and require local governments to enforce civil immigration laws. Two bills seeking to "federalize" local police, have been proposed in Congress; these bills failed. These bills would have imposed an affirmative duty on state and local police to enforce immigration laws.

About fifty-eight (58) cities and three states have promulgated policies limiting the authority of their employees to enforce civil immigration law. In their proclamations these state and local entities have declared that turning local police into federal immigration agents would be counterproductive and would undermine public safety rather than enhance it; it would undermine

successful community policing and violence suppression programs, which rely heavily on the involvement and participation of all residents, including immigrant communities. In addition, an enforcement scheme that requires local police to address civil immigration laws would amount to an unfunded federal mandate, diverting scarce resources from more critical local law enforcement needs.

On June 7, 2006 the Major Cities Chiefs Association, which is comprised of the largest police agencies in America, announced its adoption of recommendations to the United States Congress and the President respecting the immigration crisis in America today. The Association declared that local police agencies are the first to respond to the public safety concerns of over fifty million residents in the United States. The Association expressed serious concerns about any attempt by the federal government to mandate the involvement of local police in enforcing immigration laws, noting that such enforcement schemes would undermine trust and cooperation of immigrant communities, be a financial burden that most major police agencies would be unable to bear and, given the complexity of immigration laws and the lack of clear authority to enforce the law's civil provisions, local law enforcement agencies would face the risk of civil liability and litigation.

Police Chief Tucker agrees with the Association's recommendations opposing any attempt by the federal government to require local police to enforce civil immigration laws. Immigration laws are complex and local police do not have the resources to enforce them nor the training or expertise to fully understand the multi-faceted character of these federal laws, which combine criminal and civil law concepts. Thus, any local enforcement of immigration laws, could subject local governments to liability for improper detentions or arrests. Furthermore, local enforcement of federal immigration laws would jeopardize the relationship of trust local police have worked hard to build with their immigrant communities.

The Oakland Police Department Should Continue to Cooperate with Federal Immigration Agencies to Address Criminal Activity and Protect Public Safety

Oakland has a serious crime problem and city residents expect the City to enforce all laws against serious and violent offenders who threaten the safety of Oakland's communities. The City fully intends to continue to exercise its rights to investigate and arrest persons who commit violent crimes. To accomplish this mission, the Oakland Police Department cooperates with ICE and other federal law enforcement agencies when appropriate to solve crimes that occur in Oakland.

The OPD and federal immigration agencies may share information, hold multi-agency meetings, participate in long-term criminal investigations, and conduct joint violence suppression projects involving the commission of crimes in Oakland, regardless of whether the perpetrator is a U.S. citizen, a legal alien or an undocumented immigrant. In fact, federal and state law mandate that the Oakland Police Department cooperate with ICE and other federal agencies to address criminal activities of undocumented immigrants. *See, Health & Safety Code §11369, Gov. Code §53069.75, and 8 U.S.C.A §§1373, 1644.*

It should be noted that most members of Oakland's immigrant community are law abiding persons who themselves are victims of crimes, such as the recent wave of so called "amigo

checking” assaults and robberies committed against them. In addition, crimes involving human trafficking, indentured servitude, and narcotics and gang activities are often perpetrated against immigrant persons. The City therefore must continue to protect its immigrant communities not only from the abuses of immigration raids but also from the crimes that are committed against these vulnerable populations.

SUSTAINABLE OPPORTUNITIES

Not applicable.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.


RECOMMENDATIONS

It is recommended that the City Council adopt the resolution that is being introduced by Councilmembers Ignacio De La Fuente, Jane Brunner and Jean Quan, calling upon the federal government to impose a moratorium on federal immigration raids and to adopt fair, comprehensive and humane immigration reforms. The resolution also affirms that Oakland is a City of Refuge for immigrants. Finally, the resolution declares that it is the City’s policy to prohibit local enforcement of civil immigration laws while authorizing the Oakland Police Department to continue its cooperation with federal agents in matters involving public safety and serious crimes.

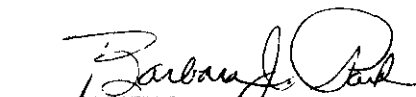
ACTION REQUESTED OF THE CITY COUNCIL

Mayor Ronald Dellums, Chief of Police Wayne Tucker and City Attorney John Russo ask that the Council adopt this resolution which is being introduced by Councilmembers Ignacio De La Fuente, Jane Brunner and Jean Quan.

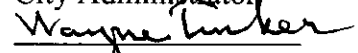
Respectfully submitted,



Ronald Dellums
Oakland Mayor



for John A. Russo
City Attorney

By: Deborah Edgerly
City Administrator


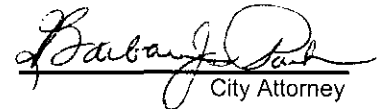
Wayne Tucker
Chief of Police

APPROVED FOR FORWARDING
TO THE CITY COUNCIL


OFFICE OF THE CITY ADMINISTRATOR

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION No. _____ C.M.S.

07 MAY -3 PM 4:51

Introduced by Councilmembers Ignacio De La Fuente, Jane Brunner and Jean Quan

Resolution (1) Calling on the Federal Government to Impose a Moratorium on Federal Immigration Raids and to Adopt Fair Comprehensive and Humane Federal Immigration Reforms, (2) Affirming that Oakland is a City of Refuge for Immigrants, and (3) Declaring the City's Policy against Local Enforcement of Civil Immigration Laws while Permitting Cooperation with Federal Agents in Situations Involving Public and Serious Crimes

WHEREAS, Oakland Mayor Ronald Dellums has issued a proclamation (1) calling on the federal government to impose a moratorium on federal immigration raids and to adopt fair, comprehensive and humane federal immigration reforms, and (2) declaring the City's policy against local enforcement of civil immigration laws while permitting cooperation with federal immigration agents in situations involving criminal activity in order to protect the public safety; and

WHEREAS, the City of Oakland has a strong tradition of embracing and valuing diversity and respecting the civil and human rights of all residents regardless of their immigration status; and

WHEREAS, the City of Oakland is made up of racially and ethnically diverse individuals, both native born and immigrants, whose collective cultures, backgrounds, and viewpoints join to form a highly cosmopolitan community which prides itself on being a place which welcomes persons and families of all backgrounds and nationalities; and

WHEREAS, in the past the Oakland City Council has recognized the contributions of immigrant communities in the City and throughout California, noting that "California's economy depends heavily on immigration labor" and that "Oakland has a large immigrant community whose investments have contributed to the revitalization of the City's neighborhoods;" and

WHEREAS, the Oakland City Council supports the civil rights of immigrant communities as reflected in past resolutions supporting state legislation aimed at removing impediments to an immigrant's ability to obtain a driver's license; providing for state and local agencies to accept identification cards issued by Consular offices; and declaring the City of Oakland a City of Refuge for immigrant refugees from Haiti, South Africa, El Salvador and Guatemala; and

WHEREAS, the Oakland City Council wishes to affirm and declare that Oakland is a City of Refuge for immigrants from all countries; and

WHEREAS, the Department of Homeland Security, Immigration and Customs Enforcement Agency, has increased the number of immigration raids and recently has begun to conduct raids in cities in the Bay Area including Oakland, causing concern and fear on the part of immigrant communities about the local police and the City's involvement in supporting the raids; and

WHEREAS, the federal government continues to call upon local police agencies to enforce civil immigration laws and legislative bills have been introduced in the United States Congress which, if passed, would mandate that local police agencies enforce civil immigration laws; and

WHEREAS, many national experts and policy makers agree that the country's immigration policy is broken, inconsistent and in need of reform, and local legislative action is an important way for cities and immigration advocates to positively influence the continuing national discussion about immigration reform; and

WHEREAS, the enforcement of civil immigration laws by local police agencies raises many complex legal, logistical, and resource issues for the City, including: (1) undermining the trust and cooperation with immigrant communities; (2) increasing the risk of civil liability due to the complexity of civil immigration laws and the lack of training and expertise of local police on civil immigration enforcement; and (3) detracting from the core mission of the Oakland Police Department to create safe communities; and

WHEREAS, the City Council is greatly concerned about crime in Oakland and the mission of the Oakland Police Department is to protect the safety of the public against crimes committed by persons who are native born or immigrants; and

WHEREAS, most immigrants in the City are law abiding citizens and are themselves the victims of crime, and the City wishes to foster the trust and cooperation with its immigrant communities and wishes to encourage immigrants to report crime and speak to the police without fear of being arrested or reported to the United States Immigration and Customs Enforcement agency; and

WHEREAS, consistent with the law and with Council policy, the Oakland Police Department does not enforce federal civil immigration laws, does not conduct immigration raids, and does not question, detain or arrest individuals solely on the basis that they might be in this country illegally in violation of federal civil immigration laws; and

WHEREAS, Chief of Police Wayne Tucker supports the Major Cities Chiefs Association's June 7, 2006 recommendation which, on behalf of law enforcement from across the United States, calls upon the United States Congress and the President to resolve the immigration crisis facing the United States and to pass immigration reform laws that are fair and humane; now, therefore be it

RESOLVED: That the Oakland City Council opposes the immigration raids and calls upon the federal government to impose a moratorium in order to protect the civil rights of immigrant communities, until such time as the U.S. Congress implements comprehensive immigration reforms that are fair and humane and which recognize the economic and cultural contributions of immigrants; and be it

FURTHER RESOLVED: That the Oakland City Council affirms and declares that Oakland is a City of Refuge for immigrants from all countries; and

FURTHER RESOLVED: That the Oakland City Council endorses Chief of Police Wayne Tucker's position supporting the Major Cities Chiefs Association's June 7, 2006 recommendation to the United States Congress and the President to resolve the immigration crisis facing America and to pass immigration reform laws that are fair and humane; and be it

FURTHER RESOLVED: That, in accordance with state and federal laws, City employees including members of the Oakland Police Department shall not enforce federal civil immigration laws and shall not use city monies, resources, or personnel to investigate, question, detect or apprehend persons whose only violation is or may be a civil violation of immigration law; and be it

FURTHER RESOLVED: That, in accordance with state and federal laws, the Oakland Police Department will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety; and be it

FURTHER RESOLVED: That nothing in this resolution shall be construed to prohibit City employees and Oakland police officers from cooperating with federal immigration agencies when they are required to do so by statute, federal regulation, court decision or a legally binding agreement.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
City of Oakland, California