

Suffolk NYCLU

The Honorable Steve Levy
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099

December 13, 2004

Dear Mr. Levy:

This letter is a follow-up to our December 9th letter on a potential Memorandum of Understanding (MOU) between the Bureau of Immigration and Customs Enforcement (BICE) and Suffolk County.

An MOU is a dramatic step; no local municipality has entered such an arrangement. In addition to the matters raised in our December 9th letter of defacto deputization with corresponding discrimination in police protection, constitutional questions and privacy and security issues, there are three additional reasons to reconsider entering an MOU: Such an arrangement will strain the County's already over-burdened resources, expose the County to significant civil liability, and decrease the reporting of domestic violence within Suffolk County.

Domestic Violence

Domestic violence programs stress the importance of safety planning for each survivor of violence. That planning requires that victims feel free to call on local law enforcement when necessary. These programs and the organizations that administer them have worked diligently to develop collaborative relationships with law enforcement, attorneys and judges, and community agencies on behalf of all survivors of domestic violence.

We are extremely concerned that if this MOU is approved, battered immigrants will be afraid to call the police for help. Women would fear, legitimately, that an abusive spouse or partner who goes to the jail for a night could face deportation. The prospect of their spouse or partner's never returning will undoubtedly deter many women from seeking police assistance.

Immigrant women experiencing domestic violence face an overwhelming number of barriers to accessing services to alleviate the violence. Congress recognized this in 1994 and again in 2000, when it passed the immigration provisions of the Violence Against Women Act, stating that: "Immigrant women and children are often targeted to be victims of crimes committed against them in the United States. All women and children who are victims of these crimes must be able to report these crimes to law enforcement."

Resource Strain

Implementation of this agreement will require substantial resource commitments of time, training, and administrative costs that would further burden a severely understaffed jail system. To comply with the MOU's demands, County employees will have to make complex determinations as to the immigration status of an individual, access and utilize complicated federal databases, and house and feed the individual in question until they are picked up from BICE – a situation that will not always be immediate or even timely. The significant new responsibilities would come at a time when the jail system is already dangerously overburdened. As County officials themselves have repeatedly stated, the jail system is seriously strained. In this context, we see little wisdom in the County's jails taking on greater responsibility.

Civil Liability Exposure

The MOU also could expose the County to significant civil liability costs. It is our understanding that it will require the County to take on the responsibility for determining whether foreign-born people in the County's jails are subject to deportation under immigration laws. Unfortunately, the federal immigration laws are exceedingly complex, and not every foreign-born person convicted of a crime is subject to deportation. Determining whether or not a particular individual is in fact deportable often involves a complex inquiry into both the individuals' immigration history and the nature of the conviction at issue. In other cases, even determining whether a foreign-born person is a United States citizen can require a difficult legal judgment, such as in cases where one or both of the person's parents are United States citizens.

If the County becomes involved in immigration, it could expose itself to substantial civil liability. Suffolk officials would be responsible for detaining individuals after the completion of service until pickup by BICE officials – if this is not handled in a timely manner, the County could become liable. And where mistakes occur and people are wrongly subjected to detention or deportation, courts have not been hesitant to find federal immigration authorities liable for the government's mistakes. See, e.g., *Araujo v. United States*, 301 F.Supp.2d 1095 (N.D. Cal. 2004) (granting partial summary judgment to wrongfully deported immigrant in damage action against United States); *Rhoden v. United States*, 55 F.3d 428, 432 (9th Cir. 1995) (noting that government's six day detention of legal resident with drug conviction "must be tested against constitutional limits" and remanding for trial on that claim). Thus, legal errors by Suffolk employees who erroneously interpret the federal immigration laws could expose the County to significant liability.

Most important, implementation of the MOU would create significant civil liberties concerns without increasing security for the County's residents. We recognize that the County must take all appropriate steps to enforce the criminal laws and protect the County's residents. However, the MOU would create more problems than it solves, leading to substantial concerns from liability to domestic violence, from denial of police protection to constitutional questions, from increased costs to privacy concerns for

thousands of Suffolk residents. Suffolk County should not be the first local municipality in the nation to enter into such an arrangement until the potential questions are answered to spare the County from unwanted, costly and potentially dangerous consequences.

Thank you for your consideration and for your service on behalf of Suffolk County.

Sincerely,

Jared Feuer

cc: Christine Malafi, Esq.

DELIVERED VIA FAX