## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 5 | **Name:** | Clifton Curry |
| **Item No**.: | 2014-0297 | **Date:** | July 23, 2014 |

**SUBJECT**

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.

**SUMMARY**

This Proposed Ordinance would make it the policy of the county to no longer honor civil immigration hold requests (detainers) from the U.S. Immigration and Customs Enforcement (ICE) unless accompanied by a federal judicial warrant. The current policy of the county is to honor detainers for individuals who have been convicted of certain violent, serious, sex, or serious traffic crimes as defined in Washington statute. Prior to the adoption of the county’s detainer restrictions in December 2013, it had been the practice of the King County Department of Juvenile and Adult Detention (DAJD) to continue to hold individuals in jail based on immigration-related detainers even when the individual would otherwise have been released from jail after a local court order. The use of the detainers allowed federal agents to take these individuals into custody to enforce immigration laws. The county policy adopted in Ordinance 17706 allows the honoring of detainers for individuals only when federal agents provide documentation of defined prior criminal history. Federal agents have chosen not to provide this data with detainers and, as a consequence, no detainers have been honored by the county in 2014. Since the adoption of the county’s policies, some federal courts have ruled that honoring ICE detainers is not mandatory and that holding an individual on a detainer without other probable cause could result in the violation of constitutional protections and make the jurisdiction holding the individual liable for paying damages. This ordinance would change the county’s policy so as to not honor any detainer without a federal judicial warrant.

**BACKGROUND**

Enforcing America's immigration laws is a federal responsibility. Since the 1980s, the federal government has been apprehending noncitizens arrested and detained by state and local criminal justice systems through numerous enforcement operations, primarily the Criminal Alien Program. Under that program, federal agents used booking and other information provided by local law enforcement agencies to target noncitizens in local custody for the placement of administrative immigration detainer requests that could result in a direct transfer upon release from local custody into federal custody for initiation of removal proceedings (deportation). Under the Homeland Security Act of 2002, the responsibility for enforcing immigration laws was placed with the Department of Homeland Security (DHS), specifically U.S. Immigration and Customs Enforcement (ICE).

**Secure Communities.** The Department of Homeland Security, with ICE as the responsible agency, 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 to be investigated for immigration law violations. Like the Criminal Alien 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. The use of fingerprint information for the Secure Communities program in Washington was fully deployed in April 2012.

**ICE Enforcement Processes Before the Adoption of Ordinance 17706.** When there is a match of data from local jails and the DHS databases, an ICE agent determines what, if any, immigration enforcement action may be appropriate.  Secure Communities does not authorize local law enforcement agencies to enforce immigration law or task them with any additional responsibilities.  If ICE officers determine that an individual identified through Secure Communities at a local jail may be removable, a detainer may be issued for that individual.  The detainer is a “request” to the state or local detention facility to hold the individual for up to 48 hours (excluding weekends and holidays) beyond the time they would normally be released from custody (8 CFR 287.7).   A detainer only comes into effect once all current local legal proceedings have concluded and the individual is ordered to be released from jail custody. The detainer is not equivalent to a judicial arrest warrant; rather it is simply an administrative request to hold an individual for investigation by ICE, removal proceedings, or for removal. The detainer, unlike a warrant, does not require ICE to provide a judge with evidence of probable cause.

When an ICE agent takes an individual into custody, they may or may not be transferred to a federal detention facility. According to discussions with ICE representatives in the Seattle Region and data from other sources, not every detainer results in detention. ICE agents may or may not use the detainer to take custody of an individual when released from jail. If ICE agents do take the individual into custody, the individual’s case is reviewed using several federal policies. The individual can be simply released, released on their own recognizance into the community pending further hearings, released with a bond, released to alternatives to secure detention, or held in federal detention facilities.

The majority of federal immigration proceedings are civil, not criminal. According to the Supreme Court ruling 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, ICE is not a party to a federal court proceeding, and these officials would not ordinarily have access to a federal magistrate or judge for the issuance of judicial warrant. Consequently there is generally no judicial review of probable cause associated with ICE detainers.

**County Policies Related to Noncitizens.** In 2009, the county adopted a policy in Ordinance 16692 to ensure that all of the county's 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, the council established in the King County Code the requirement that a county office, department, employee, agency or agent shall not condition the provision of county services on the citizenship or immigration status of any individual. Further, the council adopted the requirement that sheriff's office personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws. Similarly, in accordance with those code requirements adopted in Ordinance 16692, DAJD does not endeavor to determine the immigration status of any individual held in county detention facilities.

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 addressed federal detainer requests. 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 offense or has a finding in federal immigration court that the inmate is an inadmissible alien due to commission of crimes or activities threatening security or human rights and that federal agents submit written documentation and case identifying information establishing criminal history.

**ANALYSIS**

In its deliberations related to Ordinance 17706, the council received public testimony from various individuals, organizations, and immigrant advocates in King County who recounted instances where the county’s unrestricted honoring of detainers had 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. Further, many testified through public input and the submission of written testimony that there are costs to the community, both in dollars and human suffering when families become broken and dependent when the family breadwinner is detained or deported. Individuals also testified that the threat of deportation for the immigrant community deters many persons from reporting domestic violence or other types of 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.

As a consequence, King County adopted Ordinance 17706 restricting the Department of Adult and Juvenile Detention (DAJD) 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, serious, sex, or serious traffic crimes;
* conviction anywhere of an equivalent violent or serious crime; or,
* when there is a finding in federal immigration court that the inmate is an inadmissible alien due to commission of crimes or activities threatening national security or human rights anywhere worldwide.

The county's policy requires federal agents to provide the DAJD with documentation and case identifying information establishing that the inmate meets one or more of these criteria. The ordinance also added reporting requirements and required that the executive convene an oversight group to review the impact of these policies.

Upon passage of the new policy, ICE informed King County officials that it will not provide the required information to support its detainer requests. Since no detainer requests meeting the requirements of Ordinance 17706 have been submitted, the county has not honored any detainers since the ordinance was enacted.

After the county’s adoption of its restrictions on ICE detainers, the U.S. 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 when detaining individuals. In its decision, the court held that when a municipality holds an inmate on an ICE detainer but there was no probable cause to support the detainer, the municipality can be liable for damages.

Other federal trial courts soon adopted the Galarza ruling: Maria Miranda-Olivares v. Clackamas County (District of Oregon); Morales v. Chadbourne (District of Rhode Island), and Villars v. Kubiatowski (Northern District of Illinois). These cases resembled Galarza, where individuals were entitled to release on their underlying state charges but were held in jail on ICE detainers for which ICE lacked probable cause. As in Galarza, the respective courts ruled that a local jail’s decision to honor an ICE detainer is discretionary, not mandatory. Also as in Galarza, these courts ruled that the local jurisdictions had violated the inmate’s constitutional Fourth Amendment rights against illegal seizure; the detentions were unlawful.

Galarza and its progeny establish that local jurisdictions that honor detainers can be liable for damages to the inmate if ICE lacked probable cause for the detention. An ICE detainer does not shield the jurisdictions from liability as does a judicial arrest warrant.

Current policy in King County could allow the federal government to place detainers on those individuals who would otherwise be released from jail after a county court ordered their release, but only if proper documentation is provided. Federal agents have not chosen to provide this information and the county has consequently not held anyone solely on an ICE detainer since the adoption of Ordinance 17706. Nevertheless, this could change if federal agents started to meet the county code requirements and submitted required information. In these circumstances, county code would require that the individual be held even after a court has ordered their release.

This proposed ordinance would state as county policy that DAJD would only honor ICE detainers that are accompanied by a federal judicial warrant and removes the other instances when the county would honor a detainer. In addition, the legislation also modifies the current reporting requirements and eliminates the requirement that the executive convene a detainer oversight group because the county would no longer be honoring detainers.

**REASONABLENESS:**

Adoption of this ordinance would change the policy of the county to reflect the unwillingness of ICE to comply with the requirements of Ordinance 17706. The new policy would ensure that individuals who have had a probable cause review would be held when an ICE detainer is accompanied by a federal judicial warrant.

**ATTACHMENTS:**

1. Proposed Ordinance 2014-0297

**INVITED:**

* William Hayes, Director Designee, Department of Adult and Juvenile Detention
* Howard Schneiderman, Senior Deputy Prosecuting Attorney, Prosecuting Attorney’s Office