Statement of Support for “Sanctuary” Communities

Endorsed January 2017

WHEREAS, the National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of over 50,000 attorneys and approximately 75 national, state and local Asian Pacific American bar associations; NAPABA members include solo practitioners, large firm lawyers, corporate counsel, legal service and non-profit attorneys, and lawyers serving at all levels of government; and NAPABA is committed to addressing civil rights issues confronting Asian Pacific American communities and people of color;

WHEREAS, the United States is a country of diverse peoples, including immigrants who traveled from around the world to seek a better life;

WHEREAS, immigration policy and law have a dramatic impact on the Asian Pacific American community, as nearly two-thirds of the Asian Pacific American community are foreign born, and of the estimated 11.2 million undocumented people in the country, approximately 1.3 million are of Asian origin;

WHEREAS, in a resolution in March 2014, NAPABA called for Congress to enact commonsense immigration reform legislation and supported administrative relief that addressed the harms caused by Congressional inaction;

WHEREAS, to date, Congress has failed to act to reform the country’s immigration system;

WHEREAS, immigration policy and immigration enforcement responsibilities are solely vested with the federal government and not with state or local governmental entities within the United States;

WHEREAS, from the 1980s, many state and local governmental entities throughout the United States enacted policies that limited the voluntary cooperation with federal immigration authorities to advance public safety within their communities and create relationships of trust with immigrant communities;

WHEREAS, local law enforcement agencies throughout the country have determined - through engagement with the community at large and with the immigrant community - that as matter of public safety, victims and witnesses should be encouraged to be engaged and ensure the safety of their communities;

WHEREAS, local law enforcement agencies have found that voluntary cooperation with federal immigration authorities jeopardizes the relationship of trust with the community at large and discourages victims and witnesses from coming forward;
WHEREAS, the United States Immigration and Customs Enforcement ("ICE"), under 8 C.F.R. 287.7, may send a detainer request to a local law enforcement agency that advises it that ICE "seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien" and requests notification prior to release of the alien;

WHEREAS, the ICE detainer request may also ask a local law enforcement agency to detain the individual in question for up to forty-eight hours "in order to permit assumption of custody by" ICE, 8 C.F.R. 287.7(d), beyond any detention that may otherwise have been authorized by that state's law;

WHEREAS, all of the United States Courts of Appeals to address the issue have characterized ICE detainer requests as simply that: “requests,” Galarza v Szalczyk, 745 F.3d 634, 640-41 (3d Cir. 2014) (collecting cases);

WHEREAS, ICE detainer requests do not create a mandatory obligation on local law enforcement agencies that receive such requests to detain an individual, see Galarza v Szalczyk, 745 F.3d 634, 642 (3d Cir. 2014);

WHEREAS, local law enforcement agencies that choose to honor ICE detainer requests, which are not supported by probable cause, and detain individuals solely on the basis of the detainer likely violate the Fourth Amendment to the Constitution of the United States and may subject the state or local governmental entity to monetary damages as a result of the unconstitutional detention, see Galarza, 745 F.3d at 645;

WHEREAS, for reasons of public safety, many state and local governmental entities choose not to comply with ICE detainer requests to detain individuals on that basis alone;

WHEREAS, such local policies have shown to promote positive relationships with the community and have not led to an increase in crime;

WHEREAS, legislation has been introduced in Congress, such as S.2146, S.3100, H.R.3002, and H.R.3009 in the 2015-2016 session, which would, among other things, defund federal grants from state and local governmental entities that enact "sanctuary policies;”

WHEREAS, the incoming Presidential administration, as part of its immigration platform, promised to block federal funding for “Sanctuary Cities;”

WHEREAS, state and local governmental entities - which do not have the obligation to enforce federal immigration law - should not be forced to choose between federal monies and whether to enact proven policies that protect communities and ensure public safety;

THEREFORE, BE IT RESOLVED that NAPABA:

1. Supports state and local governmental entities that (a) choose not to honor ICE detainer requests, (b) decline to detain individuals solely on the basis of an ICE detainer request, and (c) engages in building trust relationships with their communities - and especially immigrant communities - that further promote public safety;

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2. Opposes any legislation, such as S.2146, S.3100, H.R.3002, and H.R.3009, that would defund or otherwise penalize state and local governmental entities for (1) denying ICE detainer requests; (2) declining to detain individuals solely on the basis of an ICE detainer request; (3) limiting voluntary cooperation with federal immigration authorities for the protection of the public; or (4) limiting or prohibiting law enforcement officials from inquiring into the immigration status of witnesses, victims, or suspects.

3. Authorizes its president, board, and staff to communicate the content of this resolution to its members, affiliates, other bar associations, members of Congress, the Administration, the press, and others to take steps to implement this resolution, as they deem necessary.

4. Supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.