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December 30, 2011

VIA US MAIL

Mr. Brian McCann
9110 Damen
Chicago, IL 60643

**RE: Your Letter Concerning Cook County's Policy for Responding to ICE
Detainer Requests**

Dear Mr. McCann:

I have received a copy of your letter to Toni Preckwinkle, President of the Cook County Board of Commissioners. I was deeply saddened to learn of your brother's death and I would like to express my sincere sympathies to you and your family at this difficult time on behalf of the entire Board of Commissioners here at Cook County.

Drunk drivers are a serious hazard to everyone on the road. Legislators and judges recognize this, and the State of Illinois has some of the toughest DUI laws in the nation. Although statistics show that the incidence of drunk driving has decreased over the years, it continues to be a pervasive problem in our society—one that takes the lives of innocent people, like your brother, all too often. I strongly support continued efforts at all levels of government to address this problem and seek to prevent such tragedies from occurring in the future.

However, it appears from your letter, that you were given inaccurate information concerning the criminal justice process and Immigration and Customs Enforcement (ICE) detainer requests, both in this instance and generally.

In Illinois, Circuit Court judges are entrusted with the serious responsibility of determining whether people charged with crimes are eligible for release on bail pending the disposition of the charges against them. Prior to making a decision as to whether and on what terms to set bail, judges are required by law to consider many factors, including but not limited to the severity and the type of crime charged, the defendant's family status, his/her immigration status, and any prior history of criminal convictions. As part of that process, it is the responsibility of the Assistant State's Attorney to present the pertinent information with regard to setting bail, including information to support a request to deny bail or require a very high dollar amount when there is reason to believe that a defendant poses a significant public safety or flight risk.



However, under our Constitution and laws, once a judge finds a pre-trial detainee is eligible for release on bail, and that person meets the court ordered conditions of his/her release, the Sheriff cannot detain him/her for a longer period of time absent an outstanding criminal warrant or other order of court. A detainer request from ICE is not a criminal warrant or other order of court, and it does not provide a valid legal justification for continued detention by the Sheriff.

Cook County does not comply with detainer requests from ICE because such requests are not based on probable cause and have even been placed on US citizens by mistake; local law enforcement officers are not immigration officers trained in federal civil immigration policy and procedures; and detaining people beyond their authorized time of release without a warrant or other order of court is arguably unlawful and unconstitutional. However, Cook County readily complies with all arrest warrants and court orders, which ICE also has at its disposal. **Saul Chavez was in the Sheriff's custody between June 8, 2011 and November 20, 2011. ICE had more than five months to obtain an arrest warrant or court order for him, but failed to do so. If ICE had presented an arrest warrant or court order, the Cook County Sheriff would have immediately cooperated.**

Although Cook County's policy for responding to ICE detainer requests does not foreclose the possibility of reaching an agreement with the federal government by which certain detainer requests will be honored, to my knowledge the federal government has never approached Cook County about entering into such an agreement because it does not need Cook County's cooperation to enforce federal immigration law.

ICE can and should arrest Saul Chavez if he is in the United States illegally and is not entitled to remain. As evidenced by its recent arrest of more than 2,900 nationwide in a "Cross Check operation" this past September, ICE has vast resources, including access to a national database that includes individuals' criminal and immigration histories, and the ability to go after felons who are in the United State illegally. An ICE detainer is not necessary for ICE to take custody of any person as to whom there is probable cause to believe that he or she is illegally in this country. But even when people are deported, they sometimes come back. Our limited local law enforcement resources are better spent preventing and solving crimes, rather than attempting to aid in the enforcement of a broken immigration system, the responsibility for which is reserved to the federal government under our Constitution.

All of us at the County Board share your desire to live in a community where the rule of law is upheld, and criminals are held accountable. However, complying with ICE detainer requests absent an agreement with the federal government would not advance that goal. Complying with an ICE detainer request would mean that a person eligible for release pursuant to a court order would be held for an additional 48 hours while ICE decides whether or not to take custody of him/her for immigration violations, regardless of the pending criminal case. It would not necessarily mean that person would remain in custody or be deported. In most cases, ICE does not even take custody following a detainer request, and thus a great many persons are subjected unnecessarily to illegal, prolonged detention, which results in a substantial waste of limited taxpayer funds and local law enforcement resources.

In the interests of public safety, we must protect the integrity of the criminal justice process. Cook County's policy with regard to ICE detainers does just that. By refusing to turn individuals over to ICE before they have been found guilty or served their sentences absent an arrest warrant or court order, we are ensuring that the criminal justice system takes its proper course, and that criminals are held accountable for their offenses pursuant to our cherished constitutional procedures. As part of my oath of office, I swore to uphold the Constitution, and I intend to make every effort to honor that oath.

I agree that persons who are a danger to society or pose a serious risk of fleeing our justice system should be either subjected to the most rigorous conditions of bail, or denied bail altogether, and I have reached out to the Chief Judge of the Circuit Court of Cook County to ask that he emphasize to our County's judges the importance of being rigorous and vigilant in setting bail. However, this decision is reserved to the courts. Although we may ultimately disagree with the judge's decision in a particular case, we do not have the authority to disregard the court's orders. In spite of a judge's best efforts, people—immigrants and citizens alike—sometimes miss court dates. When this happens, we must react as a community to bring these people to justice, using the lawful methods at our disposal.

I hope that this letter has clarified the situation for you, and I again extend my deepest sympathies. In closing, I wish you and your family peace and serenity this holiday season. Please do not hesitate to contact my office at 312-603-5443 with any further questions or concerns.

Sincerely,

Jesus G. Garcia
Cook County Commissioner (7th District)

Encl.