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## Immigration Law Society's Response to Proposed Change to Board Policy 3.54

### **Impact on Immigrant Communities:**

Imagine this. Jose an undocumented worker, coming home from a long day's work to support his family. Jose turns on his tv in the evening and the first thing he sees is a news reporter saying Santa Clara County, the place he calls home, is deciding to cooperate with ICE. That's the headline. This person is not going to see this as an attempt to make the community safer. They are just going to see that Santa Clara County is cooperating with ICE, after vowing not to just one year ago. Jose feels unwelcome.

This County has done a lot to develop a sense of trust within the community. The City of Santa Clara declared itself a Sanctuary City last year. In 2012 the Dornsife Center for Immigrant Integration conducted a study of various CA counties on various steps they take to encourage immigrant integration and build a strong diverse community. Santa Clara County ranked first in almost every category: Effect on the economy, economic trajectory, warmth of welcome, and civic participation. This is shown by the great work done by all the various groups here to speak today, as well as those that are not present, but still do their part in making Santa Clara County a diverse and welcoming community. The Immigrant community will lose trust and Santa Clara's progress in this respect will be undermined.

As current political climate stands, the immigrant community feels unwelcome and is in fear. In fear of separation from their families, friends, and of being expelled from the community they call their home. If the county is not protecting their community, members of this community are less likely to cooperate with County officials. Undocumented individuals who are likely to receive legal help to fix their legal status are not seeking it in fear of discovery and retaliation. People who are eligible for visas will not seek them out.

Undocumented individuals who could provide crucial information in the investigation and prosecution of crime will not come forward because they cannot trust

officers or the county. An undocumented immigrant that observes a crime will be unwilling to report it because they won't feel safe interacting with authorities. Citizens will be unwilling to report people they know are undocumented, if they commit a crime, if they know they could be deported. A study conducted by the University of Chicago observed this very phenomena of decreased participation in legal communities when the community loses trust due to the implementation of more punitive immigration policies such as the one that is being proposed. This fear will undermine the work the county has done to build this sense of trust with the undocumented community.

It is important to understand that the Trust Act of 2013, the California Values Act of 2017, and Policy 3.54 was implemented as a response to ICE indiscriminately targeting immigrant communities. If we comply ICE detention notifications, the county will be acting as an agent of ice. A change in Policy 3.54, signals an unwillingness to protect for most vulnerable members of our community.

For these reasons, we recommend that Santa Clara County's current Civil Detainer Policy remain the same.

### **Legal Implications:**

We reviewed the research, and if this country begins to honor ICE notifications, we are concerned that two things may happen. First, that it will make it easier for ICE agents to target immigrants protected by the California Values Act. Second, even if law enforcement agencies made a good-faith effort in complying with a notification policy, any mistake made could open up this county to civil liability.

### **Non-Compliance**

Our first concern is that with a notification policy, it will be easier for law enforcement agencies to find ways to bypass the California Values Act. We found research showing that some counties are still targeting immigrants protected by the Values Act by either not complying with the law or through loopholes that defeat the law's purpose.

For Example, the Fresno County Sheriff's office has this practice where they will take an immigrant and "release" them by escorting them into a small locked room where ICE agents will be waiting to detain them, put them in a vehicle and drive off.

There's also an exception in the California Values Act which allows LEA's to share with ICE an immigrants personal information so long as its publicly available.

Now, there's more than 20 Sheriff's offices in the state that post on their websites when an inmate will be released from jail. By posting this information for the general public, a Sheriff's Office can then work with ICE to detain immigrants that have not been convicted of serious felonies. We saw this happen in Marin County, where officials posted inmate release dates as a loophole to contact ICE agents.

### **Civil Liability**

Now to the second concern: If the county adopted the proposed change to Policy 3.54, and if law enforcement agencies adopted guidelines for those changes, any mistakes in following those guidelines could open the county up to civil liability.

We understand that the DA's Office has submitted a recommendation that there be a policy of holding an immigrant in jail longer if ICE agents are not present the time when an inmate is set to be released.

The Values act prohibits any enforcement agency from holding someone for immigration purposes. There is nothing in the law that says honoring a ICE notification allows jails to hold an immigrant longer than their release time. So, let's say there's a case where you have someone set to be released and an enforcement agency decides to comply with an ICE request for notification. If for some reason, ICE doesn't show up and the enforcement agency holds that person any longer than their scheduled release date, then that could become an illegal detention.

### References:

*Morales v. Chadbourne*, 793 F.3d 208 (2015)

*Turning The Golden State Into A Sanctuary State A Report On The Impact And Implementation Of The California Values Act (Sb 54)*