

AUG 23 2012



U.S. Immigration and Customs Enforcement

Ms. Julie Kirchner
Executive Director
Federation for American Immigration Reform
25 Massachusetts Avenue NW, Suite 330
Washington, D.C. 20001

Dear Ms. Kirchner:

Thank you for your July 17, 2012 letter regarding the trend of certain jurisdictions adopting policies or legislation to not honor U.S. Immigration and Customs Enforcement (ICE) immigration detainers. The U.S. Department of Homeland Security (DHS) and ICE share your concerns that such policies undermine public safety and hinder ICE's ability to enforce the nation's immigration laws.

ICE has explained to jurisdictions such as Cook County, Illinois, that by ignoring ICE detainers they are undermining public safety in their communities by exposing their local communities to risks from suspected and convicted sex offenders, weapons violators, drunk drivers, and other violent criminals. These are not hypothetical risks. ICE is aware of some of the additional crimes being committed by these recidivist criminal aliens after such jurisdictions have chosen to release them back into their communities rather than into federal custody. These crimes include the possession of a controlled substance, money laundering, burglary, spousal battery, aggravated driving under the influence, and even attempted murder. The gravity of Cook County's actions was highlighted in very real terms in a *Chicago Tribune* article about the case of Saul Chavez, an alien who was charged with killing a pedestrian while driving intoxicated. Mr. Chavez fled Cook County after the county released him on bond, despite the fact that an ICE detainer had been lodged against him.

In addition to undermining public safety, policies that restrict compliance with immigration detainers may also violate federal law. The Immigration and Nationality Act provides that a "local government entity...may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." See 8 U.S.C. § 1373(a). This provision is designed to ensure that ICE's ability to enforce immigration law in our communities is not unduly obstructed by state or local laws or policies. The policies enacted by such jurisdictions prohibit their personnel from responding to ICE inquiries or communicating with ICE regarding an individual's incarceration status or release date.

Since such policies have been enacted in certain jurisdictions, ICE has lodged hundreds of detainers against removable aliens in their custody who have been charged with or convicted of a crime or multiple crimes, including serious and violent offenses. None of these detainers

have been honored by these jurisdictions. This has prevented ICE from removing these aliens without their being released back into the community. Of those released back into the community, ICE has been able to independently locate and arrest only a few.

In a related matter, many of these jurisdictions continue to submit requests for State Criminal Alien Assistance Program (SCAAP) funding to the U.S. Department of Justice (DOJ). Under the auspices of SCAAP, the federal government, through DOJ, reimburses jurisdictions for the cost of detaining criminal aliens. In administering SCAAP, DOJ requires DHS to verify the immigration status of inmates for whom state and local agencies seek reimbursement. Without access to these jails, ICE's ability to accurately verify the immigration status of criminal aliens detained becomes extraordinarily difficult—as evidenced by this year's SCAAP validation process during which ICE was able to validate all fiscal year 2012 SCAAP requests received from DOJ except for the submissions from Cook County, Illinois, and Santa Clara County, California—and may result in a denial of reimbursement to the state for costs of incarcerating criminal aliens under SCAAP. Moreover, it is fundamentally inconsistent for such jurisdictions to continue to request federal reimbursement for the cost of detaining aliens who commit or are charged with crimes while at the same time thwarting ICE's efforts to remove those very same aliens from the United States.

Because of the gravity of these concerns, ICE has requested that jurisdictions with restrictive detainer legislation and ordinances amend their policies to avoid any legal conflict with federal law and to restore sensible cooperation with ICE, particularly when it comes to identifying and removing criminal and recidivist criminal aliens incarcerated in their jails. DHS and ICE are committed to ensuring the safety of American communities and will continue to consider all options, both financial and legal, to encourage such jurisdictions to honor ICE detainers.

Thank you again for your letter and your support on this issue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Morton", with a long horizontal flourish extending to the right.

John Morton
Director