



## UNANSWERED QUESTIONS:

### **The Los Angeles Sheriff's Proposed Implementation of ICE's Priority Enforcement Program**

*September 29, 2015*

The Los Angeles Sheriff's Department (LASD) has not responded adequately to concerns raised by stakeholders concerning the implementation of ICE's Priority Enforcement Program (PEP). The Sheriff's "Concerns and Facts" released yesterday raise as many questions as answers.

The LASD proposed policy threatens to continue to allow ICE excessive access to detainees and databases—beyond that required by PEP or endorsed by the Board of Supervisors. Further the policy does not take into account strong concerns voiced by local stakeholders. Nor does it ensure that any policy is implemented with transparency or democratic accountability. Los Angeles County should not be the testing ground for ICE's new jail deportation policy. The community has called for a disentanglement of local criminal law enforcement and federal civil immigration enforcement; the proposed policy would do the reverse.

### **A response to the LASD September 28 "Concerns and Facts in Regard to the Los Angeles County Sheriff's Department's Policies on the Priority Enforcement Program"**

**CONCERN #1:** The public's input was not considered in the development of the Sheriff's policies.

#### **LASD Response**

Three public meetings were held at various locations in Los Angeles County, attended by over 375 community members, 90 of whom offered their input and opinions as to how the program should be implemented. Key stakeholders including the Alternate Public Defender, DHS, ICE, neighboring Sheriff's Departments, LAPD, ACLU, ICE Out of LA, National Immigration Law Center, The Remembrance Project and the Jamiel's Law Organization attended these meetings and provided input. Additionally, numerous emails, letters and phone calls were considered during the program's development.

### **RESPONSE TO LASD ASSERTION**

Despite claims to the contrary, LASD only allowed limited public input. Of two meetings ICE Out of LA activists participated in, both took place at jails, one was invite-only, and in the other, participants were only allowed to provide written pre-screened questions concerning the list of crimes which would subject an individual to ICE notification and access. Further, the policy does not reflect the key concerns raised by community stakeholders and immigration activists. As a result, over 50 organizations sent a letter to Sheriff McDonnell with specific recommendations. That letter is available [here](#).

**CONCERN #2:** ICE Agents will have new, full and unfettered access to the jails, and can interview any inmate in the County Jails at any time.

### **LASD Response**

Immigration and Customs Enforcement (ICE) Agents' access to the jails is no different than that of any other law enforcement agency and must be read and understood in the context of the policies adopted by the Sheriff. Specifically, ICE access will be limited to the purposes set forth in the Sheriff's policy -- namely to interview specific inmates who have a high likelihood of being in the United States illegally, meet a Priority Enforcement Program (PEP) priority category, and have a qualifying conviction under the California Trust Act. The Sheriff's Department also retains the authority to allow law enforcement agencies, including ICE, access to interview any inmate in regards to pending criminal investigations.

### **RESPONSE TO LASD ASSERTION**

ICE access to LA jails is, in fact, very different from other law enforcement agencies because the information is used for purposes of civil deportation, not criminal investigation and prosecution. The latter carries significant due process protections, whereas the former does not. For the Sheriff to assert that this is not unique is to misapprehend the unique problems posed by jail-based deportations and the difference between the LASD assisting other criminal law enforcement entities, who share a similar mandate of criminal law enforcement with the LASD, and assisting ICE, whose mandate is to enforce civil immigration laws, a mandate not shared with the LASD and a function that the LASD does not have authority to perform without prior approval.

**CONCERN #3:** The Sheriff is allowing ICE "back into the jails" contrary to the Board of Supervisor's motion earlier this year.

### **LASD Response**

The Board's motion on May 12, 2015, ended the 287g agreement and specifically requested that the Sheriff cooperate with ICE to implement the President's new Priority Enforcement Program. That cooperation necessarily requires – and the

Board's motion clearly contemplated – access by ICE to individuals in the jails to allow for interviews and ICE action in regard to individuals who pose a danger to the community and are subject to ICE enforcement action. That access does not depart from past LASD practices or run counter to the Board's action in May.

#### **RESPONSE TO LASD ASSERTION**

This is factually inaccurate. PEP does not require ICE access to individuals in the jail; the Sheriff's proposed policy goes beyond that required to implement PEP and beyond the mandate of the Board of Supervisors. PEP was initially described by DHS as an automated information-sharing program that would result in requests for transfer of custody. Now, nearly a year after the PEP program was announced, scarce details remain about the parameters of the program. When the Board passed its motion, PEP had not been implemented and the Board memo rightly took a “wait and see” approach with regard to PEP and what it would require. Now, the Sheriff's proposed policy would allow greater ICE access to the jails and databases of local law enforcement than required by DHS, and even before DHS has publicly confirmed and elaborated what is contemplated by PEP.

**CONCERN #4:** The new policy resurrects the terms of the 287(g) agreement that had previously been terminated by the Board.

#### **LASD Response**

The 287(g) agreement provided for LASD personnel to perform ICE functions. That is no longer the case. In particular, the five Custody Assistants who were previously deputized as ICE agents to enforce immigration law no longer serve in that capacity. In addition, the Board action requested that the Sheriff cooperate with ICE in implementing the PEP. Consistent with that request, the recently issued LASD policies provide for that cooperation and a mechanism for implementation of PEP, while also bearing in mind the overlay of state laws and legal precedent.

#### **RESPONSE TO LASD ASSERTION**

One of the most criticized aspects of the 287(g) agreement was the lack of a clear separation between local law enforcement and civil immigration enforcement; the Sheriff's proposed policy would cement this entanglement. Further, the 287(g) agreement had two central oversight features lacking in the current program. First, there was an enforceable Memorandum of Agreement that outlined clear parameters of the program. Second, the Board of Supervisors retained review and oversight authority over the Los Angeles Sheriff's implementation of the 287(g) agreement. The Sheriff's new policy, in addition to being unclear, would abdicate the County Board's critical role in oversight, and it would place considerable trust in ICE to live up to its word, despite the fact that ICE has routinely broken its word when implementing its jail-based deportation programs.

**CONCERN #5:** ICE Agents are permanently stationed in LASD jails and there will be an increased ICE presence in the jails due to Sheriff McDonnell's new policy.

**LASD Response**

Following the Board's vote on May 12, 2015, to discontinue the 287(g) MOA, ICE vacated offices in the County Jails. No ICE agents are permanently stationed in the County Jails. ICE agents have access to available computer terminals in the jails, as do representatives of other law enforcement agencies, to access necessary law enforcement databases in order to carry out their lawful responsibilities.

**RESPONSE TO LASD ASSERTION**

The LASD does not respond to this valid concern. The Sheriff acknowledges that this proposed policy would allow expansive ICE access to both County detainees and local law enforcement databases. The word "permanent" has been removed, but this seems to be a distinction without any meaning.

**CONCERN #6:** Individuals who are in custody with a detainer under the federal Priority Enforcement Program (PEP) will automatically be transferred to the custody of ICE.

**LASD Response**

Individuals who meet the criteria set forth in PEP will also have to meet the standards established by the California Trust Act and the steps in response to Concern #9. Just because ICE sends a detainer, does not automatically mean that the individual will be transferred to ICE. There are additional screening processes as outlined in the response to Concern #9.

**RESPONSE TO LASD ASSERTION**

LASD does not respond to the concern that the Sheriff's proposal would facilitate the transfer of too many people to ICE custody. The TRUST ACT sets forth a floor for minimum protections which the Sheriff treats improperly as a ceiling. This reverses the trend in jurisdiction after jurisdiction seeking to disentangle criminal law enforcement from civil immigration enforcement—and conflicts with the recommendations of local civil rights, immigration and community stakeholders.

**CONCERN #7:** The Sheriff's Department will hold individuals beyond their date of release if ICE makes a request to detain them for possible deportation.

**LASD Response**

No individual will be detained beyond their date of release regardless of whether or not there is a valid ICE detainer.

### **RESPONSE TO LASD ASSERTION**

It remains to be seen if the new transfer of custody protocol comports with the Constitution. This ambiguity alone exposes Los Angeles County to considerable legal liability. The Fourth Amendment protects individuals from being detained for one moment longer than constitutionally permissible.

**CONCERN #8:** Inmates who are being released will be delayed or held in order to facilitate transfer to ICE.

### **LASD Response**

Individuals will only be transferred to the custody of ICE during the normal period of time it takes for the LASD release process regardless of any ICE requests.

### **RESPONSE TO LASD ASSERTION**

This appears to be a physical impossibility. The transfer of custody from LASD to another jurisdiction requires additional processing steps that the LASD would not have to perform to release someone to the street. LASD has not demonstrated how it will ensure that the LASD release process will be unaffected and not delayed processing people for release to ICE.

**CONCERN #9:** During the ICE screening process, Agents will racially profile inmates and will only talk to inmates who look like they are in the United States illegally.

### **LASD Response**

The ICE screening process of inmates in the release area and in the County Jails consists of computerized database screening and is not race-based. ICE Agents screen all inmates scheduled for release. ICE determines if an individual has a high likelihood of being in the United States illegally. Once that initial screening is concluded, Agents will determine if the inmate meets a PEP priority category and has a qualified conviction under the California Trust Act. The Department will then verify that the inmate's conviction is listed in the Trust Act. Only after all of the above steps are completed can an ICE interview occur, followed by the possibility of an ICE detainer. These procedures are more limiting than the net cast by the PEP and ensure that enforcement of the PEP is consistent with California State law.

### **RESPONSE TO LASD ASSERTION**

LASD acknowledges the risk of racial profiling and yet does nothing to provide a safeguard protecting people from civil rights violations. Further, LASD facilitates an even wider net than ICE's PEP program envisioned. As with the disgraced Secure Communities program, the concern has never been that the racial profiling only occurs after the point of arrest. Experience around the country – and in Los Angeles County – suggests that racial profiling occurs to bring immigrants into contact with sheriffs in the first place. Considerable protections must be put in place

immediately. It is very troubling that the know-your-rights forms discussed in the Sheriff report are not yet complete. Minimally, they should be in place before LASD does anything further. Further, and contrary to the LASD's assertions, the procedures outlined here are not more limited than the net cast by PEP. By allowing ICE to interview people who are "no matches" (where no match exists in the database) and for whom they do not already have information, LASD is allowing ICE to identify far more people for PEP enforcement than they would be able to identify otherwise. Also, ICE has not previously expressed a need to interview people to carry out the PEP program. This is something outside of PEP and enables ICE to apprehend more people.

**CONCERN #10:** Inmates will not know if the Pacific Enforcement Response Center (PERC) has issued a request for notification or a detainer relating to them.

**LASD Response**

Inmates who have been issued a request for notification form or detainer from PERC will be advised by LASD staff of the existence of the notification or detainer and will be advised of their opportunity to consult with legal counsel.

**CONCERN #11:** ICE Agents use their access to LASD jail databases to obtain information on inmates who they cannot issue detainers, so they can apprehend them at a later time.

**LASD Response**

ICE Agents will limit their immigration enforcement use of LASD databases to assist in their computerized screening process and to ensure conformance with LASD's release timeframes.

**RESPONSE TO LASD ASSERTION**

This does not comport with the initial LASD report. The LASD report states: "Full access into the County's jails and our databases will also be authorized in order for ICE to conduct thorough investigations, ensuring timeframes and procedures are met." In this proposed policy, the LASD does not provide any limits on ICE's full access to LASD databases. LASD's response here does not clarify or address the underlying concern.

**CONCERN #12:** Inmates may be transferred to ICE custody who have committed minor offenses.

**LASD Response**

Only those inmates who have committed a qualifying serious or violent felony, as set forth in the provisions of the California Trust Act, will be considered for transfer to the custody of ICE.

## **RESPONSE TO LASD ASSERTION**

The TRUST Act includes some misdemeanors so it is inaccurate to say that the LASD proposed policy would limit the possibility of immediate transfer from LASD to ICE custody to those who have committed only serious or violent felonies. For this reason, immigration activists recommended more restricted criteria for ICE interviews, and a statute of limitations for convictions that would make individuals eligible for any ICE access. Further, because the LASD proposed policy allows for extensive access to detainees for interviews and even greater access to the database, the proposed policy would implicate the LASD in ICE's broader deportation policy which has swept up many people committed of minor offenses, and not only those limited by the TRUST Act.

**CONCERN #13:** Crimes committed as a juvenile will qualify an inmate for transfer to ICE custody.

## **LASD Response**

Only crimes committed while the individual is an adult will be considered as a qualifying crime under the California Trust Act for transfer to ICE.