

January 7, 2016

Sheriff Jim McDonnell  
Chief Eric Parra  
Los Angeles County Sheriff's Department

**Re: Recommendations regarding the Los Angeles Sheriff's Department's  
Collaboration with Immigration Enforcement**

To the Los Angeles Sheriff's Department:

The undersigned civil rights, legal, faith-based, labor and community organizations write to you with our recommendations on whether and how the Los Angeles Sheriff's Department (LASD) should cooperate with federal Department of Homeland Security (DHS) on the issue of immigration enforcement.

On December 6, 2016, the LA County Board of Supervisors passed a motion (4-0, 1 abstention), *Protecting Los Angeles County Residents Regardless of Immigration Status*, which called for public report-backs from County officials within thirty days, in consultation with organizations and local institutional actors, regarding how to protect immigrants and religious minorities from threats to their liberty and security, and ensure that LA County is welcoming to people of all nationalities, ethnicities and religions.

We welcome the efforts of the County to take concrete steps to protect Los Angeles County's immigrant population from threats of mass deportation, and racial and religious discrimination. Los Angeles has long been a leader in pro-immigrant policies that recognize the contributions of immigrant communities and promote public safety for all. Los Angeles County should continue to protect residents from the dire economic, emotional, and social impacts of deportations.

Consistent with the Board's Motion, we provide recommendations to inform the LASD's report to the Board, and we urge that these recommendations be implemented before the presidential inauguration. At this critical moment, we ask the LASD to revisit existing policies to ensure that it is not an arm in federal immigration enforcement efforts.

**CURRENT LASD POLICY**

As we understand current policy, LASD voluntarily provides ICE with broad access to County databases and information about individuals in LASD custody and their release dates, and significant access to detainees in LASD custody for interviews and in-custody transfers. In particular, the Department allows ICE “[f]ull access into the County’s jails and [] databases” and notifies ICE “up to seven days prior to an inmate’s release” with regard to all inmates in LASD custody, providing details about the individuals and their dates of release. The Department also permits the transfer of individuals directly from LASD to ICE custody where compliant with the

TRUST Act; and allows ICE agents “access to all inmates who are being released” for interviews where TRUST Act-compliant.<sup>1</sup>

LASD policy provides some important limitations on collaboration with federal immigration enforcement.<sup>2</sup> These limitations have been established because of the recognition by the Department that “[s]erving the community, investigating illegal activity and preventing crime is immeasurably more difficult if law enforcement fails to maintain strong relationships with – and the trust of – all members of [the LA County] community.”<sup>3</sup>

Further, the California TRUTH Act (AB 2792), in effect since January 1, 2017, now binds LASD. The TRUTH Act requires that LASD notify individuals in LASD custody of all requests from ICE for information about them or for their transfer to ICE custody; provide individuals and their attorneys or designees with all notifications of the release dates of detainees; and advise individuals in writing of the voluntary nature of any request by ICE to interview the individual.<sup>4</sup>

## RECOMMENDATIONS

The enforcement of federal immigration law falls exclusively within the authority of the federal government. Los Angeles County law enforcement should not engage in law enforcement activities based solely on someone’s immigration status, or work together with the Department of Homeland Security on deportation efforts. LASD should **establish a bright line between federal immigration enforcement and local law enforcement** by adopting the following policies:

- I. **End ICE’s access to people in the jail for purposes of carrying out deportation and removal operations.** A May 12, 2015 Board of Supervisors resolution stated, “It is the intent and understanding of the Board of the Supervisors in terminating the 287(g) program that the ICE office in the Inmate Reception Center (IRC) be closed and that the ICE agents permanently housed in the IRC be removed.” While ICE’s office has been

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<sup>1</sup> Sheriff McDonnell Report-Back to the County Bd. of Supervisors, Sept. 22, 2015. *See also* LASD Custody Services Division Inmate Reception Center Unit Order 5-22/001.10 (last review Oct. 19, 2016).

<sup>2</sup> Notably, current LASD policy requires that LASD “investigate criminal activity without regard to an individual’s legal status;” “not initiate police action with the objective of discovering the individual’s immigration status;” “neither arrest nor book an individual solely on suspicion of violating a federal immigration law relating to illegal entry, being unlawfully present, or overstaying a visa;” “not inquire about [the] immigration status [of people under investigation for criminal activity] unless the information is absolutely necessary to ascertain their true identity,” or “about a victim’s or a witness’ immigration status unless that information is an essential component in their investigation (e.g., human trafficking, involuntary servitude, etc.);” and not “forward [] information” to ICE about a victim’s or a witness’ immigration status discovered during an investigation where the individuals are not already in LASD custody. LASD 5-09/271.00 (Jan. 22, 2016). LASD policy also prohibits the detention of individuals beyond their date of release solely based on an ICE request, and requires the notification to inmates when an ICE detainer is issued. Sheriff McDonnell Report-Back to the County Bd. of Supervisors, Sept. 22, 2015. *See also* LASD Custody Services Division Inmate Reception Center Unit Order 5-22/001.10 (last review Oct. 19, 2016).

<sup>3</sup> *See, e.g.*, LASD 5-09/271.00 (Jan. 22, 2016). *See also* Sheriff McDonnell Report-Back to the County Bd. of Supervisors, Sept. 22, 2015. (identifying as a LASD goal “to ensure that [LASD] continues to fulfill its mission of promoting public safety, investigating crimes regardless of the victim’s or offender’s immigration status, enforcing the law fairly and within constitutional authority, and maintaining public trust through [] ongoing partnerships with all of the communities [LASD] serve[s]”).

<sup>4</sup> AB 2792 (TRUTH Act), Sec. 3 (amending Sec. 7283.1(a), (b)).

closed, ICE agents are still allowed unfettered access to IRC to conduct interviews and to LASD computer equipment. We believe this violates the spirit and intent of the Board's resolution.

Pursuant to the intent of the BOS resolution, ICE should not have access to Los Angeles County jails for purposes of carrying out deportation and removal operations. This includes not allowing ICE into the jail for purposes of interviewing people about their removability and not allowing ICE to use LASD's computers or equipment. Additionally, LASD should refuse to make individuals in County custody available to federal immigration authorities for interviews. **LASD should require ICE to produce a criminal warrant prior to entering LASD facilities.**

- II. **Re-affirm policies that make clear that LASD is not enforcing federal immigration law.** LASD should re-affirm its commitment to not make arrests based on civil immigration warrants, given that neither the Fourth Amendment nor state law permit the LASD to make such arrests, and its prohibition on inquiring into a person's immigration status. Inquiring about immigration status would undermine public trust in LASD and make people less likely to report crimes for fear of that it would lead to their deportation.

Equal enforcement of the law and equal service to the public regardless of immigration status increases the effectiveness of local law enforcement in protecting and serving the entire community. All individuals, regardless of immigration status, should feel secure that contacting law enforcement will not make them vulnerable to harassment, arrest or deportation.<sup>5</sup> Assistance in the enforcement of immigration law also leads to profiling based on race, ethnicity, and national origin in violation of the United States and California Constitutions and state and federal anti-discrimination laws.

- III. LASD should not respond to ANY ICE detainer requests or requests for notification. **We recommend that the LASD decline to detain individuals for ICE in all circumstances.** Detaining individuals at ICE's request exposes LASD to legal liability. The legal deficiencies presented by ICE's form I-247 were not cured by the new I-247D request for detention or I-247X form. Adopting a clear policy of not detaining inmates in LASD custody at ICE's request would be in line with what other agencies, including the Los Angeles Police Department, have done.

Additionally, we are particularly concerned about certain types of criminal convictions for which LASD currently honors ICE detainers. Any non-violent drug related offenses such as H&S §11351, H&S §11378, and H&S §11379 should not form the basis for LASD to respond to ICE detainer requests. Drug offenses should be responded to with treatment and rehabilitation. Nationally and in California, policies have moved towards de-criminalizing drug offenses and LASD should also move in tandem with this trend.

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<sup>5</sup> A recent study by the University of Illinois found that as a result of increased cooperation between police and ICE, 44 percent of Latinos surveyed reported being less likely to contact law enforcement if they have been a victim of crime. This figure rises to 70 percent when only undocumented immigrants are surveyed.

We are also concerned about property crimes which remain on the list of AB4 crimes and which under Prop 47 can be reduced to misdemeanors. This includes PC §459 (burglary) and PC §487 through 487i (grand theft). Reclassifying property offenses where the amount taken is less than \$950 as misdemeanors indicates that these crimes are seen as less serious than other types of felonies. LASD should follow this line of reasoning and remove these crimes from the AB4 list.

Nor should LASD honor detainer requests if the basis for the request is an allegation that the person has “intentionally participated in a criminal street gang.” As shown by a recent California State Audit of the Calgang database system, the requirements for designation as an active gang member, affiliate or associate are overly broad and sweep thousands of people into a classification system that lacks due process.<sup>6</sup> PC §186.22 (felony criminal street gang) and PC 186.22(A) (participate in a known street gang) are purely associational crimes, which, on their own, are non-violent offenses. These charges are rarely used and, when they are, it is usually in combination with other charges for criminal activity. These on their own should not be a basis for transfer to ICE.

At minimum, LASD should remove these crimes – all non-violent drug-related offenses, property crimes, and associational gang convictions – from the AB4 crimes list.

- IV. It is our position that no one should be held for ICE for prior crimes. Community members who may have very old convictions and have long since rehabilitated and are contributing members of the community would be at risk of double punishment and separation from their families. **Should LASD continue to honor some detainer requests (including requests for notification and transfer), LASD should adopt a wash out period/statute of limitations of three years for detainer requests,** which is the time period recognized under the common law definition of “recidivism.”<sup>7</sup>

Three years is the standard definition of “recidivism” on the local, state, and federal level. The Board of State and Community Corrections defines recidivism as, “conviction of a new felony or misdemeanor committed within three years of release from custody or within three years of placement on supervision for a previous criminal conviction.”<sup>8</sup> The California Department of Corrections and Rehabilitation (CDCR) defines a recidivist as, “a convicted felon who was released from CDCR in FY 2008-09 and subsequently returned to CDCR within a three-year follow-up period.”<sup>9</sup>

The three year period is echoed on the federal level. According to the National Institute of Justice, “Recidivism is measured by criminal acts that resulted in rearrest, reconviction

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<sup>6</sup> See <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>.

<sup>7</sup> At minimum, the wash out period cannot be anything more than 5 years because this is the limitation already set by California law under the TRUST Act. See Gov. Code § 7282.5(a)(3) (“The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted at any time of a felony for, any of the following offenses...”).

<sup>8</sup> <http://www.bscc.ca.gov/downloads/Recidivism%2011.13.14.pdf>.

<sup>9</sup> [http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_documents/Outcome\\_evaluation\\_Report\\_2013.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_documents/Outcome_evaluation_Report_2013.pdf).

or return to prison with or without a new sentence during a three-year period following the prisoner's release.”<sup>10</sup>

- V. LASD should adopt and implement formal policies for local law enforcement to **cease engaging with Immigration and Customs Enforcement (ICE)** (including Homeland Security Investigations and Enforcement and Removal Operations) **in any joint operations**, and refuse to permit any collateral arrests for immigration enforcement purposes in connection with local law enforcement operations, or operations in which local law enforcement is associated.
- VI. LASD should continue to collect and share data in order to promote transparency. Currently, LASD publishes monthly statistics on the number of people whom ICE issues PERC detainers, interviews, and takes into custody. This data does not capture all interactions between ICE and the LASD, and fails to provide sufficient detail to assess the impact that LASD’s involvement in immigration enforcement is having on the county. We, therefore, ask for greater transparency and more meaningful reporting, including but not limited to:
- The following data sets by race, age, gender, national origin and address (zip code)
  - Aggregate data on the basis for probable cause for all requests for detention, according to the new I-247D form (broken down by the 4 categories on the form);
  - Aggregate data on the basis for the request for detention or request for notification based on ICE’s prioritization categories (broken down by the 6 categories on both the I-247D and I-247N forms);
  - Information about how the Sheriff’s department’s budget is being allocated towards involvement in immigration enforcement;
  - Information about which databases (CalGang, local gang databases, DNA, sex offender, other) ICE has access to;
  - The process of notifying ICE about an inmate’s release date, home address, and other information sharing between LASD and ICE;
  - Confirmation that the advisal form is given to inmates before an ICE interview takes place, pursuant to AB 2792; and
  - Confirmation that LASD called the person's attorney/designee and informed the individual if they plan to respond to an ICE request, pursuant to AB 2792.
- VII. On December 12, 2016, advocates sent the attached letter to the LASD with our recommendations on implementing the TRUTH Act (AB 2792). As AB 2792 became law on January 1, 2017, we urge you to immediately implement these recommendations, if not already done.

When you committed to implement President Obama’s Priority Enforcement Program (PEP), you did so expressing the importance of “keeping foremost in mind the needs, safety, and vitally important trust of our community.”<sup>11</sup> Based on statements made by the President-elect and his Cabinet appointees and policy team, it appears very likely that PEP will be discontinued, and that

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<sup>10</sup> <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx>

<sup>11</sup> Sheriff McDonnell Report-Back to the County Bd. of Supervisors, Sept. 22, 2015.

the incoming administration will engage in more vigorous immigration enforcement, with less discretion and fewer protections for due process and other constitutional rights of County residents.<sup>12</sup> As the state of California and the County have previously recognized, voluntary assistance in the enforcement of federal civil immigration law drains already-limited County resources; detracts from LASD’s core mission to create safe communities; and makes it difficult to maintain trust between the Department and the County’s residents, thereby threatening the safety and well-being of County residents.<sup>13</sup>

In summary, we recommend that LASD prohibit the use of its resources, facilities, and personnel to investigate or assist in the enforcement of federal immigration law. And we ask that LASD publicly affirm its commitment to maintain each and every one of the above policies in the face of any threats from President-elect Trump, including threats to withdraw federal funding.

We look forward to further dialogue with you about the recommendations in this letter. Please contact Shiu-Ming Cheer from the National Immigration Law Center at (213) 674-2833 or [cheer@nilc.org](mailto:cheer@nilc.org) should you wish to discuss anything in this letter.

Sincerely,

Asian Americans Advancing Justice – Los Angeles (AAAJ-LA)  
Asian Pacific Policy & Planning Council (A3PCON)  
AF3IRM Los Angeles  
API Equality – Los Angeles  
California Immigrant Policy Center (CIPC)  
California Immigrant Youth Justice Alliance (CIYJA)  
Central American Resource Center – Los Angeles (CARECEN)  
Clergy and Laity United for Economic Justice (CLUE)  
Dignity & Power Now  
Esperanza Community Housing Corporation  
Immigrant Defenders Law Center  
Immigrant Youth Coalition  
International Rescue Committee  
Koreatown Immigrant Workers Alliance (KIWA)  
Long Beach Immigrant Rights Coalition  
Los Angeles Alliance for a New Economy (LAANE)  
[Los Angeles LGBT Center](#)  
LA Voice  
Loyola Immigrant Justice Clinic  
National Day Laborer Organizing Network (NDLON)  
National Immigration Law Center (NILC)

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<sup>12</sup> See, e.g., Julie Hirschfield Davis & Julia Preston, “What Donald Trump’s Vow to Deport Up to 3 Million Immigrants Would Mean,” *N.Y. Times*, Nov. 14, 2016.

<sup>13</sup> AB 2792 (TRUTH Act), Sec. 2(b), (d), (i); AB 4 (TRUST Act), Sec. 1(a), (d).

National Lawyers Guild – Los Angeles (NLG)  
People Organized for Westside Renewal (POWER)  
Pomona Economic Opportunities Center  
Public Counsel  
SEIU United Service Workers West  
Thai Health  
UNITE HERE  
United Teachers Los Angeles (UTLA)  
UPLIFT  
Youth Justice Coalition