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Title: AN ORDINANCE ending the honoring of civil immigration hold requests from the United States Immigration and Customs Enforcement for individuals in the custody of the department of adult and juvenile detention; and amending Ordinance 17706, Section 2, and K.C.C. 2.15.020.

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Indexes: Adult and Juvenile Detention, immigration, United States

Code sections: 2.15.020 - .

Attachments: 1. Ordinance 17886.pdf, 2. Staff Report Proposed Ordinance 2014-0297 COW ICE Detainer Policy.docx, 3. Attachment 1 Proposed Ordinance 2014-0297.doc, 4. Attachment 2 PM 2014-0297 Amendment.docx, 5. Attachment 3 PM 2014-0297 Jurisdictions w ICE Deatiner Policies.docx, 6. 2014-0297 Amendment G-1 Warrants.docx, 7. Revised Staff Report 2014-0297 Detainer Policy Staff report.docx

Date	Ver.	Action By	Action	Result
9/2/2014	2	Metropolitan King County Council	Hearing Held	
9/2/2014	2	Metropolitan King County Council	Passed	Pass
8/20/2014	1	Committee of the Whole	Passed Out of Committee Without a Recommendation	
7/23/2014	1	Committee of the Whole	Deferred	
7/14/2014	1	Metropolitan King County Council	Introduced and Referred	

Clerk 08/21/2014

AN ORDINANCE ending the honoring of civil immigration hold requests from the United States Immigration and Customs Enforcement for individuals in the custody of the department of adult and juvenile detention; and amending Ordinance 17706, Section 2, and K.C.C. 2.15.020.

STATEMENT OF FACTS:

1. King County was renamed in honor of the Reverend Doctor Martin Luther King, Jr., and is a "home rule" government under Article XI, Section 4, of the Washington State Constitution.

Under its home rule power, the county may exercise any power and perform any function, unless

preempted by state or federal law, relating to its government and affairs, including the power to regulate for the protection and rights of its inhabitants.

2. The enforcement of civil immigration laws has traditionally been, and continues to be, the responsibility primarily of the federal government. Since 2002, immigration enforcement operations have been carried out by the United States Immigration and Customs Enforcement, a division of the Department of Homeland Security, which was, before 2002, known as the Immigration and Naturalization Service.

3. Since the 1980s, the Immigration and Naturalization Service and Immigration and Customs Enforcement have been apprehending noncitizens arrested and detained by state and local criminal justice systems through numerous enforcement operations, primarily through some variation of the Criminal Alien Program. Under the program, federal agents use booking and other information provided by local law enforcement agencies to target noncitizens in local agency custody for the placement of administrative immigration detainer requests that can result in a direct transfer upon release of noncitizens from local custody into immigration custody for initiation of removal proceedings.

4. In 2008, Congress directed the Department of Homeland Security to expand efforts to target noncitizens with serious criminal convictions for apprehension and removal. In response, the Department of Homeland Security, through Immigration and Customs Enforcement, created the Secure Communities program to complement its efforts under the Criminal Alien Program initiative. The key component of the Secure Communities program is automated information sharing between the Department of Homeland Security and the Federal Bureau of Investigation, primarily the sharing of fingerprint data collected from local jails for identifying individuals incarcerated in local facilities to be investigated for immigration proceedings.

5. Like the Criminal Aliens Program, noncitizens identified through the Secure Communities

program and targeted for Immigration and Customs Enforcement apprehension can be subjected to placement of a detainer request while in custody of local jail officials. According to 9 C.F.R. Sec. 287.7(a), "A detainer serves to advise another law enforcement agency that the federal Department of Homeland Security seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible." There is no judicial review of a detainer.

6. Since April 2012, Immigration and Customs Enforcement investigators have had access to all fingerprint data transmitted to federal authorities from jails in the state of Washington. Local jails have no discretion to opt out of participation in the Secure Communities program.

7. King County is dedicated to providing all of its residents fair and equal access to services, opportunities and protection. In K.C.C. 2.10.210, the King County Strategic Plan declares as part of the "fair and just principle" that determinants of equity include "(c)ommunity and public safety that includes services such as fire, police, emergency medical services and code enforcement that are responsive to all residents so that everyone feels safe to live, work and play in any neighborhood of King County and a law and justice system that provides equitable access and fair treatment for all. K.C.C. 2.15.010 was enacted in 2009 to specifically ensure that all county residents have access to necessary services and benefits essential for upholding the county's commitment to fair and equal access for all residents. To further this policy, K.C.C. 2.15.010 established the requirement that no county office, department, employee, agency or agent shall condition the provision of county services on the citizenship or immigration status of any individual.

8. In accordance with those code requirements, the department of adult and juvenile detention

does not endeavor to determine the immigration status of any individual held in county detention. However, it had been the practice of the county to honor all civil immigration hold requests from Immigration and Customs Enforcement for detainees by holding adult inmates for additional time after they would otherwise be released from county jail facilities.

9. The majority of federal immigration proceedings are civil, not criminal. According to *Arizona v. U.S.*, 132 S.Ct. at 2505, "(a)s a general rule, it is not a crime for a removable alien to remain present in the United States." Civil immigration proceedings are conducted in a United States Department of Justice Immigration Court, not in a United States District Court. Therefore, unless an arrestee is being federally prosecuted for a criminal immigration violation, Immigration and Customs Enforcement is not a party to a federal court proceeding, and Immigration and Customs Enforcement officials would not ordinarily have access to a federal magistrate or judge for the issuance of judicial warrant.

10. In 2013, the metropolitan King County council held multiple meetings to discuss the policy of honoring civil immigration holds and developed policy that would restrict how the county honored federal detainer requests.

11. Ordinance 17706, enacted on December 2, 2013, placed in county code the policy that the department of adult and juvenile detention would only honor federal civil immigration holds if an inmate has been convicted of a violent, serious and that federal agents submit written documentation and case identifying information establishing criminal history.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. In its deliberations related to Ordinance 17706, the council received public testimony from various individuals, organizations, and immigrant advocates in King County who recounted numerous instances where the exercise of federal detainers by the department of adult and juvenile detention has resulted in significant distrust of local law enforcement, dislocation of families, the loss of jobs and housing, economic loss to

families and the community, and harm to children. Many testified through public input and the submission of written testimony that there are significant costs to the community, both in dollars and human suffering when families become broken and dependent when the family breadwinner is detained or deported. Testimony established that the threat of deportation for the immigrant community is so strong that many persons are afraid to report domestic violence or witnessed crime. Further, many noted that children who are English-speaking United States citizens of an undocumented parent are uniquely vulnerable to the impacts of the exercise of federal detainers.

B. King County adopted policy in Ordinance 17706 that restricts the department of adult and juvenile detention from honoring civil immigration detainers except for inmates with a history of one or more of the following: conviction in the State of Washington of specific enumerated violent or serious crimes; conviction anywhere worldwide of an equivalent violent or serious crime; and finding in federal immigration court that the inmate is an inadmissible alien due to commission of crimes or activities threatening security or human rights anywhere worldwide. The county's policy requires federal agents to provide the department of adult and juvenile detention with documentation and case identifying information establishing that the inmate meets one or more of these criteria. However, Immigration and Customs Enforcement announced that it will not do so, and have not done so. Faced with the lack of cooperation, the county has not honored detainers except for those accompanied by a judicial warrant.

C. In March 2014, the United States Court of Appeals, Third Circuit, issued a decision in *Galarza v. Szalczyk*, holding that a federal detainer alone does not shield local municipalities from liability. In its decision, the court held that when a municipality holds an inmate on a civil immigration detainer, but there was no probable cause to support the detainer, the municipality can be liable for damages.

D. Two other federal trial court decisions quickly followed the *Galarza* decision: *Maria Miranda-Olivares v. Clackamas County* (District of Oregon); and *Villars v. Kubiowski* (N.D. Illinois). These cases resembled *Galarza*, with detainers that lacked any accompanying documentation such as a judicial warrant or

an affidavit of probable cause. As in Galarza, the respective courts ruled that a decision to honor an Immigration and Customs Enforcement detainer is discretionary, not mandatory. Further, the District Court ruled that Clackamas County violated Miranda-Olivares's constitutional Fourth Amendment rights against illegal seizure and unlawfully detained her, and that the detainer did not shield the county from liability. The Illinois District Court found that detaining the plaintiff on a detainer without further probable cause is unconstitutional and lead to several causes of actions including conspiracy and equal protection violation. Consequently, local jurisdictions that honor detainers unaccompanied by evidence of judicial review can be liable for detaining an inmate on a civil detainer when the inmate is legally entitled to release.

E. The federal court decisions indicating that local jurisdictions could be liable in instances where they honored civil immigration detainers occurred after the county's enactment of policies that would honor some detainers.

SECTION 2. Ordinance 17706, Section 2, and K.C.C. 2.15.020 are each hereby amended to read as follows:

A. It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals ~~((who have been convicted of a violent or serious crime. The department of adult and juvenile detention may hold individuals for an additional forty eight hours after they would otherwise be released only upon receipt of a written immigration hold request by a federal agent to detain a county inmate for suspected violations of federal civil immigration law, where one or more of the following apply:~~

~~1. United States Immigration and Customs Enforcement agents provide written documentation and case identifying information that the individual has been previously convicted of a homicide at any time in the past; or that the individual either has been convicted of a violent, serious, sex, or serious traffic offense within the past ten years or within the past ten years has been released from prison after serving a sentence for a violent, serious, sex, or serious traffic offense conviction. For purposes of this section, "has been convicted of a~~

~~violent, serious, sex or serious traffic offense" means the individual was convicted of a most serious offense as defined in RCW 9.94A.030, a sex offense as defined in RCW 9A.44, a conviction of any sexual exploitation of a children offense as defined in RCW 9.68A, residential burglary as defined in RCW 9A.52.025, drive by shooting as defined in RCW 9A36.045, convicted of an offense of unlawful possession of a firearm as defined in RCW 9.41.040, a conviction of an offense with a firearm enhancement as defined in RCW 9.94A.533, or convicted of two or more serious traffic offenses as defined in RCW 9.94A.030; or where United States Immigration and Customs Enforcement agents provide written documentation that an individual has identified through United States immigration court proceedings as an inadmissible alien under 8 USC Section 1182(a)(2) (G), Foreign Government Officials who have committed particularly severe violations of religious freedom; 8 U.S.C. Section 1182(a)(3), Security and related grounds (terrorist activities, totalitarian parties, Nazi collaborators and recruitment of child soldiers); or 8 U.S.C. 1182(a)(10)(C) International child abduction: or~~

~~2. United States Immigration and Customs Enforcement agents provide written documentation and case identifying information that the individual has been convicted in any jurisdiction of an offense that, if committed in the state of Washington would meet the criteria outlined in subsection A.1. of this section.~~

~~B. Notwithstanding subsection A. of this section, the county shall not honor civil immigration hold requests for any individuals who are younger than eighteen years old.~~

~~C. This section does not create or form the basis for liability on the part of the county, its officers, employees or agents)) that are accompanied by a criminal warrant issued by a U.S. District Court judge or magistrate.~~

~~((D. Beginning January 1, 2014,)) B. ((†))~~The department of adult and juvenile detention shall compile a listing all immigration detainers received by the department, showing detainers received and detainers accompanied by federal judicial warrants. Beginning May 1, 2014, the department shall prepare and transmit to the council a quarterly report showing the number of detainers received and the number of detainers that were accompanied by a federal judicial warrant with descriptive data that includes but is not limited to: the

types of offenses that individuals with detainers accompanied by a federal judicial warrant were being held, the reason for release from county custody, the length of stay for each individual before the detainer accompanied by a federal judicial warrant was executed (~~((for those who were released from county custody))~~), and the number of individuals that had detainers but were transferred to federal or state department of corrections's custody. The reports called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole, and the law, justice, health and human services committee, or their successors.

~~((E. The executive shall convene an immigration detainer oversight group to review the implementation of the county's limitations on immigration detainer requests as outlined in subsection A.1. of this section. The oversight group shall include but not be limited to: the executive or the executive's designee; the director of the department of public defense or the director's designee; the prosecuting attorney or the prosecuting attorney's designee; the presiding judge of the superior court or the presiding judge's designee; and two representatives appointed by the county council, one of whom shall be an immigrant's rights specialist and one of whom shall be a member of the King County Bar Association. The members of the oversight group shall be appointed by the executive and submitted to the council with a motion for confirmation. The executive shall convene this group by July 1, 2014, and, with the help of King County criminal justice agencies, provide this group with data on the detainers received by the county, criminal history information on the individuals for whom detainers were honored, data on the length of stay within county detention facilities for these individuals, and the outcome of the court case that resulted in the individual being detained that led to them being subject to a detainer. The executive shall also try to obtain data on the outcome of the individuals' immigration proceedings after the honoring of the detainer. The oversight group shall review this data to evaluate the impact of the limitations on detainers and also to determine if any changes are needed in the county's policies and develop a report with the group's conclusions and recommendations. The executive shall also prepare a fiscal estimate of~~

~~the cost of honoring federal detainees. The oversight group shall review this data to evaluate whether it continues to be appropriate for the county to honor any detainees or to cease honoring detainees as a county policy. The group shall also review the county's existing systems to make recommendations on how federal agents can use current information systems to identify when individuals will be released from county custody in order for federal agents to take appropriate enforcement actions upon release without the use of detainees or cost to the county. The group shall also review how the county could enhance its information systems to provide greater public notification of when individuals will be released from county custody.~~

~~By January 31, 2015, the executive shall prepare a report summarizing the data reviewed by the oversight group, include the report of the oversight group, and include the group's proposed recommendations for proposed changes to the county's policies. The executive shall transmit the report, supporting data, and recommendations to the clerk of the council. The report called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole and the law, justice, health and human services committee, or their successors.))~~