



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2021-12

Voiding Inequality and Seeking Inclusion for Our Immigrant Neighbors (VISION)

Reported to the Caucus by the NHCSL Immigration Force
Rep. Louis Ruiz (KS), Chair

Sponsored by Asmbr. Wendy Carrillo (CA) and Rep. Lillian Ortiz-Self (WA)

Ratified by the Caucus on March 26, 2022

WHEREAS, jails and prisons, in the United States, voluntarily and unnecessarily transfer immigrant and refugee community members who are eligible for release from state or local custody to Immigration and Customs Enforcement (ICE) or Customs and Protection (CBP), for immigration detention and deportation purposes, subjecting these community members to double punishment; and,

WHEREAS, ICE and CBP can incarcerate certain immigrants, often for prolonged periods and with no right to bail, and cause them to be deported--permanently banishing them from the country, from their families, their homes, and their livelihoods. The Supreme Court has repeatedly acknowledged that for many people deportation is a more severe penalty than any jail sentence;¹ and,

¹ *Lee v. United States*, 528 U.S. ___, 137 S.Ct. 1958, at 1968 (2017).

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WHEREAS, incarceration and ICE or CBP transfers are also harmful to public health, with studies documenting negative health impacts of this ICE activity on immigrant health, including have lower life expectancies;² and,

WHEREAS, the immigration detention and immigration court systems in our country exist in a zone of diminished rights and protections³ tantamount to being outside of the spirit of equal protection and due process enshrined in the Constitution of the United States, as admitted even by immigration judges;⁴ and,

WHEREAS, the Voiding Inequality and Seeking Inclusion for Our Immigrant Neighbors (VISION) policy⁵ protects these values by ensuring that all persons, including refugees and immigrants, are not torn from their communities when they are eligible for release from state or local custody, something that is an additional sentence for a civil infraction and is never handed down in a normal court of law; and,

WHEREAS, existing federal law provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agencies advise the DHS, prior to the release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impractical or impossible;⁶ and,

WHEREAS, since federal law cannot commandeer states to enforce immigration law, the VISION policy prohibits any state or local agency, including law enforcement agencies, from engaging in conduct that assists, in any manner, the arrest, detention, interrogation, or deportation of an individual for immigration purposes, and protects them from undue pressure; and,

WHEREAS, the VISION policy further provides that a state or local agency or court shall not use immigration status as a factor to deny or to recommend denial of probation, or participation in any diversion, rehabilitation, mental health program, or placement or a credit-earning program or class, or to determine custodial

² Karen Hacker et al., “Provider’s Perspectives on the Impact of Immigration and Customs Enforcement Activity on Immigrant Health.” *Journal of Health Care for the Poor and Underserved*. May 2012; 23(2): 651–665, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3753075/>.

³ See for example, American Civil Liberties Union (ACLU), *The Constitution in the 100-mile border zone*. <https://www.aclu.org/other/constitution-100-mile-border-zone>; see Geoffrey Heeren, *Shattering the One-Way Mirror: Discovery in Immigration Court*, 79 B’klyn L. Rev. 1569 (2014).

⁴ Hon. Mimi Tsankov, *Human Rights at Risk: The Immigration Courts Are in Need of an Overhaul* (ABA Human Rights Magazine, April 27, 2020), available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/immigration/human-rights-at-risk/

⁵ As laid out in California AB 937 (2021-2022), available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB937

⁶ 8 CFR § 287.7(a).

classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

THEREFORE, BE IT RESOLVED, that the National Hispanic Caucus of State Legislators (NHCSL) calls on all states to adopt the VISION policy, prohibiting local and state agencies from conducting immigration arrests and from assisting with immigration arrests, which includes prohibiting ICE transfers; and,

BE IT FURTHER RESOLVED, that the NHCSL calls on all states to further adopt the VISION policy that prohibits state agencies, local agencies, and courts from using immigration status as a factor to deny or to recommend denial in a diversion program, rehabilitation program, placement in a credit-earning program or class, or mental health program, to ensure that immigrants are treated equally.

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY RATIFIED THIS RESOLUTION ON MARCH 26, 2022, AT ITS ANNUAL MEETING IN WASHINGTON, DC.

