

RESOLUTION NO.

WHEREAS, the City of Austin is a community that welcomes all, appreciates diversity, and recognizes the immense economic, social, and cultural contribution that immigrants have made to this country; and

WHEREAS, the City of Austin has a diverse and international population and, according to the 2012 American Community Survey, is approximately 19.3% foreign-born, constituting over 150,000 individuals; and

WHEREAS, the immigrant community in Austin shares the city's values of family unity and human dignity, and its beliefs that every person should have the rights to feel secure and protected, to live free of the fear of discrimination, and to due process and equal protection under the law, regardless of place of birth; and

WHEREAS, the City of Austin is committed to the safety, health and welfare of all of its residents and has a non-discrimination policy that includes race, color, religion, national origin, sex, sexual orientation, gender identity, disability or age; and

WHEREAS, the aforementioned commitment is reflected in many actions taken by the City, including the creation of the Commission on Immigrant Affairs that advises City Council on issues of common concern to immigrants; and

WHEREAS, the City of Austin is a part of Welcoming America's Welcoming Cities and Counties Initiative, and formally proclaimed itself a Welcoming City on September 19, 2013, with the goal of creating a welcoming atmosphere – community by community – in which immigrants are more likely to integrate into the social fabric of their adopted hometowns; and

WHEREAS, the Commission on Immigrant Affairs passed a resolution, subsequently adopted by the City Council on March 20, 2014, directing that the City of Austin take steps to become a “Welcoming Community” by engaging community stakeholders, such as government, educational institutions and non-profits, and to work together to define a vision for Austin as a Welcoming City, including “troubleshooting current and future issues that will affect Austin's immigrant population;” and

WHEREAS, one of the most difficult challenges to being a Welcoming City is the current state of the federal immigration system; and

WHEREAS, the City of Austin advocates for comprehensive immigration reform through its City Council-adopted federal legislative agenda, which urges the United States Congress to enact legislation accomplishing comprehensive immigration reform that provides a realistic pathway to citizenship; works to keep families of immigrants intact; promotes public safety, national security, and economic prosperity; respects human rights and civil liberties; establishes a responsible and accountable border policy; and addresses the root causes of migration; and

WHEREAS, the issues of immigration reform and enforcement have a direct impact on communities and local government beyond the federal level, through such programs as U.S. Immigration and Customs Enforcement's (ICE's) Secure Communities (S-Comm) program; and

WHEREAS, ICE's S-Comm program is a federal immigration enforcement program that issues ICE detainers, which are requests that individuals in local custody be held for 48 hours to allow ICE agents time to verify immigration status, assume custody of the individual and place him/her in deportation proceedings; and

WHEREAS, ICE detainers have led to record-high deportation numbers nationally and in Travis County, with Travis County ranking among the highest counties in the nation in deportations, resulting in over 4,741 deportations since June of 2009, an average of 19 people per week; and

WHEREAS, compliance with ICE detainers sweeps up Travis County residents who live, work and raise families in our community and allows the deportations of valuable and contributing community members; and

WHEREAS, in the last two years, Travis County complied with 5,507 detainers, 73% of which were issued against persons who were ultimately not convicted of any crime, and only 3% of which involved the most serious (Level 1) offenses; and

WHEREAS, the ICE detainer program generates fear in the immigrant community and discourages cooperation with law enforcement and reporting of crime, even among victims of crime, eroding trust between the immigrant community and the County's and City's law enforcement officers and significantly harming local community policing efforts; and

WHEREAS, the S-Comm program results in the harmful separation of children from their parents, as evidenced through ICE's data showing that between July 2010 and September 2012, nearly 23% of all immigrants deported — or, 204,810 deportations — were parents with citizen children, jeopardizing the welfare and prosperity of Travis County's future generations; and

WHEREAS, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for an extended period. Too often these children lose the opportunity to ever see their parents again and the deportations shatter the families and endanger the children left behind; and

WHEREAS, broad compliance with all ICE detainers is a significant expense for Travis County taxpayers because ICE is not required to reimburse counties for all of the costs of continued custody, which in Travis County reaches \$105.16 a day per detainee and in most cases, ICE provides very little reimbursement, leaving the County responsible for significant expenses resulting from ICE detainer compliance; and

WHEREAS, ICE detainers strain scarce City and County resources with the economic burden of continued custody of individuals in the Travis County Jail with little promise of reimbursement, using resources that could be better allocated to more beneficial endeavors, like health, education, human services and serious public safety needs; and

WHEREAS, both the Department of Homeland Security (DHS) and the U.S. Third Circuit Court of Appeals in the case *Galarza v. Szalczyk*¹ made clear that compliance with the ICE detainer program is voluntary and the federal government does not and cannot require counties to comply with ICE detainer requests and to hold people in jail for ICE to assume custody; and

WHEREAS, unlike criminal detainers and warrants, ICE detainers are not issued nor reviewed by a judge and are not based on probable cause nor reasonable suspicion, making them constitutionally questionable; and

WHEREAS, recent court decisions² have declared that the ICE detainer program violates the Fourth Amendment prohibition against unreasonable search and seizure and made clear that when constitutional abuses such as these arise from localities' compliance with ICE detainers, the counties themselves may be legally liable for such violations, and therefore Travis County is exposing itself to lawsuits

¹ *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

² See, e.g., *Miranda-Olivares v. Clackamas County*, No. 12-02317, 2014 WL 1414305 (D. Or.); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Villars v. Kubiowski, et al.*, No. 12-cv-4586, -- F. Supp.2d --, 2014 WL 1795631 (N.D. Ill.); *Morales v. Chadbourne*, ___F.Supp.2d ___, 2014 WL 554478, (D.R.I, 2014).

for wrongful detention and constitutional violations under state and federal law by participating in the ICE detainer program; and

WHEREAS, on April 28, 2014, a letter, signed by over one hundred University of Texas School of Law professors and Travis County attorneys, was sent to the Travis County Commissioners Court members requesting termination of the County's participation in S-Comm; and

WHEREAS, states and communities across the country have changed their policies to limit their cooperation with ICE and compliance with ICE detainers with the positive results of restoring immigrants' trust in law enforcement, maintaining the unity of thousands of families who are vital parts of their communities, and saving millions in taxpayer dollars; and

WHEREAS, on March 26, 2012 the City of Austin Human Rights Commission and the Commission on Immigrant Affairs passed a joint resolution to urge the Austin City Council to oppose the Travis County Jail's continued honoring of every "hold" request; and

WHEREAS, the Travis County Sheriff's voluntary compliance with ICE detainers is damaging the welfare and potential of our community, our families, and our city, and thwarts legitimate law enforcement goals and community policing in Austin and Travis County and does not make our community safer;
NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council opposes the use of Travis County resources, including efforts by County staff and taxpayer dollars, for the implementation of ICE's S-Comm program.

The City Council urges the Travis County Sheriff's Office to stop complying with ICE detainers and holding people in its jail for ICE to assume custody.

The City Council directs the City Manager to research options to minimize or completely replace the City of Austin's use of the Travis County Central Booking Facility, until such time that Travis County's participation in the S-Comm program has been terminated, and to report back to the Public Health and Human Services Council Committee and the Joint Public Safety Working Group prior to reporting back to the Council within 90 days.

The City Council directs the City Manager to send a copy of this resolution to the Travis County Judge, Commissioners and Sheriff.

ADOPTED: _____, 2014

ATTEST: _____

Jannette S. Goodall
City Clerk