

December 3, 2019

To: Fire and Police Commission Board Members Everett L. Cocroft, Dr. Fred L. Crouther, Steven M. DeVougas, Angela McKenzie, Nelson Soler, Ann Wilson
Fire and Police Commission Executive Director Griselda Aldrete

Re: Recommended Changes to SOP 130: Foreign Nationals – Diplomatic Immunity – Immigration Enforcement

Dear Fire and Police Commission Board Members:

The undersigned civil rights, legal, faith-based, labor and community organizations write to you with our compromise policy regarding changes to the Milwaukee Police Department’s (“MPD”) Standard Operating Procedures (“SOP”) 130.

We have heard the concerns that MPD raised at the October 31st Commission hearing and have closely reviewed the City Attorney’s recommendations. In response, we offer the attached new compromise policy that we are submitting, with the revised language highlighted in yellow.

Our compromise policy will allow MPD to perform its public safety duties while also fostering trust within the community it serves. We are not interested in preventing MPD from properly serving all of Milwaukee nor creating unnecessary obstacles for MPD. We urge the Commission to ensure that MPD is not an arm of harsh and inhumane federal immigration enforcement efforts. Adopting the compromise policy will keep families together, our communities healthy, and promote greater public safety in the City of Milwaukee.

I. SOP 130.10: MPD Should Not Inquire into the Citizenship of Arrested or Detained People

Voces’ proposed change to SOP 130.10 prohibiting inquiries about a person’s citizenship and/or immigration status complies with the Vienna Convention and bilateral treaties, and does not cause any undue burden to MPD. We consciously made edits to the SOP that would permit MPD to comply with the Vienna Convention without causing the immigrant population to distrust MPD or causing unnecessary fear in the community.

The City Attorney’s official opinion states that Voces’ proposed changes to SOP 130.10 are legally permissible in that law enforcement is not legally required to inquire about a detainee/arrestee’s citizenship under the Vienna Convention and bilateral agreements. In addition, recording information about a person’s citizenship can lead to a person being placed in deportation proceedings. DHS and Immigration and Customs Enforcement (ICE) actively comb regional law enforcement databases for information that they can use to target non-citizens.ⁱ If the MPD notes citizenship outside of the United States when entering information about an arrestee, ICE can use that as the basis for an arrest and eventual deportation.ⁱⁱ At minimum, it provides a basis for ICE to follow up and conduct further investigations.ⁱⁱⁱ By recording information about a person’s citizenship, therefore, the MPD provides ammunition to ICE and puts non-citizen residents at risk of severe immigration consequences.

II. SOP 130.25: Timeframe for Decisions on U Visa Certification Requests

The attached compromise policy shows the language that we agreed upon at the October 31st meeting. We agreed that there will be a bifurcated process: one for people in removal proceedings and another for people who are not. The agreed-upon timeframe for the former was 30 days and for the latter was 90 days. We also agreed to include contact information for both the USCIS and UMOS' Latina Resource Center for assistance.

This compromise time frame would address MPD's resource concerns, help community member avoid deportation while a request is pending, and be in line with other state's laws that set out similar deadlines. Nevada^{iv} and Washington's^v laws require 14 days for those facing deportation and 90 days for other cases.

III. SOP 130.30: MPD Should Not Enforce Federal Immigration Laws

a. SOP 130.30.B.: Local resources should not be spent on immigration enforcement

SOP 130.30 Immigration Enforcement is of critical importance. We believe that **local resources should be spent on enforcing local laws**, not on assisting the federal government in its mass deportation agenda. Entanglement with ICE diverts important law enforcement resources that could be spent on building safe communities. It distorts not only the relationship of the police with respect to the community, but also their mission to serve and protect.

This will not affect MPD's ability to request assistance from and work with the federal government on criminal matters. For example, MPD can ask the federal government for information related to a criminal investigation, or ask DHS to join a task force whose sole purpose is to pursue a child pornography ring operating across multiple states.

b. SOP 130.30.C., F.-H.: Requiring judicial warrants protects constitutional rights

Adopting a requirement that ICE *must* present a valid judicial warrant in order for MPD to cooperate in the situations outlined in Voces' proposed SOP 130.30.C., 130.30.F., 130.30.G., and 130.30.H. safeguards everyone's constitutional rights. An administrative warrant is any document,^{vi} issued by a designated ICE official, purporting to document the authority of an ICE agent to arrest a person suspected of violating immigration laws.^{vii} The administrative warrant is not issued by a neutral magistrate as required by the Fourth Amendment. Instead, it can be signed by any number of designated immigration officers.^{viii}

In contrast, warrants issued by a neutral magistrate or judge must be based on probable cause. By cooperating with ICE when ICE only presents an administrative warrant, which does not require probable cause, the City would be undermining the Fourth Amendment. We believe the new policy language submitted provides a satisfactory compromise.

c. SOP 130.30.G.: Detainers should not be honored as they lack probable cause

The Police Chief's exceptions would allow for holding or transferring a person to ICE based on ICE detainers, which is likely unconstitutional. Any response to an ICE detainer request should

be prohibited, absent a judicial warrant. A U.S. District Court recently held in *Gonzalez v. ICE*^x that **ICE detainers are largely unconstitutional because they lack probable cause** that individuals are involved in criminal activity.^x The electronic databases ICE uses to issue detainers are too error-ridden and incomplete to be reliable sources of information for probable cause determinations. The Court in *Gonzalez* permanently blocked ICE from issuing detainers to states whose laws do not expressly authorize state and local law enforcement to make arrests for civil immigration purposes; Wisconsin is one such state.^{xi}

In light of this legal context, any response to ICE detainers is constitutionally suspect, thereby imposing on the City greater risks for further liability. Places across the nation have been found financially liable for these practices. In California, one county agreed to pay \$35,000 to settle a lawsuit by a U.S. citizen for facilitating her transfer to ICE.^{xii} Milwaukee should join the many jurisdictions that have refused to honor detainers without a judicial warrant.

d. SOP 130.30.L.: Excluding identifying information from public reports

The City Attorney's report raised a concern about Voces' proposed language on MPD reporting and sharing requests and communications from ICE with the general public. The concern was about sensitive information being disclosed. We do not want identifying or sensitive information about people in custody to be disclosed. Rather, we are asking for cumulative data on instances when ICE or other federal immigration enforcement agencies make requests of MPD, and MPD's response. For example, we would want this type of information to be shared publicly:

- The number of detainer requests made by federal immigration authorities, and the number responded to by MPD;
- The number of requests for notification of an individual's release made by federal immigration authorities, and the number responded to by MPD;
- The number of requests from federal immigration authorities to make arrests based on administrative warrants or judicial warrants, and the response of MPD;
- The number of requests by federal immigration authorities to interrogate or interview individuals in MPD custody, and the number of interrogations or interviews permitted;
- Countries of origin of the people transferred to ICE.

IV. Adopting Our Compromise Policy Would Be in Line With Other Cities and Counties

In adopting our compromise policy, Milwaukee would not be alone. In 2017, 760 counties, or 24% of all counties across the country, had policies limiting responses to ICE hold requests.^{xiii} The number of jurisdictions disentangling themselves from ICE has risen recently as at least 120 jurisdictions have enacted some kind of sanctuary policy since 2017.^{xiv} Cities and Counties with policies barring holding people on ICE holds include Maricopa County, Arizona, Travis County, Texas, Providence, Rhode Island, and Atlanta and Decatur Georgia.^{xv}

Some of the 760 Counties mentioned above still allow some cooperation with ICE. In 2017, 79 Counties were considered to have the most protective policies barring all cooperation with ICE.^{xvi} **Therefore, Voces' version is the compromise.** It is not a zero cooperation policy and it is not an overly broad policy. It is a policy that makes clear that MPD cannot collaborate with ICE except in very limited circumstances where a **judicial warrant** is presented.

V. Disentangling MPD from DHS will Increase Public Safety

Adopting Voces' policy would further our shared goals of greater public safety in Milwaukee. A recent national study by the University of California, Davis, found that **deportations do not reduce crime**. The study indicated that there is no correlation between deportations and public safety; in particular, deportations had no effect on violent or property crimes.^{xvii} A 2017 study conducted by Professor Tom Wong of the University of California at San Diego found the reverse correlation – that counties with policies protecting immigrants had **lower crime rates**. Specifically, it found that there are, on average, 35.5 fewer crimes committed per 10,000 people in “sanctuary” counties compared to nonsanctuary counties.^{xviii}

Multiple people testified at the October 31st FPC hearing that law enforcement entanglement with ICE increased their distrust of MPD. In general, immigrant community members are far more distrusting of law enforcement when they believe law enforcement is entangled with ICE.^{xix} They are less likely to report crimes and serve as witnesses, which decreases public safety for everyone. A 2013 University of Illinois report^{xx} surveying Latinos from various counties found that 70% of undocumented Latino immigrants and 28% of Latino U.S. citizens were **less likely to contact law enforcement if they were victims of a crime for fear that police would inquire about their immigration status** or the immigration status of people they know.

Police Departments have seen similar trends. Los Angeles Police Chief Charlie Beck said in 2017 that **reports of sexual assault dropped 25%** among the city's Latino population compared with the same period in 2016, and that **reports of domestic violence fell by 10%**.^{xxi} The cause of this decline was concerns that immigrants could risk deportation by interacting with police.

Altogether, the data and community experiences suggest that when local law enforcement focuses on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, community members are more likely to cooperate with law enforcement.

VI. Conclusion

In conclusion, **adopting this compromise policy would further the interests of the City in avoiding potential liability for unconstitutional actions and further community safety for all**. Entanglement with ICE leads to broken homes, separation of children from their parents, and greater economic vulnerability for families. We need policies that uphold our values of compassion and equality. Milwaukee should not play any part in furthering the federal government's harsh and inhumane deportation agenda.

We welcome the efforts of the Commission to take concrete steps to protect Milwaukee residents from the dire economic, emotional, and social impacts of deportations. We look forward to further dialogue with you about the compromise policy. Please contact Tommy Molina from Voces de la Frontera at (414) 643-1620 or tommy@vdlf.org should you wish to discuss anything in this letter.

Sincerely,

Voces de La Frontera
National Immigration Law Center

Never Again is Now Action
Wisconsin Working Families Party
Hmong American Women's Association
Black Leaders Organizing for Communities
African American Roundtable
National Association for the Advancement of Colored People
American Civil Liberties Union
Milwaukee Inner-city Congregations Allied for Hope
United Migrant Opportunity Services
Southside Organizing Center
Collaborative Community Committee (Findings and recommendations include support for SOP 130)

Cc: Mayor Tom Barrett
Police Chief Alfonso Morales

ⁱ George Joseph, "Where ICE Already Has Direct Lines to Law-Enforcement Databases with Immigrant Data," NPR, May 12, 2017, <http://www.npr.org/sections/codeswitch/2017/05/12/479070535/where-ice-already-has-direct-lines-to-law-enforcement-databases-with-immigrant-d>.

ⁱⁱ *Id.* at 7.

ⁱⁱⁱ *Id.*

^{iv} AB 336, signed 2019,

<https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=1&BillNo=336>.

^v HB 1022, eff. Jun. 7, 2018, <https://app.leg.wa.gov/billsummary?BillNumber=1022&Year=2017>.

^{vi} In recent years, ICE agents have increased their efforts to serve civil detainees on local law enforcement agencies (LEAs). ICE civil detainees (Form I-247A) provide notice to LEAs that ICE intends to assume custody of an undocumented person in LEA custody. As a policy matter, ICE attaches an administrative warrant (Warrant for Arrest or Warrant for Removal/Deportation) to the civil detainee that is signed by an ICE immigration officer. Administrative warrants signed by an immigration official do not carry the same weight as criminal warrants (judicial warrants), which are issued by judges. In March 2017, ICE issued a policy that took note of their administrative warrant limitations and LEAs ability to decline ICE detainees.

^{vii} This arresting authority is outlined in 8 U.S.C. § 1357, 8 C.F.R. § 287.5.

^{viii} 8 C.F.R. § 287.5(e)(2); see generally *United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the procedure for obtaining an administrative warrant). These administrative warrants, because they are not true warrants issued by a neutral magistrate, do not give ICE officials authority to enter a place where there is a reasonable expectation of privacy; *Camara v. Municipal Court*, 387 U.S. 523 (1967) (holding administrative warrant insufficient to permit entry into residence); *See v. City of Seattle*, 387 U.S. 541 (1967) (holding that administrative warrant does not provide authority to enter non-public parts of business without owner's consent); *United States v. Castellanos*, 518 F.3d 965, 971-972 (8th Cir. 2008).

^{ix} *See Gonzalez v. Immigration & Customs Enft*, 2019 WL 4734579 (C.D. Cal. Sept. 27, 2019).

^x Courts "have universally . . . interpreted *Arizona v. United States* as precluding local law enforcement officers from arresting individuals solely based on known or suspected civil immigration violations." *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013) (citing 567 U.S. 387 (2012)). "The rationale for this . . . is straightforward[:] A law enforcement officer may arrest a suspect only if the officer has probable cause to believe that the suspect is involved in criminal activity." *Id.* (quoting *Brown v. Texas*, 443 U.S. 47, 51 (1979)) (internal quotation marks omitted). "Because civil immigration violations do not constitute crimes, suspicion or knowledge that an individual has committed a civil immigration violation, by itself, does not give a law enforcement officer probable cause to believe that the individual is engaged in criminal activity." *Id.*

^{xi} *Id.* at *18.

^{xii} ACLU of So. Cal., "Guadalupe Plascencia, a U.S. Citizen Unlawfully Detained by ICE, Wins Settlement," Oct. 26, 2019, <https://www.aclusocal.org/en/press-releases/guadalupe-plascencia-us-citizen-unlawfully-detained-ice-wins-settlement>.

^{xiii} Immigrant Legal Resource Center, "The Rise of Sanctuary," p. 9, Jan. 2018, https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-ig-20180201.pdf.

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- ^{xiv} Immigrant Legal Resource Center, “The Success of Sanctuary Under Trump,” Jan. 21, 2019, <https://www.ilrc.org/success-sanctuary-under-trump>.
- ^{xv} *Id.*, p. 18.
- ^{xvi} Immigrant Legal Resource Center, “The Rise of Sanctuary,” p. 12-13, Jan. 2018, https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-lg-20180201.pdf.
- ^{xvii} Anna Flagg, “Deportations Reduce Crime? That’s Not What the Evidence Shows,” N.Y. TIMES, Sept. 23, 2019, <https://www.nytimes.com/2019/09/23/upshot/deportations-crime-study.html>.
- ^{xviii} Tom K. Wong, The Effects of Sanctuary Policies on Crime and the Economy, Jan. 26, 2017, <https://www.nilc.org/issues/immigration-enforcement/sanctuary-policies-effects-crime-economy/>.
- ^{xix} When local law enforcement agencies work with ICE, unauthorized immigrants are dramatically less likely to trust that law enforcement will keep their communities safe. Tom K. Wong et al., *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, U.S. IMMIGRATION POL’Y CTR., UC SAN DIEGO, Apr. 3, 2019, <http://usipc.ucsd.edu/publications/usipc-working-paper-2.pdf>.
- ^{xx} Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.
- ^{xxi} Jennifer Medina, “Too Scared to Report Sexual Abuse. The Fear: Deportation,” N.Y. TIMES, Apr. 30, 2017, [https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?module\(=inline; see also Cora Engelbrecht, “Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation,” N.Y. TIMES, Jun. 3, 2018, https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html](https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?module(=inline; see also Cora Engelbrecht, “Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation,” N.Y. TIMES, Jun. 3, 2018, https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html). In addition, 80 percent of California county residents said that contact with a government agency or program increased the risk of deportation. Mike McPhate, “California Today: Worries Over Deportation,” N.Y. TIMES, Apr. 5, 2017, <https://www.nytimes.com/2017/04/05/us/california-today-worries-over-deportation.html>.