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COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 30, 2024

Ms. Veronica Mendoza Jachowski
Maui Roots Reborn

Via Email: vero@rootsreborn.org

Dear Ms. Jachowski:

SUBJECT: BILL 88 (2023), AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS (DRIP-5)

Thank you for your correspondence dated June 13, 2024, where you provided an update on your discussions with the Department of Police regarding Bill 88. In that correspondence, you mentioned your intention to share an internal letter to the Department that covered policy changes and other items by June 14, 2024. Copies of Bill 88 and the June 13, 2024 correspondence are attached for your convenience.

May I please request the following:

1. A status update of the internal letter, including any subsequent response received from the Department.
2. Please indicate whether Maui Roots Reborn supports or opposes Bill 88 and why.

May I further request you transmit your response to drip.committee@mauicounty.us by **August 14, 2024**. To ensure efficient processing, please include "DRIP-5" in the subject line.

Ms. Veronica Mendoza Jachowski
July 30, 2024
Page 2

Should you have any questions, please contact me or the Committee staff (Jarret Pascual at 808-270-7141, or Maria Leon at 808-270-7866).

Sincerely,

Tamara A.M. Paltin

TAMARA PALTIN, Chair
Disaster, Resilience, International
Affairs, and Planning Committee

drip:ltr:005a02:pmg

Attachments

DRIP Committee

From: Veronica Mendoza Jachowski <vero@rootsreborn.org>
Sent: Thursday, June 13, 2024 6:52 PM
To: DRIP Committee
Cc: Aparna Patrie; Kevin Block; Lily Solano; Tamara A. Paltin; Stacey Moniz
Subject: Re: Bill 88 (2023), Authorizing the Mayor to Enter into an Intergovernmental Agreement with the US Immigration and Customs Enforcement Homeland Security Investigations (DRIP-5)

Attachments: 6.12.24 Bill 88 Letter.pdf

Aloha e DRIP Committee,

Mahalo nui for your patience as I worked on getting you this update. Between travel and getting COVID, I'm a bit behind. However, I'm very happy to provide you with this update!

For your reference, we met in person with Chief Pelletier, Chief of Staff Mike Crowe, Stacey Moniz of Pacific Cancer Foundation, Liz Cortez of Maui Immigration Law, Kevin Block of Maui Immigration Law & Roots Reborn, and myself back in February. It was a productive meeting that provided an opportunity to break bread and begin a collaborative approach to working together for the safety of our community without the need to compromise the safety and well-being of our immigrant community. At that meeting, we discussed providing Chief Pelletier with a few bullet points for a public statement and or policy changes, establishing bi-monthly check-in meetings, and exploring the possibility of conducting educational trainings on immigration for his staff. In order for us to provide him with a few points, we continue to seek additional information from MPD.

Our last contact with the Chief has been between Aparna, Kevin, Chief, and Mark as recently as the end of May via email. We continue to request agreements that MPD has entered into with other government agencies. If there are policies that exist and are being carried out by MPD, there should be agreements in writing. We believe that doing our due diligence here not only provides clarity on what agreements our County actually has in place but, in doing so, allows us to understand how to move forward (with or without agreements).

I've provided an internal letter that we will be sharing with the Chief on the topic of agreements, policy changes and a couple of other items for your review. Please note that this will be going out to him tomorrow -- I kindly request discretion until after tomorrow.

So, to recap, we're making progress, but we're not done. Our position on Bill 88 depends on the Chief's response to the attached letter. If all goes well, we are positioned to drop our opposition to Bill 88.

I also just want to add that we believe this work is laying the groundwork for Roots Reborn (RR) and MPD to be able to work collaboratively in the long term, and not just on this issue, which we believe will have huge positive ripple effects on the overall safety of our community.

If we could ask for your support to MPD for them to act in full transparency, we would greatly appreciate it. Your support in pursuing these agreements from MPD with a letter to the Chief in support of full transparency would be invaluable!

We are profoundly grateful to you for providing a space to address these concerns. Your skillful facilitation has allowed all of us to voice our concerns and work towards a relationship that ultimately enhances community safety for all.

I welcome questions for additional clarity on anything or if you would prefer a meeting, I'm happy to make that happen too.

Best Regards,
Vero

On Sun, Jun 2, 2024 at 6:22 PM Veronica Mendoza Jachowski <vero@rootsreborn.org> wrote:
Aloha e DRIP Committee,

Thank you for this follow up! I am confirming receipt of your email and the attached letter. I will be back from break on 6/10 and will work on an update for you right away upon my return.

Regards,
Veronica

Veronica Mendoza Jachowski (*she/her/ella*)
Founding Executive Director
Roots Reborn
[Instagram](#)
rootsreborn.org

On Fri, May 31, 2024 at 8:15 PM DRIP Committee <DRIP.Committee@mauicounty.us> wrote:

Ms. Jachowski: Please refer to the attached letter from the Maui County Council's Disaster, Resilience, International Affairs, and Planning Committee Chair Tamara Paltin. Please respond by June 12, 2024.

Mahalo,
DRIP Committee Staff

--
Veronica Mendoza Jachowski (*she/her/ella*)
Founding Executive Director
Roots Reborn
[Instagram](#)
rootsreborn.org



Dear Chief Pelletier,

We appreciate your ongoing dialogue with our organization and the communities we represent. In the discussions regarding Bill 88, Roots Reborn was asked to provide a list of proposed policy changes as part of our ongoing efforts to increase cooperation and trust between the immigrant community and the Maui Police Department (MPD). Our proposed policy changes are outlined below:

1. End use of 48 Hour ICE Detainers

We request that MPD decline to effectuate any ICE detainer request absent a judicial warrant in order to minimize the risk and liability of holding a person in violation of the Fourth Amendment.

As you know, ICE detainer requests are requests for police departments to detain individuals *up to an additional 48 hours* beyond the time that the person would otherwise be released (e.g., because charges were dropped, the person was released on bail or recognizance, the person was acquitted, or the person completed a jail or prison sentence). ICE detainer requests that are accompanied by Forms I-200; I-203 (if there is an intergovernmental service agreement or basic ordering agreement) or I-205 are *not* judicial warrants because they are signed by ICE agents rather than magistrates or judges and therefore, they do not provide police officers or local law enforcement with the authority to hold a person. ICE detainer requests are not mandatory, and it is up to each police department to develop its own policy on how to handle such requests.

Because ICE detainer requests are not judicial warrants, many courts throughout the country have found that police departments honoring these requests are acting in violation of the Fourth Amendment. The First Circuit, Third Circuit and many District Courts have upheld Fourth Amendment claims in which ICE detainer requests violated plaintiffs' constitutional rights against illegal search and seizure. *See Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015) (affirming that mere investigative interest – including investigation into one's immigration status – is not enough to justify warrantless imprisonment); *Galarza v. Szalcyk*, 745 F.3d 634 (3d Cir. 214) (holding that Lehigh County could be held liable for its policy of detaining people on the basis of ICE detainer requests, which are not binding); *Miranda -Olivares v. Clackamas County*, 2014 WL 1414305 (District of Oregon, 2014) (holding that plaintiff was entitled to Summary Judgement for violation of her Fourth Amendment rights where she was held on ICE detainer after she would have otherwise been released); *Mendoza v. Osterberg*, 2014 WL 3784141



(District of Nebraska, 2014); *Villars v. Kubiakowski*, 45 F.Supp.3d 791 (Northern District of Illinois, 2014) (holding that the plaintiff stated a viable Fourth Amendment claim against both ICE and local officials where he was held on an ICE detainer); *Uroza v. Salt Lake County*, 2013 WL 653968 (District of Utah, 2013) (plaintiff stated a viable Fourth Amendment claim where she was held on ICE detainer after she posted bail). Because of these precedents, many jurisdictions have either affirmatively stopped honoring ICE detainer requests or been ordered to do so.

Maui County Police Department General Order Chapter 101 states that MPD “will protect the fundamental rights of all persons to be free from unreasonable searches and seizures,” as the Fourth Amendment requires. Detaining persons at ICE’s request without a valid judicial warrant and probable cause justifying additional detention time not only violates the Fourth Amendment, it violates MPD’s own stated policy. We therefore ask that MPD cease honoring ICE detainer requests, unless those requests are accompanied by a separate *judicial* warrant.

We realize that this policy change could be a significant departure from existing MPD policy. We would like to convene a working group to discuss this issue further and chart a path forward.

2. Biased Policing - Training and Documentation

We seek a public explanation as to how the Department currently upholds General Order 101.9, its Policy of not “engaging in any activities that are discriminatory or indicative of a practice of bias-based profiling.” Can the MPD provide its training materials for such training, policies around when officers must complete such training, who provides them, and the course material used in the training? Would the MPD be willing to share statistics around Internal Affairs complaints around biased policing, and the results of any investigations into these matters?

We ask the MPD to publicly clarify and specifically commit to protecting the immigrant community under this policy. Additionally, we seek opportunities to conduct training for MPD officers on bias-based policing specific to the immigrant communities in Maui, much like the LGBTQI+ community currently provides such training directly to officers..

Produce all Agreements between MPD and Federal Agencies

In the discussions regarding Bill 88, you stated that there are “already agreements in place” between MPD and federal agencies regarding requests to detain individuals suspected of immigration violations. We respectfully ask for the opportunity to review those agreements.



Specifically, we ask MPD to provide us with any cooperation agreements currently in place between DHS (including ICE, HSI and ERO) and MPD. In the alternative, we ask MPD to make a formal statement that no such agreements exist, and instead produce MPD's current policies regarding procedures for handling requests from such agencies.

We would welcome the opportunity to convene to discuss the legality and implications of any agreements between MPD and ICE with ICE or ICE detainer policy MPD currently has.

3. Combined Community Outreach and Education

We seek to create a working group to see if there are mutually beneficial opportunities to build bridges between local law enforcement and the immigrant community on the topics of Bill 88, the Department's Bias-Based Profiling policies of the Department and U-visas. We seek opportunities to build trust to help bolster community policing while at the same time getting buy-in and trust from immigrant community leaders and members.

Conclusion

We see these policy revisions or requests as a starting point. We are grateful for the opportunity to engage in this dialogue, and we respect and appreciate the efforts of the Chief and the Department in addressing the issues proactively and in the spirit of cooperation.

ORDINANCE NO. _____

BILL NO. 88 (2023)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The US. Immigration and Customs Enforcement Homeland Security Investigations (“ICE”) and the County of Maui, Department of Police (“MPD”) wish to enter into a mutually beneficial agreement that would permit ICE to designate MPD officers as custom officers and provide appropriate training to any designated officers as more fully described in the Memorandum of Understanding (the “Agreement”), attached hereto as Exhibit “1” and incorporated herein by reference. The agreement specifically excludes “the authority to enforce administrative violations of immigration law.”

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Mimi Desjardins
MIMI DESJARDINS
First Deputy Corporation Counsel
County of Maui
LF2023-0332
2021-07-23 Authorizing IGA.docx

MEMORANDUM OF UNDERSTANDING

between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS

and

Maui Police Department

regarding

THE DESIGNATION OF

Maui Police Department

EMPLOYEES

AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Maui Police Department.
2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Maui Police Department G.O. 304.12.
3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Maui Police Department.

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), *HSI is not conveying the authority to enforce administrative violations of immigration law.*

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Maui Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. **RESPONSIBILITIES.**

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of Maui Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, et seq.).

Maui Police Department agrees:

- a. That only sworn law enforcement officers of Maui Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
- b. To schedule periodic meetings to review this MOU, as required.

5. **REPORTING AND DOCUMENTATION.** HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and

Maui Police Department

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: SAC Honolulu
Name: Gary Bell
Title: Management Program Analyst
Address: 595 Ala Moana Blvd.,
Honolulu, HI 96813
Telephone Number: +1 (808) 260-5962
Fax Number: +1 (808) 522-5852
E-mail Address: gary.bell@hsd.dhs.gov

Maui Police Department :
Name: Clifton Perreira
Title: Acting Captain
Address: 55 Mahalani Street
Wailuku, HI 96793
Telephone Number: +1 (808) 244-6472
Fax Number: +1 (808) 244-6458
E-mail Address: clifton.perreira@mpd.net

7. OTHER PROVISIONS. This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

8. EFFECTIVE DATE. The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.

9. MODIFICATION. This MOU may be amended by the written concurrence of both Parties.

10. TERMINATION. This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

John F. Tobon
Name of HSI Official

Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Date: _____

John Pelletier
Name of Maui PD 's Official

Chief of Police
Title of Maui PD 's Official
Name of Maui PD 's Agency

Date: _____

INTRODUCED BY:



ALICE L. LEE

Upon the request of the Mayor.