DENVER
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BRIEF HISTORY OF DENVER POLICIES ON IMMIGRATION MATTERS

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Webb Era Policies

DPD Operations Manual, Sec. 104.52

(3) . . . . a. The responsibility for enforcement of immigration laws rests with the Bureau of Immigration and Customs Enforcement (B.I.C.E.). Denver Police officers shall not initiate police actions with the primary objective of discovering the immigration status of a person.

b. Generally, officers will not detain, arrest, or take enforcement action against a person solely because he/she is suspected of being an undocumented immigrant. If enforcement action is deemed necessary under these circumstances, the approval of an on duty supervisor or commander is required. In addition, as soon as is practical the commander of the involved officer shall be notified.

d. The charge "Hold For Immigration" will be lodged against a prisoner only when a warrant has been issued by the U.S. Department of Justice, or an agency thereof, and then only when the warrant is on an immigration matter.

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Response to "Illegal Immigration Reform and Immigrant Responsibility Act of 1996"

- Authorization for "287(g) Agreements," a type of IGA in which local law enforcement agencies agree to assist federal officials in the civil and criminal enforcement of immigration laws.

- Neither Webb nor any subsequent Mayor ever seriously considered entering into a 287(g) Agreement.

- The 1996 Act also adopted 8 U.S.C. 1373, saying state and local governments cannot "prohibit or in any way restrict" exchanging information with the INS (now ICE) "regarding the citizenship or immigration status" of any person or which prohibits or restricts the "maintaining" of such information.

- The Webb administration and all subsequent Mayors have taken the position that Denver is in full compliance with 8 U.S.C. 1373.

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Response to Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (PRWORA)

- Executive Order 116 issued to express disapproval of provisions of Clinton-era welfare reform legislation that denied certain welfare benefits to aliens *legally* in the U.S.
- Said nothing about *illegal* immigration or immigration enforcement.
- Doesn't really "order" anybody to do anything.
- Proclaims Denver's values as a "diverse" and "pluralistic" city.

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Matricula Consular Identification Cards

- Executive Order 119 (2002) authorized the acceptance of identification cards issued by foreign counsualtes as a form of identification for persons doing business with the city.
- The XO conceded that the authorization was good unless preempted by federal or state law.
- A year later the XO was indeed preempted by the state via the adoption of HB 03-1224.
- XO carried forward by subsequent mayors and remains on the books.

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Seeds of state legislative backlash against illegal immigration (2005-06)

- Murder of DPD officer Donnie Young
- Proposed state constitutional amendment to deny public services to undocumented immigrants
- Wedge issue in Ritter-Beauprez governor's race

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"The toughest package of state immigration legislation in the nation!"

- SB 06-90. Anti-sanctuary bill; mandatory cooperation by local law enforcement with ICE.
- HB 06-1343. Prohibition against employment of "illegal aliens" in certain public contracts.
- HB 06S-1023. Verification of "lawful presence" for applicants for certain public benefits.
- HB 06S-1009. Verification of "lawful presence" for professional and commercial licensing.
- Denver was heavily involved in opposing and/or "fixing" much of the legislation introduced in 2006, but ultimately implemented the new laws. With the exception of SB 90, all of these laws remain in effect today.

Hickenlooper Era Policies

- SB 06-90 required local governments to certify to the state that they did not maintain "sanctuary" policies, and threatened to withhold certain state grants from sanctuary jurisdictions.

- *"Sanctuary policies are local government ordinances or policies that prohibit local officials, including peace officers, from communicating or cooperating with federal officials with regard to the immigration status of any person within the state."*

- The law affirmatively required local law enforcement agencies to report to ICE whenever they had probable cause to believe an arrestee was in the country illegal (but imposed no affirmative duty of inquiry or investigation into the immigration status of any arrestee).

- The law required local government to report to the General Assembly each year the number of ICE contacts made in the prior year.

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- Denver certified to the state annually that it was *not* a "sanctuary city" per the definition in the statute during the time SB 90 was in effect (2006-2013)
- Denver met its responsibility for ICE reporting of suspected undocumented aliens by simply sending weekly booking information for all inmates reporting foreign birth.
- A state performance audit in 2009 concluded Denver was complying with the law.
- SB 90 was repealed in 2013.

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Motor Vehicle Impoundment

- On the August, 2008 primary election ballot, Denver voters approved an initiated ordinance requiring the impoundment of vehicles driven by illegal aliens or anyone else without proof of a valid driver's license.

- The CAO opined that, in order to be constitutionally applied, the new law could *not* be targeted at persons based upon national origin or immigration status, and instead must be uniformly applied to all unlicensed drivers.

- An attempt by the proponents to return to the law to its original intent of targeting illegal aliens via a second initiative was soundly defeated by Denver voters in November, 2009.

- The ordinance was repealed by City Council in 2011, having resulted in nearly 10,000 impoundments since its original adoption, and much public controversy.

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Laws prohibiting the hiring of "illegal aliens" in public contracts

- From the beginning the CAO had interpreted the employment verification mandates of HB 06-1343 to apply to only a narrow range of city "services" contracts.

- In 2010 council members Jeanne Faatz and Chris Nevitt sponsored legislation to expand verification to include any city construction contracts, specifically requiring use of the new federal E-Verify program. §§ 20-90, *et seq*., D.R.M.C.

- The ordinance specifically requires reporting to ICE of any violations by city contractors. § 20-90.4, D.R.M.C.

- State and local laws requiring the use of E-Verify by contractors and/or licensees were upheld by the U.S. Supreme Court in 2011.

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Advent of Obama-era "Secure Communities Program"

- Denver, in cooperation with the Ritter administration, embraced the implementation of the Secure Communities program in Colorado, primarily because it was a much more palatable alternative to SB 06-90, or any other law that would purport to compel local law enforcement to affirmatively identify and report suspected "illegal aliens" to ICE.

- Under Secure Communities, the local law enforcement role was relatively passive, not active. ICE bore the responsibility for determining whether they had a "hit" (through the NCIC fingerprint database) on a person of interest housed in a local jail, and then reached out to the jail for cooperation with interviewing and transfer of the individual to ICE custody.

- In 2011 DSD modified its internal policies to reflect the city's voluntary participation in the Secure Communities Program.

Hancock Era Policies

Civil Immigration Detainers

- Long before the Secure Communities program and the use of I-247 civil detainer forms under that particular program, DSD honored 48-hour "hold for immigration" requests from federal immigration officials and assisted with handoff of prisoners to federal custody.

- Starting circa 2013-14, federal courts around the U.S. began to rule that local governments have no authority to hold inmates beyond the time they are due to be released under state and local law.

- In 2014 DSD modified their internal policy to reflect the fact that, although they would continue to cooperate with ICE generally, DSD would no longer hold inmates beyond their release date absent a federal warrant.

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Advent of Obama-era "Priority Enforcement Program" and release notification requests

- In November of 2014, the Department of Homeland Security announced that they were replacing Secure Communities with the new Priority Enforcement Program, under which they would usually *not* be asking that an inmate be detained, and instead would more commonly ask that ICE simply be notified of the inmates release date under the new I-247n form.

- DSD continues to cooperate with ICE requests for release notification to the extent they reasonably can do so, but no longer assists with the physical transfer of prisoners from local custody to federal custody.

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Response to Trump Executive Order (January 25, 2017)

- Support legal challenge to "sanctuary jurisdiction" portion of the XO and threat to withhold federal funds.
- Maintain current DSD policy on detainers; refuse 48-hour hold requests.
- Continue to cooperate on release notification requests.
- Continue to maintain longstanding policy that enforcement of federal immigration laws is not a local responsibility; continue to eschew "287(g) agreements."
- Implement programs and policies to comfort and reassure immigrant communities, particularly victims and witnesses of crime.