

HOUSE No. 1613

The Commonwealth of Massachusetts

PRESENTED BY:

Carl M. Sciortino, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to restore community trust in Massachusetts law enforcement.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------------|-----------------------|------------------|
| <i>Carl M. Sciortino, Jr.</i> | <i>34th Middlesex</i> | <i>1/18/2013</i> |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> | |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | |
| <i>Carlo Basile</i> | <i>1st Suffolk</i> | |
| <i>Cheryl A. Coakley-Rivera</i> | <i>10th Hampden</i> | |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> | |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> | |
| <i>Michael J. Finn</i> | <i>6th Hampden</i> | <i>2/1/2013</i> |
| <i>Linda Dorcena Forry</i> | <i>12th Suffolk</i> | |
| <i>Gloria L. Fox</i> | <i>7th Suffolk</i> | |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> | |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | |
| <i>Paul W. Mark</i> | <i>2nd Berkshire</i> | |
| <i>James J. O'Day</i> | <i>14th Worcester</i> | |
| <i>William Smitty Pignatelli</i> | <i>4th Berkshire</i> | |

| | | |
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| <i>Denise Provost</i> | <i>27th Middlesex</i> | |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> | |
| <i>Jeffrey Sánchez</i> | <i>15th Suffolk</i> | |
| <i>John W. Scibak</i> | <i>2nd Hampshire</i> | <i>1/30/2013</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> | |
| <i>Ellen Story</i> | <i>3rd Hampshire</i> | |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> | |
| <i>Timothy J. Toomey, Jr.</i> | <i>26th Middlesex</i> | |
| <i>Aaron Vega</i> | <i>5th Hampden</i> | |

HOUSE No. 1613

By Mr. Sciortino of Medford, a petition (accompanied by bill, House, No. 1613) of Carl M. Sciortino, Jr. and others for legislation to clarify the responsibility of law enforcement agencies to enforce federal immigration laws. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to restore community trust in Massachusetts law enforcement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION. 1. Chapter 126 of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting the following new section:-

3 Section 40.

4 (a). Definitions

5 For purposes of this chapter, the following terms have the following meanings:

6 (1) “Administrative warrant” means an immigration warrant, notice to appear,
7 removal order, or warrant of deportation, issued by ICE, Customs and Border Protection, or a
8 successor or similar federal agency charged with enforcement of civil immigration laws.

9 (2) “Citizenship or immigration status” means all matters regarding questions of
10 citizenship of the United States or any other country, the authority to reside in or otherwise be
11 present in the United States, the time or manner of a person's entry into the United States, or
12 another civil immigration matter enforced by the Department of Homeland Security or other
13 federal agency charged with the enforcement of civil immigration laws.

14 (3) “Commonwealth” shall include the territory and government of the state of
15 Massachusetts and any county, city, or municipal governing bodies or political subdivisions
16 therein.

17 (4) “Custodial Law Enforcement Agency” means the local law enforcement agency
18 having custody of the person against whom a detainer is lodged.

19 (5) “ICE” means the United States Immigration and Customs Enforcement Agency,
20 and includes the former Immigration and Naturalization Service, Customs and Border Protection,
21 and any successor agency charged with the enforcement of civil immigration laws.

22 (6) “Immigration detainer” means a written request issued by ICE, Customs and
23 Border Protection, former INS, or any other federal agency charged with the enforcement of civil
24 immigration laws, to another federal, state, or local law enforcement agency to provide notice of
25 release and to detain an individual based on an inquiry into immigration status or an alleged
26 violation of a civil immigration law, including detainers issued pursuant to 8 C.F.R. § 287.7 and
27 8 C.F.R. § 236.1, and on DHS Form I-247 “Immigration Detainer – Notice of Action.”

28 (7) “Inmate” means anyone in the custody of a law enforcement agency as defined
29 under (h) of this section, and does not include individuals in the custody of Immigration and
30 Customs Enforcement.

31 (8) “Law Enforcement Agency” means an agency in Massachusetts charged with
32 enforcement of state, county, municipal, or federal laws, or with managing custody of detained
33 persons in the Commonwealth, and includes municipal police departments, sheriffs’
34 departments, state police, campus police, and the Massachusetts Department of Corrections.

35 (9) “State correctional institution” means a penal institution managed by the
36 Massachusetts Department of Corrections.

37 (10) “Law enforcement official” means any officer of a state, county, or municipal
38 agency authorized to enforce criminal statutes, regulations, or local ordinances, or to operate jails
39 or to maintain custody of individuals in jails, and any person or local agency authorized to
40 operate juvenile detention facilities or to maintain custody of individuals in juvenile detention
41 facilities. This includes “police officers” as defined in Massachusetts General Laws Chapter
42 90C, Section 1.

43 (b). Standards for Responding to Immigration Detainers

44 (1) There being no legal authority upon which the federal government may compel an
45 expenditure of Commonwealth resources to comply with an immigration detainer, there shall be
46 no expenditure of any Commonwealth resources or effort by law enforcement officials for this
47 purpose, except as expressly provided within this Chapter.

48 (2) A law enforcement official or agency in the Commonwealth may detain an inmate
49 pursuant to an immigration detainer, provided that:

50 (i) Such detention is permitted by local, state and federal law and the Massachusetts
51 and United States Constitutions; and

52 (ii) The inmate has not been ordered released by the criminal justice system, pursuant
53 to:

54 (A) a finding of not guilty;

55 (B) dismissal of charges; or

56 (C) granting release pending trial by a bail commissioner or clerk, judge, or
57 magistrate, as soon as the inmate has met any imposed conditions for release; and

58 (iii) The following conditions are met:

59 (A) The subject of the detainer is over 18 years of age;

60 (B) The inmate has been convicted and confined to a state correctional institution for
61 five years for an offense enumerated in MGL chapter 265;

62 (C) The immigration detainer is accompanied by a prior order of removal for the
63 subject of the detainer, or evidence that DHS has filed a Form I-862 Notice to Appear with the
64 immigration court; and

65 (D) The custodial law enforcement agency has an agreement with the federal
66 government for the reimbursement of all costs associated with the further detention of that
67 individual.

68 (3) No inmate subject to an immigration detainer shall be denied bail solely on the
69 basis of that detainer. Such an inmate shall still be subject to the custody provisions of
70 subsection (b)(2) of this act.

71 (4) Law enforcement agencies shall not make inmates available for ICE interviews, in
72 person or over the telephone or videoconference, unless the inmate is provided an opportunity to
73 have counsel present during the interview and signs a written consent form in a language the
74 inmate understands, that explains who the interviewer is and the possible legal consequences of
75 providing information to ICE. Notice of the interview request shall be provided in a language or
76 manner that the inmate understands. Inmates who are hospitalized or on suicide watch shall not
77 be made available for ICE interviews.

78 (5) If any inmate is subject to an immigration detainer or a Notice to Appear in
79 immigration court, the custodial law enforcement agency shall provide notice in writing to that
80 inmate of the nature and substance of the detainer or notice, immediately following the receipt of
81 that detainer or Notice to Appear. Such notice shall be provided in a language or manner that the
82 inmate understands.

83 (6) Unless ICE agents provide a criminal warrant, or a law enforcement agency has a
84 legitimate law enforcement purpose that is not related to the enforcement of civil immigration

85 laws, law enforcement agencies shall not provide booking lists to ICE, or communicate with ICE
86 regarding individuals' incarceration status or release dates. Nothing in this section shall limit the
87 exchange of information regarding citizenship or immigration status as permitted by federal law.

88 (c). Administrative Arrests

89 There being no legal authority for law enforcement officials in the Commonwealth to
90 enforce federal civil immigration laws, law enforcement officials shall not make arrests or detain
91 any individual based on an administrative immigration warrant in the National Crime
92 Information Center (NCIC) database.

93 (d). Transfers of custody

94 Law enforcement officials are not responsible for the enforcement of federal immigration
95 laws and shall not arrest or transport inmates for civil immigration enforcement purposes or on
96 the basis of a civil immigration detainer, unless the inmate has been formally placed in federal
97 immigration custody under a contract with the Department of Homeland Security, or in
98 accordance with section 2 of this act. Nothing in this section shall be construed as limiting or
99 changing the duties of Sheriffs regarding transportation in Chapter 37, Section 24, except that
100 ICE facilities or ICE custody shall not be considered non-correctional for the purposes of
101 subsection (c) of that section.

102 (e). Data Collection

103 (1) All law enforcement agencies shall record the following for any inmates subject
104 to an immigration detainer: race, gender, place of birth, date and time of arrest, arrest charges,
105 date and time of receipt of detainer, immigration or criminal history known or marked on the
106 detainer form, whether the detainer was accompanied by additional documentation regarding
107 immigration status or proceedings, whether a copy of the detainer was provided to the inmate,
108 and, if applicable, the date and time that ICE came to take custody of the inmate.

109 (2) All law enforcement agencies that receive detainer requests shall report the
110 information in subsection (a) yearly to the Civil Rights Division of the Attorney General's
111 Office. Such information, with the exception of the name of the individual named in the
112 detainer, shall be a public record, within the meaning of G.L. ch. 66 § 3.