

EXECUTIVE SUMMARY

AN ORDINANCE TO PROTECT EQUAL JUSTICE FOR ALL

MAY 2018

Fairfax for All, a coalition of Fairfax community members and their allies in the immigrant and civil rights communities, asks the Board of Supervisors to adopt the attached Ordinance. The Ordinance prohibits all Fairfax agencies and employees from permitting or assisting U.S. Immigration and Customs Enforcement (ICE) with civil immigration enforcement, unless expressly required by law. It also protects residents' privacy by restricting unnecessary and unwarranted information sharing.

The Ordinance is founded on two key principles:

1. Honoring ICE's requests to detain immigrants has sowed mistrust of law enforcement and undermined community policing efforts. Immigrants fear that any contact with Fairfax officials, including reporting a crime, puts them in peril. This threatens the safety of all Fairfax residents.
2. Being undocumented is a civil, not criminal, violation of federal law, and Fairfax's cooperation with ICE may violate the Constitution. This threatens people's fundamental rights and subjects the County to potential legal liability.

Under the Ordinance, the County may continue to cooperate with ICE on criminal immigration matters and will not interfere with ICE's independent enforcement activities. Careful legal study has shown that the provisions of this Ordinance are compatible with Virginia and federal law.

BACKGROUND

The need for policy improvement is most evident in the area of law enforcement. At present, police are allowed to arrest immigrants in circumstances where US citizens would be given a summons, based on information from notoriously unreliable ICE databases that have been found to be erroneous [about 30%](#) of the time. The Sheriff's practice had been to turn over all detained immigrants for deportation, but her recent decision to terminate the Intergovernmental Services Agreement (IGSA) means many will now be released. The release will be short lived, however, if the Sheriff continues the existing practice of notifying ICE where the immigrant can be found. Detention hurts entire families. About [85%](#) of immigrant families include a mix of citizens, authorized residents and undocumented members. Family income typically drops [70%](#) after detention; psychological trauma is common.

The County's practices have been exacerbated by new ICE directives to deport *all undocumented immigrants*, including individuals with no criminal history, and with strong family and community ties. Fairfax law enforcement has acquiesced to these changes, with devastating consequences:

- **Almost 3 times** as many immigrants were turned over to ICE by Fairfax law enforcement in 2017 than in 2016 (an increase from 271 to 779).
- **56%** of immigrants that Fairfax arrested and turned over to ICE were found innocent, had their cases dismissed, or were turned over to ICE before they had their day in court on the local charges. Even where an individual was convicted of a crime before being transferred to ICE custody, the vast majority of convictions involve traffic offenses and misdemeanors.

Other Fairfax agencies also may alert ICE to people's immigration status (or suspected status), or allow ICE entry to County facilities. Children stay home from schools, benefits are left unclaimed and individuals are afraid to appear in court. Many immigrants fear any foray into the larger community. Fairfax is failing to achieve its [stated goals](#) of respect and acceptance of immigrants in our community.

THE BOARD'S AUTHORITY TO ACT

Fairfax has clear authority to pass the Ordinance under the powers granted municipalities by Virginia law. *See* Va. Code Ann. § [15.2-1102](#). Constitutional officers such as the Sheriff also can be bound because the Board "may condition [county] appropriations on the sheriff's acceptance of certain restrictions on the use of the appropriated funds." *Roop v. Whitt*, 768 S.E.2d 692, 695 (Va. 2015) at n. 1 (citing *Bailey v. Loudon Cty. Sheriff's Office*, 762 S.E.2d 763, 765 (Va. 2014)). Inclusion of the Sheriff is necessary to codify the IGSA termination for future sheriffs and to implement other needed changes.

SUMMARY OF PROPOSED ORDINANCE

The proposed ordinance applies to **all** Fairfax County agencies and employees. This includes the Police Department, Sheriff's Office, Adult Detention Center, Juvenile Detention Center and Public Schools. It will be a condition of acceptance of any County appropriations that recipients follow the Ordinance. Key provisions are detailed below.

1. **Prohibition on Civil Immigration Enforcement.** Bars certain civil immigration enforcement activities, including activities that:
 - a. **Consider Immigration Status in Law Enforcement Decisions.** Bars taking into account someone's immigration status (including a civil or administrative warrant, removal order, or detainer request) when deciding whether to stop, detain, issue a summons in lieu of arrest or release them.
 - b. **Investigate Information Status.** Bars investigating or requesting information about a person's citizenship or immigration status, unless the law explicitly requires it.
 - c. **Grant ICE Unencumbered Access.** Restricts ICE's unencumbered access to Fairfax facilities to enforce civil immigration law. Where access is authorized, requires ICE officers to clearly identify themselves.
 - d. **Enter into Agreements with ICE.** Prohibits agreements to perform the functions of ICE or assist civil immigration law enforcement—including 287(g) agreements or IGSA's.
 - e. **Participate in a Federal Registry.** Bars participation in any federal program requiring the registration of individuals on the basis of race, immigration status, national origin or other protected identity or status.
2. **Provisions on Information Sharing and Collection.**
 - a. **Limitation on Sharing Confidential Information.** Protects confidential information, including a person's sexual orientation, gender identity, race or ethnicity; status as a crime witness or victim; receipt of public assistance; citizenship or immigration status; or tax record information.
 - b. **Limitation on Sharing Other Information with ICE.** Prohibits disclosure of information to ICE about a person's release date, incarceration, court proceedings, personal data, or contact information without a criminal judicial warrant.
 - c. **Prohibition of Unjustified Searches of Biometric Data.** Bans law enforcement searches of biometric data or materials, including DNA swabs and tattoos, without cause.
 - d. **Data Collection Requirements.** Requires Fairfax to collect data to evaluate the effectiveness of its policies against bias-based policing, including federal immigration requests and police stops.
 - e. **Detainer Notice Requirements.** Requires Fairfax to notify individuals in its custody when they are the subject of an ICE query, and of their right to legal counsel.
 - f. **Enhanced Language Access.** Strengthens existing Language Assistance Programs for persons with Limited English Proficiency.
3. **Acceptance of ID Documents.** Permits a broader range of identification (ID) documents, to stop criminalizing people without driver's licenses.
4. **Legal Support.**
 - a. **Representation Fund.** Establishes a public fund to provide legal representation to qualifying individuals in need of legal representation for immigration matters.
 - b. **Redress Available.** Provides individuals alleging violations of the Ordinance with the right to redress.