



County of Santa Clara  
Board of Supervisors  
Supervisorial District One  
Supervisor Mike Wasserman

95911

**DATE:** April 9, 2019  
**TO:** Board of Supervisors  
**FROM:** Mike Wasserman, Supervisor  
**SUBJECT:** Clarifying County Policy Regarding ICE

**RECOMMENDED ACTION**

Approve referral to County Counsel to return to the Board with amendments to Board Policy 3.54 to replace outdated provisions regarding civil detainers with appropriate references to state law; reaffirm existing policy that the County will honor all judicial warrants obtained by U.S. Immigration and Customs Enforcement (ICE); and allow for notification of release of those in our custody who have been convicted of having committed serious and violent felonies as defined by state law. (Wasserman)

**REASONS FOR RECOMMENDATION**

In the wake of the tragic death of Bambi Larson, many in our community have raised questions about the County's policies related to cooperation with U.S. Immigration and Customs Enforcement (ICE). The County's current policy does not reflect recent changes to state law and rulings from federal courts about the U.S. Constitution, both of which completely prohibit the County from honoring detainer requests from ICE. The County currently does—and has always—honored judicial warrants from ICE and other federal, state, and local law enforcement agencies. Judicial warrants allow the County to directly transfer an individual to ICE in handcuffs.

This referral asks County Counsel to update the County's current policy to reflect the current law on detainer requests, to reaffirm that the County has and will honor all judicial warrants, and to allow notification to ICE of those individuals who have been convicted of serious or violent felonies as defined by state law.

Back in 2013 and 2015, there was support to notify ICE regarding these particular convicted serious or violent felons. While there was debate regarding other categories or crimes, this

was the criteria that had broad-based support, and it makes sense to move forward with these categories rather than divisively debating dozens of other categories. I think this is common sense and would better protect public safety while honoring the Constitution and state law, and we can get it done now.



**County of Santa Clara  
Board of Supervisors  
Supervisorial District Three  
Supervisor Dave Cortese**

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95849

**DATE:** April 9, 2019

**TO:** Board of Supervisors

**FROM:** Dave Cortese, Supervisor

**SUBJECT:** Referral Regarding Immigration and Customs Enforcement (ICE) and Jail Release Processes

**RECOMMENDED ACTION**

Consider recommendations relating to notifications to Immigration and Customs Enforcement (ICE) of release of inmates from County Jails, implementation of a lawful transfer protocol, and system improvements to release processes. (Cortese)

Possible action:

- a. Approve referral to Administration and County Counsel to seek input from the Sheriff, the District Attorney, the San Jose Police Department, the President of Santa Clara County Police Chiefs' Association, Office of Immigrant Relations, and interested stakeholders, and return to the Board of Supervisors within 30 days with amendments to County Policy to ensure the timely and lawful notification to other local, state and federal law enforcement agencies, including ICE, of releases of inmates convicted of serious or violent felonies (or a list of agreed upon misdemeanors and felonies set by the Board of Supervisors as per Senate Bill 54).
- b. Approve referral to Administration and County Counsel to seek input from the Sheriff, the District Attorney, the San Jose Police Department, the President of the Santa Clara County Police Chiefs' Association, Office of Immigrant Relations, interested stakeholders, and ICE to craft a transfer of custody process, based on a judicial warrant or court order, in cases where past or current serious or violent felony convictions give rise to the need for such a transfer to federal authorities to ensure local public safety. This policy should also include procedures through which every law enforcement officer in the County can be advised in real time of ICE-initiated judicial warrants to protect law enforcement and the public. The above shall be presented to the Board of Supervisors for their consideration within 60 days.

- c. Approve referral to Administration to continue recommending improvements to the release process as it relates to Probation supervision, Assembly Bill 109, mental health treatment and diversion, the appropriate use of 5150 and 5152 holds, improved processes and criteria to prevent the risk of violence and harm, post-release, to self and others, and any other release/risk issues that the Administration deems advisable to present to the Board of Supervisors.

## REASONS FOR RECOMMENDATION

In the face of a tragedy, the most important act is the act of coming together to find a solution. Tragedy has struck with the murder of Bambi Larson, and while there are many reasons and causes, what matters most right now is identifying what we as elected officials, public servants, and residents can do to ensure a safe community for all. In doing so, we need to balance the interests of the people we represent, and also the ideal that justice should be applied without regard to wealth, power, or other status. My goal is for us to strive for a harmonious community, one where we move closer to each other, not farther apart. It is in this spirit that I am making the above recommendations to the Board of Supervisors.

## BACKGROUND

The tragic murder of Bambi Larson has raised public debate about protection of the public and jail release policy and procedures.

This is a moment in which we must welcome examination of the current system and be open to how we can improve processes and criteria to prevent the risk of violence and harm, post-release, to self and others, across several areas of practice, including law enforcement, behavioral health, bail and release, and drug and alcohol. I have had discussions with senior officials in the County who agree that improvements to the process are possible.

Every week, inmates are released from our jail under court order but held and handed over to other State and local authorities who have obtained judicial warrants, as required by California State law and the Constitution of the United States.

Only ICE has declined to obtain judicial warrants for holds as required by State law and the United States Constitution. ICE has instead preferred a voluntary request process (a “detainer request”) directed to state and local agencies rather than a judicial warrant or court order.

It should be noted that ICE has access to justice data at the state and local level as to who is in custody and when they are being released, but ICE’s ability to access this information has not prevented judicial release of serious and violent felons prior to ICE taking custody. The notification process does not necessarily prevent a felon from re-entering the community, post-notification, because ICE is inconsistent in their responsiveness. Furthermore, detention by state or local officials that goes beyond a judicial release date has clearly been deemed unconstitutional by federal courts, violates state law, and is grounds for civil liability and damages as to local jurisdictions who detain or hold in the absence of a judicial order or a warrant. As such, the most effective solution is a process whereby federal authorities use a judicial order or warrant to fulfill the extradition or simply show up on-time (prior to release) based on pre-published judicial release dates.

We should re-engage federal authorities and our local partner law enforcement agencies, especially the San Jose Police Department, to ensure that these procedures work reliably or to find alternatives that are both constitutional and practical.

In our community, we cannot and should not seek to govern by hysteria. The public's safety is our most important responsibility, and public safety requires that we work together – across jurisdictions, across disciplines and across political lines – to preserve it.