

**In the Spirit of Sanctuary:  
Sanctuary-City Policy Advocacy and the Production of Sanctuary-Power  
in San Francisco, California**

By

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*To my loving partner Zina, my daughters Bea and Evla,  
and my parents Mike and Maureen*

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## **LIST OF ABBREVIATIONS, NOMENCLATURE, AND SYMBOLS**

12H – Chapter 12H of the San Francisco Administrative Code, the City of Refuge or “Sanctuary” ordinance. Same as SCO.  
ACLU – American Civil Liberties Union  
ACS – American Constitution Society  
ADA – Anti-Drug Abuse federal block grants  
AEDPA – Antiterrorism and Effective Death Penalty Act of 1996  
AHCSA – Ad Hoc Committee to Stop the Deportations  
ALC – Asian Law Caucus  
ANC – African National Congress  
APD – Adult Probation Department  
API Legal Outreach – Asian Pacific Islander Legal Outreach  
AROC – Arab Resource and Organizing Center  
ATF – United States Bureau of Alcohol, Tobacco, Firearms, and Explosives  
BAIRC – Bay Area Immigrant Rights Coalition  
BCIS – United States Bureau of Citizenship & Immigration Services, same as USCIS  
BICE – United States Bureau of Immigration and Customs Enforcement, same as ICE  
CAAP – County Adult Assistance Programs  
CAFTA – Central American Free Trade Agreement  
CALM – Cash Assistance Linked to Medi-Cal  
CAO – Chief Administrative Officer  
CAP – Criminal Alien Program  
CAPI – Cash Assistance Program for Immigrants  
CAPS – Californians for Population Stabilization  
CARC – Crisis Assessment and Receiving Center  
CARECEN – Central American Resource Center  
CAROP – Central American Refugee Organizing Project  
CBO – Community-Based Organization, a non-profit  
CCBO – Coalition of Community Based Organizations  
CCSF – City and County of San Francisco  
CDBG – Community Development Block Grants  
CDSS – California Department of Social Services  
CMS – Centers for Medicare and Medicaid  
CFAP – California Food Assistance Program  
CIA – Central Intelligence Agency  
CIS – Center for Immigration Studies  
CJC – Criminal Justice Council of the Mayor of San Francisco  
CPS – Child Protective Services  
CRECE – Central American Refugee Committee  
CRM – 311 Citizen Relationship Management scripting  
CSS-SF – San Francisco Catholic Archdiocese’s Catholic Social Service  
CUAV – Communities United Against Violence  
DA – San Francisco District Attorney  
DCCC – Democratic County Central Committee  
DEA – United States Drug Enforcement Administration

DEM – San Francisco Department of Emergency Management - 911  
DGO – Department General Order (Policy) of the San Francisco Police Department  
DHHS – United States Department of Health and Human Services  
DHS – United States Department of Homeland Security  
DMV – California Department of Motor Vehicles  
DPH – Department of Public Health  
DRO – U.S. Immigration and Customs Enforcement Office of Detention and Removal  
DSS – California Department of Social Services  
DV – Domestic Violence  
EBASE – East Bay Alliance for a Sustainable Economy  
EBSC – East Bay Sanctuary Covenant  
ED – Executive Directive  
FAIR – Federation for American Immigration Reform  
FBI – United States Federal Bureau of Investigations  
GOMAC – Grass Roots Organizers from the Muslim and Arab Community  
GSA – San Francisco General Services Agency  
HRC – San Francisco Human Rights Commission  
HAS – San Francisco Human Services Agency  
HOMEY – Homeys Organizing the Mission to Empower Youth  
HUD – United States Department of Housing and Urban Development  
ICE – United States Bureau of Immigration and Customs Enforcement, also known  
just as Immigration and Customs Enforcement  
ISGA – Inter-governmental Service Agreement  
IHS – International High School  
ILRC – Immigrant Legal Resource Center  
INA – Immigration and Nationality Act  
INS – Immigration and Naturalization Service  
IRA – Immigrant Rights Administrator  
IRC – San Francisco Immigrant Rights Commission  
IIRIRA – Illegal Immigration Reform and Immigrant Responsibility Act of 1996  
JJCC – Juvenile Justice Coordinating Council  
JJCPA – Juvenile Justice Criminal Prevention Act  
JPD – Juvenile Probation Department  
LAPD – Los Angeles Police Department  
LATF – Commission on Social Justice’s Latin America Task Force, Catholic  
Archdiocese of San Francisco  
LCRS – San Francisco Juvenile Probation Department’s Log Cabin Ranch School  
LCCR – Lawyers Committee for Civil Rights  
LEAR – Law Enforcement Agency Response Team of the Bureau of Immigration and  
Customs Enforcement  
LEP – Limited English Proficient persons  
LGBTQ – Lesbian, Gay, Bisexual, Transgender, Questioning  
LSC – Legal Services for Children  
MALDEF – Mexican American Legal Defense and Educational Fund  
MOA – Memorandum of Agreement  
MOCD – Mayor’s Office of Community Development

MOCJ – Mayor’s Office of Criminal Justice  
MOH-CD – San Francisco Mayor’s Office of Housing-Community Development  
MPD – Mesa Police Department  
MUA – Mujeres Unidas y Activas  
MUNI – San Francisco Municipal Railway  
NAFTA – North American Free Trade Agreement  
NCSC – Northern California Sanctuary Churches  
NFOP – National Fugitive Operations Team of the Bureau of Immigration and Customs Enforcement  
NLLQ – Local Law Enforcement Inquiry to the Bureau of Immigration and Customs Enforcement’s Law Enforcement Support Center regarding a Criminal History of an Alien  
OCC – San Francisco Office of Citizen Complaints  
OCEIA – Office of Civic Engagement and Immigrant Affairs  
OCJP – California Office of Criminal Justice Planning  
OLS – Office of Language Services-City Administrator  
OLSE – Office of Labor Standards Enforcement  
OOHP – Out of Home Placement  
OSHA – Occupational Safety and Health Administration  
POWER – People Organized to Win Employment Rights  
PPD – Provider Payment Determination form  
PR – Public Relations  
PRUCOL – Permanent Resident Under Color of Law  
PRWORA – Personal Responsibility and Work Opportunity Reconciliation Act  
PSA – Public Service Announcement  
QHWRA – Quality Housing and Work Responsibility Act of 1998  
RFI – Request for Inquiry  
RICO – U.S. Racketeer Influenced and Corrupt Organizations statutes, Title 18 of the United States Code  
RRN – Rapid Response Network  
SAVE – Systematic Alien Verification for Entitlements  
SB 1070 – Arizona Senate Bill 1070  
SCAAP – State Criminal Alien Assistance Program of the U.S. Department of Justice’s Bureau of Justice Assistance  
SCO – Sanctuary City Ordinance  
SF-CCC – San Francisco Complete Count Committee  
SFDLP – San Francisco Day Labor Program  
SFGH – San Francisco General Hospital  
SFHA – San Francisco Housing Authority  
SFIA – San Francisco International Airport  
SFICI – San Francisco Interfaith Coalition on Immigration  
SFILN – San Francisco Immigrant Legal and Education Network  
SFIRDC – San Francisco Immigrant Rights Defense Committee  
SFFD – San Francisco Fire Department  
SFOP – San Francisco Organizing Project  
SFPD – San Francisco Police Department

SFSC – San Francisco Sanctuary Covenant  
SFUSD – San Francisco Unified School District  
SI/PLC – Social Issues/ Police Liaison Committee of the San Francisco Human Rights Commission. Also known as the “Issues Committee”.  
SIU – Department of Homeland Security -Special Investigations Unit  
SOTF – Sunshine Ordinance Task Force  
SRO – Single Room Occupancy unit  
SSN – Social Security Number  
TFO – Task Force Officer model of the Immigration and Customs Enforcement 287(g) program  
THC – Tenderloin Housing Clinic  
TSA – United States Transportation Security Administration  
TTX – San Francisco Treasurer and Tax Collector  
UFN – Undocumented Foreign National  
USA PATRIOT Act - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, also known as the “PATRIOT Act”.  
UN – United Nations  
USC – United States Code  
USCIS – United States Bureau of Citizenship & Immigration Services, also known as Citizenship & Immigration Services, same as BCIS or CIS.  
WIC – Welfare and Institutions Code

## CHAPTER 1

### Introduction

*"The state is not a cold monster; it is the correlative of a particular way of governing. The problem is how this way of governing develops, what its history is, how it expands, how it contracts, how it is extended to a particular domain, how it invents, forms, and develops new practices."*<sup>1</sup>

- Michel Foucault

On a warm San Francisco morning in September 2012, José and I arrived at the Hall of Justice early enough to make our way through security and find the courtroom where the hearing for his traffic citation would be held. The Hall of Justice is a large concrete cube that takes up an entire block of Bryant Street and houses the city's main jail, county courthouse, District Attorney's office, and the Police Department's administrative offices, office of the Chief of Police, investigative offices, and Central Station. In front are about 20 double-parked police patrol cars, and across the street you can find at least 10 bail bonds offices, where desperate families and friends of detainees seek assistance in covering the cost of getting their loved ones out of jail. After emptying our pockets and removing our belts, we passed through the airport-like metal detector while one Sheriff's deputy ran our belongings through an x-ray scanner and another told us to move to the back wall near the elevators.

José is a 30-year-old, undocumented, indigenous Tzeltal-Maya immigrant from Chiapas, Mexico, and has been working as a day laborer for the past eight years, mostly in home remodeling. He had even retiled the floor and bathroom of the apartment I was renting just before my family moved in. Today, he was calm and collected, as if he had done this before and knew there was nothing to be worried about. I asked José if he was nervous at all being around police officers or Sheriff's deputies and he told me "no." In his hometown in Chiapas, there were no police officers and the closest ones were over two hours away. Here in San Francisco, they had not given him any problems either. However, José was concerned about the potential fine that the traffic court – an agency of the state Superior Court of San Francisco - would give him for his citation. He would have a difficult time paying it off. He has been sending money to his wife to rebuild their home in Chiapas. It was previously made of wood boards and now is being refashioned with cinderblocks, a metal roof, a cement floor, and electricity like the homes that other people who immigrated to the U.S. from his town are building. He still has \$7,000 left to save to pay the workers finishing the job, and this traffic citation could be a major setback.

We gathered our belongings and made our way around the corner and down a hallway of people waiting outside the seven or eight first-floor courtrooms with their lawyers and family members, media crews waiting to interview attorneys coming out of controversial hearings, and sheriff's officers coming in and out of unmarked security doors to lock and unlock court rooms. José's hearing was at the end of the hall, and as we were a little early, the courtroom door was locked. We



waited outside in the marble-laden, cold and echoing hallway with the rest of the people waiting to see what their traffic violation fine would be.

At the time, I was working as an intern for District 9 Supervisor David Campos, a former undocumented immigrant from Guatemala, now a Stanford- and Harvard-trained lawyer, and one of the most high profile advocates on the Board of Supervisors - the city's legislative body - for immigrant rights and the city's "sanctuary city" status. I worked in "constituent services" for Campos, helping residents of the primarily-Latino Mission District and Bernal Heights with whatever city-related problem that they had. Often Spanish-speaking, undocumented residents from all over the city would seek out our help, knowing that Campos understood their concerns personally and would help them talk to the police, get a Municipal ID card, put pressure on a department to address their complaints, or sponsor a new city policy that addresses an immigrant community need. Though José did not come to our office in City Hall to ask us for help, he did what most undocumented immigrants I have met do when they have a city-related problem; they call someone that they know personally and trust, who knows the system, is part of the system, and is willing to help. Often it comes down to who they might have seen speak at a community event in their neighborhood. José called me because, through my previous research, I had spent some time in his hometown in Chiapas, I had spoken with him in his native language Tzeltal-Maya, and I had sat at his dinner table in his San Francisco 3-bedroom apartment joking with his 13 roommates, all guys from his hometown. I had also helped a few of his roommates file and win a wage-theft case through the State Labor Commissioner against a cheapskate construction sub-contractor a few months earlier. A few days before his hearing, he invited me over to his apartment to look at the citation, translate it for him from English into Spanish, and ask me if I would go with him to the hearing.

While we waited in the hall with the others with similar traffic citations, we stood in silence, and I decided to take the time to review José's citation again and run through his story in my head one more time. José had been driving to work one morning in June at about 4:00am from his home in the Mission when he was pulled over by a police officer for what he thought was speeding. The police officer asked him in English for his driver's license, proof of insurance, and registration. As José doesn't speak English, he didn't quite understand what the officer was asking of him or why exactly he was being pulled over. Ultimately it didn't matter because he didn't have any of these things anyways. Though he had been a certified driver for the Department of Public Works in Palenque, Chiapas previous to coming to San Francisco, he was legally forbidden from getting a driver's license in California. To identify himself he normally carried his "*matricula consular*", a photo ID card that the Mexican Consulate in San Francisco issues to Mexican immigrants regardless of their immigration status, and a Chase Manhattan bank card for an account that he opened with this *matricula* so that he didn't have to carry so much cash. Undocumented immigrant day laborers are all too often easy prey for thieves who know that they mostly get paid under the table in cash on a daily basis and therefore are likely to carry large amounts at any given time. José had the misfortune of being robbed a week earlier and though he didn't lose any money, he lost his only two forms of identification. He had filed a report with the police but to no avail - the

wallet was gone. As a result, he was completely unidentifiable, fully exposed to law enforcement, in risk of getting his car towed and impounded, and just trying to get to work.

Thanks to the organizing work of a local immigrant rights coalition called the San Francisco Immigrant Rights Defense Committee, in 2009, then Police Chief and Cuban immigrant George Gascón, issued a “department bulletin” – a decree of the Chief - requiring SFPD officers to allow an unlicensed driver to call a licensed driver with proof of insurance to pick up the car within 20 minutes before it’s towed and impounded. This policy was referred to in the media as “sanctuary on wheels.” However, at 4am, José was unsuccessful at getting anyone on the phone that had a license, given that the majority of the people that he knew in the city were undocumented Tzeltal immigrants like him. As a result, he was cited and his car was towed and impounded.

He had bought the vehicle from his former employer in order to get to and from jobs, to haul materials, and to be “chingón,” to look like a badass who was financially making it in this neoliberal “global city,” this “playground of the rich.” His employer suggested that they keep the title of the car and insurance in the employer’s name so that if he were ever pulled over and the car were impounded, the employer would still be able to get the car out of impoundment with *his* driver’s license. They made an agreement that the employer would be in charge of keeping the registration and insurance valid and José would cover all the costs. In order to get the car out of impoundment, his employer had to go to a police tow hearing at the Hall of Justice and pay around \$200 of which he then demanded that José reimburse him. And now José was facing further financial penalty, potentially \$1,500 more for his citation.

Finally, a Sheriff’s officer opened the courtroom door and we all filed into the court to find a seat. The room looked like a mixture between a TV-courtroom and a business office. The walls were covered in wood panels and the room was divided by a waist-high wooded wall, in front of which was a table and two podiums equipped with small microphones. On one side of this division was an audience seating section with old-fashion folding movie-theater style chairs. This section itself was divided by an aisle down the middle, from the door to the podiums. On the other side of the wall were three desks with desktop computers, a raised desk for a judge in the center back of the room, and an American flag next to it. On the wall behind the judge’s desk hung the seal of California and on the wall to the left was taped dozens of pieces of color paper with courtroom policy information in English.

At one of the desks sat the constable who would issue the fines to the people cited. He was an Asian American man in his thirties wearing a white business shirt, a fade haircut, and a thin moustache, what locals call a “cookie duster.” We found aisle seats a few rows back from the front and on the right, and as soon as we sat down, a Latino court interpreter named Eduardo came into the room in a hurry. He was in his 50s, short and skinny, wearing a grey suit and glasses, with a dignified and professional yet inviting style. He announced in Spanish and English that he is here to assist anyone that needs interpretation and glanced through the audience noting the various people that were Latino. When he looked at us, José raised his hand and

Eduardo came over to tell us to go back out into the hall with the two other Spanish speakers who needed translation help so that we could talk further.

In the hallway, all four of us huddled around Eduardo who got straight to business. In Spanish he asked each of the immigrants one by one about what they wanted to do in terms of their pleas. The first woman in her forties had been pulled over at a drinking checkpoint on July 3, and though she was sober, she didn't have a driver's license. The second person, a man in his twenties, was pulled over for speeding and likewise did not have a license. They, like José, had few options for pleas, but Eduardo explained each option to them quickly. He asked if they had licenses or could they get licenses and all three responded "no". He explained that if they did, they could take a class and avoid a huge fine, but that was not on the table. He then asked them if they wanted to contest their citation and potentially pay the full fine listed on the citation, or plead "guilty" and accept a reduced fine or do community service at the rate of \$10 per hour to pay off the fine. The two other immigrants said that they wanted to admit fault and that they could pay today. When Eduardo turned to José, he said, "What would you like to do?" José responded by explaining his story of being pulled over and of his arrangement with his ex-employer. He then said, "*Quiero que me den una chance. Quiero que bajen mi multa porque no puedo pagar. Pero sí, lo hice, soy culpable.*" "I want them to give me a break. I want them to lower my fine because I can't pay it. But yes, I did it, I'm guilty."

We went back inside the courtroom and got in line behind the other people who the constable was hearing. Eduardo helped the first two immigrants admit fault and accept a reduced fine to be paid the same day. The constable then called José up to the podium and read him what he was cited for in English. He had been cited not for speeding but for having expired registration tags, no insurance, and no driver's license. Eduardo, José, and I were all caught off-guard. In the end, José hadn't been stopped for speeding but for his ex-employer's negligence. The employer wasn't keeping up his end of the deal and hadn't renewed the vehicle's registration or paid the insurance premiums, and as a result, José was facing a fine of \$1,500 that he couldn't pay. He had already paid his ex-employer the \$200 to get his car out of impoundment and now he felt betrayed by someone he considered his friend. Eduardo then explained to the constable that José is very low-income, has intermittent employment, and is unable to pay the full \$1,500 fine that was being levied on him, but that he is committed to paying what he needs to settle the matter. He asked that the court consider lowering his fine and give him more time to pay it off. The constable then said that he would lower it to \$750 and asked José how long would he need to pay. José responded that he could pay it with in two weeks. The constable accepted this and gave José a form in English to sign that informed him of his constitutional rights and to acknowledge that he pleads "no contest or guilty" to the infraction offense he was cited for.

We then left the courtroom with Eduardo and regrouped in the hallway. José thanked Eduardo for his help and Eduardo shook his hand. Eduardo then reminded him that what he was stopped for was not speeding, but having expired registration tags and that whoever his friend was who sold him his car, was not really his friend. He then said goodbye and moved on to another courtroom hearing.

## Sanctuary-Power and Governmental Practice

The municipal law enforcement officials that cited José, required him to go to traffic court, checked him in and out of security gates and courtrooms in the building which housed the city's main jail and a central police station without ever asking him about his immigration status, were enacting a *sanctuary city*. A sanctuary city is a municipal regulatory regime that is created, governed, and reformed by a wide variety of governmental actors and watched over by immigrant community organizations with the purpose of regulating city employee practices. In this sense, it is a regime of practices. The policies, which enact this form of municipal governance are *sanctuary city policies* – policies which prohibit city employees from expending municipal resources or time enforcing federal immigration laws, asking about immigration status, or communicating information about suspected undocumented immigrants to federal authorities for the purpose of immigration enforcement, except in specific limited circumstances. The ultimate, expressed goal of enacting a sanctuary city regulatory regime is stated universally by city officials and immigrant advocates that it is to regulate municipal government practices so that it may mitigate the fear, foster the trust, and serve a unique subject population - “all residents regardless of immigration status” - so that the municipal government can function effectively and meet its internal departmental goals.

This dissertation argues that there is another governmental “achievement” that occurs when city employees, city executives, city oversight agencies, immigrant rights advocates, and federal immigration authorities battle over the creation and implementation of a sanctuary city regulatory regime – the clarification and enforcement of the circumstances when it is appropriate for a city employees to cooperate with federal immigration enforcement authorities and initiate federal deportation proceedings. In this sense, while sanctuary city practices prevent innumerable deportations of the vast majority of undocumented immigrants in San Francisco by deeming immigration status irrelevant in the vast majority of interactions between immigrants and city employees, it also sanctifies and normalizes routine municipal deportation practices in certain circumstances as acceptable and necessary.

The purpose of this dissertation is to describe what those sanctuary practices and municipal deportation practices are in San Francisco and how the city came to enact a sanctuary city regulatory regime through political and legal battles, as well as grassroots community organizing campaigns to define and redefine the department protocols that implement this *way of governing*. In order to do this, the study will focus intently on what I call “governmental sanctuary practices” and “municipal deportation practices” in San Francisco as they developed and transformed over the period of 1980 through 2010. It will pay particular attention to one protracted power struggle to reform the city's sanctuary policies in 2008 and 2009 which ultimately defined the appropriate circumstances for assisting in the deportation of youths booked in local youth jails on felony-level offenses. This is also the story of how grassroots social movement ethics and tactics that promoted undocumented immigrant inclusion were codified in municipal law, instituted and operationalized in the form of city department protocols, and then were used by the

Executive Branch of municipal government for the opposite purpose of their original intention - as a means for clarifying an “appropriate” manner in which the city could participate in the federal deportation of undocumented immigrants. This story will be told through the experiences, public testimonies, and perspectives of real people that demanded that through sanctuary city policy, the city define their role in safeguarding not only undocumented immigrant lives, but also the balance of governmental powers, constitutional rights, public safety, the proper functioning of the municipal system, and democracy itself.

This dissertation serves as the first anthropological account of a sanctuary city that takes the *sanctuary practices of governments* as its main point of focus. It provides social scientists a complimentary approach to the study of sanctuary practices, a study primarily focused on the political power of ecumenical movements and undocumented immigrants and refugees who fight the government for legal recognition through extra-legal methods. This ethnography additionally focuses on the experience and practices of governmental actors in creating a bureaucratically-instituted “sanctuary city,” highlighting the experience of District Supervisors, city Commissioners, department Chiefs, frontline city personell who work with undocumented immigrants, and city attorneys who write and advise implementation of sanctuary-related policies. This treats governmental actors as sanctuary workers, many who care deeply about undocumented immigrants, work hard to provide them access to city services, and who educate immigrants on their municipal rights, as well as - under sanctuary city protocols - initiate the deportation process for undocumented immigrants.

This dissertation contributes to the theoretical study of power and governance in U.S. cities that are home to large undocumented immigrant populations. It counters the argument that governmental sanctuary practices create abject spaces outside of law, a space where rules are broken, liminal zones, “zones of indistinction,” or zones where emergent forms of insurgent citizenship are formed. Governmental sanctuary spaces are highly regulated spaces - regulated by laws, reaffirmed by cultural conditioning on the part of supervisors, department trainers, and other people who pressure Department Heads to modify that culture and regulation. This dissertation aims to show how sanctuary city spaces are inside-of-government-spaces with multiple targets of control, where information about undocumented immigrants is input on federal benefits eligibility forms, where their names are entered into Federal Bureau of Investigation criminal background check databases, where their fingerprints are logged in jail booking sheets, and where their testimonies of immigration raids are videotaped by municipal government television and archived in public hearing transcripts. These regulated spaces are not spaces of illegalized immigrant life where they have an opening to breath in the shadows, but the space of the police station, courthouse, jail, public hospital, Juvenile Hall, and City Hall, where city employees are monitored and disciplined by supervisors, who are monitored and disciplined by Department Heads, who are monitored and disciplined by the Mayor and the Board of Supervisors, who are monitored and criticized by the media, and who are ethnographically analyzed by anthropologists. These are the sites of the sanctuary city regulatory regime and that is where sanctuary-power is exercised. They are not places where one turns a blind

eye or remains quiet, but places where vision is intensified in multiple directions, where people are asked questions about their lives, their crimes, their needs, and where legally enforced protocols and contractual grievances rule.

In dialogue with previous debates on the exercise of power in Western democracies, this dissertation offers the analytic “sanctuary-power,” a form of power wherein municipal government agencies, with the help of immigrant advocacy groups, work to incorporate undocumented immigrants as active participants in general municipal governance, all the while connecting municipal practices to the federal deportation regime and federal benefits agencies in a border-filled world. Sanctuary-power functions when frontline city departments intentionally refrain from gathering and distributing immigration status information as well as when they pick up a phone and call immigration officials about an immigrant accused of committing a crime in their custody. By doing this, city departments are able to provide many undocumented immigrants life-sustaining services and to obtain information vital to solving crimes, controlling public health crises, extinguishing fires, and educating children who may in the future enter the city’s workforce. As other scholars have pointed out, this also allows undocumented immigrants to participate in local politics, to engage elected officials on policy initiatives, and to take part in city life with less fear of deportation. However, this dissertation contends that it also allows for the destruction of immigrant families when city officials, under the provisions of the same sanctuary policies, direct city employees to refer immigrant children to federal immigration authorities for deportation. The concept “sanctuary-power” provides us the ability to think through the relation of governmental practices of protecting vulnerable, foreign subject populations living “outside of the law,” treating them as “residents regardless of immigration status” to governmental practices which exile certain immigrants through deportation that the sanctuary city regulatory regime deems to be unworthy of sanctuary.

This project builds upon anthropological studies of “everyday forms of state formation” (Joseph and Nugent 1994) and philosophical studies of “inclusive” governance systems in which subjects proactively participate in and contribute conceptual and technical resources to the informal social structures as well as bureaucratic institutions and agencies that govern their daily lives (Gramsci 1971). This study aims to illuminate the manner in which many of the practices, ethics, places, organizations, services, and activists of the grassroots sanctuary movement have been co-opted and transformed as a set of governmental techniques that aggregate to form what this study will consider a sanctuary city regime of practices. Paying attention to local social movement history as well as political economic and governmental history, this study proposes to freshly approach U.S. sanctuary as a form of city governance that is enacted through the efforts of public employees, city officials, city attorneys, court judges, undocumented immigrants, and their advocates. Such a study assumes that the governance of undocumented residents formally instituted by the “City of Refuge” ordinance – Chapter 12H of the City Administrative Code - and subsequent sanctuary-related legislation is a contentious set of negotiated and in some cases, improvised practices that extend not beyond the public sphere into the private sphere, but from private social movements into

the government, and that its effect on migrant civic and political engagement is multiple and contradictory, producing unexpected outcomes.

This study, while reflecting on the macro-level governmental and social movement strategies, takes as its focus practices of social movements and governmental actors, which constantly struggle to redefine the macro-level goals and visions of the sanctuary city regime. Through that process of struggle, what emerges is not a single overarching and directing or determining governmental strategy above and beyond the consciousness or intentionality of all actors. Rather, what these actors create are multiple discourses and multiple contradictory strategies that remain in constant competition for tenuous and short-term hegemonic dominance. However, the effect of these competitions is the production of an implemented and embodied compromise or synthesis – an arrangement of government in motion. This compromise in power relations is something not completely controlled by any single actor or group of actors that have more power or hegemonic control over the others. Therefore, this arrangement is not totally satisfactory for any of the groups but which nonetheless they deal with in the short-term as they continue on to struggle to modify the compromise. In the case of a sanctuary city regulatory regime, this refers to struggle over the implementation of a wide variety of sanctuary-minded city employee protocols – the regime of practices- as well as city employee protocols for initiating the federal deportations of undocumented San Franciscans.

### **The Study of Sanctuary Cities and Sanctuary Practices**

Anthropologists have not studied the sanctuary practices of governments or sanctuary city policies in the United States as the primary focus of their writing. Many however have mentioned sanctuary city policies as part of the context of other socio-cultural processes related to the undocumented immigrant experience in the United States (Quesada et al 2014). One type of this literature that takes sanctuary city policy into account are ethnographies of the emergence of local forms of belonging that work in tandem with or counter to citizenship. Kathleen Coll's work (2010) on undocumented immigrant members of the San Francisco Latina peer-help and immigrant rights advocacy group *Mujeres Unidas y Activas* focused on how citizenship as a constant focal point of dispute is challenged through the everyday practices of undocumented immigrant women who enact their rights as local citizens despite the federal government refusing to include them in a federal citizenship regime. This approach fits in a broader school of citizenship studies wherein citizenship is both a practice, process, and outcome of political struggle (Isin 2002). For Coll, while the practices of these immigrant woman are in part possible because of the culture of sanctuary that immigrant women have pushed for as *local citizens*, sanctuary city policies are not enough to formally recognize these women as full members of society because the proponents of sanctuary in City Hall, as she portends, consider sanctuary a politics of humanitarianism which can be rescinded at any moment if immigrants step outside of their socially prescribed role as good immigrants.

Similarly, political geographer Jennifer Ridgley, who has taken sanctuary city governance as a main focus (2008, 2010, 2011, 2013) but from a *genealogical* perspective, building from Holston and Appadurai's notion of "insurgent citizenship" (Holston and Appadurai 1996; Holston 1998), argues that city governments through the enactment of sanctuary city policies, open up a political space where undocumented immigrants can fight to produce a form of urban citizenship that is oppositional to federal citizenship regimes. Ridgley builds her argument by working through the analytics of Giorgio Agamben (1998) who describes sovereign practices of the state which strip certain populations of their rights, hold them as outsiders excluded from membership in the nation and the legal protections that membership affords in order to define the boundaries of the state and membership in it. Such practices of sovereignty, for Agamben (2005) define within the nation state "zones of indistinction" or "states of exception" where normal legal and juridical protections provided through citizenship do not apply. In a sense, these non-citizens are held in "inclusive exclusion" - held in a territory by the sovereign but excluded from having a rights-bearing political status for the purpose of drawing the boundaries of the state and defining who are its rightful subjects in perpetuity. In some cases people are held in isolation apart from society, however for Ridgley, following Ong (2003) and Ngai (2004), the practices of state exclusion are built into every day life through the bordering practices of employers, social service providers, local police, and private citizens in their engagement with undocumented immigrants. These bordering practices throughout the interior of a sovereign nation localize federal immigration enforcement, and re-produce migrant illegality (De Genova 2002, 2005). These practices place undocumented immigrants outside of the law and expose them to indeterminate detention, deportation, separation from their families, and even death in detention or in their home countries.

Ridgley's account of sanctuary city policy posits the city being used by immigrants and their advocates as a space of refusal that can be used to counter the federal government's production of migrant illegality, loosen the grip of the federal government on the lives of undocumented people, thwart their incorporation into the deportation regime (De Genova 2010), and weaken the authority of the federal government to define the conditions of political membership in society. The outcome of the struggles over sanctuary city policies, for Ridgley following Holston and Appadurai (1996), is not only that social relations are transformed, but also that the notion of citizenship itself is affected. Further, Ridgley argues that alternative ideas of citizenship take form along the lines of what Bozniak (2007) has called "ethical territoriality" - that all people within a territorial space should have equal rights and access to governmental services and benefits regardless of their citizenship status. For Ridgley, municipal sanctuary disrupts the federal government's assertions to institute boundary-making practices at the local level and thereby disrupts the sovereign practice of producing the exception through migrant illegality.

Ridgley (2010) also argues that an important part of sanctuary's history is that it establishes spaces



outside the realm of ordinary existence where emergent norms and ideals of legality and political belonging can be asserted. Sanctuary is thus a strategic form of territoriality, in the sense that it draws upon and establishes moral authority, meaning, and control over spaces where alternative forms of political belonging can be nurtured. (p.144)

This argument is echoed by political theorist Keally McBride (2009) who finds municipal sanctuary practices to produce spaces outside of the nation's control where undocumented people are protected from sovereign power. McBride visualizes this space as a "sinkhole" where the nation's "unwanted people, activities and debris are contained so they can largely exist outside of official recognition and hence regulation." Said differently, sanctuary city practice for McBride, produces a form of spatial segregation where federal governmental control is more entrenched or less entrenched in different spaces of its territory. McBride, echoing former Republican federal prosecutor Joe Ruffalo, even goes so far as to argue that "Sanctuary of course, is not fundamentally different from harboring; the real distinction lies in whether the movement shielding the person from prosecution has moral legitimacy."

In each of these cases, the focus of study remains on the theoretical effects for undocumented immigrant lives where various aspects of their "deportability" is mitigated and their civic participation is facilitated rather than focusing on the affect of sanctuary city regimes on government, governance, governing practice, spaces of government, or the values and morals of the governmental actors themselves. Further, they also fail to acknowledge the manifold manner in which at the level of practices and human interaction, sanctuary-cities shed light on undocumented immigrant lives, make them knowable by the municipal government as well as the federal government (for instance through the federal census), and garner their participation in governmental projects.

Social science literature which does focus on immigrant participation in governmental projects and civic life in sanctuary cities likewise takes sanctuary city policies into account only as a backdrop, choosing to focus on the practices of private community groups, their opponents, and government officials that extend the power of the state through practices of incorporating undocumented immigrants in civic life rather than focusing on the practices of government actors that are regulated by sanctuary city policies themselves. Els de Graauw's very insightful work which is focused less on sanctuary city and more on immigrant integration and immigrant rights in San Francisco argues that while citizenship based political systems largely disenfranchise undocumented immigrants, non-profit organizations step into the vacuum left by these systems to facilitate undocumented immigrants gaining access to public political spaces, fighting for their rights to the city, and creating real policies to extend the processes of municipal government to serve and govern these immigrants better (de Graauw 2007, 2008a, 2008b). These non-profits are funded by the municipal government and extend the power of the City into the private sector where undocumented immigrants feel safer to seek the culturally competent services of community advocates rather than seeking the services of municipal departments (de Graauw

2012). While immigrant rights groups in San Francisco fight alongside undocumented immigrants for the implementation of programs that institutionalize immigrant rights and access to the city's services, de Graauw's work (2014) explains that city officials do not necessarily implement those programs in order to create new immigrant rights or to challenge the federal citizenship regime, but rather to improve city administration and customer service.

However, for de Graauw, such city action in San Francisco is allowed because federal law provides city officials that freedom to come up with creative solutions to serve *all* residents of a city, not just citizens. While de Graauw does not extend this analysis to an analysis of sanctuary city policy, we can deduce that the logical extension of her analysis is that sanctuary-cities do not create some sort of space outside of federal governance for immigrants to demand rights – that space is already provided through the existing division of the federal, state, and municipal systems. In other words, that space is just as governed as other space in the nation-state. Such projects like San Francisco's municipal I.D. card program – a program where anyone who is a resident of San Francisco can obtain a San Francisco I.D. regardless of immigration status – that are pushed by immigrant advocates and undocumented immigrants and are implemented by city officials, for de Graauw, are nonetheless about creating new forms of “local bureaucratic membership” policy. This type of local membership helps undocumented people become “active and recognized participants in city affairs without upsetting the federal monopoly over immigration and citizenship powers.” (de Graauw, 2014, p. 311) Its main goal is to facilitate access to municipal service bureaucracies for undocumented immigrants who to the detriment of their own and other city resident's health, safety, and welfare, tend to avoid contact with government officials and agencies. Thus this type of policy encourages undocumented immigrants to use the basic city services for which they are already eligible. Local bureaucratic membership for de Graauw differs from citizenship in that it is an administrative designation rather than a juridical status, and it does not confer new rights, benefits or responsibilities while the acquisition of U.S. citizenship does. Therefore, de Graauw argues that immigrant action in San Francisco around the municipal ID program and the establishment of this local bureaucratic membership is not a form of urban citizenship that confers all rights of citizens to all residents regardless of status and which is created in the shadows of federal law due to sanctuary city policies loosening the federal government's control. de Graauw's approach acknowledges that U.S. cities are still subservient to the real and lasting power of the federal government and that

advances in local membership rights and benefits for noncitizen immigrants do not happen in a policy or political vacuum, but instead result from federalist dynamics where cities must test and negotiate their discretionary administrative powers with the federal government's exclusive power over both immigration and citizenship policy (de Graauw 2014, p.315)

Lastly, the notion of local bureaucratic membership, pays more attention than notions of urban citizenship, to the fact that such membership is not the sole product of immigrant rights activists fighting the good fight, but that the advocacy

by immigrant rights supporters is also countered and modified by the advocacy of immigration opponents and the eventual intervention of city officials, who may water down membership policy, and who have the power to enact and implement laws affecting city residents' daily lives. By considering this wider range of stakeholders, de Graauw is able to provide a more realistic picture of what local membership in a sanctuary city looks like, what can be obtained also in a context where immigrant rights advocacy faces the conservative media, as well as political and legal scrutiny. Nonetheless, as was previously stated, this focus on membership and immigrant inclusion, does not heavily scrutinize the operations of sanctuary city practices or discourse, leaving them in the background as a mere extension of the city's more general immigrant integration policies, which have overlapping but in some ways different aims.

Other studies of immigrant rights organizations that use the city government as a platform to fulfill sanctuary city ideals have been focused, like de Graauw, on the work of private actors, which aid the government in largely maintaining existing citizenship regulatory regimes. Political geographers Jonathan Darling and Vicki Squire (2013) focus on the sanctuary practices of the City of Sanctuary movement in the United Kingdom wherein private community activists work in organization to mitigate the effects of federal citizenship-based exclusionary technologies by providing assistance to asylum seekers as they wait for the government to legitimize their residency. The aim of the movement, which is to "build a culture of hospitality" towards undocumented asylum seekers, promotes everyday encounters between individuals and other city residents and requires movement participants to work with City Councils to pass immigrant incorporation policies. However, Darling and Squire argue that these forms of private sanctuary practices which target the *city* and which promote hospitality tend to reify of the power dynamics between guest and host, while doing little to contest the distinctions of citizenship status used to exclude asylees in the first place. In valorizing the act of the host's welcoming of the asylee in need, sanctuary practice, in this case of private actors, solidifies the indebtedness of the asylee and their worthiness of assistance. The City of Sanctuary movement participants refuse to engage in lobbying activities or protest, preferring to promote a welcoming environment that fits in nicely with discourses of the state, which aim to present the image of a tolerant nation. In this sense, the movement's maintenance of the city as a site of sanctuary acts to propagate the exclusions of the citizenship apparatus without challenging the citizenship regime or the movement's complicity with such a regime.

Political geographer Jennifer Bagelman (2016) argues that this private form of indefinite hospitality in the City of Sanctuary movement holds undocumented asylum seekers in an indefinite state of deportability. On the one hand, the practices of the City of Sanctuary movement create a space of safety and hope, and on the other hand a sense of passivity among asylum seekers and refugees. In the space of sanctuary, asylum seekers express their neediness in exchange and support, which for Bagelman, when given, exerts a temporal hold upon them. In this sense, the sanctuary practices of citizens provide a "release valve for the systemic process of suspension and unpredictability that confronts asylum seekers". Taking into account Agamben's analysis of the exception, for Bagelman, the sanctuary space

assists in the maintenance of the exception, which constitutes “the state,” albeit in a more hospitable manner. Bagelman argues against notions of sanctuary city that portray it to be an escape from “the state” or form of resistance to the state, but rather like this author (Mancina 2013), an “art of government” through which the state is reproduced. For Bagelman, while the sanctuary city vision may have a tendency to ameliorate the problems associated with waiting, thereby enabling and perpetuating them, it is also generative of a range of practices that interrupt this process. Ultimately, Bagelman contends that sanctuary city is a troubling governmental technology that “produces good waiting subjects while assuaging the very problem of indefinite waiting.” Nonetheless, Bagelman’s work is still troubled by the trope plaguing many of the previously mentioned studies, which posits sanctuary city as producing space outside of or loosened somehow from maximal tightness of the federal grip upon undocumented people. Bagelman’s book *Sanctuary City: A Delayed State* (2016) holds on to sanctuary practice as providing space at the margins in “in-between spaces” where the City of Sanctuary movement in the UK “creates the possibility for transformative encounters.”

Bagelman’s work is reminiscent of anthropological and sociological work on the sanctuary practices of the U.S. sanctuary movement of the 1980s wherein sanctuary movement participants, through their assistance for undocumented refugees to cross the border and make a life in waiting of formal recognition, reproduced the very bordering practices of the United States Immigration and Naturalization Service (INS)(Coutin 1994). These actors gave Central American refugees free shelter, access to a variety of social, legal, and health services, and basic necessities such as food and clothing. In Tucson, Arizona and other cities and towns close to the U.S.-Mexican border where the sanctuary movement first took form, small groups of Christian parishioners inspired by the social justice ethics of liberation theology (Golden and McConnell 1986; Tabb 1986; Bau 1985) decided to take firm actions to help poor refugees covertly enter the United States (Coutin 1993, 1994; Cunningham 1995, 1998). They did this in defiance of U.S. immigration authorities that had denied almost ninety per cent of the asylum requests from Guatemalan and El Salvadorans fleeing wars caused in part by the United States (Tomsho 1987; Crittenden 1988). Sanctuary activists claimed that the U.S., by denying these claims for political reasons, was breaking international law regarding refugee rights. As a result, the sanctuary movement stepped in to informally restore legal order by stationing its own volunteers in Mexican border towns as informal immigration agents to interview potential refugees and choose those whom it would help cross the border. They also set up safe houses throughout the region, smuggled “legitimate” political refugees into the U.S., and publicized refugee testimonies to a national audience. Their hope was to pressure the U.S. government to change its politically motivated refugee policy and its imperialist involvement in Central American politics.

As Cunningham has noted (1995, 1998), in the border region, the movement’s focus on the legality and legitimacy of refugee claims reinforced the distinctions between legal and illegal immigration, citizens and non-citizens, and replaced state functionaries with religious functionaries who fulfilled similar roles in an informal immigration bureaucracy. On the other hand, Cunningham framed

sanctuary practices of church organizations on the border an instance of conflict between church and state wherein the church openly defied the federal government on religious grounds (1995). However, as was already stated, many sanctuary movement activists also claimed the opposite, that what they were doing was not civil disobedience – the breaking of unjust law – but rather that their work was perfectly legal within the existing legal system (Bau 1985). They found that in a sense, their work was to make the federal government do its work as it should and enforce international refugee law which the U.S. had signed on to but subsequently ignored for political reasons. In all fairness to Cunningham, different ideologies about what the sanctuary movement was doing in regards to the federal government proliferated in the different base regions of the movement, with Chicago activists advocating for defiant civil disobedience and activists in the southwest and western states advocating more for the recognition of movement practices as absolutely legal (interview with Eileen Purcell). Nonetheless, the trope of the illegality and defiant nature of sanctuary practice which created outside spaces of federal governance has remained the dominant trope of sanctuary in literature covering sanctuary practices in general (Rabben 2011)

Susan Coutin's seminal ethnography of the East Bay Sanctuary Covenant *Culture of Protest* (1993) which predated Cunningham's work also showed that the sanctuary movement linked faith and politics among U.S. Christians by associating the political practices of sanctuary with serving the poor, and therefore becoming closer to God (Coutin 1993, 1994). In this sense, sanctuary practice served to radicalize religious people in a manner that fostered their participation in a more general culture of protest in defiance of the federal government's foreign policy in Central American and asylum granting practices (Coutin 1993). Coutin's work outlined how sanctuary practice was not merely about providing a defiant space for undocumented refugees to build a life or assert their rights, but for movement participants to reassess themselves, refine their own practices – that is to work on themselves - and become religiously converted to a politically committed life. Nonetheless, Coutin found such forms of sanctuary practice to amount to resistance to federal practices, which it found to be illegal and therefore resistance aimed to enforce the law rather than undermine it (Coutin 1994). In a sense, sanctuary practice could then be said to amount to resistance practice that restores judicial branch authority in the face of executive branch illegality.

While all of these treatments of sanctuary posit a *state* that is extended into the private sphere, resisted or reinforced by private sanctuary practice, only one other author has focused on governmental practices themselves – or the practices of governments – criminologist Randy Lippert. Lippert's foundational text *Sanctuary, Sovereignty, Sacrifice* (2005) formulated for the first time sanctuary practice in terms of various forms of “governmentality” (Foucault 1991). Governmentality refers to a way of governing or an “art of government” with an internal logic or strategy, which organizes practices through which people are governed and through which we govern ourselves. This should not be interpreted as an impersonal, top-down, deterministic, amorphous, all-powerful and all-controlling system of logic and governance that makes people do things and denies them freedom, but rather an analytical tool for examining how an innumerable number of micro-level and

macro-level political battles between real people who employ embodied discourses, tactics, and strategies impact governing projects that aim to manage everyone's conduct. Governmentality focuses on how thought is imbedded in practices of government, with government in the governmentality literature according to Dean (2010) referring to

any more or less calculated and rational activity undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through the desires, aspirations, interests, and beliefs of various actors, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects, and outcomes. (p.18)

Government concerns both the practices of governments and practices of the self – manners in which individuals interpret themselves, comport their behaviors based on that interpretation, in relation to knowledge that has been deemed by authorities in a society to be truth, and the existing power dynamics within a particular social context in which those interpretations occur. In that sense, it is also about how we govern ourselves in relation to the government of others. Government, according to Dean, also

involves various forms of thought about the nature of rule and knowledge of who and what are to be governed, and it employs particular techniques and tactics in achieving its goals, if government establishes definite identities for the governed and the governors, and if, above all, it involves a more or less subtle direction of the conduct of the governed[...]

Finally, government for Dean, following Foucault, necessarily requires the freedom of the people whose conduct is acted upon:

Government concerns the shaping of human conduct and acts on the governed as a locus of action and freedom. It therefore entails the possibility that the governed are to some extent capable of acting and thinking otherwise. (p.23)

Governmentality regards ways of governing beyond governments but which include governments as one part. It focuses on regimes of practices that make up entire ways of governing and how those regimes sanctify certain forms of thought as true, normal, or reasonable. It is to focus on both the practices of government as well as the practical, technical, and calculative rationality of government and more broadly of ways of governing – that is, it also concerns “why we govern or are governed, the ends or goal sought, what we hope to become or the world we hope to create” (Dean 2010, p.27). By “rationality” we can understand simply a form of thinking that strives to be relatively clear, systematic, and explicit about how things are or how they ought to be. A focus on governmentality approaches the routinization and institutionalization of practices of government as well as how those practices

become targets for reform and change. Ultimately, the manner to study the internal logic or strategy of a way of governing therefore can only be conducted through a historical analysis of the operation of that particular regime of practices itself as well as the outcomes, results, and “achievements” of that regime of practices. Obviously, the analyst representing the regime to an audience is who delimits the group of practices which he or she argues make up the regime, however, much of those practices are identified by research subjects as connected or related, giving the analyst hopefully significant help in that delimiting process.

The study of governmentality fits within a broader analytical system - a Foucauldian analytics of power. Foucault conceptualized power as something that generates a particular governmental order, a sort of mode of action upon the action of others or a way of changing people’s conduct. In this sense, Foucault did not delimit the boundaries of his analysis by “culture” or “society”, though he did use sources from Western Europe with a particular focus on France, but rather the boundaries of the reach of the way of governing or the governmental system. As no governmental system is born fully-baked, Foucault would focus upon how that governmental system moved from the sites where it was born, through the lands where it was attacked, to the institutions where it was normalized as something people took for granted. Such a governmental system or mode of governance was essentially a relation of the strategic moves of forces back and forth between three levels of analysis - a relation of relations.

The first was a) the intrapersonal level characterized by “self-self” or “subjectivity-psyche/body” relations (Foucault 1987, 1988). This includes self-interpretation (Foucault 2006) and self-discipline of the psyche and body through practices related to an idealized socially- and self-produced subjectivity. In his early career Foucault (2008) described this in terms of a battle of reason, which he seemed to find culturally specific, versus unreason - that which reason could not objectify, control, make sense of, or articulate. In his later career, he focused on technologies of the self - practices by which a subject would work upon the self in the process of knowing the self in relation to systems of power.

The second level of the dynamics of force is b) the interpersonal arena of power games where opponents -individuals and collectivities or classes - use strategic resources to exert force upon each other, and to reduce each other to various relational states of dominance and subservience. Foucault would see this relation as always an unfinished encounter where the freedom of individual competitors would always have more and more opportunities to upset the power dynamic and re-establish a new but relatively tenuous dynamic. Relations at this level can be characterized as “subject-subject.”

The third level of analysis focused on c) institution and state-level governance projects that are built from (which is to say they are coterminous with and yet exceeding) the forces of levels a) and b). The relations of this level can be characterized as “apparatus-subject” (Deleuze 1992, Agamben 2009, Mancina 2011, Feldman 2011a) and can be considered to carry out projects of social control through subjectivity and discourse production that directs levels a) and b) but that also can be upset or affected by levels a) and b) in terms of macro-level strategies or “governmentalities.” This includes the inculcation of social norms, validation of

truth and knowledge, and the policing of appropriate and inappropriate forms of subjects' practice and discourse.

The relational aspect of Foucault's view of power finds that the maneuvers of forces at each level were only possible because oppositional forces at all levels would allow or resist and block them. In this sense, power was not only about the abilities of autonomous individuals or groups (which is more in the realm of "agency"), but about the coordination of force at and between each level of the network of power together - a sort of micro and macro-physics of politics. Many people have interpreted this incorporation of resistance into the analytic of Foucauldian governance and power to mean that resistance was intentionally pre-determined by a governing logic or would ultimately just serve the controlling social system. While that may be true in many cases wherein resistance ultimately serves to reinforce the logic of the state, Foucault rather wanted to analyze the formation of government as a product of improvisational challenges to previous modes of governing. Resistance therefore plays a role in the formation of governance systems and therefore Foucault would say that they are never outside of that process of formation, but this did not mean that ultimately all resistance is futile because it just serves to feed the system. For Foucault, governance always existed everywhere in some form, so we need to fight to form the best systems of governance we can, accept that we are governed and governing beings, and choose to enact the forms of control that control us as wisely and consciously as possible. The worst-case scenario would be that we would be denied the opportunity to resist, reduced to slavery where we have no freedom to counter systemic force - a situation that would entail the inability of people to recognize the social structures that held them in subservience. In this sense, Foucault's critical analytics of power would aim to problematize such systems and institutions of control such as the prison system (Foucault 1975), in order to make it an object of scrutiny, reform, or even the target of further resistance.

However, this would deny the idea that there exists some form of ungoverned space or that such outside of governing control space was the only condition for resistance from that control. Yes, there are spaces where governments don't exist, but there are no spaces where an individual's conduct is not affected, acted upon, judged against some form of standards, and coordinated in relation to other individuals or group projects. Said another way, there is no place where an individual or group does not act upon the conduct of themselves and others, judges their own conduct or the conduct of others against some relatively defined set of standards, or attempts to co-opt or coordinate the practices, knowledge, and thoughts of others with the projects of the individual or group acting upon them. Spaces of resistance and acts of resistance may then be institutional acts which are branded as "resistance" as a way to mislead people or control them; acts of resistance that are fostered by the system as a sort of check and balance or internal criticism pushing the system to work better; or acts of resistance to an apparatus or system of control that may be the emergent enactment of practices and conduct that give form to new, competing systems of governance or of other already-fully operational, competing governmental systems.



Particular historical arrangements of power flows and mechanisms incited or encouraged people to speak and act in certain ways, although it didn't deny them freedom or dictate what they say or do. In fact, systems of power, for Foucault, rely upon disruptive thought and behavior so as to co-opt and categorize it, recasting it from an initial view as abnormal discourse and behavior into known and usable discourse and behavior. However, if such behavior were threatening enough to disrupt or block the internal logic and operation of a system as a whole, and if it could not be co-opted, it may be attacked, destroyed, banished, locked away, or relegated to oblivion of practices and knowledge. These make up the losers in history.

The main forms of historical power that Foucault documented at the governmentality level were "pastoral power," "sovereign power," "disciplinary power," and "biopower." Pastoral power refers to power in societies where the church takes responsibility for assuring individual salvation in the next world, develops practices of subject confession, individual-specific paternalist care, and vigilant surveillance for knowing and identifying the threats to such salvation (Foucault 1983, 1999, 2009). It is an individualizing power produced through a pastoral gaze upon the individual soul wherein the soul is discursively produced as a technology for control – that which the individual and the pastor interrogate to measure whether one's salvation is secured. It therefore serves as the site of self-work, self-punishment, and self-knowledge. In modern secular societies, this salvation in the next life has been commuted to a salvation in this life through the provision of public services aimed at the health, wellbeing, and security of individuals, and which is secured through governmental panoptic surveillance that becomes internalized by the individual.

A second form of governmentality was "sovereign power" and was exercised in a society where a sovereign king has the unilateral right to decide who lives and dies as a right of rejoinder or defense in cases where the sovereign's existence (and his law) is in jeopardy (Foucault 1975). For instance, if an external enemy threatens him or seeks to overthrow him or contest his rights, he could legitimately wage war and require his subjects to take part in his defense. On the other hand if one of his subjects transgresses his laws, he could exercise a direct power over the offender's life and as punishment, they could be put to death. The sovereign exercises his right to life by refraining from killing – his power over life is evidenced through his ability to kill; the right to take life or let live. Historically, this fit within the broader juridical form of feudalism which was based in a subtraction mechanism – a right to appropriate a portion of wealth, tax of products, goods and services from the subjects. In other words, power functioned as the right of seizure – and even to seize life in order to suppress it through death. As mentioned earlier in this review, Agamben (1998, 2005) adds that sovereign power in modern societies is founded on the ability to suspend the law (declare martial law) and perform exceptional acts outside of the law such as extrajudicial killing – that is, to establish and maintain law and order through the potentiality of the sovereign's use of exceptional, spectacular force to kill.

The final two forms of governmentality Foucault discussed were biopower and disciplinary power which were produced in France after the 17<sup>th</sup> century

wherein power works to incite, reinforce, control, monitor, optimize, multiply, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them (Foucault 1975, 1976; Rose 2007). It is a power to administer life (of the population) wherein death is manifested as simply the reverse of the right of the social body to ensure, maintain, or develop life. Its modern regimes, taking the life of the population as that which should be produced and protected also enact holocausts on populations that threaten that life. Achille Mbembe (2003) would later call this aspect or underside of biopower “necro-power,” the global deployment of various technologies of occupation, domination, and exploitation that results in the creation of “death worlds,” or new kinds of social formations in which vast populations are subjected to conditions of life conferring upon them the status of the “living dead” subject to potential annihilation. These biopolitical regimes or apparatuses subject their own population to precise, quantifiable controls and comprehensive regulations. Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life and massacres become “necessary” for survival. It is as managers of life and survival, of bodies and *the race*, that regimes are able to wage so many wars with technologies capable of all-out destruction. Therefore, the power to expose a whole threatening population to death is the underside of the power to guarantee a subject population’s continued existence – one has to be capable of killing in order to go on living, though now on a mass scale.

Foucault contended that the existence at stake is now the biological existence of a population and not just the existence of the sovereign. As a result of power’s objective to ensure, sustain, multiply, and order life, what remained of spectacular capital punishment focused less on the transgression of the sovereign’s laws and more on the safeguard of society. Anyone (not just the sovereign) had the right to kill those who presented a biological threat to others. Power over life evolved to focus on the body as a machine disciplining it, optimizing its capabilities, extorting its forces, increasing its usefulness and its docility, and increasing its integration into systems of efficient and economic controls. All this was ensured by the disciplinary procedures of power that produced an anatomo-politics of the human body. This power also focused on the *species* body, the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births, and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary. Their supervision was effected through an entire series of statistical accounting, of interventions, and governmental regulatory controls.

During the seventeenth century, Foucault found that there was a rapid development of various disciplinary institutions – universities, barracks, prisons, and workshops and the emergence in political and economic practice the problems of birth rate, longevity, public health, housing, and migration. During this period the study of demography - the evaluation of the relationship between resources and inhabitants – was also developed. These techniques would become present at every level of the social body, utilized by the army, schools, police, medicine, and the

administration of collective bodies. They operated in the economic sphere mobilizing and inserting bodies into capitalist production and distribution. They acted as factors of segregation and social hierarchy, guaranteeing relations of domination and effects of hegemony. This marked the entry of *life* into history, that is, the entry of phenomena peculiar to the life of the human species into the order of knowledge and power and the sphere of political techniques. It was the taking charge of life, more than the threat of death that gave power its access to the body.

Finally, the law that administered life developed a regulatory and corrective mechanism in order not to kill, but to maximize the utility and value of life (of bodies). This power had to qualify, measure, appraise, and hierarchize rather than display its murderous splendor. It didn't separate the enemies from the king's faithful subjects, but organized distributions around *the norm*. Hence, judicial functions were distributed throughout institutions like the school, the hospital, the prison, and the psychiatrist's office where regulation around a norm is enforced in turn creating a normalizing society.

Through this Foucauldian analytical lens, Lippert analyzes the practices of the grassroots sanctuary church movement in Canada, which lasted a lot longer than the U.S. Sanctuary Movement from the mid-1980s until about 2003, and the practices of the Canadian government in response to the church movement's sanctuary practices. Lippert, preceding Darling, Squire, Bagelman, and this author, challenged the notion that providing sanctuary was somehow a majestic confrontation between two monolithic entities – the church and the state. Rather, he argued that the practice of sanctuary reflected the tension between two historical rationalities of government – the liberal and the pastoral.

As with the U.S. Sanctuary Movement, churches in Montreal and Toronto provided public sanctuary to Guatemalan refugees who were vulnerable to deportation. After publicly announcing to the media that a church would take a refugee in, refugees - who had all previously tried to gain formal legal status in Canada, were denied, appealed on humanitarian terms, and were denied again - stayed in churches for around 150 days each and were cared for primarily by church members. In this sense, sanctuary was provided after all legal means had been exhausted and sanctuary served as a last resort effort to stop their deportation. The idea behind sanctuary in Canada was that it would give immigration officials time to reconsider their decision in denying legal status to these particular refugees. While they waited, the sanctuary activists built support among the church, the community, and with politicians for the plight of migrants, raised funds to pay for legal representation and court fees, and engaged in some limited negotiations with immigration officials. Lippert analyzed 36 incidents of churches providing this type of sanctuary to refugees, 9 of which ended up in the immigrants leaving sanctuary to be deported, 5 led to a unknown or undecided adjustment of immigration status, and 21 or 70% led to winning a legal status adjustment.

Lippert noted that as the sanctuary movement promoted a status adjustment for these refugees in the process of opening their arms and church doors to them, this practice responded to a Canadian advanced-liberal governmentality, which preceded these sanctuary incidents. With the inability of the state to adequately process a large influx of Indo-Chinese migrants coming from Laos, Vietnam, and

Kampuchea in the years prior to the declarations of sanctuary for Central Americans, the state moved refugee resettlement out of its hands and into the responsibility of communities and churches. The Canadian government had also pushed the issue of refugee resettlement further into the courts, which mandated refugee claimants obtain legal representation. Lippert argues that with the failure of refugee cases in court occurring more frequently, sanctuary churches stepped in, enacted sanctuary practices which produced a sovereign *exception* or suspension of the law, which had denied refugee status to legitimate refugees. In other words, sanctuary was itself an act of exercising sovereignty wherein the church would decide who could remain in the territory. Out of this sanctuary practice came a response from the Canadian minister of immigration in a second act of sovereign power in which the refugees were granted a reprieve, allowing them to legally stay in the territory. Further, the Canadian government decreed that sanctuary churches would not be prosecuted for breaking the law. Both the sanctuary practices of churches as well as the government's practice of granting reprieve to refugees and legal immunity to sanctuary churches were practices, which amounted to "an exceptional measure for an exceptional situation"(Lippert, 2005, p.69). Both instances of sovereign power enacted a politics of humanitarianism through enacting a spectacle in front of television cameras for all to see, which disregarded the determination of the judicial system by formal executive decree, and reinforced the image that the Canadian nation was a liberal safe haven for refugees. However, there were many refugees who received a reprieve from neither the sanctuary churches nor the Canadian government – from neither sovereign.

For Lippert, sanctuary practices of Canadian churches, in the process of caring for refugees, watching over them, and in essence regulating their livelihoods and their conduct while in their church sanctuaries, amounted to an exercise of a pastoral governmentality or pastoral care – the power, taken up by the welfare state, to ensure, sustain, and improve the lives of each and every one. Sanctuary providers gained intimate knowledge of the lives of refugees, came to understand the specificity of their needs, so that they could tend to those needs, and even provide constant contact and guidance to refugees. Further, sanctuary workers would keep refugees occupied through skill-building activities, exercise, and language training. In this manner the truth of refugees that was established through the sovereign act of declaring sanctuary for the refugee – that this person is a refugee who has gone through a traumatic and life-threatening experience - is personalized through the exercise of pastoral care wherein governance of the refugee becomes intimate in close proximity. Sanctuary workers got to know the thoughts and behaviors of refugees and assisted in educating them, shepherding them along in a new place and new culture. As a result, the privacy of the refugee was compromised and refugees often felt a sense of confinement. Sanctuary providers were then responsible for security and stabilizing the livelihoods of the refugee. This form of power posited obedient and passive refugees – sheep of the shepherd – who were deficient in expressing their capacity to exercise autonomy and choice. If refugees did not obey the rules of sanctuary and exercise unacceptable forms of autonomy and choice to the sanctuary church, in some cases they were asked to leave sanctuary.

However, another element of pastoral power in sanctuary churches was the practice of the self-sacrifice of the sanctuary provider for the good of the refugees. This took the form of risking being prosecuted for breaking the law, taking on the inconvenience of caring for the refugee, and dedicating financial resources of the church. The pastoralization of sanctuary also entailed the rearrangement of the church space to make room for the refugee as well as to produce new lines of sight and surveillance, for instance to the parking lot, where they might see immigration officials coming to detain the refugee. Finally, the exercise of sovereign and pastoral power through declaring and providing sanctuary met with significant resistance from anti-immigrant forces in the city who placed bomb threats, parishioners who did not want to allocate resources for sanctuary or who felt sanctuary interfered too much with the normal operations of the church.

For Lippert, with the retreat of the welfare state and the subsequent decrease in the exercise of governmental pastoral care, advanced liberalism had localized and responsabilized private citizens to take on these functions of pastoral power. However liberal governmentality did not determine that private actors need to provide sanctuary in a top-down dictatorial fashion. Rather, it opened a space for these individuals to take hold of pastoral power through providing sanctuary to fill the gap left by the government in caring for those who it viewed as incapable of self-regulation or who were exposed to a loss of livelihood. Lippert contends then that from the perspective of advanced liberalism, pastoral power is complementary only to the extent that it is a form of private or community governance beyond the state, and sanctuary then is a site of government at a distance. Sanctuary practice for Lippert is not a defining element of the battle between church and state, but “one of the fragile and fleeting governmental strategies and sovereign territories that such powers and legal narratives make possible.”

However, while Lippert did focus intently on the historicity of governmental actions, which led to the rise of church sanctuary practices being used in response, and then governmental actions in response to church sanctuary practices, he did not approach the *sanctuary practices of governments*, or how sanctuary practices of government function in tandem and tension with a governmental logic. As this literature review has shown, the sanctuary practices and protocols of governments has been largely ignored as a point of focus even within studies of sanctuary cities that focus more intently on the experience or civic activity of immigrants in sanctuary cities or on the theoretically posited spaces outside of governmental control that sanctuary city policies supposedly create.

### **Seeing Like a Sanctuary City: The Anthropology of the State and Policy**

While anthropology has not dealt with sanctuary cities or the sanctuary practices of governments, it has extensively examined various forms of power, governmentality, governmental action, and governmental officials. Most thoroughly, anthropology has examined the practices of government through everyday reifications of the notion of “the state.” These studies focus on how certain subjects assert and legitimize their authority and are recognized as playing a singular part in

a larger system of governance beyond themselves - "the state." Anthropologists have examined how the "state" is perceived and subsequently represented as a holistic, unified, logical, reasonable, coordinated, and dominant ruling system of governance. Rather than take the "state" as a social fact or an unproblematic analytical category that can be found in all modern societies, anthropology has analyzed the cultural and political processes by which people imagine the "state" as such, calling into question its unity, and its very existence as it has been theorized (Mitchell 1991).

Since the 1980's, anthropology has largely approached "the state" as a screen or mask for a highly disaggregated, divided, contradictory, unintentional, incoherent, conflicting and at times entirely unrelated, set of individuals, groups, and agencies at war with each other. That is, it has focused on how the "state" functions as a discursive mask for a transnational field of power and processes that are more complicated than what could be represented in terms of localized governmental unity (Abrams 1988; Brown 1995). Such a move, allows anthropologists to de-center their assumptions of what they should find in the field when they look for "the state," expanding their vision to study the underlying power dynamics, institutional formations, and projects through which various government and non-government actors attempt to exert control over territories and global populations.

To approach this issue of state legitimation and recognition of governmental projects as "the state" - what Timothy Mitchell (1999) calls the "state effect" - anthropologists have examined mechanisms of the legitimation of the authority of the state. For instance, anthropologists of the state have focused on the discourses and governmental programs which have "spatialized the state" - that is, which posit the state as a ruling system of governmental agencies and political classes that are characterized as being "above" the population of governmental subjects, as well as being "outside of" or apart from "society" and "civil society". Anthropologists have called attention to the problems of locating the boundaries of the state in contradistinction to society (Mitchell 1991) when mechanisms for ruling territories and populations are implemented not only through the actions of governmental actors but also through the work of non-government actors such as media organizations, religious institutions, the family, educational institutions, voluntary associations, labor unions, and non-profit development organizations (Ferguson 1994, Gupta 1998, Rose 1996). The consolidation of a ruling program of governance, for anthropology, seems to occur in a much more open field beyond even these institutional settings and beyond the immediate location-based field site (Trouillot 2001; Feldman 2011). Nonetheless, anthropologists of the state, following Foucault, don't then disregard "the state" as an empty fiction even if it doesn't point to the concrete reality that it is represented to be. The fact that there are real, material and symbolic programs of governance that use "the state" as an organizing principle demands analytical and ethnographic attention. The "the state" then serves as a discursive tool for social actors to *attempt to* tie together, multiply, and coordinate power relations inside and outside of government agencies (Ferguson 1994). This allows anthropologists to pay attention to ways in which governance projects are transformed and solidified through discourses about the withering away of "the state" - discourses of state crumbling, demise, vulgarity, breakdown, failure,

corruption and illegality (Gupta 1995, Heyman and Smart 1999, Mbembe 1992, Tate 2015).

At the subjective level, anthropology has examined “the state” through various entry points into “the field” in part by conducting research with “state officials,” which tend to be government officials and “street level bureaucrats” (Lipsky 1969) - frontline government employees - who enact governmental policies and programs in their interactions with “the public”. Such examinations have explored not only the discourse and political prerogatives of government officials, but also their aspirations, fantasies, affective relationships, expressions of solidarity, sensualities, and unconscious desires (Aretxaga 2000, Tate 2015). It has also examined the lives and work of people in “civil society” organizations who are engaged in governmental projects with government officials. Such a focus further displaces dominant conceptions of the boundaries of “the state” by treating non-government actors as subjects and objects of “state formation.” However, an anthropology of the state prioritizes “emic” analytical categories that name the governance projects found in the field, as well as the categories naming the governmental subjects rather than assuming that a “state” and its subjects exist in the same way in all places.

An anthropology of the state can also lead to the development of new etic categories to explain governance projects and seemingly taken for granted subject categories. For instance, anthropologist Janine Wedel (2011) has called into question the unified notion of the subjectivity “government official” by examining how some powerful individuals who the public considers “government officials” actually move in and out of positions in the government, private consulting agencies, international credit agencies, private foundations, think-tanks, lobbyist organizations, and non-profit agencies. Such actors subsequently cannot be treated as mere “government officials” (an emic category) but rather members of what she calls “flex-nets” that wield considerable power over territory-based populations through the creation and implementation of governmental and non-governmental projects.

Anthropologists of the state have also conducted fieldwork with people who have no organizational affiliation who nonetheless interact with people in “civil society” organizations and governmental agencies. Anthropologists tend to identify these governmental subjects with state-provided subjectivities, for example, grouping them as a research population based on their location, ethnicity, or linguistic group. In some instances, the discourse and practices of these research populations have been examined as “the state body” into which the state forcefully intervenes at an entirely corporal level and invests with state narratives (Nelson 1999, Brown 1995, Aretxaga 2000). However, anthropologists of the state have also examined how such state narratives can be appropriated by (or generative of) governmental subjects who make use of notions of “the state” to make collective, class-based demands upon “the state” (Gill 2016).

The connection between the subjective level of “everyday state formation” (Joseph and Nugent 1994) and the narratives of “the state” as they are implemented in governmental programs has been recently analyzed by Andeanist anthropologists through the analytics of “projection” and “aggregation” (Krupa and Nugent 2015).

Projection refers to the practices wherein individuals and groups in singular and localized interactions project, identify, define, and modify popular notions of “the state” as existing through, behind, and beyond the individual encounters with individuals, agencies, organizations, and institutions claiming to represent “the state.” Simultaneously, such actors “aggregate” a multitude of these interactions, as well as aggregate the multitude of actors they encounter who claim to be state representatives into a unified singularity – “the state.” One might say that this approach focusing on the minutiae of everyday imagining that is embedded in interpersonal interaction allows anthropologists to witness governmentality at the level of subject-subject relations rather than positing it at some higher level of abstraction, “above” the populace, above the governmental apparatus, above the field of power, unconsciously orchestrating everything. To the contrary, the anthropology of the state provides analytical windows into seeing how governmentality is formed and reformed through the maneuvers of all agents who claim and imagine state authority in a field of power, each exerting some degree of force upon other local subjects which taken together have a collective effect on the management and vision of governance processes.

Anthropology then focuses on “the state” as a real phenomenon in the field – not a unified machine, but a discursive technology. This technology is produced by a network of agents at various nodes in a field of power to mobilize governmental force and material resources in a more or less coordinated manner. Therefore, the anthropology of the state provides useful methods and critical approaches for studying governance and power in general. Such an approach is useful for not only studying “the state” but also studying dynamic fields of power in all their forms and arrangements that become represented as projects, institutions, and social structures that aim to regulate, administer, and manage collective conduct.

One critical entry point for the anthropology of state formation has been to examine what James Scott’s describes in *Seeing like a State* (1999) as “state abstractions” and their application within state projects. By “state abstractions,” Scott refers to economic plans, survey maps, ethnic classifications, maps of political boundaries, agricultural plans, and countless other abstractions made by “the state.” These abstractions are created to represent the vast multitude of heterogeneous beings in heterogeneous territories in terms of simplified schematics in a manner which allows “the state” to more easily and centrally manage them. These abstractions in a sense, are departures from reality with which state agents then come to apprehend reality and act upon reality, managing it for the consolidation of the state and the production of a new world. From these abstractions, states create utopian visions for how the world should look and operate in the future, which in turn inform the ways that state programs should be reformed and operated today to bring that future into existence. Scott finds these state projects to be doomed to failure unless they take more local, culturally based knowledge and practices in all their heterogeneity into account. James Ferguson (1994) points out however, that when such programs “fail” to transform the world into their own image, it does not mean that they do nothing. Rather, it means that they are doing something else, and that something else always has its own (likely contradictory) logic. For instance, a non-profit development project may fail in its stated purposes of raising the



standards of living of a population, however, on the other hand, serve as the vehicle for attracting foreign capital, developing local infrastructure, and expanding the administration of populations by “the state” in those areas. The discourse of non-governmental development project “failure” in this case then hides the other accomplishment of the project - “state formation” and thereby depoliticizes it.

This focus on “state abstractions” dovetails with the anthropology of “policy” – the anthropological study of arguably the most pervasive abstract technology for managing people inside and outside of government. The anthropology of policy approaches policy as an instrument of rule that is imbedded within particular social and cultural worlds or “domains of meaning” that seek to reshape worlds in their image (Shore and Wright 2011). Policy is theorized by anthropology as explicit proscribed governing rules that produce new social and semantic spaces, sets of power relations, political subjects, and webs of meaning. Anthropological approaches to the study of policy and its role in governmental projects show how through policy formation and implementation, a variety of agents seek to classify and regulate certain spaces and subjects around certain organizing principles, rationalities of rule, governmentalities, and within regimes of knowledge and power. In so doing, policies legitimate dominant governing projects as well as generate and modify them.

Policies, like other “state abstractions,” project a myriad of potential scenarios - potential futures – and from those hypothetical projections prescribe possible legitimate actions to be taken within those scenarios. In effect they reduce the heterogeneity of possible responses to possible future scenarios down to guiding, governing principles as well as strict protocols to be applied uniformly in real situations. They also *produce* real responses – practices - in the case that such potentialities had not been imagined within the confines of status quo thought and action. This is inherently a moral and ethical technology of governing that defines what “should” be done according to principles of what is considered “good government”. Competing visions of good government, however, and their codification in policy over time, can cause policy interference when multiple protocols and policy visions conflict, leading governmental subjects confused about how they should respond to emerging circumstances and scenarios. Contradictory governmental policies lead to contradictory and confused actions on the part of governmental agents as they respond to those unforeseen circumstances. Policy, therefore tends towards continual modification as actors interpret policy on the ground over time. In this sense, for the anthropology of policy, policies do not reflect a unified, logical, or singular rationality, but rather carry and codify contradictions which reflect the political battles, strategies, and competing logics and principles of the warring social agents that fought over the creation, approval, and implementation of such policies.

Transgression of the principles and protocols proscribed in policy, as well as transgression of the abstract governmental utopian vision which guides policy formation, commands disciplinary responses which are just as abstract. Disciplinary responses to transgressions, which are built into policy, are proscribed based on visions of a myriad of hypothetical scenarios of policy transgression. Such disciplinary responses are abstracted hypothetical calculations based on notions of

abstract justice – degrees of response to meet the severity of hypothetical transgression or an abstracted notion of appropriate action to correct the hypothetical transgressive behavior.

This dissertation sits at the juncture of these two anthropological traditions – the anthropology of the state and the anthropology of policy. Though it does not ask how San Franciscans represent, legitimize and imagine “the state” as a ruling authority, it does examine the discursive and political legitimation of a different governmental phenomenon called “the sanctuary city.” What is apparent is that like “the state,” the “sanctuary city” appears behind, through, and greater than the various governmental projects, agencies, departments, and individual interactions, which implement it. Its proponents, opponents, and academic analysts represent it as a unified governmental apparatus or field of policy that involves community input. It also appears as a guiding and fairly dominant ethic of government, a code of values that bureaucrats and legislators fall back on when improvising responses to new challenging governmental situations. As a result, governmental resources, actions, and programs are set in motion today to inch the government closer to realizing the utopian vision of a sanctuary city that governmental actors and non-governmental immigrant rights activists think San Francisco should be in the future. The narrative of the unified sanctuary city as a territory or as governmental project is parroted in the national media, presenting the sanctuary city as a territory that is illegal, resistant, autonomous, and laying outside of federal government’s control.

However, this narrative about the unified and autonomous sanctuary city is one piece of a larger story told about the genesis of local immigrant and immigration-related policy. Since the mid-19<sup>th</sup> century, the U.S. federal government has asserted its power over the powers of states and cities to serve as the sole arbiter of who can remain in its territory, to direct foreign relations of the country, to declare war and maintain peace, and to negotiate and do business with other nations. It has monopolized the power over immigration and naturalization policy, relegating states and cities to immigrant-related policy – that is, to laws that govern the treatment of non-citizens with respect to matters other than entry and expulsion.

However, scholars of local immigrant and immigration-related policy argue that in light of the U.S. federal government’s “inability to control its borders,” the gridlock in Congress on immigration reform legislation which would provide a path to citizenship for the country’s 11 million undocumented immigrants and increase immigration enforcement, and the federal government’s “refusal to reimburse states and cities for social service costs” from the presence of unauthorized immigrants, many U.S. cities and states, since the mid-1980s have been said to “take into their own hands” the responsibility for regulating aspects of undocumented migrant residency in those cities and states. Monica Varsanyi (2010) notes that in 2009 alone, around 1,500 undocumented immigrant-related laws and resolutions were considered in all 50 state legislatures and 353 were enacted. They included state-level employer sanctions laws that penalize employers who knowingly employ undocumented immigrants, laws preventing undocumented residents from receiving driver’s and business licenses, and laws excluding undocumented students from in-state tuition benefits at public colleges and universities. State legislatures

also sought to promote the integration of immigrants, passed laws increasing immigrant access to social services, and created opportunities for immigrants to learn English. By 2010, sixty-four cities had passed “sanctuary” policies declaring some form of non-cooperation with federal immigration enforcement activities.

On the other hand, by 2010, 133 cities passed or considered Illegal Immigration Relief Acts (IIRAs), ordinances that penalized local employers for hiring undocumented workers and local landlords for renting to undocumented residents, and 67 jurisdictions signed 287(g) agreements with federal immigration authorities, authorizing over a thousand local law enforcement officers to be deputized as Immigration and Customs Enforcement (ICE) agents to enforce civil immigration laws. This municipal immigrant activity surged in the post-9/11 era after Attorney General John Ashcroft issued a classified memo affirming the already existing authority of state and local police under section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to enforce civil immigration law, allowing for the creation of agreements of cooperation between local and federal departments (287[g] agreements), and activating this provision of the IIRIRA distributing immigration enforcement powers down to local actors for the purpose of fighting the “War on Terror.”

This narrative of localities taking matters into their own hands with regard to immigration control in the face of federal inaction then presents locally articulated forms of immigrant-related governance, both pro- and anti-sanctuary, as creating a “national patchwork” of policy, policy implementation, strategies, and tactics imbued with regional perspectives, cultural behaviors, and beliefs. This academic narrative is correct in examining how local culture and politics greatly affect the manner in which national projects like immigration control are implemented. Even within the locality, the implementation, training, and enforcement of city-wide sanctuary city policy is inflected with departmental culture and practice that necessitate the creation of a subset of sanctuary city department-specific policies to bring that particular department culture into full compliance with city-wide sanctuary city policy.

However, the narrative of the genesis of local immigrant and immigration related policy occurring when localities “take matters into their own hands” in light of federal “failure” on immigration control masks the history of how the federal government has played a huge role in creating and implementing local policies through negotiating and supervising 287(g) programs with municipalities as well as in creating and overseeing the implementation of sanctuary city policies. Nor does it acknowledge how such sanctuary policies fit within the legal framework of federal law – for instance that such policies exist in concert with the Immigration and Nationality Act and the U.S. Constitution.

In this narrative context, the sub-narrative of the unified, autonomous “sanctuary city” then also serves to disregard the history of political battles where competing strategies of rule were forcefully asserted in the process of creating sanctuary city policy which was then partially- and differentially implemented over the past 30 years. It also masks the history of municipally assisted deportations of San Francisco residents in the name of the sanctuary city and under its legitimized protocols that deem certain deportations of accused criminals to be “reasonable.”

Through an examination of discourses, practices, strategies, and governmental technologies employed by a wide variety of actors, this dissertation seeks to unearth these forgotten histories and to examine what it means to *see like a sanctuary city*. Further, it examines how San Franciscans over the past three decades have reformulated governmental operations so as to bring about a world posited by that utopian sanctuary city vision. However, rather than framing city-assisted deportations facilitated by the sanctuary city policy to be “failures” compared to the utopian vision of a sanctuary city, or framing the federal government’s actions to invest local governments with immigration control powers as the “failure” of federal immigration control, this dissertation initiates a larger research project that extends beyond this dissertation to examine what these types of governmental practices actually achieve.

The primary technology for bringing the sanctuary city into being, reviving it when it is under attack, and breathing life into it when it is deprioritized is legislative policy. In San Francisco, legislating sanctuary city policy does not only serve to restrict governmental practices or generate new practices, but also to, as Winifred Tate (2015) has shown in her analysis of Plan Colombia, galvanize, mobilize, and solidify coalitions and alliances of individuals and their interests around particular programs. The development of sanctuary city policy and the place it is thought to create has occurred in response to varying crises where undocumented immigrant deportations were posing problems for municipal governance and wherein policy reform was seen as the solution. Sanctuary city policy is created through multiple competing claims by people in various institutional and non-institutional positions. Each of these people have individual agendas which are constructed in partial-knowledge of the agendas of others so as to court their agreement and cooperation. This process of policy courtship is not only about obtaining votes for the policies and the abstractions they legislate, but also about courting their involvement in implementing new policies and furthering cultural changes. In the case of sanctuary city formation via policy creation, such policy includes implicit strategies of implementation as well as contingency plans for countering refusals to implement. This study fits within this anthropological tradition not only by studying the process of policy formation, but also the manners in which policy implementation is entirely undermined through its reinterpreted enactment.

### **Organization of the Dissertation**

This dissertation is organized chronologically beginning with Chapter 2 “The Birth of a Sanctuary City” which explores the history of the rise of the sanctuary movement in San Francisco in the 1980s, with a focus on the movement’s practices, organizational formations, aims, ideologies, and achievements in codifying sanctuary practices in the municipal administrative code – the city’s set of administrative laws. Further, Chapter 2 outlines the efforts of sanctuary movement organizers who were appointed by the Mayor as city Commissioners to oversee the implementation of governmental sanctuary practices in key city departments.

Chapter 3, “Securing’ the Sanctuary City to Safeguard Funding” analyzes almost a decade and a half of political battles wherein municipal deportation protocols were forced upon the city government by the California State government and incorporated into sanctuary city policies. These protocols mandated that the Sheriff’s department report any adults who were suspected of being undocumented and either booked on felony crime charges or booked on lower-level misdemeanor crimes but who had felony convictions in their criminal record, to the Immigration and Naturalization Service. This chapter also discusses San Francisco’s administrative resistance to anti-immigrant measures in the mid to late 1990s on the basis of San Francisco’s sanctuary city goals and ethics. Lastly, it examines the Board of Supervisors’ symbolic resistance to federal efforts to further enlist the police in detaining immigrants for immigration purposes after the creation of the Homeland Security Department and the re-structuring of immigration enforcement agencies in the wake of September 11, 2001.

Chapter 4, “Departmentalizing Sanctuary” discusses the period of mid-2004 through the spring of 2008 when the most significant institutionalization of sanctuary city department-specific protocols occurred through the Mayor’s *Sanctuary City Initiative*. In response to heightened federal immigration enforcement activities in San Francisco, the organized immigrant rights community worked with the Mayor’s Office to carry out this initiative which sought to reaffirm and more thoroughly operationalize the city’s sanctuary city status in order to restore the faith and trust of the city’s undocumented immigrant population in the city government.

Chapter 5 “The Sanctuary City Picks a Sacrificial Lamb” provides a detailed examination of the political maneuvers of the Executive Branch of municipal government in the summer of 2008 under pressure of the media, the U.S. Attorney, and federal immigration officials to create municipal deportation protocols for the San Francisco Juvenile Probation Department (JPD). These protocols allowed JPD officers to initiate the deportations of undocumented youth who were accused but not yet found guilty of felony crimes. This chapter examines how these policy actions were taken in the name of “protecting the sanctuary city ordinance” in general, how they undermined the authority of the state Juvenile Court, and how they extended the sanctuary ordinance’s municipal deportation protocols into a new domain – the juvenile justice system. Further this examines the anti-immigrant and anti-sanctuary cultural climate in this period, which in the midst of these changes, allowed for the Adult Probation Department to conduct the largest mass-reporting of undocumented immigrants to federal immigration authorities since the city was a sanctuary city. This “house cleaning” occurred over a two-week period, without the media or immigrant rights community knowing about it.

Chapter 6, “Unmasking Political Will and Laying the Foundations for Legislating Due Process for *All Youth*” examines the initial steps of the immigrant rights community from mid-October 2008 through March 2009 to begin a grassroots policy advocacy campaign to pass a sanctuary city ordinance amendment that sought to modify the immigration-related protocols of the JPD. Working with the municipal legislature, the immigrant rights community used the policy process with the aim of restoring due process for undocumented youth and halting their

deportations. This chapter emphasizes the discursive nature of politics in which immigrants, their advocates, and pro-sanctuary city officials counter media representations of immigrant criminality and of the threat that they posed to public safety through a discourse of human rights for all youth and the restoration of the sanctuary city. This chapter also describes the naming and further organizing of the San Francisco Immigrant Rights Defense Committee, a coalition of immigrant rights organizations, many who participated in the Sanctuary City Initiative, that formed to safeguard the sanctuary city ordinance and modify JPD's municipal deportation protocols.

Chapter 7, "Living in Fear in the Sanctuary City: The Impact of Immigration Enforcement on Residents Regardless of Immigration Status," like Chapter 6, also focuses on the discourse of undocumented immigrants who within the public space of a City Hall hearing in April 2009 provided public testimony to city Commissioners of their fear of deportation and the effects that immigration enforcement had on their families. This discourse disrupted the celebratory and exceptionalist attitudes of city officials who believed the vision of sanctuary city had already been achieved and confronted them with the reality that many immigrants still remained fearful of engaging government authorities.

Chapter 8, "Hiring to Ensure the Safety of the Sanctuary City" focuses on the hiring process of the new San Francisco Police Chief George Gascón from early April 2009 through mid-August 2009 wherein support for sanctuary city policies was a determining requirement for all Police Chief candidates. This chapter explores the history of George Gascón's efforts to simultaneously support sanctuary city policies in his prior position as Police Chief in Mesa, Arizona, as well as take steps to involve Mesa police officers in the most integrated relationship with federal immigration authorities possible through a 287(g) program. This chapter explains how through the discourse of public safety, sanctuary city practice and the involvement of local police in federal immigration enforcement are not mutually exclusive.

Chapter 9, "Delaying ICE Referrals and Contesting Legal Advice" explores the rivaling legal discourses of the City Attorney, the Mayor, and lawyers in the San Francisco Immigrant Rights Defense Committee as they introduced a sanctuary ordinance amendment in late August 2009 at the Board of Supervisors to modify Juvenile Probation's municipal deportation protocols for the purpose of ensuring due process for all youth. This chapter not only analyzes the legal assertions of these political agents as discourse, but treats them as political assertions of force which aimed to achieve a political effect on the Board of Supervisors' ability to pass the youth sanctuary amendment.

Chapter 10, "Arguments for Providing Governmental Sanctuary for Youth" analyzes the public testimonies of immigrants and their advocates, as well as the arguments of city legislators, department heads and staff about why JPD sanctuary-related deportation protocols should be replaced with sanctuary-related due process protocols, categorizing these arguments as variations of four primary arguments – that such sanctuary due process protocols would be constitutionally sound, would make the municipal system function better, were ethically the right thing to enact, and would be in line with the religious values of providing sanctuary that underpin the regime of governmental sanctuary practices. It does so by

analyzing these arguments within the context of the political battles in which they exerted force - in public hearings that occurred from late August 2009 through mid-October 2009 following the introduction of the youth sanctuary amendment.

Chapter 11, “Legislating Due Process for Youth” provides an overview of the discourse and political maneuvers of the Board of Supervisors, the San Francisco Immigrant Rights Defense Committee (SFIRDC), and the Mayor to pass the youth sanctuary amendment at the Board of Supervisors in late October and early November 2009. With 8 votes in favor of the policy change the Board was able to pass the ordinance and override a subsequent Mayoral veto by Gavin Newsom. This show of legislative force by the Board in conjunction with the immigrant rights community provided them the sense of ultimate justice in a long saga initiated by the federal government in May 2008. The community’s faith in the narrative about the democratic legislative process was temporarily restored – that is, if community members lobbied their municipal representatives, those representatives would in turn pass policies to protect the constitutional rights that had been trampled upon by the San Francisco Executive Branch and federal immigration officials.

Chapter 12, “Implementation Thwarted” examines the period of mid-November 2009 through late February 2010 when Mayor Gavin Newsom’s made an executive decision to instruct the Juvenile Probation Department to not implement the youth sanctuary amendment. The chapter also examines the City Attorney’s offers to force federal litigation of the youth sanctuary amendment and the actions taken by the Board of Supervisors and SFIRDC to persuade the City Attorney, the Mayor, and Juvenile Probation Department to implement the policy change. This chapter highlights how the policy formation does not progress smoothly through transitions from the identification of a problem needing a policy solution, to the drafting and passing of a policy, to automatic and uniform implementation. Rather, this chapter shows that sanctuary city policy, which came as a policy solution from the immigrant rights community and the Board of Supervisors, and was deemed legally defensible in a court of law by the City Attorney, met with severe resistance from the Executive Branch who refused to implement it. Without the political will of the Mayor, the coalition and the Board of Supervisors moved to mount a campaign calling on the City Attorney to change his policy implementation advice to the Mayor, calling on the Mayor to do his duty to enact the policy passed by the Board, and thereby restore the faith of the public in the municipal legislative process.

Chapter 13, “The Juvenile Probation Department and the Mayor’s Office Face the Community,” examines the arguments of the Mayor’s Office and the Juvenile Probation Department for not implementing the youth sanctuary amendment as they expressed those arguments in a hearing of the Board of Supervisors Rules Committee on March 3, 2010. It also analyses SFIRDC counter-arguments that they directly addressed to JPD Chief William Sifferman and Assistant Chief Alan Nance. The hearing was the first time that the debate between the immigrant rights community and the opponents of the youth sanctuary amendment in the Mayor’s Office and in JPD would occur on the record and in front of the Board of Supervisors. The aim of this hearing was to hold the Executive Branch accountable to their non-implementation actions and to pressure them to uphold the laws of the city, including sanctuary city policies.

Chapter 14, “Investigating and (Not) Disciplining Violations of Sanctuary,” examines the only documented cases of city employee violations of sanctuary protocols and the official decisions made to correct those violations. This last chapter will explore the power of two of the city’s department oversight agencies - the Human Rights Commission (HRC) and the Office of Citizen Complaints (OCC) - to investigate violations of sanctuary city policies and to make recommendations to department heads on discipline and corrective action to take. In the Human Rights Commission-Immigrant Rights Commission joint hearing on immigration enforcement in April 2009 that was described in Chapter 7, as well as in other hearings throughout the campaign to pass the youth sanctuary ordinance amendment, immigrants and their advocates impressed upon various legislative bodies that among many of the issues they faced, Police Department collaboration with ICE, in violation of sanctuary policies, continued to be a problem. Many of the charges brought against the police by immigrants at the hearing were formally lodged with the agency that investigates alleged police violations of their department policies – the OCC. This chapter will further explore why sanctuary as a strategy or ethic of government has not been fully implemented and why immigrants might still distrust the municipal government despite the city implementing sanctuary city protocols at the frontlines of department work. It does this by analyzing the only official complaint and investigation of a violation of the sanctuary ordinance lodged with the Human Rights Commission. It also examines all complaints of violations of the Police Department’s sanctuary-related general order on immigration policing – Department General Order (DGO) 5.15 - from 2004 to 2012. What this chapter argues is that when sanctuary ordinance violations and violations of SFPD DGO 5.15 have occurred, they have led to seemingly ineffective action on the part of department heads to correct the behavior of the offending city employees. This calls into question the strength of the policy given that it is not enforced through disciplinary action but rather supported through training, investigation, further policy action, retraining, and a more general promotion of sensitivity to the situation of immigrants.

Chapter 15, “Conclusion: Reflections on Sanctuary-Power” provides a recap of the reflections and analysis provided throughout the dissertation, while circling back to discuss the governmental sanctuary practices and municipal deportation practices which work in tandem and tension in San Francisco. It concludes with a discussion of how we can, through analyzing the operation of these practices, reflect upon the underlying governmentality – sanctuary-power - that legitimates and activates them. Finally, an appendix has been inserted at the end of this dissertation to outline the methods undertaken during the course of this research.

Through this exposition of the regime of governmental sanctuary practice in San Francisco, I hope to add to the scholarship of sanctuary, by showing that government and sanctuary practice are not at odds but are one and the same. Further, I hope to contribute to the anthropology of the state and of policy a thorough and thick description of the policy world out of which a “sanctuary city” is posited in order to transform and legitimate a municipal government in relation to the federal deportation regime.



## CHAPTER 2

### THE BIRTH OF A SANCTUARY CITY: GOVERNMENTAL SANCTUARY IN SAN FRANCISCO FROM 1980-1990

#### Introduction

Across the United States in the early 1980s through the mid-1990s, religious congregants and order members of a variety of faiths decided to take firm actions to help Salvadoran and Guatemalan refugees enter the U.S. and resettle their families in 'public sanctuaries' (MacEoin 1985; Coutin 1993; Cunningham 1995, 1998). The congregants did this in defiance of U.S. immigration authorities that had denied over 90 per cent of the asylum requests from Guatemalans and Salvadorans fleeing the violence of U.S.-supported anti-communist military regimes (Bau 1985; Coutin 1993; Crittenden 1988). Sanctuary activists throughout the country claimed that the U.S. federal government was breaking international and domestic refugee law by denying these claims for political reasons. As a result, some sanctuary activists stepped in to unofficially restore legal order by stationing volunteers in Mexican border towns as informal immigration agents to interview refugees and choose those whom they would help cross the border. Others throughout the country set up safe houses and publicized refugee testimonies to a national audience. The sanctuary movement's hope was to pressure the U.S. Department of State to end its active involvement in the Central American civil wars and also to pressure the Immigration and Naturalization Service (INS) to stop deporting Central American refugees fleeing the violence.

In San Francisco, California, a city farther from the border, the sanctuary movement was less focused on helping refugees cross into the U.S. and more focused on easing refugee transition to American life and organizing local citizens to oppose U.S. foreign and immigration policy (Perla and Coutin 2012). San Francisco's sanctuary movement also cultivated alliances with key officials in the municipal government, effectively incorporating them into the movement as sanctuary activists. The city government became a key ally of the movement, providing venues from which the movement could amplify the voices of refugees and counter the discourse and policing practices of the INS. Through the work of city officials and grassroots sanctuary leaders, the sanctuary movement infused the municipal government's culture of tolerance towards immigrants with the sanctuary movement ethics of providing "support, protection, and advocacy" (Catholic Social Services 1982: 6) for undocumented refugees. Informed by this ethical framework, the municipal government then assembled a regulatory apparatus, a *sanctuary city*, to manage and improve the precarious situation of undocumented Central American refugees. This effectively institutionalized sanctuary as a governmental strategy, an "art of government" (Foucault 1991), for governing a mixed-immigration-status city population.<sup>2</sup>

This apparatus was set in motion through the passage of two pieces of sanctuary city legislation, the "City of Refuge" resolution (1985) and the "City of Refuge" ordinance (1989). This legislation required municipal employees to cease

all participation in immigration policing and provide city services to all city residents including undocumented refugees in an immigration status-blind manner. These prohibitions and the provision of normal city services as sanctuary city services linked municipal departments, agencies, and commissions with sanctuary movement organizations. Leaders of these sanctuary organizations provided technical assistance to city agencies and also served on the commissions that monitored sanctuary city compliance. In this manner, governmental sanctuary in San Francisco remained legal, routine, institutional, and sustained rather than exceptional (Lippert 2005; Ridgley 2011). This chapter will trace the history of how these activists brought about these developments in their local government, resulting in legally significant changes that affected the lives of countless thousands of undocumented refugees and immigrants in the decades that followed.

### **San Francisco Political Economy and Immigrant Workers**

Immigrant labor has played a pivotal role in the development San Francisco Bay Area regional economy, all the while being relegated to the lowest rungs. From the 16<sup>th</sup> century until 1846, San Francisco was a military outpost and Catholic Mission governed under Spanish mercantilist rule, and was primarily a site of the Spanish extraction of labor from the Ohlone Native Americans (Walker 2008). In 1846, U.S. President Polk invaded Mexico to gain control of Texas and purchased the Southwest and Western seaboard from Mexico. In this time, fur traders and fisherman poured in to San Francisco and gained control of the seas from the tip of South America up to Alaska. Two years later in 1848, the Gold Rush brought people from all over the world to independently mine the more accessible places like rivers and streams. Investment from Japan and England poured in for setting up mining industry, and gold and quicksilver were exported all over the world. San Francisco was the principle financial center west of St. Louis (Walker et al 1990). Money obtained from this business was used locally to develop infrastructure and to set up a variety of local California banks that would provide venture capital for small businesses throughout the region. In San Francisco alone, there were 75 major banking offices, including the headquarters for 5 of the top 100 U.S. banks. The docks of California started mass-producing ships that would be shipped all over the world. Machine shops opened up to provide the equipment for the new industries, logging and lumber yards supplied construction materials, and local capitalists started investing in agro-business.

This agro-business which had its headquarters in San Francisco moved into the central valley of California and used the land there at first for growing wheat on a massive scale with newly invented irrigation systems and tractors, and wheat was shipped all over the region and exported to other countries. San Francisco-based agro-business invested in sugar plantations in Hawaii and the central valley of California diversified to produce fruits and vegetables. Alameda County – the seat of Oakland - and San Francisco became the pre-eminent center for canning factories of the world and built warehouses for storage. From 1870 until about 1930, elite residences began to be established in areas around San Francisco in Marin, the East Bay, and in South Bay suburbs. The East Bay and Contra Costa County were home to

the development of heavy industry and oil refining beginning at the turn of the 20<sup>th</sup> century. They built up transportation and shipping infrastructure and vehicles to ship the food and oil internationally, nationally, and regionally. Capitalists in the Bay Area financed the development of mining techniques and equipment production, and shipped engineers and equipment all over the world to set up mining projects. Oil was mined and San Francisco engineers converted big ships from coal to oil.

During World War I, the Bay Area became the hub of the Pacific War Arena and obtained an unprecedented amount of federal funding to develop naval ships, radar and sonar equipment, and the first mega-computers. Mexican and Japanese workers were brought in to build the railroads and work the farms throughout California in semi-slave like conditions of contract labor, as well as work in the manufacturing plants of San Francisco producing the naval equipment. The San Francisco-based Bank of Italy turned into the Bank of America and started “branch” banking – putting branch offices all over the world, providing loans to start up businesses, and started the Visa credit card system. Funding for this type of war-focused manufacturing continued through World War II, turning the Bay Area into the largest shipbuilding center in the country with Kaiser and Bechtel hiring 150,000 workers.

Beginning in the 1950s, Silicon Valley, just south of San Francisco, began to manufacture microelectronics, which became the main engine of expansion in the region. Employment in the manufacture of chips, computers, and software exploded from 250,000 jobs in 1964, to 832,000 jobs twenty years later in 1984. By the 1970s, the Port of Oakland eventually took over all business from San Francisco of importing goods from Asia, the clothing manufacturing of Levi-Strauss grew in San Francisco, and tourism became a major industry in the city. Restaurants and hotels expanded allowing for availability of around 16,000 of the Bay Area’s 100,000 hotel rooms, and the majority of residents of the city were foreign born with Mexican immigrants and Southeast Asian immigrants increasingly moving into the city to work in Levi-Strauss factory and in the service and hospitality industries. The Bay Area’s manufacturing declined in this period as the war money they had been receiving was redirected to Southern California. However, venture capital still reigned and speculative real estate investing boomed, as Silicon Valley became the number one place in the world for the creation of computer hardware. Foreign companies opened up branches in the Bay Area to keep abreast on the latest computer updates and Chinese, Japanese, and other East and Southeast Asian capital entered the Bay Area economy.

In the beginning of the 1980s, under President Reagan, the Bay Area saw a recession that hit local companies hard. During this period, many of the locally owned banks were bought out by Japanese capitalists and 18 of the 32 fortune 500 companies were bought by foreign capitalists. By 1986, the gross regional product of the Bay Area reached \$141 billion, over 3 million people were employed, and employment was growing at a rate of 116% versus the national average of 71% (Walker 1990). However, the type of employment was rapidly changing. There was a decline in heavy manufacturing sectors – steel works, lumber mills, tire plants, and vehicle assembly plants shut down, and there were major cutbacks in food processing, container shipments, and metalworking jobs (DeLeon 1992). Essentially,

all sectors were seeing cutbacks except the computer tech industry of Silicon Valley, which was growing. San Francisco's economy had become dominated by a rise in business services such as accounting, law, engineering, data processing, advertising, and management consulting. Employment in business services went from 27,000 jobs in 1962 to 142,000 jobs in 1982 - an increase of 425% (ibid). Office space in downtown San Francisco increased in three years from 1985 to 1988 by 9 million square feet growing the total footprint of office space to 54 million square feet or 2/3rds of the financial district.

By the late 1980s, San Francisco had 3 million visitors per year bringing in \$2.8 billion dollars and the city held 60,000 jobs in the hotel industry. Restaurants and retail saw some of the highest per capita sales of any city. Capitalists infused investment funds in the development of the biotech industry in the South Bay, and total employment in the military economy declined from 150,000 during World War II to just over 40,000 in 1987. The traditional skilled working class was confined to the refinery and petrochemical plants of the East Bay, construction jobs continued to boom with the expansion of office space and other forms of real estate, but traditional medium and low-skilled mass production working class jobs were largely gone after World War II. However, a new unskilled workforce of assemblers in the high-tech industry factories of Silicon Valley, office workers in San Francisco, and waiters, busboys, cooks, maids, janitors - all positions filled by new undocumented immigrants - would proliferate. Further, an underclass of black male workers that none of the industries would hire would be relegated to the shadows of San Francisco society and economy.

### **The San Francisco Sanctuary Movement and the Cultivation of Sanctuary as an Ethic of Municipal Governance**

Into this political economy, in the early 1980s the San Francisco Bay Area became one of the emerging centers of the U.S. sanctuary movement. Responding to the needs of an estimated 60,000-100,000 Central American refugees in the Bay Area, community organizers employed by the San Francisco Catholic Archdiocese's Catholic Social Service (CSS-SF) and the Commission on Social Justice's Latin America Task Force (LATF) worked with religious leaders in over 65 churches, synagogues, and religious orders to educate them on the wars in Central America, the plight of refugees, and possible forms of communal action (including public sanctuary) to improve the situation. With the support of the San Francisco Archbishop John Quinn, the organizational space and resources of the Archdiocese were made available to sanctuary organizers to build an urgent action network of social workers, lawyers, health services providers, employers, and private family "sponsors" that addressed the life-sustaining needs of refugees. Archdiocesan resources were available due to the fact that the federal government had been providing the Archdiocese funding for refugee resettlement efforts since World War II, and therefore CSS-SF had already established refugee resettlement administrative bodies and service structures, and had been in the previous few years resettling Chilean, Argentinian, and Nicaraguan refugees in San Francisco. However, a new project structure within CSS, the Central American Refugee

Organizing Project (CAROP), would come to focus specifically on Central American refugees and organizing sanctuary activities throughout the Bay Area. Sanctuary organizers used these resources to also organize a political network of labor unions, institutional church officials, and local government officials to publicly “protect, defend, and advocate” for the rights of undocumented refugees. Following valued guidance from refugee and immigrant rights organizations such as the Central American Refugee Committee (CRECE) (Perla and Coutin 2012) and most importantly, from community partners in Central America, sanctuary workers mixed legal advocacy and community education with efforts toward policy changes granting political asylum and voluntary departure status to refugees.

From 1980 to 1982, CSS-SF, LATF, and the Ad Hoc Committee to Stop the Deportations (AHCSA), an organization that allowed CSS-SF and LATF to join forces with a variety of community groups, organized public demonstrations, speaking events and public discussions, delegations to speak with local immigration officials, labor strikes, informational mailings, Congressional letter writing, vigils and media work, and assistance to refugees both in San Francisco and Central America. They also began outreach to the San Francisco municipal government to educate certain officials in powerful positions about the Central American wars; repression of Central American religious leaders, peasants, and dissidents; and the systematic deportation of legitimate, but legally unrecognized political refugees.

In particular, movement leaders targeted progressive members of the San Francisco Board of Supervisors. The Board was made up of leaders who from 1978-80 were voted into their positions by the district populations they represented, and from 1981-2000 were elected through citywide voting. In addition to determining the city budget and passing the city’s laws, this body had the power to pass resolutions that served as statements of political opinion, moral orientation, and legal directives for practical government business. The Board’s meetings, which were open to the public, served as a venue where sanctuary movement leaders and undocumented refugees provided testimony on the wars in Central America, INS deportation policies, and the experience of refugees in the city. This testimony was addressed directly to the city’s lawmakers, influencing them in their decisions to cooperate with or oppose state and federal policy, including immigration policy and foreign policy.

Community groups that wished to pass particular legislation or to influence the allocation of city funds worked directly with Supervisors and with leading legislative aides in their offices. From the beginnings of 1980, CSS-SF, LATF, and AHCSA worked to develop relationships with two newly elected progressive Supervisors: Nancy Walker, who represented District Nine including the predominantly Latino Mission District, and Harry Britt, who represented District Five including Dolores Heights and the Castro. Over the next decade, these two Board members went on to present 33 of the city’s 50 resolutions and ordinances that supported sanctuary movement efforts, instituted sanctuary practices in daily department procedures, and formally honored sanctuary movement leaders. Among these pieces of legislation were calls for an end to U.S. aid for the Salvadoran military junta; the withdrawal of U.S. military personnel from Central America; support of self-determination and human rights for the citizens of El Salvador; and

federal recognition of refugees from El Salvador and Guatemala as “political” refugees, the provision of asylum or extended voluntary departure status to them, and a halt to their deportations. In preparation for presenting this legislation to the Board, Supervisors Walker and Britt periodically requested background information from CSS-SF on refugees from El Salvador, invited CSS-SF organizers and refugee leaders to speak at public hearings, and worked with the organizers on campaign strategies to gather support for sanctuary policy initiatives.

In 1982, at the urging of refugee leaders, after two years of successful organizing with these municipal officials, and following the declarations of public sanctuary at five congregations in the nearby East Bay in March, CSS-SF, LATF, and AHCSF leaders began to reach out to congregations and religious orders in San Francisco to discuss the possibility of declaring public sanctuary. Since the beginning of the war, thousands of Salvadoran families who had immigrated to San Francisco in previous decades, local congregations<sup>3</sup>, and individuals in San Francisco had provided private or secret sanctuary to refugees in their homes. However, declaring “public sanctuary” meant that congregations would publicly use sanctuary – announce to the media that they were going to house undocumented refugees – as a strategy to publicize the plight of the refugees. This strategy countered the federal government’s narrative that the wars in Central America were surgically targeting Marxist rebels in defined locales. Declaring public sanctuary was an intentional method for showing the “dirtiness” of the wars that targeted the general populace whom the governments feared could potentially support the rebels. In this sense, sanctuary was a method to tell *the truth* about war atrocities and U.S. involvement.

From 1982-84, an extensive “house meeting” campaign was conducted wherein CSS-SF organizers accompanied by CRECE leaders met with members of parishes and religious orders in their private homes to educate them about the wars in Central America, the plight of refugees, and about the practicalities of managing a public sanctuary. Sanctuary services and activities that congregants were invited to participate in included providing refugees food, shelter, medical and psychological care, education and tutoring, and employment; helping refugees to process political asylum applications; raising funds for bail bonds for detained refugees; educating the parish and city community on Central America and refugee needs; supporting appropriate legislative reform; maintaining contacts with other sanctuary communities; praying for specific needs of the refugees and for the success of sanctuary work; creating liturgies to sustain and inspire their own efforts; lobbying in Washington; traveling to Central America and reporting to U.S. audiences; and aiding the resettlement of displaced people within El Salvador. Congregants were also invited to ask questions, raise concerns, provide congregation-specific action plans, and most importantly to reflect on what it means to be a Christian, Jew, Buddhist, Unitarian, or Quaker in the context of oppression. Reflections were guided by scripture passages that allowed congregants to apply familiar spiritual principals and ethics to deal with the current problem of saving refugees from violence and persecution.

The urgency of the war and how congregants should come to their aid was informed by Biblical stories that highlighted the perspective of slaves in Egypt, the

poor and most vulnerable, captives, workers, fishermen, the marginalized, prostitutes, and foreigners such as the Samaritans. Congregants conducted deep reflection on scriptural teachings that whatever one does for the “least of our brothers and sisters,” he or she did for God. Through this message, the lowliest, most vulnerable became the point of revelation of God in history. Congregants felt that they could come to know God better through standing with and seeing the world through the eyes of the poor, the disinherited, and the “insignificant.” (Golden and McConnell 1986). Refugees were compared to Christ who was tortured and killed, undergoing a premature death, living in foreign lands, and persecuted by the state.

Such an approach to scripture hailed from the late 1960’s religious practices of the grassroots popular churches organized by proponents of liberation theology. Members of these popular churches would read the Bible and the newspaper together in order to analyze God’s will on earth. Liberation theology gave them a template to look at their faith tradition, the values, returning to the religious texts and to read them in historical context. Congregants were encouraged to reflect on the situation of refugees in Central America by asking themselves, “Where am I in my community and in my world?” “What are the signs of the times?” “If this is how we see our world, what do we do about it to change it?” Reading the Christian scriptures of Matthew, congregants felt not only called to feed the hungry, clothe the naked, and shelter the homeless, but also to challenge the root causes of people’s hunger, nakedness, and homelessness, and were directed to aim their focus on identifying the cause for these things in U.S. foreign policy in Central America.

Sanctuary organizers and congregants referred to this process of intense moral reflection as a “discernment process,” a religious process of identifying a decision that must be taken on a spiritual issue so as to resolve that issue. However, rather than focusing on individual spiritual resolve, sanctuary discernment created a process for congregants to take a “corporate stance” on an issue of collective concern. Discernment was a method of spiritual “conversion” wherein congregants became deeply aware of the situation of the oppressed and committed themselves to a life of responsibility to and solidarity with them, to not only provide them charity, but to share in the risks of accompanying them in their quest for a safe life. Through this solidarity with the oppressed, congregants would become closer to God. Sanctuary discernment processes lasted for six months to one year, after which CSS-SF and CRECE stepped back leaving individual congregations to organize a communal vote to decide whether or not to become a public sanctuary.

Once a vote had been taken, the congregation would hold a “declaration event” in which the congregation would usually hold a public procession to a sanctuary church where the congregation would in front of television cameras declare that they were going to be providing sanctuary to a refugee family. Refugees provided testimony, and religious leaders provided justifications for providing sanctuary by highlighting the situation of refugees and of the war in El Salvador and Guatemala. They would then hold a celebration mass in which speakers would discuss biblical themes that highlighted the plight of the refugee, the religious person’s call to aid them, and how such aid brought them closer to God. The refugee family would then be formally invited to stay in the church building for roughly two

weeks, and afterward be transferred to either a private apartment where they would stay or at the home of one of the congregant members who served as a “sponsor” family.

### *The Responsibilities of Sanctuary Movement Refugee Sponsors*

Sanctuary movement sponsors took refugees into their homes confident that what they were doing was entirely legal due to their conviction that Guatemalans and Salvadorans were legitimate refugees rather than illegal immigrants. The orientation guide that sanctuary organizers provided to sponsors in advance of taking in a refugee family stated, “A sponsor is in no way breaking the law by providing housing to a refugee.”<sup>4</sup> In defining who could be a sponsor, movement organizers stated in the sponsor orientation manual that “any person, family, or church group who is willing to provide “room and board” for a refugee qualifies as a sponsor.”<sup>5</sup> Sponsors were to provide a “safe, welcoming environment” for refugees that stayed with them and who may have suffered psychological trauma do to the violence in their home countries. While refugees arrived with very few belongings and very little financial resources, the sponsor would work with the movement’s Refugee Project to provide them the necessities of life, in particular clothing and supplies for maintaining their hygiene. Sponsors were also encouraged to “help their guest become more self-sufficient by taking them to thrift stores where they can buy inexpensive clothing.”<sup>6</sup>

The types of sponsorship that the movement organizers arranged were “emergency housing,” in which sponsors would provide shelter for 2-3 days; “temporary housing” wherein refugee families would be provided housing and meals for 1-3 months; and “extended housing” wherein housing was provided for any period beyond 3 months. The purpose of providing emergency housing was to offer a place for refugees to stay while they were waiting for a temporary housing situation. The sponsor was asked to provide refugees meals and a place to sleep on a bed, sofa, cot, or sleeping bag on the floor. Once the refugee family was placed in an emergency housing sponsorship situation, an organizing committee of the movement called the Refugee Committee was responsible for finding a more permanent housing arrangement for the refugee family so that the sponsoring family would not need to worry about that. Sponsors who provided emergency housing were merely responsible for specifying how often he or she was willing to provide emergency housing for a refugee, whether this would be continuously, once a week, or once or twice a month.

Once the Refugee Committee found a placement for the refugee family with sponsors of “temporary housing” the refugees would make the move. Sponsors of temporary housing would provide food and shelter for one to three months. The orientation manual would indicate that meals served could be in the families regular fare and “if your refugee is a woman, she may enjoy helping in meal preparation and may be delighted to fix some of her favorite recipes for you.”<sup>7</sup> Sleeping arrangements were made on the basis of whatever was most convenient for the sponsor whether it was a private bedroom, a shared bedroom or a bed in a family room. Sponsors were encouraged to offer sponsorship for at least two refugees in



the case that they had a spare bedroom so that if the refugees were individuals not in a family, they could have some companionship.

It was not the responsibility of the sponsor to find employment for the refugee – that was also the responsibility of the Refugee Committee. However, the sponsor was told that “if some small jobs, such as gardening, lawn mowing, or household tasks are available in your community, certainly these opportunities would provide a welcome income for the refugee.”<sup>8</sup>

Nor were sponsors required to be able to speak Spanish. They were encouraged to learn, but also reassured that gestures and facial expressions would still allow them to say a lot without the use of words. The orientation manual would advise them, “Don’t let language discourage you from sponsorship; you’ll find you can manage very well, and very creatively – and you’ll even learn some Spanish in the process.”<sup>9</sup> This would also provide the refugee the opportunity to learn English and about American cultural practices. The Committee advised the sponsors that “effective use of the English language will become a necessity for the refugee” and that the sponsor could be of additional help to the refugee “by encouraging him in his studies, speaking slowly and distinctly to him, and patiently helping him to practice speaking English at home. A little praise will really help a beginner in a new language too!”<sup>10</sup>

However the Refugee Committee advised that the refugees would still need some companionship with other Central Americans. The Sponsor was encouraged to help facilitate get-togethers between refugees who had been placed nearby each other, perhaps in the same neighborhood, by the Refugee Committee. If there was no other refugee nearby, the Sponsor was to help the refugee navigate the public transit system to meet other refugees or to help them use the Sponsor’s telephone to have conversations with other refugees. Likewise, the Refugee Committee reminded sponsors that many of the refugees had come to the Bay Area in the first place because they have friends or family there who had also come from their hometown. The Committee recommended that the sponsor “might be of assistance in locating these persons. This help might involve teaching the use of the telephone and giving directions so the refugee could find his way to the friend’s address.”<sup>11</sup>

Sponsors were encouraged to ask themselves “How can I be of further help to the refugee in the process of adapting to life in the U.S.?” “What useful things can I show and teach this person?” Sponsors took into consideration the background of the refugee – whether they came from a city or from a rural town, whether they were literate, the amount of education they received in their home country – and what amount of time and resources the sponsor had. The Refugee Committee suggested that given that the Bay Area had a wealth of Spanish radio and television stations, the sponsor give them access to the media where they could not only learn about issues related to Spanish speakers, but also about current events and culture in the United States.

Sponsors would also be instructed to orient the refugee to

basic things in our culture that will help the refugee become more independent. He may need assistance with all the gadgets we Americans use. Electrical appliances might be new to him, as well as household plumbing.

Such things as using an electric or gas range, a Laundromat, a vacuum, plumbing, or hot water might deserve some instructions from the sponsor. Help with shopping, use of the library, public transit, telephone, etc., all will be helpful.<sup>12</sup>

The sponsor was also advised to be culturally sensitive to the refugee and not attempt to “Americanize” the refugee but rather to allow the refugee to attempt to maintain his or her cultural identity:

You will probably not encounter any great cultural differences that will prevent you and your guest from understanding each other. In many respects, the U.S. and Central American culture are similar. The most important thing to be aware of is that your guests have come to the U.S. to escape political repression and that they hope their stay here will be only temporary, until conditions improve in their native country. The host should be sensitive to their guest’s need to maintain their cultural identity. They may not wish to be “Americanized” and will probably not abandon their allegiance to their native land.<sup>13</sup>

However, the Committee also wanted to brief the sponsor on cultural differences that may become apparent to the sponsor that they should be aware of. In particular, they pointed out that there was a greater distinction between “male and female roles” in Central America – while many men were not used to doing household chores and cooking, many women had no work experience outside of their home. Further, the Committee informed sponsors that refugees from rural areas would be unfamiliar with many aspects of city life and that class distinctions in Central America between rural and urban people might lead the refugees to feel uncomfortable in the sponsor’s urban home:

Rural and working class people are not regarded as social equals by many “upper class” persons in Central America. Your guests may feel uncomfortable at first, and uncertain of their role in your home. Make an effort to help them feel they are a part of your family. Invite them to share family activities, meals, etc.<sup>14</sup>

Either the Sponsor or the refugee could call the Refugee Committee to mediate and help resolve any problems concerning their living arrangement, and either party could terminate the arrangement at any time if it was not satisfactory. At the end of the three months, the sponsor and the guest refugee were asked to evaluate their situation with the Refugee Committee. If both parties wanted to extend their current housing arrangement, then a new period of sponsorship could be agreed upon. In that case, the type of sponsorship would then be considered “extended housing,” which lasted longer than three months, and both parties agreed upon a future time when they would re-evaluate the agreement with the help of the Refugee Committee.

While in many cases the sponsor was a congregant family of a church that declared sanctuary, in some cases the church itself served as the sponsor of the refugees. In this case, the church may rent an apartment for the refugees, house them in the same facilities as the church's religious leaders, or already have other housing available to support refugees living there. The private sponsor or the church would then be responsible and encouraged to participate in activities supporting the refugee in the same manner as private family sponsors.

By 1984, seven San Francisco congregations and religious orders had declared public sanctuary<sup>15</sup> and joined together to form the San Francisco Sanctuary Covenant (SFSC). SFSC was one of the Bay Area's seven "Sanctuary Covenant Communities"<sup>16</sup> -- coordinating councils that planned events and campaigns among sanctuary congregations in individual cities or groups of adjacent cities. SFSC coordinated activities and strategizing among sanctuary congregations of a variety of faiths located in the San Francisco Archdiocese's area of oversight, which included congregations in San Francisco, San Rafael, and Burlingame. Drawing on the organizational structure already established by the East Bay Sanctuary Covenant (EBSC), SFSC consisted of a steering committee on which two representatives from each sanctuary congregation and two representatives from CRECE and CSS-SF participated. Like each of the other Bay Area Covenant Communities, SFSC sent delegates to the meetings of the Northern California Sanctuary Churches (NCSC), an informal regional communications council through which Bay Area sanctuary congregations stayed connected to each other and to developments in the national movement.

As new congregations carried out their discernment processes and voted in favor of declaring public sanctuary, membership in SFSC increased from seven members by 1984 to 11 members by 1985,<sup>17</sup> 14 members by 1986<sup>18</sup>, and 19 members by 1989<sup>19</sup>. Both SFSC and NCSC facilitated the decentralization of power in the movement by investing communal resources and information in the base membership of sanctuary congregations. SFSC members shared experiences, analysis, and reflection on their sanctuary work, and developed strategies for media work, legislative and political action, service programs, and education and outreach to other local congregations. SFSC served as a mechanism with which members could build congregational strength, autonomy, and the ability to act in a complimentary and communal manner rather than serving as a bureaucratic top-down, decision-making body. The immediate goals of SFSC were to respond to emergencies in Central America through letter writing and telegram campaigns; to offer "support, protection and advocacy" on behalf of the refugees in San Francisco; to produce a monthly newsletter to inform sanctuary congregants and supporters about current events in Central America, refugees in the U.S., and the status of sanctuary work; and to pass legislation that would end all U.S. aid supporting the war in El Salvador and end the deportations of Salvadoran refugees.

### **Governmentalizing Sanctuary: The City of Refuge Resolution of 1985**

In November of 1985, SFSC began to work with Supervisor Walker to launch a grassroots campaign persuading the Board of Supervisors to pass its first “sanctuary city” resolution declaring San Francisco a “City of Refuge” for Salvadoran and Guatemalan refugees. This became the city’s first step towards instituting the sanctuary movement practices of publicly providing undocumented refugees life-sustaining services and space to build their lives anew in San Francisco. Following sanctuary resolutions that had already been passed by city councils in Berkeley, Los Angeles, West Hollywood, Seattle, Olympia, Chicago, St. Paul, Madison, Burlington, Cambridge, Ithaca, and New York City, SFSC proposed that the San Francisco resolution mandate city employees to refrain from cooperation with the INS in immigration policing through gathering and distributing immigration status information. This would effectively encourage refugees to use the city’s emergency police, fire, and health services, as well as social services and public schools with less fear of being turned in to the INS.

In the wake of the indictments of 16 sanctuary workers in Texas and Arizona in January 1985 on federal conspiracy, harboring, and transporting charges (Cunningham 1995), the City of Refuge campaign served to unite the San Francisco sanctuary movement’s base members at the then-11 sanctuary congregations, reinvigorate them in a time of legal uncertainty, and show the country that the movement in the Bay Area was unwavering in its commitment to “protect, defend, and advocate” for the rights of undocumented refugees. It also gave them the opportunity to educate other District Supervisors and then-Mayor Dianne Feinstein about the plight of Central American refugees, the sanctuary movement, and the national sanctuary cities campaign.

This education would be multi-faceted. At the grassroots level, CSS-SF sanctuary organizers who also worked as staff for SFSC began to work with parish sanctuary committees to educate parishioners on the proposed City of Refuge resolution. Educating this base occurred through house meetings similar to those that CSS-SF organized for sanctuary congregations in their discernment processes in the early to mid-80s. These organizers asked parishioners to in turn educate the undecided Supervisors and Mayor by sending in postcards and making direct phone calls in favor of the resolution. Organizers also educated and collected signatures of nearly 50,000 San Francisco residents so that if the Board and the Mayor rejected the resolution, SFSC would have enough citizen support to put the resolution on the general elections ballot in November 1986.

In consultation with Supervisors Walker and Britt, SFSC sent small delegations to meet with each Supervisor, the Mayor, and the Chief Officers of city departments that worked directly with the public such as the Police, Sheriff, Public Health, and Education departments. The delegations included four sanctuary organizers: Father Peter Sammon and Sister Kathleen Healy of St. Teresa’s Catholic Church; Eileen Purcell, lead sanctuary organizer of CSS-SF’s CAROP; and Lana Dalberg, staff person hired by SFSC specifically for the City of Refuge campaign. The delegations also included a Salvadoran refugee from CRECE who had provided first-hand war testimony to congregants in the initial 1982 house-meeting efforts, and Marc Van Der Hout, the movement’s most prominent lawyer and co-founder of the

pro-sanctuary legal organization, the Father Moriarty Central American Refugee Project.

In the meetings, these delegates introduced the Central American refugee issue, the sanctuary movement, and the City of Refuge campaign; and solicited the support of the politician or department head. SFSC maintained relationships with ally Supervisors through weekly written, telephone, and personal visits, and provided them with a steady stream of updated info on the campaign and the sanctuary movement. Additionally, SFSC leaders worked closely with Supervisors on the Board's Human Services Committee to review other cities' sanctuary city resolutions and to draft recommendations for San Francisco's resolution and potential methods of monitoring its enforcement.

In evaluating the influence of this outreach on city officials, SFSC wanted to make a lasting and personal impression with regard to the refugee issue and the need for governmental sanctuary. As a result, they organized delegation trips to Central America where city officials could personally witness the effects of war and the causes of Salvadoran exile. Sending delegations to Central America had long been a powerful method for "converting" potential sanctuary workers to a life of deep conviction for supporting the anti-deportation cause and helping refugees (Coutin 1993). In February 1984, the already-sympathetic Supervisor Walker had joined CSS-SF organizers on such a delegation for 10 days in Nicaragua, El Salvador, and Honduras. In late November 1985, SFSC and CSS-SF invited officials previously unaffiliated with the movement, Assemblyman (and later San Francisco Mayor) Art Agnos and Supervisor Doris Ward, on a trip to El Salvador with Father Sammon. They visited refugee camps and church organizations that were helping refugees, areas of the countryside where bombing was occurring up to four times per week, and prisons where political prisoners were being tortured (Sammon and Purcell 1998). The impact of these experiences motivated these officials to provide powerfully authoritative testimonies on the plight of refugees and the need for sanctuary city policy at special Board hearings leading up to the Board's vote. This experiential conversion of governmental officials into dedicated sanctuary politicians allowed the movement to further infuse sanctuary ethics in governmental discourse, to promote governmental projects in support of refugees, and to defend sanctuary from legislative attacks that came from within City Hall.

In late November and early December 1985 Supervisor Walker drafted the City of Refuge resolution in collaboration with SFSC leaders. Most notably, the resolution stated that

... the City and County of San Francisco finds that immigration and refugee policy is a matter of Federal jurisdiction; that federal employees, not City employees, should be considered responsible for implementation of immigration and refugee policy

...the City and County of San Francisco urges the Mayor, and the Chief Administrative Officer, to advise the commissions and departments under their respective jurisdiction of this fact of law; and that the Mayor is urged to affirm that City Departments shall not discriminate against Salvadoran and Guatemalan refugees because of immigration status, and shall not jeopardize

the safety and welfare of law-abiding refugees by acting in a way that may cause their deportation...

...the implementation of the provisions of this resolution by employees and agencies of the City and County of San Francisco remain consistent with federal statute, ordinance, regulation or court decision and, provided further, the City and County of San Francisco is not, in adopting this resolution, encouraging its employees and citizens to violate any local, state, or federal laws...<sup>20</sup>

The resolution also requested that the Board make a request to the INS that “upon arresting a refugee from one of these two countries (Guatemala and El Salvador), the INS immediately notify the San Francisco sanctuary congregations and religious orders so that legal and support services can be arranged for the arrested refugee.”<sup>21</sup>

Nancy Walker submitted the resolution language to City Attorney Louise Renne to assess the legality of the resolution, which yielded the response that it was in fact legally defensible if challenged in court. Deputy City Attorney Buck E. Delventhal and legal intern Randy Riddle would provide Supervisor Walker a memo stating

While the Board may adopt a city wide policy that no City resources or assets may be committed to assist in the apprehension or deportation of refugees, neither the Board nor any City department may prohibit city officers or employees from exercising their right under state and federal law to assist the INS in locating foreign nationals illegally in this country, or punish them for having done so.<sup>22</sup>

The City Attorney also addressed the authority of the Board to create policy that would affect the procedures of administration in the departments, since that largely was the responsibility of Department Heads. They found that with regard to the City of Refuge resolution, the Board was in their right authority to issue the resolution under the City Charter – the underlying laws defining authority of the city’s various agencies and officers. In specific, section 2.4.01 of the City Charter stated that

Neither the Board of Supervisors nor its committees, nor any of its members shall dictate, suggest, or interfere with appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions of the Chief Administrative Officer, or of department heads under the Chief Administrative Officer, or under the respective boards and commissions. The Board of Supervisors shall deal with administrative matters only in the manner provided by this charter.<sup>23</sup>

However, the City Attorney memo would state that

this section was not intended to divest the Board of Supervisors of the power to 'prescribe city-wide rules of procedure to be followed by all departments and offices in the conduct of their affairs.' (City Attorney Opinion 83-68, p.7). Since the City of Refuge resolution was addressed to the "city administration" and is apparently intended to prescribe citywide policies and procedures, the Board would not be precluded by Section 2.401 from adopting or implementing this resolution.<sup>24</sup>

Walker would also submit the resolution to the City Budget Analyst Harvey Rose for an analysis of the financial impact of the resolution upon the City and the affected departments. The Budget Analyst after review of the resolution concluded that no further costs would result to the city. He commented:

Because San Francisco is a city and county, certain county costs might be incurred as a result of the proposed declaration as a City of Refuge, particularly in terms of health and social services policies. However, the proposed amendment of the whole expressly addresses eligibility issues for social services entitlements. Therefore, there would be no increased costs for aid payments to undocumented persons. San Francisco General Hospital (SFGH) is already the City's provider of last resort for health services and in that capacity expended approximately \$3.5 million during 1984-1985 on services to "undocumented aliens". [...] A spokesperson for SFUSD [San Francisco Unified School District, the public school system] reports that children are served regardless of their status under a long-standing policy of the State Superintendent of Schools.<sup>25</sup>

The Department Public Health (DPH), which oversaw San Francisco General Hospital, largely welcomed the resolution as well. In a letter to the Board of Supervisors, DPH Director Carmen Carrillo stated that the resolution

Would establish policy for public servants in our local jurisdiction to follow. Regardless of historical, political, or philosophical antecedents, Central Americans are here in our community, do not enjoy the benefits that flow from official refugee status, and present a dilemma to our system of public health. Department of Public Health does not discriminate against refugees, but has no mechanism to address their needs. Thus, staff are confused about their legal, moral, ethical, and personal responsibilities on this issue. The resolution would result in a cost effective public health intervention. Currently the majority of refugees are afraid to seek primary care, early intervention, and preventative treatment. In the public health arena, this fearful attitude may result in hazards to the broader community, or more expensive treatment when health problems have exacerbated. In the mental health arena, where many of the problems are related to the effects of war and torture, our first contact is usually when there has been substantial decompensation and the patient needs the more expensive acute level of care. Early intervention would, therefore, be cost effective. To achieve this,

the refugee community must feel assured that they can use our service without fear of denunciation. The resolution would align our practice with reality. The truth of the matter is that Central American refugees are here. The churches, the communities, are providing refuge. The community needs to know that the City's leadership recognizes the issue and takes appropriate action. For these reasons and based on my personal experience attempting to address this issue for several years, I respectfully urge you to adopt the resolution.<sup>26</sup>

In advance of the final vote on the resolution, Walker lastly forwarded the language of the resolution to Sheriff Michael Hennessey who responded in a letter of support on December 18<sup>th</sup>, 1985 that he could implement the resolution without major operational changes:

I have reviewed the proposed resolution urging the Mayor to declare San Francisco to be a City of Refuge. I support the spirit and purpose of this resolution and feel the resolution can be honored without major operational changes in the San Francisco Sheriff's Department. The resolution does raise issues regarding our legal obligation to honor immigration holds placed by other law enforcement agencies, but that issue can be resolved by further research of the law in this area. Ultimately, of course, the San Francisco Sheriff's Department will do its utmost to uphold the laws of the City, the State and the Country, while honoring the policy of the Mayor and the Board of Supervisors on this specific issue.<sup>27</sup>

On December 9, Supervisor Walker introduced the City of Refuge resolution to the Full Board of Supervisors and two weeks later on December 23 it passed by an 8-3 vote. At the first Board vote on the resolution, sanctuary movement leaders and refugees would come and provide testimony as to why the Board of Supervisors should pass the resolution. One testimony came from Elie Wiesel, the famed holocaust survivor and Nobel Peace Prize winner. Wiesel addressed the Board to explain what the Bible said about the historical "Cities of Refuge":

For a refuge-city, according to the Bible, is a place for guilty people, as distinct from refugees fleeing Central America. A person who inadvertently was guilty, who unwittingly, unknowingly, committed a crime, would flee to one of the designated cities for a safe haven from revenge. Why? We are told in the Bible that it is natural to want to avenge a relative. It is an instinctive reaction. But there is one place where that avenger could not enter. It is the refuge-city.<sup>28</sup>

In the case of San Francisco sanctuary, the avenger was not the military soldiers of Guatemala and El Salvador that forced the refugees to leave, but rather the INS, who was constantly on the hunt for undocumented immigrants who according to the federal government violated federal civil immigration law.



Following passage of the resolution Mayor Feinstein clarified in a letter to the Board that the resolution

In no way alters the law or amends current practice. What it does do is address the very real fears of refugees terrified to return to their homelands, yet terrified to stay here. They are fearful to use the basic public services that most people take for granted (calling police when there is trouble, going to a doctor, getting a job, and going to school). They fear any contact with officialdom might subject them to deportation. The resolution has one purpose and that is to emphasize that persons are not going to be discriminated against or hassled in San Francisco because of their immigration status as long as they are law-abiding. The resolution is not an open invitation to massive immigration, but is addressed only to El Salvadorian and Guatemalan refugees who come to this country because they fear for their lives at home. It in no way grants immunity from this nation's immigration laws or policies.<sup>29</sup>

Then to re-emphasize her point that sanctuary was not a shield for criminal behavior:

It affects only the law-abiding, a phrase I asked be inserted in the resolution to mean persons who do not break our criminal statutes. The lawless are not protected, and those who are arrested *and convicted*, as is the current practice, will be subject to deportation by the Immigration and Naturalization Service. I am not interested in providing status to any who deal in or use drugs, who steal, or would commit bodily injury in any form.<sup>30</sup>

Then to re-emphasize that the resolution modifies nothing in terms of governmental practice Mayor Feinstein stated:

The resolution does not alter existing law, but recognizes current practice where responsibility for enforcement of immigration laws is a federal, not a local responsibility. The Police, the Department of Public Health and other agencies will continue their current policies of providing service to people regardless of immigration status.<sup>31</sup>

And lastly, she would state that the resolution did not impede the INS in their work in the city:

Clearly, the resolution does not impede the INS in the enforcement of the federal immigration laws, or in its seeking the deportation of narcotics peddlers and other felons who are a threat to others. It must be emphasized that those who break the law, regardless of immigration status, when arrested, will be prosecuted to the full extent.<sup>32</sup>

John Belluardo INS Director of Congressional and Public Affairs, echoed Mayor Feinstein's sentiments by saying that the City of Refuge resolution "sends out a false message that if they [refugees] come to San Francisco, they will be protected, which is not so, because we fully intend to apprehend illegals."<sup>33</sup>

Though it did not explicitly redefine city department procedures, the resolution transformed the normal, institutional day-to-day services that these departments provided San Francisco residents discursively into governmental sanctuary services that could be extended to undocumented Salvadoran and Guatemalan refugees. The resolution also served as a reference point for governmental legislators considering future legislation, manners of engaging the local immigrant population, and assessing the effects of federal initiatives to incorporate city employees in federal-municipal joint projects. However, it was largely moral and symbolic in its purpose, rather than legally binding. It created no institutional oversight body, no chain of command, no procedures for serving refugees, and no guidelines for when or how disciplinary action should be administered to non-compliant city employees.

Over the next three years, San Francisco's sanctuary city status provided government officials a moral standard that governmental action should measure up to with regard to the rights of undocumented residents. Moving beyond the struggle for immigrant and refugee rights, the "sanctuary city" became defensible itself. It provided activists and politicians a point of focus for political work, encouraging them to continue to elaborate ways of making San Francisco a place where all residents, including the undocumented, could thrive free from discriminatory treatment and fear. The sanctuary city concept was extended and reapplied by the municipal government to support, protect, and advocate for other sectors of society such as South African and Namibian refugees fleeing apartheid, sexual minorities, and conscientious objectors to war.

### **Institutionalizing Governmental Sanctuary: The 1989 Sanctuary City Ordinance**

By late 1988, the City of Refuge resolution had still not been fully translated into explicit departmental policy changes appropriate to serving refugees, or disciplinary procedures that could ensure city employee compliance. Despite San Francisco Sheriff Michael Hennessey's progressive stance in support of the 1985 resolution, Sheriff's Department officers in San Francisco jails maintained the practice of providing the names of all Latino inmates to the INS so that they could interview them. Police officers also on occasion accompanied INS agents on raids in the Latino immigrant community.

In this context, the newly elected Mayor Art Agnos looked to the long-time community advocate, SFSC Chair, and guide of Agnos' El Salvador delegation trip in 1985, Fr. Peter Sammon, to help him bring changes to the city government's treatment of its diverse residents. In November 1988, Mayor Agnos personally appointed Father Sammon to be a Commissioner on the San Francisco Human Rights Commission (HRC). This government body was first created in the mid-1960s to give effect to the rights of every inhabitant of the city and county to equal

economic, political and educational opportunity, to equal accommodations in all business establishments, and to equal service and protection by public agencies.

The HRC was charged with providing reputable, expert advice and assistance to the City and County, in particular the Mayor and the Board of Supervisors. The commission's responsibilities included research into emerging social issues affecting minorities in the city, advocacy for human rights issues, and investigation and mediation of complaints of governmental discrimination and non-compliance with minority-related ordinances. The HRC was also responsible for providing outreach, technical assistance, referrals, expert advice, and training to city officers, departments, and community organizations to implement ordinances governing the provision of city services to minorities.

Within the city governmental structure, HRC resolutions carried clout on city and national issues due to the fact that its 11 Mayoral-appointed Commissioners were recognized in the city as politically powerful and charismatic community advocates. While they might not have had full legal authority as Commissioners to demand that departmental action be taken, their moral authority gave them the power to speak frankly with city officials and persuade them to make changes. Serving four-year terms, each Commissioner provided leadership for one of the HRC's five issue-oriented Standing Committees, through which the Commissioner could help craft policy. These committees provided for the in-depth study and exploration of issues, and invited community involvement in the discussion on how these issues should be dealt with by the municipal government. Committees invited expert community speakers to present opposing points of view whenever discussing an issue before the commission, and recommended that the HRC take positions on specific pieces of city, state, and federal legislation.

When Fr. Sammon was appointed Commissioner, he was assigned the position of Chair of the "Social Issues/ Police Liaison Committee" (SI/PLC), which worked with the Police Commission to oversee police conduct in issues of discrimination. Under the direction of Commissioner Sammon, SI/PLC focused on issues related to immigration and undocumented residents, law enforcement and public safety, housing, prejudice-based violence, and unemployment. Sammon kept a vigilant eye on police violations of the City of Refuge resolution, and invited sanctuary movement organizers and lawyers to testify in favor of HRC resolutions supporting sanctuary initiatives.

In the summer of 1989, two incidents called into question the efficacy of the city's sanctuary resolution: in June, San Francisco police officers photographed CRECE leaders during a protest and gave the pictures to the Salvadoran Consulate, and in July, San Francisco police officers and Alcohol Beverage Control officers worked directly with the INS to raid a local salsa club, *Club Elegante* (Ridgley 2008). These two actions threatened the atmosphere of trust that the sanctuary resolution was intended to create between the community and the SFPD, and among other things had the potential to silence undocumented witnesses of crimes from talking or interacting with police and other city authorities. The *Club Elegante* raid led to the deportations of 28 undocumented immigrants who were transported in SFPD patrol cars to INS detention. Supervisor Jim Gonzalez noted, "Deportation raids are

basically Gestapo tactics. This is all very much based on race and color and language. It's unconstitutional and un-American."<sup>34</sup>

In response, Commissioner Sammon brought these issues to the HRC and began to lead a governmental effort to legally enforce institutionalized sanctuary in city departments that work directly with immigrants. The purpose of this work was to make sure that departments working directly with immigrants could no longer disregard the City of Refuge resolution, and as a result, to re-establish undocumented residents' trust in the municipal government. If achieved, this trust would allow undocumented people to feel safer to call the police, an ambulance, or a fire truck, and therefore reduce the threat of crime, health hazards, and fires, ensuring public order and promoting the general welfare of all San Francisco residents.

In the midst of Commissioner Sammon's efforts, on August 1<sup>st</sup> the San Francisco Police Department Chief Frank Jordan would sign a Memorandum of Understanding (MOU) with David Ilchirt, District Director of the INS (Bau 1994). The MOU would state the INS was responsible for the enforcement of federal immigration laws while the SFPD was responsible for the enforcement of state and local criminal laws. It would also acknowledge that

By resolution 1087-85, the Board of Supervisors of the City and County of San Francisco has declared that San Francisco is a City and County of Refuge for Salvadoran and Guatemalan refugees and that enforcement of immigration and refugee policy is a matter of federal jurisdiction.<sup>35</sup>

Both agencies acknowledged in the MOU that the SFPD might encounter people who had violated state and local law, as well as federal civil immigration law. However both agencies also agreed that

The SFPD does not enforce federal immigration law, but that the SFPD will not take any action to impede the Immigration and Naturalization Service's enforcement of immigration laws nor will the San Francisco Police Department initiate enforcement activity based solely on an individual's immigration status. Except for cooperation in criminal investigations and/or the investigation of criminal aliens, the INS will not request the assistance of the SFPD when solely enforcing immigration laws.<sup>36</sup>

Working with Jim Gonzalez, the city's first Guatemalan-American District Supervisor and a former Catholic seminarian, sanctuary movement lawyer Ignatius Bau, CRECE refugee leader Carolina Castaneda, Sister Kathleen Healy, Commissioner Sammon, and his HRC staff aide Don Hesse began to revise the City of Refuge resolution. Bau however, did the bulk of the research and drafting. In order to strengthen the mechanisms for its enforcement, this team, with the advice of the City Attorney, opted to turn it into an ordinance of the city's Administrative Code. This drafting was first done as an HRC SI/PLC project that the HRC would vote on and then refer to the Board of Supervisors to pass into law. Before it was voted on, Commissioner Sammon invited Bau, Healy, and Castaneda to present the ordinance to the HRC. The

ordinance commended public church sanctuaries for their work with refugees, and mandated that no department, agency, commission or employee of the City and County of San Francisco shall use city resources to

- 1) assist or cooperate in their official capacity with any INS investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law;
- 2) assist or cooperate in their official capacity with any investigation, surveillance or gathering of information conducted by foreign governments;
- 3) request information about or disseminate information regarding the immigration status of any individual
- 4) condition the provision of services or benefits by the City and County of San Francisco upon immigration status except as required by federal or state statute, regulation or court decision.<sup>37</sup>

However, in line with the SFPD MOU with the INS, this ordinance did not instruct city employees to interfere with independent INS immigration enforcement activities in the city (Bau 1994). After HRC approval in September of 1989, the ordinance was reviewed by the Board's Human Services Committee, and in October it was presented to the full Board by Supervisors Gonzalez, Walker, Alioto, and Britt. Prior to the vote, sanctuary movement leaders organized the Sheriff's and Police Chief's support, both who weighed in heavily on the issue so that the Board was not just hearing from community and religious activists. These internal city officials understood that if they were going to be turning people over to INS then they would lose the cooperation of those immigrant and religious communities.<sup>38</sup>

The Board voted unanimously to approve it, and Mayor Agnos signed it into law. The ordinance was explicit in that it did not create any new rights "for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury." That is, no individual could file a claim under the statutes of the sanctuary ordinance for monetary damages caused as a result of a sanctuary ordinance violation. However, at the time, the main presenter of the ordinance, Supervisor Gonzalez, was Chair of the Board's Finance Committee, and therefore, would personally review and analyze city department budgets, taking into account complaints regarding non-compliance with the sanctuary ordinance. This sent a powerful message to departments and agencies that breaking this city law may result in budget cuts and as a result, departments, including the police, were cooperative.

Joseph P. Russionello, U.S. Attorney, Northern District of California who was in charge of prosecuting individuals who violated federal laws, wrote a letter to the City on October 16, 1989

The city of refuge ordinance does not relieve any City agency or department of its obligation as an employer to verify the employment eligibility of persons hired since November 6, 1986, as required by the IRCA of 1986. Nor will it relieve the San Francisco Police Department or Sheriff's Department of

its duty to report to the INS the identity of any person arrested for certain drug offenses when that person may be an illegal alien as is required in the Anti-Drug Abuse Act of 1988 and 11369 of the California Health and Safety Code.<sup>39</sup>

Within two months, all government applications, questionnaires and interview forms used in relation to benefits, services or opportunities were reviewed and all questions regarding immigration status other than those required by federal or state statute, regulation or court decision, were deleted. Mayor Agnos sent each appointing officer of the City and County of San Francisco a memo requiring him or her to inform all employees under her or his jurisdiction of the prohibitions in the sanctuary ordinance, the duty of all of her or his employees to comply with its prohibitions, and the disciplinary action that would be administered to employees who failed to comply with the ordinance. However, the form disciplinary action would take was left in the hands of department heads. Each city and county employee was then sent a written directive from the City Attorney Louise Renne informing them of the city's sanctuary prohibitions and advising them to contact the City Attorney for any technical guidance they might need on implementing sanctuary.

While the original 1985 City of Refuge resolution had not established an enforcement or monitoring body, the 1989 ordinance designated the HRC's SI/PLC, then headed by Commissioner Sammon, as the main governmental body in charge of reviewing compliance with the mandates of the ordinance. In particular, the SI/PLC, with the support of the Mayor, conducted investigations of instances of noncompliance or when a complaint alleging noncompliance had been lodged. They could then mediate conversations between the parties involved to assess whether there was a violation. If they determined that a violation occurred, they could work directly with the departments to make the necessary procedural changes to bring the department into compliance. However, the SI/PLC was not given the power to impose specific sanctions on violators.

In reflecting on his work to draft the sanctuary ordinance of 1989 and to organize with sanctuary movement leaders, Ignatius Bau later commented:

I never for all the work and research we did, I never saw sanctuary as the answer for providing the pragmatic or practical refuge or protection for individuals, but always saw it as the political and public education organizing vehicle that it was. But I did think in working on the ordinance that if we could create an environment in the city and county of San Francisco where it really was no longer about Central American refugees, but it was about the undocumented, wherever they came from, where undocumented folks could feel comfortable interacting with local government and not be in fear. And INS is clearly here and we couldn't do anything about that – they could arrest the undocumented at any time. But at least from the City side that they wouldn't be arrested, they wouldn't be harassed if they had to interact with any city services, with the city government, that they could do so without

fear. Creating that very practical protection for them was the vision. Then they could otherwise live their lives. We couldn't give them documents, we couldn't make them legal, and couldn't ever protect them from INS actually picking them up, but INS at that point was either focused on the border or raiding workplaces. They weren't in the habit of walking down the street and saying, "Hey you! Show me your papers." Or going into people's homes. If that kind of pragmatic protection is there, at least you can live your life and that is important. But it is very difficult to carve out a real sanctuary in U.S. law. The way that our constitution and our legal system is set up, federal immigration law, states and local government can't regulate in this area. So you can't declare people truly safe. So I do believe that if there is any power, it is in the power of the symbolism and in the power of at least the concept of personal safety and refuge. But how real that is and whether you can truly keep out – we are simply not cooperating, it's not that we are resisting, it's not that we are pushing out that federal power. The symbolic power for the refugee is simply that in this place, bounded by the physical city and county that they feel some degree of safety, a lesser degree of vulnerability that they might feel someplace else. But they can't ever truly feel safe because they are still at risk. But there was always that fear historically. No sanctuary was ever absolute – they were always as much symbolic as they were pragmatic.<sup>40</sup>

In the year following the passage of the sanctuary ordinance, Commissioner Sammon and Don Hesse worked with department heads to develop specific changes to policy and procedure manuals for city employees who worked directly with undocumented immigrants and refugees. Sammon and Hesse also participated in educating and training city employees on these department-specific procedural changes related to the sanctuary ordinance as well as on issues facing the undocumented. Departments most involved in the workings of the sanctuary city apparatus were the Police, Public Health, Fire, Social Services, Education, and the District Attorney's Office. However, governmental sanctuary enforcement efforts most urgently focused on modifying the practices of the Police.

SFPD officers were forbidden from stopping, questioning, or detaining any individual solely because of the individual's national origin, foreign appearance, inability to speak English, or immigration status. In the course of traffic enforcement, investigations, and taking reports, officers could not ask for immigration status documents, nor could they assist the INS in the enforcement of immigration laws unless there was a significant danger of personal injury to INS agents or threat of serious property damage during an INS raid. Nor could officers assist the INS in transporting people suspected solely of violating federal immigration laws. They could not cooperate with foreign governments in any investigation, surveillance, or information-gathering project unless it was related to an investigation into a violation of city, county, state, or federal criminal laws.

However, there were definitely hiccups. As early as July 1990 Jim Gonzalez' office received various complaints that police officers were harassing Latino street vendors in the Fisherman's Wharf tourist area where the INS was searching for undocumented immigrants. One t-shirt vendor was even detained by the police and

turned over to INS, but was released after they found that he was a legal resident. This issue exposed a rather grey area in the enforcement of sanctuary wherein police officers might be called to the scene of an INS investigation under the auspices of dealing with immigrants who are causing a public disturbance.

While the aim of the policy was to influence city employees who previously had thought it was their duty as citizens to report undocumented immigrants to the INS in all instances to begin to treating immigration status as “irrelevant” to providing their department’s services, the culture shift would remain entirely incomplete, dysfunctional, and in need of constant effort on the part of pro-sanctuary reformers in local government to remain vigilant, bring attention to the issue, and work with departments to re-train city employees. While many already viewed immigration status as irrelevant before the sanctuary ordinance was passed, others disagreed entirely with the need for implementation of the policy. Many were reluctant to participate in writing explicit sanctuary policies or attend SI/PLC trainings that they found to be a waste of time. While many department heads accepted the responsibility of implementing the policy to serve *all* San Francisco residents, including the undocumented, some did not pass the message down to the officers under their charge in an effective manner. This created a patchwork of sanctuary policy, protocols, interpretations of policy, and enforcement. One of the aims of this dissertation is to illuminate the lived policy world of this patchwork of sanctuary city policy and enforcement.

## **Conclusion**

In San Francisco during the 1980s, sanctuary movement leaders helped assemble and coordinate a network of sanctuary congregations and sympathetic politicians to “support, protect, and advocate” for unauthorized Central American refugees. Due to the success and public recognition of this work, these leaders were called upon by the municipal government to help assemble and coordinate a sanctuary city apparatus, a network of governmental departments, agencies, officials, and front-line employees to manage the precarious situation of undocumented refugees in the city. This linked the ethics, knowledge, discourse, practices, and social networks of the grassroots sanctuary movement with those of the municipal government. Governmental sanctuary required city employees to refrain from acting outside of municipal jurisdiction and from acting outside of the law when serving undocumented residents. By forbidding city employees from engaging in intrusive surveillance, information gathering, and distributing of the details of refugee legal status, the municipal government was able to provide life-sustaining municipal services to undocumented refugees and to advocate on their behalf in public arenas. Such sanctuary practices encouraged undocumented residents to remain healthy, trusting, law-abiding, and cooperative with municipal agents, and therefore, these practices were used as morally imbued techniques for city management, maintenance of public order, and promotion of the general welfare.



## CHAPTER 3

### **“SECURING” THE SANCTUARY CITY TO SAFEGUARD FUNDING: SANCTUARY CITY REFORMS FROM 1991-2004**

#### **Introduction**

In the second chapter, this author illustrated how the ethic of providing sanctuary and the practices of the San Francisco sanctuary movement were incorporated into the discourse and legal code of the municipal government. Religious social movement actors and allied government actors instituted sanctuary as a governmental ethic and institutional mandate to transform municipal protocols. This move converted the ethic and practice of sanctuary from a form of popular and moral power, which was argued to contravene governmental authority, into an ethic and practice for governing city employee conduct with regard to their interactions with undocumented residents. This chapter demonstrates that in the decade and a half following the implementation of the sanctuary ordinance, political alliances, relationships, and the discourse of sanctuary itself became highly contentious and dominated by the discursive frames of “public safety” and “immigrant criminality.” During this period the California state government threatened to withhold federal pass-through funding for policing unless the city modify its sanctuary ordinance to require local law enforcement to report undocumented immigrants accused of felony crimes to the INS. This maneuver was predicated on an erroneous assumption that deporting immigrants in general would reduce crime and increase security.

Shifting alliances led to competitions over how sanctuary would be instituted and thought of in relation to immigrants who were scapegoated as the cause of crime in general. However such scapegoating discourses served as a smokescreen for the real motivations behind the policy changes. The primary factors for making the policy change in San Francisco were less about making the city more “secure” or reducing immigrant crime in any measurable manner. Rather, the Mayor’s office and the Board of Supervisors merely wanted to maintaining funding sources for the police, and California state officials were primarily focused on fully integrating the information sharing systems of the city, state, and federal law enforcement agencies – in particular of criminal and immigration records.

In this manner, “crime” and immigrants who were blamed for it, were used as justifications to consolidate government apparatuses, shore up inefficiencies, and build political alliances at all governmental levels. In this period, sanctuary became not a conflict of church and state, but a volatile hegemonic convergence of governmental actors at the municipal and state levels, and immigrant rights organizations fighting over what governmental sanctuary meant and how it could be enacted.

Sanctuary, nonetheless, also came to serve as an ethic for providing governmental services to all residents regardless of immigration status in the city. Ensuring access without fear to health services, social services, and community services would hypothetically allow for undocumented immigrants to reside in San

Francisco with some degree of stability. However, with the passage of the anti-immigrant ballot measure proposition 187 in 1996, the anti-immigrant fervor threatened that stability by seeking to cut services to immigrants and force service providers to determine immigration status as a basis for extending services. In this period, San Francisco officials invoked the ethic of governmental sanctuary to successfully refuse to implement the law until it was enjoined by the courts.

This tradition of refusing state and federal attempts to incorporate city employees was then continued in the wake of the September 11, 2001 attacks on the World Trade Center in New York City. As federal immigration enforcement agencies reorganized and the new enforcement agency, the Bureau of Immigration and Customs Enforcement (ICE) focused all the more intensively on detaining and deporting immigrants, not only did immigrant advocates work with the Board to pass symbolic resolutions denouncing the enforcement activity, but pushed for the revision of police trainings to ensure that police officers were aware of their obligations under the sanctuary ordinance in this new world. This chapter outlines the trajectory of sanctuary from 1991 through early 2004, with its mutations, retractions, and expansions through policy amendments, discourse, and enforcement.

### **Sanctuary and The Threat of Losing Federal Funds for Policing: 1992 and 1993 Sanctuary Ordinance Amendments**

Following the sanctuary ordinance's initial implementation in the early 1990s, the ordinance served as the referent for protecting the city from federal imposition, for promoting civil rights, and a reminder that undocumented immigrants need to be not only considered, but included in the dialogue about future policy decisions. However, sanctuary never fully achieved a status of a taken for granted ideology, nor was it smoothly implemented – it continued to be contested by its opponents primarily in the Mayor's office, the Police Department, and by conservative District Supervisors over the next two decades.

Following Art Agnos' departure from his position as Mayor, Frank Jordan, the San Francisco Police Chief who oversaw the Club Elegante raid, became mayor, and appointed Richard Hongisto, a firm opponent of the sanctuary ordinance, to be his successor in the Police Department. Hongisto had famously claimed that undocumented immigrants were rendered "untouchable by the [sanctuary] law" and were a main contributing factor to overcrowding in local jails.

The Human Rights Commission also saw a change in leadership. Peter Jamero, the Director who oversaw the institutionalization of sanctuary, resigned in October 1990 and Art Agnos, before he left his position as Mayor, appointed Edwin Lee as the new Director in January 1991. Ed Lee was a veteran civil rights attorney who at the time of appointment served as the Director of the city's Whistle-blower Program, a program that was aimed at protecting employees who voiced complaints against their bosses. Lee had also been Deputy Director of Employee Relations. He had become known for his skills in the area of human rights and had worked for the city's most prominent non-profit legal agency assisting the Asian immigrant community, the Asian Law Caucus. Ed Lee created the agency's Housing Law Project

in 1977, its Garment Workers Project in 1988, and served as managing attorney from 1983-1988. During that time he was a litigant in lawsuits over race discrimination in the San Francisco Fire Department, and the preservation of residential hotels. He had also worked as a hearing officer for the Office of Citizen Complaints, which heard citizen complaints of police misconduct. Leaders in pro-sanctuary organizations such as the Lawyers' Committee for Urban Affairs, the American Civil Liberties Union, Chinese for Affirmative Action, and the Mexican American Legal Defense and Education Fund endorsed his candidacy for the HRC position.

As early as a year after the ordinance was passed, anti-immigrant and anti-sanctuary fears were mounting. Andy Furillo, reporter for the local newspaper *The San Francisco Examiner*, wrote a story that blamed the sanctuary ordinance for the murder of a man by a "Cuban drug dealer" who had been picked up for a crime and released from detention 17 days previous to the murder. Joaquin Ciria, 30, had arrived in the U.S. from Cuba in the 1980 Mariel boatlift- the mass emigration of Cubans - and was sentenced to three years probation on March 8, 1990 for selling crack cocaine. Three weeks later on March 25, he killed a man in the Mission District. Records showed that no city law enforcement agencies contacted the INS about Ciria's drug arrest, which would have resulted in his immediate placement in federal prison. Furillo's article specifically blamed a Sheriff's policy adopted in November 1990 that was related to the sanctuary ordinance, which called on Sheriff's officers to refuse to detain any immigrants, including "criminal suspects" who illegally re-enter the country after being deported on felony convictions. However, the authors of the ordinance responded by pointing out that the ordinance allows for the police and Sheriff's officers to report immigrants to the INS when they are arrested for drug offenses in order to comply with state anti-narcotics laws - in particular Section 11369 of the State Health and Safety Code. As Robert Rubin, a lawyer who helped author the ordinance said, "The system didn't work here because the responsible officials did not perform their duty. Don't blame an ordinance that properly acknowledges these legitimate criminal contexts when police officers should cooperate with Immigration [INS]."<sup>41</sup> Jim Harrigan, a deputy city attorney representing the Sheriff's department responded by saying that the jails were not a Motel 6 for the INS. Overcrowding at the jails was one main reason for refusing to detain immigrants for the INS. In February 1991, the Sheriff's department had produced a report on the county jail population that showed that county jails were over capacity by 145 people or 9 per cent.<sup>42</sup>

Many law enforcement officers were afraid to cooperate with the INS because they might be disciplined for violating the sanctuary ordinance as Michael Williams, a San Francisco assistant district attorney, had been in 1990. Williams had been "called to answer" for checking into the immigration status of an accused child molester. Other officers' sanctuary-related violations cases were also pending with the Office of Citizen Complaints, the agency that investigated accusations that SFPD officers had violated their own department general orders. By April 1991, the SFPD was calling for police officers to have greater leeway in reporting arrests of individuals they believed to be "illegal aliens". The Chief of Police asked the Police Commission to create exceptions to department policies that would allow officers to

report to the INS arrests of immigrants who were charged for aggravated felonies such as rape, murder, or robbery. These complaints came on the coattail of INS claims that the sanctuary ordinance hinders the agency's ability to do its job. INS Assistant District Director for Investigations Joseph Brandon reported,

It has limited the flow of information from the city and county to us about criminal aliens. We are not fully enforcing the immigration laws in the City and County of San Francisco because of it. That is not in the best interest of the people of San Francisco.<sup>43</sup>

But Sheriff Hennessey felt differently about the ordinance. He said, "Jails are for criminal defendants. The INS thinks we are obliged to follow civilian holding laws. I suspect if they had a firm legal standing, they would have had a U.S. attorney call and threaten me."<sup>44</sup>

In 1990, Congress passed the Immigration Act of 1990, which required states receiving federal "Anti-Drug Abuse" (ADA) block grants for crime and drug control to provide certified copies of state criminal conviction records for aggravated felonies to the INS within thirty days of a conviction.<sup>45</sup> The following year, Congress amended the law<sup>46</sup> to require mere *notice* of a conviction within thirty days, in lieu of the certified records, unless INS requested the certified records. In April 1992, the California Office of Criminal Justice Planning (OCJP), which was responsible for administering the federal block grant, determined that it would require grant recipients, such as San Francisco, to report individuals to the INS upon arrest, rather than conviction, to facilitate compliance with the federal law. It set out procedures for localities to follow:

#### Step I

During the booking procedure of a suspected alien at all county and city jails, a notation will be made on the booking report to contact INS for a confirmation of resident status. The determination to contact INS will be based on the established INS formula, which indicates that the suspect is not a U.S. citizen (The INS formula includes: lack of proper identification, inability to speak English, foreign born admission, CAL ID print verification of prior alien status.) The jail commander/watch commander of the local jurisdiction will be responsible for this initial contact and will document on the booking sheet that INS was contacted. INS will then be responsible to respond and to make the determination of resident status of the suspect. INS will interview the suspect during this booking/custody period, determine alien status, and place an Immigration Detainer (Federal form I-247) on the suspect if applicable.

#### Step II

After INS places a detainer on the booking report, the booking or records officer will transfer the necessary suspect information, including the INS

Detainer notification to the State of California Disposition of Arrest and Court Action Report (Form #JUS 8715). The jail commander, watch commander or records supervisor shall ensure that this notification is properly documented on the JUS 8715 form. From this time on the notification will be on the suspect's criminal history file as he/she proceeds through the criminal justice system.

Note: The JUS 8715 form is the one document that follows the suspect from arrest through the prosecution stage, and if convicted, to the court and sentencing stage. This form is then routed to California Department of Justice Bureau of Criminal Statistics, for state-wide data collection and to the FBI. This form has the information necessary to fill out the INS Transmittal Form. (The Transmittal Form is the INS notification of a convicted alien felon.)

### Step III

At the time of conviction the County Superior Court Clerk responsible for completing the disposition data on the JUS 8715 form will, based on the notation under the remarks section of this form that the convicted felon is an alien, fill out the INS Transmittal Form and forward it to the INS District Office within the 30 day "window" time frame.

Note: The Superior Court Clerk of each county will have the option of either: 1) doing the initial notification within the 30 day period and then, upon request, forward the certified copy of the court conviction to INS; or 2) send the certified copy within the 30 days to avoid the 2 step process. This notification to INS is to be done at the county's expense [emphasis added]. The certified copy must have a certification of authenticity under the official seal of the custodian of the records or an authorized deputy. The State of California will forward to all counties the necessary instructions, address information of district INS offices, and forms necessary to carry out this mandate.<sup>47</sup>

What was at stake for San Francisco if they did not modify their reporting procedures to comply with the OCJP's reporting plan, was \$1.2 million in federal ADA grants to the state that the OCJP would refuse to share with the city.<sup>48</sup> These funds had come to San Francisco in the form of two grants for \$600,000 each. Section 12H.2. of the City of Refuge ordinance already stated that:

City funds or resources may not be used to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or state statute, regulation or court decision.<sup>49</sup>

This provision in the ordinance allowed for local law enforcement agencies to abide by California state law which required reporting the arrest of any individual that they believed is not a citizen to the INS when the arrest is made for a narcotics-related crime. The ordinance would also allow for police to be involved in cases where *criminal* violations of immigration law were to have taken place. Most immigrants who come to the U.S. in an unauthorized manner, do not break *criminal* laws doing so, but rather merely *civil* immigration laws – that is, their illegal entry is an administrative matter rather than a criminal matter. However, they may commit criminal violations of immigration laws if they for instance, smuggle other people into the U.S. or forge immigration documents. In these types of cases, SFPD could get involved and remain in compliance with the sanctuary ordinance. Although, the policy did not allow for the reporting of all individuals arrested who have previous convictions for any aggravated felony committed in California.

In response to concerns leveled primarily by the Mayor's office that the City was allowing undocumented criminals to be shielded from deportation, in late April, 1992, Jim Gonzalez requested that the City Attorney prepare legal written opinion as to whether the sanctuary ordinance prevents city law enforcement personnel from reporting to INS undocumented persons convicted of committing crimes of violence or with weapons. At the same time, he also requested that the City Attorney prepare an amendment to the ordinance, which allowed for reporting of these individuals.

There were further outstanding legal issues and fears surrounding the compliance of San Francisco in reporting immigration information to the INS. In June 1992, Quentin Kopp, a former District Supervisor turned state Senator who was staunchly anti-sanctuary, requested an updated legal opinion from the California Attorney General regarding municipal policies that restrict local officials from reporting immigration status to the INS. In Kopp's letter to the Attorney General, he reported that even though the sanctuary ordinance allowed for adherence to federal or state statute, the impact of the sanctuary ordinance

has been interpreted as a complete prohibition and any city or county employee who violates this ordinance will be subjected to disciplinary action. This ordinance has caused a breakdown in the day to day exchange of vital law enforcement information between local police, the Sheriff's Department and the INS. Deportable criminal aliens arrested on narcotics violations, violent crimes, and other crimes involving moral turpitude are going unreported to this office because of the interpretation of this ordinance. The San Francisco Sheriff has denied INS Special Agents access to his detention facilities for purposes of booking INS custody cases either on administrative charges or criminal charges, and refuses to advise the INS of any foreign nationals in his facilities which may be of any interest to the INS. Our Special Agents only have access to the San Francisco county jail when they have a specific name of a suspected alien, and of course such information is difficult to obtain due to the ordinance.<sup>50</sup>

According to Kopp, the Sheriff and other city and county agencies had defended their position by referring to the State Attorney General's opinion #83-902 of July 24, 1984 relating to state officials' responsibility to report immigration violators to the INS. The opinion concluded that

There is no general affirmative duty in the sense of a legally enforceable obligation incumbent on peace officers and judges in California to report to the Immigration and Naturalization Service (INS) knowledge they might have about persons who entered the United States by violating title 9, United States Code section 1325, but such public officials may report that knowledge if they choose to do so unless it was learned in a process made confidential by law.<sup>51</sup>

Kopp saw San Francisco as "the spawning ground for anti-INS enforcement in the Bay Area" and feared that other cities and counties would contemplate adopting restrictive ordinances limiting police and sheriff's cooperation with INS. Kopp wanted the State Attorney General to issue a new opinion on the basis that policies like San Francisco's violated a variety of federal and state statutes, including the Federal and State Penal Code, the Immigration Reform and Control Act of 1986, the Anti-Drug Abuse Acts of 1986 and 1988, the Immigration Act of 1990, and the California State Health and Safety Code. Further, San Francisco officials, he contended went beyond what the sanctuary ordinance stipulates by, as he saw it, entirely refusing to cooperate with the INS. These Acts stated that individuals couldn't receive, relieve, comfort, or assist someone who has committed an offense against the United States in order to hinder or prevent apprehension, if they know they have committed the crime. Individuals could not, having knowledge of a commission of a felony, conceal that information from a judge, or other person in civil, or military authority. Nor could individuals shield from detection or encourage an illegal alien to remain or reside in the United States in violation of law. The Anti-Drug Abuse Act of 1986 and 1988 required for the reporting to INS of aliens arrested for violations related to controlled substances.

One resident wrote a letter to Mayor Jordan and the Board of Supervisors imploring them to amend the sanctuary ordinance to allow the Sheriff's department to turn over to INS anyone who was arrested for crimes with the idea that crime in the predominantly Latino Mission District could be solved if the city cooperated in deportations:

While I wholeheartedly support the right of any law-abiding individual to seek a better way of life, I do not believe that anyone involved in criminal activity of any kind is deserving of sanctuary. Is it too much to ask of those to whom we have granted sanctuary to be on their best behavior? Our criminal justice system is already collapsing. Why should we further burden it with criminals who are here illegally? Therefore I urge you to support an amendment to the City of Refuge resolution so that police will report anyone arrested for a criminal act to the INS if that person is believed to be an undocumented immigrant. I hope that you agree with me. While this may be

a legislative concern for you, it is a matter of life and death for my neighborhood.<sup>52</sup>

In late July 1992, Supervisor Gonzalez, with Ignatius Bau, lawyer from the Lawyers Committee for Civil Rights (LCCR) who wrote the sanctuary ordinance, responded to growing anti-immigrant sentiment that equated immigrants with criminals by drafting an amendment to the sanctuary ordinance:

Nothing in the Chapter shall preclude any City and County department, agency, commission, officer or employee from cooperating with an INS request for information regarding an individual who has been convicted of an aggravated felony, as defined by Immigration and Nationality Act Section 101(a)(43).<sup>53</sup> This ordinance shall not apply in cases where an individual is arrested and convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal. Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies.<sup>54</sup>

However, the Mayor and the anti-sanctuary supervisors didn't think that this amendment went far enough in reporting measures. The Immigration Act of 1990 required the transfer of conviction records of *all aggravated felony convictions* within 30 days of adjudication. However the Act didn't specify whether those were for convictions in the past, or for the charges that a person was recently booked on and adjudicated for. Being booked on a criminal charge did not mean that a person committed that crime and was found guilty. It just meant that a person had been accused of committing a crime. The person was not actually convicted until her case had been examined and ruled on by a judge. Criminal justice activists have pointed out that Police can engage in pre-textual arrests based on people's race or clothing that do not yield any significant evidence with which a District Attorney can file charges against a defendant, leading many cases to be thrown out even before they are seen by a judge.

In early August 1992, Mayor Jordan, blaming undocumented immigrants and the sanctuary ordinance for the jail overcrowding, put a proposition on the November ballot, which would ultimately aim to bring San Francisco into compliance with the OCJP INS reporting plan. He did this on the last day for putting an initiative on the ballot and without having consulted the ordinance's author Jim Gonzalez, the Sheriff, the Human Rights Commission or with leaders of the organized immigrant community.

The jails were the exclusive prerogative of the Sheriff's department who had been following the mandates of the City of Refuge ordinance, while those who stood to lose the federal funds were the Police. Nonetheless, the Police Department and the Mayor framed the need for changes to the sanctuary ordinance in terms of jail overcrowding, igniting anti-immigrant sentiment positing immigrants as criminals who would be released from jail because of a lack of jail space. The Police Chief



Richard Hongisto claimed that among the county jail population, perhaps 700 inmates were illegal aliens and assumed that it was due to an increase in the Latino population in the city. However, in a letter to San Francisco Supervisor Bill Maher written just a few weeks earlier in July 1992, Sheriff Michael Hennessey wrote that the Sheriff's Department did not routinely inquire into to a person's place of birth or current citizenship status. This information for him had no particular relevance to custody matters. Therefore, he told Maher, that he could not -nor could anyone - give an accurate number of "non-documented" aliens in custody. Such a statement by Hennessey would indirectly point out that Police Chief Richard Hongisto's claims were likely just estimations without any real basis in fact.

Further, immigrant leaders saw the jail overcrowding discourse as divisive, one which scapegoated immigrants, and which equates them with criminals, even though the overwhelming majority of immigrants in San Francisco are law-abiding residents. Further, they found that reporting them to the INS would not relieve overcrowding because immigrants who have committed crimes would still need to finish their jail sentences before they are turned over to the INS. This division between the Police Department and the Mayor on one side, and the Sheriff, an independently elected official, and the immigrant community, on the other side, would be a recurring factor in political battles over sanctuary in subsequent decades.

Mayor Jordan's ballot initiative stated:

Notwithstanding any other ordinance of the City and County of San Francisco, no officer, employee or law enforcement agency of the City and County of San Francisco shall be prohibited from cooperating with the Immigration and Naturalization Service (INS) regarding an individual who has been convicted of a felony, committed within the state of California.<sup>55</sup>

The initiative also included Gonzalez's amendment language, which protected immigrants from being turned over to INS following arrest at a public assembly. Such a stance appeared entirely contradictory with statements that the Mayor had made in the previous weeks when welcoming an HIV positive immigrant, Tomas Fabregas, back to San Francisco after he had been detained by the INS. The Mayor had commented that the time had come for Americans to send a clear message to the INS that they would no longer stand for "insidious [immigration] laws" which were "based solely on prejudice and ignorance." Community leaders found the Mayor's sanctuary-focused ballot initiative an example of such a prejudicial policy. Supervisor Gonzalez viewed it as mere political posturing considering that it was almost identical to his amendment. If the initiative were to remain on the ballot and to be approved by voters, all future changes would require a ballot vote, and there would likely be further anti-immigrant campaigning. The worst-case scenario, which came in the form of passing comments to the media, would be that the Mayor would attack the sanctuary ordinance as a whole and try to repeal it or refuse to enforce it.

Harvey M. Rose, the Budget Analyst of the Board of Supervisors, reported on the financial impact of the introduced amendment. He noted that

of the approximately 2,200 inmates in county jails, 23 per cent, or 500 inmates were individuals who were not pre-trial felons. While most convicted felons are transferred out of the county jails to state prisons, some convicted felons carry out their sentences in the county jails.

The Sentencing Judge may offer convicted felons a choice between staying in the county jails or moving to the State jails system if the person's jail term is relatively short. If the convicted felon chooses to stay in the county jail, the county's General Fund pays for that felon's keep. The average cost per prisoner per day in the county jail is \$59 or approximately \$21,535 annually.

Under [Supervisor Gonzalez's amendment], a convicted aggravated felon who elects to stay in the county jail system may be interviewed by INS and determined to be an illegal alien. If any individuals are subsequently removed from the county jail by INS, this would result in savings to the city. However, the Sheriff's Department does not have information regarding immigration status, and does not maintain records of numbers of convicted felons in county jails.

According to the Sheriff's Department, the extent to which the proposed ordinance would reduce jail overcrowding cannot be determined at this time because: (1) exactly what portion of the approximately 500 non pre-trial felons are illegal immigrants as well as convicted aggravated felons is unknown; and (2) no arrangement with INS, including who has the responsibility for the identification of illegal immigrants and the rapidity of the removal of such immigrants by INS from the San Francisco county jails, has yet been made.<sup>56</sup>

The financial impact report also noted that the SFPD at this point was not abiding by the sanctuary ordinance because it was suspecting persons as having "illegal status,"

if they are foreign nationals and/or non-English speakers, and are new arrestees. If an individual is suspected of being an illegal immigrant, the SFPD currently provides that person's name to the INS. Once the INS is provided with the name of an inmate suspected of illegal status, the Sheriff cooperates with the State law to allow INS access to the jail to interview that person to determine immigration status.<sup>57</sup>

In response, Supervisor Gonzalez, with community leaders, revised the amendment to reflect the Mayor's ballot initiative language, which created a "carve-out" or exception, which would allow law enforcement to report individuals who had been "convicted of a felony committed in violation of the laws of the state of California." An individual had been "convicted" of a felony when a) there had been a conviction

by a court of “competent jurisdiction”; and b) all direct appeal rights had been exhausted or waived; or c) the appeal period had lapsed. Community leaders pushed the Supervisor to include language stating that, “No officer, employee, or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual’s national origin or immigration status.”<sup>58</sup>

Supervisor Gonzalez’ amendment was first assigned to the Economic and Social Policy Committee of the Board of Supervisors but then reassigned and heard by the Finance Committee, a committee on which he was still Chair, on August 13<sup>th</sup>. It was described then as an amendment, which would add Section 12H.2-1 to the administrative code to “clarify that Chapter 12H does not apply to individuals who have been convicted of certain criminal violations.” The Mayor promised that if the Board of Supervisors voted in favor of Gonzalez’ amendment, he would withdraw his ballot initiative. The Mayor had until the first week in October to remove the proposition from the ballot.

Noticing the divisiveness of this fight, the Human Rights Commission attempted to step in and mediate a discussion between the Mayor’s Office, the community opposed to the Mayor’s ballot initiative, and Supervisor Gonzalez’ office. Concerned individuals in the immigrant community approached the Human Rights Commission and expressed fear that the Mayor’s proposition would serve to increase anti-immigrant sentiments in San Francisco.<sup>59</sup> The HRC Social Issues/Police Liaison Committee also known just as the “Issues Committee”, chaired by Fr. Peter Sammon would convene a public meeting on the amendment a week after it had been heard by the Finance Committee of the Board.

At this point, the courts and Adult Probation had continued to cooperate with reporting individuals to the INS, but the City Attorney did not see that they had firm authority to do so. Following the hearing and subsequent negotiations with the Mayor’s office, the Board’s final amendment stated

This Board of Supervisors continues to have serious concerns about the potential discriminatory and selective implementation of any cooperation between the City and County of San Francisco and the INS and specifically intends that any such cooperation not be based on an individual’s race, national origin, or ability to speak English.

This Board also specifically affirms that it shall remain the policy of the City and County of San Francisco not to initiate any enforcement activity solely on the basis of an individual’s immigration status. [...]

Nothing in this Chapter shall preclude any City and County department, agency, commission, officer, or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in

violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law.<sup>60</sup>

This language allowed for reporting at the booking stage of anyone booked on any crime – misdemeanor or felony - as long as they had been convicted *in the past* of a felony crime. In other words, it was not requiring that the crime that the person was currently booked for be a felony or that they wait until it was adjudicated and the person found guilty. This law amendment was targeting *past felony convictions*. The Board of Supervisors voted in favor of passing the amendment on August 24<sup>th</sup> and 30<sup>th</sup> and the Mayor signed it into law on September 4<sup>th</sup>. As a result the federal ADA pass-through funds that the OCJP was withholding were released. However, this would prove only the first of many challenges to the sanctuary ordinance that would be based on the discourse of immigrant criminality. The next challenge would occur a year later.

Though significant legislative compromises were made in the 1992 sanctuary ordinance amendment to comply with OCJP's 1992 directive to prevent the loss of federal funding, the OCJP didn't think that the San Francisco Board of Supervisors went far enough since their amendment only targeted *past felony convictions*. For instance, under the policy, people who were booked on felonies, but who did not have a felony conviction on their record were going unreported until the time when that person was found guilty of that new felony charge they were recently booked on. Therefore, San Francisco was not reporting all suspected undocumented immigrants to INS at the booking stage who OCJP wanted them to report. A Letter from Acting Assistant Attorney General of California M. Faith Burton to Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights of the U.S. House of Representatives dated June 30, 1993 stated:

In the case of California, the State [OCJP] faced two problems in complying with the INS alien reporting requirements. First its criminal justice records are, for the most part, not automated, and therefore, the pace at which records move through the system and are updated is extraordinarily slow. Second, the State believes that the large volume of cases processed state-wide precludes providing accurate and complete notices of conviction within the statutorily mandated 30 days.

California's plan is to provide notification to INS at two stages: (1) at the time of the arrest of an alien or suspected alien; and (2) upon final conviction. The State [OCJP] believes that, since the transfer of criminal records upon conviction cannot be guaranteed in a timely fashion due to lack of automation, notification at the time of arrest and conviction will ensure that proper notification will be provided to INS *by the county courts* within the 30-day time period prescribed in the Federal statute.<sup>61</sup>

Given the lack of automation of conviction records transfers and in light of the federal mandate to report conviction records of current felony convictions within 30 days of adjudication, OCJP still wanted local jails upon arrest and booking of an individual in a local jail to contact INS at the booking stage with a focus on *the current felony charges* as well. OCJP still wanted San Francisco jails to use the State of California Disposition of Arrest and Court Action Report (California Form #JUS 8715), so that INS could come to a San Francisco jail at the booking stage to verify immigration status of anyone suspected of being an undocumented immigrant and who was booked on a felony charge regardless of their criminal record. INS, upon initial notification of arrest of a person on a felony charge from a jail, would then make a determination as to “alien” status and, if applicable, place an immigration detainer on the arrestee. That detainer would then be attached to Form #JUS 8715. This document followed arrestees through prosecution and, if convicted, to sentencing. After a finding of guilt of a felony and sentencing, the County Court would route this conviction record with the INS immigration status determination in the JUS 8715 document and detainer to the California Department of Justice’s Bureau of Criminal Statistics, which is the State’s non-automated central repository for criminal justice records. That California department then notified INS that the person was eventually convicted for the felony charges they were recently booked on and for which INS interviewed them at the booking stage.

Given this process included many agencies moving around physical records, the OCJP continued to demand that INS be involved from the booking stage onward even before the person had been found guilty, so that hypothetically conviction records for current charges, not merely records for people with past felony convictions, would be provided to the INS in accordance with the Immigration Act of 1990. Involving them at the booking stage didn’t actually speed up the process of moving around the conviction records between the agencies, but it at least would provide INS early notification of the person in local custody well in advance of the 30-day post-adjudication period. However, what this meant would be that the INS would be notified about people with no criminal record who had merely been accused of committing a felony crime, could interview them at the local jail, and issue an immigration detainer for their deportation, even if they were later found to be innocent of the felony charges. Since San Francisco’s 1992 sanctuary amendment allowed for reporting at the booking stage of only past felony convictions, but not convictions on people’s current felony charges, San Francisco was still not in compliance with federal law according to the OCJP. And since the state had not developed a centralized reporting system that would allow it to report such convictions on current and recently adjudicated charges within 30 days of the current conviction, it created this plan to involve INS at the booking stage to cover its back given its inadequacy.

The federal government had no authority in the dispute between a state and local jurisdiction as long as the State had met all statutory requirements for receipt and sub-granting of the federal ADA funds. In this sense, the State was truly holding the funds hostage on its own and the city could not appeal to the federal government to discipline the State. At this time, the State was working on a plan to automate its records system to allow reporting to happen through a state controlled

central repository, thus relieving local jurisdictions of the reporting requirement. This, in turn, would aim to render the dispute between the State of California and San Francisco on this issue moot.

Quentin Kopp, the anti-sanctuary former Supervisor turned California State Senator mentioned previously, had introduced in April 1993 state legislation, SB-691 "Law Enforcement: Immigration Matters" which would require INS notification of suspected undocumented immigrants at the time of felony arrest. Kopp's legislation said:

In order to comply with state law requirements mandated by Section 3753 of Title 42 of the United States Code, which bases eligibility of federal grants under the Omnibus Control and Safe Streets Act, no local law shall prohibit a peace officer or custodial officer from identifying and reporting to the United States Immigration and Naturalization Service any person, pursuant to federal law or regulation, to whom both of the following apply:

- (a) The person was arrested and booked, based upon the arresting officer's probable cause to believe that the person arrested had committed a felony.
- (b) After the arrest and booking in subdivision (a), the officer reasonably suspects that the person arrested has violated the civil provisions of the federal immigration laws.

**SEC. 2.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to guarantee continued federal support for local law enforcement activities, it is necessary that this act take effect immediately.<sup>62</sup>

San Francisco Supervisors naturally expressed opposition to Kopp's legislation, and this invigorated the OCJP to reset its sites on San Francisco's sanctuary ordinance. The OCJP wanted the Board to amend the City of Refuge ordinance to incorporate an exception for individuals merely arrested and booked on felonies, regardless of their conviction history or whether or not they were found guilty of the felony they were booked on. OCJP put a hold on \$1.2 million in ADA continuation funding to San Francisco on June 30<sup>th</sup> pending changes to the ordinance and threatened to pull all \$4 million in funding in fiscal year 1993-1994. OCJP gave the Mayor's office two weeks to comply from July 1<sup>st</sup> or they would pull the funding. Given the legislative process that would require a Board Subcommittee hearing, and two additional votes of the full Board of Supervisors, the OCJP gave the city an extension from July 1 until July 23 to make the changes. Anne Kronenberg, Director of the Mayor's Criminal Justice Council (CJC) worked closely with Mike Carrington, Deputy Director of the OCJP, over the ensuing week to determine what changes would bring San Francisco into compliance with OCJP requirements and allow for a release of the ADA funds

being held. Kronenberg also worked with Scott Emblidge of the City Attorney's Office to redraft the City of Refuge Ordinance. Drafting language was created to mirror Quentin Kopp's state legislation.

Following initial drafting but prior to the Mayor introducing it to the Board of Supervisors, the OCJP reassured CJC that its new sanctuary ordinance amendment would bring them into compliance and that the ADA funds would be released if the ordinance were passed. The Mayor introduced the amendment on July 7<sup>th</sup>, 1993, which would modify section 12H.2-1 of the city's administrative code (the sanctuary ordinance):

Nothing in this Chapter shall prohibit, or be construed as prohibiting a law enforcement officer from identifying and reporting any person pursuant to state or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws.

In addition, nothing in this Chapter shall preclude any City and County department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the state of California...<sup>63</sup>

The amendment was heard and unanimously approved by the Budget Committee on July 14<sup>th</sup> and went to the full Board on the 19<sup>th</sup>. At that full Board meeting, the Board of Supervisors voted 7 to 3 in favor of passing the amendment with one abstention – Supervisors Coruoy, Hsieh, Kaufman, Leal, Maher, Midgen, and Shelley were in favor; Supervisors Alioto, Bierman, and Hallinan were opposed; and Supervisor Kennedy abstained.

This amendment to allow San Francisco Police Officers and Sheriff's Deputies to report to INS all people booked on felony charges would be a huge change to the ordinance that would place immigrants with no criminal record who were merely accused of a felony, even if they were later found by a court to be innocent, in deportation proceedings. The main issue at hand would be whether or not the State had the proper authority to require the City to comply with State guidelines that exceeded federal requirements. The State maintained that it did have the authority and contended that the City is in violation of State requirements under the provisions of the current ordinance.

At the same full board meeting of the first vote, Supervisor Hallinan, seconded by Supervisor Leal, moved that the City Attorney bring a lawsuit on behalf of the City and County against the Office of Criminal Justice Planning to challenge their right to cause amendments to the sanctuary ordinance because the City is not in compliance with the "California Plan to Report Alien Convictions to the INS". All Supervisors present at the meeting voted in favor of the motion. One supervisor told the *Examiner*, "If these amendments don't go through, as repulsive as they are, we will lose the money."<sup>64</sup> Supervisors argued that the state requirement goes beyond what is required from the federal government.

On July 26<sup>th</sup>, the day of the second reading and vote on the amendment, a coalition of community organizations committed to the defense of the rights of immigrants called The Coalition to Defend the Sanctuary Law wrote a letter to the Board to express their deep concern over the vote in favor of the new sanctuary ordinance amendment:

We consider such an amendment to be unnecessary. In San Francisco, the Sanctuary Law has helped to guarantee a climate of relative peace, particularly in the Latino community, which is affected by poverty and discrimination and where there have been several instances of police abuse. The implicit assumption in the amendment that immigrants are prone to commit serious crimes is completely unfounded. Far from that, immigrants – regardless of their status – constitute a population that is hard-working and whose contributions to North American society have been vastly documented.

The passage of the amendment seems to have been motivated by a desire for the City to be the recipient of a large sum of money intended for crime prevention. ...Nonetheless, we have information indicating that those funds will in fact be allocated to law enforcement projects and not to crime prevention efforts at the community level.

We feel very strongly that the passage of this amendment is likely to result in significant police abuse and that it will be a source of intimidation and fear for all immigrants. Moreover, we feel that this amendment will result in higher levels of discrimination on the basis of immigrant people's languages and physical features. The fact that the amendment challenges the notion of assumed innocence upon which the entire legal system of this nation is based – in effect applying a different standard to the immigrant community – makes us feel that what is being criminalized is immigration itself, and that immigrants are seen by City representatives as less worthy. To be sure, the passage of the amendment appears to us as an overt attack against the immigrant population – which is unjustly being scapegoated for the economic downturn in this nation – and we fear that racism, chauvinism, and xenophobia might be the real reasons motivating the Board's action.<sup>65</sup>

The Board voted in favor of passing the amendment 6 to 4 with only Supervisor Leal moving to a “no” vote. The Mayor signed it into law on August 4<sup>th</sup>.

Worried that each year, they might hear from the OCJP telling them that the ADA funds would be held pending amendments to the sanctuary ordinance, Ann Kronenberg, Director of the CJC wrote to Ray Johnson, Executive Director of the OCJP in September to request a written statement that these amendments passed by the Board of Supervisors satisfied the OCJP's criteria for funding requirements. Ray Johnson responded that the OCJP appreciated the city's efforts to bring San Francisco into compliance with federal law regarding the receipt of ADA funds and as a result of the corrective action taken concerning the sanctuary ordinance, the



OCJP was able to certify that San Francisco was then in compliance and that they would be able to continue funding the “vitaly needed anti-drug activities.”

In October, Quentin Kopp’s state legislation, SB-691 also was adopted by the state legislature as Section 53069.75 of Chapter 818 of the Government Code. Over the next few years, the various law enforcement-related departments would continue to make adjustments to their policies. In 1994, Juvenile Probation requested assistance from the City Attorney to clarify whether or not the sanctuary ordinance procedures for reporting individuals booked for the alleged commission of a felony applied to juveniles as well. In February 1994, City Attorneys Buck Delventhal, Loretta Giorgi, and Julie Moll contended that yes it did. Under the previous amendment for reporting of convicted felons, juveniles could not have been reported to INS for past felonies they committed due to the fact that they are not subject to the same prosecution and conviction as adults and once juveniles are released from being a ward of the Juvenile Court Authority, they are not considered convicted felons. Under the 1993 amendment calling for reporting at the booking stage, juveniles could be reported to the INS because they were booked in the same manner as adults wherein the police and Juvenile Probation use the same booking procedures, and juveniles could be charged with a felony offense.<sup>66</sup>

### **Accessing the Sanctuary City in the Age of Proposition 187, 1994-2000**

Over the next six years, the anti-immigrant popular and political discourse honed its fear-mongering by emphasizing immigrant criminality, violence, and the threat to citizen safety. However, beginning around 1994, anti-immigrant politicians began to additionally blast undocumented immigrant access to public services and the supposed resulting inflated cost to taxpayers. In particular, undocumented immigrants were charged with being a burden on the public school system, the healthcare system, and other social services systems. This sentiment was channeled into the passing of the highly controversial California ballot initiative, Proposition 187 (“Prop 187”), in November 1994.

Prop 187 authorized all law enforcement agents to ask arrestees about their immigration status if the law enforcement agents suspected that they were undocumented. If they found evidence of illegality, they were required to report it to the Attorney General of California, and to the federal Immigration and Naturalization Service (INS). The proposition also prohibited local governments from preventing or limiting law enforcement from reporting the evidence of illegality to the Attorney General and INS. Further, the proposition targeted public service and benefits providers by requiring them to, in writing, report their suspicions of a benefits seeker being undocumented to the INS. This would enforce a provision of the proposition, which would deny any public social services to immigrants until that person was verified as a U.S. citizen or lawfully admitted alien. This would include health care services from a publicly funded health care facility and public elementary or secondary schools. Each school district was responsible under the proposition to verify the legal status of each child enrolled in their district and the legal status of each parent or guardian of each child. If found to be

undocumented, the child's family would receive a notice from the Attorney General and the INS and would then be barred from attending school 90 days from the date of the notice. The Attorney General was then required to keep records on all such cases and make them available to any other government entity that wished to inspect them. Lastly, Prop 187 made the manufacture, distribution, sale, or use of false citizenship or residency documents a state felony punishable by imprisonment or fine.

One day after the bill's passage, the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU) filed lawsuits against the measure in state court, and three days after the bill's passage, Federal Judge Matthew Byrne issued a temporary restraining order against instituting the law. A month later in December, Judge Mariana Pfaelzer issued a permanent injunction of Prop 187 blocking all provisions except those dealing with higher education and false documents. Over the next five years, the constitutionality of the proposition was litigated.

Soon after the injunction, San Francisco Mayor Frank Jordan issued a pronouncement that the City of San Francisco would not enforce Proposition 187 unless and until federal courts clarified its constitutionality. He further explained to the public that this meant that no one should fear being denied emergency medical services, police protection, public schooling, or housing due to their immigration status. The HRC, following Mayor Jordan, also reaffirmed its enforcement of the City of Refuge Ordinance, which according to them "does not permit any City official or City employee to perform the work of the U.S. Immigration and Naturalization Service (INS)."<sup>67</sup> The HRC stated that,

It is the mission of the Human Rights Commission to assure the residents' of San Francisco that you can live and work here without fear and that you will not be discriminated against due to your race, national origin, gender and sexual orientation. Our City is committed to the following: The Department of Public Health will continue to provide daily and emergency medical services regardless of immigration status; the S.F. Police Department will continue to provide police assistance and services regardless of immigration status; The San Francisco Unified School District will continue to enroll and teach all resident students regardless of immigration status; The Human Rights Commission will continue to enforce all local laws, including housing laws which prohibits discrimination based upon immigration status.<sup>68</sup>

From 1994-1995, the Board of Supervisors passed a variety of symbolic resolutions opposing state and federal welfare reform bills that had sought to preclude undocumented immigrants from receiving public benefits, such as access to prenatal care through presumptive Medicaid eligibility, and access to services. One Board resolution established a more general policy to oppose any federal or state restrictions on immigrants' access to public services. The Board also held hearings and passed resolutions which opposed federal laws that would require the local verification and reporting of immigration status to federal authorities.<sup>69</sup>

Nonetheless, the passage of Prop 187 was accompanied by an increase in INS raids and San Francisco police involvement in deportations.<sup>70</sup> Just a few months earlier, in July 1994, the INS, perhaps in gearing up for the raids, had attempted to obtain a part of Treasure Island, an island in the San Francisco Bay within the legal jurisdiction of San Francisco, for the purpose of building an INS detention center. The Board of Supervisors successfully blocked this transfer of property.

By December 1995, the immigrant rights community organized and put pressure on the San Francisco Police Commission to clarify the SFPD procedures for the enforcement of immigration laws and cooperation with the INS in conformity with state and federal laws and the City of Refuge ordinance. As a result, they codified the Police Department General Order (DGO) 5.15, which stated “employees of the Police Department could not attempt to enforce immigration laws or assist the INS in the enforcement of immigration laws” except under very limited circumstances.<sup>71</sup> They could not stop, question, or detain any individual solely because of the individual’s national origin, foreign appearance, inability to speak English, or immigration status. Nor could officers ask for documents regarding an individual’s immigration status or assist the INS in transporting individuals who’d been solely suspected of violating federal immigration laws.

If SFPD members received requests from INS to back them up in a raid or other immigration enforcement activity, SFPD could only do so if there were a significant danger to INS agents or if property damage was likely – this included instances when the targets of a INS immigration enforcement action would likely have firearms or other weapons, the target had a history of violence, or otherwise, if it was likely that INS agents could be physically attacked. However backup assistance could not be provided to INS agents for routine operations or raids if these other elements were not part of the picture. In the case that backup assistance requests fit within these parameters, the request needed to first be approved by the SFPD Deputy Chief. The police officer would need to file an incident report describing the reasons for their assistance and notify their supervisor who would show up on the scene to ensure that the assistance was warranted.

In accordance with the sanctuary ordinance, DGO 5.15 did allow, however, for SFPD to inquire into immigration status, release information, or even “threaten” to release information to INS in limited circumstances. In accordance with the 1993 sanctuary ordinance amendment, SFPD could report people to INS if they were booked on a felony charge or in accordance with the 1992 sanctuary ordinance amendment booked in a county jail on a lower-level charge like a misdemeanor but who also had a felony conviction on their record. The referral would not be made for all people with these kinds of charges, but only if the officer had “reason to believe that the person may not be a citizen of the United States.”<sup>72</sup> Such *belief* could according to the DGO not be based solely upon a person’s inability to speak English or his/her “foreign” appearance. This vague language about reasonable belief did not set out what kind of criteria police officers would use to determine reasonable belief, nor did it mandate training for officers for making that non-final non-determination determination. Further, these bookings that triggered INS referral were police bookings with charges set by police officers – charges that may be

deemed appropriate by the District Attorney and Judge or that they may also find too stringent, baseless, lacking evidence, or entirely without merit.

Another provision in the DGO went beyond what the sanctuary ordinance required and beyond what state law had required – that if INS requested information about someone with a felony conviction on his or her record, SFPD could provide that to INS seemingly regardless of whether a booking occurred. The provision was the following

**When Information may be released.** A member shall not inquire into an individual’s immigration status or release or threaten to release information to the INS regarding an individual’s identity or immigration status except:

Prior Felony Conviction (S.F. Admin. Code 12H. 2-1  
(a)(b)(c)

**(2) When the INS makes a request for information about a person and the person has previously been convicted of a felony committed in violation of the laws of the State of California which is still considered a felony under state law.**

**DGO 5.15 B.4.c.(2)<sup>73</sup>**

The absence of booking language in this provision seemingly left the Police open to provide information to INS about anyone merely in their presence that somehow the INS knew were in their presence. However, under no circumstances could the SFPD release information to INS if the person had been arrested or convicted for failing to obey a lawful order of a police officer during a public assembly – including a protest - or for failing to disperse after a police officer had declared an assembly to be unlawful and ordered dispersal.

Most of the time when the circumstances allowed for law enforcement to notify INS of a detainee and release a person to INS custody, it would be done by Sheriff’s Department jail personnel, however there were also SFPD employees working in county jails who under this SFPD DGO 5.15 could notify INS as well. If the release of information were to be made outside of the jail, the SFPD member would need the authorization of his or her Watch Lieutenant or other Officer-in-Charge. Despite all of these restrictions, the DGO allowed the SFPD to inquire about immigration status of people seeking employment with the Department, as required by state and federal law. As with all DGOs, failure to comply with any provision of the DGO would subject the SFPD member to disciplinary action.

Translating the requirements of the City of Refuge Ordinance into a Police Department General Order gave immigrant rights advocates another venue through which they could address violations of the sanctuary ordinance. Previously they could only appeal to the HRC, which, following an investigation, could issue findings reports that find the Police Department to have violated the ordinance. The HRC had with no real enforcement power or disciplinary power aside from offering to assist

with re-training officers. Now that the Police Commission issued a DGO, the Office of Citizen Complaints (OCC) could investigate complaints of violations of SFPD DGOs lodged by anyone regardless of the complainants immigration status. Following OCC findings, the Police Commission and Police Chief had the power to discipline and even fire officers for violations of any DGO. Further, community members who were not the main parties involved in the investigation could weigh in on the violation at public Police Commission meetings, making their full testimonies public record, an arena not afforded in the HRC complaint investigation process.

To further address the needs of the immigrant community for continued access to city services, and to involve them in the political process, the Board of Supervisors passed an ordinance in May 1997, amending the city's administrative code to create the Immigrant Rights Commission (IRC), adding Article 21, Section 5.201. IRC's commissioners would be made up of immigrant community leaders and advocates, some appointed by the Mayor and some by the Board of Supervisors for two-year terms. They focused on immigrant access and participation focusing on outreach and education, policy and legislation, welfare reform education, and naturalization and citizenship. Commission members consulted with and sought the advice of immigrants and experts as needed and partnered with immigrant-serving community-based organizations (CBOs).

The IRC was charged with making recommendations to the Board of Supervisors and Mayor on how to involve immigrants in local government. The Commission made recommendations on how to improve city services to immigrants, and prepared annual reports on services for immigrants. It was in charge of developing a plan for outreach to, and education of, the public to increase public awareness of the contributions made by immigrants. They held community hearings and city-sponsored events; they studied how certain immigrant communities are most excluded from local government and elaborated ways to address this; they investigated the administration of status of services to immigrants and prepared recommendations to improve them; they wrote policy proposals and legislation, monitored state and federal legislation and policy related to immigrants, and made sure immigrants' concerns and interests were turned into policy recommendations to the city. And finally, one of the most extensive projects they monitored was the provision of translation and interpretation services in all city departments for residents whose English language skills were limited.

The IRC was supposed to be an independent body in terms of its voice - it had independent authority to issue any opinion based on immigrant rights across departments. However, some of the IRC Commissioners were Mayor appointees and defended the Mayor's position on various immigrant issues. The IRC received its budget from the General Services Agency (GSA) headed by former Human Rights Commission turned City Administrator Ed Lee. If the IRC decided that a campaign was necessary to surface an issue, Lee offered assistance in ensuring that it was effective. While the IRC did not have administrative authority, it could provide remedy on individual cases by referring people who came to ask for its assistance to the appropriate agencies. The IRC also assisted various departments to ensure that communications and policies in the city were welcoming to immigrants, particularly those who were not English speakers, to enable them to participate fully.

Providing sanctuary to undocumented immigrants, from the IRC's perspective, therefore meant much more than shielding them from deportation – it meant providing them equal access to benefits and services, ensuring funding for those services, and stabilizing their residency. For the IRC, sanctuary meant essentially treating all immigrants like any other resident of San Francisco. To this end, in some cases, what the IRC did to stabilize the undocumented community paradoxically was to support the INS's work. In May 1998, the San Francisco Board of Supervisors passed a resolution approving the assignment of full-time, paid city employees on six month contracts to assist the INS to process the backlog of naturalization applications. This was authorized to occur over a period one year. Additionally, the Board authorized the assignment of City employees on paid status to provide assistance to the INS at their regular Tuesday morning naturalization ceremonies.

However, all of these San Francisco initiatives could not stop the INS from conducting raids in the city. In fact, raids intensified during this post-Prop 187 period, leading the IRC and the Board of Supervisors in May 1999 to go as far as passing a resolution calling on the INS to make San Francisco a "Raid Free Zone":

Whereas, In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which provides the Immigration and Naturalization Service (INS) more personnel and equipment resources for conducting enforcement activities; and Whereas the INS conducts raids at places of business and at people's homes and conducts other forms of enforcement activities in San Francisco; and Whereas, Raids are sometimes used by employers as a tactic to impede workplace and union organizing and to keep wages low; which impacts all workers, regardless of their immigration status; and Whereas, Many immigrants living in San Francisco are forced to be separated from their family members and live in terror of being detained, questioned or arrested by the INS; and Whereas, the INS often violates the civil rights of undocumented and legal residents during raids, arrests and detentions; and Whereas, INS raids threaten the public safety of all San Franciscans, regardless of immigration status; Whereas, San Francisco desires all its residents, regardless of immigration status, to live free from fear of being detained or arrested by the INS; and Whereas, San Francisco values the contributions of all immigrants living in the city, regardless of their immigration status, and desires that they remain living in San Francisco; Therefore be it Resolved, That the City and County of San Francisco declares itself an "INS Raid Free Zone". The Board of Supervisors and the Mayor of San Francisco request and urge the INS to cease conducting raids, arrests and detentions within the City and County of San Francisco; and Be it Further Resolved, That the Mayor of San Francisco contact the INS District Director, Northern District, and will communicate the contents of this resolution."<sup>74</sup>

At this point, the constitutionality of Prop 187 had been thoroughly challenged by a ruling of the Federal District Court, and San Francisco called on Governor Grey Davis

to withdraw the appeal initiated under former Governor Wilson. In May of 1997, Judge Mariana Pfaelzer, who had issued the 1994 injunction of Prop 187 found the law to be unconstitutional on the basis that it infringed on the federal government's exclusive jurisdiction over matters relating to immigration. She found that California could neither regulate immigration nor alien access to public benefits. Then Governor Wilson appealed the ruling, bringing the case to the federal Ninth Circuit Court of Appeals. In April 1999, the newly elected Governor Gray Davis, who had campaigned against Prop 187 brought the case before mediation and in July withdrew the appeal initiated by Wilson, effectively killing the law.

In the two years following Prop 187's demise, San Francisco re-doubled its efforts on promoting state funding for immigrant communities, extending sanctuary to new vulnerable populations and making them visible, increasing access to city services, and continuing to make sure that city departments continue to abide by the sanctuary ordinance. It was this time when lesbian and gay bi-national couples became one of the primary targets for new sanctuary legislation. In January 2000, the Board of Supervisors passed a resolution extending sanctuary to bi-national same-sex couples, instructing City and County workers not to alert INS officials to partnered gay and lesbian foreigners living on expired U.S. visas. In March 2001, the Board of Supervisors passed a resolution urging the United States Congress to adopt the "Permanent Partner Immigration Act" to add the term "permanent partner" to a section of immigration law that provides immigration rights to legally married couples, and to allow gay and lesbian citizens to sponsor their partners as U.S. residents.

The city also called upon the state government to allocate greater funds for immigrant services. However, the city faced a huge challenge in addressing the real need of immigrant communities. Since the city did not ask for immigration status information, they could not adequately assess how many immigrants accessed their general services, aside from making assumptions based on who accessed certain programs and benefits specifically designed to serve immigrant populations. And federal funding is largely based on census counts, which traditionally undercount the undocumented community. Immigrants remain largely reserved from census participation due to mistrust and fear of government officials in the context of INS raids and high rates of deportation. In order to adequately fund services and benefits for immigrants as a whole, San Francisco and the Federal government would need to know how many undocumented immigrants reside in the city. In addition to affecting federal revenue sharing, census data determines reapportionment, redistricting, and provides critical data collection for public and private planning. Census undercounts have a profound impact on the electoral power of and resource allocation for undercounted communities. Immigrants, limited English proficient residents, and people of color are among the groups historically undercounted in the census. The result in San Francisco was that the city then had been receiving less state and federal money for services based on an incorrect understanding of the size of San Francisco's population.

Immigrant advocates and Commissioners in the IRC made it their goal to increase undocumented immigrant participation in the census by creating a plan for engaging them in a safe, trusting, and culturally appropriate manner. Willie Brown

had become Mayor in 1996 and his administration created a task force, the "Complete Count Committee" (SF-CCC), that would do outreach to traditionally undercounted communities including the undocumented immigrant community to ensure greater participation in the census. This work was part of a larger California initiative to create a more complete census count, and San Francisco received \$114,447 from the state for this work. The SF-CCC included the Mayor's Office, the Board of Supervisors, key city departments and community-based groups convened by the Mayor, Supervisor Mabel Teng, and the IRC. The SF-CCC conducted outreach through 1) government agencies that have contact with different groups to notify the public 2) the San Francisco Unified School District (SFUSD) 3) a unified media strategy that used mainstream print and "electronic" media and 4) a ground strategy where individuals went out to different neighborhoods and did a door to door census count.

The Census Bureau estimated that the 1990 census had missed 21,621 San Francisco residents equaling 2.9% of the population. The hardest to count voting tracts were in the Mission District, South of Market, Chinatown, the Tenderloin, and Bayview-Hunters Point – neighborhoods with the highest concentration of linguistically isolated households. The largest group missed was "Asian or Pacific Islander, not of Hispanic origin" with an estimated 7,431 people, followed by 4,066 "Hispanic origin" people, 1,237 "Black, not of Hispanic origin", and 929 "White, not of Hispanic origin" people.

To promote immigrant trust and mitigate fear of deportation during this outreach, Supervisors Tom Ammiano, Sue Bierman, and Gavin Newsom sponsored a resolution<sup>75</sup> urging the San Francisco District Office of the INS to consider sending a well-publicized message to the immigrant community in San Francisco that INS raids will not be pursued during the Census 2000 count and to otherwise maintain a low profile during the count. In response, David Still, Deputy District Director of the INS, visited a meeting of the IRC and spoke to the Commission about INS guidelines for operations during Census 2000. He reported that INS fully supported the Census Bureau's effort to have all persons participate in Census 2000, regardless of their immigration status. He noted that, "special consideration and supervisory review of enforcement actions will occur during the census. National security and public safety operations, however, will go forward."<sup>76</sup> The INS issued guidance to its field offices emphasizing the special steps to be taken in regard to enforcement operations during Census 2000.

The 2000 census was largely hailed as the most successful census in history and yet, the Mayor's office when looking back on the census nine years later, estimated that the city was still missing roughly 100,000 people. This would result in a missed opportunity for receiving over \$300 million in federal revenue in the decade from 2000-2010.<sup>77</sup>

Despite the gains for immigrant rights during this period, sanctuary still remained an incomplete project, with various departments remaining out of compliance with the ordinance. In October 2000, Supervisor Tom Ammiano, who represented the Mission District, had found out that since the passing of the Quality Housing and Work Responsibility Act (QHWRA) of 1998,<sup>78</sup> a federal law that required immigration status reporting for accessing public housing, the San



Francisco Housing Authority (SFHA) had been verifying the social security numbers of public housing applicants and residents with a private contractor of the INS. The SFHA got most of its \$40 million budget from the U.S. Department of Housing and Urban Development (HUD), a federal agency, and so was moving forward with complying with HUD's requirements to ensure it would receive its planned revenue. SFHA immigration status reporting would have an adverse effect on 2,000 people in San Francisco Section 8 housing, housing provided by Housing Opportunities for People with AIDS, and the Public Housing program.<sup>79</sup>

In response, Supervisor Ammiano sponsored a resolution in opposition to the QHWRA, which urged the SFHA to keep available housing open to all people attempting to exit homelessness and "in the spirit of the San Francisco Sanctuary Ordinance not to share names of persons who may be undocumented with the INS, INS contractors, and associated agencies."<sup>80</sup> While this resolution passed, the Housing Authority continued to deny subsidies to immigrants already in subsidized housing who couldn't prove citizenship or legal permanent residency and also to require them to verify immigration status through the INS.<sup>81</sup> Over the next year, Supervisor Ammiano continued to work for sanctuary in the SFHA by establishing a General Fund residential rent assistance program for tenants whose federal rent subsidy in San Francisco had been reduced or revoked due to a failure to meet federal immigration status verification requirements imposed under Section 592 of the QHWRA, including tenants in San Francisco Housing Authority units and Section 8 units; providing criteria and procedures for disbursement of that funding, and identifying companion legislation that would provide funding of \$349,000 from the City's General Fund for the first year of the program. The ordinance codifying the program finally passed in July of 2002. *Strong Tenants Against Eviction*, a group of organizations and tenants, formed and worked with Ammiano, to create a pool of city money that would make up for the loss of federal subsidies some residents would face. In the end, \$360,000 was set aside from the San Francisco city budget to assist them.

### **Governmental Sanctuary in the Age of Homeland Security, 2001-2004**

In the wake of the September 11<sup>th</sup> attacks in 2001, the federal government clamped down on undocumented immigration and targeted immigrants for detention and deportation in an unprecedented manner. Immediately following the attacks, the San Francisco Board of Supervisors acted quickly to protect immigrants from being scapegoated, and to resist federal attempts to monitor their population through unconstitutional invasions of privacy. They did this all from the standpoint of sanctuary. Beginning on September 17<sup>th</sup>, Supervisor Chris Daly sponsored a resolution<sup>82</sup> denouncing the terrorist acts of September 11, 2001, urging swift and just apprehension of the perpetrators, supporting immigrant and religious minority communities against domestic terrorism and swift prosecution of hate crimes, and decrying war as an answer to intractable socio-political problems.

A little over a month later, the Bush Administration signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). It allowed for the

indefinite detention of immigrants and gave permissions for law enforcement officers to investigate U.S. and non-U.S. citizens in a much more invasive and expansive way. They could do this by searching a home or business without the owner's or the occupant's consent or knowledge, for the FBI to search telephone, e-mail, and financial records without a court order, and expanded access of law enforcement agencies to business records, library records, and financial records. Wiretapping and surveillance orders were expanded, including an expanded use of roving wiretaps - wiretaps that don't need to specify all carriers or third parties - and internet service providers could be subpoenaed for a wide variety of user information.

On January 23, 2002, through the passing of the Homeland Security Act of 2002, the Department of Homeland Security (DHS) was created. The mission of the office would be to

develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The Office will coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.<sup>83</sup>

It would consolidate 22 U.S. executive branch agencies that all played a role in "homeland security" into a single agency. Namely, it consolidated certain agencies of the Defense Department, Treasury Department, Justice Department, Agriculture Department, General Services Administration, Transportation Department, Health and Human Services Department, Energy Department, and the FBI. Following the creation of the DHS, raids increased in San Francisco, and immigrants, particularly from the Middle East, were targeted for surveillance. In San Francisco, this created a climate of fear and intimidation as raids occurred at the workplaces and homes of immigrants.

Home raids typically included a team of heavily armed immigration enforcement agents who approached a private residence in the pre-dawn hours, seeking an individual believed to have committed a civil immigration violation. Agents, in possession of only administrative warrants, which don't grant them legal authority to enter private dwellings, then pushed their way in when residents answered the door, entered through unlocked doors or windows or, in some cases, physically broke into homes. All occupants were then seized, interrogated with no legal authority, and suspected immigration status violators were arrested, detained, and deported if found to be in violation of immigration laws. Often no high priority target was apprehended. In their wake, children were left without parents or other relatives to take care of them, and often ended up in the city's child welfare system. When parents were not capable of finding their children while they were in detention and deportation, and no one else claimed to serve as a guardian to the children, parents were accused of "abandoning" their children and permanently lost custody of them.

By May 2002, community organizations worked with Supervisors Daly, Gonzalez, and Sandoval to pass a resolution promoting San Francisco's commitment

to “ensuring that all its residents may live in safety and free from discrimination in the midst of the post-September 11 “war against terrorism,” by reaffirming San Francisco's status as a City and County of Refuge, and an “INS Raid-Free Zone.” Additionally, the IRC passed a resolution supporting the Board resolution.<sup>84</sup>

The Board of Supervisors also found the need to directly address the encroachment of the federal government through the PATRIOT Act and its threat to maintaining sanctuary for all residents regardless of immigration status. In December, Supervisors Jake McGoldrick, Sandoval, Daly, Peskin, Maxwell, and Gonzalez sponsored a resolution communicating that no City employee or department shall officially assist or voluntarily cooperate with investigations, interrogations, or arrest procedures, public or clandestine, that are in violation of individuals' civil rights or civil liberties as specified in the U.S. Constitution due to the passing of the PATRIOT Act. The resolution acknowledged the contributions of immigrants to the San Francisco community, stating that they were vital to the community's character and function. It sought to uphold the guarantees of the U.S. Constitution which they found to also be contiguous with the values of sanctuary: freedom of religion, speech, assembly, and privacy; protection from unreasonable searches and seizures; due process and equal protection to any person; equality before the law and the presumption of innocence; access to counsel in judicial proceedings; and a fair, speedy and public trial. The resolution affirmed the rights of all people, including U.S. citizens and citizens of other nations, living within the City in accordance with the Bill of Rights and the Fourteenth Amendment of the U.S. Constitution. Finally, it called on San Francisco's U.S. Representatives and Senators in Congress to monitor the implementation of the PATRIOT Act and to actively work for the repeal of the Act and all orders that violate fundamental rights and liberties as they were stated in the U.S. Constitution.

In March 2003, the Department of Homeland Security restructured the INS by combining Immigration, Naturalization, and Customs to create the Immigration Customs Enforcement service (ICE). ICE was conceived to be a law enforcement agency for the post-9/11 era, to integrate enforcement authorities against criminal and terrorist activities. These types of activities included not only interdiction of unauthorized immigrant job seekers, but also a focus on human trafficking, smuggling, transnational gangs, and sexual predators of children. Shortly after this restructuring, there was an increase in the number of immigration raids, mass deportations, and a sacrificing of frontline services.

David Still, Interim District Director of the Bureau of Citizenship & Immigrant Services (BCIS) visited a meeting of the IRC and spoke to them about the effects of the Immigration & Naturalization Service (INS) reorganization on the provision of immigration services. Still explained that on March 1st, the INS was absorbed into the Department of Homeland Security (DHS) and its functions were divided between two bureaus: the Bureau of Citizenship & Immigration Services (BCIS), which provides immigration-related services to the public; and the Bureau of Immigration and Customs Enforcement (BICE) responsible for enforcing immigration and customs laws. In support of the DHS overall mission, the immediate priorities of the new BCIS were to promote national security, to continue eliminating backlogs in immigration/naturalization processing, to implement

solutions for improving immigration customer services, and to improve the administration of benefits and immigration services for applicants by exclusively focusing on immigration and citizenship services. Mitchell Rose of ICE also addressed the Commission's concerns regarding crimes that were perpetrated against immigrants, whether documented or undocumented. Rose noted that criminal victims should contact the police and the District Attorney so that the criminals could be prosecuted. As an example, he pointed to the recent prosecution of an alleged immigration consultant by Santa Clara County for defrauding immigrants. He informed the Commission that undocumented aliens who were victims of serious crimes, such as kidnapping, spousal abuse, and human trafficking might be eligible to obtain either a U or T visa, provided that the victims assist and cooperate with the prosecution of the criminals.

During this same month, the immigrant-serving non-profit community grew increasingly concerned about the rising number of raids in the city after September 11, and especially after the creation of ICE. They pushed city officials and the San Francisco Police Department to ensure that SFPD officers would not participate in immigration enforcement or discrimination against Muslim and Arab immigrants. In response, the IRC and HRC convened joint monthly meetings with the police to discuss anti-immigrant backlash since September 11 and to identify ways that they could make sure officers abided by the sanctuary ordinance. They called themselves the "Backlash Working Group" and were composed of the Acting HRC Director, an HRC staff member, an SFPD Lieutenant from the Special Investigations Division, a Captain from the Recruiting Department, and various directors of immigrant-serving non-profits. They discussed the use of City resources with respect to the Patriot Act, assigning an officer to a position as a community relations person, and the department's recruitment efforts for recruiting new officers. The Special Investigations officer stated that the Patriot Act did not impact SFPD at all and that the SFPD would not comply with any subsequent Patriot Acts if additional versions were passed because San Francisco "is a City of Refuge." The department put their officers through racial profiling training consisting of role-playing and discussions about different cultures and about past mistakes that the department has made. The training was conducted by Grass Roots Organizers from the Muslim and Arab Community (GOMAC) at the SFPD Police Academy.

Following this model, the Backlash Working Group decided to create a more robust training for police officers on following the department's existing immigration enforcement policy, DGO 5.15, which clarified sanctuary ordinance compliant procedures in the Police Department. Working with immigrant-serving community organizations, the Backlash Working Group and the San Francisco Police Academy's training officers created a new DGO 5.15 "roll call" training. This roll call training was started with a pre-test to assess the current understanding of the officers. The training officer would pose the question, "Can a San Francisco Police Officer assist an Immigration and Naturalization Agent checking for "illegal aliens" in a sewing factory?" Following the officers' responses, the training officer would guide them through a series of more complicated scenarios under which the SFPD might be called by ICE to participate in a raid, or scenarios where individual officers might be tempted to call ICE when encountering someone suspected of being

illegally in the country. Following the scenario explanation, the roll call would include questions about how the officer should respond. Each question would then follow with an explanation of the portions of the DGO 5.15 applicable to the scenario. The primary scenario concerned booking a suspect for a felony-level offense. It read:

You are booking a suspect for armed robbery. A check of his rap sheet reveals a prior conviction for armed robbery. The suspect is Hispanic and speaks very little English. You also note on his rap sheet that he has numerous en-route U.S. Department of Immigration holds. You believe the suspect to be an "undocumented alien" with a prior felony conviction and pick up the telephone to notify Immigration. You are stopped by your supervisor who reminds you of DGO 5.15 and the "City of Refuge" Ordinance. Who is right?<sup>85</sup>

The training officer then discussed with the officers that

Members shall not stop, question or detain any individual solely because of the individual's national origin, foreign appearance, or inability to speak English or immigration status.

Members shall not enforce immigration laws or assist the INS in the enforcement of immigration laws except 1. When a person has been arrested for Health and Safety Code Sections 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11357, 11359, 11360, 11361, 11363, 11366, 11355 and there is reason to believe that the person may not be a citizen of the United States. 2. When a person is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. 3. Prior felony conviction. a. When a person has been booked at any county jail facility and has previously been convicted of a felony committed in violation of the laws of the State of California, or b. When the INS makes a request for information about a person and the person has previously been convicted of a felony in violation of the laws of the State of California. 4. Before release can be made by personnel other than those assigned to the county jail, a member must have the authorization of his/her watch lieutenant or Officer-in-charge.

Members may provide back-up assistance to the INS only when the member determines that there is a significant danger of personal injury or serious property damage. 1. If a request for back-up assistance is made in advance, the member's Deputy Chief must approve. 2. Members providing back-up assistance to the INS must immediately notify their supervisor who shall immediately respond to the location and ensure that such assistance is warranted. 3. Members shall file an incident report describing the reasons for their assistance. 4. Members shall not assist INS in transporting persons suspected solely of violating federal immigration laws. 5. SFPD Policy does

not prohibit a member from performing his/her duties in enforcing state and local laws.

The City of Refuge Ordinance prohibits release of information to the INS in a case where a person has been arrested or convicted for failing to obey a lawful order of a police officer during a public assembly, or for failing to disperse after a police officer has declared an assembly to be unlawful and ordered dispersal. Members shall not assist or cooperate with any investigation, surveillance or information gathering conducted by a foreign government unless it is related to an investigation, authorized by the Police Department, into a violation of city and county, state or federal criminal laws.<sup>86</sup>

The training officer would go further and discuss the ethical underpinnings of the DGO 5.15, noting, "It is the policy of the San Francisco Police Department to foster trust and cooperation with *all* the people of this City and encourage them to communicate with police officers without fear of inquiry regarding their immigration status."<sup>87</sup> Following the explanation of the applicable DGO 5.15 provisions, there would be a "post-test" where the training officer assessed how well the officers grasped the issues. The training officer would present a final scenario: "INS makes numerous arrests for violation of immigration laws at a sewing factory in Chinatown. They call for backup and assistance in transporting to their holding facility. Can you assist?"<sup>88</sup>

In October 2002, the state government closed the Office of Criminal Justice Planning (OCJP), the state agency that a decade earlier threatened to withhold public safety federal pass-through funds from San Francisco. They had done this in order to force the Board and Mayor to amend the sanctuary ordinance to allow reporting of people booked on certain crimes. In 2002, the California state auditor had found the OCJP's process for awarding grants weak. The OCJP didn't have guidelines for evaluating recipients' past performance, nor did it provide oversight of grant recipients. The auditor found that the OCJP didn't visit recipients as planned, follow up on recipients' submission of required reports, or properly plan its evaluations. There was also similarity in OCJP and DHS's programs and overlap between their application and oversight activities. As a result of this audit, the state legislature included in the 2003-2004 Budget Act language that the OCJP will be eliminated effective January 1, 2004 and its grant programs will be transferred to other state agencies such as the Office of Emergency Services. At this point, San Francisco had already ceased to receive the pass-through funds that the OCJP almost a decade earlier had withheld. Even though the OCJP was closed down, and San Francisco stood to lose no federal money for not reporting undocumented felons to INS, amendments to the sanctuary ordinance introduced in the early nineties remained in the law and by this point had come to play a role in promoting the sanctuary discourse, which excluded "criminal immigrants" from being deserving of sanctuary.

## Conclusion

What can be clearly seen is that the discourse of sanctuary in this period led to the operationalization of sanctuary city-assisted deportations based on a discourse that had existed when the City of Refuge resolution had first been passed –that, as the prior Mayor Diane Feinstein had stated - sanctuary would not be extended to criminals. The deportability of immigrants on the basis of exceptions built into the sanctuary city ordinance during this period would transform the sanctuary ordinance from a law that ensured due process and access to services, at least on paper in all instances, into a law which would also clarify when it was appropriate and legal for municipal agents to participate in deportations. For the sanctuary city, immigrant deportability would hinge not on the fact that immigrants violated federal civil immigration law when entering the country without authorization, but on their violation of criminal municipal and state law – violations of the state Penal Code. This necessity for operationalizing the discourse of immigrant criminality in the manner in which city agents would assist in deporting immigrants who had been accused of felony-level crimes was an imposition of the California state government that, as they saw it due to technological inefficiency, was required by the federal government to demand that immigration status reporting standards change at the municipal level. This imposition was largely met with acquiescence by municipal officials on the basis of abiding by federal law, but primarily because they found that the security of police budgets trumped the need for due process for all residents regardless of immigration status. Rather than resist the state government’s attempts to turn the sanctuary city into a partner of the federal deportation apparatus, the Board of Supervisors begrudgingly amended the sanctuary ordinance. While this discourse was not born in this period, the legalization of the discourse in the administrative code would grow to be the decisive element around which the enactment of sanctuary city policy would be debated over the next two decades.

However, sanctuary was not only something that would allow for the deportation of some, but would also largely inform government officials in how to respond to and confront federal attacks on immigrants in the wake of anti-immigrant initiatives imposed through proposition 187 and federal enforcement activity following the September 11<sup>th</sup> attacks. In this manner, during the period of 1991-2004, sanctuary would serve as both a mechanism for clarifying how a city could assist in deportations, a value for ensuring service provision to all residents regardless of immigration status, and an ethos of municipal official resistance to the federal attack on immigrants in San Francisco.

As other anthropologists of policy have stated (Tate 2015) and what this dissertation further elaborates is that individual policy fits in a larger policy world, reiterating, drawing upon, and constantly referring back to past policies that legitimize it, give it authority and legitimacy. Such reference to prior policy, as can be seen in the case of Board and IRC resolutions to reaffirm San Francisco’s sanctuary city status, allowed pro-sanctuary actors to tactically frame their new resolutions as non-controversial, as part of the status-quo within the larger sanctuary city policy world. These new resolutions nonetheless re-expressed, ignited, and expanded existing political values of sanctuary to take on new meanings

and new policy territories. In that sense, they toyed with the status quo, and challenged the policy world to do something different, pushing beyond the status quo rather than merely restoring it.



## CHAPTER 4

### DEPARTMENTALIZING SANCTUARY

#### Introduction

In the previous chapter, the development of sanctuary city policy implementation and the politics of municipal cooperation with the federal deportation regime came under heavy attack from the State and Federal governments. However, with that attack, was a reinvigoration of the ethic of governmental sanctuary as something that would remain relevant to municipal governance in the post-Homeland Security era. Such a dialectical relationship between sanctuary and federal deportation would push the agents of federal deportation and the agents of municipal sanctuary to advance development of their respective policies and practices in an ever more entrenched and sophisticated manner. In this sense, it is arguable that with each blow that federal and state agencies deal to the sanctuary city, the sanctuary city doubles down in its efforts to expand its practices to ensure due process and the provision of services to all residents regardless of immigration status for the proper functioning of municipal government. That is, without the ever-advancing deportation regime, the sanctuary art of government would remain in a simple, preliminary stage. With every increasingly more vociferous attack on immigrants, the municipal government, which aims to govern its employees to serve a mixed-immigration status city population, learns, creates new solutions and new protocols, and expands. In this manner, the dialectic of municipal sanctuary and municipal cooperation with federal deportation creates a new form of municipal governance for a border-filled world: *sanctuary-power*.

This chapter will outline the most extensive institutionalization of sanctuary city protocols since the law's inception that would occur in response to the federal attack on San Francisco's residents regardless of immigration status. This project was an Executive Branch effort to "departmentalize" sanctuary. This project was called *The Sanctuary City Initiative*. Under the direction of the Mayor, all department heads were required to create department-specific sanctuary ordinance-related protocols for front-line staff to abide by when serving all residents regardless of immigration status if they didn't already have them. Further, once these protocols were defined, all employees of those departments would receive training in the protocols. Upon completion of this training, the Mayor, flanked by the Department Heads and community organizations announced that despite the increased immigration enforcement activity in the City, San Francisco was still a sanctuary city for all residents to feel safe in engaging with the municipal government. Such a project was initiated under the pressure of immigrant advocacy organizations and labor organizations that pushed the Mayor to issue an Executive Directive, or decree that department heads would need to follow.

After an initial centralized assertion of Mayoral executive power that commanded, coordinated and directed the city-wide effort to implement an overarching strategy of governmental sanctuary, this program was implemented through the work and leadership of immigrant community advocates working in

community based organizations and in government positions inside of City Hall. For a brief period of time, from mid-2004 until the spring of 2008, city officials in the legislative branch and the executive branch had created a unified sanctuary city hegemonic bloc with the organized immigrant community that would confront the federal government, not to stop federal deportations or defy federal law, but to ensure the survival of the image of San Francisco as a sanctuary city through operationalizing sanctuary protocols further in the day to day practices of city employees.

### **The Era of Increased ICE Raids**

On the heels of District Supervisor Gavin Newsom, who represented the wealthy Marina District of the city, becoming the new Mayor in January 2004, and his appointment of long-time police officer Heather Fong as Police Chief, in early May 2004, ICE and the FBI began ramping up raids in San Francisco. On May 6, FBI and ICE conducted a raid on the Sunrise Hotel, a residential hotel in the Mission District populated mostly by Mexican and Central American immigrants. Federal agents were searching for one person, but in the raid, seven Mexican nationals and two South East Asians were taken into custody, and the two Mexicans were quickly deported without access to legal counsel. The individual who the agents had been looking for had allegedly violated his immigration orders to leave the country. This home raid was a part of “Operation Endgame”, an operation to reduce the number of foreign nationals who have been ordered removed by a federal immigration judge, but who had failed to report for deportation. All but one of the people detained signed voluntary deportation notices, and one person asked for a hearing but was deported anyway.

Supervisors Tom Ammiano, Bevan Dufty, and Chris Daly responded by sponsoring a resolution condemning the raids and urging the FBI and ICE to “send a well-publicized message to the immigrant community in San Francisco that INS raids will not be pursued in immigrant communities.” When arguing for the passage of the resolution, Supervisor Daly said,

San Francisco is a city of refuge. These kind of raids should not be happening anywhere in the city. The Hotel Sunrise in particular is not only one to low-income adults but to many low-income families seeking refuge from homelessness. It is unacceptable that these vulnerable families would have to deal with something like this.<sup>89</sup>

The resolution also urged the federal government to not “spend valuable resources on targeting hardworking immigrants” and to allow those taken into custody to access to legal council, to have a hearing, and have their case reviewed by a judge.<sup>90</sup> Supervisor Ammiano noted:

Although the feds do pre-empt our sanctuary laws here, in the past we’ve been able to hold them at bay, not well enough, but by not cooperating with them. I’ve had meetings in the past with the head of INS, and that’s something

we might do, we could also have a hearing on it. Until we can get that law changed, the more we make our position known as a sanctuary city and protest these actions, I think it will have some effect.<sup>91</sup>

Despite the raids, San Francisco moved forward with its initiatives to provide access and inclusion to all residents regardless of immigration status. By September 2004, the SFPD under Chief Fong worked to extend Police services to immigrants through language access in accordance with the language access ordinance. They met with community-based organizations Chinese for Affirmative Action, Asian Law Caucus, and Chinatown Neighborhood Resource Center in order to identify some of the areas they could improve upon in terms of language access. They planned to do outreach to the Chinese community to ensure that their officers were able to “deal with” in Chief Fong’s terms, residents who do not speak English. Police dispatchers began to connect immigrant callers to interpreters and bilingual officers, and attempted to call those officers to the scene to help the immigrant. Officers could also call a language line with their cell phones and speak to an interpreter who could assist their conversations. Each officer carried a card that listed all the city’s major foreign languages so that immigrants could point to the card to identify the language they speak. This card also had the phone numbers for the language line’s interpreters in particular languages. The SFPD also provided public safety trainings in the Chinese immigrant community. Chief Fong, when addressing the IRC who oversaw the Language Access Ordinance reiterated that the Police Department could not treat people differently or take any action because someone is undocumented. She also re-affirmed that the police would provide the services even if immigrants are “illegal”. Lastly, she told them that, “The Police Department does not help the Immigration Department [ICE].”

The IRC continued to work with the SFPD to ensure that they remembered that they should “treat equally all those they serve regardless of sex, race, immigration status, language ability, lifestyle, or [regardless of] the primary reason for police contact.”<sup>92</sup> The IRC also worked with the SFPD to ensure that San Francisco police officers received training in crisis intervention techniques appropriate to non-English speakers, particularly as they related to recent immigrants and those with mental health problems.

Over the next year, Sanctuary would receive a series of federal legislative blows. The most significant one came on May 11, 2005, when President George W. Bush signed into law the REAL ID Act of 2005 as a part of the War Appropriations Bill. The bill, which focused on emergency appropriations for military spending and tsunami relief, had been amended to include several immigration and asylum law provisions which came to be known as the REAL ID ACT which were entirely unrelated to war spending. Although the declared purpose of these provisions was to protect United States citizens and legal residents from terrorists, instead they were viewed by immigrant rights and civil rights advocates as eroding civil liberties, expanding the power of the executive branch, diminishing the power of the judiciary, and stigmatizing legal immigrants.

The first main provision retroactively expanded the definition of terrorism in the Immigration and Nationality Act (INA), which had previously referred to any use

of a weapon not motivated solely by economic gain to endanger individuals or to substantially damage property. The REAL ID ACT expanded the definition to include pure speech and association and rendered even lawful permanent residents deportable and ineligible to be legal citizens of the United States for speech and association activities deemed terrorist activities. Non-citizens could be deported and barred from admission for life for “endorsing or espousing” terrorist activity or a terrorist group. And these provisions were retroactive, so for example, a non-citizen who had lived under apartheid in South Africa and who in the past spoke out in support of the African National Congress (ANC)(which met the definition of a terrorist group) would forever be barred from coming to the United States and would be deportable if she were already living in the United States, even if no one had paid attention to that person’s support for the ANC in the past, and her support had incited nothing.

Immigrant advocates in San Francisco expected that this provision would have a chilling effect on lawful permanent residents, especially those who gained asylum from countries with civil conflict, by muting their speech and by discouraging donations to charities or other association activity. The trigger for deportation would likely be a file review during the naturalization process where earlier disclosures in asylum or permanent residency applications might come back to haunt the person. They expected that lawful permanent residents as a result may be reluctant to apply for citizenship.

The third provision of the act most directly threatened sanctuary by creating national driver’s license and identification card requirements that advocates said threatened to foster discrimination based on race and ethnicity, and which violated privacy rights and discriminated against legal immigrants. The provision required drivers’ licenses to include a wide and standardized set of personal data such as name and address, date of birth, a biometric identifier, and unique ID number; and that the data be made available not only on the front of the card, but also on an undefined “machine-readable technology” that would be on the back of the card. The REAL ID Act forced states to link their drivers’ databases that contain every licensed driver’s detailed personal information with other states and the Federal Government. This created, in effect, one national database, so that all of the private data in motor vehicle records were instantly available to a wide range of state, local, and federal officials. In essence, the Real ID Act made drivers’ licenses into *de facto* national ID cards. The result would be that California Department of Motor Vehicles (DMV) officials were required to check every applicant’s citizenship or immigration status as a condition for obtaining a license. Advocates thought this would further marginalize San Francisco residents without status, leaving them unable to board a plane, open a bank account, or engage in any other of the routine activities for which the uniform ID will increasingly be required. They also suspected that this would lead to local law enforcement making arrests based on federal immigration grounds for which they lack enforcement authority.

Many senators vigorously opposed attaching the REAL ID Act to the emergency war spending legislation. Dianne Feinstein (D - Calif.), former San Francisco Mayor who signed the original City of Refuge resolution turned U.S. Senator argued “an emergency supplemental is not the place for the Congress to enact substantive

immigration provisions."<sup>93</sup> Sen. Sam Brownback (R - Kan.) and Sen. John McCain (R - Ariz.) urged Senate Majority Leader Bill Frist to keep the broad "anti-immigration" proposal off the supplemental appropriations bill. Despite this vocal opposition, majority leaders in the Senate pushed the provisions through without debate. Sen. Feinstein stated in a press release two days before the spending bill became law, "voices of opposition to the REAL ID Act were all but silenced."<sup>94</sup>

Human rights and immigrant rights organizations throughout the country lobbied against the law. Local advocates urged the San Francisco Human Rights Commission to hold a public hearing on the law and its impact on the local community. On May 26, 2005, the merits of the law were debated during a joint hearing before the Human Rights and Immigrant Rights Commissions. The hearing chamber was filled to standing room only and a coalition called The Constitutional Rights Coalition mobilized a range of speakers representing a broad cross section of San Francisco's civil rights, trade unions, immigrant rights and human rights organizations. Individual citizens and city officials also voiced their concerns. Mark Silverman, formerly one of the sanctuary movement's strongest advocacy attorneys testified before the commissions:

The Real I.D. Act is already connected to something worse on the horizon—a provision of what was the Clear Act. This provision will force police nationwide to enforce immigration laws or risk losing law enforcement funding from the federal government. It will place an affirmative obligation to pursue possible immigration violations when contact is made with people. This immigration issue becomes a public safety issue when it destroys the ability of police to fight crime effectively in the immigrant communities where they will lose the confidence and trust of possible crime witnesses. Support is needed from police chiefs and groups dealing with domestic violence. We are facing an era of potential terror in the immigrant communities and that these anti-immigrant measures based on myths, illusions, and lies about how they are fighting terrorism that we need to oppose are being strategically pushed through without debate.<sup>95</sup>

Advocates recommended to the City that

In the event that California law authorizes driving privileges for undocumented immigrants, but requires them to carry a driver's license or certificate that is marked in some unique way to identify them as an undocumented immigrant, pass a San Francisco Administrative Code ordinance and work with law enforcement entities and the Attorney General to ensure that law enforcement is prohibited from requesting that people turn over these cards for inspection or using the information on these documents for purposes other than to determine whether the person is authorized to drive.<sup>96</sup>

Maxwell Peltz, a San Francisco Assistant District Attorney warned that the ensuing reduction of identification would impact law enforcement because identification is central to not only identifying, locating, and tracking down suspects but also

identifying and contacting witnesses and victims both for the police and prosecutors during the investigation prosecution of cases. Other concerns included the increase of unlawful, uninsured drivers and accidents and identity fraud. He also noted that several ordinances in San Francisco require applicants to present valid picture identification to apply for and receive General Assistance and certain types of social services. Some people will have less access to social services under the new law.

The next major federal legislative threat came in December 2005 when the House of Representatives passed the “Border Protection, Anti-Terrorism, and Illegal Immigration Control Act (HR 4437)” which according to the San Francisco Board of Supervisors was one of the most egregious, anti-immigrant bills in this country’s history. The bill posed to make undocumented residence in the U.S. into an aggravated felony, to criminalize U.S. citizens and legal residents who have routine contact with undocumented immigrants, to require day laborer centers and other non-profit organizations to verify workers’ immigration status, make detention of immigrants mandatory, and to give the government unfettered discretion to designate individuals as gang members and make immigrants deportable as members of supposed gangs even if they have never violated the law.

In the face of this legislation, city Supervisors reaffirmed their “INS Raid-free Zone resolution” and the City of Refuge ordinance’s commitment to providing a safe, healthy and dignified place to live for immigrant communities regardless of immigration status, and condemned the bill. They passed a resolution welcoming and valuing all residents including undocumented residents; wishing them to work and live free from discrimination, exploitation, and from fear of “invasive local collusion” with federal immigration law; and condemning the federal bill. During the week of March 21, 23 Bay Area residents participated in a weeklong hunger strike in front of the Federal building near to the San Francisco City Hall in order to bring attention to the negative impact of the bill, and to urge Federal Representatives to defeat similar measures in the House. The Board commended the hunger strikers for their courage, sacrifice, and commitment to immigrant rights and social justice and urged the Department of Public Works to waive a fee charged to the strikers for a temporary occupancy permit required for access to a bathroom near the strike site. In March, the Board went further and passed a resolution urging the Sheriff’s department, the SFPD, and the District Attorney to abide by the “spirit of the City of Refuge Ordinance” and refrain from expending any City resources in support of criminal provisions that are based solely on immigration status in any new federal immigration law should it pass.

Given this increased anti-immigrant federal climate, the city leaders realized that the City and the immigrant-serving non-profit organizations that it funded were not adequately resourced and staffed to aid immigrants in need of legal assistance and education in the case that the new anti-immigrant federal laws passed and the immigration raids continued increasing in frequency. The Board in response resolved to commit the necessary fiscal resources to ensure that it could adequately provision resources “in order to uphold its status as a City of Refuge and prepare a timely, human, and just response”<sup>97</sup> to impending anti-immigrant legislation. This response included the provision of legal services and a comprehensive community education and outreach strategy so that “immigrant residents have accurate

information regarding changes to federal immigration law and knowledge of available resources to make informed decisions for their well-being and that of their families.”<sup>98</sup>

At the same time the House of Representatives was in the process of amending their fiscal year 2007 *Science, State, Justice and Commerce Appropriations Bill* to force cities to end their sanctuary city policies or have their Homeland Security funding denied. The Board fired back by urging Mayor Gavin Newsom to speak out and defend the City of Refuge Ordinance and to explicitly state that San Francisco will reject any funds that are contingent upon the City repealing its support for undocumented immigrants. Further they urged other sanctuary-cities to join in the fight against federal security money being “used as a pawn in the debate over immigration.”

During this period ICE changed its annual arrest quota for its Fugitive Operation Team, which was charged with conducting home raids, from 125 to 1000. Further, their arrests no longer had to be solely of “criminal aliens”, but now could include “collateral arrests” of suspected civil immigration status violators. These were often women and children for whom ICE did not have a warrant, but who were in the home being raided. From August 1 to 15, 2006, ICE carried out 15-20 different deportation orders in San Francisco. ICE agents went to resident’s homes and presented themselves as police officers, not as immigration agents. The immigrant community in the Mission District became weary of the Police, threatening sanctuary. Ana Perez, Director of Central American Resource Center (CARECEN), in response attended a Board of Supervisors meeting to ask them to re-declare sanctuary, to ask ICE to identify themselves properly and not call themselves police officers so residents know who was really at their doors and to not open the door. Perez pleaded the Board “support community safety,” and make sure that the community feels safe to come to the Police when they need to.

Police Chief Fong in response issued a “department bulletin,” a directive to all officers which is often a reminder of existing policies, that reaffirmed the Police Department policy on immigration enforcement:

On January 23, 2002, the Homeland Security Act of 2002, the Department of Homeland Security (DHS) was created. Immigration, Naturalization, and Customs were combined to create the Immigration Customs Enforcement service (ICE). Members are reminded that San Francisco is a designated “City and County of Refuge” as it pertains to the investigation and enforcement of federal immigration laws or assistance to the INS (now ICE), in the enforcement of immigration laws. This rule shall include notification of “persons” of interest to ICE” made via telephone, print, or computer. Furthermore, any member requesting to participate in any interagency operation involving ICE, shall receive prior written authorization from their Bureau Deputy Chief. Members are also reminded of the provisions of the DGO 5.14, which mandates that all planned operations with outside agencies (e.g. FBI, DEA, ATF) must be approved prior to participation in the operation. No member shall participate in such operations or investigations without prior approval from the member’s Bureau Deputy Chief, or his/her designee.

Members should review the full-text of DGO 5.14 and 5.15, and refer to the City's Administrative Code, Chapter 12H, as necessary.<sup>99</sup>

However, ICE wasn't only mounting an attack on sanctuary through home raids disguised as police – they were also initiating a new rule on using the Social Security Administration's "no match" letters to scare employers of undocumented immigrants into verifying immigration status and potentially firing immigrant workers. When a social security number being used by an employee didn't match the employee's name, DHS sent the employer a letter, which required them to take immediate action. City Supervisor Sandoval found this unacceptable, since a wide variety of residents were at threat of being fired when they had surname changes following marriages, divorces, or if there were clerical errors on the individual's records. They found this to potentially lead to employers harassing, intimidating, and underpaying their employees, especially those who were organizing for increased rights and engaging in union activity. More generally, they found it to encourage a lack of tolerance for immigrants in San Francisco, broadly affecting sanctuary.

The Board of Supervisors wanted to "make it very clear that the city's policy will be to disregard those letters if we receive them from the federal government with regard to any city employee." And further, they sent a message to all San Francisco companies that "they should also similarly consider disregarding the letters certainly not without taking other actions, and doing other investigations to confirm the information that's being received." The city leaders felt that "San Francisco values and relies upon the contributions of immigrant workers to the city's workforce, in both public and private sectors and [...] contribute to several key industries, including hotels and restaurants, construction and building trades, health care, and janitorial services." They felt that the economy "would be jeopardized by the loss of immigrant jobs in the wake of fear and confusion caused by the new and unclear enforcement of this rule." As the San Francisco Labor Council pointed out to the supervisors, social security no match letters were never about immigration enforcement until this point. Previously they were just used to tell someone that they were putting money into the wrong social security account. Pilar Shiavo of the Labor Council said at the hearing for the resolution, "They are making employers now agents of the Department of Homeland Security."

### **Funding the Sanctuary-City**

In December 2006, San Francisco fought back not merely through denunciation of federal anti-immigrant laws, or through putting further restrictions on local agencies' cooperation with ICE, but rather by bolstering the support network for all residents regardless of immigration status. The city decided to fully fund a new non-profit coalition of long-time community based organizations and legal organizations called the San Francisco Immigrant Legal and Education Network (SFILN). SFILN was composed of 13 immigrant-serving, member-based organizations and legal advocacy organizations all with deep roots in the low-income immigrant communities they served. These organizations were the African Advocacy Network,



Arab Resource & Organizing Center, Asian Law Caucus, Asian Pacific Islander Legal Outreach, Central American Resource Center, Chinese for Affirmative Action, Filipino Community Center, La Raza Centro Legal, La Raza Community Resource Center, Mujeres Unidas y Activas, People Organizing to Demand Environmental & Economic Rights, Causa Justa/Just Cause, and Dolores Street Community Services, which served as the lead agency. They represented members in the African and Afro-Caribbean, Arab, Asian, and Latino communities and provided services in over 20 languages and dialects. In the wake of raids and anti-immigrant bill proposals, SFILEN formed so that legal service and education of immigrant communities on the rapidly evolving immigration policy landscape could be coordinated among the city's largest immigrant serving organizations. This would allow them to work more efficiently, grow in capacity, overcome the isolation of monolingual immigrant communities, and improve shared knowledge among the various service providers. Legal services included not only assistance with legal forms and legal advice, but also defending undocumented San Francisco residents in their deportation proceedings in San Francisco's federal immigration courts.

SFILEN was first conceived in meetings between long-time immigrant advocacy leaders Eric Quezada, Director of Dolores Street Community Services; Sheila Chung Hagan, Director of the Bay Area Immigrant Rights Coalition; John Avalos, then legislative aide to city Supervisor Chris Daly; and Supervisor Tom Ammiano. At the time, many of the immigrant serving organizations that would make up the coalition were funded by the Mayors Office of Housing-Community Development (MOH-CD), however, MOH-CD's existing funding for legal services to these organizations was not primarily focused on immigration legal services. Ammiano's office and the advocates kept MOH-CD abreast of the conversations they were having and let them know that funding for the new coalition's work would come from the General Fund and need to be administered by some city agency. Since MOH-CD already had an administrative infrastructure to track funding for these organizations' legal services and had existing relationships with the organizations' leaders, they offered that they administer the funds once approved. MOH-CD had already identified undocumented immigrants as a vulnerable population in their consolidated plan. The Board approved the funds through the add-back process, the process by which Board members reallocate certain funds that had been cut from the Mayor's proposed budget. Add-backs are typically allocated for particular services rather than for a particular organization, and once approved are administered by a particular city agency. When the services are to be performed by non-profit community organizations the agency that administers the funds issues a "request for proposals" or RFP, and any non-profit providing the type of services sought out can apply. Usually, Supervisors have organizations in mind ahead of time, though the competition remains open. In 2006, MOH-CD, after issuing an RFP, granted the General Fund money to SFILEN headed by Dolores Street Community Services, and this would consist of SFILEN's entire budget. MOH-CD built the General Fund money into its General Fund "baseline." Most of MOH-CD's funds were from Community Development Block Grants (CDBG) -federal funds. This meant that in years when there would be a projected budget deficit, these General Fund dollars would not come under as much scrutiny as funds in other departments with larger

portion of General Fund dollars. This immigration legal services and education grant, according to grant managers at MOH-CD, was

very strategic to maintain because it was for a collaborative of many organizations that crossed all different languages and cultures in the city. It was exactly what we wanted to see. It also came from an internal referral, and was driven by the community rather than by being imposed by the city. It had all of the right elements and with the community driving it, the city is just there to facilitate and help with the administration. It just leverages so many resources.

One of the reasons that we prioritize the immigrant population is that for many cities, so much of our cultures derive from the immigrant community and people come to San Francisco because of the diversity of cultures, the fact that they can feel, I hope that they can feel, embraced and can be integrated into the city in a way that you can't in many other places. So for us to not provide the legal protections for people who have chosen to come here, that really does a disservice to the entire city. When you think of the economy, the arts, neighborhood advocacy, there's really no aspect of the city that hasn't been created...well, maybe I'm biased because my grandfather moved here in the early 1900s under maybe not so accurate papers. I'm very sympathetic to what drives folks to come here seeking a life they couldn't have received in other places. And I don't think we can depend on federal and state funding, so if San Francisco wants to make that commitment and prides itself on being a progressive, inclusive city, I think it's completely appropriate. Legal services in particular are not the sort of thing that receives as much support by private foundations. These funds are explicitly designed to help people who are being persecuted because of their undocumented status. So for those people whose status has been disclosed, our job is to protect their families as much as we legally can so it is less punitive.

This kind of funding provides an opportunity for innovation, for folks to network, and give each other moral, professional support through the roller-coaster of policy and see the impact on the community. So funding those spaces is really helpful to the city because you can have healthier workers that provide better services for safer environments and come up with new, more effective programs for even more specialized populations that may not have been thought of in the original plan. And better thinking can happen in terms of responses to policy decisions. These community providers really build the space for transition. For instance when this new immigration reform policy is going to come up, or if there was a challenge to sanctuary-city, how communities and families on the ground level respond to those policies, they are buffered by these networks. And if those networks are disjointed and aren't able to communicate in real-time, that has an absolute affect and can push people into underground economies or more unsafe situations or lack of reporting of crime or domestic violence, and all of these things start getting more and more into the closet rather than out into a

healthy human service dialogue. These grants help build a more nurturing environment and community rather than a more isolated environment.

MOH-CD saw funding immigration legal services and education part of making sure that residents regardless of status know that they are entitled to access services and actually can. Much of SFILEN's work was conducting know your rights trainings. Many undocumented residents were worried about how they could register their child for school or how to sign up for a certain Human Services Agency (HSA) benefit. Rather than going to City Hall, their first point of contact with the social services system were the immigrant organizations that composed SFILEN to find out if they were at risk or not for deportation. In that sense, funding SFILEN helped enact sanctuary in the city.

For the MOH-CD, community education about accessing city services and the changing immigration laws was incredibly important.

We have all of these protections but if people don't know about them, it doesn't make a lot of sense to have a sanctuary ordinance. And even with the ordinance many people are still scared – ICE doesn't care if we have an ordinance. The more we can do to help people make informed decisions about the action they take – ultimately they decide about what kind of risks they are willing to take. It's our responsibility to inform them of the possible consequences of what could happen and what kind of legal protections we might be able to offer to them if they are not going to be able to afford it themselves. And depend upon them to tell their trusted friends and colleagues how best to navigate a complicated system. We fund the non-profits because those folks (immigrants), the residents might not trust the city but hopefully they trust the non-profits. Some people might not be willing to go to the non-profit, but they are willing to talk to their friend, so it kind of trickles-down that way. Ideally, you would have to have a sanctuary city because no one would be prosecuted because of their lack of undocumented status. It's hard to imagine the sanctuary city ordinance not being necessary.

MOH-CD also saw this funding playing a role in reducing victimization of undocumented residents:

Because of this funding and SFILEN, it eliminates individuals or groups who could be predators with wrong information or wrong assistance - like phony immigration lawyers who charge immigrants for services and then defraud them. So by investing in trustworthy institutions like SFILEN you are making sure you don't have that other element that victimize people who are in need. In San Francisco we don't have as many of these urban coyotes – that is a huge success. If we were to lose the funding for these agencies to give accurate information, I think we'd have a dangerous situation on our hands in terms of people taking information into their own hands and misguiding others.

Since many of the services that MOH-CD funded served residents regardless of status, MOH-CD grant managers met with their Housing and Urban Development (HUD) federal representative who grants them the CDBG funds. MOH-CD told him

You understand that we are serving undocumented folks? We are reporting them to you, so I just want to make sure that that's ok. That's not one of the HUD required data fields and we are not going to ask that question [immigration status]. We specifically don't include social security numbers and work closely with our grantees to make sure that in their intake process, we are not asking questions that dissuade people from responding.

From HUD's perspective, there was no push at all to exclude undocumented people from receiving services. HUD told this MOCD grants manager, "Oh no, that's great that you are doing that."

### **The Sanctuary City Initiative<sup>100</sup>**

By early 2007, ICE was growing increasingly frustrated that San Francisco was not cooperating to the degree that it would have liked in identifying deportable San Franciscans. In a report issued by the Department of Justice on recipients of State Criminal Alien Assistance Program (SCAAP) funds - funds reimbursed to local jails for detaining undocumented immigrants booked on crimes - the Department of Justice reported:

The San Francisco ICE Field Office has encountered difficulties in its attempt to expand the Criminal Alien Program (CAP). According to an agent working at ICE headquarters, the San Francisco County Jail and its administration appear to have implemented a 'bare minimum of cooperation with ICE and the CAP to ensure they are compliant with state rules and the SCAAP regulation.' Agents employed by ICE are not permitted to access jail records without the authorization and approval of the Sheriff. ICE agents are authorized to enter the jails to interview prisoners and to access the 'all jail alphabetical list' of inmates. However, ICE agents do not have the authorization to access booking cards, housing cards or other jail records, including computers.<sup>101</sup>

This report illustrates the contradictory, perhaps confused, and partial implementation of the sanctuary ordinance in the Sheriff's Department: sharing the list of inmate names and giving them access to interview inmates was certainly not allowable under the sanctuary ordinance protocols, however the Department refusal to give ICE access to other jail records was.

In February 2007, under "Operation Return to Sender", ICE began conducting raids, individual detentions, arrests, and deportations in San Francisco. They targeted private homes, commercial buildings, stores and harassed individuals on the street in immigrant neighborhoods. In nearby Contra Costa County, they

detained roughly 100 people, and 300 people had been detained throughout the Bay Area, primarily in Redwood City, Richmond, Concord, San Mateo, and San Francisco. During some of the raids, witnesses reported ICE agents identifying themselves as local police, forcibly entered people's homes without warrants, and used intimidation and harassment. In some cases ICE agents were also seen nearby local schools. In San Francisco, ICE agents were seen in the high-density Latino immigrant communities - Excelsior District, the Tenderloin, and the Mission District. On February 6, ICE raided a home in the Mission close to the main commercial street and arrested five residents. The raids caused a general climate of fear among the immigrant resident population, keeping them from accessing city services or sending their kids to school for fear that they would be detained.

The Board of Supervisors condemned these raids, arrests, detentions, and deportations and urged Homeland Security not to conduct these activities in San Francisco and to meet with City and County officials and residents regarding the recent raids. Immediately, the Police Commission requested of the Police Department clarification on the role of the police in immigration enforcement. The Police Department reminded the Commission that

The CCSF is a "City and County of Refuge" and a "Sanctuary City." Members of the SFPD are responsible for enforcing state and local criminal laws. By virtue of San Francisco Administrative Code Chapter 12H and Police DGOs, members of the SFPD are prohibited from contacting or stopping individuals solely because of their immigration or perceived immigration status. Members of the SFPD do not enforce immigration laws and do not assist any other agency in enforcing immigration laws. All persons, regardless of their immigration status, have a right to receive essential city services. Anyone who is the victim of a crime, or has information about a crime, or is in need of any other service provided by the SFPD, is encouraged to contact the SFPD.<sup>102</sup>

However, the most impacting response came from Mayor Gavin Newsom. Pilar Shiavo of the San Francisco Labor Council immediately reached out to the Mayor's Office on behalf of the immigrant rights coalition formed primarily of SFILN related organizations and began conversations with Mayor's Office of Government Affairs staff member Wade Crowfoot to elaborate an institutional action plan for fortifying sanctuary in light of the raids. Out of that initial conversation, the city planned to conduct research into San Francisco's sanctuary city status, what was covered and what was not in terms of interactions with ICE. While the ordinance was on the books, it was not clear as to how it was being implemented in each department or whether it was being implemented at all. At this point not a single complaint of a sanctuary ordinance violation had been registered with the HRC, so if it were being adhered to, oversight needed to be happening entirely within the departments. The Mayor's Office wanted to pay particular attention to the SFPD and the Sheriff. They planned to issue a strong public statement from the Mayor and hold a press conference with the Chief of Police, and other department heads such as the Sheriff,

Schools, Department of Public Health, and Homeless Shelters. The Mayor issued the following statement:

I am very concerned about the recent raids performed in various parts of the city by Immigration and Customs Enforcement (ICE) officials. As a sanctuary city, San Francisco is proud to provide services to all of its residents, regardless of their immigration status. These raids jeopardize the public health and safety of the city by instilling fear in those who may come forward to report information about a crime or those who are in need of medical treatment. In the future, I urge ICE to take that factor into consideration when deciding to undertake raids across the United States.<sup>103</sup>

The Mayor also sent a letter to ICE requesting a meeting and to clarify their procedures for raids including asking what level of warrant they needed, and whether they could take others in the house.

However, most importantly, the Mayor initiated what was later to be called “The Sanctuary City Initiative,” the most significant effort to institute sanctuary city since the ordinance was first enacted in 1989. It would be a multi-pronged approach wherein the Mayor issued a directive to all departments, distributed to all staff and department Heads to clarify the city’s sanctuary city status and what that really looks like on the ground for city staff. The Mayor’s Office and the City Attorney convened a weekly meeting of all department heads to discuss the city’s sanctuary city status. Training would be mandated for all City and County staff on the rules around cooperation with ICE. There would be an extensive community outreach and education program consisting of Immigrant Rights Commission hearings, Mayor’s “town hall” addresses, and materials would be developed and distributed to the various immigrant communities on sanctuary city and public services. The City would also start planning for mitigating the economic impact on families affected by raids, by assisting them with immediate needs if a parent or other wage earner they relied upon was taken. Finally, the City planned to invest in hiring an City staff member entirely dedicated to this effort and to focus on immigration issues that could be a point person to work with the immigrant community, immigrant advocates, and city offices regarding sanctuary city, services, and policies. This person could also investigate city cooperation with ICE, work to uphold sanctuary city statutes, and respond to raids or other urgent matters.

In March, Mayor Newsom issued Executive Directive 07-01 worth including here in its entirety:

By virtue of the power and authority vested in me by Section 3.100 of the San Francisco Charter to provide administration and oversight of all departments and governmental units in the executive branch of the City and County of San Francisco, I do hereby issue this Executive Directive to become effective immediately:

1. Departments must ensure that departmental rules, regulations and protocol adhere with San Francisco’s Sanctuary City status, as designated by Chapter 12H of the City Administrative Code. Key provisions of this local law

include:

- a. No department, agency, commission, officer or employee of the City and County of San Francisco may assist Immigration and Customs Enforcement (ICE) investigation, detention or arrest proceedings unless such assistance is specifically required by federal law.
  - b. No department, agency, commission, officer or employee of the City and County of San Francisco may require information about or disseminate information regarding the immigration status of an individual when providing services or benefits by the City or County of San Francisco except as specifically required by federal law.
2. Departments that provide public services must keep updated written protocols that describe compliance with Chapter 12H of the Administrative Code. A written description of current departmental protocols, and subsequent updates to these protocols, must be copied to the Human Rights Commission and the Immigrants Rights Commission of the City and County of San Francisco.
  3. The Human Rights Commission and the Immigrants Rights Commission of the City and County of San Francisco shall maintain updated versions of these written departmental protocols and shall make them available to the public by request.
  4. Departments are instructed to incorporate education on the City's Sanctuary City status into regular employee trainings and orientations.
  5. Departments are also instructed to incorporate education on the City's Sanctuary City status into regular community outreach, and engage in proactive community outreach on this subject where appropriate.<sup>104</sup>

Newsom would later say that following this Executive Directive, his office received countless hostile calls and emails against the directive: "No other issue I have championed has received a more negative reaction from the public than this sanctuary city stance - and that includes gay marriage."<sup>105</sup>

In the midst of this announcement and movement towards instituting sanctuary in the departments, the City found itself in the middle of a lawsuit over the sanctuary ordinance. In late March, Charles Fonseca, a citizen and resident of San Francisco, with the help of Judicial Watch, a conservative anti-sanctuary legal organization, filed a lawsuit against the San Francisco Police Department, SFPD Chief Fong, and the Police Commission, claiming that the department fails to comply with Section 11369 of the state's Health and Safety Code which states that "when there is reason to believe that any person arrested for a violation of any of 14 specified drug offenses may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters."<sup>106</sup> The offenses included possession and sale of a variety of controlled substances and narcotics, purchase for sale of designated controlled substances, possession of cocaine base for sale; transportation, sale, giving away of certain controlled substances; Adults soliciting, inducing, encouraging, or intimidating a minor with the intent that the minor shall violate any provision of this code; adults hiring or using a minor to unlawfully transport, carry, sell, give

away, prepare for sale, or peddle any controlled substance; selling, furnishing, administering, giving, or offering to do these things to a minor; selling or furnishing a substance falsely represented to be a controlled substance; unauthorized possession or possession in a school of certain quantities of cannabis; possession for sale of marijuana; opening or maintaining a place used for the purpose of unlawfully selling, giving away, or using certain controlled substances; forging or altering a prescription; issuing, procuring, or possessing an altered prescription or a prescription bearing a forged or fictitious signature for any narcotic drug; using or being under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the possession of a loaded firearm. The code was largely predicated on the idea that deportation would lower drug crime.

The City Attorney Dennis Herrera and Deputy City Attorney Wayne Snodgrass contended that 11369 was pre-empted, because it “imposes classification and reporting requirements on local officials, with the obvious goal that suspected aliens will be reviewed by immigration authorities and possibly deported.”<sup>107</sup> As the City saw it, Section 11369 impermissibly compels state and local police officers to serve as “field agents” for federal immigration authorities. They contended that statute is ipso facto a state regulation of immigration because it forces state actors “to participate, in a supporting role, in ‘the determination of who should or should not be admitted into the country.’”<sup>108</sup>

The [lower] trial court agreed with the City, reasoning that Section 11369 invades exclusive federal power to regulate immigration because it effectively requires the SFPD “to act as an investigative arm of the federal deportation authorities”<sup>109</sup>:

Respondents rely very heavily on the proposition that Section 11369 cannot plausibly be deemed to serve any purpose other than that of impermissibly regulating immigration. They say that “Section 11369 can have only one purpose: to mandate cooperation with the federal immigration officials ‘solely for the purpose of ensuring that such persons leave the country.’” The trial court agreed, stating that “section 11369 cannot be regarded as even primarily about drug use, sale, or possession, because it adds nothing to the State’s regulatory scheme for those matters.”<sup>110</sup>

However, Judicial Watch and Fonseca appealed and left San Francisco in limbo while litigation continued. However this didn’t stop the City from moving forward with its renewed plan for making sanctuary part of the everyday practices of frontline city employees.

By April, the Mayor’s Office initiated a working group comprised of Supervisor Ammiano, the Heads of all of the city departments that work directly with the public, and community groups, most who were in SFILN. The City referred to this as the “Sanctuary City Coalition”. This included Supervisor Ammiano’s staff, the Office of Language Services, and the directors or their representatives from 311, 211, Department of Public Health (DPH), SFPD, HSA, the Office of Labor Standards Enforcement (OLSE), Adult Probation Department (APD), Juvenile Probation Department (JPD), Office of Language Services-City Administrator (OLS), SF Unified



School District (SFUSD), SF International Airport, Department of Emergency Management (DEM), the Treasurer and Tax Collector (TTC), and the Fire Department (SFFD). Representing the immigrant community was CARECEN, St. Peter's Housing Committee, Immigrant Legal Resource Center, San Francisco Labor Council, Young Workers United, Out for Immigration, and Chinese for Affirmative Action. These city agencies were identified as priority departments to be involved in the planning of the Sanctuary City Initiative because of the a) high volume of public interaction with immigrant communities and b) higher probability of request for assistance from ICE. These priority departments made up 64.1% of the total city and school district workforce.

A multi-track strategy was adopted which included a community outreach component that would educate communities impacted by ICE raids as well as the City's immigrant community in general. Part of this public education would be on "know your rights" when ICE comes to your home or workplace, or when you are in deportation proceedings. The other part of the public education was about informing undocumented immigrants that they can access city services safely without fear of being reported to ICE, detained, or deported, that San Francisco is a "city for everyone"<sup>111</sup> and how to file a complaint with the Human Rights Commission if a city employee violated the sanctuary ordinance. This latter goal would be known as the "Public Awareness Campaign".

The second component was to develop and implement sanctuary city department protocols and training materials on those protocols for the City's 28,000 employees and the School District's 7,700 workers. DPH and HSA were the two lead agencies responsible for developing a training protocol template that could be modified by all of the various city agencies and departments. Additionally, DPH would come up with a plan for how they could adapt their existing Crisis Response Team - a team of first responder medical professionals who showed up on the scene of a violent crimes to assess and assist with urgent medical needs - to show up on the scene of an immigration raid. They would also discuss how they create a city-based crisis management response network among agencies and play a role in making referrals for immigrants who need city services in the wake of a raid. And finally, they would work with a smaller group of SFILEN associated organizations to organize a community-side Rapid Response Network (RRN) of non-profits that are connected to the immigrant community, and who would hear about raids first. These organizations could initiate a calling tree to activate the city agencies like the Crisis Response Team and HSA's shelters to assist the affected immigrant residents, and to provide anti-deportation legal assistance, housing, family support, and case management.

The Office of Language Services which had been created in late 2006 and which oversaw the Language Access Ordinance in coordination with the IRC and DPH was the lead agency responsible for monitoring implementation of new training protocols by city agencies, ensuring training protocols were submitted, and organizing the on-going meetings between city agencies and community based organizations (CBOs). Regular weekly meetings were scheduled. OLS would also be in charge of coordinating the media campaign to re-announce San Francisco's sanctuary city status once the trainings were completed. The OLS would carry the

weight of the initiative for the first 10 months. All the while the City allocated \$100,000 of the General Fund to the IRC to hire an Immigrant Rights Administrator to work under the City Administrator to complete the Sanctuary City Initiative, manage the implementation of the sanctuary ordinance within City agencies, and organize a media campaign in the long-term. The Administrator would function in the capacity as an immigrant rights advocate, providing legal resources and technical assistance to both departments and the community.

Funding for the Sanctuary City Initiative came through the leadership of the Mayor and Supervisor Ammiano. Funding was procured for FY07-08 "to enforce Chapter 12H [the sanctuary ordinance]": a \$400,000 General Fund allocation to the Mayor's Office for Community Development (MOCD) to implement the community outreach and educational component primarily conducted by SFILEN. Approximately 80% or \$315,000 would be dedicated to the creation of the community Rapid Response Network. The remaining \$85,000 funded an educational outreach campaign called "Know Your Rights" which consisted of SFILEN distributing and discussing 11"x17" and 24" x 36" "My Sanctuary City of Refuge" posters in Spanish, Cantonese, Arabic, Tagalog, and English. The posters covered immigrant rights during raids and the main provisions of the sanctuary ordinance, and were handed out at Know Your Rights events, placed in businesses, community organizations, community centers, and other visible places.

A combined total of \$80,000 from DPH and HSA's existing budgets funded the media campaign that they called the "Public Awareness Campaign". Led by a workgroup of the Sanctuary City Coalition, the purpose of the media campaign was "to ensure San Franciscans, regardless of their immigration status feel safe in reaching out and receiving the vital services our employees provide." Print ads consisted of a photo that "reflected San Francisco's diversity," with the words "We are San Francisco," under which the words "A City of Refuge" appeared, followed by "Know your rights. Call 311 for more information." The Mayor's office hired two pro-bono graphic design interns from the San Francisco Art Institute and a communications consultant Kathleen Baca, Director of Communications for Marguerite Casey Foundation, to develop campaign materials. Newspaper ads appeared in five languages and were put in ethnic newspapers. The print ads appeared 40 times per paper from 2/17/08-6/27/08. It was expected that 120,000 households would be reached by *Sing Tao Daily* alone, the local Chinese newspaper, 500,000 through *Viet Tribute*, 40,000 through *Philippines News*, and 10,000 through *Tecolote*, the Mission District Latino paper. The City put 30 "tail" ads on San Francisco MUNI public buses and train-cars, and negotiated 30 bus shelter ads with Clear Channel, that were the same image and information as in the print ads. These ads appeared in six languages - English, Spanish, Cantonese, Vietnamese, Russian, and Tagalog.

Television Public Service Announcements (PSAs) included various "representatives" from each major immigrant community saying in their respective language, "We are San Francisco, a City of Refuge. Know your Rights. Call 311 for more information." Three different PSAs in three languages (English, Cantonese and Spanish) and were aired on commercial media, ethnic media, cable channel 27 and 78 (the San Francisco government television channel SFGov TV). The 30-second ads

ran from 7-8pm 10-12 times per week from 2/18/08-6/23/08. From its airing on KTSF Channel 26 alone, it was expected to have been viewed by 1.4 million Asian Americans in cities throughout the Bay Area.

Lastly, the City created a new tri-fold 8/5" x 11" brochure to be placed in every City office and agency titled "San Francisco is a Sanctuary City." The brochure encouraged residents to call 311 for city government services and 211 for community services 24 hours a day in over 170 languages. 311 was used for accessing health services, enrolling in school and youth programs, and finding locations and hours for all city agencies. Calling 211 could be used for finding out information on the immigration process and one's rights, about social security "no-match" letters, getting connected to immigration legal assistance, finding food clothing, and housing, getting utility assistance and employment services, finding counseling and support groups, finding programs for seniors and persons with disabilities, and childcare and tutoring. The brochure informed the reader that San Francisco provides "SAFE Access to Public Services."<sup>112</sup> It reaffirmed that "City Services are available to All" and that city departments, commissions, or employees may not help ICE with immigration investigations or arrests unless such help is required by federal or state law or a warrant. SAFE Access meant more specifically that

City employees will not report you or your immigration status to ICE when you apply for services or benefits. SAFE Access to healthcare meant that the Public Health Department will respect the privacy and privacy rights of all our residents. SAFE ACCESS to Education meant that any child who lives in San Francisco may attend SF public schools and be eligible for free lunch/breakfast, transportation and other school programs. Public Safety for All meant that immigrants could call 911 to report fires or a crime. You can feel safe when contacting the Police or Fire department during an emergency.<sup>113</sup>

The target audiences of the public awareness campaign were immigrants, city employees, community based organizations (CBOs), and ethnic and mainstream media consumers. The design and "look" of the promotional materials were developed and approved by the working group. This work would go hand and hand with SFILEN's work in the community to educate immigrant communities on knowing their rights and understanding the protections and affordances of the sanctuary city policy.

The proposal for the Sanctuary City Initiative's funding indicated that the aims of the project were to

bring resources and support to families during this time of crisis and destabilization of families in San Francisco. It takes steps to assure that children both U.S. born and immigrants are less impacted by deportations. Additionally this proposal aims to set up a more sustainable and secure structure to support the immigrant community, city agencies and

community-based organizations working with immigrants to support the effective integration of immigrants to our city.<sup>114</sup>

Agencies that supported the funding proposal were the CBOs involved in the Sanctuary City Coalition – CARECEN, Dolores Street Community Services, Chinese for Affirmative Action, St. Peters’ Housing Committee, and the San Francisco Labor Council – as well as La Raza Centro Legal, Mujeres Unidas y Activas, Chinese Progressive Association, Asian Pacific Islander Legal Outreach, Good Samaritan, Caminos, the African Immigrant and Refugee Resource Center, La Raza Information and Resource Center, Mission Economic Development Agency, Arab American Legal Service, American-Arab Anti-Discrimination Committee, St. Francis Living Room, La Vow Latina, Central City SRO Collaborative, Filipino Community Center, and the Transgender Law Center.

They reminded city officials that San Francisco had taken important steps at responding to recent anti-immigrant attacks by supporting legal services, reaffirming the Sanctuary Ordinance, and allocating local funding to services for immigrants regardless of their immigration status. But since comprehensive immigration reform was unlikely to take place in the next two years, they expected that many San Francisco families would continue to struggle to gain access to resources and services that depend on legal status. They argued:

The city of San Francisco must make a concerted effort to continue to invest in these communities to ensure that they can further thrive and become an even greater asset to our city. In a time of increased deportations and the ripping apart of families and our communities, during this budget cycle San Francisco has a unique opportunity to realize its vision as a Sanctuary City.<sup>115</sup>

In the process of defining the need for funding, they defined the target population - undocumented residents - and their challenges:

It is estimated that 37 per cent of all San Francisco residents are immigrants. Our city’s immigrants come from Asia, the Pacific Islands, Africa, the Middle East, Europe, the former Soviet Union, and Latin America (including Indigenous Peoples from Mesoamerica). While immigrants live in every district of San Francisco, they are concentrated in the Mission, Chinatown, Tenderloin, South of Market, Excelsior, Visitation Valley, Bayview, Richmond, and the Sunset. Immigrants face many challenges. The recent immigration raids have only underscored this vulnerability; past experience suggests that the raids will deter many undocumented immigrants from seeking assistance. Particularly worrisome are the implications of the current punitive policies on immigrant families. Because an estimated 50% of undocumented residents have US-born children, our city must recognize that if adults are arrested and deported, the welfare of their children falls to us.

In general, income and educational attainment levels among immigrants are low, health indices are poor, and asset building is weak. A major barrier to addressing these challenges is the lack of access to linguistically and

culturally appropriate services. Despite similar levels of work effort among their parents, children of immigrants are substantially more likely than children with U.S.-born parents to be poor, have food-related problems, live in crowded housing, lack health insurance, and be in fair or poor health. While children of immigrants exhibit high levels of need for public benefits and services, current laws restrict immigrant eligibility for many major federal and state funded programs. Undocumented immigrants are generally ineligible for all public benefits except emergency health services. The 1996 welfare reform law restricted many legal immigrants' eligibility for these programs as well.<sup>116</sup>

They expected that this work would amount to fiscal savings for the City and County:

By making city services more accessible many problems that undocumented immigrants face can be dealt with much more easily than if service is delayed and the problems are allowed to worsen. Confronting problems before they become more serious is a much more efficient use of City resources [...] Helping immigrant families become stronger and self-sufficient is expected to have significant long-term costs benefits as immigrants are able to contribute financially and socially to local communities and economies, and use less emergency services, i.e. health, police, social services so the most effective options regarding both cost and community members are found.<sup>117</sup>

#### *Department-Specific Sanctuary Protocol Development*

In the initial few weeks after Mayor Newsom issued the executive directive, the Mayor's office, Jan Dempsey of SFPD, and Sheriff Mike Hennessey met to discuss the current status of the Police and Sheriff's department cooperation with ICE. One thing that came up was that the SFPD's arrest cards included a question about nationality, which did not comply with the sanctuary ordinance. Dempsey explained that it was because in the case of arrest, the Police needed to contact the embassy of that person's country of origin.

While a fairly minor issue, it pointed to the disjunction between having a law like the sanctuary ordinance on the books, and how in practice, there was a multitude of circumstances in which the sanctuary ordinance's provisions had not been clarified to address department-specific day to day situations for city employees. City employees had largely been left to interpret the law on their own unless their department head had already issued a particular department-specific policy. The result was often that the sanctuary ordinance had been ignored, partially enacted, enacted in a manner that still allowed for some residents regardless of status to be asked about their immigration status or reported to ICE.

To correct this, department heads in the Sanctuary City Coalition immediately began to provide the Mayor's office with existing sanctuary ordinance related department policies, or if they did not have them, they began writing them. The first agencies to come forward and provide department sanctuary protocols

were the International Airport, the Department of Emergency Management, the Fire Department, Human Services Agency, the San Francisco Unified School District, the Department of Public Health, and the Police who provided a copy of their existing DGO 5.15.

Representing the International Airport, Derry Moten presented Airport Director John L. Martin's department policy to the coalition stating that unless otherwise required by federal statute, regulation or court decision, no employee of the Airport in the course of discharging his or her duties could

require information about or disseminate information regarding the immigration status of an individual. No employee of the airport may assist ICE investigation, detention or arrest proceedings unless such assistance is specifically required by federal law. Nothing in this protocol shall prohibit authorized airport staff from compliance with mandatory Security Directives issued by the Transportation Security Administration (TSA) that may require both the inquiry and reporting to specified federal agencies of the immigration or citizenship status of persons holding or applying for airport issued identification media. Any requests for information or assistance, including those from law enforcement or pursuant to subpoena, that relate to the immigration status of individuals should be referred to and authorized by both the airport's Deputy Director of Operations and Airport General Counsel. This Airport Executive Directive on the Sanctuary City Policy will be added to the Airport Employee Handbook and reviewed at new employee orientation trainings and orientations.<sup>118</sup>

Of the International Airport's 34,000 employees, 1200 were City and County of San Francisco employees who would need to be trained on the policy.

Next were Donna Obeid and Lisa Hoffman of the Department of Emergency Management (DEM). The department's call dispatchers receive 911 emergency calls and DEM planners help prepare for natural disaster and manage the City's response and recovery. Lastly, their team manages the homeland security priorities for the San Francisco Bay Area. The DEM policy that Obeid and Hoffman presented required that

personnel shall not gather or disseminate information regarding the immigration status of individuals, nor use any City funds or resources to assist in the enforcement of federal immigration law. Members shall not inquire, record, or document the immigration status or information regarding any individual in conjunction with immigration status. *Callers who wish to discuss or report immigration status of any person shall be advised to contact ICE directly.* Since police may provide backup assistance to ICE only when there is a significant danger of personal injury or serious property damage, DEM members receiving calls from outside jurisdictions or agencies regarding a planned and ongoing interagency operations, shall refer the call to SFPD Field Operations Bureau. All DEM members have signed confidentiality agreements which prohibit any member from viewing,

disclosing, disseminating, transmitting or furnishing to any person, directly or indirectly, protected info obtained in the course of their employment unless the information is necessary and permitted in the scope and performance of the member's official duties. Any member receiving information about the immigration status of an individual in the CC and who in any manner discloses such information shall be considered to have violated their agreement and may be subject to disciplinary action up to and including termination, as well as civil and/or criminal action.<sup>119</sup>

DEM had 250 employees who would need training in the policy.

The Fire Department did not view the sanctuary ordinance as relevant to their work, seeing that they are not a law enforcement agency. They thought it primarily applied to the Police and Sheriffs department and so at first did not see the need to write a Fire Department-specific policy. After much back and forth between the Fire Department and the OLS, they created a draft policy and Andy Zanoft of the department presented it to the coalition.

The San Francisco Fire Department is obligated to follow rules and regulations, ordinances and resolutions as adopted and directed by the Mayor and Board of Supervisors of the City and County of San Francisco. The San Francisco Fire Department abides and adheres to the rules, regulations, and protocols of the Sanctuary City Ordinance. The San Francisco Fire Department is not a law enforcement agency. The mission of the Fire Department is to protect the lives and property of all members of the city's population, be they visitors, tourists, day workers, businesspeople, residents, students or citizens foreign and domestic.

The SFFD does not ask, note, collect, document, log, maintain or disseminate information on a person's immigration status in this country. None of the Fire Department's officers, staff, members, agents or representatives, civilian or uniformed, engage in the practice of inquiring or reporting this information. The information collected and records created during the business of providing emergency medical services to the community is protected by the federal Health Insurance and Privacy Portability Act and may not be shared or released to any entity, private or public, outside of the Fire Dept., without the written permission of the patient or a court-ordered subpoena, or as otherwise required by State or Federal law. None of the information collected, collated, stored or analyzed by the SFFD includes, infers or refers to a person's immigration or legal status in the U.S.

None of the information collected or noted in Abuse, Neglect, Domestic Violence or Gunshot reports or in Occupational Safety and Health Administration (OSHA) reports includes, infers or refers to a person's immigration or legal status in the U.S.

The SFFD's Arson Unit investigates the cause, origin and circumstances of a fire and determines the nature, be it criminal or accidental. The Arson Task Force is a multi-agency organization under the direct supervision of the Fire Department. Members are selected from the Bureau of Fire Investigation, SFPD, and the DA's office. The Arson Unit, and the multi-agency Arson Task Force does not collect, research, or distribute information on a suspected arsonist's immigration status as a component or influence of a fire or criminal arson investigation.

This policy will be distributed to every fire house, work station and member of the San Francisco Fire Department, will be filed with the Office of Occupational Health Administration, the San Francisco Immigrant Rights Commission, and with the Mayor's Office. The policy is in effect upon distribution and does not have an expiration date.<sup>120</sup>

This policy was further revised and distilled into a Department General Order later signed by Fire Chief Joanne Hayes-White:

There are two key provisions of the Sanctuary City Ordinance. Key Provision 1 states that, 'no department, agency, commission, officer or employee of the CCSF may assist ICE investigation, detention or arrest proceedings, unless such assistance is specifically required by federal law.' Key Provision 2 states 'no department, agency, commission, officer or employee of the CCSF may require information about or disseminate information regarding the immigration status of an individual when providing services or benefits by the CCSF except as specifically required by federal law.' The San Francisco Fire Department provides emergency services to members of the public regardless of immigration status. Department members shall not ask, inquire or seek to know about immigration status of any patient or other member of the public during the performance of their duties. Department members are not ICE personnel and shall not investigate, detain or arrest any member of the public regarding immigration or naturalization status during the performance of their duties. This General Order is effective immediately and replaces General Order 07 A-65.<sup>121</sup>

The Human Services Agency (HSA) on the other hand, already included in their HSA Personnel Procedures Handbook, copies of San Francisco's City of Refuge policy and the Agency's Client Confidentiality Policy, which does not speak directly to the City of Refuge policy, but outlined policies and procedures regarding sharing of client information. This included policies for responding to information requests from law enforcement agencies. This handbook was given to all new employees. Additionally, various HSA programs had their own more general policies and procedures related to sharing information about clients, as well as policies related specifically to the determination clients' immigration status. For instance, the County Adult Assistance Programs (CAAP) had a confidentiality policy, which required client authorization to release information to the USCIS, among other agencies. The Housing and Homeless



Division had a policy regarding law enforcement access to DHS-funded shelters, which stated that INS officials could not enter a shelter to take a person into custody for deportation purposes. Since some benefits programs were state and federally funded, these programs required asking clients for information regarding residents' immigration status. However, this information was not reported to the federal government or ICE. This was solely for the purposes of determining eligibility to the agency's programs, "as required by local, state, and federal laws/regulations."<sup>122</sup>

HSA-managed Medi-Cal was one such benefits program. Per federal rules, if the applicant was undocumented or not a qualified immigrant, Medi-Cal applicants were eligible for only pregnancy and emergency medical services. However, qualified immigrants could receive full scope coverage. Food stamps was another. Per federal rules, if the Food Stamps applicant was undocumented or not a qualified immigrant, applicants were ineligible. If the applicant was in the U.S. as a qualified immigrant for five years, she was eligible. However, this was still subject to a sponsor signing an affidavit on or after 12/19/1997 deeming that the immigrant was eligible. This verification lasted until a client met a 40-quarter employment standard or naturalized as a U.S. citizen. HSA also asked about immigration status information to ascertain eligibility for the Cash Assistance Program for Immigrants (CAPI). Per state rules, only non-citizens in the U.S. as qualified immigrants were eligible. Sponsor-deeming applied to most with entry dates on or after August 22, 1996. Deeming lasted ten years after the date of entry. If non-citizens first applied for CAPI, they could also apply for Cash Assistance Linked to Medi-Cal (CALM) a program for people who were receiving Medi-Cal benefits because they were either aged or disabled, but do not currently qualify for Supplemental Security Income or the Cash Assistance Programs for Immigrants. Non-citizens must document whether their sponsor provides support. Lastly, per state and federal rules, HSA asked residents about their immigration status when they applied for CalWORKS, a program that provides cash assistance only to citizens or qualified immigrants and which provides Medi-Cal and Food Stamps according to those programs' regulations.

In HSA's client confidentiality document, Part I-B stated:

Employees are cautioned that giving information on any case to any agency including law enforcement, except directly in connection with the administration of the welfare programs, and with the appropriate chair of management knowledge and approval is punishable as a misdemeanor as well as being cause for disciplinary action within the Department. Information about clients may be released to a law enforcement representative ONLY upon a written request from the law enforcement agency specifying that a warrant of arrest for the commission of a felony has been issued and with the appropriate chair or management and approval. The written request can be made only by the head of the law enforcement agency or by an employee of the agency who has been identified by name and title in writing by the head of the agency. Any requests from law enforcement representatives which staff receive, must be referred through the supervisory chain to the respective Deputy Director in order to ensure that

the requirements for release of information are met. When an appropriate request is received, only the following disclosures may be made: name, address, birthday, social security number, and physical description. Requests for information from the Special Investigations Unit (SIU) of DHS regarding welfare fraud investigations shall be honored. Requests for information may include access to case file data and personnel records. When required to do so, staff will assist SIU by providing verbal information and/or written declarations as authorized by existing confidentiality policy in each program or in the absence of such a policy by the rules herein. The client's authorization is always required before releasing information to U.S. Citizenship and Immigration Services (USCIS). However, now authorization is required for law enforcement agencies, including any Corrections Dept. parole officers, Probation Department, Police, FBI, and CIA.<sup>123</sup>

Whenever a government or law enforcement official arrived at an HSA homeless shelter and made a request, HSA policy was for employees to be polite and professional and notify management. Employees of the shelter were instructed to cooperate with the law enforcement officials only if law enforcement merely *indicated* that an arrest warrant had been issued for the commission of a felony or misdemeanor against a shelter recipient. In that case they were allowed to give the client's name, address, phone number, birth date, social security number, and physical description of the client. Law enforcement however, wasn't required to produce the warrant. If the client was present at the shelter, shelter employees were instructed to escort law enforcement to the client. Law enforcement was allowed to make an arrest at the shelter. Staff needed to accompany law enforcement as they conduct business at the shelter, unless to do so would create an undue safety issue for staff. However, HSA did not consider INS "warrants for deportation" to be sufficient to constitute an arrest warrant. HSA staff were instructed to not give access to INS officials to the shelter to take a person into custody for deportation purposes.

Like HSA, the San Francisco Unified School District (SFUSD) already long had practices that tried to ensure that all students were able to attend school regardless of their immigration status or the immigration status of their families. The U.S. Supreme Court in 1982 ruled in *Plyler v. Doe* that public schools were prohibited from denying immigrant students access to elementary and secondary public education. According to the SFUSD handbook,

Every student in SF USD, regardless of immigration status, has a right to receive a public education and school services, including free or reduced lunch and breakfast, transportation, and other educational services for which they qualify. A social security number is not required to enroll in SFUSD schools and receive services. In case of a family emergency or separation, all families are required to complete school site emergency cards and are strongly encouraged to keep this information up-to-date.<sup>124</sup>

SFUSD applied this policy to various school district procedures. For instance, SFUSD's enrollment procedure requested documentation of a child's birthdate, family's home address and immunization records. However, if a family were unable to produce these documents, SFUSD would not deny enrollment to a student. In some cases, if there were a box for a social security number on their forms, it would be blacked out indicating that residents did not need to fill out this information. However, social security number was requested on the Federal School Lunch form application. Thus, the following was added to the instructions:

*What if we are not citizens or legal U.S. residents? Free and reduced price meals are available for all children regardless of their citizenship status. All information on the Meal Application Form is confidential – it is **not** shared with INS/ICE or any outside agency. If you do not have a social security number, simply write "none" in that space.<sup>125</sup>*

It was also the general policy of the school district not to allow any individual or organization to enter a school site if the educational setting would be disrupted by that visit. Therefore, it was the School District's practice that when contacted by ICE, the request was routed through the Superintendent's Office for review before a decision was made to allow access to the site. It was also general practice for document requests by ICE to be forwarded to the Legal Office which, in consultation with the Superintendent's Office, determined if the documents could be released to ICE.

Moving beyond participation in the Sanctuary City Coalition, the San Francisco Board of Education who oversaw the Unified School District, found the need to reaffirm and publicize their existing policy position and protocols for serving undocumented students in this same time period:

In light of the increasing tensions in immigrant communities [due to ICE raids], and the possible chilling effect on the educational rights of immigrant students [...], the Board of Education hereby restates its position that all students have the right to attend school regardless of the immigration status of the child or of the child's family members; and

Further Be it Resolved: That the SF Board of Education further states that all District students, who register for the following services and meet the federal and state criteria, are entitled to receive all school services, including free lunch, free breakfast, transportation, and educational services, even if they or their family are undocumented and do not have a social security number and that no school district staff shall take any steps that would "chill" the Plyler rights of these students to public education; and

BE IT FURTHER RESOLVED: In order to provide a public education, regardless of a child's immigration status, absent any applicable federal, state, local law or regulation or local ordinance or court decision, the District shall abide by the following conduct:

- District personnel shall not treat students disparately for residency determination purposes on the basis of their undocumented status.
- District personnel shall not inquire about a student’s immigration status, including requiring documentation of a student’s legal status
- District personnel shall not make unreasonable inquiries from a student or his/her parents for the purpose of exposing the immigration status of the child or his/her family
- District personnel shall not require students to apply for Social Security numbers nor should the District require students to supply a social security number
- If parents and/or students have questions about their immigration status, school personnel shall not refer them to the ICE Office.
- It is the general policy of the District not to allow any individual or organization to enter a school site if the educational setting would be disrupted by that visit. The School Board has found that the presence of ICE is likely to lead to a disruption of the educational setting. Therefore, any request by ICE to visit a school site should be forwarded to the Superintendent’s Office for review before a decision is made to allow access to the site.
- All requests for documents by ICE should be forwarded to the Legal Office which in consultation with the Superintendent will determine if the documents can be released to ICE.

FURTHER BE IT RESOLVED: That Central Office staff, school administrators, school-based teachers and other staff will be adequately trained on how to implement this policy; and parents will receive notification in various languages of the new District policy to fully inform families of their rights in the SFUSD.<sup>126</sup>

Copies of this resolution were distributed to all school sites, which were then directed to comply with the general guidelines and principles outlined in the resolution. The Superintendent and Legal Office ensured that the SFUSD Bilingual Community Council, English Learners Advisory Council, Bay Area Immigrant Rights Coalition (BAIRC), SF Immigrant Legal Education Network, SF Immigrant Rights Commission, the Mayor’s Office, and other immigrant community organizations were to be consulted and involved in monitoring the successful implementation of the policy.

The final department to provide sanctuary ordinance related protocols in the initial Sanctuary Coalition meetings was the Department of Public Health and the General Hospital. The department’s “San Francisco General Hospital Procedures for All Residents Regardless of Immigration Status” outlined that when a patient arrives in the Emergency Department at SF General Hospital (SFGH) they were medically screened by a Resident Nurse. After this process, an eligibility worker interviewed the patient to collect demographic and financial information. All patients were interviewed the same way regardless of ability to pay, and the interview included a

question about whether the patient had a Social Security Number. If the eligibility worker was unable to collect a Social Security Number, the patient was asked if they had applied for one. The patient would usually volunteer the following information as a response to this question: they would state they are either – A. a tourist, B. Here on a work permit or business visa that’s valid and not expired, or C. are undocumented with no papers or in the U.S. without a permit or visa. Based on the response, a billing determination was made. If the person was undocumented with no papers, the eligibility worker was instructed to determine them as “self-declared” and to either refer them to apply for Medi-Cal or to complete a Provider Payment Determination (PPD) form.

In 2003, the federal government passed the Medicare Modernization Act that added a provision referred to in Section 1011 of funding to reimburse hospitals and its physicians for emergency services to uninsured undocumented persons. This Federal Program was implemented in June 2005. Section 1011 required hospitals to follow the screening guidelines mandated by the Centers for Medicare and Medicaid (CMS) in order to request reimbursement for services. CMS developed a screening questionnaire, a PPD form for hospital representatives to use as part of the patient interview process. This form and any documents collected were retained at the hospital as proof for claiming payment. This Program accepted patient’s self-declaration as an undocumented person but did request the hospital, as an option, to collect proof of undocumented status. CMS contracted with Trailblazers as the fiscal intermediary to receive and process hospital and physician claims for payment reimbursement. In order to bill Trailblazers the hospital was only required to report services, charges and patient’s medical condition. The patient’s name and address were not reported as part of billing to Trailblazers. DPH eligibility workers would also process residents with expired visas with a PPD Form.

In SFGH outpatient clinics, the registration procedure also included the patient interview in which the eligibility worker collected financial and demographic information for proof of San Francisco residence only. If the patient did not have a Social Security Number, they were screened for a Sliding Scale payment program or referred to apply for Medi-Cal. The Eligibility worker also asked why the patient did not have a Social Security Number. The case of DPH asking for social security numbers and valid visas for the purpose of establishing federal benefits eligibility points out an interesting aspect of sanctuary in San Francisco. This practice would be legal under the ordinance’s provision that stated that no city employee could ask about immigration status unless required by state and federal law, court order, *or for local service provision purposes*. Since asking for immigration status here was actually promoting the spirit of sanctuary - that is, providing a more stable life for residents regardless of status and one with minimal fear - this practice was included in the ordinance as permissible.

A second wave of department protocols was developed within the following few weeks. Among those protocols was the Office of the Treasurer and Tax Collector (TTX). The TTX reviewed their Employee Handbook and revised it to contain information about protecting taxpayer confidentiality and information on the City’s Sanctuary City Policy.

Taxpayer and treasurer information is protected under State and City law. Under the San Francisco Business and Tax Regulations Treasurer and Tax Collector Sanctuary Protocol Code, TTX is only authorized to share individual taxpayer information to the extent related to violations of the Business and Tax Regulations Code, and with specified governmental agencies, including the IRS, California Franchise Tax Board and Board of Equalization, and City Controller's Office. TTX is not explicitly authorized to share taxpayer information with the INS.

TTX collects info on nationality but not immigration status in regard to the issuance of passports. TTX is an authorized U.S. passport acceptance facility, which means that the office is federally authorized to accept passport applications for review and processing by the Department of State. In this role our office is responsible for verifying the identity of passport applicants, ensuring that all of the required documentation is submitted, and accepting payment for the passport and related fees. Only U.S. citizens may receive a U.S. passport. Depending upon the specifics of the request, there will be circumstances where the Treasurer's Office is mandated by federal law to ask for specific identification such as social security numbers and tax id.<sup>127</sup>

### *Training City Employees in the New Policies*

By the end of May 2007, the Sanctuary City Coalition of city departments moved into a new phase of their work – creating training modules to implement the sanctuary policies that department leaders and their staff had developed for their departments. Earlier in the month, the Board of Supervisors passed a resolution further pushing the work of sanctuary by calling for a moratorium on ICE raids while Comprehensive Immigration Reform was being discussed. When arguing for the moratorium, Supervisor Tom Ammiano said

Parents who are not documented live in daily fear that they will in fact be deported while their children still are in school. It seems to me that the city has a moral responsibility to that population and those who support them, not only to declare this moratorium, but to develop other policies.<sup>128</sup>

This set the tone for the Coalition's work, and Barbara Garcia, Deputy Director of Public Health and Director of Community Programs at DPH took the lead in implementing the department protocols. In an interview with the author, Director Garcia noted:

We took the lead in training the other city departments because we already had in place a lot of the administrative staff to do this kind of work. I had staff take a basic power point to talk to the other departments about how to implement this in the city. It was very easy for us because we already had that culture in place of trying to get people in preventative care and medical homes, and out of emergency care as the first point of contact- that has

always been a cultural value in our department. We went to the other departments and did the trainings internally. We did it once because it was new legislation [the Mayor's executive directive], but we weren't asked to repeat the trainings.<sup>129</sup>

DPH developed a sanctuary city employee-training curriculum designed to help CCSF employees "understand the purpose of the Sanctuary City ordinance, their roles and responsibilities, and their department's protocols for compliance."<sup>130</sup> Garcia managed the creation of a proposed timeline of activities for the implementation of the trainings and sent a draft letter to department heads providing them a training overview. DPH, community advocates, and the Mayor's Office staff all reviewed the curriculum. The curriculum was also presented to the DPH Community Programs Management Meeting participants for feedback. The plan at this point was to implement all trainings citywide once all departments had created their protocols and Sanctuary Initiative Coalition members approved them.

The training materials that DPH developed were made in the form of a power point presentation that included template overview information and various slides outlining department-specific policies to be implemented. Each presentation reviewed the history of the sanctuary ordinance, defined sanctuary, explained the role of the ordinance as it related to the Police, the role of the department being trained, and answered frequently asked questions. The purpose of the training statedly was "to provide you [city employee] with an overview of the Sanctuary City Ordinance in order to ensure that the City's immigrant population continues to use public services, regardless of immigration status."<sup>131</sup> It quoted Mayor Gavin Newsom saying, "San Francisco is a city of compassion – we are a Sanctuary City. We are proud to provide City services and public protection to all people, no matter where they are from..."<sup>132</sup>

However, what was most interesting is that the training materials were unclear as to what was really prompting them to change their protocols. Their history of the Sanctuary City Ordinance was the following:

In October 1989, the San Francisco Board of Supervisors passed an ordinance (Chapter 12H) making San Francisco a 'City of Refuge'. This ordinance was created in response to the number of Central American immigrants fleeing Civil Wars in Guatemala and El Salvador. The purpose was to protect immigrants who were not granted asylum, despite the violence in their countries. This ordinance is the foundation for the Sanctuary Ordinance.<sup>133</sup>

In actuality, 12H was the sanctuary ordinance. The author was actually confused thinking that Newsom's ED was the Sanctuary Ordinance or "Sanctuary Policy" that was requiring the changes in department protocol, not chapter 12H.

The history moved onward to say that

On March 1, 2007, Mayor Gavin Newsom issued Executive Directive 07-01 entitled, "The Sanctuary City Policy". This policy included five components, each designed to go hand in hand with Chapter 12H.

Unless specifically required by federal law, City and County of San Francisco departments, agencies, and commission officers or employees;

1. May not assist Immigration and Customs Enforcement (ICE) investigation, detention, or arrest proceedings, unless such assistance is specifically required by federal law.
2. May not require information about or disseminate information regarding the immigration status of an individual when providing services or benefits by the CCSF, except as specifically required by federal law.<sup>134</sup>

Actually these were the only component of Newsom's ED that were not new – these just restated what 12H already said. In fact, these rules were more permissible than the actual law stated. Newsom's real addition to the implementation of sanctuary in the city government was to tell all city departments to follow the existing law by having all departments create protocols related to sanctuary if they hadn't already done so. So in a sense, the training module made it seem like Newsom was creating a new "Sanctuary City Policy" based on 12H, when really he was just making sure the existing policy was implemented. However, this training then was not really a training on the actual letter of the law – of 12H including all of its amendments, but rather on Newsom's Executive Directive which merely pointed to a few of 12H's main sections.

The training had other inaccuracies. In discussing the rules for the Police, It told all city employees that members of the police department "do not enforce immigration laws and do not assist any other agency in enforcing immigration laws." While this is the spirit of the ordinance, technically, the SFPD was allowed to cooperate with ICE under limited circumstances.

However, technicalities aside, most importantly, city employees were trained on how to implement sanctuary in their department through specific protocols affecting their day-to-day work. For instance, the Department of Public Health Training stated the following:

Unless otherwise required by federal statute, regulation, or court decision, no employee of DPH in the course of his/her duties may disseminate information regarding the immigration status of an individual. No employee of DPH may assist ICE investigations, and any requests for such information or assistance, including those from law enforcement that have a subpoena that relate to the immigration status of individuals should be referred to a DPH Compliance Officer or City Attorney.

Enrollment in to DPH's programs may require eligibility workers to screen patients to determine if they qualify for different government programs.



Financial and demographic information for proof of SF residence: If a patient doesn't have a Social Security Number (SSN), the eligibility worker does not ask why the patient does not have a SSN nor disseminate it to ICE to assist with an investigation. Any requests for info or assistance, including those from law enforcement or pursuant to subpoena that relate to the immigration status of individuals are to be referred to a DPH Compliance officer. The Compliance officer and City Attorney will determine if the documents may be released to ICE on a case-by-Case basis.

Some DPH Programs require some form of identification or a SSN to determine eligibility for certain services or benefits (i.e. Healthy SF, Medi-Cal). A client's information is private and is not to be use for ICE purposes. Do not ask why someone does not have a social security number.

If ICE shows up at one of the clinics or other Community Program sites (even with a subpoena), do not release any patient information to ICE officers. For frontline staff, the supervisor should be contacted, then contact should be made with your DPH Compliance officer. For questions regarding the sanctuary ordinance, contact your supervisor or HR Labor division staff (Luenna Kim at SF General, Michael Brown in the central office, and Willie Ramirez at Laguna Honda Hospital).<sup>135</sup>

One of the most extensive trainings that was elaborated from the DPH template was the 311 call center training which included specifics on changes to their "Operator Citizen Relationship Management (CRM) scripting" and changes to the way that they answered certain questions from callers. Since the Sanctuary City Ordinance "protects the immigration status of individuals"<sup>136</sup> as they saw it, 311 put emphasis on assuring callers that any personal information they provided would be held strictly confidential. 311 operators asked all callers, "May I have your name and your phone number so that we can contact you if we have any further questions?" The training module informed them that if a called asked how the sanctuary city ordinance affected them, 311 operators were told to "explain the sanctuary city ordinance to the caller and *never* ask a caller about their immigration status." If the caller asked if they needed to show ID or prove immigration status in order to participate in a City program, the 311 operator was advised to search the 311 "knowledge database" to find the program in question, and convey whether or not an identification card or immigration status was required (and that only some state and federal benefits programs required ID and immigration status).

In the case that a caller reported to a 311 operator that a San Francisco department employee asked them for their immigration status and they would like to file a complaint, the 311 operator was instructed to "transfer the call to your supervisor." This indicates that at the time that this training module was created, 311 operators did not direct callers to register sanctuary ordinance violations with the Human Rights Commission that was charged with receiving sanctuary ordinance violation complaints. Further, there was no part of the training module on how 311 supervisors should take action when receiving sanctuary ordinance violation

complaints. In an interview with the author, the San Francisco Human Rights Commission Executive Director, Larry Brinkin, who oversaw the sanctuary ordinance violation complaints process commented on the lack of sanctuary violations complaints coming from the departments:

When we talked to the departments when we were on the Sanctuary Coalition in 2007-2008, they told us they would train their employees on the sanctuary ordinance because that was what was asked of them by the committee and by the Mayor. But they also said that most of their employees were aware of the sanctuary ordinance and they couldn't think of any point when they had reported an undocumented immigrant to ICE. I thought that was pretty good news and I had no reason not to believe it. One or two employees had done so and had been disciplined under the ordinance, but they had done that discipline all internally, they hadn't done what they were supposed to – notify the Human Rights Commission and let us investigate. Nobody was ever fired – the discipline was just counseling and it went in their personnel file. Anytime there was a complaint, we were supposed to investigate it and make a report to the Board of Supervisors and the Mayor.<sup>137</sup>

The 311 training also covered fielding questions regarding city departments that asked about immigration status for federal benefits eligibility purposes, questions about whether the SFPD asked about immigration status, service referral for undocumented residents, documenting a resident's opposition to the ordinance, or even how to report one's undocumented neighbor to ICE:

If a caller were to ask why a San Francisco department employee asked them for their immigration status and/or ID, tell them that “some San Francisco services will ask for immigration status and/or ID (i.e. Cal Works, SFPD), but that this was confidential information and will not be used for ICE purposes.”

If a caller were to report that they had an encounter with the SFPD and were to ask if the SFPD were to report their status to ICE, tell them “No. Members of the SFPD do not enforce immigration laws and do not assist any other agency in enforcing immigration laws.”

If someone calls and self-reports as undocumented, needing support services (food, housing, health, job information, education, etc.), “warm transfer the call to 2-1-1”.

If someone were to want to report their disagreement with the ordinance, they were instructed to call the Mayor's Office of Neighborhood Services or their District Supervisor.

If someone were to call 311 to report that their neighbor is undocumented and to request the phone number for the INS, tell them that “the CCSF doesn't

provide information about immigration law enforcement, but that information may be found elsewhere such as on the internet, white pages, etc.<sup>138</sup>

This was particularly problematic for following the spirit of the sanctuary ordinance in that the training, while not advising the 311 to expend resources to ask about immigration status or report an undocumented resident to ICE, it did advise them to refer a documented resident to sources where they could find out how to report an undocumented resident.

Lastly, if a caller were reporting an ICE raid in progress at a housing or apartment complex or job site, the 311 operator was instructed to locate the Sanctuary City Policy page in the Knowledge Base and follow directions for contacting the Rapid Response Team, which essentially was calling San Francisco Immigrant and Legal Education Network (SFILEN) legal defense team.

The Juvenile Probation Department created a power point training as well, indicating that the purposes of the training were, like the 311 training

1. To ensure that the city's immigrant population continues to use public services, regardless of immigration status and 2. To ensure that all City and County employees understand what the Sanctuary City Ordinance is and their responsibilities to this ordinance.<sup>139</sup>

The JPD's training outlined that the purpose of the Sanctuary City Ordinance was to "protect immigrants who were not given asylum despite the violence in their countries and U.S. involvement in these wars."<sup>140</sup> It reiterated that Mayor Newsom's Executive Directive 07-01 required all city departments to

Ensure that departmental rules, regulations and protocol adhere with City's Sanctuary City status, as designated by Chapter 12H of the City Administrative Code, provide public services and keep updated written protocols that describe compliance with Chapter 12H, incorporate education on the sanctuary status into regular employee trainings and orientations, and incorporate education on the City's sanctuary status into regular community outreach, and engage in proactive community outreach on this subject where appropriate.<sup>141</sup>

At the time of this training, JPD's Policy 8.12 (effective 1/5/04) on intake procedures for undocumented youth in detention stated that JPD employees were prohibited from reporting undocumented persons to the U.S. DHS, ICE. The training slides said "Undocumented youth coming to the attention of the JPD will be dealt with as though they are residents of the City and County of San Francisco and will be afforded all of the rights, privileges, and considerations given residents."<sup>142</sup> Undocumented youth were defined as "any person under the age of 18 years who is found to be not in possession of legal documents authorizing his/her presence in the United States, California and the City and County of San Francisco, and who claims to be or has been determined to be from another country."<sup>143</sup>

The module informed city employees that even though the sanctuary ordinance was passed in 1989, trainings were happening now because on March 1, 2007 Mayor Gavin Newsom issued his executive directive due to the increase of ICE raids resulting from a national political anti-immigrant sentiment. The Executive Directive was designed “to go hand in hand with Chapter 12H” requiring employee training, on-going training, outreach, and a community awareness media campaign. Anyone with questions regarding the Sanctuary Ordinance was advised to call their direct supervisor, the Office of the Chief Probation Officer, Tomas Lee at the City Administrator’s Office, Jenny Chacon the Health Program Planner at DPH, or Ana Perez, Executive Director of CARECEN.

The last training module worthy of mention was the International Airport training. The module’s *Collecting and Dissemination of Information and Assisting ICE* slides explained that unless otherwise required by federal, statute, regulation or court decision, no employee of SFIA in the course of his/her duties may disseminate information regarding the immigration status of an individual.

No employee of SFIA may assist ICE investigations, and any requests for such information or assistance, including those from law enforcement that have a subpoena that relate to the immigration status of individuals should be referred to both the SFIA Deputy Director of Operations and the Airport Compliance Officer or City Attorney. Nothing in this protocol shall prohibit authorized airport staff from compliance with mandatory security objectives set forth by the Transportation Security Administration (TSA), which may require both inquiry and reporting to specified federal agencies of the immigration or citizenship status of persons holding or applying for airport issued identification media.<sup>144</sup>

The training, like other department’s modules, included a question and answer series. One particularly strong question regarded how an SFIA employee was visited by ICE agents at his or her workstation with a subpoena. The module instructed the employee,

Do not release any information to ICE officers!!! Any requests for assistance or information or a subpoena that relate to the immigrant status of an individual should be referred to and authorized by both the Airport Deputy Director of Operations and Airport General Council.<sup>145</sup>

A total of 35,291 SFUSD and City and County employees, supervisors, and managers were to be trained in the new department policies. The first wave of trainings was to target priority departments that were involved in the Sanctuary Initiative Coalition. This included 50 311 Customer Service Center employees, 101 Adult Probation employees, 240 Juvenile Probation employees, 1,292 airport employees, 229 Emergency Management employees, 1701 Fire Department employees, 1,758 HSA employees, 2,531 Police officers, 5,883 DPH employees, 7,669 SFUSD employees, 938 Sheriff’s officers, and 218 Treasurer employees. These priority departments made up 64.1% of the total city and school district workforce. The remaining 35.9%

in non-priority departments would be trained in a second wave. Priority departments were instructed by the Mayor to complete their protocol drafting and to have begun the process of implementing their trainings by October 15, 2007 and to submit report-backs on training completion status. After the Mayor had received all of the reports from each department, the Mayor would launch the Public Awareness Campaign and the non-profit Rapid Response Network would officially begin to provide services to families impacted by ICE raids. All Departments would have until the end of October 2007 to train all of their employees in the new sanctuary department policies, all the while the Mayor would promote the city's image as a sanctuary city and encourage media to continue covering the issue. In July 2008, the Mayor would then have a press conference with ethnic media to discuss the city's status as a sanctuary city.

In mid-October, department heads in the Sanctuary Coalition informed their staff of the protocols, alerted them that they would be undergoing trainings, modified office personnel manuals, and posted the sanctuary training modules online. The Police Department implemented a one-hour training as part of their roll call trainings, and they sent the power point presentation to the 34 commanding officers with a request for it to be implemented at the precinct level. Unit Supervisors in Adult Probation were assigned to conduct training with their staff, and the Department of Emergency management supervisors completed training and were assigned training responsibilities. The Fire Department implemented a policy of completing quarterly "refresher" trainings that lasted 15-20 minutes, and Treasurer and Tax Collector employees and General Hospital employees received the policy updates in their pay check envelopes. By late October, all departments except for the Sheriff's Department had created protocols and completed the trainings of all employees. Unlike most other Departments whose Directors are appointed by the Mayor, the Sheriff is an elected official and not beholden to the Mayor. This may have accounted for some of the lack of participation in the Sanctuary Coalition, but Sheriff Michael Hennessey had always been a supporter of sanctuary in the jails, arguably the most important site for sanctuary protections.

After all priority departments had been trained, the plan had been that the Mayor would launch the media campaign referred to as the "Public Awareness Campaign" around November 1. However, Mayor Newsom postponed the launch due to his election obligations as he was running for Governor in the 2008 elections against Jerry Brown. Not until February 2008 did Mayor Newsom return to the Public Awareness Campaign, authorizing the broadcast of sanctuary city PSAs on television and news, as well as running the print ads.

By early February, the Sanctuary City Coalition had found the city's first Immigrant Rights Administrator (IRA), Sheila Chung Hagan, who was one of the architects behind the creation of the SFILEN and the former-Director of the Bay Area Immigrant Rights Coalition (BAIRC). The IRA worked under the City Administrator Ed Lee, in coordination with the IRC, and would oversee the remainder of the Sanctuary Initiative, taking over from the OLS. Her main role was to continue to make sure that the City departments were adhering to the Sanctuary Ordinance, to continue to be a liaison to the Rapid Response Network and SFILEN, and to assist the County Clerk with the city's new Municipal ID program, a new

government ID card that any resident regardless of immigration status could obtain. The card would allow immigrants to identify themselves to city officials, police officers, hospitals, and when seeking city services. It would also allow them open up bank accounts and therefore reduce their risk of becoming victims to thieves who preyed on undocumented immigrants who largely carry cash. The first issuance of the cards would happen in August 2007 (de Graauw 2014).

DPH at this time created a Request for Proposals for creating the Rapid Response Network (RRN), and approached two SFILEN organizations, CARECEN and Dolores Street Community Services to be the leads on the RRN and to receive the grants. They created a raid hotline number and phone tree of contacts to call in the event of a raid, and would arrive on the scene to take photographs and assess the needs of those who remained. They could then refer immigrant family members left behind to the appropriate social services provided by non-profit organizations and city agencies, find them housing, legal support, and funds for immediate needs. In addition to the RRN raid hotline, the United Way of the Bay Area set up a raid hotline number through a partnership with the Immigrant Legal Resource Center (ILRC) that operated from 5:30am to 5:30pm, as most raids happen in the early morning. SFILEN also launched the Know Your Rights campaign, organizing “Know Your Rights” trainings in churches, community group spaces, and at other sites.

After months of inaction on sanctuary protocol creation and training on sanctuary, the Sheriff’s Department finally submitted their sanctuary protocols to the Sanctuary Initiative Coalition. The Sheriff reported that his Classification Unit reported the name of any prisoner who self-identified as foreign born or whose Field Arrest Card indicated she was foreign born and who had been booked on felony charges or who had prior felony convictions. They also reported the name of any prisoner believed to be an alien based on information found through a computerized criminal history check, for instance if an active ICE warrant or a prior deportation order were found; information obtained in an interview with a prisoner who had been booked on felony charges or who had a prior felony conviction in her record; or any other source of verifiable information about a prisoner who had been booked on felony charges or who had a prior felony conviction on her criminal record. The Sheriff permitted ICE officers to interview prisoners in the jail if ICE specifically requested information about that person by name. Prisoners were told by Sheriff’s staff that ICE requested an interview with them and the prisoner could decline any or all interviews. However, ICE officers were not permitted to review booking or Field Arrest Cards at any Sheriff’s Department location or otherwise perform random searches of Sheriff’s Department records. When all local charges were adjudicated and only the ICE warrant remained, Sheriff’s officers notified ICE via teletype that the person was ready for pick-up and ICE was given 24 hours to pick the person up, excluding weekends and holidays. If the person was not picked up within 24 hours, the person was released from custody.

The Sheriff notified the Coalition that he conducted entry-level training for all new employees, reviewed the Sanctuary Ordinance, and reviewed the type of contact the Sheriff’s Department had with ICE. Supervisors received annual training each year and the Sanctuary Ordinance and the contact the Department had with ICE would be reviewed during the next training occurring within a few months. The

Department sent many directives over the past several years to all work locations explaining the permitted contact with ICE.

Finally, in the beginning of April, five months after planned, the Mayor announced the Public Awareness Campaign by hosting a press conference flanked by Supervisor Ammiano, community groups, faith leaders, and department heads. In preparation, the Sanctuary City Coalition had a met to discuss messaging at the press conference. They wanted to convey that San Francisco wanted to promote “dignity for all” and make San Francisco a “city for all.” They contended everyone in the city benefitted from the sanctuary ordinance, which promoted trust. The Coalition wanted the public to know that they saw immigrants coming to the U.S. to work and reunite with their families, not to over-use public services, and that access to services was a human right for everyone. They wanted to reiterate how the immigrant population was a long-time population in San Francisco and in the U.S. They emphasized the theme of a united humanity living on one planet, in one city wherein “we all speak the same language when we talk about sanctuary city.”<sup>146</sup>

At the press conference Mayor Newsom promoted the sanctuary ordinance and assured undocumented residents that accessing city services did not make an individual vulnerable to federal immigration authorities:

The City's public awareness campaign is a reminder that City employees will not report individuals or their immigration status to federal immigration agents. San Francisco residents should feel safe when they visit a public health clinic, enroll their children in school, report a crime to the Police Department or seek out other City services. The Sanctuary Ordinance helps to maintain the stability of San Francisco communities. It keeps communities safe by making sure all residents feel comfortable calling the Police and Fire Departments during emergencies. It keeps families and the workforce healthy by providing safe access to schools, clinics and other City services. Other cities have taken up sanctuary city frameworks, but we would like to take it to the next level. We've been very concerned that in the last year and a half at the renewed vigor of the federal government or ICE for immigration raids [...] And I know it's necessary because of the failure of our federal government to rationalize its immigration policy. We shouldn't be put in this position and that is why we are here. Until we get it right in this country on immigration, until we come to grips with the reality of people coming from around the world to cities large and small, then it is appropriate to protect our residents, to protect our families. [We are doing this public education campaign] to calm people's fears, people's instinct to go underground, to not come forth and report a crime because of that fear, to send their child to a clinic because of that fear, to send their child to school because of that fear. We are standing up to say to all of our residents, 'We don't care what your status is in terms of its legal certification, we care that you, as a human being are a resident of our city. We want you to participate in the life of our city, at least until the rest of the country figures this issue out.' We follow the letter of the law...we are not breaking any federal law – we are quite smart about how we do this. We are following the law, but we are not going to exploit the

spirit of condemnation behind the law in terms of going out of our way to support its implementation. We are wise in this effort but principled nonetheless. We will not stand back and watch this bigotry and fear-mongering advance in our city, and we will stand up and continue to fight for people so that they can live their lives out loud, in the light of day with dignity and respect.[...] Now If you break a law and you have a felony, that's a different set of rules, and that's only appropriate. We are not saying it is a free pass for anyone - that somehow different rules apply to people without status. That's why we are very precise in our efforts and deliberate that we make sure to reach the letter of the law. Reality dictates that we deal with the real conditions that we face as a city. We do it in an honest and forthright way.<sup>147</sup>

They announced that the awareness campaign would consist of advertisements of the sanctuary city policy on radio and TV, and multi-language brochures targeted at immigrants, city workers, business owners, and others. City Administrator Ed Lee commented that

Many of our critics say that having a sanctuary city is the "liberal thing to do" and they label that for San Francisco, but we in San Francisco - and I know in particular the Mayor and the Board of Supervisors - we know it is not only the liberal thing to do, it's the *responsible thing to do*. When we see the census undercounting in this city, the health crisis and housing crisis, and violence issues, these all require and need the engagement of populations that otherwise may be afraid to come out. We need a live sanctuary city ordinance to do that.<sup>148</sup>

Supervisor Ammiano noted that sanctuary was an issue that unified both sides of the political aisle:

It is a noble issue. We are taking a big bite out of the reality sandwich in admitting that there are people here who may not have citizenship status, but the most important status is not only their human status, but their residence of San Francisco, a welcoming and enlightened city. While the state dithers, and the federal government avoids, San Francisco again takes the matter in their hands, and it is if anything, a humane and productive - even for economics - recognition of the contribution of people who make San Francisco a great and wonderful city.<sup>149</sup>

Police Chief Heather Fong pointed out the need for creating safe environments for law-abiding immigrants and to protect them from people who would prey upon them:

Regardless of status or ability to speak English, we have to serve that public and we enjoy doing so and partnering with that community. All of us know someone who lives in our communities who doesn't speak English and who



are potentially undocumented and we all need to be there to support them. There are people who prey upon undocumented people and we need to say 'no, that's not appropriate, they are welcome to our city - law abiding citizens.' And we look forward to ensuring that they live in safe environments.<sup>150</sup>

## **Conclusion**

This chapter explained how with executive political will and with the consent of the community, sanctuary city policy enacted by the legislature, could be implemented in a manner that modifies the everyday practices of the people who government officials manage – city employees. The Sanctuary City Initiative brought together all of the main public-serving department heads in one room with immigrant rights advocates, to collectively hash out how city agencies should modify their practices through executive decree. They aimed to change the cultures of city agencies, taking the specificity of those agency cultures and practices into account. Operationalizing sanctuary meant first, writing more specific sub-policy – department-specific sanctuary policies - to regulate department staff behavior in a way consistent with the sanctuary ordinance rather than just idealize the values of sanctuary. While some departments like the Sheriff's Department created annual recurring trainings on the policies, others trained their employees only once as part of this Mayoral initiative. This largely assumed that organizational cultural shifts that would bring about the sanctuary city could take place if only more policy were created and people were trained on that policy. Even if the creation of policy and training effected culture change in these departments, the Sanctuary City Initiative did not create policies or trainings for supervisors and Department Heads on how to deal with violations of their new sanctuary policies nor did it create policies for the Mayor to follow for disciplining the department heads who failed to take effective action on violations. Nonetheless, it was a moment, perhaps the only, when the Mayor, Supervisors, and the immigrant rights community were on the same page with regard to sanctuary city policy and how it should be implemented to make sanctuary tangible rather than merely symbolic. Further, the major branches of the government came together with immigrant serving organizations to broadcast the message to immigrants throughout the city that they could feel safe that if they engaged the municipal system, they would not be reported to ICE. In this moment, Mayor Newsom appeared to be a champion for immigrants, directing his staff to make sanctuary real, and standing in front of television cameras in the midst of his gubernatorial campaign to show the world that he stood behind this policy, and that the values it propagated were the foundation of the city. Little did they all know how short-lived this alliance would be, how quickly the Mayor could single-handedly bring it all to a halt not with a boom, but with silence, denial, and withdrawal.

## CHAPTER 5

### THE SANCTUARY CITY PICKS A SACRIFICIAL LAMB: THE EXECUTIVE BRANCH'S ATTACK ON UNDOCUMENTED JUVENILES

*The deniability on the part of one is not so plausible.  
-Juvenile Probation Department  
Chief William Sifferman<sup>151</sup>*

#### Introduction

Just a month after Mayor Newsom and the Sanctuary Coalition announced the Public Awareness Campaign, ICE fought back and amped up another wave of home and workplace raids in San Francisco. ICE agents were reported to have threatened individuals inside their homes with lengthy periods of incarceration, and detained and interrogated individuals based on their appearance, without individualized suspicion as to their immigration status. ICE also made headlines for raiding 11 *El Balazo* Mexican restaurants around the Bay Area and arresting 63 undocumented immigrants. The raids all occurred simultaneously at 10:30am in San Francisco, San Ramon, Lafayette, Concord, Pleasanton, and Danville. 62 immigrants were from Mexico and 1 was from Guatemala. Detainees were photographed, interviewed, and fingerprinted. 11 were released immediately for humanitarian reasons and the rest were expected to be released soon after. ICE had obtained search warrants, come in the restaurants, shut the doors, and interrogated all of the employees.

These raids were a slap in the face of the Mayor and the Sanctuary City Coalition - a reminder that ICE still works in the sanctuary city, can instill fear, and will still aggressively arrest and deport undocumented residents regardless of the city's sanctuary ordinance. For immigrants, it didn't matter if City employees wouldn't report them due to the sanctuary ordinance, if when it came down to it, they were afraid to bring their children to school, to hospitals, or to access city services because ICE was out hunting them.

At the same time, in mid-May, the Mayor seemingly for the first time, became aware of ICE agents detaining a San Francisco Juvenile Probation Officer in the Houston Airport after he had been accompanying two Honduran undocumented youth to their gate to a flight to Tegucigalpa. The youths had previously been convicted of drug crime offenses in San Francisco Juvenile Court and the youths had been declared wards of the Juvenile Court on April 11<sup>th</sup> and 29<sup>th</sup>. Rather than reporting the youths to ICE, the Juvenile Court judge ordered that JPD probation officers return the youth to their parents in their home country Honduras in the name of family reunification. Provisional visa documents for the youth had been obtained by the Honduran Consulate on April 30<sup>th</sup> and flight tickets for the youth and the JPD Probation Officer that would escort the youth were purchased by JPD the following day. On May 16<sup>th</sup>, JPD brought the youth to San Francisco International Airport and accompanied them on a red-eye flight to Houston where they would make a connecting flight to Tegucigalpa early in the morning. At the arrival gate, coming off of their flight from San Francisco, they were met by four ICE agents who

asked the JPD officer to identify himself and the youth, and then proceeded to handcuff the minors and take them into separate interrogation rooms. The JPD probation officer told the agents that he was carrying out a San Francisco Juvenile Court Directive. After interrogating the minors for four hours, the ICE agents then interrogated the JPD officer about the officer's personal information, his employment status with the Juvenile Probation Department, and the nature of the transport of the minors. ICE didn't believe the probation officer until they received faxed copies of the court order itself. The Probation officer, according to his report back to his supervisor explained the Sanctuary City Policy under which "Probation Officers are not permitted to report undocumented minors to ICE" and the alternate protocol implemented by the Court for returning minors to their parents in their country of origin.<sup>152</sup> The lead *ICE agent* then indicated, "that federal law *requires that we report all undocumented*s and San Francisco Juvenile Court is violating federal law."<sup>153</sup> While the JPD officer was not arrested, he reported, "the threat of arrest was looming throughout the interrogation."<sup>154</sup> The ICE agent told the JPD officer that they had referred the JPD officer's case to the Texas State Attorney General, who declined to prosecute. Instead, the JPD officer was "given a warning" and told

If the San Francisco Juvenile Court continues to send minors back to Honduras by sidestepping ICE, the transporting Officer will be held accountable for 'knowingly or unknowingly transporting undocumented' to the full extent of what federal law permits.<sup>155</sup>

The ICE agent extended a "professional courtesy" by not arresting the JPD probation officer due to him being a "fellow Peace Officer," and told the probation officer that he "should consider [him]self lucky and forewarned."<sup>156</sup> The ICE agent then went on to notify ICE's local San Francisco office for "further investigative action against the San Francisco Juvenile Court and Probation Department."<sup>157</sup> The JPD officer was then released. Federal authorities then took the two undocumented youths into custody and put them in deportation proceedings.

However, the Mayor's "surprise" in this JPD policy was disingenuous. In early December 2007, a similar incident occurred where a JPD officer was questioned in the Houston airport, and at that time, in response, JPD Chief Sifferman met with an San Francisco-based ICE official – Assistant Field Office Director, Sylvia Arguello – to inquire into the issue. Arguello then wrote Sifferman a follow-up letter on December 17<sup>th</sup> notifying him very cordially that the Detention and Removal Office (DRO) of ICE

has sole ownership of the Criminal Apprehension Program that the Office of Investigations previously held. The San Francisco Office of Detention and Removal (DRO) is responsible for interviewing and determining removal of foreign-born nationals from the United States from your facility. DRO is also responsible for the transportation aspect of *the Immigration and Customs Enforcement (ICE) detainees in your custody* once their sentences have been completed.<sup>158</sup>

For Arguello to call undocumented youth, on the basis that they were undocumented alone “Immigration and Customs Enforcement (ICE) detainees” who were in JPD custody would frame the status of the youth to Sifferman as that they were already necessarily subject to ICE deportation even prior to ICE assuming custody of the youth. Further, it would disregard the authority of the Juvenile and Superior Court to determine the sentences and rehabilitation plans of youth. Arguello would go on to say that “We would like to have ICE personnel present at your facility in order to interview these individuals in your custody. We would also like to begin receiving referrals from your staff regarding individuals in your custody.”<sup>159</sup> Arguello then provided Sifferman with all of the contact information for DRO supervisors.

However, for Chief Sifferman the issue was still unclear as to whether or not he could continue to abide by Juvenile Court orders to reunify youth with their families in other countries. Sifferman immediately informed the Mayor’s Office of Criminal Justice (MOCJ) Deputy Chief of Staff Kevin Ryan who reported directly to the Mayor about the issue. Ryan was one of the few Republicans in the city government and prior to being Deputy Chief of Staff for MOCJ, was a former U.S. Attorney and a San Francisco Superior Court Judge. However, after 4 years on the job as a U.S. Attorney under President George Bush, Ryan was fired from his job in December 2006 for being “elusive, isolated, removed from office life, retaliatory, explosive, non-communicative, and paranoid”.<sup>160</sup> He had received low scores in a performance review in 2005 following his staff reporting to have extremely low morale. Soon after his departure from that office, Mayor Newsom hired him on as his senior crime advisor in the MOCJ.

After hearing from Chief Sifferman about the Houston encounter with ICE, Kevin Ryan then in turn scheduled a meeting with the U.S. Attorney’s Office for April 3, 2008 to discuss the incident at the Houston airport.<sup>161</sup> However, the U.S. Attorney cancelled that meeting and MOCJ never rescheduled it.<sup>162</sup> In a later report of the Chief to the Juvenile Probation Commission, the Chief would indicate that in the meantime, “JPD was advised to follow the Juvenile Court’s orders and that response to ICE detainers was voluntary (i.e. “...you *may* respond”).” This would indicate that if the Juvenile Court ordered JPD probation officers to reunify undocumented youth with their families locally or internationally and ignore an ICE request for JPD officers to turn over a youth, then they could do so legally. As a result, JPD continued the policy of international family reunification (the fly-back policy) of undocumented youth. San Francisco Public Defender Jeff Adachi explained later that the amount of youth who he had represented who had been transported back to their home countries since February 2007 were a total of seven youth.

The local media characterized JPD’s actions of international family reunification to be instances of JPD going rogue and interpreting the sanctuary ordinance as a no-cooperation with ICE policy despite a City Attorney memo stating that juveniles were subject to deportation for certain offenses. However, JPD was actually following very clear department policy elaborated first in 1996 and then reaffirmed and clarified in 2004 with regard to the handling of undocumented youth in their custody.

This chapter outlines the tumultuous dismantling of the Executive Branch's political will to implement sanctuary city protocols in the summer of 2008. It shows that the Executive Branch's actions undermined the State Judicial Branch's power to provide sanctuary-minded criminal sentences for juvenile youth. While some of these youth had been found to have committed crimes, others had been merely accused of committing crimes and later acquitted. This chapter explores how the Executive Branch used the sanctuary ordinance and the idea of *sanctuary city* to initiate deportation proceedings of these undocumented youth and also adults on probation in San Francisco. Such a period in sanctuary city's history highlights one of the potential uses of the sanctuary ordinance: to clarify how exactly a progressive municipal government can participate in assisting the federal deportation regime. This chapter also describes in detail the role that federal officials from the Immigration and Customs Enforcement agency and the U.S. Attorney's Office had in assisting the Executive Branch in reforming the Juvenile Probation Department's sanctuary city protocols to allow Juvenile Probation officers to report undocumented youth to ICE.

### **Processing Undocumented Youth in the Juvenile Justice System**

The Juvenile Probation Department's three major functions were 1) to investigate the circumstances surrounding the arrest and detention of minors, 2) the preparation of reports to the California Juvenile Court and Superior Court of San Francisco (a state court) that they would consider prior to sentencing youth, and 3) the execution of Court Orders including the supervision of minors released to the community or into out-of-home placements.<sup>163</sup> Unlike all other counties in California, San Francisco's Juvenile Probation Department was the only one to have a stand-alone department focusing on juveniles rather than a bifurcated Probation Department that focuses on both juveniles and adults. The mission of the Department would be to

Serve the needs of youth and families who are brought to our attention with care and compassion; to identify and respond to the individual risks and needs presented by each youth, to engage fiscally sound and culturally competent strategies that promote the best interests of the youth; to provide victims with opportunities for restoration; to identify and utilize the least restrictive interventions and placements that do not compromise public safety; to hold youth accountable for their actions while providing them with opportunities and assisting them to develop new skills and competencies; and contribute to the overall quality of life for the citizens of San Francisco within the sound framework of public safety as outlined in the Welfare and Institutions Code.<sup>164</sup>

JPD aimed to work in partnership with a variety of stakeholders in the juvenile justice system to reduce juvenile delinquency and recidivism, strengthen youth and their families, and to give victims and communities affected by juvenile crime,

opportunities “to be heard and to experience satisfaction through actively participating in the juvenile justice process.”<sup>165</sup>

The authority structure of JPD was strictly hierarchical. At the top of the management of the department was the Chief Probation Officer, William Sifferman, who was appointed by the City Administrator with the agreement of Mayor Newsom. As such, JPD was part of the Executive Branch. The Chief oversaw two divisions of the department each with their own Director. The first was an administrative division composed of the subdivisions Human Resources, Information Technology, Buildings and Grounds, and Business and Finance. The second division was a correctional and probational division, composed of Juvenile Hall, Probation Services, and a secure facility for the most serious juvenile offenders in City custody - the Log Cabin Ranch. This second division was directed by the Assistant Chief Probation Officer Allan Nance. Within the Probation Services Division there were 48 frontline probation officers who reported to 8 Supervising Probation Officers who reported to a Senior Supervising Probation Officer, who reported to the Probation Services Director, who reported to the Assistant Chief Probation Officer Allan Nance who reported directly to Chief Probation Officer Sifferman. In addition to probation officers and their managing supervisors, the correctional/probation division of the department would also employ counselors, employment training specialists, and social workers who provided services to youth in serving out their rehabilitative sentences and their probation. The department would also partner with community organizations to extend their programs to serve specific needs that the department did not meet or which the community organization could meet more effectively and affordably.

In addition to being directly accountable to the Mayor, the Juvenile Probation Chief and the officers under his charge were also accountable to the Juvenile Probation Commission, which was composed of civilians - some who were appointed by the Mayor and some who were appointed by the Board of Supervisors - who decided on policy for the department, overarching departmental direction, and who served as a bridge between the community and the department. The JPD Chief would also be accountable to the Board of Supervisors in carrying out the mandates of city laws that the Board passed. The JPD was additionally reliant on the Board to authorize the Juvenile Probation Department’s budget.

The manner in which all youth came into contact with JPD began when a youth had been accused of a law violation. Most juvenile offenses were described in broad terms in the State of California Welfare and Institutions Code (WIC), section 602 on Law Violations, while the actual language of law violations were described in the Vehicle Code, Business and Professions code, Traffic Code, Health and Safety code, and Penal Code. If a youth were accused of an offense, he or she would be in most cases arrested by a police officer or other law enforcement agency and brought to JPD’s Crisis Assessment and Receiving Center (CARC) – a JPD facility staffed by a team of professionals including probation officers for a determination of whether the child should be cited and released or brought directly to Juvenile Hall. Juvenile Hall was a 150-bed facility providing year-round, 24-hour per day secure custody, and was designed for temporary detention for youth awaiting their court dates and sentencing. It was also used for detention for youth serving out short-term

sentences. While the juvenile population in Juvenile Hall fluctuated seasonally, the Hall would remain occupied with roughly 80-120 youth at any given time. The larger the population of detained youth at a given time in Juvenile Hall, the higher the cost to the Department for running the facility. If the case involved violence or a serious felony offense, the arresting police officer was required to take the youth directly to Juvenile Hall for booking, bypassing CARC. However, if the offense was of a more minor nature – a misdemeanor- then CARC staff could cite the minor to either come back for an intake interview with a probation officer or to handle the matter informally. If it was determined appropriate to handle the matter informally, the youth wouldn't be cited but would rather return to work with a CARC case manager for 30 days. This "informal probation" may include the youth doing community service or seeking the services of local community agencies that help youth with anger management, substance abuse, or mental health counseling. If a youth were initially brought to CARC, they would be processed through CARC rather than through Juvenile Hall. CARC handled just over 300 misdemeanor cases and some non-violent felony cases per year.

If the youth were cited, she would be given a citation that is called a "referral" that would require the youth to appear in court after reporting to a JPD Probation Officer for an intake interview unless he or she were brought by the law enforcement officer or other city official directly to a probation officer in Juvenile Hall. The majority of referrals to JPD came through law enforcement agencies, though other agencies that serve youth such as schools or afterschool programs might take the first step in reporting a youth to the police or to JPD. Teachers usually only called JPD on cases where the student was on probation, while they would likely call the Police for any delinquent offense if it merited the call. The third manner in which a youth could come into JPD's custody would be through a "transfer-in" – when a youth who normally lives in San Francisco commits an offense in another county and is transferred back to San Francisco to be processed for the offense. These "referrals" would amount to a citation with a minimal summary of certain facts that the citing or arresting officer witnessed or documented from his or her interviews with on-site witnesses, and would include his or her initial charge of a violation of a particular law or status offense. In that sense, the referral reflected the snapshot opinion of the officer without a ruling that the facts witnessed actually amounted to a violation of the law or status offense the officer was accusing the minor of.

The main levels of referrals that the Juvenile Probation Department processed were infractions, misdemeanors, and felonies with felonies incurring the most detention time and misdemeanors incurring the least detention time if they were "sustained" – that is, found to be valid by juvenile court. Infractions never incurred detention time. Once a youth was referred to JPD by a law enforcement agency for further processing, JPD needed to make a determination about whether they needed to continue detention for the minor or not within 48 hours of obtaining custody of the child during the workweek. If the youth is booked over the weekend, then a judge or magistrate of the juvenile court would need to issue a finding of probable cause that the youth committed a crime so that Juvenile Hall could continue to hold him or her over the weekend. The majority of youth referred to JPD

were released to their parents or guardians within the first three days, if not within hours of delivery of the youth to JPD custody at Juvenile Hall or CARC. Often, these youth would be required to return to Juvenile Hall or CARC for further processing and sanctions, making their release conditional. Other alternatives to secure detention that the Juvenile Probation Department would use were “home detention” and shelter care for youth at contracted and licensed non-profit shelters throughout the city. Placements in these various settings would come as a result of the youth’s final “disposition” or sentencing – the finding of guilt or innocence by the juvenile court and the plan for how JPD would rehabilitate the youth.

If the youth were brought directly to Juvenile Hall by a referring agency, the youth would be admitted to the Hall through a process referred to as “booking.” All referrals were first processed by the JPD’s Intake Unit, a unit of Probation Officers that investigated each case by interviewing the youth in custody and determining what he or she thought the most appropriate course of action to be. After interviewing a child and assessing the referral charges, the Intake Unit probation officer could make the decision to further send the child through the juvenile court process or to route the case through alternative, less serious channels. If the probation officer determined the case to not merit the need for a court ruling, he or she had the options to decide to send the youth to receive counseling along with a dismissal of the arresting officer’s charges; to divert the youth to a community based agency, assign community service hours and restitution; refer the youth to traffic court; or to dismiss the case all together with no further proceedings.

However, if the Intake Unit decided that the youth’s case needed to advance on to the juvenile court, usually because they had reason to believe that the youth did commit a felony-level offense or if the youth had violated their CARC probation, and if the youth needed to remain in JPD custody for longer than three days, then the probation officer would file a request for a “petition” with the District Attorney’s office (DA) – an initial assessment that there are charges against the youth that have merit that deserve to be tried in juvenile court. The DA’s office, which was in charge of prosecuting the youth in court, would then decide whether the petition had merit to prosecute, and would prepare and file the petition in the Juvenile Court with the probation officer and youth present. The petition filed in Juvenile Court could have a level of severity that might differ from the arresting officer’s initial charges in the referral as the Intake Unit probation officer and the DA might find that the arresting officer’s assessment of the situation was overblown and in need of reduction from, for example, a felony to a misdemeanor. Going further than that, the District Attorney may also decide to not re-file the petition, dismissing the case.

If the youth’s case was determined to be fit for being heard in the juvenile court, then the youth would be given the petition to return to court for an initial arraignment called a “jurisdictional court hearing.” At that hearing, prosecuting lawyers from the DA’s office and defense lawyers from the Public Defender’s Office or from a private legal agency administered by the San Francisco Bar Association who represent the youth, plea bargain in the process of prosecuting the case. This hearing would need to occur within 24 hours of the DA filing the petition. This hearing would also be referred to as the “adjudication stage.” JPD’s Court Officer Unit would attend these hearings, transport youth in custody to the hearings,



explain the proceedings to youth and their families, and share information of the case with appropriate concerned parties. They ultimately were responsible for communication between the case-carrying Probation Officers and the Court.

The outcome of the plea bargaining in this hearing was that a juvenile court judge would determine whether or not to find that the petition requested by the probation officer and filed by the DA's office was sustained – found to be true - found not to be sustained, or dismissed. This would be referred to as the “dispositional stage”. If the case were dismissed, that could mean that there was likely a lack of evidence provided by the arresting officer or the probation intake officer to prosecute the child. However, the youth could also avoid the jurisdictional court hearing by admitting the truth of the charges before trial or “pre-trial”, which would also lead the court Commissioner or Judge to accept the plea of guilt, find that the charges were sustained, and skip the youth past the jurisdictional hearing straight to a sentencing hearing. This type of plea would be based on a motion filed by the youth's lawyer usually for “voluntary informal probation” but that type of plea was almost always objected to by the DA and the Juvenile Probation officer.

If the petition *was not sustained*, then the judge might decide that the youth still needed informal or voluntary supervision or “probation,” may need to be transferred to another jurisdiction if the youth's residence was outside of San Francisco, or may dismiss the matter altogether. If the judge decided that the youth needed supervision – “probation” - then JPD's Supervision Unit would provide on-going supervision of the youth while that youth lived with his or her family at home or with a close relative. Probation Officers would essentially supervise youth in the community by visiting the youth and their families in their homes, schools and at community based organizations. The Probation Officers might also refer the youth to other agencies for a variety of supporting services and to enforce court-imposed conditions of the youth's probation. This type of probation usually lasted about 6 months.

If the petition *was sustained* by the judge either through a plea at pre-trial or at trial, meaning that the facts of the case did lead to a finding of guilt for the accused offense, then the youth would move on to a “dispositional court hearing” where the youth's disposition – the sentence or action plan that would be taken to rehabilitate the child or correct the offending behavior – would be negotiated between the prosecuting DA, the youth's defense lawyer which was usually the Public Defender, and the Juvenile Court Judge. Ultimately, the Judge had the final say in what kind of sentence - the disposition - that the youth needed to fully rehabilitate based on the charge, but weighed heavily the recommendation of the case holding JPD probation officer, as well as the opinions of the District Attorney and the Public Defender.

At that hearing, the child would either be declared a “ward of the court” or not. If the child was considered a “ward of the court” the court would enter into a legal relationship with the child wherein the court would act as a “parent” of the child – a *parens patriae*. These youth would be placed on active supervision either at home, with a relative, or in more serious cases the youth is removed from the home. If the judge established “ward-ship” and determined that the youth should be placed outside of the home, usually placement of the youth was at a state licensed group home or institution locally, in another county in California, and only in rare

circumstances, out of State. If the youth were removed from their homes, JPD's Private Placement Unit then played the role of supervising the youth who were placed in non-secure facilities, such as foster homes, group homes and residential treatment programs primarily in California as well as Nevada, Colorado and Pennsylvania. These Probation Officers supervised the youth while in their placement, monitored the suitability of the placements and prepared aftercare re-entry plans for youth completing programs. This type of wardship probation usually lasted one year but the youth could technically remain on probation until they became 21 years old.

In the most serious of cases, if a youth needed to be placed out of the home, the juvenile court would place them in the City's Log Cabin Ranch or with the California Youth Authority. Log Cabin Ranch was the city's post-adjudication facility for male juveniles providing a twenty-four hour a day residential program wherein minors take San Francisco Unified School District classes, and receive mental, dental, medical, and social services. They participated in therapeutic groups, and receive cognitive, behavioral, and vocational training, as well as substance abuse counseling. On the state level, the California Youth Authority maintained correctional facilities - maximum-security youth prisons - for the state's most serious juvenile offenders up to the age of 25. For the least serious sustained petitions where minors were not made wards of the court, the judges could rule that the youth continue on informal supervision or *probation without wardship*.

However, in certain circumstances where a youth was accused of a very serious offense covered by section 707 of the Welfare and Institutions Code (WIC), such as a rape, murder, or kidnapping, then the juvenile court could "waive" the petition and find the minor unfit for juvenile court jurisdiction through a 707b WIC fitness hearing certifying the youth's case to adult court - the Superior Court of San Francisco. If that were the case, the youth would then be tried as an adult, and the DA would prosecute the crimes without any kind of determination of guilt or innocence from the Juvenile Court. Nonetheless, youth who are accused of these more serious crimes may still remain detained in Juvenile Hall while awaiting adjudication and disposition due to state laws, which forbid minors from being jailed with adults until they reach the age of 18. If approved by the Juvenile Court, the youth could even remain in Juvenile Hall until reaching age 19.

In 1996, the Juvenile Probation Commission - which creates policy for and which oversees the Juvenile Probation Department - under pressure of and in collaboration with the immigrant rights community *and the Immigration and Naturalization Service (INS)* elaborated specific protocols with regard to how its various units would interview and process undocumented minors. The JPD Policy regarding protocols for the treatment of undocumented minors was born out of conversations in August 1996 between the Mission Community Coalition for Youth Services and Ed Flowers, Chief Probation Officer of the San Francisco Probation Department.<sup>166</sup> Members in the Coalition included Real Alternatives Program, La Raza Centro Legal, CARECEN, Horizons, and the Advisory Board of Comunidad San Dimas. Also present in the meetings were the District Attorney's Office, the Public Defenders Office, and the City Attorney.

The Coalition assisted the Probation Department in drafting and implementing a new policy, which would balance the state-wide goals of the juvenile justice system and public safety with the imperatives of the Welfare and Institutions Code, which required youth dispositions to be made in the best interests of youth. In this sense, it would not be based on the sanctuary ordinance, but rather on the legal imperatives of the juvenile justice system that treated minors differently than adults with regard to crime and rehabilitation. The policy stated that

Pursuant to Welfare and Institutions Code Section 202 and California Appellate Court decisions, it is the purpose of the San Francisco Juvenile Probation Department in conformity with the interests of public safety and protection, to afford all minors, regardless of national origin, immigration status, gender, or ethnicity, care, treatment, and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances.<sup>167</sup>

The policy would further state that with regard to meting out dispositions

the immigration status of a minor shall not be considered in the recommendation of a probation officer for disposition. Disposition recommendations shall be made independent of immigration status. Probation officers shall not discriminate in any fashion against minors based on their immigration status.<sup>168</sup>

The policy would also find that due to juvenile files being confidential under the Welfare and Institutions Code (WIC), only in very limited circumstances could they be released to agencies such as the Immigration and Naturalization Services (INS):

As will be further outlined below, juvenile matters are confidential and shall not be disclosed to outside agencies except in limited circumstances. Intentional violations of confidentiality provisions is a misdemeanor pursuant to Welfare and Institutions Code section 828.1 except as provided by Welfare and Institutions Code section 827 and 828.<sup>169</sup>

Under the policy, undocumented minors could be detained and taken into temporary custody by JPD for an offense pursuant to WIC section 602, and without a warrant pursuant to WIC section 625. In doing so, the probation officer had a variety of options for processing the youth. He or she could release the minor; deliver or refer the minor to a public or private agency that the City had an agreement with to provide minors shelter care, counseling, or diversion services; prepare a citation and notice to appear in court to be signed by the minor and his or her parent, guardian or relative, in which case the officer immediately then released the minor to his or her parent, guardian, or relative; or the probation officer could take the minor to a probation officer in another county if the youth had committed an offence elsewhere. If the probation officer found it appropriate, he or she could also contact a community counselor to speak to the minor in order to facilitate release of the

minor to a public or private agency and/or to a parent, guardian, or relative. The probation officer would then provide the youth with a list of community counselors.

Under Welfare and Institutions Code section 628, as soon as an undocumented minor was delivered to the probation officer - as with all youth - the probation officer needed to immediately investigate the circumstances of the minor and the facts surrounding the minor's detention. The probation officer then needed to immediately release the minor to the custody of his parent, guardian, or responsible adult. That adult would need to present a valid identification such as a driver's license, identification card, visa, passport, or birth certificate, or the probation counselor would call a community advocate to help the probation officer obtain the necessary information for release of the minor. The guardian then would sign an affidavit under penalty of perjury that they were willing to be responsible for the care and control of the undocumented minor and that they would sign a written promise that they and the minor would appear before the probation officer at the Juvenile Hall or another suitable place designated by the probation officer at a specified time.

Under the policy, before a petition – the charges - were even filed in Juvenile Court, the probation officer was allowed to on his or her own, without a Judge issuing a court order or disposition, make a rehabilitation plan that lasted no longer than 6 months for the youth, wherein the undocumented youth would be released to his or her family whether they resided locally or internationally in the youth's home country. This would only be done if it was in the best interest of the minor and if it would not be a threat to public safety. If the youth didn't return to the United States illegally and was not cited or arrested in the United States for another offense during the six-month period, the petition for the original offense would not be filed. This would all be allowed under WIC section 654 of WIC – state law. In cases of non-violent undocumented offenders, probation officers could also make a plan for informal probation under the same law.

However, if the probation officer did find it appropriate to file a petition in Juvenile Court, the probation officer could not consider the immigration status of a minor in making his recommendations to the Juvenile Court for dispositions. The policy stated:

Disposition recommendations shall be made independent of immigration status. The minors shall receive dispositional recommendations consistent with their specific needs. The Community Coalition will assist the Probation Department in reviewing dispositional recommendations by providing a representative to serve on the Multi-Disciplinary Committee that reviews recommended dispositions for minors.<sup>170</sup>

In most cases, under this policy, the Juvenile Probation officers were not allowed to refer an undocumented minor to INS if JPD had not received a specific request from INS to hold the youth for INS to interview and put that youth in deportation proceedings. The policy would state that

When there is no INS hold on the minor, there is no purpose for the probation officer to contact INS within the scope of Welfare and Institutions Code section 828.<sup>171</sup>

However, if the INS had placed a hold on a minor, the probation officer was instructed under the policy to “obtain a copy of that hold from the bailiff. The probation officer shall then fill out the attached form verifying that a hold does exist and attach a copy of that hold to the form.”<sup>172</sup> In other words, if an INS hold was placed on a minor who was in JPD custody, under the policy, the JPD officers would verify with INS that the hold was valid, placing it in the youth’s case file, and then immediately provide the lawyer for the minor a copy of the INS hold. The JPD officer would then fill out a form under penalty of perjury that the hold was valid and that he or she had given it to the youth’s lawyer. The JPD Officer could then call INS under section 828 of WIC to get more information on the hold that the probation officer could include in the “dispositional report” – his or her recommendations to the Juvenile Court Judge for a disposition for the youth. The probation officer would also attach a copy of the hold to the dispositional report.

The probation officer then was instructed to try to confirm the situation for the minor in his or her home country. The officer attempted to locate the youth’s parents wherever they resided, get a birth certificate for the youth, and if they could locate the parents and found the situation to be safe for the youth in the home country, request to the INS that they release the hold on the youth. The officer then talked to the youth’s country of origin Consulate in the United States about getting the youth a provisional visa so that JPD could transport the youth back home to his or her parents. If all of this worked out and the judge agreed that the youth should be reunited with his or her family back in his or her country of origin, the judge would issue a disposition of international family reunification that would order the JPD officer to escort the youth back to his home country. The policy would state, “The Probation Department shall make every effort to return an undocumented minor through the auspices of the Probation Department.”<sup>173</sup>

While the policy would limit taking immigration status into consideration to circumstances when INS holds had been placed, it did also allow probation officers to contact INS when there was no hold, “If a probation officer believes that it is necessary.”<sup>174</sup> But before he or she did so, the probation officer was required to “file a motion before the presiding judge of the San Francisco Superior Court, Juvenile Division, pursuant to WIC section 827 and the Standing Order Number 303, Release of Records, for authorization to contact INS.”<sup>175</sup>

So in this sense, under the policy, international family reunification was statedly for allowing undocumented youth to show that they could either stay clean for 6 months in order to get their petitions dismissed before being filed in Juvenile Court or to avoid having the youth deported by INS though *with the INS’s* knowledge and approval. Further, this would be done only when it was in the best interests of the minor to fly the youth back to his or her home country to his or her guardians. In practice, international family reunification would be seen in its own right - apart from the issue of throwing out petitions or for evading deportation - as a practice

that really was in the best interest of the youth as a disposition in many cases, especially if the minor was unaccompanied in the United States.

On the other hand, the only time when it was appropriate to report youth to the INS when the INS had not already placed an hold on the youth for deportation purposes, would be after the probation officer had gotten approval from a Superior Court Judge taking into account the legal requirements of WIC, which ensured it would be in the best interest of the youth.

Prior to passage of this policy for processing undocumented youth and reunited them with their families, the Juvenile Probation Commission shared the policy draft with the City Attorney's Office who approved it, as well as with Nancy Alcantar, the Assistant District Director for Deportation of the Immigration and Naturalization Service (INS). The INS had recently settled a class-action lawsuit, *Flores v Reno* in which the INS had been sued for using juvenile justice centers for detaining undocumented immigrants. Part of the settlement stipulated that detained children would be placed in the "least restricted environment" and that INS would make every effort to reunite minors with their families. As a result, the INS had wanted to stop deporting undocumented youth following the settlement. In this legal environment, Assistant District Director Alcantar reviewed, approved, and cooperated with the JPD policy on protocols for processing undocumented minors. Alcantar even offered federal funds for transporting minors if family reunification in home countries was appropriate. Unaccompanied youth were transported with full knowledge of INS pursuant to Court orders.<sup>176</sup>

The Mission Community Coalition for Youth Services assisted the Probation Department in enacting this policy by providing "community counselors" who were available to meet with a detained undocumented minor at the Probation Department's Youth Guidance Center on a daily basis. The community counselors, mostly who were CARECEN employees, discussed the minor's background and willingness to return to relatives in the community or in the minor's country of origin. The counselors also assisted the Probation Department in locating relatives in the local community or in the country of origin. However, counselors would not ask about the facts of the underlying detention. This instance of assistance, highlights how city agencies, in fulfilling the spirit of the sanctuary ordinance and related department policies elaborating interesting work-arounds to the sanctuary ordinance itself. In this case, community counselors, who were not city employees, were allowed to ask questions regarding immigration status and the immigration situation of the undocumented youth since no city employees could do that under the sanctuary ordinance. Here pro-immigrant non-profit workers would do the asking about immigration and country of origin but not about the crime they are charged for.

The Coalition also had provided the Probation Department with community representatives (immigrant advocates) to assist the Probation Department's "Multi-Disciplinary Team." They helped review dispositional recommendations and court sentences for undocumented juvenile offenders. In doing this work, the Coalition believed that "it is in the best interests of the minors to encourage reunification with their families whenever it is appropriate".<sup>177</sup>

Following the Coalition's recommendations, the Probation Department contracted with Mission neighborhood agencies, youth groups, and churches to provide shelter and services for undocumented youth when needed. They also assisted the Probation Department with finding foster parents for youth who were detained for their first nonviolent offense in lieu of sending them to group homes.

In January of 2004, the undocumented minors processing protocol was updated<sup>178</sup>. However, while the 1996 policy was based on the Welfare and Institutions Code, the 2004 policy would primarily cite the 1989 sanctuary ordinance as its legal basis. The 2004 policy would state

Pursuant to a resolution passed by the Board of Supervisors of the City and County of San Francisco in October 1989, San Francisco is a City of Sanctuary. Juvenile Probation Department employees are prohibited from reporting undocumented persons to the United States Department of Homeland Security Immigration and Naturalization Services. Undocumented youth coming to the attention of the JPD will be dealt with as though they are residents of the City and County of San Francisco and will be afforded all of the rights and privileges and considerations given residents.<sup>179</sup>

The policy defined "undocumented youth" as "Any person under the age of eighteen years who is found to be not in possession of legal documents authorizing his/her presence in the United States, California, and the City and County of San Francisco, and who claims to be or has been determined to be from another country."<sup>180</sup> When probation officers processed undocumented youth referred to them for either status offenses or law violations, probation officers were instructed to deal with them "in this same manner as any other youth coming to the attention of the Department."<sup>181</sup>

Under the policy, if the probation officer found that it wasn't warranted to file a petition and the undocumented youth was unaccompanied – that he or she didn't have family in the area and there was no responsible adult willing to care for him or her - the Probation Officer could refer the youth to temporary shelters run by the non-profit organizations Huckleberry House, Larkin Street Shelter, Diamond Street Shelter, or another appropriate temporary shelter. If the probation officer did find it necessary to file a petition in Juvenile Court and the judge found the petition to be sustained, the Probation Officer was required to follow normal department policy in making a dispositional recommendation to the Court.

However, the policy's language around international reunification of undocumented youth with their families would be slightly modified. Steps to initiate international reunification wouldn't just be triggered if ICE were to have already requested JPD to hold the youth for deportation purposes or if the probation officer wanted to provide the youth an opportunity to stay out of trouble for six months. The expressed reason why JPD would reunite undocumented youth with their families in their home countries under the 2004 policy would be on account of minors being able to identify their country of origin and "expressing a desire to return there".<sup>182</sup>

If that were the case, the Probation Officer was required to work in collaboration with the San Francisco-based consul of the youth's country of origin in

securing the legal documentation necessary for the youth's return home to his or her country of origin. The undocumented youth would then be provided airfare, with approval by the Juvenile Court, when appropriate and the Probation Officer would prepare a "Minute Order" requesting the exact sum of the airfare and arrange for the youth's transportation. The probation officer would then accompany the youth to the location in the United States where the youth would get on a direct flight alone to his or her country of origin.

However, like in the 1996 policy, the 2004 policy would also make room for JPD probation officers to respond to an ICE hold, to refer a youth to ICE, and transfer a youth to ICE custody if the Juvenile Court ordered the officer to do so. However, if the Juvenile Court found that it was not in the best interest of the youth to be turned over to ICE and ordered that the JPD officer should ignore the ICE hold and reunify the youth with his or her family after termination of his or her wardship or probation, the policy mandated that "The Probation Officer shall not disobey a lawful order of the Juvenile Court Judge or Commissioner [a judge not appointed by the California Governor, but hired by the Superior Court.]"<sup>183</sup> In other words, a JPD officer could not on his or her own report a youth to ICE, respond to a subsequent ICE detainer that ICE sent him or her about the youth by providing the youth's case files and release date, or transfer the youth to ICE custody, if the Juvenile Court had ordered another plan for the youth, namely family reunification. If an ICE hold had been sent to JPD requesting that they hold the youth, the probation officer was required to consult with the Director of Probation Services or his or her designee prior to releasing the minor to that agency even if a Juvenile Court ordered the release. Like in the 1996 policy, the 2004 policy would indicate that if the Department of Homeland Security had prior knowledge of the youth, the Probation Officer was instructed to maintain contact with the agency official not to refer them for deportation, but to inquire more about their situation in order to prepare a dispositional report for the Juvenile Court.

### **Stopping Juvenile Probation's International Family Reunification Practice**

On May 16<sup>th</sup>, the day of the second incident of JPD officers being detained by federal authorities in Houston in the process of international family reunification, Chief Sifferman briefed the Mayor on the incident and raised the question of whether JPD should begin reporting undocumented youth to ICE, as Synthia Arguello of ICE had requested in December 2007. Mayor Newsom immediately gave a verbal order to Chief Sifferman to stop the fly-back policy and directed Mayor's Office of Criminal Justice Chief of Staff Kevin Ryan to investigate whether JPD's notification practices to ICE were legal and appropriate.<sup>184</sup>

However, in order to stop the international family reunification flights without putting probation officers in contempt of the Juvenile Court – a State institution - for not carrying out court orders, Chief Sifferman would need the compliance of the Court's Commissioners and Judges. They after all made the final decision on dispositions to reunite youth with their families after reviewing probation officers' dispositional reports, and listening to the plea bargaining arguments of the District Attorney and the minors' defense counsel. On May 16<sup>th</sup>,



after receiving the order from Mayor Newsom, Chief Sifferman sent an email to Superior Court Judge Donna Hitchens who supervised the Juvenile Court, Juvenile Court Commissioner Abby Abinanti who presided over youth trials under Hitchens, Superior Court Judges Lilian Sing and Newton Lam, Walter Aldridge who directed the Juvenile Division of the District Attorney's Office, Patricia Lee who managed the Juvenile Division of the Public Defender's Office, and Gregory Bonfilio, Attorney Administrator of the California Bar Association's indigent defense program who procured defense counsel for youth. In his email, Chief Sifferman explained the situation of the JPD officer's detention by ICE, and announced as if by decree that

These questions and the increasing risks undertaken by our probation officers causes me to suspend all JPD escort of unaccompanied minors to destinations leading to Honduras until such time that we as a group can meet to discuss alternative methods to advance this particular dispositional plan or other plans for Honduran youth.<sup>185</sup>

In other words, Chief Sifferman was not suspending the State Juvenile and Superior Courts' ability to give dispositions that included international family reunification fly-backs. That would have amounted to a municipal Executive Officer giving a directive to the State's Judicial Branch, which was composed of independently elected officials not under his authority or the authority of the San Francisco Mayor. The Juvenile Courts in San Francisco were part of the California Juvenile Court system, which is part of the unified family court system rather than the adult criminal court system, and entirely separate from the municipal Executive Branch. What the Chief was announcing rather was that his JPD probation officers would no longer provide recommendations to the Juvenile Court for youth to be flown back to their home countries. JPD would also not comply with the Juvenile Court dispositional orders for JPD probation officers to escort undocumented youth on flights to internationally reunify them with their families in their home countries if they were ordered to do so. This would amount to an Executive act of disregard of the state Welfare and Institutions Code as well as an assertion of local power over state power. This local assertion attempted to force a modification of the exercise of state Judicial Branch authority - in how they issued dispositions for undocumented youth. It was furthermore a JPD de facto policy enactment to cooperate with federal immigration enforcement regardless of the state Juvenile Court's determination of what was in the best interest of a youth. If the Court didn't agree, and if the Court's judges continued to make international family reunification dispositions following a request from the youth's attorney, and if JPD did not comply with the court order, JPD probation officers would be in contempt of court. The Court could have then made court orders to show "cause for contempt" and convened hearings for each probation officer who defied the court's orders to reunify undocumented youth with their families in other countries. However they didn't; rather, the Juvenile Court Commissioners and Judges complied. Judge Donna Hitchens contended that it would be improper for Juvenile Court Judges and Commissioners to issue a disposition that had not been recommended by any of the parties to a case - JPD officers, District

Attorneys, or the attorneys representing the youth. However, technically speaking, the power of the court order resided in the Judges and Commissioners.

Court Commissioner Abby Abinanti responded to Chief Sifferman's email that she would like "all minors in this category [youth who'd been given the disposition of international family reunification] added to [Juvenile Court] calendar as it will be necessary to revise their dispositions."<sup>186</sup> In other words, rather than stand behind the Juvenile Court's decisions which were made on recommendation from JPD to reunify youth who'd already been sentenced to be internationally reunified with their families, the Court moved immediately to change these youths' sentences acquiescing to Chief Sifferman's decree.<sup>187</sup> The Chief immediately contacted the Court to calendar "only the ones [...] where the existing plan involved transport to Honduras."<sup>188</sup> There were five cases that would need modifications to the dispositions. Going forward, JPD officers would recommend to the Juvenile Courts dispositions that ordered JPD probation officers to place undocumented youth in group homes in San Bernadino County in Southern California, rather than sending them back to their home countries in the name of family reunification. The Courts then following plea-bargaining in each case, issued these type of dispositions rather than international family reunification.

In the media, Mayor Newsom claimed that he had not known about the 1996 and 2004 policies regarding flying undocumented youth back to their countries of origin. However, given his office's extensive investigation over the past two years during the Sanctuary City Initiative into department-specific sanctuary policies, drafting department policies, and training city employees *in the Juvenile Probation Department*, that claim was suspicious. A full year earlier, on April 21, 2007, JPD Chief William Sifferman had emailed a summary document of the JPD policy protocols on processing undocumented immigrants, including family reunification international fly-backs to Mayor's Staff Wade Crowfoot. This email was sent in response to Crowfoot's request for the policy as part of the Sanctuary City Initiative. While the summary did not provide all of the details of the 2004 undocumented youth protocol document that the department had been using, the summary document did state:

All JPD staff have been provided with a copy of the Sanctuary City Ordinance and have been instructed to refrain from initiating contact or responding without court order to the Federal Immigrations and Customs Enforcement (ICE) Service to disclose the identity and/or whereabouts of undocumented/unaccompanied minors under the JPD's and the Juvenile Court's custody, care, control or supervision.

JPD efforts with undocumented/unaccompanied youth focus upon their safe and expedient direct court ordered release to a verified parent, bonafide custodian or legal guardian in the United States, the return to a parent or guardian in their country of origin, or placement on a legally established pathway to obtain legal resident status and concomitant social services.<sup>189</sup>

The Mayor's Office of Criminal Justice was also notified in December 2007 by JPD Chief William Sifferman when Sifferman received a letter from ICE about JPD officers flying undocumented youth to their home countries. Therefore, the Mayor's choice to not stand behind the policy, which was enacted and modified by the Juvenile Probation Commission in line with the state Welfare and Institutions Code and in consultation with the former City Attorney and *the INS*, was puzzling to all who had stood with him to institute sanctuary protocols in the departments throughout 2007 and 2008.

However, it was never made clear whether the minors who were being sent back to their home countries had expressed a desire to return for family-reunification purposes or whether JPD and the Juvenile courts were trying to rid themselves of undocumented youth through their own sanctuary city compliant private deportation practice. The media played up the image of immigrant youth as undocumented Honduran crack cocaine dealers in the Mission and Tenderloin who were lying about their age and who were actually adults living communally in Oakland.<sup>190</sup> They also framed the flights as JPD "ferrying detainees home" at the taxpayer's expense.

Public Defender Jeff Adachi, would add another voice to the media debate, pointing out in an Op-Ed in *The San Francisco Chronicle* that ICE and its predecessor the INS had long known about JPD's policies and cooperated in not detaining undocumented youth in their custody. Jeff Adachi, who defended many of the youth in Juvenile Court told the media that the *local* office of ICE had previously not ever told JPD Chief Sifferman not to fly back youth. Local ICE was well aware of the fact that JPD rarely ever referred undocumented youth to them for pick up for deportation.<sup>191</sup> JPD Chief Sifferman on the other hand stressed that the city flew juvenile offenders to their home countries only after all other rehabilitative efforts had failed, including probation, foster care, and juvenile detention. Deporting them through ICE, according to Sifferman, might have doomed them from ever becoming productive members of the U.S. by preventing them from ever obtaining citizenship and denying them a chance to take a different course.

On May 21st, two days after Chief Sifferman briefed the Mayor, the Chief and MOCJ's Kevin Ryan, met with an ICE official and Assistant U.S. Attorney David Anderson, a high-powered Republican attorney working under U.S. Attorney Joe Russionello, to notify them of the policy change.<sup>192</sup> Joe Russionello, who had served as U.S. Attorney under President Ronald Regan, was chosen by the Obama Administration in January 2008 as Republican Kevin Ryan's replacement when Ryan was ousted from his position as U.S. Attorney. David Anderson had also applied for Kevin Ryan's job as U.S. Attorney but with Russionello's appointment, Anderson became Russionello's second in command.<sup>193</sup> Sifferman in a later email to Kevin Ryan would remind him that they called this meeting

to resolve this matter quietly with the assistance of the City Attorney's office. We told them that we had stopped the escort business to borders and were interested in working out protocols that did not interfere w/ their criminal investigation.<sup>194</sup>

In that meeting the U.S. Attorney's office threatened prosecuting JPD on transporting and harboring grounds unless JPD stopped the policy for good.

The next day, on May 22<sup>nd</sup>, MOCJ's Kevin Ryan reported back on his research into JPD's ICE referral practices and advised the Mayor that, "some of JPD's court-sanctioned practices might be inconsistent with applicable federal law."<sup>195</sup> The Mayor subsequently gave a verbal direction to JPD Chief Sifferman to begin referring youth to ICE who'd been accused of felonies, in the same manner that adults were referred under the sanctuary ordinance. However, protocols would need to be developed before the practice was initiated. Kevin Ryan then under the Mayor's direction initiated the process of reviewing and changing the city's policies – in collaboration with JPD, ICE, the U.S. Attorney and the City Attorney – to ensure that JPD would handle notification in a manner consistent with the Adult Probation Department's practices.<sup>196</sup>

Chief Sifferman two weeks later attended a meeting of the Juvenile Justice Commission to discuss the change in policy with regard to international family reunification fly-backs. The Juvenile Justice Commission was a body of the Superior Court of San Francisco made up of citizens, including minors, that was charged with ensuring that juvenile detention facilities conformed to all applicable laws that govern operations of detention facilities; ensure that minors under the jurisdiction of the Juvenile Court receive care, treatment and guidance consistent with their best interests; set goals and objectives for the Commission to improve juvenile justice system performance; and monitor compliance with established standards to "ensure the health, education, and welfare of minors under the jurisdiction of the Juvenile Court."<sup>197</sup>

At the meeting, the Chief notified the Commission of the decision to suspend international family reunification fly-backs and Commission members requested that the Chief follow-up by writing the Commission a memo confirming the decision. In that memo, dated June 6<sup>th</sup>, the Chief wrote

Pursuant to the request made at the recent meeting of the Juvenile Justice Commission, I am offering this written confirmation of my reported decision to suspend the Probation Department's practice of escorting youth ordered by the Courts to return to Honduras until such time as this practice has been thoroughly reviewed by the City Attorney's Office. The Courts have agreed to cease entering such orders. We will continue to explore other alternative dispositional plans for these youth until our responsibilities under federal, state, and local laws and ordinances are clarified.<sup>198</sup>

Little did the Commission know that such "alternative dispositional plans for these youth" would include, under the Mayor's direction, referring many of these undocumented youth to ICE for deportation. Just under two weeks later, on June 16<sup>th</sup>, JPD Chief Sifferman would receive an email from Sylvia Arguello, Assistant Field Office Director of ICE who would write saying

It is my understanding that through recent meetings, there has been an agreement that ICE can now receive referrals of Foreign Born Nationals in

custody at your facility. Can I please obtain the name and phone number of a Point of Contact at San Francisco Juvenile Hall who will facilitate this? We look forward to working with your Department.<sup>199</sup>

At this time Mayor Newsom had long ceased to engage in his previous efforts to institute sanctuary policies via the working groups of department leaders and community leaders that he had convened for the Sanctuary City Initiative over the past two years. However the final nail in the coffin of the Mayor's efforts to institute sanctuary would come towards the end of June.

### **The Executive Branch Sacrifices the Children to Save the Sanctuary City**

On the evening of June 22, the Bolognas, an Excelsior District family well-known for their community involvement, were driving home from a family gathering in Fairfield, California when Edwin Ramos, a 22 year old resident of El Sobrante, California and member of the MS-13 gang, drove up next to their car at the corner of Congdon and Ney St. Earlier that day, an MS-13 gang member had been shot and Ramos had been driving to the hospital where his friend was being treated but got lost in the Excelsior. When he came upon Tony Bologna and his sons Michael, Matthew, and Andrew in their Honda Civic, he started staring down Tony as if he were a gang rival. Ramos then drove up in his Chrysler 300 about a foot away from the Bologna's car, rolled down his window, and started firing into the car with an AK-47. No words were exchanged.

At the time of the Bologna murders, Ramos was awaiting deportation proceedings after being turned down for temporary residency status. He had come to the U.S. legally at age 13 from El Salvador where his grandmother raised him. Ramos wanted to be near his mother, who had left him in El Salvador when he was 4 months old, and she was living with two of her other children in San Francisco. Sometime after he had arrived, his legal status was revoked.<sup>200</sup> In 2004, when Ramos was 18 years old, he had married a woman who was a U.S. citizen and applied again to stay in the United States legally, this time as a permanent resident. While his temporary residency status request had been denied, the permanent residency request was pending at the time of the Bologna shootings.<sup>201</sup>

Prior to the Bologna murders, Ramos had been arrested various times and released by JPD without having been referred to ICE. In 2003, at age 17, while out of legal immigration status, Ramos had committed a gang-related assault of a MUNI public bus passenger in the process of harassing bus passengers to determine what gang they were affiliated with. Juvenile Probation, upon court order, placed him in a shelter and later released him to his mother in April 2004.<sup>202</sup> Four days after his release, he assaulted and attempted robbery of a pregnant woman and her brother and was sentenced to the city's Log Cabin Ranch for felony-attempted robbery.<sup>203</sup> Ramos was released from the Log Cabin Ranch in February 2005. While this was in line with the JPD policy of treating undocumented minors differently than undocumented adults who would have been referred to ICE at the point when they were booked on a felony level charge or if they had felony convictions in their record, various *San Francisco Chronicle* journalists argued that JPD should have

called ICE at some point during one of these arrests, convictions, or releases while Ramos was a minor.

However, at the time of the Bologna murders, federal authorities already knew about Ramos' presence in San Francisco, aside from the deportation proceedings he was in. For three years, he had been the target of an FBI probe, "Operation Devil Horns", which sought to infiltrate and break up the MS-13 gang in the Bay Area. At age 18 in April 2006, Ramos, then considered an adult, had also been identified to the FBI by a MS-13 leader and FBI informant. The leader, Ramos' brother-in-law, claimed that Ramos had shot Rolando "Chino" Villadares, a former Norteño gang-member. Federal authorities had repeatedly been told that Ramos carried a gun, brokered gun sales, took part in gunfights with rivals, and sold cocaine, all offenses that as an adult could have led to his arrest, imprisonment, and deportation.<sup>204</sup> However, the FBI never took such action, so that the U.S. Attorney could build a stronger and larger case against MS-13. Doing so could have exposed to other gang members the identity of the FBI informants who helped build the case towards the "mega indictment" of 29 gang members that would occur in October 2008. ICE did attempt to arrest Ramos at his home once but after he was not home, they didn't follow-up to attempt a second arrest.

In March 2008, just a few months before the Bologna murders, Ramos had been arrested twice and processed by the San Francisco Sheriff's Department as an adult on felony-level crimes: once for stealing a car in the Mission District in early March and once in late March when he was caught at a traffic stop. In the second case he was driving with a passenger in his car that had a loaded semi-automatic handgun. The SFPD booked both the passenger and Ramos on the charges, though the District Attorney didn't charge Ramos. Following the sanctuary ordinance which allows for referral of people booked on felony charges, the San Francisco Sheriff's department faxed ICE on March 30<sup>th</sup> asking if they wanted the Sheriff to continue to jail Ramos for ICE to investigate Ramos' immigration status or to pick him up. Some accounts say that ICE didn't respond to the fax and others claim that they did respond by specifically telling the department that they were not placing a detainer on him - a non-mandatory request to detain a jailed person for 48 hours for ICE to pick up. Sheriff's officers electronically queried a federal database about Ramos' immigration status to determine if they could bill the federal government for his jail stay through the State Criminal Alien Assistance Program (SCAAP) funds reimbursement program. Since they found no documented reason to hold him, they released him.

Following the Bologna family shooting, the SFPD, especially in the Mission District Station, increased traffic stops involving ethnic minorities, and many were reported to ICE and deported without trial. Four days later, Ramos was arrested though no murder weapon was found. *The San Francisco Chronicle* covered the story in a manner which blamed the sanctuary ordinance for shielding from deportation dangerous, violent, immigrant gang members and criminal felons who kill citizens. The implied notion from this messaging was that in the immigrant community were hidden criminals who would inevitably commit another crime against a citizen, that latent immigrant crime would eventually strike again, and that the entire immigrant community should be looked upon with suspicion as long as the sanctuary

ordinance remained active.

The Mayor at the same time came further under fire from San Bernadino County officials because eight of the immigrant youth that San Francisco JPD had placed in unlocked and unguarded group homes in Yucaipa, San Bernadino County, had escaped. One youth had been re-caught in San Francisco and the rest were at-large. Douglas House, the facility that the youth escaped from was owned by a private corporation named Silverlake Youth Services and was run by the Community Care Licensing Division of the California Department of Social Services (DSS). San Bernadino in response, very publicly threatened to sue San Francisco for all county police expenses incurred in response to looking for the escapees and asked San Francisco JPD to notify them of all offenders placed in their county. Most of the 63 undocumented youth in JPD custody who had been sent to group homes, foster homes, or other facilities, had been placed in the Bay Area, but the media and San Bernadino officials were making it appear as if the Juvenile Court and JPD were pawning off their undocumented juvenile criminals on Southern California.

Walter Aldridge, Managing Attorney for the Juvenile Division of the San Francisco District Attorney's office in response to these findings of the youth escapes ordered all of the Assistant District Attorney's under his authority to request to the Juvenile Court judges and commissioners that dispositions for the undocumented youth they were prosecuting "comport with Federal Law." In other words, he found any placement that did not ultimately lead to deportation of these youth to be against federal law. Allan Nance would respond to Aldridge's move by telling him in an email that

I am not aware of any partnership to circumvent Federal law as you describe [...] As prosecutor on all of these matters involving undocumented youth, your office is in a position to insure that the law is being followed. The Probation Department will continue to inform the court and the attorneys whenever we are aware that Federal authorities have expressed interest in any person who is also the subject in Juvenile Court proceedings.<sup>205</sup>

Aldridge's move would add an additional pressure from the D.A.'s office upon the Court when the Court was considering placement for undocumented youth and for issuing dispositions.

As a result of all of these factors, Mayor Newsom and JPD Chief Sifferman decided to end the practice of sending these kids to Southern California in the same manner that they decided to end the practice of international family reunification.<sup>206</sup> At this point, the media reported that JPD had spent \$2.3 million to house 162 undocumented youth since 2005 and \$38,955 to fly juvenile offenders to Honduras, American Samoa, and Mexico over the previous two years.

With the increased media attention around the JPD fly-back policy, the Edwin Ramos murders, and immigrant juvenile group home escapes, it was time to move forward with publicly announcing the new JPD youth referral policy which Mayor Newsom had directed Chief Sifferman and MOCJ's Kevin Ryan to begin working on in May 2008. As a part of that work, Mayor Newsom had requested a client-privileged confidential "cautionary" legal memo from the City Attorney's office

regarding the legality of referring undocumented youth detained in the Juvenile Justice System to ICE.<sup>207</sup> This memo would be client privileged rather than a public document, meaning that only the Mayor's Office would see it as a document of precautionary legal advice about a policy he was considering instituting. Only the Mayor could authorize the divulging of the memo to the public and it could not otherwise be requested through a public records request or legal subpoena.

In it, the City Attorney noted that

The sanctuary ordinance does not preclude giving information to federal immigration authorities, among instances, for an individual who is "in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws."<sup>208</sup>

The memo also pointed out that a previous 1994 City Attorney memo concluded that this exception applied to both adults and juveniles. The 2008 memo explained that depending on the facts, the juvenile court may, in line with California State Welfare and Institutions Code (WIC) Sections 725 and 738 place a juvenile on probation, make the minor a ward of the court, order the juvenile returned to his or her residence in another state or country or take other appropriate action.<sup>209</sup> In particular, WIC Section 738 stated that

In a case where the residence of a minor placed on probation under the provisions of Section 725 or of a ward of the juvenile court is out of the state and in another state or foreign country, or in a case where such minor is a resident of this state but his parents, relatives, guardian, or person charged with his custody is in another state, the court may order such minor sent to his parents, relatives, or guardian, or to the person charged with his custody, or, if the minor is a resident of a foreign country, to an official of a juvenile court of such foreign country or an agency of such country authorized to accept the minor, and in such case may order transportation and accommodation furnished, with or without an attendant, as the court deems necessary. If the court deems an attendant necessary, the court may order the probation officer or other suitable person to serve as such attendant. The probation officer shall authorize the necessary expenses of such minor and of the attendant and claims therefor shall be audited, allowed and paid in the same manner as other county claims.<sup>210</sup>

The City Attorney memo affirmed that State Law requires that juvenile court records be kept confidential but permits inspection of the records without a court order by law enforcement agencies under certain circumstances. Welfare and Institutions Code Section 827 allowed for the inspection of juvenile court files by the attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.<sup>211</sup> Deportation proceedings of a civil rather than criminal nature would not fall in this category. San Francisco Superior Court,



Juvenile Division, Standing Order No. 303 permitted all California and Federal law enforcement agencies, California school systems, California Probation Departments, and the California Youth Authority to inspect juvenile files without filing a petition if that agency is also investigating criminal or juvenile proceedings involving the child. Lastly, Welfare and Institutions Code Section 828, a broad and vague provision, permits “disclosure of any information gathered by a law enforcement agency relating to the taking of a minor into custody [...] to another law enforcement agency [...] or to any person or agency which has a legitimate need for the information for the purposes of official disposition of a case.”<sup>212</sup>

The City Attorney’s memo to Mayor Newsom also gave an explanation of the legality around city employees reporting immigration status information, transporting undocumented immigrants, and harboring them. They noted that federal civil law does not require the City to give federal authorities information about juvenile detainees who appear to be in the country illegally. Under federal civil law – 8 U.S. Code Section 1373 - no federal, state or local official or entity may “prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service *information regarding the citizenship or immigration status, lawful or unlawful, of any individual.*”<sup>213</sup> Under this law, the City itself cannot be compelled to turn over information, but also in the City Attorney’s view, the City possibly cannot penalize a City employee or official for turning over information.

The City Attorney’s office also pointed out that the tool that ICE used to request a law enforcement agency to hold an undocumented juvenile, an “immigration detainer-notice of action” or “hold” is not a mandatory mechanism and does not require City officials to turn over a juvenile. An INS detainer issued under the Immigration and Nationality Act’s (INA) section 287(d)(3) of chapter 8 (8 CFR 287.7) was not an order of custody but was a “request that another law enforcement agency notify the INS before releasing an alien from detention so that the INS may arrange to assume custody.”<sup>214</sup> But certain federal orders may require the City to turn over a juvenile, such as a warrant of arrest or final order of deportation.

Really what put the City Attorney and Mayor Newsom on edge was that the incredibly anti-sanctuary U.S. Attorney Joe Russionello had threatened to arrest City employees who transport or harbor undocumented youth detained in the juvenile justice system. The memo noted that federal criminal law makes it a crime for any person in knowing or reckless disregard of the fact that an alien is illegally in the U.S. to transport, move or attempt to transport or move the alien within the United States “in furtherance of such violation of law,” or conceal, harbor or shield from detection such alien in any place, including any building or any means of transportation.<sup>215</sup> However, many legal experts in favor of sanctuary city policies argued that the federal government has never prosecuted government officials on harboring or transporting charges and that there was no likelihood of that happening during the current administration of President Barack Obama despite Joe Russionello’s threats.

On July 1, Mayor Newsom received the completed City Attorney’s legal memo, and called for a press conference to discuss the manner in which he was moving forward to tackle the issue of undocumented youth in the juvenile justice

system. At the press conference, when asked by reporters whether he would act to hand over undocumented youth who dealt drugs and committed other crimes to ICE, the Mayor insisted that he was actually powerless to do so. He told Jaxon Van Derbeken and Maris Lagos of *The San Francisco Chronicle* that

I don't have the authority here. I have a bully pulpit. The courts have the authority here. The question you need to ask is why the courts, the D.A. and the public defender are directing the JPD to do that. The Chief doesn't do it on his own. He is told by the courts to do this. The D.A., the judges, and public defender all tell Chief Sifferman what to do.<sup>216</sup>

The reporters were also concerned that San Francisco would continue placing youth in group homes and other out of home placements, leading them to escape and commit more crimes. They asked Newsom if he would stop the practice of putting youth in out of home placements and he responded "if we stop the practice of sending juvenile offenders to homes, there's no question we will see the numbers and cost increase at Juvenile Hall."<sup>217</sup> This response would assume that if they didn't place them in cheaper out of home placements that they would place them at Juvenile Hall where the population there was already facing overcrowding issues. However, as previously mentioned, it was not within Mayor Newsom's authority to command the Superior Court or the Juvenile Court – California state judicial bodies – about how to make *dispositions* – sentences. The Superior Court was composed of independently elected officials in the Judicial Branch, not staff under the Executive's authority – under the Mayor.

That same day, Mayor Newsom publicly announced that he was considering running for Governor in the November 2010 election. His new statewide constituency would include anti-sanctuary citizens in California that had over a decade earlier voted for proposition 187. One organization within his constituency would be the anti-sanctuary statewide group, Californians for Population Stabilization (CAPS). In response to the media coverage JPD was getting on their fly-back policy and the youth group home escapes, CAPS wrote a Letter to Governor Arnold Schwarzenegger asking him to open an investigation of the San Francisco Probation Department and its Juvenile Hall to see if they were paid off by drug cartels for protecting their drug dealers. Also they asked that the state run Probation Department employees through E-Verify, the automatic immigration status verification system for employees to "identify any illegal aliens who might be working there."<sup>218</sup>

The next day, on July 2, the Juvenile Probation Department, under the direction of Mayor Newsom, announced that they would begin reporting all undocumented youth who were booked on felony charges to ICE. The new policy was created in what looked to the public like an ad hoc manner but which had actually been in the works for months. This executive change in policy completely bypassed the Juvenile Probation Commission – made up of Mayoral appointees and Board of Supervisor-appointees – that was normally in charge of making and approving policy for the department.<sup>219</sup> In a statement of the Mayor, also on July 2,

he would say almost in total contradiction to his comments the previous day, this time voicing his power to act:

Let me be clear: I will not allow our Sanctuary City status to be used to shield criminal behavior by anyone. I have directed my administration to work in cooperation with the federal government on all felony cases. *I urge* the District Attorney, the Public Defender *and the courts* to do the same.<sup>220</sup>

What was interesting about this statement was that, for the Courts, there was not much more cooperation with the federal government that the Courts could even do. If probation officers were now empowered to report youth *at the booking stage on their own without a court order to do so*, the youth would already be reported to ICE *before the court even knew they were in the JPD's custody and before they had legal representation*. The only further action the courts could take would be to issue dispositions ordering that JPD officers transfer undocumented youth booked on felonies to ICE custody after finishing their sentences rather than ordering them to be released to their families. JPD was already poised, as the jailing authority, to do the releasing of those youth to ICE regardless of what the court ordered. If a Judge ordered those youth to be returned to their families after their sentences, JPD officers would be acting in contempt of the court if they released the youth to ICE in defiance of the court's family reunification order. Newsom's call for the Courts to cooperate with the federal government on felony cases would really just amount to a call for the Courts to not make dispositions that would put JPD's defiant and cavalier behavior in contempt of court.

The JPD management also issued new "*recommended* language" for the Juvenile Courts when producing Detention Hearing Reports for undocumented youth cases.<sup>221</sup> In the recommended language document, they justified their changes by copying and pasting the legal provisions included in the July 1 City Attorney's cautionary memo to Mayor Newsom. They declared that

prior attempts to find alternatives for undocumented youth have not been consistently successful and that Federal authorities have contended that it is a federal crime for Juvenile Probation Officers to transport suspected undocumented youth out of the state for the purpose of out-of-country family reunification. Juvenile Probation has attempted to house undocumented youth in various out-of-home placements, including shelters, and foster care, but has found that the individuals typically did not remain in non-secure detention as ordered by the Court.<sup>222</sup>

Interestingly, they did not mention the fact that the JPD did to station JPD officers at those unlocked facilities, leaving it entirely up to the state Department of Social Services to keep an eye on the youth. The form language that they suggested probation officers used in dispositional reports given to the courts was the following:

- The SFJPD recommends that <INSERT MINOR'S NAME> remain in custody pending adjudication on this matter. The Probation Officer will notify or has notified Federal Immigration officials of the custody status of any undocumented persons who are or have been arrested, booked and charged with a felony offense within San Francisco.
- The JPD recommends that the Court commit <INSERT MINOR'S NAME> to Juvenile Hall for 30 days. The probation department intends to notify federal officials of the minor's presence in Juvenile Hall. If they seek to take custody of the minor, custody will transfer to the federal officials at the conclusion of the minor's Juvenile Hall commitment. If Federal officials do not take custody of the minor, the Probation Department will explore other options regarding the minor's immigration status. Probation would ask that the matter be continued for a status report one day prior to the termination of the Juvenile Justice commitment <INSERT DATE>. <sup>223</sup>

A day later, on July 3, Chief Sifferman would meet with Sylvia Arguello, Assistant Field Office Director of ICE in San Francisco to work out preliminary "pilot protocols" for referring undocumented youth to ICE at the booking stage and for allowing ICE access to interview suspected undocumented youth at Juvenile Hall. <sup>224</sup> According to Sylvia Arguello,

During the meeting it was agreed that San Francisco Juvenile Probation would begin referring all Foreign Born Nationals arrested and booked for felonies to ICE. It was also agreed that your department would now allow access to the Foreign Born juveniles for interview purposes and further that you would honor our Immigration Detainer-Notice of Action, Form I-247. It was also agreed that upon completion of their sentencing, ICE would be given advance notice of the aliens release date and granted the 48 hour window of time allowed for arrangements to be made for pickup and transfer of the foreign born national. <sup>225</sup>

What this would indicate would be not only that JPD probation officers would be making a policy change to refer or share information with ICE that an undocumented youth was in their custody, but also that they would be honoring ICE detainers that were sent as a result, they would give access to ICE to their detention facilities for ICE to interview children, that they would allow for detention of minors up to 48 hours for the sole purpose of immigration enforcement beyond when the youth would normally be released, and would transfer the youth to ICE custody. Chief Sifferman had previously been informed in December 2007 that honoring of the ICE detainer was not mandatory – that they may or may not honor it since it was a *request* to hold and release a youth to ICE. This would also all be done absent any type of Juvenile Court order authorizing JPD probation officers to a) refer a youth b) respond to an ICE detainer c) detain a youth for immigration enforcement purposes, and d) transfer to ICE custody a youth – all actions that had previously required the issuing of a juvenile disposition by a Juvenile Court Judge. Literally, the Juvenile Probation Department was taking justice into their own hands and authority for

every step of the process of assisting ICE in deporting youth.

On July 7<sup>th</sup>, a revision of JPD's Policy 8.12 "Intake, Processing and Release: Undocumented Persons" with the pilot protocols would be issued in their Policies and Procedures Manual. The policy stated that

In every case where the undocumented person is arrested and booked for a felony charge, the On-Duty Officer shall notify the Department of Homeland Security, Immigration and Customs Enforcement, so that they may determine if this is a person whom they intend to interview, and/or request a hold.<sup>226</sup>

The policy would make clear that even if charges weren't filed on a youth after being booked on a felony booking, the JPD probation officer should still honor ICE's request to hold the youth for transfer of custody to ICE:

If a petition is not filed and an ICE hold is in place, the Juvenile Justice Center shall notify the ICE agent identified in the detainer and inform them that the department will hold the person for not more than 48 hours pending secure transfer of custody to federal ICE agents.<sup>227</sup>

The policy also prohibited JPD employees from transporting undocumented youth back to their home countries and from placing undocumented youth in foster care placements even if the Juvenile Court ordered it:

L. Probation Department employees are prohibited from engaging in the transportation of undocumented persons for purposes of facilitating their exit from the United States, unless done in accordance with Federal Immigration laws.

M. SFJPD employees are prohibited from facilitating foster care placements for undocumented minors who are ineligible for legal residency in the United States.<sup>228</sup>

Finally, the policy would mandate that JPD employees grant federal authorities access to any alleged undocumented immigrant, accompany them into interviews with ICE, and honor all ICE hold requests – detainers - lodged, and all federal arrest warrants and subpoenas.

The SFJPD shall grant access by Federal officials to any individual who is a person of interest based on an investigation alleging that the individual has violated Federal law and such individual is in the custody of SFJPD. A representative of SFJPD shall accompany the minor during interviews conducted by ICE officials with the minor within the Juvenile Justice Center. At such time as an undocumented person is set to be released from secure custody, the SFJPD shall honor all detainers issued in accordance with 8 CFR 287.7 and will honor all arrest warrants, and subpoenas, issued by Federal officials.<sup>229</sup>

That same day on July 7<sup>th</sup>, Assistant JPD Chief Allan Nance wrote a letter to Juvenile Court Judges Donna Hitchens, Lilian Sing, Newton Lam, and Abby Abinanti to tell them that the City Attorney had reviewed the case law surrounding the application of Welfare and Institutions Code 738. This law had been the basis for Juvenile Court Judges to issue dispositions – court orders - placing undocumented youth in group homes and transporting them for family reunification purposes even out of the country. Nance would acknowledge that such dispositions were legal, but argued that the implementation of them by JPD staff was not. This was the essence of policy interference and contradiction, and would seem to be an argumentative plea to the Judges to change their dispositions to not put JPD officers in the crosshairs of federal prosecutors. Nance’s letter would use this argument to justify JPD’s decision to report all youth booked on felony crimes at the booking stage.

While it appears that the practices are lawful in part, the implementation of the orders requires the participation of Federal authorities [...] Chief Sifferman and I have met with the representatives from Immigration and Customs Enforcement (ICE) and have agreed to notify them in every instance where a person is arrested for a felony offense, and is booked into the Juvenile Justice Center. This notification will occur after the individual is booked and determination is made that the person was born outside of the United States. Further, in the wake of recent public scrutiny over juvenile justice practices related to city and county resources expended to transport and place minors, the department can no longer transport or place any minor who is not eligible for Title IV-E reimbursement [non-citizens, including undocumented youth] for the cost of the placement as well as the transportation associated with such placements.<sup>230</sup>

As early as July 10<sup>th</sup>, in the morning Sylvia Arguello, Spokesperson for ICE, would contact JPD Assistant Chief Nance and leave a phone message that ICE received 2 referrals from a JPD probation officer “last night. 2 juveniles booked. Presuming a ‘go’ going forward with this as discussed; clarify schedule appointments to do interviews or their guys drop in. Let her know. Would like to start.”<sup>231</sup> Arguello would follow up the phone call with an email to Nance in the afternoon. She then called to let Nance know about the email and left another phone message stating that “2 of her officers will be here at 9:00 AM. She told them you are point of contact. 9:00AM to interview”.<sup>232</sup> In an email to City Administrator Ed Lee on July 11<sup>th</sup>, JPD Chief William Sifferman indicated that

ICE agents are here at YGC [Juvenile Hall] today to interview 6-8 youth in this category that the Court and attorney groups have all been made aware of this prospect. The interviews are being conducted in conformity with 827(e) and 828 of the Welfare and Institutions Code. I have directed that a bi-lingual Juvenile Hall staff member be present during every interview. <sup>233</sup>

After the interviews were completed, Chief Sifferman reported back to Mayor’s Communications Director Nathan Ballard and City Administrator and former

Human Rights Commission Executive Director Edwin Lee that

The ICE agents were described as being professional in their interview styles, following a scripted form and not at all confrontational. It was an interview, not an interrogation. All were asked if they feared for their lives if returned to their country of origin (Honduras). All stated "No".<sup>234</sup>

These interviews took the immigrant rights community by surprise considering that they had attempted to engage JPD in conversations about how the formal policy and protocols for implementing the Mayor's directive would be created and initially implemented. JPD had expressed openness to collaboration with community organizations, however, it seemed like JPD was moving forward with implementing its protocols on its own by allowing ICE agents access to interview suspected undocumented youth in Juvenile Hall.

Among the reasons provided by the Chief for moving ahead with pilot protocols for referring these youth to ICE and giving ICE access to Juvenile Hall in advance of the creation of formal protocols, was that decisions to refer youth were taking place on a "case to case basis. Otherwise, the census of the Juvenile Justice Center and the lengths of stays in detention for each undocumented youth will continue to escalate during the time it takes to craft, digest, re-craft, vet and approve new policies and protocols."<sup>235</sup> In other words, if he continued to jail youth as he had been prior to the Mayor's policy change, there would be overcrowding. To make sure that the overcrowding was under control, he argued, he would need to enact the policy immediately. Overcrowding of Juvenile Hall had been an on-going problem that the Chief had been trying to get a handle on for a great deal of 2008, as periodic overcrowding was very expensive for the Department. In a May 16<sup>th</sup>, 2008 email - just a few months prior to the youth referral policy change announcement - JPD Chief Sifferman wrote to Mayor's Office of Criminal Justice Deputy Chief Kevin Ryan that

Our admissions continue at a rate higher than our releases due to extended lengths of stay caused by case processing delays, an elevated census of undocumented/unaccompanied youth from Honduras, 707b cases pending fitness hearings, a rise in the number of long term juvenile hall commitments as a sentence, and contested disposition hearings.<sup>236</sup>

The Chief had inquired to MOCJ's Kevin Ryan about emergency funds available for electronic ankle monitoring to allow for the release of youth from Juvenile Hall to lower the population and lower expenses. As of March 2008, the City had a deficit that had reached \$340 million and that was acutely apparent for Mayoral Staff. In April 2008, the Mayor had requested a cut of 8% in JPD salaries and had issued Executive Directive 08-03 calling for a reduction in discretionary spending targeting Department Heads throughout the city.<sup>237</sup> Chief Sifferman was even preparing to propose furloughs for low risk youth that he would need to "pitch to the courts" because "we need to move some kids out to make room..."<sup>238</sup> Mayor Newsom had also issued an executive directive to the JPD in 2007 that they were to reduce their

Juvenile Hall population as well. Gregory Bonfilio of the Bar Association of San Francisco too would write an email to the “Delinquency Panel” of the Bar Association, cc’ing Chief Sifferman that

The Juvenile Hall is overcrowded. One of the solutions is to temporarily detain at LCRS [Log Cabin Ranch] ‘undocumented’ minors who are pending disposition or awaiting transportation home. There will be hearings for that purpose on Friday May 16<sup>th</sup> in Department 4 Commissioner Abinanti [Juvenile Court Commissioner Abby Abinanti] Afternoon calendar. <sup>239</sup>

In the absence of funds due to the financial crisis and budget deficit and “overcrowding” which was being, to a certain degree, blamed on undocumented youth from Honduras, it would seem very suspicious that JPD would in July be implementing a policy change unilaterally pushed by the Mayor to clean Juvenile Hall of all undocumented youth by referring those booked on felony charges to ICE.

On July 15, five days after the first youth referral under the new policy, probation officers were then instructed by Assistant Chief Probation Officer Nance to initiate ICE referrals by using a newly created “ICE Referral Worksheet”<sup>240</sup> – a form used to guide probation officers in the collection of information from the youth, which would be sent as part of the fax referral to ICE. In addition to asking the youth’s name, sex, and date of birth, the worksheet asked the probation officer “Is there a question about alien’s age?” for “country and city of birth”, “spoken language”, whether the youth had “any charges or convictions”, whether the youth had any existing medical conditions, and the reason why the youth was apprehended. Additionally, it would ask for the youth’s next Court date and date of release. The form was to be faxed to ICE “Team San Francisco” and a copy of the fax would be forwarded to Assistant Chief Probation Officer Allan Nance.

On July 15<sup>th</sup>, Nance sent the ICE referral worksheet out to be used for any undocumented person arrested and booked in Juvenile Hall on a felony offense. The probation officers would then be notified “once an ICE interview was scheduled and once an ICE detainer is received.”<sup>241</sup> Nance instructed probation officers to keep him informed of the court orders following each of the court dates for undocumented youth so that he could inform ICE once the minor was scheduled for release from Juvenile Hall.

If, after making a referral of a youth, they did not receive a “detainer” or “hold” fax from ICE in response, which asked JPD to hold the youth for ICE to come interview, probation officers were still instructed to send a follow up letter notifying ICE Team San Francisco of the youth’s upcoming release and confirming that they had not received a detainer. This letter would state

Dear Sirs, please be advised that the above-named person was arrested and booked into the San Francisco Juvenile Hall on (insert admission’s date) and charged with (insert code violation). The Juvenile Probation Department suspects that the person is undocumented. A referral was faxed to the Department of Homeland Security – Immigration and Customs Enforcement (ICE) on (Insert fax date). At present there is no ICE hold on this person. The



Juvenile Probation Department intends to release the person to a parent, guardian, or other responsible adult charged with the custody, care and control of this person. If no such person exists, the Department will release the minor to the San Francisco Department of Human Services, Child Protection Center. Sincerely, (Probation Officer of Record).<sup>242</sup>

JPD would also need to expand their databases to allow for data on youth referred and transferred to ICE custody by probation officers to be tracked by management so that aggregate trends could be reported back to the Mayor. Though probation officers would fill out intake forms, ICE referral forms, and other case files which documented certain data on youth who were referred, a second procedure would need to be developed so that staff could enter the new data on referrals into the system. In mid July, JPD's IT staff would need to create new labels in their existing database tables to explain the youth's immigration status and how the referral and transfer to ICE happened. They would add "referred to ICE" as a new reason for closing their contact with the youth; "released to ICE" in the "Released to" field covering transfers into other agency's custody; "undocumented" in their "Person" field indicating the individual's immigration status; and "ICE hold" in the "Referral Reason" field to indicate that an individual was detained on an ICE hold beyond the period of their criminal sentence.

However, JPD would not only begin referring youth who were booked on felony offenses from July 3<sup>rd</sup>, going forward. They would also look to clean house of undocumented youth who had already been booked on felony charges, who's cases had already been heard by a Juvenile Court Commissioner or Judge, who had been sentenced by that judge to undergo rehabilitation through programs which placed them outside of their homes, but who had not yet been transported to that placement, and therefore who were still being detained in Juvenile Hall. Suspected undocumented youth in Juvenile Probation custody would make up roughly 32 youth or 29% of the total population in JPD custody however not all of these youth were booked on felonies.<sup>243</sup> This focus on already booked and sentenced but not yet placed undocumented youth would be the product of the July 3<sup>rd</sup> meeting between Sylvia Arguello, Assistant Field Office Director at ICE, and JPD Chief Sifferman where they agreed, that "our attention would focus upon the individuals presently booked in the Juvenile Justice Center on felony charges and that our action on youth already performing well in their placements would be deferred."<sup>244</sup>

In line with this agreement between JPD and ICE, on July 11<sup>th</sup>, Assistant Chief Allan Nance would instruct all juvenile probation officers to file a motion for re-sentencing in Juvenile Court on all of their cases where undocumented minors already had an Order for Out of Home Placement (OOHP) and the minor had not yet been placed into the proposed setting. Out of Home Placement was a form of disposition (sentencing) authorized by the Welfare and Institutions Code (WIC) and ordered by the Juvenile Court following court proceedings of a youth who had been tried and found to have committed a law violation. These type of placements were made based on the needs presented by the youth and according to the services offered at the placement site.<sup>245</sup> Out-of-home placements were group homes, foster care and other residential treatment facilities that were unlocked, staff-secured

facilities. Upon the Court's determination that the youth was in need of out of home placement, JPD, and in some cases, the youth's defense attorney normally investigated and identified suitable placement options for the court judge to consider. Once the out-of-home placement plan was approved by the Court, the Probation Department arranged transportation to the facility. According to JPD Chief Sifferman

Most youth placed outside the home have significant emotional and behavioral needs. Many are placed in facilities involuntarily. It is not uncommon that a youth may runaway from these facilities, often resulting in a re-evaluation by Probation and the Courts, and subsequent re-placement into a more therapeutically appropriate setting. This is a common reality present for abused, neglected and delinquent youth. In reality, many youth return to their parents or families of origin when they leave placement without authorization, because of the significant bond that exists.<sup>246</sup>

When a minor left a placement without authorization, a JPD probation officer would request a juvenile arrest warrant from the Juvenile Court. Once a minor would then be returned to custody, the court was required to address the violation of the child to stay in his or her out-of-home placement and consider another disposition – another sentence – which normally resulted in an order of the judge that the youth be placed in another “therapeutic environment that may be more appropriate”. Since placement of these youth was not an “exact science” it was normal for the court to make multiple attempts at placement until the best setting was identified “and the youth is able to thrive”.<sup>247</sup>

Payment for out-of-home placements were handled by San Francisco's Human Services Agency. Placements for U.S. citizen youth were reimbursed through federal funding if the minor met federal eligibility requirements and the travel costs associated with the mandated monthly visitation of these youth were reimbursed by State funds. All youth placed in out of home placement by San Francisco were paid for through federal Title IV-E Foster Care funds if the youth were a citizen or out of the City and County of San Francisco's general funds if they were not eligible for federal funding for a variety of reasons, among those being if they were not a citizen.

San Francisco's JPD placed suspected undocumented youth in the exactly same manner as all other youth in accordance with the Welfare and Institutions Code long before the sanctuary ordinance even existed, but also after the law was enacted. What Assistant Chief Probation Officer Allan Nance was ordering probation officers at JPD to do on July 11, would be a break in that decades long policy. He instructed them to ask the Juvenile Court to resentence suspected undocumented youth who had already been tried by the Court and deemed to require out of home placement to be re-sentenced in a manner where they could be housed in Juvenile Hall and reported to ICE for deportation. This would rid the JPD of the liability of transporting and housing these youth in the case that the U.S. Attorney Joe Russionello prosecuted them on transporting and harboring charges as his office had threatened. Obviously, this type of modification to the youth's disposition would not be on the basis that the youth be placed in a more “therapeutic environment” in

their best interests, but rather for the JPD to rid themselves of the fear of the wrath of Joe Russionello, and they needed the courts to go along with it. On the other hand, it might have not been about the legal threat at all -rather, they may have just wanted to take the opportunity to rid themselves of Honduran drug dealers in a more expedited manner through deportation to lighten their case load and free up their court rooms.

In Nance's July 11<sup>th</sup> email to probation officers, he sent a "JV-740 Petition to Modify Previous Orders-Change of Circumstances" form that the probation officers could provide the courts as legal justification for modifying the OOHP dispositions to nullify the OOHP and the youth's ward-ship with the Juvenile Court.<sup>248</sup> The JPD probation officer who did the research for Nance to find out that this was the form that all probation officers would need to use to file this motion was the same probation officer who had been detained in the Houston Airport in May accompanying the youth back to Honduras. What was interesting is that the Juvenile Court in processing this form would assess the probation officers' allegation that certain "changes of circumstances or new evidence regarding the child"<sup>249</sup> were grounds for the probation officer to request a modification to the prior order. The form included check off boxes where the Court could indicate that it found the petition to "modify, change, or set aside previous order filed (date) was a) denied b) stated a change of circumstances or new evidence or c) was agreed to by all parties and attorneys of record."<sup>250</sup> The Court could also check off a box to indicate that the petition showed that "It appears that the best interest of the child may be promoted by the proposed modification"<sup>251</sup> – a rather perverse option for a Court to check off if in fact the modification would lead the youth to be referred to ICE for deportation.<sup>252</sup> If the change were found to be in the best interest of the child, then a hearing would be set to discuss the modifications.

One such subsequent JV-740 petition issued by a JPD probation officer would state that the "circumstances or new evidence regarding the child" were that

On June 15, 2008, the court ordered the minor into out of home placement. Pursuant to 8 USC 1324(a)(I)(A)(ii)and(iii), federal law makes it a crime for any person in knowing or reckless disregard of the fact that an alien is illegally in the U.S. to transport or move the alien within the U.S. in the furtherance of such violation.<sup>253</sup>

The JPD officer would indicate his or her intention in filing the form regarding the youth who had already been booked and tried by the court prior to the July 2008 policy change in the form's field titled "Petitioner requests the following modifications of prior orders."<sup>254</sup> The JPD officer stated in this field that

That the court vacate the commitment to OOHP [order for out of home placement] and commit the minor to a period of 30 days within the Juvenile Justice Center. Juvenile Probation will notify Federal ICE officials that minor is in custody.<sup>255</sup>

In other words, JPD was not only implementing a policy wherein going forward they

would report to ICE all suspected undocumented youth who were booked on felony charges, but they were also looking backward at those youth who were already in their custody. Probation Officers wanted to unload these recently adjudicated youth who had become Wards of the Court and placed in out of home placement by dissolving their ward-ship and referring them to ICE because they feared federal prosecution on the grounds that continued supervision could put them in the crosshairs of U.S. Attorney Joe Russionello on and federal harboring and transporting charges. In a sense, the probation department was calling into question the Juvenile Court's decision to put undocumented youth in out of home placement by pointing out that this could lead JPD officers to potentially violate federal law.

On July 12, JPD Chief Sifferman wrote a letter to all of the Juvenile Probation Commissioners that

As you know, I have been very clear about JPD's interest in revising our policies to conform with the Mayor's directive regarding undocumented felons, while at the same time managing and processing the existing population of undocumented youth already adjudicated on felony charges who are detained, already represented by legal counsel and awaiting sentencing. Those intentions were made very clear at our last meeting and at a previous meeting with immigrant rights groups. The matters involving detained undocumented adjudicated youth awaiting sentencing cannot linger while the long process of developing, vetting and approving new protocols occurs. For that reason, ICE notifications were made in some cases in conformity with 827(e) and 828 of the Welfare and Institutions Code. These notifications were made after informing the Court and the attorney groups of our intention. On Friday, July 11<sup>th</sup>, two ICE agents interviewed six (6) undocumented youth pending sentencing on felony charges while detained on JPD custody.<sup>256</sup>

Sifferman had also shared this message with City Administrator Ed Lee the day prior. What Chief Sifferman's letter to the Commissioners and to the City Administrator would fail to mention is that JPD was not only moving to report youth who were awaiting sentencing, but that they were instructing probation officers to request re-sentencing for youth who had already been sentenced to out of home placement and who had not yet been placed, so that these individuals too could be reported to ICE.

In the midst of these maneuvers in the City government, members of the Mayor's Staff received an email from former Juvenile Probation Commissioner, Eli Aramburo. Aramburo had been a Commissioner from 1996 until 2002, when the protocols for JPD processing undocumented immigrant youth was created and implemented. Aramburo emailed Nathan Ballard, the Mayor's Communications director in response to the Mayor's Office and JPD Chief Sifferman having acted shocked that there was a international fly-back policy and a policy that youth might not be reported to ICE upon booking. Aramburo let Ballard know that even though the 1996 undocumented youth protocol allowed for prioritizing family reunification

rather than deportation, including flying back the youths to their home countries that

The Juvenile Probation Department always had the authority to refer an undocumented minor to INS for screening pursuant to the 1996 policy adopted by the Probation Commission if the circumstances warranted a referral, i.e. violent felony, probation violation, illegal re-entry. INS reviewed, approved, and cooperated with the policy. There was no attempt to shield or harbor youths. Nancy Alcantar, the [INS] Assistant District Director for Deportation offered federal funds for transporting minors if reunification was appropriate. Unaccompanied youths were transported with full knowledge of INS pursuant to Court orders. The JPD was required to cooperate with any INS holds on minors. [...] The policy was approved by the City Attorney's Office [under Louise Renne]...The policy relied on the Welfare and Institutions Code and was not based on the sanctuary ordinance approved in 1989. I am disappointed that Chief Sifferman did not understand the policy or the Department's obligation to make appropriate recommendations based on the individual circumstances of each case.<sup>257</sup>

While Aramburo had originally sent the email to Nathan Ballard, Ballard forwarded the message to the Mayor's Office of Criminal Justice Deputy Director Kevin Ryan, and the Mayor's Chief of Staff Steve Kawa. Ryan's response was, "This person apparently has not seen the January 2004 policy adopted by someone over there at JPD. Nevertheless, we have fixed this now."<sup>258</sup> Ryan would miss the point that the 2004 JPD policy too, while allowing for fly-backs, allowed for all of the forms of cooperation with ICE that Aramburo was pointing out. Both policies allowed JPD at the dispositional stage to make a decision based on the facts of the youth's case and the severity of the crimes, to respond to an ICE hold on an immigrant youth that had been placed, and to refer him to ICE for further screening. Neither of the policies mandated JPD to voluntarily refer a youth to ICE if a hold had not been placed on the youth.

What Kevin Ryan and the Mayor's Office seemed to have "fixed" was not an inability of the juvenile justice system to communicate with ICE about criminal juveniles, but rather the ability of the Juvenile Court to order a referral of a youth to ICE. The Mayor's Office, the highest level of the Executive Branch of government had undermined the Juvenile Court's powers to find that a referral to INS was appropriate, given the whole situation of the youth- including their crime - and given that INS had placed a hold on them which would indicate that the youth was likely undocumented. In its place, the Mayor's Office had empowered City employees under its own authority - JPD probation officers - for the first time to report youth *themselves* with no Juvenile Court oversight and based on 1) the probation officer's suspicion that the youth was undocumented rather than on the placement of an INS or ICE hold and 2) an accusation that the youth had committed felony offenses rather than having been found guilty.

Eli Aramburo would point this out succinctly in a letter to the editor published in the *San Francisco Chronicle* that titled "A Just Society". Aramburo

explained that

Dumping undocumented youths into the federal immigration system may save the City money, but it limits the Court's authority to determine what is in the best interest of each individual minor in violation of the federal settlement of *Flores v. Reno* and applicable Juvenile Law.<sup>259</sup>

Aramburo in her letter would further indicate that due to the settlement of *Flores v. Reno* that Public Defender Jeff Adachi had already bought to the media's attention, not only had the INS been cooperative with the Juvenile Probation Commission's 1996 policy to reunify undocumented youth with their families in other countries, in fact

Immigration officials did not want to deport minors and requested that the Juvenile Probation Department reunify a minor with family or any dispositional alternative deemed appropriate by the [Juvenile] Court given the circumstances of the minor and the offense.<sup>260</sup>

While the debate around the July 2008 policy change with regard to referrals of undocumented youth to ICE had been focusing on public safety and compliance with federal law, really what was occurring was one of the most cavalier invasions of the Executive Branch into the jurisdiction of the Judicial Branch of government by stripping it of its authority to determine when referring youth to ICE was appropriate. What would be ironic was that this invasion of the Judicial Branch was being led by a Mayoral staff member - Kevin Ryan - who was a former U.S. Attorney and former San Francisco Superior Court Judge.

### **The Immigrant Rights Community Response**

The organized immigrant rights community responded quickly to the announcement of the policy change by meeting with top leadership of the Mayor's office and testifying before the Juvenile Probation Commission about concerns regarding undocumented youth being referred to ICE.<sup>261</sup> Among them was CARECEN, which had been continuing to play a leading role for the past two decades working as "community counselors" with undocumented youth in the JPD's Youth Guidance Center. In these meetings, the coalition defined and shared their key guiding principles bringing the member organizations together:

1. Immigration is a human right and individuals have the right to migrate to secure the economic, social and cultural well being of their families.
2. Immigrants have the right to live in security regardless of their immigration status
3. Immigrants, especially youth immigrants, have the right and the capacity to grow, learn and develop in their new homeland regardless of their family situation.

4. The best policy decisions regarding immigrant youth are based on accurate understanding and involvement of the community.
5. Children, families and the community are best served through collaboration and cooperation among community stakeholders and government agencies.
6. We believe in supporting immigrant youth and young adults who have gone through the criminal justice system to have a second chance to become self-reliant and positive assets to our community.
7. We do not accept and are against inappropriate characterization of youth by the media and police department.
8. We believe immigrant youth and young adults are a part of our community. Therefore, community and government agencies have the responsibility to serve them as such.

Members of the Police Commission, the civilian oversight body of the Police, were also alarmed at Mayor Newsom's unilateral decision to refer kids to ICE at the booking stage. The Police commission was in charge of setting policy for the Police Department and conducting disciplinary hearings on charges of police misconduct filed by the Chief of Police or Director of the Office of Citizen Complaints. They also imposed discipline and heard police officers' appeals from discipline imposed by the Chief of Police. Commissioners were not city employees but rather leaders who had attained a great degree of respect for their work advocating for certain communities or working in some aspect on public safety. They were appointed by the Mayor and the Board of Supervisors and they oversee the Police Department and the Office Of Citizen's Complaints.

At a Commission meeting soon after the change, Commissioner David Campos was worried that the reversal in JPD policy would undo the work that the Police Commission had done to send a clear message to people in the community that "we as a police department do not cooperate with ICE".<sup>262</sup> While the Police Department was not undergoing a change in policy, the Commissioner thought that, "the change in practice might have a very negative impact on our ability to actually have the trust of the community."<sup>263</sup> Another commissioner interpreted the new JPD policy as a "complete reversal of the whole sanctuary policy and its protection we offer immigrants in the city." This pointed to the fact that even though the reversal might have been consistent with the sanctuary ordinance's exceptions for felony bookings, which according to the City Attorney's 1994 memo, applied equally for youths and adults, something about the *spirit of sanctuary* was violated with this very political move. At this same meeting, during the public comment portion, a resident of the Western Addition, a low-income, predominantly African American neighborhood, came to speak about the Mayor's change:

Good evening commissioners. I really wanted to echo commissioner David Campos. I'm concerned about ICE and the San Francisco Police Department cooperating with ICE. And I want us to maintain and enforce our sanctuary city in general and especially for the juveniles. I witnessed an arrest of a juvenile and I saw a lot of brutality that wasn't necessary. I felt he was alone

and nobody cared and I think going after the petty drug dealers is not going to address the issue. You have to have rehabilitation of the drug addicts and these kids are more victims than criminals and they need help. A lot of them are here alone and have no family. I'm a mother and watched this and this really broke my heart so I know it's not on the agenda but I want to echo there's a lot of concern in the community. I heard of another case of police brutality where a 14- 15-year-old was kicked around and threatened to be deported and that's not acceptable. We can't do that to these kids. They need to be rehabilitated and get the services they need. I felt there was roughness and some cultural language issues. If he's not English speaking and you're telling him to open his mouth and your rough because he's not cooperating, you have to have cultural sensitivity and that's my comments tonight. Thank you commissioners and the police department for hearing me.<sup>264</sup>

If things couldn't get worse for JPD and Mayor Newsom, later in the month the last remaining undocumented youth in detention in a group home in Atascadero, California, in San Luis Obispo County escaped. He had been detained with 12 other youth, all from Honduras and who had been detained for dealing drugs. The 11 others had already escaped and Mayor Newsom was planning to bring this last youth back to San Francisco for resentencing because "enough is enough". However, the youth got a phone call tipping him off that he would be turned over to ICE under the Mayor's new JPD policy and so he left the home, which was unlocked. As a result, JPD Chief Sifferman said, "There will be no more group homes in the future."<sup>265</sup>

On the same day as the youth escaped, the coalition of immigrant rights groups, successfully urged the city's Immigrant Rights Commission to adopt a resolution written in favor of undocumented youth and opposed to ICE referrals. The resolution was written by IRC Commissioner Chris Punongbayan who also worked for the Asian Law Caucus, one of the coalition member organizations. The IRC essentially served as an advisory board to the Mayor on immigrant issues. The resolution followed the standard format of defining the subject population in need of government service, explaining the crisis situation of the subject population, the statistics and laws regarding the issue at hand, and finally what the Commission urged the Mayor, the Board of Supervisors, and appropriate departments to do to improve the situation of the target population, in this case, undocumented youth. The resolution stated:

Whereas, undocumented immigrant youth come to the U.S. fleeing economic and political hardships in their home countries; Whereas many undocumented immigrant youth come to the U.S. unaccompanied by parents, relatives, or other adult guardians; Whereas, undocumented immigrant youth who become involved in the juvenile justice system in San Francisco should be treated humanely and in a way that respects their civil and human rights; Whereas, many youth involved with the juvenile justice system have endured trauma, abuse, neglect, and abandonment and, in the cases of immigrant youth, may have been trafficked into the country; Whereas, all youth regardless of immigration status, involved in the juvenile justice



system are subject to the jurisdiction of the juvenile court, under the Unified Family Court, whose goals are rehabilitation, permanency, stability, reunification with families and acting in the best interests of the child, which is legally distinct from involvement in the adult criminal court system; Whereas the legal consequences of a sustained petition in juvenile court do not trigger the same consequences as a conviction in criminal court for immigration purposes; Whereas, state law requires all detained youth, including those at the Youth Guidance Center (YGC) in San Francisco, be reunited with parents, relatives, or other adults in the community whenever it is safe and appropriate to do so; Whereas, federal immigration law provides various forms of relief for immigrant youth including Special Immigration Juvenile Status for undocumented minors; Whereas immigrant youth may also be eligible for other forms of immigration relief such as asylum or the T-visa for victims of trafficking; Whereas, federal immigration law imposes no affirmative duty on local officials to transfer a youth who has a sustained petition in juvenile court to ICE custody; Whereas, in deportation proceedings, an immigrant youth is very rarely represented by an attorney while the interests of the federal government are always represented by an attorney; Whereas, consistent with the Sanctuary City Ordinance, San Francisco Juvenile Probation officers are prohibited from inquiring about any minor's immigration status or attempting to determine status; Whereas, state and local law prohibits confidential information regarding a minor under juvenile court jurisdiction from being disclosed to ICE or any other agency that is not actively involved in an on-going case regarding that specific minor;

THEREFORE BE IT RESOLVED THAT the IRC strongly urges that a new policy be adopted by the Probation Department that all immigrant minors in custody have access to an immigration legal screening by an immigration attorney; and, be it, Resolved, that the IRC advises that such screening policy be developed with input from local community-based organizations; and, be it, Resolved, that the IRC urges that all custodial immigrant minors be provided with an immigration attorney to represent the minor in immigration proceedings; and, be it, Resolved that the IRC recommends that the City develop and expand opportunities for unaccompanied immigrant youth, including safe housing and jobs, because these youth are extremely vulnerable to exploitation by adult criminals; and, be it, Resolved that the IRC recommends City Officials commit adequate resources towards development of culturally-appropriate, community-based placements for unaccompanied, undocumented immigrant youth; and be it, Resolved, that the IRC recommends that JPD and all other juvenile justice stakeholders make every effort to, where appropriate, place accompanied, undocumented immigrant youth with their family and in their community in San Francisco. Resolved, that copies of this resolution be forwarded to the Mayor, Board of Supervisors, and the Probation Department.

The commission received 62 emails and 10 phone calls about the resolution and all but two were opposed. Mayor Newsom's spokesman and former Deputy City Attorney Nathan Ballard responded to the resolution by saying that "the Mayor appreciated the commission's input but has directed the Juvenile Probation Department in no uncertain terms to turn over juvenile felons to federal immigration authorities. Ultimately, the decisions must be made by the Mayor, and that is where the buck stops."<sup>266</sup>

A few days later in July, Edwin Ramos went before Adult Court Judge Lucy Kelly McCabe and pled not guilty to the triple murder, and Danielle Bologna, widow of Tony Bologna, went on Fox News with Megan Kelley. Bologna stated:

It was a senseless crime and had they [the City] done something this animal would not have taken my family. I feel that the government allows these immigrants to come in and how dare they strip our families like this. None of us should ever have to go through something like this. I never thought in a million years that I would be sitting here talking to you nor would I have to bury three beautiful loved ones. I feel that I thought I did everything right as a citizen. I am Catholic, I raised five beautiful children, and something like this to happen senseless to my family is totally unacceptable. Totally. And I feel like the support of the community and the people behind us is something that we need. And we need change. You can't just let people come in and kill innocent people. And my husband has lived in the house for all his life while we were there, it was a normal day and we thought as normal as it was just heading home we thought we'd be safe like always. We never experienced something so vicious and so disgusting to me in this world. And to think that I have to go on in my life without my husband and my two beautiful sons is just unbearable. It's totally not fair. And I want this country to understand that. This animal, *this thing* has committed more than one crime and for him [Mayor Newsom] to now stand up and say something like that [that he was rescinding the JPD policy], it's too late. My husband and sons are gone. It should have been resolved in the beginning when this guy had done more than one crime in the city. We wait for things to happen and it's just not ok. I want justice. I want people to see if my family was not safe, what makes you think yours will be.<sup>267</sup>

The immigrant rights coalition, growing to represent 28 organizations<sup>268</sup> and calling itself the Coalition of Community-Based Organizations (CCBO) responded by organizing a press conference titled "San Franciscans Stand up for immigrant communities and support Public Safety" to further push back on the anti-immigrant sentiment. Speakers included various member leaders of the coalition, local pro-immigrant pastors, Immigrant Rights Commissioners, representatives from the Public Defender's Juvenile Division, Police Commissioner David Campos, and District Supervisors Eric Mar, Tom Ammiano, Chris Daly, and Ross Mirkarimi. They expressed that the sanctuary ordinance, far from causing violent crime actually increases public safety by building trust between immigrants and local law

enforcement. They claimed that the Sanctuary ordinance has saved lives and that immigrant victims and witnesses have come forward to report crimes because of the ordinance. They also reminded the press that immigrants are less likely to commit crimes than U.S. born residents. They expressed strong support for all victims of crime but cautioned against scapegoating immigrant communities.

They called on the Mayor to preserve due process rights and privacy for all youth and presented the Mayor with a letter and a list of principles for the treatment of undocumented youth in the juvenile justice system. These principles included the following:

- 1) All youth involved with the juvenile justice system should be treated equally. All cases should be guided by the goals of the juvenile justice system: rehabilitation, permanency, stability, reunification, safety and best interest of the minor. All policies with regards to juveniles in the justice system should be consistent with the strong principles of equality and human rights, including the rights of immigrants, that are at the core of our city's values.
- 2) All youth detained at the Youth Guidance Center [Juvenile Hall], regardless of immigration status, should be placed with parents, relatives or other appropriate adults in the community whenever it is appropriate and safe to do so. Immigration status should have no bearing on whether a minor is released from detention into the community. This is consistent with state and federal laws that mandate family reunification and also with the principles of the Juvenile Detention Alternative Initiative.
- 3) Consistent with the Sanctuary Ordinance, probation officers should not ask about any minor's immigration status or attempt to determine status. Immigration status is a complicated legal issue that should not be determined by someone without appropriate expertise. In addition, asking minors about their immigration status based on appearances may also result in unlawful profiling based on race and/or national origin. *See S.F. Admin Code 12 H2-1* ("in deciding whether to report an individual to the INS under the circumstances described in this Section, an officer, employee or law enforcement agency of the City and County of San Francisco shall not discriminate against individuals on the basis of their ability to speak English or perceived or actual national origin."). Referrals made to ICE of youth who turn out to be actually documented also could subject JPD and other officials to liability. *See Soto-Torres v. Johnson*, CIV S-99-1695 WBS/DAD (E.D. Cal. Filed Aug. 30, 1999) (County and federal officials pay \$100,000 to settle a lawsuit after a County probation officer made an erroneous determination regarding the plaintiff's deportability, which resulted in the wrongful arrest and detention of plaintiff by immigration authorities).
- 4) No confidential information regarding a minor under Juvenile Court jurisdiction should be turned over to ICE or any other agency that is not actively involved in an on-going case regarding that specific minor. This is mandated by Welfare and Institution Code sections 827, 828, and San

Francisco Juvenile Court Standing Order No. 303 (See City Attorney's Memo, Section II).

- 5) All undocumented minors should have access to an immigration legal screening by an immigration attorney. Minors could be referred at any point in their case by the delinquency attorney, who will likely know their immigration status. In any case where the Probation Department is considering a referral to ICE the minor must have access to a screening prior to that referral. Any minor who has been found eligible for affirmative immigration relief should not be referred to ICE. The affirmative filing of their case will trigger notice to the Department of Homeland Security. Notification to ICE could likely result in their being moved to a detention facility outside of California where they may have no access to legal assistance.
- 6) The City should commit resources to prevention efforts, including in particular safe housing and jobs, to provide opportunities for unaccompanied youth who are extremely vulnerable to exploitation by adult criminals.
- 7) The City should commit resources towards development of culturally appropriate community-based placements for unaccompanied youth.<sup>269</sup>

Philip Hwang from the Lawyers Committee for Civil Rights commented that, “

For nearly two decades, the Sanctuary Ordinance has been a cornerstone of our efforts to build bridges between City officials and immigrant communities. If trust between local police and immigrant communities is further eroded, crimes are likely to go unreported or unsolved, and none of us will be any safer.”

Abigail Trillin of Legal Services for Children stated that, “All policies should be consistent with the goals of the juvenile justice system, namely rehabilitation, reunification, safety, and best interest of the minor.”

Mayor Newsom responded that he still supported the “concept of sanctuary-city,” but that he did have “a panel” reviewing the sanctuary ordinance. Such comments were rather ironic given that over the previous two years, he had convened all department heads with many of the immigrant rights groups in the CCBO to review the sanctuary ordinance and how department-specific sanctuary protocols could be developed where they don't currently exist to further institute sanctuary city. At this point, the type of review the Mayor was instigating would have the opposite aim – to analyze how city departments should increase cooperation with ICE where they are currently not cooperating or providing sanctuary in a manner that might politically blow-back on the Mayor. Pandering to the public safety fears of citizens, the Mayor stated that in the previous 18 months 1100 people had committed crimes, been housed in San Francisco jails, and then been turned over to ICE. Newsom said: “We are trying to tighten up the language so it's crystal clear to everybody. We need to tighten it all up and bring it together in a way that maintains the spirit that brought us here in the first place, which I will not

back off on, which I believe in principally.”<sup>270</sup> This work of tightening up the language would refer to the Mayor’s Office of Criminal Justice (MOCJ) Deputy Chief of Staff Kevin Ryan’s work. The CCBO immigrant advocates suspected that much of Mayor Newsom’s position on changing the JPD youth referral policy was the outcome of influence from Kevin Ryan.

### **Seizing the Moment to Strike at the Sanctuary City**

The following day, July 31, a dozen members of the anti-sanctuary vigilante group, the Minutemen Project, organized a protest on city hall steps demanding a repeal of the sanctuary ordinance and the resignation of Mayor Newsom. They called Newsom, District Attorney Kamala Harris, and Juvenile Probation Chief William Sifferman accessories to the Bologna murders.<sup>271</sup> To counter the anti-sanctuary protest, 300 members of the organizations involved in the Coalition of Community-Based Organizations arrived to counter-protest the Minutemen. Immigrant rights protesters cheered, “Racists go home!” and “Racists Go Away!” while Minutemen were asked by the media if they mind being shouted down by protesters. They responded, “No, I don’t see an interruption. I have 14 new mics stuck in my face. The message is getting out – we want to see an end to sanctuary cities. It was a murder that would have never happened if the Mayor made sure that federal immigration laws were enforced in his community.”<sup>272</sup> The Minutemen put in earplugs and said

To me they [pro-sanctuary protesters] are irrelevant and I don’t give them much thought or credence whatsoever. [...] People in the [makes air quotes with her fingers] ‘immigrant community’ don’t refuse to report [crimes to the police] because they are afraid of ICE. They refuse to report because they are afraid of thugs, and why shouldn’t they be when these guys are turned loose. If you break the law and you are here illegally we would like to see you deported. I want sanctuary cities ended so that citizens are protected and not people from another country. When you are encouraging those with an illegal behavior to come to your city and seek refuge there, that’s not good for the safety, health, and maintenance of the city itself.<sup>273</sup>

The Minutemen held signs that said “Sanctuary City Mayors are U.S. Traitors” and “Save your Country before it’s TOO LATE!!” One leader of the CCBO and organizer of the San Francisco Day Labor Program and Women’s Collective, Renee Saucedo, responded that “We need to denounce these hate messages, these messages of scapegoating because if we allow them to go unchallenged, they become part of the mainstream.”<sup>274</sup>

However, the Minutemen would not be the only anti-sanctuary organization to direct blows at the city. Reinvigorated by the political climate created in the fall-out of the Ramos murders, Southern California group home escapes, and the JPD fly-back policy, the conservative anti-sanctuary legal advocacy group Judicial Watch and Charles Fonseca, pushed forward in their lawsuit against the City to reform the sanctuary ordinance by filing an appeal in the Court of Appeal of the State of California First appellate district, division 2 (see chapter 4). With the political tide

against San Francisco, they would have an easier time getting a reinterpretation of the laws at stake especially given that these laws governed reporting protocols for immigrants arrested on drug crimes. San Francisco's leniency on juveniles arrested on drug crimes in their view had led to the murder of innocent civilians, the Bolognas. Judicial Watch's original claim had been that San Francisco fails to abide by Section 11369 of the state Health and Safety Code which states that "[w]hen there is reason to believe that any person arrested for a violation [of any of 14 specified drug offenses] may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters."

In their petition, Judicial Watch lawyers argued that section 11369 is not federally pre-empted, as the trial court had ruled, and pointed out that in the previous round of legal argumentation which led to the dismissal of the case by the trial court, San Francisco's position on its compliance with 11369 was left ambiguous by the time the case was dismissed. The City argued that they found Section 11369 pre-empted because it was a mandate to the city to regulate who enters and exits the country, which would be an invasion into the exclusive domain and authority of the federal government. Therefore, the City argued that they don't need to comply with Section 11369. At another point in the case, the City argued that in fact they are in compliance with 11369, however, Judicial Watch pointed out that that claim was left un-adjudicated and in need of clarification especially if the Court of Appeal reverses the ruling of the trial court and finds 11369 to not be federally pre-empted. Judicial Watch pointed out that the logical assumption would be that if San Francisco is arguing that it doesn't need to comply with 11369 then they essentially were admitting to be out of compliance with 11369.

Judicial Watch argued that case law provides rulings that not every state enactment or action

which [may] in any way deal with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised. Standing alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.<sup>275</sup>

In these previous rulings cited by Judicial Watch, the court established a three-part test for determining whether a state statute relating to immigration is preempted by federal law.

The initial inquiry is whether the state statute constitutes an attempted "regulation of immigration" that is per se pre-empted because of the exclusivity of federal power to regulate in this area under the United States Constitution. (De Canas, supra, 424 U.S. at p. 355.) If this is not the case, the statute may nevertheless be pre-empted under the second test, which is whether it was the "clear and manifest purpose of Congress" to effect a "complete ouster of state power—including state power to promulgate laws

not in conflict with federal laws” (id. at p. 357) with respect to the subject matter of the state statute—because Congress intended to ‘occupy the field’ to which the state statute applies (id. at p. 357, fn. 5). Where the statute does not attempt to regulate immigration and applies to an area in which Congress did not intend to completely oust the states of power to regulate, the state statute may still be pre-empted under the third test, which is whether it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’ in enacting the INA.<sup>276</sup>

Fonseca/Judicial Watch contended that unlike section 4 of Proposition 187, Section 11369 does not require any state or local law enforcement agency to independently determine whether an arrestee is a citizen of the United States, let alone whether he or she is present in the United States lawfully or unlawfully. Nor does the statute create or authorize the creation of independent criteria by which to classify individuals based on immigration status, as did section 4 of Proposition 187. All of those determinations, as well as the duty to tell an arrestee who may be in this country unlawfully to either obtain legal status or leave, are left entirely to federal immigration authorities. Section 11369 is also different from section 4 of Proposition 187 in that it does not apply to all arrestees, but only to those persons arrested for one or more of 14 specified drug offenses.

Judicial Watch claimed that 11369 did not oblige state or local officials to determine “what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization, and the statute is therefore not an impermissible state regulation of immigration within the meaning of *De Canas*, supra, 424 U.S. at page 355.”<sup>277</sup>

The City had relied very heavily on the proposition that Section 11369 cannot plausibly be deemed to serve any purpose other than that of impermissibly regulating immigration. They said that, like the per se pre-empted provisions of section 4 of Proposition 187, “Section 11369 can have only one purpose: to mandate cooperation with the federal immigration officials ‘solely for the purpose of ensuring that such persons leave the country.’ ”<sup>278</sup> The trial court agreed, stating that “Section 11369 cannot be regarded as even primarily about drug use, sale, or possession, because it adds nothing to the State’s regulatory scheme for those matters.”<sup>279</sup>

To top it off, in their petition, they additionally included that “compliance with Section 11369 would reduce municipal expenditures relating to the incarceration of many persons arrested for such offenses, and thereby benefit appellant and other taxpayers.” Judicial Watch, Fonseca, and the City would wait two months for a ruling from the court.

Also, to keep the culture war on sanctuary alive, in late August, the anti-sanctuary group Californians for Population Stabilization launched a new television campaign “highlighting the affects of sanctuary cities.” The television spots aired on local stations state-wide asking Californians to express their opinions about Sanctuary City policies in force, formally or informally. While showing pictures of San

Francisco downtown, the Golden Gate Bridge, images of crime scene police “caution” tape, a scene of an actor portraying a Latino gang member having his mug shot taken, and images of a car windows being broken into with a crow-bar, the narrator of the 30-second commercial would state in a slightly menacing tone

Californians are a compassionate people. Our sanctuary-cities defy state law so we can protect illegal aliens even though they are named in 95% of outstanding homicide warrants in L.A, even though they are wanted in 2/3 of fugitive arrest warrants. Illegal alien gang members get back on the street because cops can’t ask immigration status. Have sanctuary-cities taken our compassion too far?

This commercial conflating undocumented immigration with felony-level criminal gang activity would play perfectly into the fear-mongering perpetuated by *The San Francisco Chronicle*, and more subtly by the Mayor and his staff that would not only target convicted criminals but all undocumented immigrants in sanctuary-cities.

Anti-immigrant city residents also took shots at the government by continuously using city government hearings as a location for venting their outrage at what they saw as irresponsible governance in relation to public safety and the protections the city provides for undocumented immigrants. At a Police Commission meeting, resident Lesley Tras used the public comment portion of the meeting to air her outrage at the Mayor and the Police Department surrounding crime and what she perceived as the shielding of undocumented immigrant criminals from deportation:

The mayor's office and police department in this city are not doing the job that they should be doing to protect the citizens of this city. The recent killings of members of the Bologna family in the Excelsior are a milestone that reveals the negligence on the part of the Police Department when it comes to protecting law-abiding citizens. Mayor Newsom is more concerned about running for Governor than protecting citizens of this city. The police department is more concerned with protecting things like the sanctuary program that has been used to shield violent felons than the majority of the citizens of this city. People like Edwin Ramos [...] should have been deported and not protected by this city. People are outraged, as they should be. [...] I just want to know, how many more innocent people must die in San Francisco before Mayor Newsom and the SFPD start doing the job that they have not been doing to protect the citizens of this great city. Thank you.<sup>280</sup>

Another member of the public commented that, “If Mr. Ramos had been deported, the members of the Bologna family would be alive today. That's an inexcusable negligence on the part of the SFPD and on the part of the mayor's office [...]”<sup>281</sup> Commissioners aimed to reassure the public that the Police Commission develops policy for the SFPD and that prior to any changes with regard to the sanctuary ordinance or the Department General Order (DGO) 5.15 regulating immigration policing, they would have an extensive public hearing. However, they delayed



having such a hearing until the new JPD policy was fully fleshed out and made public.

In late August, Danielle Bologna, widow of Tony Bologna at the urging of anti-sanctuary legal advocates filed an administrative claim against the City claiming the city's sanctuary policies "played a substantial role" in the slayings of her family members by shielding Ramos from deportation. While it didn't make any specific request for damages it asserted that the City knew that ICE was targeting illegal immigrant gang members for removal and, unaware that the FBI and ICE already knew about Ramos, asserted that ICE would have sought to deport Ramos immediately had they known his juvenile record. The claim also placed blame on the city's Juvenile Probation Department for adopting "official and unofficial policies" that they claimed amounted to unlawfully harboring illegal immigrants who committed violent crimes.

Bologna's attorney bringing this claim forward was Kris Kobach, legal counsel for the anti-immigrant group Federation for American Immigration Reform (FAIR), author of the infamous Arizona anti-sanctuary state bill SB1070, and author of a variety of other SB 1070 copy-cat anti-sanctuary bills proposed in the South two years later in 2010. Kobach noted:

There are clearly many, many restrictions on when and whether (San Francisco) police officers can communicate with the federal government on an individual's immigration status - and those restrictions played a role, in a significant way, to horrible events that unfolded on June 22. It was just a horrific tragedy because it was preventable. If the city had followed the law, Anthony, Matthew and Michael Bologna would most certainly be alive today.<sup>282</sup>

It cited Mayor Newsom's 2007 executive directive on sanctuary city and a Chief's Bulletin issued by Police Chief Heather Fong - two executive orders derivative of the sanctuary ordinance. The claim stated that, "All of these official enactments, orders, mandates and endorsements of ... sanctuary policies were reinforced by an unwritten but enforced policy that discouraged police officers from reporting any illegal alien."<sup>283</sup>

ICE, too would take the opportunity to set its sights on the City's sanctuary policies and would try to push the anti-sanctuary sentiment within City Hall as far as it would go, setting it's sights this time on the Sheriff's Department. On July 1<sup>st</sup>, Sylvia Arguello, Assistant Field Office Director of ICE sent Sheriff Michael Hennessey a letter stating that

It is my understanding that a recent policy has been issued to personnel in your department that limits ICE's ability to identify foreign nationals that are in custody in San Francisco County Jail. Specifically, your staff has been directed the following: that ICE is not permitted to review booking, housing or computer documents and further that ICE agents under no circumstances may review any Department logs or records that are maintained concerning prisoners identified as Foreign Nationals.<sup>284</sup>

This Sheriff's recent policy change had come as a part of conversations with the working group of the Mayor's Sanctuary City Initiative, which ended in the Spring to make sure that all departments had been in compliance with the sanctuary city ordinance. Arguello then cited the sanctuary ordinance's section 12H.2-1 to argue that the Sheriff was required to give ICE information to assist them with detaining undocumented immigrants for deportation. Arguello said

Section 12H.2-1 of the City Charter part (b) indicated below allows for your department to provide ICE (formerly INS) records pertaining to foreign nationals who have been convicted of a felony. Your policy disallowing ICE to review any logs or records on foreign nationals appears to be in conflict with the City Charter.<sup>285</sup>

Arguello then citing federal laws the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996" went on to argue that federal law prohibits prohibiting city employees from "cooperating with the Immigration and Naturalization Service (now ICE)".<sup>286</sup> She didn't seem to think this argument was contradictory with her previous argument that he should abide by the sanctuary ordinance. Regardless, this second federal law-focused argument was not technically correct since these laws didn't prohibit local officials from prohibiting their employees from "cooperating with INS" in general, but specifically about sending immigration status information to the INS. The Sheriff's policy did not prohibit the sharing of immigration status information from being sent to ICE since the Sheriff's Department didn't ask about immigration status when doing their normal business and therefore didn't have that information, but rather all of the other information about the detainees in his custody that would be included in "booking, housing or computer documents [...] Department logs or records".<sup>287</sup> They only asked about immigration status when people were booked on felonies, in which case that particular information would be faxed to ICE. Arguello wanted the Sheriff to rescind his recent policy, and give ICE access to booking sheets and other jail records that went beyond what federal law required.

Sheriff Hennessey responded in a letter on July 9<sup>th</sup> stating that the sanctuary ordinance stipulated that he not expend funds or resources to assist in the enforcement of federal immigration laws "unless such assistance is required by federal or state statute, regulation, or court decision." He went on further to say

Your letter of analysis does not direct me to any specific law, which requires me to provide you access to the jail records you seek. So, while you are correct in stating that the local San Francisco ordinance does not prohibit my department from allowing your officers access to certain jail records, it directs me to provide such information only when required to by law or court decision. To the best of my knowledge, the San Francisco ordinance has not been invalidated by any court of law.[...] I must enforce our local law consistent with the requirements of federal law. I believe the current policies

of the San Francisco Sheriff's Department meet that mandate. If you are aware of other, more specific, federal laws or court decisions, which would dictate a different course of conduct, please let me know.<sup>288</sup>

In a subsequent letter dated July 23, 2008, Julie L. Meyers, Assistant Secretary of ICE wrote to Mayor Newsom to thank him for his "recent statements about ending the practice of transporting juvenile offenders abroad without contacting U.S. ICE."<sup>289</sup> Meyers would note

I write to raise an additional area where we could use your assistance. As you may know, the Sheriff's Department currently has a policy that limits ICE's ability to review booking, housing, or computer documents. Furthermore, ICE agents are not allowed to review any Department logs or records that are maintained concerning prisoners identified as Foreign nationals. Absent access to this kind of information, ICE is unable to effectively identify criminal aliens in the Sheriff's custody and lodge the detainers necessary to prevent the release of these criminal aliens back into the San Francisco community. ICE has raised this concern with the Sheriff's Department before, but as you can see from the enclosed letters, our efforts were unsuccessful. I hope you will consider urging the Sheriff's Department to rescind its current policy so that ICE can work together with the Department to better protect the citizens of San Francisco through the removal of criminals from the community. I look forward to working with you in the future.<sup>290</sup>

What was amazing about this request is that ICE had taken note of how the Mayor had been successful in forcing the Juvenile Court – a body not under the Mayor's authority - to modify its practice of issuing dispositions which included international family reunification for undocumented youth. They were taking the opportunity to see if it would work again, asking the Mayor to urge the Sheriff, an independently elected officer of the City and County who also was not under the authority of the Mayor, to change his policies with regard to releasing information on undocumented individuals in his custody.

However, Mayor Newsom, unlike his handling of the juvenile procedures, would instead, back up Sheriff Hennessey in calling into question ICE's need for the information and access that they were requesting. In an August 22, 2008 letter in response to Meyers, Mayor Newsom would respond that while the Sheriff was an independently elected official not under the auspices of the Executive Branch – that is he was not under the authority of the Mayor - the Sheriff's department did provide significant cooperation with ICE that Meyers was not acknowledging. In specific, Mayor Newsom explained that it was his understanding that Sheriff Michael Hennessey provided information on individuals booked on felonies and who were suspected of violating civil immigration laws and that as a result, in the past year and a half, "ICE has picked up at least 1179 such persons."<sup>291</sup> Newsom would also explain that

I am informed that the U.S. Department of Justices Inspector General's 2007

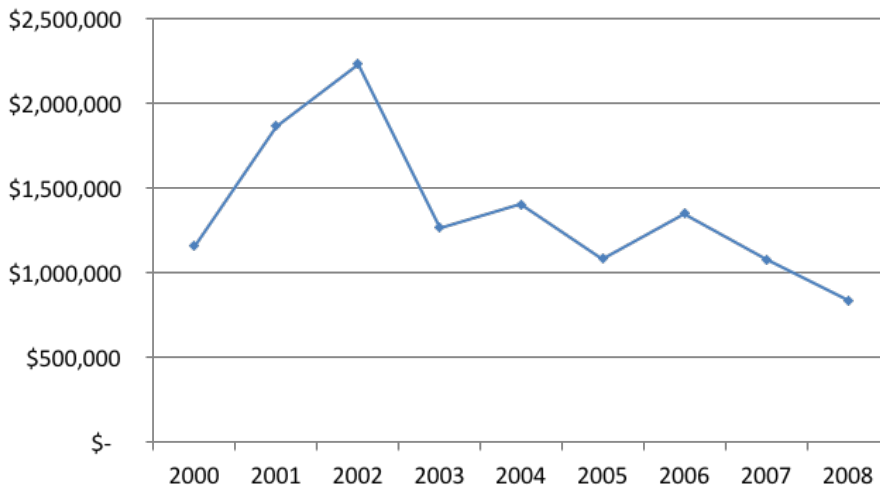
audit of the Sheriff's practices regarding SCAAP compliance demonstrated that the department had a 'cooperation level' far better than many other jurisdictions. It also concluded in part the following: 'our review did not disclose any instances of outright failure to cooperate with ICE in the removal of criminal aliens from the United States.'<sup>292</sup>

SCAAP funds – State Criminal Alien Assistance Program funds - were federal funds reimbursed to local law enforcement agencies by the federal government when the local agencies had detained undocumented immigrants in their local facilities. San Francisco kept track of undocumented status of inmates charged on felony crimes or who had felonies on their criminal record. These were also the immigrants that they had notified ICE of prior to their release. They then could submit a report to the federal government the number of days these individuals were detained before ICE picked them up for deportation or before they were released to the street in the case that ICE declined to pick them up. SCAAP funds could then be used largely for anything the Sheriff's Department wanted to use them for. For instance, SCAAP's approved use of funds list would include salaries for corrections officers; overtime costs; corrections work force recruitment and retention; construction of corrections facilities; training and education for the offenders; training for corrections officers related to the offender population; management expenses; consultants involved with the offender population; medical and mental health services; vehicle rental or purchase for the transport of offenders; prison industries; pre-release and re-entry programs; technology involving management of offenders and the facilitation of inter-agency information sharing; and disaster preparedness and continuity of operations for the corrections facility in the event of a disaster.

Over the previous 9 years, from 2000-2008 the San Francisco Sheriff's Department had received \$9,270,701 in SCAAP funds with an average of \$1,324,386 per year.<sup>293</sup> However in 2008 SCAAP funds reimbursement had reduced to the lowest amount in nine years of only \$837,450. The SCAAP award amount was based on a calculation of total cost to the department for Correctional Officer salaries divided by the total number of days that eligible illegal immigrants were in the Sheriff's custody. While the total Correctional Officer salary outlays had in fact doubled over the previous nine years from \$25,481,251 to \$50,959,697 in 2008, the number of illegal inmate days in Sheriff's custody had reduced almost in half after 2001, the year of the terrorist attacks on the World Trade Towers in New York City. This reduction in days that illegal inmates spent in local adult jails from 33,053 days in 2000, to the spike in illegal inmate days in 2001 to 72,063 days, and then with a gradual reduction down to 29,674 days in 2008 would reflect the number of undocumented adults who had been booked on felony charges or who had been booked on misdemeanor charges but who had felony convictions – findings of guilt of a felony offense – on their criminal record, since those were the only people that the Sheriff asked about immigration status. The total number of undocumented individuals booked on felonies or who had felony convictions on their record that stayed in local jails for all of these days had reduced almost in half from 848 in 2003 to 477 in 2008, which would also mean that the average length of time that an undocumented immigrant booked in this manner had remained jailed for all of the

offenses he or she had been booked for over the year had also reduced from 76 days in 2003 to 62 days in 2008. If the Mayor's was correct that the Sheriff had made 1179 referrals to ICE, that may have meant that 477 individuals were referred to ICE in 2007, on average, 2.4 times each. The sheriff also jailed and released individuals who had been booked on misdemeanors but who had no felony convictions on their record, however, his officers did not notify ICE or the SCAAP office about these individuals in compliance with the sanctuary ordinance.

## SCAAP Awards to San Francisco



**Figure 1. SCAAP Awards to San Francisco, 2000-2008**

Fiscal Year	Final Award Amount	Eligible Illegal Inmates	Illegal Inmate Days	Unknown Immigration Status Inmates	Unknown Inmate Days	Total Correctional Officer Staff	Total Correctional Officer Salary Outlays Expense
2008	\$837,450	477	29,674	28	1,715	552	\$50,959,697
2007	\$1,081,941	477	33,345	40	2,236	556	\$48,910,744
2006	\$1,352,541	637	40,164	65	2,852	573	\$46,317,454
2005	\$1,087,199						
2004	\$1,405,674						
2003	\$1,268,857	848	64,862	211	11,819	491	\$34,248,554
2002	\$2,237,039		63,011				\$28,933,676
2001	\$1,869,609		72,063				\$23,843,974
2000	\$1,159,450		33,053				\$25,481,251

**Table 1. SCAAP Funds Awarded to San Francisco 2000-2008.**  
Blank boxes represent data that was not available.

SCAAP funds would provide the Sheriff's Department a financial incentive to detain undocumented immigrants for ICE referral, however, the reducing numbers indicated that such an incentive had not led the Sheriff to continue to depend or rely on the detention of undocumented immigrants to maintain his normal operations. Nonetheless, the Mayor was right that by all signs of the Sheriff's involvement in the SCAAP reimbursement program, he was on a regular basis referring adults to ICE and transferring them to ICE custody.

Newsom's letter to Meyers would explain that on July 31, 2008 the Sheriff had even met with Assistant Secretary of Homeland Security Edmund Sexton in which they discussed improving communications between ICE and the local jails under the Sheriff's authority. The existing communication between the Sheriff's deputies in the jails and ICE when a person was booked on a felony included two notifications to the Department of Homeland Security – one notification to the local ICE office, and the other to the SCAAP office. Newsom would note that the Sheriff

upon request of ICE, also permits ICE agents to interview these jail inmates. If ICE issues a detainer for an inmate, the Sheriff honors the detainer and notifies ICE before the inmate is released from the jail. To my knowledge, there has not been any allegation that the Sheriff has failed to comply with any federal law or regulation.<sup>294</sup>

Finally, in response to Meyer's letter, Newsom pointed out that Meyers didn't provide any specifics about what information ICE needed from the additional documents or

why such information is necessary for ICE to perform its duties, particularly in light of the efforts already undertaken by the Sheriff in this regard...Perhaps the dialogue with the Sheriff would be more productive if ICE provided him with a clear explanation as to why his current practices are not sufficient for ICE to perform its duties, and further, how the specific information you are requesting will assist ICE in this regard.<sup>295</sup>

Having met a political dead end with the Mayor in regards to turning over more information on adults, ICE did not pursue the issue further with the Mayor.

### **Using the Sanctuary Ordinance to Deport Youth**

On August 26th, four days after Mayor Newsom wrote his letter defending Sheriff Michael Hennessey, JPD Chief Sifferman officially issued the updated juvenile ICE referral policy (policy 8.12) outlining the protocols for handling undocumented youth in JPD custody. The policy was issued without any approval or discussion at the Juvenile Probation Commission, the body charged with making policy changes in the Juvenile Probation Department. Using the sanctuary ordinance as a cited justification for the policy change, the new policy stated that

The Juvenile Probation Department shall comply with all federal, state, and local laws in the arrest booking and case processing of undocumented persons. The Juvenile Probation Department shall inform the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) in every case where a person is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. (San Francisco Administrative Code 12 H.2-1)<sup>296</sup>

The policy directly quoted the sanctuary ordinance's provision 12H.2-1 on reporting individuals booked on felony level offenses leaving out the 12H2-1 language that allows for the reporting of individuals who are booked on lower level offenses who nonetheless have felony convictions on their record. The policy would directly affect the work of the JPD's Intake Unit. Normally, the Intake Officers were responsible for investigating each case and determining the most appropriate course of action to take for the youth.<sup>297</sup> If a youth were a citizen, normally, the Intake Unit would make a choice "to counsel the youth and dismiss the charges; to divert the youth to a community based agency, assign community service hours and restitution in lieu of filing a petition; or refer the case to the District Attorney for formal prosecution."<sup>298</sup> However, the new ICE referral policy added another layer of responsibility to the Intake Unit – they were now required to keep track of data that would indicate immigration status and to cooperate with ICE to assist them with detaining kids. Probation Officers were reminded that they must provide language assistance to Limited English Speaking Persons through the use of professional interpreters or other authorized Probation Department personnel.

In response to claims that undocumented youth were actually adults, the policy stated that if at any time, a Probation Officer, in light of all of the facts and circumstances relating to a matter, believed that a detained person may not be a juvenile but may in fact be an adult, then the Probation Officer needed to inform the Juvenile Court of the facts and circumstances leading them to believe this and needed to request, under Welfare and Institutions Code Section 608, that the Court order a scientific or medical dental test at San Francisco General Hospital to determine the age of the person. Once a determination was made that the person is an adult, the probation officer needed to notify the SFPD Identification Bureau so that their records could be adjusted.

The new policy stated also that if a person was booked into secure custody at Juvenile Hall or was detained for more than two hours, and the person was a known or suspected foreign national, the On-Duty Officer needed to tell the detained person that he or she has a right to communicate with an official from the consulate of his or her country. In every case, regardless of the detained person's response, the On-Duty officer needed to telephone the appropriate consulate and provide the consular officer the following information: (1) name of the detained person; (2) reason for the detention; and (3) where the detained person is being held. The On-Duty Officer then would document on the department approved "Consular Notification Form," the date, time and person contacted. That Consular Notification Form then became a part of the minor's Juvenile Probation Department case record.

If the detained person wanted to communicate with a consular official, the Director of Juvenile Hall needed to facilitate that correspondence whether it be a telephone call with the consular official or in person visits.

One of the most contentious issues of the policy regarded how a Juvenile Probation Officer actually came to have a reasonable suspicion that a juvenile was present in the United States in violation of the civil provisions of the federal immigration laws after being booked for commission of a felony. The policy stated that

In determining whether there is reasonable suspicion that a person is present in violation of the federal immigration laws, an On-Duty officer shall take into consideration a combination of objective factors including but not limited to: self report of immigration status, inconsistent report of immigration status, report by parent, guardian or other reliable person, location of parents or guardian, possession of documentation that establishes legal status, existence of a verifiable local address, method of entry into the country, length of time in the country, presence of undocumented persons in the same area where arrested or involved in the same illegal activity, affiliation with a criminal street gang known to be comprised of undocumented persons and court or criminal history information showing a prior ICE hold or proceedings. An On-Duty officer may not rely solely on inability to speak English or on perceived or actual national origin.<sup>299</sup>

What was interesting about this was that the policy did not require probation officers to ask directly whether or not a youth was undocumented but rather left it up to chance that the information would be offered up through a variety of other routine questions – in other words immigration status would seemingly become known to the officers passively and indirectly. Immigrant advocates interpreted the provision stating that the officer could develop a reasonable suspicion based on “presence of undocumented persons in the same area where arrested or involved in the same illegal activity”<sup>300</sup> as an incentive for police to racially profile Latinos in the Mission District where a high number of undocumented immigrants reside and work.

In the case that the juvenile probation officer had independently on his or her own determined that he or she reasonably suspected that a person is undocumented, the policy instructed the On-Duty officer to advise the person that he or she may consult with an immigration rights advocate, at the person’s own expense or through pro bono services should they be available, provide the person with an information sheet identifying advocates with expertise in matters related to immigration rights, and inform the person that the person’s identity will be reported to ICE. The form listed the phone numbers of Immigrant Legal Resources Center, the Pacific Juvenile Defenders Center, and Legal Services for Children, all member organizations of the Coalition of Community-Based Organizations, as the immigrant advocacy organizations youth could contact. Soon after the policy was publicized, these coalition member organizations would all ask for their organizational name removed from the form due to the fact that either the



organization did not accept referrals for individuals needing legal representation on immigration matters or because the organization no longer trusted the JPD since they were willing to break state confidentiality laws guaranteed to undocumented youth through the Welfare and Institutions Code.<sup>301</sup>

Juvenile Hall staff then were instructed to grant the person phone access in order to initiate contact with an “immigration rights advocate specializing in immigration rights” -a legal advocate - if the person wanted that. Immigration rights advocates must then prearrange any subsequent interviews through the person’s assigned Probation Officer. In order to visit a detainee in the Juvenile Justice Center, those advocates needed to obtain an authorized interview pass prepared by the minor’s assigned Probation Officer, a Probation Supervisor, or another authorized Probation Department representative.

The policy then instructed that after these preliminary steps were taken, the On-duty officer was allowed to contact ICE by faxing them a completed ICE Referral Form and document the notification as part of the minor’s booking documentation. JPD employees who then received a request from ICE for information or other assistance in response to the faxed referral – such as detainers, warrants, subpoenas, or other documents – they were instructed to forward a copy of the ICE request to Chief Sifferman or Assistant Chief Probation Officer Allan Nance. The probation officer then needed to take action to ensure that a copy of any document related to a youth was placed in the youth’s Juvenile Probation file. Immediately after notifying ICE, the Probation Officer was required to then make reasonable attempts to inform the person’s parent, guardian or other responsible adult of the referral to ICE. At the next Court date following the referral to ICE, the assigned Probation Officer needed to inform the Juvenile Court Judge, the Assistant District Attorney, the minor’s defense attorney, and the minor of the referral to ICE.

If ICE were to then come to Juvenile Hall to interview a juvenile detainee, the Probation Officer was required to be present at the interview. If ICE served Juvenile Probation with a federal detainer, arrest warrant, subpoena or order of deportation, the Probation Officer would comply as appropriate depending on the document served after the Chief or Assistant Chief reviewed and approved the compliant action. In this sense, while referral of a minor was entirely up to the Juvenile Probation officer, the action taken on the subsequent ICE request – whether that be transfer of the youth to ICE custody, or other action – was entirely up to Chief Sifferman or Assistant Chief Nance. If at any time, ICE assumed custody of a juvenile immediately following release from Juvenile Probation’s custody – for instance, JPD and ICE had not scheduled a direct transfer of custody of the youth from JPD to ICE, if the youth was scheduled to be released to his or her family, and ICE was waiting outside to immediately apprehended the youth when he or she was released to his family - the assigned Probation Officer was also required to try to notify the person’s parents, guardians or other responsible adult.

To protect the department from further U.S. Attorney threats of federal prosecution on the basis of transporting undocumented immigrants, the policy prohibited JPD employees from transporting them for purposes of facilitating their exit from the U.S. Except for transportation associated with medical appointments, emergency medical care, or any other circumstances involving urgent health and

safety needs, either the Directors or Assistant Directors of Juvenile Hall or Log Cabin Ranch, the Assistant Chief Probation Officer, or the Chief Probation Officer, or their designees needed to approve any transportation of undocumented juveniles outside of Juvenile Hall.

In the case that ICE failed to respond to JPD referrals or declined to take any action, then the assigned Probation Officer was required to send a standard Department-approved written statement acknowledging these facts to the San Francisco ICE Duty Agent at their downtown 630 Sansome Street offices in San Francisco. 630 Sansome was also the location of ICE's immigration court for immigrants in deportation proceedings and an immigration short-term detention center.

Finally, in the case that a suspected undocumented person's case is resolved (whether because a Juvenile Court Petition is not filed, is dismissed, or the matter is otherwise adjudicated) and ICE had not served a detainer related to the person, JPD officers were instructed to release the person to a parent, guardian or other responsible adult. If no one was available to assume custody, then the assigned Probation Officer was instructed to make a call to Child Protective Services and take steps to allege that the youth is a dependent person subject to 300 W&I state code.

The same day that JPD Chief Sifferman would issue the policy, he would also call for a mandatory staff meeting for all probation services division personnel – probation officers, probation supervisors, and support staff - to meet at the Juvenile Justice Center to provide them with an explanation of updates on the new protocols with regard to processing undocumented youth. The steps in the referral process as explained to the staff were:

1. Minor is identified as suspected undocumented person
2. Consular rights provided
3. Copy of immigration rights resources provided to minor
4. ICE notification made
5. ICE interview conducted in Juvenile Hall
6. ICE hold [detainer] received
7. Court, minor, parents and attorneys informed of ICE HOLD
8. ICE contacted and informed once minor is no longer ordered to remain in secure custody
9. Courtesy hold for ICE up to 48 hours excluding Friday, Saturdays and federal holidays
10. Release form for ICE to take custody<sup>302</sup>

Staff were reminded that there was a lot of media attention on JPD and they needed to have a “unified and consistent response, following the law”.<sup>303</sup> JPD Chief Sifferman would also get an email that day from Mayor's Office of Criminal Justice Deputy Chief of Staff Kevin Ryan asking him if he could

prepare an analysis of the impact of your new policy vis a vis undocumented persons and the impact on the Mayor's ED [executive directive] (2007) that the population at YGC [Youth Guidance Center-Juvenile Hall] be reduced. Can

you include current trends and any predictions that you can make on these trends. Thanks, K.<sup>304</sup>

While perhaps not the main reason for changing JPD's youth referral policy, reduction in the juvenile inmate population at Juvenile Hall would remain a concern related to the issue of reporting undocumented youth to ICE for the Mayor's staff.

Not until two weeks after the public announcement of the new policy would JPD Chief Sifferman attend a Juvenile Probation Commission meeting on September 10th and present the new juvenile policy during his Chief's report. The youth policy had not been "agendized" – put on the agenda as an action item to be voted on - and so at that meeting, the Juvenile Probation Commission did not even have a chance to approve the policy, but instead created an ad hoc committee composed of Susana Rojas who served as Chair, Katharine Albright, and Dirk J. Beijen to review it. Chief Sifferman implemented the new policy with Mayor Newsom's backing regardless. Immigrant rights advocates showed up at this meeting to express disapproval during public comment even though it hadn't been put on the agenda and called into question the probation officers ability and expertise to discern immigration status. They expressed outrage at the criteria for suspecting immigration status leading Chief Sifferman in subsequent communications with the head of Juvenile Hall and Director of Probation that

All of this being said, it is absolutely imperative that you exercise vigilant supervision over this intake process to ensure that staff decisions are substantiated and that undocumented youth are provided with the information sheets on the opportunity to contact and consult with an advocate, and that the opportunity to call an advocate is accommodated. These are critical issues that will need your close attention. The game is on.<sup>305</sup>

Also in the two weeks following the issuance of the Mayor's JPD youth referral policy protocols, while everyone was distracted with the issue of deporting undocumented youth in the name of the sanctuary city, department executives and Mayoral Staff would seize the moment to engage in the perhaps single largest ICE referral program in the city's history. Mayor's Office of Criminal Justice's Kevin Ryan would also embark on another project to clean house of adult undocumented immigrants who were on probation by working with the Adult Probation Department (APD) to identify undocumented immigrants with cases in APD's case management system. APD would first count the total cases in the system "showing status as other than a U.S. citizen, and those for whom the status field was blank."<sup>306</sup> Of those cases identified, they then identified which immigrants should be reported to ICE and then would fax ICE notifications every day as the reviews of those cases were completed. Kevin Ryan would call this project, the "look back" perhaps because this would not only target adults who were booked on felony crimes going forward, but rather all of those people who had already been booked, judged and who were in the system as individuals continuing to undergo rehabilitation. The APD counted that there were 1,924 cases of non-citizens or individuals with

unknown immigration status and as soon as September 3<sup>rd</sup>, Kevin Ryan notified Steve Kawa, the Mayor's Chief of Staff, and Nathan Ballard, the Mayor's Communications person that APD had reviewed 251 files and sent 47 notices to ICE that these individuals under the charge of APD were not citizens.<sup>307</sup>

Just over a week later, on September 12, a Mission High School student came into school reporting that six members of her family had been detained by ICE in a raid of her home the night before. While the Police were not involved in the raid, they arrived afterward in its wake and stayed with the girl until her aunt could arrive. MOCJ's Kevin Ryan wrote an email to Patrick Boyd, Chief Probation Officer of Adult Probation inquiring if the ICE raid in the Mission that yielded the 6 Individuals was "possibly re one of your notifications?" Boyd and his staff had not heard anything about the raids but knew that there was increased ICE activity in the Bay Area. Ryan would then send an email to Steve Kawa, in the Mayor's Office and Nathan Ballard, the Mayor's Communications Director stating, "ICE has been active all week. They went looking for 3 guys who had previously [been] ordered deported by feds. Had nothing to do with any San Francisco reporting protocols."<sup>308</sup> However, Boyd hadn't ruled the possibility out that the raid had to do with the mass-notification project that Adult Probation Department had been continuing to conduct - his staff just hadn't heard about it. The same day, APD Chief Boyd would report to Kevin Ryan, Mayor's Communication Director Nathan Ballard, and JPD Chief William Sifferman that as of noon, APD had reviewed 651 of the 1,924 cases requiring review. Of the 651 reviews, they had notified ICE of 198 people. That would mean that in one week, they notified ICE of just over 150 additional individuals on probation in San Francisco.

The following day, September 13, Kevin Ryan would write to ICE officials Mark Wollman of the ICE Office of Investigations, Ray Greenlaw, and Timothy Aitkin, who was the Deputy Field Office Director for Deportation and Removal Office (DRO) to verify that there was in fact an ICE raid and to inquire if the San Francisco Police Department was involved in any way. Wollman indicated that the raid was not an action of the Office of Investigations and would defer to Tim Aitkin. Aitkin later responded that his division arrested 6 people at the residence without the help of the Police Department. Aitkin did not know how the Police Department was notified<sup>309</sup> but let Ryan know that the girl was left in their custody. This same day, the Adult Probation Department's ICE notification project ploughed ahead despite the youth reporting that her family had been torn apart by an ICE raid. At close to 5pm, Patrick Boyd would report back to MOCJ's Kevin Ryan, Nathan Ballard, and JPD Chief William Sifferman that "staff worked overtime today and made significant progress. We have now completed 1,181 reviews of the 1,924 cases to be reviewed. The 1168 reviews have resulted in 372 ICE notifications."<sup>310</sup> This would mean that following the report of the ICE raid upon the Mission High School student's home, from noon that day until 5pm the following day, APD reviewed 517 cases - almost the same amount of cases that they had reviewed in the two weeks prior from the beginning of September until September 12<sup>th</sup> at noon. From that review, they yielded an additional 174 notifications to ICE - again, almost the same amount of ICE notifications as what they had produced in the two weeks prior.<sup>311</sup> It would seem as if they had wanted to get the project done quickly in the chance of increased

press attention and backlash to the ICE raid. However, this mass referral would never gain the attention of the immigrant community or the media.

### **The Immigrant Community Response to the JPD Protocols Document**

Immigrant advocates, including those listed on the JPD immigrant advocate form were extremely alarmed, concerned, and outraged at the new JPD policy. They pointed out that the new policy was modeled after the adult criminal justice system, and violated well-established juvenile court law and procedure. They found that a separate juvenile justice system was created for youth to allow them the opportunity to rehabilitate and to become contributing members of society. They pointed out that contrary to common misconceptions, Juvenile Court dispositions, in contrast to convictions in adult criminal court, are not grounds for deportation.

They also thought that automatic referral at booking to ICE would result in premature and erroneous referrals, and would dismantle crucial protections against racial profiling and pre-textual police arrests. Pre-textual arrests referred to unjustified police arrests of people who the police target for being Latino, with the assumption that they are undocumented, knowing that the arrest could lead to deportation regardless of whether charges the police book them on are dropped by the District Attorney or the Court Judge. Since the new policy called for referral at the booking stage rather than the disposition stage, it would allow for the referral of more youth who were booked on various “wobbler” charges that could be charged as either a misdemeanor or a felony such as vandalism or resisting arrest. Under the old policy, referral only happened once the charges had stuck as felony charges. Therefore, notifying ICE at the booking state, the coalition contended, would result in police choosing to charge youth more on felonies than misdemeanors in these cases, leading to the reporting of youth who have not committed an offense or who committed an offense that could have been lodged as a mere misdemeanor. According to JPD statistics, in 2006, 30% or 361 of the 1215 petitions filed by the District Attorney’s Office in Juvenile Court did not result in a sustained petition – a finding of guilt.<sup>312</sup>

The second major problem that the coalition had with the policy was that probation officers were not qualified to reasonably suspect immigration status. As many of the coalition members were immigration lawyers, they knew first-hand that determination of immigration status was complex, and youth themselves were often unaware of their own immigration status. They claimed that by forcing JPD officers to establish reasonable suspicion that a juvenile is undocumented before referring them to ICE, the new policy subjected the City to potential liability because youth who have legal immigration status may be mistakenly referred to ICE by probation officers. They pointed to other counties and federal officials that had paid as much as \$100,000 to settle lawsuits after county probation officers made erroneous legal status determinations. This provision that required probation officers to do immigration status suspecting would very literally force them to very poorly do the work of federal immigration agents.

Further, the coalition found that the policy undermined the ability of undocumented youth to pursue legal immigration relief to which they may be

entitled under federal law. Congress had created several means by which undocumented youth may apply to adjust their immigration status, including Special Immigrant Juvenile Status for children who have been abused, abandoned or neglected; asylum for children who have been persecuted in their countries of origin; “T” visas for children who are the victims of trafficking; and “U” visas for children who are the victims of enumerated crimes. Notifying ICE at the booking stage, the coalition contended, would effectively cut off these avenues of federal immigration relief for a majority of eligible youth. Since ICE neither screens youth for potential forms of relief nor provides them with immigration attorneys, and ICE may and often does transfer youth to detention facilities in remote areas without legal service agencies, this policy would make it virtually impossible for juveniles to assert a viable claim for relief.

Lastly and most importantly, the coalition found that the new policy undermined the juvenile justice system’s goals of rehabilitation, reunification, and public safety mandated by state law. They argued that the new policy would potentially tear families apart since all juveniles, those accompanied by legal guardians and those who were unaccompanied, would be referred at the booking stage. Under the previous policy, only unaccompanied minors were reported. The coalition argued that youth who had lived their entire lives in the U.S. with their families would be orphaned by a blanket policy that refers all youth to ICE regardless of their particular circumstances. They contended that if youth were reported and torn from their families through deportation, it would be very difficult to locate them through and after the deportation and may even lead parents who thought they would be deported as well to go into hiding and literally abandon their deported children.

## **Conclusion**

From the first week in July 2008 through the first week in October 2008, JPD referred 71 youth to ICE to be placed in deportation proceedings.<sup>313</sup> However almost all of these notifications to ICE came in the first month and a half of implementing the Mayor’s JPD referral policy. From July 3 through August 22, 2008 68 youth were referred. By the end of that period, 49% were still residing in Juvenile Hall finishing their sentences prior to being released to ICE, 18% of the minors referred had already been transferred to ICE custody after notification and after an ICE hold had been placed, another 4% were transferred to ICE custody before an ICE hold was even placed on the youth, 15% were transferred as a result of a warrant, 7% were transferred to adult court, 3% were still rehabilitating in out of home placements, 3% were rehabilitating in the City’s Log Cabin Ranch, and one per cent – one youth- was an out of county youth who was transferred back to his home jurisdiction after San Francisco JPD reported him to ICE.<sup>314</sup> 56 of those kids or 83% were from Honduras, 15% or 10 kids were from Mexico, and 1% were from El Salvador and Guatemala.

In Mayor Newsom’s September 2008 “Mayor’s Accountability Report” – a report that he issued annually to summarize the work his office had done over the previous year, his office included a section updating the public on his work to

“Ensure that all San Francisco City departments comply with the local Sanctuary City ordinance, which prohibits City departments from assisting with enforcement of federal immigration law, except as specifically required under federal law.” This section referred to the Sanctuary City Initiative that was stopped dead in its tracks during the summer. No new update on the Sanctuary City Initiative was provided but he did provide an explanation of a separate initiative he put in place during the summer that was arguably diametrically opposed in its goals:

In July 2008, Mayor Newsom clarified that San Francisco’s Sanctuary City policy is designed to protect San Francisco residents, not to be used as a shield for criminal behavior. He directed his administration to work in cooperation with the federal government on all felony cases involving illegal immigrants and urged the District Attorney, the Public Defender, and the courts to do the same. Judge Kevin Ryan, Director of the Mayor’s Office of Criminal Justice, currently is conducting a review of all Executive Branch City agencies’ policies regarding existing sanctuary city policies.<sup>315</sup>

Whereas over the previous two years, he had the Office of Language Access, the Immigrant Rights Administrator, and all of the department heads investigate whether or not they had written sanctuary city protocols, to draft them if they didn’t exist, to create trainings to create a culture of sanctuary city regulation, and to inform the public that the city was still in fact a sanctuary city despite recent ICE raids, here he was doing the opposite. Whereas under the Sanctuary City Initiative, the Mayor called upon an immigrant advocate, turned city staff - the Immigrant Rights Administrator - Mayor Newsom in this new anti-immigrant youth era called upon a Republican former U.S. Attorney turned Criminal Justice Director to investigate sanctuary city protocols in all of the departments, to work on revising them and the sanctuary ordinance, to re-write the JPD youth referral policy, and to enforce a new culture that cast suspicion on undocumented youth as criminals deserving of deportation.

What this period shows is that with regard to sanctuary, given the appropriate anti-sanctuary pressure from the media, the federal government, and from conservative political advisors, the political will of the Mayor can turn on a dime, dismantle a network apparatus that promoted sanctuary city ethics and protocols, and replace it with an entirely other network of government officials set on dismantling the mechanisms of sanctuary city with the outcome of breaking the trust that the immigrant community has with the local government. It also shows that the production and implementation of San Francisco’s sanctuary city policy has not occurred as some have contended as an expression of local autonomy from the federal government (Gardner 2014). In fact, the INS, ICE, the U.S. Attorney’s office, and a former U.S. Attorney who took up a position in the Mayor’s Office all played significant roles in the drafting, development, and approval of the Juvenile Probation Department’s policies for implementing the sanctuary ordinance. In this sense, there is a symbiotic relationship between the local and the federal governments that has led to this set of sanctuary city policies, which are more about striking the

appropriate balance between municipal and federal goals than it is about autonomous crime governance or autonomous immigration governance.

Paradoxically, the Mayor, aided by the legal advice of the City Attorney, worked to deny due process to youth by invoking a already-existent interpretation of the sanctuary ordinance – that governmental sanctuary is only for law-abiding immigrants who have not been accused of felony crimes. As Eli Weisel pointed out in the hearing of the Board of Supervisors in December 1985 when the City of Refuge resolution was first passed, the Biblical Cities of Refuge were places where city authorities provided entrance and safety to foreigners who had inadvertently committed a serious crime and were threatened with retribution from the aggrieved party. Providing sanctuary would ensure them due process, stop the cycle of violence, allow emotions to cool, and allow the facts to arise through a proper trial. In the case of San Francisco in the summer of 2008, the very people who had previously provided sanctuary to undocumented immigrants accused by the federal government of illegal and unjustified entry into the U.S. were the very parties with whom took revenge upon the accused. The accused themselves were said to have violated the rules of the City of Refuge and deserved to be handed over to the initially aggrieved party – the federal immigration authorities. For political expediency, the Mayor, in the name of the sanctuary city, unleashed the wrath of the federal deportation regime upon the immigrant community.

The actions in the summer of 2008 would amount to the municipal Executive Branch of government – the Mayor and the Juvenile Probation Department - with the rationality of abiding by federal law and in the protection of the city's sanctuary city practices and policies in general, enacting municipal deportation policies which would allow executive branch municipal employees to cooperate with federal immigration enforcement agencies. This act of power would defy the State's Juvenile Court's arguably pro-sanctuary disposition issuing practices which were in line with *State* welfare law regarding minors. However, this was not an ideological contradiction since sanctuary city was not about pure anti-deportation practice, but was more about clarifying the instances when municipal cooperation with federal detention and deportation was appropriate and about how exactly city employees should cooperate or not cooperate in those instances. To say that this was an instance of governmental institutions at war with each other would be a gross understatement. Such a case calls into question the thesis of social science scholars of a unified state that acts according to macro-level unified aims or strategies. Rather, this shows that the practices of government, rather than being pre-determined are elaborated as a result of the confrontation between a variety of oppositional governmental actors, community advocates, city employees regulated by governmental policy, and undocumented immigrants – each with competing strategies and tactics that lead to unforeseen outcomes, effects, and governmental achievements.



## CHAPTER 6

### UNMASKING POLITICAL WILL AND LAYING THE FOUNDATIONS FOR LEGISLATING DUE PROCESS FOR *ALL* YOUTH

#### Introduction

The previous chapter described a devastating turn of events wherein the most outspoken public official in support of San Francisco's sanctuary city status would completely shift gears to undo the work he had initiated over the previous two years to institute a culture of sanctuary. In the process, a culture war against sanctuary was stoked to a fever pitch beyond where it had ever been in the past. This war was fought with litigation, media, executive maneuvers, and legal opinions on display for the whole nation. In order to counter this ideological war, the community and the pro-sanctuary city officials would need to counter by reaffirming the need for due process for all residents regardless of immigration status. While they were not in a position to pass binding legislation which would mandate protocol change, they initiated a grassroots policy plan wherein the community assisted various legislative bodies, including the Board of Supervisors and the Democratic County Central Committee in drafting, organizing support, and turning out community members to testify on behalf of resolutions in support of the human rights and constitutional rights of undocumented youth. This would lay the discursive foundation for countering media fear-mongering that would likely come at the point which the community organizations working with the Board of Supervisor would introduce and attempt to pass a binding law upon the Juvenile Probation Department to delay reporting of undocumented immigrants until after they were found guilty of felony crimes. This also would give pro-sanctuary Supervisors an opportunity to get a sense of the level of support among their colleagues for a juvenile referral policy change. The result was that the pro-sanctuary District Supervisors had a supermajority of votes that would allow them to override a likely veto from the Mayor. This chapter which focuses on the period of mid-October 2008 through March 2009, provides a portrait of this grassroots policy advocacy by the immigrant rights community and the rational positions of city officials who argued for an end to the youth deportations.

#### **The Birth of the San Francisco Immigrant Rights Defense Committee**

With the San Francisco Executive Branch fully devoted to undermining sanctuary for youth, ICE seized the moment to strike in the heart of the city with raids of two Chinese restaurants and three alleged "stash houses". This resulted in 21 arrests of 9 Chinese nationals, 5 Mexicans, 3 Guatemalans, 2 Indonesians, 1 Singaporean, and 1 Honduran. District 9 Supervisor Tom Ammiano said, "It's very disturbing. Aside from the mean-spiritedness of these arrests, there appears to be a coordinated attack on the city's sanctuary status."<sup>316</sup> In one of the home raids, federal agents threw in gas bombs, knocked down the door terrorizing the whole family, pulled people out of their bed by their hair and pointed guns at the children.

The raids and subsequent media attention that they garnered greatly concerned the Police Commission, leading them to discuss whether or not police officers were noticing resulting differences in the level of cooperation of the Latino immigrant community with the police. Commissioner Lee was worried that these immigrants would not come forward out of fear that they might get reported to ICE.

**Commissioner Lee:** What I've heard anecdotally [...] is that members in the Latino community and certain immigrant communities are afraid to come forward to cooperate with the police department for fear of being turned over per se to immigration authorities even though they may be here legally or what have you because despite all the effort done by the department, it's still out there that because of all the attention on the sanctuary city debate and all of the attacks on immigrant communities that certain members of the Latino, Asian and other immigrant communities are afraid to come forward to cooperate with the police department. So I'm wondering, given the high number of Latino homicide victims not only since September of this year, have you noticed this as a challenge that your investigators are facing?

**Commanding Officer:** Commissioner Lee thank you for bringing the point up. I want to really emphasize that the San Francisco Police Department does not look at immigration status for witnesses at all. That is not something that we do. In fact, we encourage everyone to come forward. Your question about in the Latino community - is there more resistance because of their fear of the police and immigration status? That's a very difficult question. I don't have an answer to that. I'm sure there's some resistance and fear of that, but I'm glad you're bringing that out. I just really want to emphasize we do not look at immigration status. We want people to come forward. We want people to bring forth information they have so we can bring the killers to justice and stop further violence from this. So, I'm really appreciating you bringing the fact up, and on the department's part, I want to emphasize we do not look at immigration status as far as witnesses who want to come forward with what they've seen.<sup>317</sup>

At this point, the Coalition of Community Based Organizations had grown to over 36 organizations and decided to formalize their alliance and call themselves the San Francisco Immigrant Rights Defense Committee (SFIRDC).<sup>318</sup> Meeting for the first time as a formal coalition in mid-October, 2008, SFIRDC prioritized defining their goals and planning a response to the crisis facing undocumented youth and their community. They resolved to work to reinstate all funding for immigrant programs that Mayor Newsom cut during the previous budget process, push the Mayor to denounce the raids, and maximize the rights of undocumented youth. In order to fight back on the culture war against immigrants, immigrant youth, and the culture of sanctuary city, SFIRDC planned to provide on-going education to the immigrant community, to city legislators and executive officials, to the media, to allies who were constituents of the city officials, and to the San Francisco public. They would do this through media work, community events and workshops, and strategy

sessions with their organization's immigrant clients, their clients' households, and the community at large. They would provide info on the sanctuary city ordinance, on ICE and raids, on the Juvenile Probation Department's old and new policies, and on the differences between juvenile and adult prosecution, as well as conducting "know your rights" trainings for when encountering ICE, Police, and JPD.

To educate city officials, they planned to hold meetings with department heads and ally organizations that were their constituents to move the officials to take a position on the new undocumented youth policy. SFIRDC also planned public events that would preclude a JPD policy change. They planned to hold a mass action on Migrant Day (December 18<sup>th</sup>) - a hearing with the Board of Supervisors and the Police Department wherein immigrants affected by the new JPD referral policy could come forward and on the record tell their stories about the detention and deportation of their children. They would use their network of contacts to bring people to the events, do phone banking, and place door-hangers in the Mission District.

SFIRDC also sent Mayor Newsom letters of support for the Sanctuary Ordinance, and in opposition to any laws and policies exposing youth further to deportation. They also asked him to work with the coalition to develop a new protocol for youth in line with the goals of the juvenile justice system. SFIRDC pointed out to him, "All San Francisco youth should be given an opportunity to be healthy and supportive members of the San Francisco community. San Francisco should remain a leader for the nation in showing how immigrant inclusion is an effective way to increase public safety and community."<sup>319</sup>

The coalition also continued to work with city commissions and agencies to pass further resolutions in support of undocumented youth, as they had with the Immigrant Rights Commission. Towards the end of October, SFIRDC worked with the city's Youth Commission which served as an advisory board on youth issues, providing the youth perspective to the city's legislative and executive branches. Youth Commissioner Bethany Lobo worked with SFIRDC to author and pass a resolution pushing the Mayor and JPD to change their youth referral policy. The policy recommended that

the Mayor and Board of Supervisors urge JPD to adopt a new policy that is crafted to allow the greater San Francisco community to benefit from the public safety purpose of the Sanctuary Ordinance; and, [...] facilitate suspected undocumented youth access to an immigration legal screening by an immigration attorney prior to deciding whether to notify ICE; and [...] where consideration of referral of suspected undocumented youth to ICE occurs only after both the youth's felony petition has been sustained and the juvenile court determines that referral is appropriate in light of the goals of the juvenile system, which include rehabilitation, reunification, and public safety; and, [...] allow the Juvenile Court discretion to determine on an individualized basis, where no continuing danger is posed to the community, that an accompanied youth may be placed with his or her family locally".<sup>320</sup>

While this resolution would insert an additional voice into the debate, in the back of the minds of City officials was the resolution not only of the U.S. Attorney's investigation into JPD's potential violation of federal harboring and transporting laws, but also of the lawsuit brought against the City by Charles Fonseca and Judicial Watch in the California Court of Appeals. Fonseca claimed that the SFPD was out of compliance with section 11369 of the state's Health and Safety Code requiring law enforcement agencies to report individuals who had committed various drug crimes to ICE and that it was not pre-empted by federal law because its intent was primarily to fight drug crime rather than regulating immigration. They also claimed that it was not pre-empted because it did not force localities to make a final determination of who should or should not be admitted into the Country. A San Francisco trial court had agreed with City Attorney Dennis Herrera that it was effectively immigration legislation and therefore pre-empted and dismissed the case. However, Fonseca and Judicial Watch appealed the ruling to a higher court.

The same day that the Youth Commission passed its resolution, the Court of Appeals reversed and remanded for further proceedings the judgment of the San Francisco trial court claiming that 11369 is not immigration law because it doesn't require any city to determine who is and who is not present in the country unlawfully. They argued that that determination is up to ICE, but that if they suspect someone is here, they were free to report. This ruling sent the case back to the trial court that was then charged with determining whether the SFPD is already in compliance with Section 11369 or not, something that had not been thoroughly analyzed initially. At this stage, the City settled the case out of court and SFPD amended their department policy by sending out an SFPD Department Chief's Bulletin. Such bulletins are statements of policy adjustment that are sent to all department employees. The bulletin directed the SFPD Misdemeanor Intake Unit to notify ICE of an arrestee who is arrested for an alleged felony or misdemeanor violation of any section listed in Health and Safety Code 11369. This allowed for a new class of individuals to be reported – people who were reported on certain misdemeanors, a charge lower than a felony, who otherwise had no felony convictions on their criminal record. This included individuals who were merely cited and released by the SFPD as well as those who were booked by the SFPD at the County Jail on misdemeanor charges only.<sup>321</sup>

### **The Juvenile Probation Commission Feigns Concern**

Finally after 5 months of public scrutiny and popular pressure, in mid-November the Juvenile Probation Commission, the body that oversees policy in the JPD convened the ad hoc committee on "Juvenile Probation Department Policies and Procedures Regarding Undocumented Youth" that they had created a month earlier. At the meeting four SFIRDC leaders, Abigail Trillin of Legal Services for Youth, Angela Chan of Asian Law Caucus, and Angie Junck of Immigrant Legal Resource Center, and Denise Coleman of Huckleberry Youth Services came to testify on the impact of the policy on undocumented youth. Trillin addressed the Committee arguing that the new policy does not serve the immigrant community but was rather a knee jerk reaction and was political, not pragmatic or "smart" policy. She also

pointed out that the policy was not fair since reporting at the booking stage required youth who had not been proven guilty of a crime to be reported regardless. To illustrate her point, she told two stories. To explain how youth charges can be dropped, she told a story about how a client of hers who was a citizen had been detained at Juvenile Hall and was charged with assaulting his mother. All charges were subsequently dismissed, and the youth was referred to Child Protective Services as a victim of child abuse. However, another client who was undocumented who was arrested, despite the Assistant District Attorney dropping charges after stating in court that this youth was “factually innocent,” had already been reported to ICE.

Trillin further added that the current JPD policy undermines the relationships that the immigrant community has with all law enforcement. She said that many youth who have been deported under the current policy have already returned to this area, and they are not receiving services to help them rehabilitate. Because of their status, she said they are unlikely to go to school and likely to be involved in the “underground economy”. She said that the policy had been “devastating” to immigrant parents who are told that, uniquely, their children do not have latitude to make mistakes. Trillin called for a “smart, healthy policy” that serves community, not just political interests. She told the ad hoc committee that she wanted policy changes that prescribe reporting at time of adjudication, rather than action based upon booking charges. Trillin also called for regular statistical review of youth referrals by the Juvenile Probation Commission, as she believed that the current policy allowed room for abuse.

In the preceding months, the media had reported on facts specific to juveniles who had been referred to ICE that were part of their confidential files. The legal advocacy community had suspected that various Probation Officers had leaked the files to the press to justify the need for the new referral policy. Trillin called upon the ad hoc committee to assure that action would be taken regarding the information leaks to the media that violate juvenile confidentiality laws. Angela Chan, SFIRDC leader and staff attorney for Asian Law Caucus, added that some reported quotes of an Assistant Public Defender representing the youth were statements made in closed court in the presence of JPD employees. In response, Commissioner Katherine Albright cautioned them that “one must be careful when alleging misdemeanor criminal behavior [leaking confidential information]” and the conversation moved on. Commissioner Albright asked for more information about the potential impact of changing the policy to use adjudication instead of booking charges. Trillin responded that juveniles who are most amenable to rehabilitation efforts are those who would most likely have their charges later dismissed or reduced to misdemeanors. Therefore, moving the reporting back to the disposition stage would ensure greater degree of rehabilitation and fewer referrals.

Denise Coleman, another leader in SFIRDC and staff of Huckleberry Youth Services/Community Assessment and Referral Center, addressed the ad hoc committee expressing concern about racial profiling. She commented that racial profiling could be used by police who take youth, suspected of being undocumented, directly to Juvenile Hall, bypassing the Community Assessment and Referral Center, an alternative avenue to incarceration, and thereby denying those youth alternative

rehabilitative services. Commissioner Rojas asked if it is the police or probation officers who are responsible for this. Ms. Coleman said that it results from the police notifying a probation officer that a youth is undocumented and the subsequent probation decision to request a custodial booking rather than a referral to CARC.

The ad hoc committee notified the SFIRDC members that the new JPD policy was implemented without Commission input, shocking the SFIRDC members present. After the close of the meeting, no official follow-up would be done and the hearing and work of the committee would not materialize in the issue being put forward to the full Juvenile Probation Commission as either a discussion item or action item – which is an item that they resolve to do something about. The issue as it pertained to the Juvenile Probation Commission would largely be ignored.

### **Organizing the Sanctuary City Officials**

By early December, SFIRDC began to meet with each member of the Board of Supervisors and many other city officials asking them to sign on to the SFIRDC platform. This included

defending immigrant communities, which make up over 40% of the city population and that contribute greatly to the financial well-being of the city. It includes addressing unjust acts and violations of the sanctuary city ordinance. And we demand the Mayor make a public statement upholding our city's belief that all San Francisco residents, regardless of immigration status, have a right to live free from fear in our city. We're demanding representatives of the Mayor's office and our city to be culturally competent. We're here to demand a stop to the police collaboration with ICE raids, which cause a lot of trauma and is an inhumane act on immigrant communities. We demand San Francisco must maintain an increase in funding to assist individuals, working families and overall immigrant youth and families. We demand youth not to be referred to ice and actually be given due process when arrested. We also demand an investment of resources into supporting a lot of the efforts of immigrant families and immigrant organizations.<sup>322</sup>

Moving the officials to adopt a community-based platform would provide the framework for the coalition and organized immigrant community to hold these officials accountable to the values of sanctuary, immigrant rights, and the duty to ensure due process for all youth regardless of immigration status. However within a month, some of the Supervisors would be terming out and the newly elected Supervisors would begin their first terms in office. SFPD Chief Heather Fong would also announce her retirement in December, leading the Police Commission to instigate a national search for a candidate friendly both to sanctuary city policing policies and to the likes of Mayor who is ultimately in charge of appointing the new Chief. Fong planned for her retirement to begin in April 2009.

By mid-December, SFIRDC members also met with City Attorney Dennis Herrera to discuss their concerns regarding reports of Police racial profiling and increased collaboration between city officials and ICE due not only to the change in

JPD policy, but more broadly, the growing anti-immigrant and anti-sanctuary climate in the city. They indicated to Herrera that JPD's new policy of youth referrals is inconsistent with the City of Refuge ordinance and clarified that federal law has never required the reporting of juvenile dispositions to ICE. They found that the sanctuary ordinance policy Section 12H-2-1 regarding reporting individuals with felony bookings or prior felony convictions on their records should be construed narrowly to apply only to adults, not youth who are placed under the jurisdiction of the Juvenile Court.

SFIRDC also pointed out that in fact the City no longer was even required by state or federal law, as it had been since the early 1990s, to report adults with felony bookings or prior felony convictions to ICE. In a subsequent letter to Herrera, SFIRDC explained that

In 1990, Congress passed a law that required states receiving federal block grants for crime and drug control, such as California, to provide certified copies of state criminal conviction records to the INS within thirty days of a conviction. Immigration Act of 1990, Pub. L. 101-649, article 507, 104 Stat. 4978. Notably, this federal law narrowly targeted state conviction records, not records of juvenile dispositions. The following year, Congress amended the law to require notice of a conviction within 30 days, in lieu of the certified records, unless INS requested the certified records. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, pub. L. 102-232, article 306(a)(6), 105 Stat. 1751. Again, Congress did not require states to provide notice of juvenile dispositions or records of such dispositions.

In 1992, the California Office of Criminal Justice Planning (OCJP), which was responsible for administering the federal block grant, determined that it would require grant recipients, such as San Francisco, to report individuals to the INS upon arrest, rather than conviction, to facilitate compliance with the federal law. [...]

To comply with OCJP's new directive and prevent the loss of federal funding, the Board of Supervisors reluctantly voted in 1993 to amend the City of Refuge Ordinance and incorporate an exception for individuals arrested and booked on felonies. [...]

Of critical importance is the fact that the 1993 amendment to the Sanctuary Ordinance only allowed City officials to report such individuals to INS when required by law (i.e. 'pursuant to state or federal law or regulation'). In addition, the Title of Section 12H.2-1 continued to read, 'Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes,' indicating that the Ordinance's exception remained focused on convicted felons.

The 1993 amendment to the City of Refuge Ordinance was never intended to authorize the reporting of youth or juvenile dispositions to immigration agents. Rather, it was intended to facilitate the City's compliance with a 1991 federal law requiring notification to INS of adult convictions in a timely manner. The Ordinance accomplished this goal by allowing City officials to report adults to INS at the arrest stage, ensuring that INS would

have adequate notice of a conviction. It did not authorize the reporting of youth whom City officials had no obligation to report to INS under federal law.

Moreover, the 1991 federal requirement, which had been codified at 42 USC. Article 3753, was repealed by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (enacted on January 5, 2006). Pub. L 109-162, article 1111, 119 Stat. 2960. The requirement that grant recipients provide notice of criminal conviction records to INS was eliminated.

In sum, the City of Refuge Ordinance was amended to address a specific problem – the potential loss of federal funding based on a then-existing federal requirement that INS be notified of adult convictions. It was never intended to authorize the referral of youth to immigration authorities based on criminal charges that could never result in a conviction. The language of the Ordinance, as amended, made clear that such referrals could only occur ‘pursuant to’ federal or state law, and, as indicated above, federal law has never required the reporting of juvenile dispositions.

Based on our review of the law, it appears that the JPD’s new policy is in conflict with the City of Refuge Ordinance.<sup>323</sup>

As reports of ICE raids of immigrant homes in San Francisco continued, in January 2009, a new class of city Supervisors would take office making up four out of the 11 total supervisors on the Board. Each of these new Supervisors - John Avalos a former Chicano activist and labor organizer, David Campos, a public attorney, and Eric Mar, former Director of the immigrant rights advocacy group Northern California Coalition for Immigrant Rights, and David Chiu, an attorney who had previously worked with the Lawyers Committee for Civil Rights - would be immigrants or hail from immigrant families. Campos was himself a former undocumented immigrant originally from Puerto Barrios, Guatemala. Campos’s family first tried to cross the border in 1982 when he was 11 years old, but were caught and deported. Around 1983, his father made it across the border and found work in South Central Los Angeles. Two years later when Campos was 14, with his mother and two sisters they crossed and reunited with his father. He then went on to attend high school in Los Angeles, to attend Stanford University from which he graduated in 1993 with a degree in Political Science and then to later attend Harvard Law School from 1993 to 1996. During his time at Harvard, Campos became a permanent resident. He then returned to work in California for the San Francisco City Attorney’s Office, the San Francisco Unified School District, and the Police Commission. Throughout his career, as a gay immigrant Latino, he would champion the rights of not only the immigrant community, but also the LGBT community in San Francisco.

The new Board President, Supervisor David Chiu, whose role was to set the agenda of the Board, preside over full-board meetings, and assign Supervisors to the Board’s subcommittees, would note of this incoming class:



For the first time we elected a majority minority Board of Supervisors. For the first time we elected four new members of the Board of Supervisors who are from immigrant families. In the words of Harvey Milk as everyone has been quoting, we agree in our San Francisco values of protecting our most vulnerable, in taking pride in our diversity, in valuing our immigrants, our working families, our seniors, and in being a beacon of hope and compassion to the rest of the country. I hope when history is written about the class of 2008, I hope it says we provided sensible progressive leadership that moved us forward through the crises of today and into the 21st century.<sup>324</sup>

Supervisor Campos, who had initiated much of the discussion around the new JPD youth referral policy at the Police Commission, would be appointed by President Chiu to be Chair of the Public Safety Committee.

Not only would a new San Francisco Board preside over the laws of the city, beginning two weeks later, the country would have a new President. Barack Obama became the 44<sup>th</sup> President of the United States and first Black President after campaigning to reform the country's broken immigration system. On the day that he took office, SFIRDC organized over 250 immigrants, many who were undocumented, to hold a raucous procession through City Hall to say "Bye, Bye Bush!" to the outgoing U.S. President. They visited all of the Supervisors and the Mayor garnering media coverage timed to send a message to the Obama Administration to take action to stop the raids and to legalize undocumented workers. This action took place during the San Francisco Ballet Gala and was timed in coordination with other related protests happening all over the country.

At this point, 120 undocumented youth had been deported and 125 were in Juvenile Hall.<sup>325</sup> SFPD officers were also increasing traffic checkpoints at strategic locations throughout the city where they were doing random stops of drivers to identify unlicensed drivers. The cars of these drivers would be confiscated, and as a result many immigrant families who had licenses in their home countries but were ineligible for a license in California, could not get their cars out of impoundment, and were left without a mode of transportation indefinitely. The SFPD targeted the Mission District and the Tenderloin, two neighborhoods heavily populated with undocumented Latino and Asian immigrants. Police officers ran criminal background checks of the drivers by checking a FBI criminal record database – the National Crime Information Center (NCIC) database - available to them in their patrol cars. ICE puts civil immigration warrants in the database's "immigration violator file" which appears following a query on a particular individual even though the warrants are not issued for criminal purposes – the immigrant may have merely missed an immigration court hearing and ICE was looking for them. SFIRDC members were hearing from their clients and members that in some cases Police - who were not well versed in the rules of the sanctuary ordinance - were contacting ICE when they saw an immigration warrant in the NCIC database, and subsequently the driver was placed by SFPD into ICE custody.

As a result, SFIRDC was moving faster than ever to formalize their structure and stem the tide of deportations. In early February, they created a steering committee of 13 members who consistently attended meetings from CARECEN,

Asian Law Caucus, San Francisco Organizing Project, La Colectiva de Mujeres, the Filipino Community Center, the San Francisco Day Labor Program, SFILLEN, Dolores Street Community Services, Tenderloin Housing Clinic, Young Workers United, and Global Exchange. Some of the SFIRDC members were also part of the Rapid Response Network (RRN), which responded to raids by showing up on site to document what happened, take photographs, and interview family members remaining at the scene. The RRN phone tree of 1<sup>st</sup> responders – immigrant legal advocates – was activated once a member organization was contacted by an affected family with information about a raid. The RRN then followed through with using the evidence from the raid to provide pro-bono deportation defense to those detained in the raid. This work was funded through a grant from the Mayor’s Office of Community Development. Due to all of the raids underway, these RRN attorneys were training new attorneys to respond and represent immigrants in deportation since they were overcapacity on their existing caseload.

SFIRDC members also continued to testify at public hearings of the Board of Supervisors to educate them on the lived experience of people affected by the JPD policy. During a hearing on the police traffic checkpoints that SFIRDC organized with Supervisor David Campos at the Board of Supervisor’s Public Safety Committee, Abigail Trillin of Legal Services for Children spoke about what her organization was hearing from her children clients about police and JPD treatment of kids:

We are hearing a lot of concerns from the youth community about youth being more targeted, and more Latino youth since the change in probation policies, more youth going directly into Juvenile Hall, a different system of justice, based on perceived immigration status, not even immigration status but perception. I just want to say that I think the issue of trust is so key here, and we are seeing such a deep breakdown of trust between the community and law enforcement, because of the feeling that certain communities are being treated differently and the consequences are completely different. [...] The breakdown of trust is so deep, particularly when you are talking about young people, young people who are at the point of learning about trust and fairness and who to trust and who is safe to talk to, for that group of our community to feel that a certain group of them have different outcomes, different consequences, and a different system in terms of whether they are being sent to diversion and allowed to make a mistake or whether they are going straight to the Hall and being turned over to immigration. That is an incredibly powerful message to young people and their parents. For all of us parents, we know when harm is done to our child. The impact is so grave. And what we are seeing is parents being told your children do not get the same chances, they do not get the same opportunity to make a mistake. [...] I am a parent and District 9 [the Mission] resident and parent of a District 9 school. I do not feel my family is safe if my community I live with does not feel comfortable coming forward to law enforcement. This is a public safety issue that impacts all of us.<sup>326</sup>

However, despite this type of testimony about police officers targeting immigrant kids and bypassing alternative placement paths for juveniles by taking them straight to Juvenile Hall where they would likely be deported, police officers and officials coming before the Police Commission continued to deny any possibility that officers were engaged in racial profiling, or with asking about immigration status. In a sense, they hid behind the fact that the department and city have a sanctuary city policy, as if just having the policy that officers were trained on meant that police officers don't engage in tracking kids to their deportation. At a Police Commission hearing in mid February, a Captain of the SFPD said:

Regarding civil immigration issues that you raised with ICE, the department, I'll take this time to reassure everyone, we do not work with ICE - with the enforcement of civil immigration laws. We do not deal with it. We are always working consistent with our Department General Order 5.15 and additionally the city of sanctuary ordinance.<sup>327</sup>

Police Commissioners, on the other hand, were calling attention to the likelihood that police were engaging in activity that was in violation of the sanctuary ordinance. Commissioner Petra de Jesus mentioned that she had been told stories about Latino immigrants in San Francisco not only being targeted for the stops but also having their green cards confiscated without them being returned. De Jesus was a former Public Defender, President of the Board of Directors of La Raza Lawyers Association, the first ever Latina on the Police Commission, and had a brother who was a cop. De Jesus called for the Police department to meet with SFIRDC to investigate whether or not the SFPD was in compliance with the sanctuary ordinance given that on the Police Department booking forms that the arresting officer fills out, they included a question about a person's nationality and a box to check that says if the person is a U.S. citizen. Further, Commissioner de Jesus pointed out to the Captain that the booking reports with this citizenship information and charge information is what trigger the JPD officers to inquire further about immigration status and refer the youth to ICE.<sup>328</sup> Commissioner Yvonne Lee, agreed that the SFPD needed to work with SFIRDC and added, in near denial that police officers might be violating their own department's sanctuary policy, that the SFPD just needed to continue repeating the same message to immigrants about how they should feel safe because the department doesn't participate in immigration policing:

Meet with the immigrants' rights community and see where are the growing areas we should clarify. Over and over again this department has reminded the public that regardless of the immigration status, the department is here to serve them. Regardless of the immigration status. So I think that is a really important message that we have to repeat over and over again.<sup>329</sup>

Commissioner Lee had been a community advocate for civil rights for Asian Americans and Pacific Islanders and was head of Lee Asian Community Affairs- a San Francisco-based public policy and media relations consulting business. She had previously been appointed by President Clinton to serve on the U.S. Commission on

Civil Rights, a bi-partisan fact finding federal agency in charge of monitoring and investigating civil rights violations and concerns.

However, beyond repeating stale phrases to untrusting immigrants, Commissioner De Jesus wanted to talk to the City Attorney about the booking forms and whether they were not in violation of Chapter 12H. Commissioner Lee responded with an incorrect understanding of the sanctuary ordinance, which forbids asking questions about immigration status: “My understanding was, if the individual doesn't want to tell you her or his immigration status, you don't stop serving them. You just continue on.”<sup>330</sup> This understanding would indicate that it would be ok for a police officer to ask about immigration status but that the immigrant didn't have to respond, and that if he or she didn't respond, that the officer would be fine with such a refusal. This type of confusion about the provisions of the sanctuary ordinance at the levels of city leadership and oversight would prove to be rather normal.

A week later, under the platform of “End all ICE Raids! No Police Checkpoints! No Youth Deportations! Strengthen our Sanctuary!”, SFIRDC organized a town hall meeting on immigration enforcement in San Francisco that was focused on JPD youth referrals to ICE. The meeting was held at Horace Mann School with over 12 elected officials and 400 participants. Representatives from the SFPD, Mayor's office, Unified School District School Board, the new District Supervisors, and Assessor Recorder Phil Ting were present. At the meeting Ting, who was in charge of assessing all property in the city and valuing it for tax purposes, noted:

I don't want my tax dollars going to raids, stopping people from working, stopping families from being together. We must work together to make sure our president and Congress get the support they need for real reform, because until we have a path to citizenship, our community can never be whole.<sup>331</sup>

Supervisor Campos who represented the Mission was present and at the meeting called for the Director of the Mayor's Office of Criminal Justice to be fired due to his enduring anti-sanctuary influence on the Mayor. Ryan was continuing to investigate not only how to bring the city into compliance with state and federal laws with regards to reporting but also to identify sanctuary policies and funding in the various city departments that might prove politically compromising to the Mayor. SFIRDC and Campos saw this work, which was initiated by Newsom, ultimately inflected by a larger campaign to undo the values and practices of sanctuary in general. Campos stated of Ryan, “He does not have the support of the community or many on the Board of Supervisors.”<sup>332</sup>

### **Resolving to Ensure Due Process for *All* Youth**

To build symbolic solidarity with undocumented immigrants, the Board of Supervisors for decades had been passing non-binding resolutions expressing the values, intentions, and desires for the empowerment of immigrants and the freedom

from disruptive action that would unsettle their new lives taking root in the United States. Not only did these resolutions serve as outwardly projecting expressions – messages to the external world of politics – but also as statements that reified their own habitus as legislators. Repeating the values, using them, contesting them, building upon them, applying them to new crises and for creating new solutions or positions of solidarity, placed them within a tradition of legislators from which they might be considered legitimate “City Family” members that had the backing of their constituents – the community. These policy statements as they concern immigrant rights were the outcome of a legislative battle that were always instigated and organized by the immigrant community, amplified by ally officials and attacked by opposition forces in the executive branch that exerted political force on the Board’s moderate supervisors. In other words, the legislative process of sanctuary city legislation is the product of the confrontation of grassroots power exerted by a political player that has an uncertain, exposed, and vulnerable social status – the undocumented immigrant and those immigrants who became community leaders or city officials – and a political establishment which has entirely different concerns and interests. While establishment moderates are concerned about their constituency, they also concern themselves with the imperatives of development, growth, wealth accumulation of the city government, and expansion of the political and economic realm of the city. However, they still pander to the community and use its idiom to govern them effectively.

In March 2013, prompted by the city’s Youth Commission, Michela Alioto-Pier, a moderate Supervisor representing the more affluent District 2 including the Pacific Heights and the Marina, proposed a resolution for the City to adopt the U.N. Convention of the rights of the child, a bill of rights that would set out the civil, political, economic, social, health, and cultural rights of children internationally. It elaborated universal prohibitions on the exploitation and abuse of children in all forms, including the prohibition on corporal punishment, the death penalty, and life imprisonment for children. It required signatory governments to govern children in their best interests as their own individuals rather than as the possessions of their parents. While the United States had helped draft it and had signed it, they did not ratify it. Alioto-Pier’s intent in adopting the convention locally would be to “provide legislators with a common reference point for meeting the needs of San Francisco youth.”<sup>333</sup>

In her resolution on the rights of children, Alioto-Pier had not made any mention of the elephant in the room: the rights of children in her own city being referred to ICE, detained and deported because of Mayor Newsom’s JPD policy. Her position on sanctuary was largely unclear and so the omission was not immediately interpreted as being anti-sanctuary, but perhaps merely a glaring oversight. Alioto-Pier was originally appointed to her position by Mayor Newsom after he left his seat as Supervisor of her district to become Mayor in January 2004. She then was elected in November of 2004 and again in 2006. Alioto-Pier was sympathetic to immigrant concerns, but had showed herself to be reticent to take a position against reporting undocumented immigrants to ICE. A month earlier at the Public Safety Committee hearing where immigrants and SFIRDC leaders testified on police traffic checkpoints, police collaboration in immigration enforcement, and the referral of

undocumented youth to ICE by JPD, Alioto-Pier had expressed concern about the presence of undocumented immigrants in her district:

We had a case in my community, in a period of 20 minutes, we had three aggravated assaults against women in three different parts of the area. And they were done by people who were not supposed to be -- who were not legally in the community, but who had so many warrants out for their arrest for things they had done in other parts of the city. So it's stuff like that, that concerns me and certainly does concern the people who live in my community. So I guess that's more of a comment.<sup>334</sup>

SFIRDC worked with Board member John Avalos around amending Alioto-Pier's resolution to include such language about the rights of all youth regardless of immigration status in San Francisco. Previous to being a Supervisor, Avalos was a legislative aide for the progressive Supervisor Chris Daly and long-time resident of the predominantly Latino Excelsior District, and had played a central role in the creation and funding of SFILN. As a result, he had an existing relationship with many of the organizations that were part of SFIRDC. Angie Junck of the Immigrant Legal Resource Center and Bobbie Lopez of the Tenderloin Housing Clinic would work on drafting the amended language with Avalos' Legislative Aide Raquel Redondiez. Avalos would note during a hearing on Alioto's resolution:

I also was looking at this measure and in my conscience I had a lot of difficulty approving it as is. I am actually wholeheartedly in support of the U.N. Convention but I am concerned about rule changes that happened last year around undocumented youth getting into our justice system and how young people have been referred to the immigration and customs enforcement agency without due process. So I would like to offer a friendly amendment to this resolution and hope that I can get your support.<sup>335</sup>

Avalos added four new "Whereas..." clauses, which sets of the premise of a resolution. The clauses stated,

WHEREAS last year the city of San Francisco initiated a new policy to automatically refer undocumented youth charged with felonies to immigration and customs enforcement officials before their adjudication.  
WHEREAS Undocumented youth in San Francisco are denied the right to be returned to parents if forcefully removed due to deportation [...]  
WHEREAS, In the light of these risks, San Francisco is in need of a policy that aims to transform and improve the plight of youth in San Francisco, and  
Whereas article 40 of the U.N. Convention of the rights of the child further states every child alleged or accused of having infringed penal law has the right to be considered innocent before proven guilty and has the right to due process under law.<sup>336</sup>

Then he also added a “Further resolved...” section which sets out what the resolution intends the City to do about the situation presented in the resolution’s premise section:

Further resolved, that the Board of Supervisors following the united nations convention on the rights of child hereby declares it city policy to provide every incarcerated youth his or her full right to due process under the law before any city employee initiates communication with federal immigration officials regarding said youth disposition.<sup>337</sup>

Avalos intended for his new language and the resolution as a whole to be sent back to committee where the public would then have an official space to discuss the JPD policy on the record. Supervisor David Campos of the Mission District commented that

I think the point of the amendment is to truly be on the record that we can't be talking about supporting the U.N. Convention on the Rights of the Child if we ourselves are not willing to look inward and look at what's happening in our own city, our very own city. We in San Francisco, a city with a history of protecting the rights of the individual, especially when it comes to under-aged individuals, to youth, we in San Francisco are doing something which is not consistent with not only the letter but with the spirit of what other countries throughout the world are saying. Which is, we need to make sure children have basic human rights - this is truly about recognizing the dignity of every child and it's important to underscore the irony here we are saying we embrace the resolution yet our very own policies and procedures in terms of how we treat undocumented youth are inconsistent with those very principles. I think it's important for us as a Board to underscore that irony with the hope that in a future not too far from today that we will be once again in line with basic human rights, principles that everyone throughout the world has recognized. Thank you. <sup>338</sup>

Alioto-Pier welcomed, supported, and appreciated the amendment but wanted to vote on it then and there thinking that the amendment was not “substantive” enough to require an additional review and public hearing in Committee. However, the City Attorney said that it was a “much different resolved clause than what was in the file. So to follow the Brown Act, you do need to take additional public comment.”<sup>339</sup> The motion to amend the resolution by Alioto-Pier and seconded by Avalos received yes votes from Supervisors Chris Daly, Bevan Dufty, Eric Mar, Sophie Maxwell, Ross Mirkarimi, President David Chiu, and David Campos, and no votes from Supervisors Sean Elsbernd and Carmen Chu.

The resolution was finally heard three weeks later in a meeting of the Board’s City Operations and Neighborhood Services Committee by Supervisor Dufty and Daly, with Supervisor Alioto-Pier who also sat on the Committee, excusing herself. In explaining the resolution amendment further, Supervisor Avalos who was in attendance said

I just really felt that it was important that we were consistent that we acknowledged that young people under the age of 18, children and youth under the age of 18 are a protected class and in our court system, particularly what's noted by article number 40 in the convention of the rights of the child, or the U.N. Charter, that young people are presumed innocent until proven guilty, and I felt that it was clear to me that if they were being referred automatically, they were just being presumed guilty and a process is initiated where eventually it will lead to them being removed from the city and the country of the united states. And I felt that was very alarming to young people and their own personal lives and their families. Also part of our due process in the state of California and the united states of America, and what's acknowledged in the U.N. Charter on convention of rights of the child, is people having confidentiality in the court system. And if our records are open for other government bodies, then rights are not secure.<sup>340</sup>

SFIRDC members who attended the hearing provided four recommendations for what they wanted the Board to do with regard to undocumented youth in the juvenile justice system. They requested that the Board facilitate access for unsuspected youths to speak to an attorney prior to deciding whether or not to notify ice. They told the committee members that they wanted referral to ICE to occur only after the youth is found guilty and a juvenile court determines referral is appropriate in light of the totality of circumstances in the case. And they wanted the juvenile court to determine that on an individual basis and an accompanied youth could be placed back with their family locally.

Annette Wong, an organizer for the San Francisco Interfaith Coalition for Immigrant Rights and Clergy and Laity United for Economic Justice – organizations which manage a coalition program called the San Francisco Interfaith Coalition on Immigration (SFICI) - also spoke at the hearing, providing the Committee with faith-based perspective on reasons to adopt the resolution amendments. Reading a letter from the religious leaders in her organization Wong noted:

On Behalf of the San Francisco Interfaith Coalition on Immigration (SFICI)  
We encourage you to pass the amendment co-sponsored by Supervisors John Avalos, David Campos, and Michaela Alioto-Pier on the rights of undocumented youth as part of your pending resolution to adopt the United Nations Convention on the Rights of the Child. Each of the religious doctrines represented in the San Francisco Interfaith Coalition on Immigration contains divine instructions to show hospitality to the stranger in our midst. Historically, this requirement goes back to the Israelites who escaped from Egypt. It is taught as an exhortation not to forget our roots. 'Don't mistreat any of the foreigners who live in your land. Instead, treat them as you treat citizens and love them as much as you love yourself. Remember, you were once foreigners in the land of Egypt. I am the Lord your God. Every major faith or ethical system has a similar rule – 'Do unto others as you would have them do unto you.' Can we do any less? Our children and youth are our most



precious assets. When one is mistreated or abused, all are in danger. Every child in San Francisco deserves full due process rights. When a youth is merely accused of a crime, he or she must remain in the protection of our sanctuary city laws, and if not found guilty, set free. If San Francisco is to continue as a sanctuary city, it would be morally, logically, and legally consistent for the Board to adopt this amendment. We urge you to take this important step. Thank you<sup>341</sup>

To conclude the committee meeting Supervisor Dufty acknowledged that this was a non-binding resolution that while not changing JPD protocols was “one step in that process to get our colleagues here on the Board of Supervisors on record about reverting back to the old [JPD] policy that protects young people as a protected class.”<sup>342</sup> The supervisors in attendance voted to recommend the resolution to the Full Board for a vote.

By mid-March of 2009, due to the new JPD youth referral policy, the percentage of Juvenile Hall detainees who were undocumented had dropped from 31.3% in July 2008 to only 6.4% indicating that the city was deporting kids at an alarmingly high rate, even those who had seen their charges dropped to lesser misdemeanor crimes or who had their charges dropped all together.<sup>343</sup> This would amount to almost 100 youths deported in this time period. SFIRDC leaders represented many of these kids in court and in immigration detention, as well as served their families who sought social services following the deportations, and therefore, SFIRDC felt the crisis acutely.

In order to build another level of symbolic support for changing the JPD youth referral policy, SFIRDC worked with members on the Democratic County Central Committee, or what advocates called the “D-triple-C” to pass a resolution to reverse the JPD ICE referral policy. While Supervisor David Campos, Eric Mar, David Chiu, and Chris Daly sat on the DCCC, SFIRDC worked with DCCC members Deborah Walker and Aaron Peskin to draft the resolution and sponsor it at the end-of-the-month meeting in March. Having Walker and Peskin sponsor the resolution would expand the voices and leadership in the debate, and further place the issue within the fights of the LGBT community. Walker was a long-time Mission District artist and a Commissioner overseeing the Building Inspection Department, which enforces the city’s building codes. She was also one of only six women to ever be elected President of the progressive and powerful Harvey Milk LGBT Democratic Club. Most importantly however was that Walker was preparing to run for the District 6 Supervisor seat following the departure of strong progressive Chris Daly who also sat on the DCCC. This would be an opportunity for her to show her support for the immigrant community. Peskin was formerly the very progressive President of the San Francisco Board of Supervisors, representing Chinatown, North Beach, Nob Hill, and Russian Hill – neighborhoods that were densely populated with immigrants, including monolingual and undocumented immigrants.

Angela Chan, a coalition leader and staff attorney of the Asian Law Caucus, worked with Walker to draft the resolution “In Support of the Sanctuary Ordinance”:

Whereas, San Francisco has had a Sanctuary Ordinance since 1989, standing proud in encouraging diversity, welcoming full participation in all that our country and our city offers and supporting community policing by increasing trust between immigrant residents and law enforcement, and

Whereas, even as President Obama has taken huge steps in closing horrific institutions like Guantanamo— citing severe violations of due process and, even as our prison system is being taken to task for mistreatment of inmates, it is clear that San Francisco is instead choosing to encourage such due process violations and racial profiling by reportedly engaging in stopping, questioning and confiscating valid identification cards and vehicles in sections of town with high immigrant populations and referring youth suspected of being undocumented to federal immigration enforcement at the booking stage, prior to receiving a hearing; and,

Whereas, the United States Constitution clearly delineates that we as a country shall not “deny to ANY person within it’s jurisdiction the EQUAL protection of the law” because the effect of taking the rights from ANY of us steps on the rights of us all,

Therefore let it be resolved that the San Francisco Democratic Party takes a recommitted position in support of our constitution and our city’s sanctuary position for all,

And be it further resolved that we demand that the mayor redirect law enforcement efforts away from criminalizing the immigrant community and restore our pledge to uphold constitutional due process laws and our commitment to constitutional rights to all.<sup>344</sup>

Mayor Newsom, a Democrat heavily involved in the DCCC, organized DCCC member Scott Wiener to propose a counter-amendment to the resolution that would revise the entire resolution to strike every portion about what the JPD policy was doing and replace it with statements that people who commit a violent felony could not take advantage of the sanctuary ordinance. Wiener was a moderate Democrat who had played a strong leadership role in the LGBT community, as well as being the Deputy City Attorney who was assigned to defend the city in the Bologna lawsuit. This lawsuit alleged that the sanctuary ordinance was partially at fault for the Ramos shootings. The resolution amendment that he would introduce at the DCCC stated that **[bolded text were additions, strikethroughs were deletions]**:

~~Whereas, San Francisco has had a Sanctuary Ordinance since 1989 long stood as a sanctuary city, standing proud in encouraging diversity, and welcoming full participation in all that our country and our City offers and supporting community policing by increasing trust between immigrant residents and law enforcement, and~~  
~~Whereas, even as President Obama has taken huge steps in closing horrific institutions like Guantanamo— citing severe violations of due process and, even as our prison system is being taken to task for mistreatment of inmates, it is clear that San Francisco is instead choosing to encourage such due process violations and racial profiling by reportedly engaging in stopping,~~

~~questioning and confiscating valid identification cards and vehicles in sections of town with high immigrant populations and referring youth suspected of being undocumented to federal immigration enforcement at the booking stage, prior to receiving a hearing; and,~~

~~Whereas, the United States Constitution clearly delineates that we as a country shall not “deny to ANY person within it’s jurisdiction the EQUAL protection of the law” because the effect of taking the rights from ANY of us steps on the rights of us all,~~

**Whereas, immigrants in San Francisco have long contributed to the City’s economic and cultural vibrancy,**

**And whereas, San Francisco’s sanctuary policy should protect immigrants from being separated from their families and communities through deportation, while also protecting public safety by ensuring that persons who commit violent felonies cannot take advantage of the sanctuary policy,**

Therefore let it be resolved that the San Francisco Democratic Party takes a recommitted position in support of our constitution and our city’s sanctuary position for all ~~immigrants,~~

~~And be it further resolved that we demand that the mayor redirect law enforcement efforts away from criminalizing the immigrant community and restore our pledge to uphold constitutional due process laws and our commitment to constitutional rights to all.~~ **the San Francisco Democratic Party supports continuation of the sanctuary policy without extending the protection of that policy to persons who commit violent felonies.**<sup>345</sup>

The counter-resolution would be co-sponsored by DCCC members Connie O’Connor, Mary Jung, Arlo Hale Smith, and Matt Tuchow. When SFIRDC got wind of this, they crashed a Mayoral party denouncing his efforts to undermine sanctuary and their DCCC resolution. This angered the Mayor and led him to more aggressively work to undermine the resolution. Steve Kawa, the Mayor’s Chief of Staff whom many in the City government called the “Shadow Mayor” or more boldly and disparagingly to Newsom, “the Mayor”, spent a good part of the day of the hearing trying to sway DCCC members out of voting for the SFIRDC version of the resolution. Mayor’s staff also organized his supporters to turn out to the meeting to testify and urge the DCCC to vote against the SFIRDC resolution. Robert Haaland, a progressive, transgender DCCC member, was also an SFIRDC leader from the LGBT worker’s rights organization Pride at Work. He joined Campos, Daly, Peskin, and Walker in lobbying the other DCCC members in support of the SFIRDC resolution. Haaland and the other Committee members linked the issue of due process for all youth to the Proposition 8 battle for marriage equality for all.

The day of the meeting where the Committee would vote on the resolution, around 60 SFIRDC members and clients attended. With the debate on sanctuary already imbued with the idea that only law-abiding immigrants were deserving of sanctuary, even DCCC members who supported Walker’s resolution expressed that the purpose of San Francisco’s Sanctuary City Ordinance is to protect law-abiding undocumented immigrants from being reported to federal immigration authorities.

The main contention seemed to be that innocent youth were being referred at the booking stage, with the implied notion that if they were tried and found guilty that it would be appropriate to deport them. During the discussion of the resolution David Campos would comment that it's essential that undocumented youths arrested for crimes are found guilty before city officials hand them over to ICE. Walker's SFIRDC resolution would be co-sponsored by DCCC members Supervisor David Campos, Robert Haaland, Rafael Mandelman, Supervisor Chris Daly, Joe Julian, Michael Goldstein, Hene Kelly and Michael Bornstein. It passed by a 20-1 vote with five members abstaining including Scott Wiener. Wiener's amendment failed on a vote of 19-5 with four members abstaining.<sup>346</sup>

It was an embarrassing blow to the Mayor, exposing the limits of his political power in the city and the party. Nathan Ballard, Newsom's press secretary, in response said "the city has no say in immigration policy and that the Democratic Party should take up their fight with President Obama instead. Our law enforcement officials do not engage in the conduct alleged by this resolution."<sup>347</sup> Angela Chan of SFIRDC said, "I hope Mayor Newsom will take the cue from his own party (and his own residents), and swiftly move to rescind his undocumented youth policy and work with the immigrant community to develop a more thought-out and balanced policy that respects the due process rights of youth and the goals to the juvenile justice system."<sup>348</sup>

Howard Epstein, Chair of the Republican County Central Committee (RCCC) in San Francisco noted that the Republicans were outraged by the DCCC passing a resolution blasting the Mayor's JPD policy revision and that they planned to write their own RCCC resolution to be voted on April 1. In reference to DCCC members who were also District Supervisors, Epstein noted that, "There are the people who govern the city, and they are voting to disobey the law. I didn't think they'd be so blatant. It just strikes me they'd have more common sense than to come out in a public meeting and to say, 'Let's not uphold the law.'" David Campos responded by telling the media, "I guess the two Republicans in town are going to get together and try to work it out."<sup>349</sup>

### **The Board Votes on the Resolution on the Rights of the Child**

By the end of the month, only a week after the DCCC vote, Supervisor Michaela Alioto-Pier's resolution at the Board of Supervisors, which supported the local adoption of the UN Convention on the Rights of Children returned to the full Board from committee to finally be voted on. It contained Supervisor Avalos' amendments in support of undocumented youth at risk of deportation under Mayor Newsom's JPD ICE referral policy. Alioto-Pier would remark: "I believe in due process. This is the United States of America. We're not in a communist country here. In this country you are innocent until proven guilty, and for children it is extremely important."<sup>350</sup> Nathan Ballard, Mayor's Communications Director responded

The other side is using the legal term 'due process' incorrectly, [defined by Cornell University Law School](#) as that 'all levels of American government must operate within the law ("legality") and provide fair procedures.' We're

confident the Obama administration will protect due process rights once we have reported (the juveniles).<sup>351</sup>

The Mayor's office was claiming that due process was not necessarily required at every stage of the criminal justice process as long as at some point, a final assurance of due process was made – in this case, once the youth was out of the hands of San Francisco city officials and in the hands of the federal deportation regime. Such a position failed to acknowledge the imperatives of the federal deportation regime, with its annual quotas for deportations, underlying mission and priorities of deporting what it considered to be criminal aliens, and a lack of legal representation for undocumented immigrants in immigration courts.

In the previous week, SFIRDC had made calls and visits to swing voters on the San Francisco Board of Supervisors -Michaela Alioto Pier, Bevan Dufty, Sophie Maxwell, Carmen Chu, and Sean Elsbernd - asking them to support the amendment to the resolution in favor of due process for undocumented youth. While they met resistance from Elsbernd, Chu, and Alioto-Pier, they found that Dufty and Maxwell were on the fence, but could end up voting in favor of the resolution with amendments acknowledging the need for a change in the JPD policy. This would be a first test to see if a more substantial and binding policy might pass, who would support that, who they would need to further educate on the issues of undocumented youth, and who would be firm opposition to such a binding policy.

At the Board vote, in the presence of SFIRDC members and immigrant community members in the audience, and on March 31, Chicano labor leader Cesar Chavez' birthday, the Supervisors discussed the resolution before their vote. Alioto-Pier raised concerns about the legality of the resolution as amended because she had thought that it would not "break any federal laws" but that the Fonseca case called that into question for her. The Fonseca case required the Police department and Sheriff's Department to report all individuals who were arrested for drug-related felony and misdemeanor offenses included in the Health and Safety Code 11369 regardless of whether they had felony convictions on their record. The Fonseca case did not clarify if the city was required to report youth booked on these crimes or merely adults. Since the amended resolution language included that the Board "declares it city policy to provide every incarcerated youth his or her full right to due process under the law before any city employee initiates communication with federal immigration officials regarding said youth disposition," Alioto-Pier and other fellow moderate Sean Elsbernd were interpreting City Attorney legal advice on federal immigration law and the ruling of the Fonseca case as also applying to youth even though that had not yet been adjudicated. Alioto-Pier was also referenced that the U.S. Attorney Joe Russionello was investigating Juvenile Probation to see if they had committed a crime in transporting and harboring undocumented youth.

Alioto-Pier and Elsbernd moved to continue the vote on the amended resolution until further resolution on Fonseca about reporting requirements had been made. Supervisor John Avalos who introduced the amendment stood up and countered that

I think it is important that we stand on real San Francisco values – values that welcome and embrace immigrants living in our community and also embrace the convention on due process. It is not out of the question that we are going to be moving away from due process in San Francisco with the new policy initiated by our mayor, Mayor Newsom, and the Juvenile Probation department last year. It really has been harmful for a lot of families whose children perhaps have done things that are not considered wholesome but getting booked with a felony means a reporting to ice. This has been a dreadful experience for parents and children who are separated, children deported and it is breaking apart families. We can do better than that by upholding this convention and I would encourage us to move forward with this today.<sup>352</sup>

Supervisor Campos pointed out that the Fonseca case does not deal with children or juveniles and commented on what it means to be a Sanctuary City and what providing due process means in a Sanctuary City:

This resolution really underscores the irony that here we are in San Francisco, talking about agreeing with the United Nations that children have inalienable, fundamental rights and yet when it comes to our own processes and procedures, we are doing something that is not consistent with that principle. Let me say that the people [the Mayor, Chief Sifferman] involved in this issue who are good people trying to do the right thing but there is a fundamental difference of opinion that goes to the very core, I believe, of what kind of system we have. Because when we talk about due process, which is what the language that Supervisor Avalos has added said, we are talking about due process, not enough to talk about due process in the context of the due process that will be provided to undocumented youth by the federal government. It is of course our hope, our intent that the Obama Administration will provide that. But the focus of this language is not on what the federal government is doing or not doing but on what we, San Francisco, are doing in terms of implementing our sanctuary ordinance. How can we say that we are fairly implementing it when we are reporting people merely who have been accused of doing something? I think that most San Franciscans would be surprised that we are not giving someone the benefit of the doubt, a basic principle that I think is at the heart of who we are as a society, this notion that you are truly are innocent until proven guilty. Well, that is what this does. It basically says that when it comes to implementation of our sanctuary ordinance, when we as a city interact with youth who may or may not be undocumented, that we are going to provide that youth due process and due process means that the mere fact that someone has been accused of something does not mean we are going to be the judge, the jury, that we are going to let the criminal justice process go forward and actually refer that person only if there is adjudication, a finding of guilt. I don't think that's a radical notion. I don't think that's a crazy notion. I think that in fact it's such a basic notion that the United Nations has in fact embraced that notion. I think

we as San Franciscans should be very proud to be able to say, you know what, we do not condone criminal activity but not condoning criminal activity doesn't mean that you assume that people are guilty simply because of what their documentation status might be. That's what's at stake here. I think it is truly appropriate this issue be resolved today as I noted earlier. The Fonseca case does not deal with youth, does not deal with children. The focus of this resolution is on the rights of the child. Let's give Cesar Chavez a birthday present today and pass this resolution recognizing that every child in San Francisco has rights the city will protect and respect. [Applause]<sup>353</sup>

Sean Elsbernd responded by saying that the legal advice he received from the City Attorney on the resolution ran counter to what Campos claimed about Fonseca applying to youth and reaffirmed his call to continue the resolution for one week after having a closed session with the City Attorney – a meeting not open to the public where legal matters would be discussed in a client attorney privileged conversation.

To counter the discourse, which posited that undocumented youth who had committed felony level crimes are deserving of deportation and should be punished like adults, Public Defender Jeff Adachi, who manages attorneys defending the undocumented youth in civil and criminal court, addressed the Board. He pointed out that in 2002, former Mayor of San Francisco and then Senator Dianne Feinstein introduced the Unaccompanied Alien Child Protection Act.

She stated that unaccompanied alien minors are among the most vulnerable of the immigrant population. She noted many of these children have entered the country under traumatic circumstances and they are young, alone, and subject to abuse and exploitation. I can tell you as the office that is responsible for providing representation to over 1500 youth a year, including undocumented youth, this is true for most of the undocumented youth in our juvenile justice system. Most come from backgrounds in destitute poverty and they come here to work and send home money. Some are recruited and are led to believe that it will be working in construction and odd jobs - and I have interviewed them myself - but then are forced to sell drugs or even engage in acts of prostitution once they are here to pay off their debt to traffickers. And the going rate I have heard for some of the youth is between \$1500 to \$2,000 U.S. Dollars to work off their debt to traffickers. The UN convention on the rights of the child established the best interests of the child and this is a debate that has been going on not only here in the united states but throughout the world as to how undocumented children should be treated. The standard the resolution adopts provides a general standard that countries must employ in order to shape their policies and practices affecting children. California has adopted this standard, has crafted the Welfare and Institutions Code, which lays the framework for the juvenile justice system to rehabilitate youth and identify and address those needs. The Welfare and Institutions Code section 203 provides “in order of judging a minor to be a ward of the juvenile court shall not be deemed a

conviction of a crime for any purpose nor shall a proceeding in the juvenile court be deemed a criminal proceeding.” So juvenile proceedings are not deemed criminal unlike the adult criminal justice system, which is designed to punish. The ultimate goal of the juvenile justice system is to provide care, treatment and guidance to at-risk children. So children who are here without parents who have been trafficked on to our streets are probably the most at risk at being preyed upon by unrelenting criminal elements. Undocumented or not, children on our soil are still children and must be protected. Just to give you some numbers that might be helpful, since August of 2008 we've had a total of 49 undocumented youth clients. We track age, charge, disposition, whether or not they are accompanied or not by an adult and whether or not the incident arose on a school ground. I can tell you the overwhelming number of these cases involved charges where the only charge is accessory to a felony. That's basically a charge that a prosecutor will charge if they're not quite sure exactly what the person did. That's Penal Code Section 32 - accessory to a felony. We're representing approximately 10 to 15 [undocumented] youth per month but it's now dropped to about four or five per month at the most. The most compelling statistic in terms of this resolution is that approximately a third of the cases are dismissed. We took, for example, one month in March, looked at the number of cases - we had approximately 65 cases in March - there were 22 dismissals, so that's approximately one out of every three cases. So when we talk about the presumption of innocence, when we talk about outcomes in a case, approximately 1 out of three youth, their disposition of the felony or charge for which they were arrested is in fact dismissal. Thank you.<sup>354</sup>

Supervisor Bevan Dufty, a swing vote, commented on the fear that he saw in the community which he found to undermine sanctuary, and the discretion of officers and the District Attorney on booking charges which could whimsically lead to a deportation of a youth:

When you go out and you see the fear that exists out there, I think it really undermines what the purpose of sanctuary city is, which is to protect public safety. There is an enormous amount of discretion within our charging and booking system and I think in this case that discretion winds up being unfair. Officers come in and they can charge a case and there is an inherent systemic friction that exists between the District Attorney's office and the police department based upon how cases may or may not be prosecuted. And you have situations where cases are charged up, where you have cases that even if the case is reduced it is still prosecuted as a misdemeanor, and I think that's in the normal course of business between public safety agencies. But when you wind up in a situation in which a juvenile is automatically referred as a result of that, I think it has more consequence and we have to be sensitive to it. We have a situation in which the District Attorney [D.A. Kamala Harris] has the discretion whether or not to rebook. An arrest is made and the D.A. has the opportunity through her staff and deputies to



rebook a case. We're in a situation where simply as a result of the arrest and [booking] charges by the police department against this individual comes up and is subject to deportation. And so for me right now I recognize I think that what happened to the Bologna family was an incredible tragedy and there was outrage on the part of the citizenry, but by and large, if we focused on individuals who are charged and convicted, I think we will do a tremendous amount to protect individuals' public safety. And the current situation is so open and so subject to individual interpretation, I think it's fundamentally unfair. And for that reason I'm prepared to vote for this resolution today. [Applause]<sup>355</sup>

Following Dufty's comments, Supervisor Campos commented on how the JPD policy tied the hands of the District Attorney disallowing her to do her work.

I think a fundamental problem with this policy is that it even takes away from the most professional player here, the District Attorney's office any kind of flexibility in terms of assessing whether or not there is enough evidence in a case and really weighing in whether or not moving the case forward with a charge makes sense. And I think that the people of the city and county of San Francisco elect a District Attorney to use that judgment in her discretion to figure out if justice would be served by moving forward with a charge. But in this case, the process we are following does not allow that to happen because the person is reported the moment they are booked even if the judgment of the District Attorney it is later found that maybe the booking should not have been at the felony level.<sup>356</sup>

Further, Campos commented on how the resolution did not condone criminal activity and would allow for the referral of people like Edwin Ramos who were convicted of felony level crimes:

It's clear that underlying this change in policy and practice is this tragedy of what happened with the Bologna family. It is tragic. Those of us seeking for a revised policy are in no way saying we condone criminal activity. In fact, the policy that we want to see, what we're calling for is something that in fact would have prevented what happened from happening because what we are saying is do not report someone unless they're convicted of a crime. Give them due process. But if there is a conviction, then go ahead, report. In the case of the Bologna family, Edwin Ramos, the person who has been charged with the crime and we have to see whether or not he is guilty, in this case that individual had two convictions and if the policy we want to see in place had been followed that individual would have been reported. But what is happening is that in response to a very tragic situation, I respectfully submit we went overboard and we did more than I think was appropriate for us to do. We should have recognized there was a problem, we needed to do something but the solution was not to take rights away from anyone who is merely accused of something but to actually recognize that in the criminal

justice system the way it works, sometimes charges are brought forward and it so happens that the system works itself and people are found not guilty. The district attorney sometimes decides not to bring charges forward. Our current policy does not allow for that to be the case. But I want to thank Supervisor Dufty for pointing out the importance of respecting the work of the people who work in the criminal justice system. They have the judgment. They have the background to make those tough calls. The current policy does not allow for that to happen.<sup>357</sup>

Following the discussion, Board President David Chiu called for a roll-call vote on continuing the vote one week until after the City Attorney could meet in closed session with the Board but the motion was defeated 8-3 with Campos, Chiu, Daly, Dufty, Mar, Maxwell, Mirkarimi, and Avalos voting no and Alioto-Pier, Elsbernd, and Chu voting aye. Alioto-Pier then motioned to divide out the language introduced by Avalos so that there would be two separate votes on the resolution – one on the original language of the resolution and a second on the amended language about undocumented youth. The vote on the original language was unanimously passed. They then took the second vote on just the resolution language introduced by Avalos on the rights of undocumented youth to due process, and it received a 8-3 vote in favor of including the language with the same Supervisors voting in favor of the language as who had voted to not continue the resolution vote for a week – Campos, Chiu, Daly, Dufty, Mar, Maxwell, Mirkarimi, and Avalos voting in favor, while Alioto-Pier, Elsbernd, and Chu voting against including the language.

Following the vote, a variety of SFIRDC members spoke in the public comment section of the meeting in support of providing sanctuary to undocumented youth and in need of a new JPD ICE referral policy. Alysabeth Alexander from the Tenderloin Housing Clinic urged the board to “continue the fight to push for due process, to uphold the principles of our sanctuary city but also to uphold the principles we believe that youth are our future and that we believe that teenagers are developing adults that will lead us, and that this is a beautiful, good thing.”<sup>358</sup> Angela Chan of the Asian Law Caucus thanked the Board for standing up for the “rights of youth and standing up for due process for *all* youth”<sup>359</sup> - “all” included undocumented immigrants. She also spoke about how SFIRDC and the immigrant community that they represented wanted this to be a message to the Mayor:

We would like the Mayor to take this as a signal, a strong signal, from the Board of Supervisors that he should on his own voluntarily review this [JPD] policy and develop a smart, thought-out policy that respects due process. And we are hoping that he will do the right thing. He has stood with us in the past on sanctuary and families and youth. If the Mayor is not willing to do that for any reason, we hope the Board of Supervisors will flex your power and do it in the next few weeks.<sup>360</sup>

Immediately after the Board of Supervisors meeting, Board President David Chiu and Supervisor David Campos had a meeting with the Mayor’s Office to explain that they had the 8 votes to pass a new policy ensuring the due process rights of all youth

regardless of immigration status. They suggested to him that due to this fact, he should go ahead and pass something voluntarily. The Mayor seemed open and members of SFIRDC -Lawyers Committee for Civil Rights, ACLU, Asian Law Caucus, and Immigrant Legal Resource Center - were invited to meet with the Mayor's Office to discuss legal details. However this would prove to be a futile effort, as the Mayor's position did not change on referrals – perhaps just a Mayoral attempt to force the community partners to show their cards.

### **Conclusion**

With a simple non-binding resolution, the Board asserted not just a symbolic expression of values, but also a show of legislative force that telegraphed how it could eventually override executive power. The lines on providing undocumented youth sanctuary city due process were drawn in the sand and Supervisor positions were finally clarified. This vote sent a message to the Mayor that the pro-sanctuary Supervisors on the Board had enough votes to pass a binding policy to change the JPD youth referral policy and over-ride the Mayor's veto of that policy change – a “veto-proof” majority of 8 votes out of 11 votes on the Board. City government power was nakedly divided, exposed, and on display for the nation.

## CHAPTER 7

### **LIVING IN FEAR IN THE SANCTUARY CITY: THE IMPACT OF IMMIGRATION ENFORCEMENT ON RESIDENTS REGARDLESS OF IMMIGRATION STATUS**

#### **Introduction**

Despite the city's long tradition of claiming that it welcomed immigrants and that its sanctuary city status was more than just symbolic, undocumented immigrant residents of San Francisco continued to live in fear of federal immigration enforcement. Many had experiences of ICE raiding their homes, or with city employees, especially the police who routinely violated their rights, ask for their immigration documents, ask them about their immigration status, report them to ICE, or use the threat to report them as a manner of forcing their submission. As a result, part of the work of the immigrant rights community and of the city officials who advocated for due process for all youth within City Hall, was to break through this deceptive ideology that San Francisco had achieved its status as a sanctuary city where immigrants felt safe to engage municipal authorities. Breaking through this ideology would amount to forcing city officials to recognize that the lived reality for many of the city's residents regardless of immigration status was an existence of precarity, deportability, and fear. This chapter explores that fear and experience of precarity and deportability through the testimonies of undocumented immigrants and their advocates provided directly to city officials in the political space of an April 2009 public hearing on the impact of immigration enforcement in San Francisco. This hearing was one of many wherein immigrant advocates organized affected immigrants to go on the public record and share their stories to register the history of sanctuary city's contradictions. This chapter will also continue to explore the discursive battle between anti-sanctuary forces and the immigrant rights community, as well as practices of the city government which undermined the community's trust in officials who claimed San Francisco really was a sanctuary city.

#### **The Development of Pro- and Anti-Sanctuary Discourse**

By late March 2009, SFIRDC, emboldened by its victories at the DCCC and the Board of Supervisors, moved into a new phase of organizing and working with District Supervisors to pass and implement a binding policy solution to restore sanctuary for all youth – an amendment to the sanctuary ordinance. They also clarified their platform and sought support for it among city officials. In their revised platform document created only a few days before the Board vote on the resolution regarding the UN Convention on the Rights of the Child, they had defined the immigrant community, stated the problems facing that community, and provided policy solutions to correct the problems.

*Immigrants from poor countries come to our city because of the impacts of U.S. Free Trade Agreements, such as NAFTA and CAFTA. Immigrant communities*

*come to our city as globalization refugees and their main focus is to improve the living conditions of their families. Immigrants are 40% of our city's population, and they contribute greatly to the financial wellbeing of our city.*

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Over the previous 8 months, the City had in SFIRDC's eyes been held hostage by intense media and anti-immigrant pressure that scapegoated immigrant communities and immigrant youth. Referring to the Bologna murders, they would note that acts of violence hurt their immigrant communities; however, when these incidents involved individual immigrants, they found it wrong for the media and politicians to use those incidents to discriminate against and punish a whole immigrant community. To address this attack on the culture of sanctuary in San Francisco, they sought to reiterate San Francisco's values "in support of social justice and in defense of a civic obligation to all residents including immigrants."<sup>362</sup> They wanted to push the Mayor to make a public statement in support of undocumented youth and to further policies upholding what the coalition found the city's belief to be that "all San Francisco residents regardless of immigration status have the right to live free from fear in our city." They also wanted to transform the face of the City – the Mayor's office and other city leaders- in the media on immigration issues to be someone with a strong background on civil and human rights.<sup>363</sup>

SFIRDC found that the attack on the culture of sanctuary was furthered by ICE agents intensifying their enforcement activities at private homes, on public streets, and at worksites in San Francisco. Raids had been found in some instances to be conducted without proper warrants and to target predominantly workers and families, and SFIRDC saw that thousands of immigrant families, including children, lived in terror that they may be separated from their families at any moment. Serving them every day in their organizations, they saw that this all was creating an environment in which many immigrants refused to access city services to which they were legally entitled out of fear of being arrested by ICE. Mayor Newsom had not yet publicly denounced these raids. SFIRDC demanded that he publicly denounce them and personally lobby Congressional leaders to support just implementation and reform of immigration laws. To support families affected by the raids, SFIRDC also contended that the City must maintain and increase funding to support immigrant organizations to assist immigrants in the aftermath of raids on issues of deportation proceedings, family separation, employment discrimination, and other issues.

With regard to the Juvenile Probation ICE referral policy, SFIRDC saw immigrant youth being torn away from their families through deportation, often following wrongful detention. By early April, JPD had referred 92 kids to ICE, 72 of which had previous contact with ICE.<sup>364</sup> They found it "unconscionable that San Francisco is depriving immigrant youth of due process and referring these youth to inhumane detention conditions, often far away from their families."<sup>365</sup> They demanded that "immigrant youth be afforded the same due process rights as all San Franciscans" and that youth not be automatically referred by JPD at the booking stage prior to a hearing on the charges. SFIRDC wanted immigrant youth who have

contact with the juvenile system to be protected by the same principles governing the juvenile justice system: rehabilitation, family unification, and confidentiality. And finally, the coalition demanded that the city invest resources in providing all youth including immigrant children, quality education, job opportunities and the resources to help them be productive members of the San Francisco community.

However, the city's anti-sanctuary media forces were at work as well, acting to oppose any change to the JPD policy. The *San Francisco Chronicle* was furthering the discourse of immigrant youth criminality, reporting that the JPD "shielded" 185 undocumented youth held on felony charges between January 2005 and Summer of 2008, based on data from a JPD report Supervisor Campos had requested.<sup>366</sup> They reported that 252 undocumented youth were processed by JPD in this period, 180 of whom were suspected on drug offenses and 72 for other charges not mentioned. All of these youth were Latino, 79.4% were Honduran, and 98% were male. Of the 180 suspected of drug charges, 87.8% were Honduran and almost all were men, many with multiple drug charges against them. The charges that the *Chron* reported were for hand-to-hand sales of heroin, cocaine or crack. 75% were 16-17 years old and 78% were in the Tenderloin or Polk Gulch areas. Of the drug charges, 85.1% resulted in DA filing a petition (14.9% were dropped) and 17.3% of those DA petitions were dismissed by a judge. Of the 67.8% that went forward, half went to group homes or stayed longer in juvenile hall and half received probation.

Nathan Ballard of the Mayor's office responded to the media that the youth being turned over to ICE were serious offenders and that the Mayor's new JPD policy "protects public safety and at the same time protects the due process rights of the accused criminals."<sup>367</sup> While the Mayor had seemed open to implementing another change to the JPD policy following the Board resolution on the UN Convention on the Rights of the Child passing with a veto-proof majority, SFIRDC found that this *Chronicle* article pushed the Mayor to revert back to his hunkered position on referring all youth at the booking stage. SFIRDC leader and Asian Law Caucus staff attorney Angela Chan responded to Ballard's comments that the Mayor's office should focus on breaking up the drug rings that force youth to sell drugs to pay off their migration debts rather than deporting youth.<sup>368</sup>

On the same day that the *Chronicle* reported on undocumented youth referrals to ICE, Michael A. Kelly and Matthew D. Davis from law firm Walkup, Melodia, Kelly, and Schoenberger filed a civil lawsuit against the City on behalf of Danielle Bologna, her son Andrew, and daughter Francesca blaming the city's sanctuary policies for the murder of their family members by Edwin Ramos.<sup>369</sup> It named Mayor Gavin Newsom, Police Chief Heather Fong, and Juvenile Probation Chief William Sifferman, among the defendants. The damages were set for an unlimited amount greater than \$25,000 and the case was lodged in the Superior Court of California, County of San Francisco.

The suit claimed "multiple wrongful deaths; causes of action for: 1) negligence; 2) negligent infliction of emotional distress; 3) state civil rights violations; 4) federal civil rights violations (42 USC article 1983; and 5) racketeer-influenced and corrupt organizations violations [18 USC article 1601, ET SEQ]]."<sup>370</sup> Claiming that the City's sanctuary polices were illegal, the prosecution posited that

they were a “substantial factor in causing the injuries, losses and harms sustained by Plaintiffs”.<sup>371</sup>

The basis of their claims that sanctuary policies were illegal relied on federal statutes 8USC article 1373 and a similar U.S. statutory law 8 USC article 1644. They argued that U.S. statutory law prohibited any local government entity, official or employee from restricting its officers, agents and employees in their communication with ICE and its predecessor, the Immigration and Naturalization Service (“INS”), regarding the immigration status of any individual. These laws mandated that a

local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.<sup>372</sup>

These laws, they argued, prohibit a city from adopting any official or unofficial policy that restricts local officials’ communication with ICE regarding any individual’s immigration status – what they regarded as “sanctuary policies”. These U.S. statutory laws, they claimed “were intended to protect the citizens of San Francisco and other citizens from violence committed upon them by illegal aliens by ensuring that all sworn law enforcement officers retain unfettered discretion to report, consistent with federal statutory obligations, to ICE all dangerous persons who are also illegal aliens.”<sup>373</sup>

They argued that the City flagrantly adopted and were enforcing official and unofficial sanctuary policies which led them to transport, harbor, and encourage to remain in the U.S. persons who had committed drug offenses and violent crimes and whom the City knew, or had reason to know, were illegal aliens. The suit claimed that the official enactments, orders, mandates and endorsements of City’s sanctuary policies were reinforced by an “unwritten but enforced policy that prohibited and discouraged CCSF employees, including SFPD officers and JPD employees, from reporting any illegal alien to ICE.”<sup>374</sup>

To establish that the City’s sanctuary policies were responsible for the deaths of the Bologna family members, the attorneys would need to establish that the City, by enacting their sanctuary policies let Ramos back onto the streets when they knew that it was likely he would kill a specific person immediately upon release. However, they failed to do so. Instead, they argued that Edwin Ramos was unlawfully present in the US, was subject to removal from the US, was known by the City to be an MS-13 gang member and that members of MS-13 were mostly illegal Central American immigrants who committed violent felonies including murder. They argued that MS-13 members would target and murder men simply because they “appeared to be Latino or African American, and were not members of MS 13.”<sup>375</sup> Finally, the suit claimed that Ramos killed the Bolognas because they appeared to be Latinos.

Defendants knew that Ramos had a history of extreme violence, and they knew or had reason to know that he was a member of MS-13 and would therefore likely murder males simply because they appeared to be Latino or African American. It was thus highly foreseeable to defendants that Ramos,

upon his return to the streets of San Francisco, would murder men simply because they appeared to be Latinos or African Americans. Defendants' acts as herein described were a legal cause of the violation of the civil rights of the decedents and plaintiffs, giving rise to a cause of action under 42 USC article 1983.<sup>376</sup>

Where the sanctuary ordinance played a role, according to the Bologna's attorneys, was that the City knew that Ramos had committed crimes of violence in San Francisco, had been arrested and detained by SFPD officers on multiple occasions for violent crimes, and in the custody of JPD on drug charges before the Bologna murders, but that the officers

did not notify ICE about the detentions and arrests-as required by state law-because the City's "illegal sanctuary policies prevented them from doing so." Defendants knew that ICE would have taken custody of Ramos, detained him, and initiated removal proceedings against him, if defendants had informed ICE that Ramos was in its custody, that Ramos was a member of MS-13, that Ramos had been arrested for the commission of a violent crime, and that defendants intended to release Ramos from custody. Sworn peace officers of the SFPD who arrested Ramos or had contact with him would have notified ICE about him had they not been deprived of the discretion to do so. Defendants' official and unofficial sanctuary policies prevented them from notifying ICE about Ramos.<sup>377</sup>

The suit also argued that JPD and other City and County departments and agencies illegally transported, harbored and prevented ICE from taking custody of Ramos before he committed the Bologna murders, and illegally provided shelter and services to Ramos that required, guaranteed and encouraged him to remain in the US.

Defendants' agencies, departments and officials conspired among themselves and with entities operating group homes for juveniles to illegally harbor Ramos within the US. This conspiracy was in violation of the 1996 amendments to the U.S. statutory Racketeer Influenced and Corrupt Organizations ("RICO") statutes, 18 USC [United States Code] article 1601 et seq. Specifically, U.S. statutory RICO law prohibits a conspiracy to commit "any act which is indictable under the INA section 274 [8 USC article 1324] (relating to bringing in and harboring certain aliens)," 18 USC article 1601(1)(F), where such conspiracy results in injury to an individual's property interests. This conspiracy led in a reasonably foreseeable way to the deaths of Anthony, Michael, and Matthew Bologna, to the emotional distress of Andrew Bologna and resulted in an injury to plaintiffs' property interests. Plaintiffs are entitled to treble the amount of such injury, under 8 USC article 1601(1).<sup>378</sup>



As a result of these allegedly illegal acts by the City and County, the prosecution argued that Ramos was allowed and even required to remain unlawfully present in the U.S. and was allowed to return to the streets of San Francisco to commit violence on the Bolognas. They claimed that the City and County's illegal failure to follow the legal mandate of federal statutes was "intentional, negligent, grossly negligent and recklessly indifferent to the lives, health, and safety of others, including the Bolognas herein and their descendants. It was highly foreseeable that Ramos, upon his return to the streets of San Francisco, would commit violence upon San Francisco citizens including the decedents."<sup>379</sup>

Interestingly, the prosecution also argued that the City acted in an illegal and discriminatory manner in their treatment of violators of U.S. statutory law, depending upon their citizenship status – that the city let undocumented people off of the hook, but reported legal citizens to federal agencies for transfer of custody. They claimed that City departments, agencies and employees were willing to transfer to U.S. custody for U.S. statutory prosecution U.S. citizens who committed U.S. statutory crimes, including crimes relating to immigration under 8 USC article 1101, et seq. However, as a matter of policy, defendants were not willing to transfer to U.S. custody for U.S. statutory prosecution aliens who committed U.S. statutory crimes when those crimes related to immigration, under 8 USC 1101 et seq. Defendants' discrimination on the basis of citizenship was a legal cause of the violation of the civil rights of the decedents and plaintiffs, giving rise to plaintiffs' cause of action under 42 USC article 1983.

In carrying out these illegal activities, the prosecution contended that the City acted negligently, recklessly and carelessly in adopting, and enforcing their illegal sanctuary policies so as to cause Ramos to not be reported to ICE and to not be subjected to deportation proceedings. As a result, Ramos was free to commit crimes on the streets of San Francisco. Defendants' acts and omissions were a substantial factor in causing the Bologna murders.

The City Attorney's office would immediately get to work mounting a defense against the Bologna lawsuit and the City Attorney assigned Deputy City Attorney Scott Wiener, the DCCC member who the Mayor worked with to counter Debra Walker's pro-sanctuary, anti-JPD youth referral policy DCCC resolution, as one of the attorneys to write the brief to defend the sanctuary ordinance and the City.

### **HRC/IRC Joint Hearing on Immigration Enforcement in San Francisco**

In early April, SFIRDC started to prepare for a hearing focused on the impact of immigration enforcement activities on the immigrant community in San Francisco. The hearing would be jointly presided over by the Human Rights Commission and the Immigrant Rights Commission and held in the Board of Supervisor Chambers – the main hall for Supervisor meetings. The idea for the hearing came out of HRC commissioner participation in an IRC community meeting that took place in the Mission District in mid-November 2008 where several community members testified to the impact of recent immigration raids in San Francisco. The IRC asked for a response from the city agencies that were present on their role in assisting in immigration enforcement but these agencies claimed to not have knowledge of the

alleged incidents. The purpose of the hearing was not to target any specific city agency or department such as the Juvenile Probation Department or Police Department, nor to make opinions or recommendations to change present immigration laws or local ordinances. The hearing would be used solely for the purpose of gathering community member's testimony and documenting experiences with immigration enforcement and then compiling this information into a report to inform San Francisco department heads, supervisors and other elected officials of what is affecting San Francisco's immigrant communities.

The goals of the IRC were therefore seemingly neutral, non-partisan, non-committal, and politically acceptable given the looming presence of the Mayor. According to Chair Dajani, the IRC aimed to

to hear testimony that will help inform both Commissions about the impact of federal immigration enforcement policy on the lives and well-being on immigrant communities in San Francisco; to listen to San Francisco residents who have been personally affected by various federal immigrant enforcement practices; to gain insight and perspective that will better inform Commissioners on how to advise decision-makers about programs and policies that meet the needs of immigrant communities; and to gather information and begin the dialogue on the much-needed changes in federal immigration policies and enforcement practices.<sup>380</sup>

However, taking a slightly more pro-active stance, Cecilia Chung, the Chair of the HRC, during the hearing noted that the commission wanted to hear from impacted individuals in order to "recommend more humane federal policies that better utilize resources to integrate immigrants into civil and cultural lives, rather than waste limited resources to create division and a climate of fear."<sup>381</sup> The IRC initially approved the hearing and reached out to the HRC to see if they would like to join them.

The hearing would take place on the 13<sup>th</sup>, but as was usual, SFIRDC began early, at the beginning of the month, to organize its leaders to provide expert testimony on the most important issues pertaining to immigration enforcement and youth deportations as well as identify immigrant clients and organizational members who were affected by the Mayor's JPD policy. SFIRDC prioritized preparing those immigrants who had compelling stories to tell, who were emotionally and psychologically stable, and who were articulate and able to be trained to speak publicly and to the media.

A week before the hearing, the leadership of the Immigrant Rights Commission made an attempt to restrict "expert testimony" which usually was retained for individuals who could speak in a systematic way about an issue rather than for individuals who provided personal and individualized stories. Expert witnesses could speak with authority to the Commission given their position usually as a community leader who hears from many individuals affected by a policy or who manages an organization or project that serves the affected community or which addresses the issue at hand programmatically. Further, expert testimony is allotted well beyond the 2 minutes that was allowed each person for public comment. Just a

week before the hearing, IRC leadership sent an email to all IRC Commissioners telling them that the experts that they invite to speak on the issue of immigration enforcement should not be immigrant advocates, activists, or organizations but rather, only affected immigrants— essentially excluding SFIRDC members from providing extended explanation of the impact of youth deportations. Rael Silva, Ana Perez, Christopher Punongbayan who were on the Commission were also SFIRDC leaders working with Young Workers United, CARECEN, and Asian Law Caucus. SFIRDC was told by IRC leadership that the IRC was concerned that SFIRDC leaders were saying the same things over and over again at public hearings. The IRC leaders thought it was more compelling to hear about the issue from the “horses mouth”. In particular, they wanted to hear from parents with school-age children, LGBT families, or those with job or labor related experiences.

Some SFIRDC members suspected that the Mayor who appointed the Director of the Office of Civic Engagement and Immigrant Affairs (OCEIA), which staffed the Commission, as well as 4 out of the 15 IRC Commissioners, had a hand in pushing on these IRC leaders and attempting to exclude SFIRDC leaders from serving as experts at the hearing. They suspected that whether it was coming from the IRC or the Mayor, that dictating the more restrictive terms of the hearing was an attempt to control and contain SFIRDC momentum so the Mayor didn't look worse and so the commissioners didn't feel pressured to act against Newsom's agenda. At this point, the Mayor had become very upset about how the issue continued to blow up in the media and the Supervisors on the Board who were in favor of changing the JPD ICE referral policy didn't think the Mayor was going to work with them on creating a binding policy – an amendment to the sanctuary ordinance that would delay reporting until after a finding of guilt on a felony charge. SFIRDC had decided to focus on meeting with Supervisors to move them to put SFIRDC demands in their work schedule and pass a binding policy to ensure due process for all youth. The Supervisors still wanted to work with the Mayor to craft a new policy since implementation would be his domain, but given his intransigent attitude, SFIRDC wanted the Supervisors, especially Campos, Chiu, Dufty, and Maxwell to move forward on the policy regardless of the Mayor's position or willingness to work as a partner on the policy.

At the HRC/IRC hearing, the coalition had been planning on having a mix of immigrant advocates and affected immigrants speak as experts in a more extended fashion, and then turn out more advocates and affected immigrants to speak in public comment. SFIRDC pointed out to the IRC leadership that the impact of federal immigration enforcement on San Francisco is broader than testimonies from victims of raids and that often affected immigrants are not able to be present to provide testimony due to fear of interacting with the government or other obligations. In their stead, affected immigrants may ask immigrant advocates to tell their story on their behalf, within the context of broader contextual explanations. On the other hand, the IRC and HRC had requested that SFIRDC ally and immigration law Professor Bill Ong Hing provide expert testimony, contrary to their assertion that they only wanted to hear from affected immigrants. The IRC who was in charge of the agenda also wanted the agenda to be 1 hour of expert testimony and 45 minutes

of public comment while SFIRDC wanted it to be 30 minutes of expert testimony and open timing for public comment.

The IRC was also requiring that SFIRDC would provide them with a list of speakers even for public comment in advance of the hearing, a practice that no other agency, committee, or commission had required of the coalition for hearing public testimony. They were even asked to not “scream or yell” at the upcoming hearing, something that they had not done at any hearing they had been a part of. This all deepened an underlying distrust that many of the coalition members had for the commission.

The joint hearing would also be a venue for public officials to come and provide explanation to the commissions on any updates regarding their department’s involvement in immigration enforcement or in serving immigrant communities affected by immigration enforcement. JPD Chief Sifferman was invited to speak to the commissions on his department’s youth referral policy, but three days before the hearing, on April 10<sup>th</sup>, he wrote a letter to the IRC and the HRC telling them that due to the U.S. Attorney’s federal investigation into the JPD officers and from legal advice he received from the City Attorney, he would not be attending the joint hearing. Adrienne Pon, the Director of the IRC forwarded the letter to the commissioners with a message saying, “As you may know, San Francisco is currently undergoing a federal criminal investigation on whether it has been systematically circumventing U.S. Immigration law with its *generous* policies.”

A day later, Mayor Newsom sent a letter to all of the Commissioners on the IRC and HRC regarding the joint hearing:

I am eager to hear the testimony and recommendations for reform of the federal system. As a local government, we remain committed to protecting our residents and providing opportunities for them to thrive. [...] We excel in providing services to an extremely diverse immigrant community and have developed a comprehensive sanctuary policy that ensures access to city services for all people. [...] We cannot, however, allow the sanctuary policy to be used as a shield for those accused of committing felonies. I recognize there are those who disagree with our recent change to the juvenile offenders policy. We are committed to continuing the dialogue as we strive to ensure public safety for all residents and uphold the rights of individuals accused of serious crimes.

At the hearing, in attendance were SFPD Chief Fong, OCEIA Executive Director Adrienne Pon, HRC Executive Director Chris Iglesias, Christine Deberry from the Mayor’s Office, Director of the Department on the Status of Women Emily Murase, Director of the Office of Citizens Complaints Joyce Hicks, Director of the Department of Human Resources Micki Calahan, and Adult Division Director of the Probation Department Tina Gilbert, District Supervisors David Campos, John Avalos, and David Chiu, Public Defender Jeff Adachi, and Police Commission President Theresa Sparks. The Supervisors present made brief introductory comments staging the urgency and need for sanctuary for all residents. Supervisor John Avalos of the Excelsior would note

We live in a world where wealth and capital move freely across the globe, but yet people do not have the ability to move to find economic opportunity, to find relief from oppression, to find they can unite with their families and their loved-ones, we live in a world of borders. We actually, in San Francisco, can do something to alleviate that pain and those borders and I believe that our Sanctuary City is part of that.<sup>382</sup>

Supervisor Campos commented on San Francisco's power to be a trendsetter nationwide on immigrant issues and challenged the Commissions to take action to ensure sanctuary:

I do believe that what happens in San Francisco, not only on the issue of immigration, but on many issues, ultimately impacts what happens nationwide. [...] And so it is my hope that in a future, not too far from now, that we will be able to stand here and say "thank you" to the HRC, "thank you" to the IRC, for taking a stand, for making it clear that in San Francisco we do things differently and that we are proud of that and that we are proud of the fact that we have been and continue to be a City of Refuge. [...] And, specifically, let's not forget – that what we do here locally is a reflection of the kind of City that we are, and none of us who have been supportive of Sanctuary have at any time said that we condone criminal activity. Sanctuary, in fact, was put in place to ensure that people help make a City safer so that they can come forward and not be afraid to report crime. And, yet, we have moved away from that as a City, we have moved away and now we follow a practice that essentially turns people over undocumented youth without any, any consideration of whether or not that young person, that minor, is actually guilty of the crime that they have [been accused of] committed. And that we would go that far, in response to the Federal policy that has been followed, shows you that this is one of those issues where people truly are afraid. People are afraid because it is not popular to protect immigrants, it is not popular to protect people who may not have the documentation to be in the country legally. Well, it is up to you to make sure that we continue to stand firmly behind the principle that no person, no human-being is illegal. And I hope that you continue to do this, even as it remains unpopular.<sup>383</sup>

Lastly, Board President David Chiu turned his comment into a testimony on immigration enforcement, an acknowledgement of immigrant families living in fear, and a hope for what San Francisco should be as a sanctuary city:

The first time I ever spoke during public comment was about ten years ago on behalf of advocates promoting the Sanctuary City Ordinance and I can tell you that ten years ago I was a civil rights attorney practicing immigrant rights law. And one day I received a phone call about illegal searches that the then-INS was conducting at our local airports. I showed up at the INS holding cells where I saw, through the plexus-glass, immigrants who had been

illegally arrested by the INS. Some of whom had been beaten, all of whom were shipped within 24 hours to immigration detention centers around the country, separated from their families, separated from their children, separated from their loved ones. And that experience, I will never forget. [...] But I particularly want to thank our families, our immigrants, for being here and let you know that at the Board of Supervisors, we do have a new generation of Supervisors, all of whom, all of us, are children or grandchildren of immigrants, and we know where we came from. And like everyone here, we look forward to working together to make sure that despite the tough times, and despite the anti-immigrant histories that we have seen in this country and in this state and here in the City, we want to help build, in San Francisco, a City that really is a beacon to the rest of country and the rest of the world about how we ought to treat our immigrants.<sup>384</sup>

At the hearing, 5 SFIRDC leaders and 4 affected immigrants ended up speaking as experts on police check points that target immigrants, youth referrals to ICE, racial profiling, the impact of ICE raids on families, ICE presence in local jails, funding for immigrant organizations, and the media's inflammatory anti-immigrant articles. During public comment roughly 50 affected immigrants spoke and all SFIRDC immigrant advocates provided first hand testimony from affected immigrants who could not be present. Translation was provided in Spanish, Tagalog, and Cantonese.

One of SFIRDC's main goals for the hearing was to provide documented statistics, testimony of real immigrant experiences, analysis of local and national immigrant issues, and excerpts of previous hearing transcripts including immigrant testimony (for instance from the public safety committee hearing and Police Commission hearing on SFPD traffic checkpoints) with which the Human Rights Commission could create a public report on immigration enforcement in San Francisco and its effect on immigrant families. The coalition also sought the Commissions' support for SFIRDC's on-going campaigns and upcoming legislation to ensure due process for all youth. They wanted to use the hearing to push the Commissions to commit to making public statements of support of sanctuary for all immigrants, to advocate on SFIRDC's behalf to the mayor, and to pass resolutions condemning the *Chronicle* and other media outlets who were, as they saw it, irresponsibly promoting hate and xenophobia.

During the hearing, SFIRDC members and clients stressed that without due process, youth who were being detained and referred by JPD to ICE were actually documented or qualify for immigration relief under federal law; are innocent of the crimes they are charged with; have family in the Bay Area and no family or any adults in the country where they are being deported to; have been in the Bay Area since they were young and grew up here, and if it were not for the new JPD policy, would grow up to be productive and contributing members of the San Francisco community.

Aarti Kohli of the Asian Law Caucus and Francisco Ugarte of Dolores Street Community Services, the San Francisco Immigrant Legal and Education Network (SFILN), and the Rapid Response Network, spoke about ICE's National Fugitive

Operations Program (NFOP) and immigration raids in the city, which they defined as any instance when ICE apprehends 3 or more people at the same time. They explained that ICE's NFOP teams were composed of 7 ICE agents each with the role of conducting interior enforcement including the raids occurring in San Francisco. The NFOP had two teams in San Francisco that had a quota of 1000 detainees per year each – an increase from the previous quota of only 125 people per year. Since their inception in 2003, the budget for each team had increased from \$8 Million to \$109 Million. The NFOP program had originally been sold to Congress as one that targets the most dangerous criminal aliens to address national security concerns. Originally at least 75% of the “fugitive” aliens that they were targeting had criminal convictions. However, since the program's inception, that requirement was loosened and Kohli explained that 73% of the people that NFOP teams had captured in the previous five years had no criminal convictions. By 2009, they targeted mere “fugitives,” people who had been ordered deported or removed by an immigration judge, but who had not left the country. These “fugitives” might have failed to report to the Department of Homeland Security, have gotten the order “*in absentia*,” and may not even have been in court or have even received a notice to appear in immigration court because they had moved. Through Ugarte's work with SFILN and the Rapid Response Network, he had legally assisted immigrants in immigration court who had been caught in 8 raids that netted around 54 people. Ugarte added, “What we have seen has been an attack against our most cherished liberties. The right to be free from unreasonable searches and seizures since many of these raids happen without warrants in homes.”<sup>385</sup>

### **Documenting Immigrant Fear**

Providing first-hand immigrant testimony of how SFPD and other City agencies cooperated inappropriately with ICE was an effective method for impressing upon local officials the reality of living in the sanctuary city as an undocumented immigrant despite the access that the City was supposed to be providing these residents. At the hearing, affected immigrants spoke of how their families had been torn apart by immigration raids and how they continued live in fear due to their experience dealing with both ICE and the Police Department which had played a role in instilling deportation-based fear:

**Ivan Carreno:** Hello, my name is Ivan and I hope you guys hear my words and understand what we're going through, what my family has gone through - ICE raids. Because this has affected our family a lot, especially my sister. Because on Monday, me and my friends went out with her and all the stress that she has been going through, she had a seizure in the theater and I didn't know what to, because I was nervous and I didn't know what to do with her and stuff, so I had to call my mom and I didn't really want to talk to her because she was dealing through a lot of stress. And before, my dad was here, we were good people, and my dad, I don't even know why they came for him, he never did anything bad. He just wanted a good life. If there's anything I ask for is for you guys to bring my dad back and not to take my

mom from us because I really love my parents. The only thing I want is my parents back, I want my life to be back like it was before, before the ICE raids took everything from my family. They took my dreams and I don't know what I'm gonna do without my dad. Thank you.

**Karina:** Hi, my name is Karina. I'm a student in high school, 9<sup>th</sup> grade, and I'm here talking about the immigrants. If I chose to be [changes to speak Spanish and speaks through a Translator] It is not right, that just because you come from different countries, because you speak a different language and were a different race, that we are treated too terribly. It is not a crime to come to another country for a better life. It is not a crime to come to another country looking for work to better our lives, to better our families, to feed our children. We are not criminals, we are not animals. We are afraid. Sometimes when I come home, I am afraid that my parents won't be there. Sometimes when my mom asks me to go to the store I'm scared to go. Sometimes when I'm coming home, I wonder if my parents will be waiting for me, or if something happened while I was gone at school. Sometimes when I'm watching the television, I think, maybe we should just go back to Mexico, because we're not wanted here. Thank you.

**Ana, with the help of a translator:** Good evening, my name is Ana and I am one more of the victims of raids. On September 11, there was a raid and they took 6 people. 3 of us are here tonight and 3 others were deported. [Translator speaks] They came at 5pm and I was sitting at my computer, and right beside me there was a sewing machine. [Translator speaks] So, I heard that they rang the bell and I asked who it was and nobody answered. Then they rang again and I asked who it was. Then nobody answered so I opened the door and they pushed the door open. [Translator speaks] So after that the ICE agent came in and talked to me in a bad way and said that he was looking for a criminal. [Translator speaks] So as you can see, we are humble people, we're Christians, we don't harm anyone. I don't have much time to tell you my situation, but I have the bracelet right now on my leg. [Translator speaks] When they put the bracelet on me, I said, 'Why me, why me, I'm not a person that harms anybody, I'm a person that works hard and I'm not a criminal. And even criminals don't get that kind of treatment. Why are they treating people that work and don't harm anybody this way?' [Translator speaks] So I fell into a really deep depression and right now, even when I just go to the grocery store, I feel like there will be ICE agents and I'm afraid that I will be sent back to my country. And I'm scared and that's it.

**Nadine Sharafa:** Good evening, my name is Nadine Sharafa, I'm a member of the Arab Resource and Organizing Center. I wanted to thank the Commissions for putting this evening together. On March 21<sup>st</sup>, myself, as well as 7 other Arab-Americans were unlawfully attacked and arrest by the SF Police Department. I'm not here to talk about the attacks, but I'm here to talk about a particular incident that occurred throughout the arrest and



booking process. Throughout the arrest process, when first we were in a van, myself as well as another woman, Arab-American, we were asked several times if we were American citizens. Now, I actually had my passport in my purse because my wallet was stolen so I didn't have any other ID, so I'd been carrying my passport. So every time I was asked that question by several police officers, some of the same police officers asked me again. I said, 'you have my passport and I'm not answering that question any more.' We went to jail. After 12 hours in a holding cell we were finally booked and went into jail and after a breakfast at 5 am, before lunch at 10 am, when I was in B-Pod in jail, I was then asked, along with 4-5 other women, to be moved, to pack up my stuff and move. So we packed up. All we had was blankets. And we're going to F-Pod. And while we're in line, the officer said, 'We're transferring you over to another Pod, any questions?' And I said, 'Yes, why are we being transferred to another Pod?' And then she said, 'B-Pod was intake, you're going over to the next step.' Which didn't make sense to me, because several people in B-Pod were serving longer terms versus just a few week intake. Before we went over to F-Pod, as we're carrying our plastic bags with our blankets in it, myself and the 4-5 other women were standing in line to go into a room and I saw an individual in the room and it was my turn so I walk into the room. It's myself and what I saw was an ICE agent. The ICE agent said, 'Hi this is my name and here is a form', and gave me the form. And it was a form, front and back with a place where you can put in your fingerprints. [bell indicating time was up].<sup>386</sup>

At this point in Nadine's story, a Sheriff's officer who was providing security at the hearing came up to the podium where she was speaking and pulled the microphone away from her, denying her the ability to finish her story. The audience booed and some of the Commissioners rebuked him for having insensitively stopped her from talking in the middle of a story about encountering ICE in a local jail. Despite Nadine's 2 minutes being up, she was then allowed to continue in her story:

I'm sure to sign. He asked me if I was an American citizen. I said I didn't want to answer that question. And then he said, 'Can you just fill out this form?' I said, 'why are you asking me to fill out this form?' He said, 'Well the SFPD gave me this paper and I saw a paper with 10-15 names. And next to those names were where those people were born.' I happen to be born in Egypt. OK. And so.....[voice trails off]<sup>387</sup>

These testimonies echoed what SFIRDC had been hearing from their clients and immigrant members for years, and echoed testimonies that immigrants had provided at recent hearings that SFIRDC leaders wanted included in the joint hearing report. Such testimonies challenged the perception of many officials that the city truly was a sanctuary where immigrants felt safe to cooperate with city employees such as the police. For instance, at the Board's Public Safety Committee hearing at the beginning of February on the SFPD auto checkpoints, an immigrant resident testified that

My husband was walking home from work and the police followed him. They followed him into the building where we lived and they forced the door open into our house. They went into our house claiming he was a drug dealer. They found \$2,000. We showed them our pay stubs because my husband is a hard-working man and they still demanded that -- they still claimed that we were dealing drugs. They gave me a ticket and a citation to go to court at 850 Bryant [the Hall of Justice which includes the Superior Court, central jail, and SFPD's central administrative office] And I said I wasn't scared and they said that 'you should be scared, we can call immigration on you.' They laughed. They said that they would come back later because they knew my husband would deal drugs and he would have more money. I was very upset. I was begging them to give me the money back. "I need it for diapers," I said. They said, "If you go to Bryant and get the ticket..." but I never went because I was too scared. <sup>388</sup>

While sanctuary city policies aimed to diminish this type of fear and foster trust, undocumented immigrants were over and over again telling city officials in a direct, documented, unmediated manner, in public meetings, in front of television cameras, and on hearing transcripts, that their trust in local city government was broken. Gloria, an undocumented immigrant member of People Organized to Win Employment Rights (POWER) testified that

I'm happy to live in San Francisco because San Francisco is a place where many people fight for justice. And San Francisco, the San Francisco community is a community that elected the supervisors here. We want to say -- I want to say that there is no justice right now. The children are seeing a lot of injustice in our community. It's a crime that our children have to see and live this every day. The only crime that the community has committed, the Latino community has committed is trying to feed their children, their immigrant children. The children are stressed out when they see the police. There is no trust. We -- I demand for a long time we want a list of the police that have been mistreating the community. I want to see this list. We demand this list and we demand this list from the supervisors here that represent us. As a member of a community that lives in the Mission, I know this is happening. I know there is a lot of abuse that is happening in the Mission. I see it every day and they beat the members of our community. Our people are wounded. Their souls are wounded and so are the youth that are watching this happen. This hasn't been going on only recently. This has been going on for the last 20 years as someone said. The original inhabitants of this land, the indigenous people did not treat inhumanly the people who came here. Why are we treated inhumanly? We are working people. We are the people who clean your homes and allow you to work here today. We clean the city and we make the city function. So don't treat us like this. We demand to be treated like humans, not like animals. And if you don't want to give us this list, then we'll keep pushing, we'll keep pushing for it. We're

grateful for the supervisors meeting with us here today and they want to work with us. Thank you.<sup>389</sup>

Immigrant advocates also spoke at the HRC/IRC joint hearing on behalf of immigrant residents who they had served or who could not make it to the hearing. One advocate, Ana Perez - Executive Director of CARECEN - pointed out the disconnect between having the laudable values of accepting immigrants in San Francisco by passing sanctuary policies, but that the reality of fear and sadness that permeated the immigrant community in the aftermath of dealing with immigration officials or local officials who invoked the power and threats of the federal deportation system, or cooperated in immigration enforcement was unacceptable.

In the last six months, some of those folks in the community are not feeling so trusting of the police. But what's heart breaking to me is when I see a law-abiding, hard-working man come to my office and be in tears because of the way he was treated by the police. I am sure that, you know, stopping a car at 9:00 P.M., when you don't know if the person is armed, or you don't know what the person's intention is, must be very nerve wracking for police. I understand that. Yet, when you are dealing with individuals, heads of households, fathers with children in the vehicle, and the way the police talk to them is disrespectful or fear causing, that concerns us. So I come to you, and I am telling you, I have seen grown men cry in front of me and it's heart breaking and enraging. I know the intent is not to target these individuals. The other piece about this is the relationship between community and law enforcement. We know that our communities are victims of crime - we see it. We want a community that's safe. We want to work towards public safety. So the trust of the residents to police is crucial for us. [...] Our concern is when you take a number of crimes [done by immigrants] and target a whole [immigrant] community and establish policy [JPD's ICE referral policy] that basically gives the green light to any person to contact the immigration enforcement, ICE - that is extremely alarming. Why? In the community what we are hearing is people are afraid now to come forward. If, in fact, a woman is raped the street, they will just keep it to themselves. That individual who assaulted the woman may go free to commit more crimes. We want to make sure that the police department has trust in the community and the people can come forward to stop crimes [...] We know that the city is quite open and works hard to make sure that every resident in the city is welcomed. The sanctuary city ordinance proves that - we know that you are quite ready to defend the rights of all people who are here and that's a strong statement for a city. You know, at a time where immigrants are being persecuted and laws are being passed that are extremely punishing to immigrant communities, to have a city that says we recognize some of our residents have been here for 20 years, we recognize the failure of federal government to not put forward laws that allow these individuals to become lawful residents in our city, we recognize that and therefore we are going to create a sanctuary city. That's very commendable.<sup>390</sup>

Finally, Hillary Ronin, organizer and lawyer for La Raza Centro Legal had provided a “know your rights” training for dealing with the Police to undocumented day laborers who were members of the San Francisco Day Laborer Program (SFDLP). SFDLP was a city-funded day laborer hiring hall in the Mission. At the SFIRDC-organized Police Commission hearing a month earlier in mid-March on racial profiling and SFPD checkpoints, Hillary explained that

Today, I attempted to give a “know your rights” presentation to the San Francisco day laborers. I tried to tell them they have rights vis-a-vis the police and they stopped me mid-workshop to say, “Hillary, this is all great, but whatever is written on paper, that is not the reality on the street. The reality on the street is that we are treated like criminals when we do nothing. We’re stopped because we are black, because we are brown, because we are poor. Then we are mistreated. Our IDs are taken away. When we’re working we’re told to get off private property. Our cars are confiscated for having air fresheners on the rear-view mirrors. We are stopped for these so-called ‘quality of life offenses’ and referred to ICE and deported from the country.” These are the stories we hear on the street. I was in a roomful of 50 men, mostly Latino and some black and white workers. When they see police officers they feel fear, stress and terror.<sup>391</sup>

Following the IRC/HRC joint hearing on immigration enforcement, immigrant advocates, affected undocumented immigrants, and city officials were interviewed by media outlets Univision 14, LinkTV, *San Francisco Chronicle*, *Mission Local* news-blog, and journalists from the UC Berkeley Journalism School. SFPD Chief Fong continued to respond in disbelief that any systematic violations of sanctuary might be happening and that it was merely an issue of miscommunication largely due to immigrants not understanding police officers. She told the media

We are concerned about what is being said. In some cases, it is truly beyond the departments or the commissioners, and it’s the law. But at the same time, if there are areas that we can work better to improve upon because of communication ... If there’s misinformation or misunderstanding, then those are areas that we can [improve]. The more we talk to one another the more that there is a relationship and we can address those.<sup>392</sup>

Chief Fong had planned to retire the following day from her role as SFPD Police Chief; however, she delayed the retirement for another two months.

While no real commitments or resolutions from the IRC or HRC came out of the hearing, HRC staff member Lupe Arreola, a former housing rights organizer, worked with SFIRDC leaders to use hearing testimony, statistics, and analysis to compose an HRC report on immigration enforcement in San Francisco. The findings of the report included that

1. Immigrants and their families are suffering emotional, psychological, and physical abuse at the hands of ICE, and with collaboration by the city and county of SF.
2. Immigrants are unable to receive critical services.
3. Immigrants contribute to federal, state, and municipal taxes. All people regardless of status should receive benefits.
4. Immigrant communities are reluctant and scared to participate in Census 2010
5. Police are asking if those arrested are citizens or where they are from
6. SFPD county sheriffs provide a list of arrestees to ICE agents who then interview immigrants in jail and harass them or put them in deportation proceedings.
7. Federal ICE agents are not culturally competent and do not abide by law requiring warrants for search and seizure during raids
8. Racist articles in the *San Francisco Chronicle* have instigated xenophobia and increased racism, as well as reactive policies
9. SFIRDC represents 30+ organizations supporting immigrant grassroots communities in SF
10. Immigrant workers and families are unjustly having their cars seized by SFPD for a mandatory minimum of 30 days.
11. Youth are being referred to ICE without due process, before their felony petition is sustained. Families are being split up without legal cause.
12. The City of San Francisco must pressure federal government for comprehensive immigration reform
13. Raids abuse immigrants and families
14. LGBTQ couples are unable through federal law to receive immigration benefits.
15. Immigrant workers are active contributors to our city and economy
16. People who are in the process of adjusting their status legally are sometimes unable to work
17. Immigrants and their families suffer emotional trauma waiting for Immigration Reform

The report would be shared with the Mayor's office, Board of Supervisors, and the Police Department but like many reports produced on sanctuary city related issues, it's main purpose was to "educate" and "inform" officials, to cultivate their support for immigrants with the hope that it would have a variety of unforeseen effects. SFIRDC found value in creating such a symbolic document that might serve to, if at least in a minimal way, counter-act the anti-immigrant cultural attack that was underway in the City – fighting anti-immigrant articles with reports, paper with paper as one method within an arsenal of pro-immigrant methods.

### **Conclusion**

The HRC/IRC joint hearing on the impact of immigration enforcement highlighted that while city officials might intend a policy like the sanctuary ordinance to be

implemented with success throughout the city even after translating that policy into department-specific protocols and training every last city employee on those protocols, the results for immigrants would not live up to the advocates or city official's expectations. No matter how much department heads told immigrants that they should trust that the city government, immigrants saw their family members being deported with the help of city employees. With immigrant testimonies explaining how the police were engaging in practices that invoked or even activated the federal immigration apparatus to deal with undocumented immigrants, the public record was imbued with the feedback from the community about how a well-intentioned plan to implement sanctuary that was the product of immigrant rights advocacy and legislative and executive initiative had not taken hold in the front line ranks of the city employees. Immigrant advocates would need to remain eternally vigilant into instances of city employee non-compliance with city and department policy.

## **CHAPTER 8**

### **HIRING TO ENSURE THE SAFETY OF THE SANCTUARY CITY**

#### **Introduction**

While the HRC/IRC joint hearing raised the continuing problem of San Francisco police participation in federal immigration, the city began its search for a new police Chief who would uphold the city's sanctuary policies. This chapter explores that nationwide search in May 2009 with a focus on the man who would become the next San Francisco Chief of Police, George Gascón. The chapter outlines how prior to coming to San Francisco, Chief Gascón's work in the Mesa, Arizona Police Department outwardly supported department sanctuary policies, while building into them more and more scenarios when those policies allowed for police to report undocumented immigrants to ICE. Further, it outlines how Gascón, while supporting sanctuary for law-abiding undocumented immigrants initiated conversations with ICE to begin a 287(g) program to deputize Mesa PD officers as ICE agents and target those undocumented immigrants for deportation accused of crimes. This chapter argues that to support sanctuary for law abiding immigrants is not opposed to supporting local police involvement with federal immigration enforcement and to further argue that sanctuary policies might be used by pro-deportation officials to clarify when cities can help deport individuals rather than as what conservative pundits and anti-sanctuary legal advocates portray them to be - blanket policies for the defiance of federal law. Finally, this chapter explores the developments of the San Francisco Immigrant Rights Defense Committee's grassroots policy advocacy campaign during period of mid-April 2009 through early August 2009.

#### **SFIRDC Works with the Board of Supervisors to Prepare an Amendment to the Sanctuary Ordinance**

By mid-April 2009, SFIRDC had moved forward with drafting a piece of legislation that had the potential for dramatically decreasing the Juvenile Probation Department referrals to ICE of undocumented youth who were innocent of their booking charges or who committed minor offenses. The aim of the policy would be to restore sanctuary city due process for youth and restore trust in law enforcement. The policy would move the point of a referral of a youth suspected of being undocumented from the booking stage until the point in the criminal justice process after a juvenile court sustains a youth's "felony petition" - a juvenile court's finding of guilt on a felony-level criminal charge. The policy also allowed for youths who were tried as adults to be reported to ICE since these usually were more serious cases that likely would lead to conviction. The coalition thought that allowing for juveniles with a sustained felony petition to be deported would address any counter-arguments about harboring serious or violent offenders.

Due to the fact that the coalition had yet to receive a commitment from the Mayor that he would make this policy change on his own, it was looking more and more likely that the coalition would need to pass the policy at the Board of

Supervisors. With Mayoral opposition and the potential for a veto of a Board initiated policy change, to pass the policy, the coalition would need at least 8 yes votes from the 11 Board of Supervisors members to overturn the Mayoral veto. Based on the vote on the resolution on the UN Convention on the Rights of the Child, the coalition was expecting yes votes from Supervisors Chiu, Mar, Campos, Avalos, Daly, and Mirkarimi for sure, and hopefully Supervisors Dufty and Maxwell as well. Passing the resolution was non-binding, but passing an ordinance demanded a deeper commitment to sanctuary on the part of the Supervisors and the vote could therefore come down differently.

Passing the policy at the Board of Supervisors would theoretically make the policy more immune from the ebbs and flows of Mayoral and Department Head political will which could lead to reactionary conservative anti-sanctuary policy changes in the future. Passing the policy as a binding city law would also mean departments could be held accountable to the Board of Supervisors for implementation and violations of the law. The coalition and the Supervisors who were interested in sponsoring the legislation discussed the idea of the policy being an amendment to the Sanctuary Ordinance – Chapter 12H. However, members of the Board of Supervisors and some coalition members expressed concern about reopening the sanctuary ordinance since this may allow opponents of the ordinance to propose policies that weaken or gut the ordinance, especially given the political climate around this issue at this moment. The last time the sanctuary ordinance was amended in 1993 was to insert the felony booking exception.

The Coalition decided that if the Mayor didn't move forward on this policy change as an executive maneuver then in the following 2 weeks, Supervisor Campos should introduce a first draft of the policy as its sponsor with Board President David Chiu as co-sponsor, and send it to committee for a hearing. During the next week in April, Mayor Newsom announced his intention to run for California Governor with his main opponent being former Governor Jerry Brown in the 2010 election. Campos and Chiu advised SFIRDC to begin providing stories of youth impacted by the Mayor's JPD policy in the media so that when the new policy was introduced, the opposition would be blunted.

In this same week, Supervisors Campos and Avalos, sitting on the Board's Budget and Finance Committee would hear from representatives of the Juvenile Justice Coordinating Council (JJCC), a council of City and County departments, chaired by JPD Chief William Sifferman, that work with youth and who set city-wide joint priorities for providing juvenile-focused grants to community based organizations. Due to a budget crisis following the 2008 financial crash, the budget for grants for community based organizations doing this juvenile-focused work had been cut from \$16 million to \$10 million. They were coming before the Committee to discuss an application for state funding for juvenile programs, which would be due in two weeks. Part of this application included a local action plan that in previous years had explicitly mentioned undocumented youth as a vulnerable population that had received a gap in funding and therefore would be a priority for the JJCC's funding - the JJCC would provide grants to community based organizations to serve monolingual unaccompanied undocumented youth. The rationale was that with limited "ad back" funds in the city and county budget which would be spread to



many different agencies, the only way to secure services for these undocumented youth would be to make more of the Juvenile Justice Fund available to CBOs to serve them. However, in the April 2009 local action plan, which the JJCC had already completed and seemingly waited until the last minute before submission to the State to show the Board of Supervisors, had removed all mention of undocumented youth. When Supervisor Campos asked if this meant that they were deprioritizing undocumented youth, the JJCC representatives including Chief Sifferman told him no, rather that no vulnerable populations would be specifically mentioned, all the while all vulnerable populations, including certain racial groups in certain neighborhoods, would be benefactors of the JJCC services. Campos found this erasure to be reflective of a very normal but incredibly unfortunate erasure of the people themselves in the governmental discussion on youth. Campos told Chief Sifferman and the representatives that had the local action plan been vetted through a public hearing at the Board's Public Safety Committee, which plays a role in setting city-wide priorities for public safety, the public would have told the JJCC that undocumented youth need specific mention in the plan.

When a Youth Commissioner who had a seat on the JJCC for the current year and previous year came before the Board Budget and Finance Committee a week later, he mentioned that previously, the entire JJCC had voted on retaining the language prioritizing undocumented youth, but that in the most recent draft of the plan, the language had been removed without explanation. Supervisor Campos then asked a Mayor's Office representative who was present whether there had been a decision to cut funding for community organization grant recipients who were serving undocumented youth. The Mayor's representative responded that there had not been one.

After months of planning, May 1<sup>st</sup> had come and SFIRDC decided that the Mayor had long enough to move to change the JPD policy on his own. The coalition was ready to move forward with the Board of Supervisors policy. SFIRDC also played a central role, joining the *Deporten a la Migra* (Deport ICE) contingent in organizing this year's May Day mobilization, which was themed "Workers United Across Borders." The platform of the event was centered on legalization for undocumented immigrants with no guest worker programs, worker's rights, and an end to the raids all over the country. The flier for the event would state, "This International Workers day, let's take the streets to demand respect for our sanctuary city, equal rights for immigrants, no cuts to any services, and peace with justice in Iraq, Afghanistan, Palestine, and beyond." Following a march of around 650 people from Dolores Park in the Mission District down to Civic Center, the seat of City Hall, SFIRDC members and other community members visited the Mayor's Office to present him a mock pink slip and deportation order for his deportation. The march then went to US. Senator and former San Francisco Mayor Dianne Feinstein's San Francisco office sending the message of the event platform's objectives.

This same day, Marc Tizoc Gonzalez, President of the East Bay La Raza Lawyers Association wrote a letter to Mayor Gavin Newsom urging him to revise the JPD youth referral policy. He wrote that

We find San Francisco's policy lamentably complicit in the scapegoating of immigrants, as emblemized by the Bush Administration's draconian 'Endgame Office of Detention and Removal Strategic Plan' and urge you to adopt the proposal issued by the SFIRDC to refer to ICE youth suspected of being undocumented only after a juvenile court has found that the youth committed a felony and after the youth has been given an opportunity to be screened by immigration attorneys to determine if the youth qualifies for immigration relief. This proposed change respects the human and constitutional rights of all persons to the due process of the law and guards against the equal rights violations endemic to a policy where probation officers refer criminally charged youths to ICE before the district attorney even files charges and before a youth has the chance to appear in juvenile court.<sup>393</sup>

Tizoc Gonzalez also linked deportations to violations of equal protection and right to be free from cruel and unusual punishment.

A few days later in early May, SFIRDC met with Supervisors Campos, Avalos, and Mar to discuss the youth sanctuary policy. The coalition would discuss what was going on with ICE raids in the city, police checkpoints in the Mission District, and would present a draft of the youth policy recommendations that the coalition had written. The coalition would get feedback from the Supervisors and commitments on next steps. In this conversation, Supervisor Campos's office committed to taking a lead on the youth policy with his legislative aide and former Immigrant Rights Administrator, Sheila Chung Hagan being the staff person to be the lead on working with the coalition and City Attorney's office to draft the policy, and to organize the political players in City Hall with Campos to support it. On the coalition side, Angela Chan of Asian Law Caucus, Abigail Trillin of Legal Services for Children, and Angie Junck from the Immigrant Legal Resource Center would be the leads to work on the youth policy with Sheila. These contacts/leads would be in charge of following-up with the Supervisors' legislative aides on various tasks and information sharing and inform the larger coalition about minor decisions that were made by the leads or about major decisions which needed all-coalition discussion and group consensus-based decision. The leads would present updates at all SFIRDC meetings and facilitate working groups at general meetings. Diana Oliva from CARECEN was the facilitator of the coalition and would organize coalition activities, maintain to do lists, planning documents and meeting minutes, drafts of the policy, records requests and filing, as well as scheduling.

At this same time, Jaxon Van Derbeken, the most vocal anti-sanctuary journalist at the *San Francisco Chronicle* wrote an article breaking a story about a 15-year-old Honduran teenager who was deported in 2008 under the Mayor's new JPD policy and who was just rearrested in late March 2009 for selling crack. The boy was abandoned by his mom in Honduras, and in 2008 when he was arrested, despite Juvenile Court Commissioner Abinanti ordering a youth disposition for him to be handled by the social welfare system, he was referred to ICE.<sup>394</sup> Van Derbeken's aim seemed to further push the argument that youth being deported are in fact unaccompanied Honduran crack dealers, serious criminals, rather than

innocent youth or youth who committed minor crimes. Nathan Ballard of the Mayor's office responded by saying,

The case of Francisco G. [the youth who was re-arrested] shows that even when juvenile suspects are referred to ICE, it doesn't mean that they will never come back and reoffend. This shows that we need serious immigration reform on the federal level - local governments bear the brunt of a failed immigration policy. We are doing everything we can to keep criminals away and off our streets, but we can't do it alone.

While his point might have been to argue that federal immigration reform would somehow keep serious criminal offenders off of San Francisco streets or solve crime, he also pointed to a more salient point – that deportation did not stop crime in San Francisco. In a sense, the Mayor's staff person was pointing to the flawed rationality of the Mayor's JPD policy that assumed that serious crime committed by immigrants would vanish if deportations banished those immigrants through deportation – the “double punishment” of serving a sentence for the crime and then being removed from the city at a single point in time.<sup>395</sup> In response to this article and other anti-sanctuary articles written by the *Chronicle*, SFIRDC conducted a letter writing campaign to the *Chronicle* condemning this article and the articles written over the previous year by Van Derbeken and praising them for certain pro-immigrant articles. SFIRDC organized for 121 letters to be written by members of each of their organizations sent to Executive Vice President and Editor Ward Bushee, as well as additional letters to Spanish media outlets on the *Chronicle's* anti-immigrant bias. Following the letter writing SFIRDC was able to meet with the Editorial Board and with Van Derbeken, but to no avail – their position on the stories and media coverage remained steadfast.

At the end of the month, three members of the Minutemen for American Defense invaded a home in Arivaca, Arizona to shoot and kill a Latino citizen father and his 9-year-old daughter, and to shoot her mother who survived, in the process of stealing jewelry to fund their anti-immigrant organization. Arivaca was a town very close to popular immigrant border-crossing town Sasabe in the Arizona desert. Shawna Forde, who planned the invasion and killings, had appeared on television in 2006 as a representative of the Federation of American Immigration Reform (FAIR), an anti-immigrant group started by white supremacist John Tanton. In San Francisco, this incident got a lot of media attention, shocking the immigrant rights community.

A week after the Arizona shootings, the anti-immigrant think tank, the Center for Immigration Studies (CIS), which started as a project of FAIR, announced that it would be awarding *San Francisco Chronicle* journalist Jaxon Van Derbeken and Deborah Saunders, a professed Republican conservative *Chronicle* Columnist, the annual “Eugene Katz Award for Excellence in the Coverage of Immigration” for their journalism targeting undocumented youth over the previous year. CIS had given this same award to anti-immigrant pundit Lou Dobbs in a previous year. The *Chronicle* described CIS as an “independent research group that studies the effects of immigration” while the Southern Poverty Law Center called CIS a far-right “hate

group” due to their racist, homophobic, and anti-immigrant positions. Following speeches by Saunders and Van Derbeken, both accepted cash awards from CIS of \$1000 each. In Van Derbeken’s acceptance speech he noted that what led to his stories on the JPD international family reunification fly-back policy, on the undocumented youth crack dealers who escaped from southern Californian group homes, about Edwin Ramos having been arrested and released by JPD prior to killing the Bolognas, and about undocumented immigrant adults who were posing as youth to game the system, was that originally JPD probation officers who were fed up with the sanctuary-policy came to him with the stories and illegally gave him juvenile files which he then published – a misdemeanor crime. When talking about the JPD fly-back policy Van Derbeken would note:

Now, it wasn’t a matter of deporting them, because they didn’t want to report them to ICE. So they had to use probation officers as basically escorts. So they put them on planes and they would go as far as Texas or Florida and then they would go back to Honduras or the original country that they were from. Then they’d come right back. Or if they didn’t come back, there was no supervision of them. So no one knows what ended up happening. But when they did come back, it became this horrible frustration for folks. So one of the reasons that generated this story was that people just didn’t – they just didn’t understand how this could keep going and how this system could keep going on for so long. And there were people [in JPD] that were trying to call attention to it and they would go to the judges or the commissioners in the youth system and they’d say, ‘how can you do this, this is illegal, we have to report these folks to ICE.’ And they’d say, ‘you do that, you’ll be in big trouble.’ And they didn’t. And they were so frustrated by it, they ended up coming to me. (Laughter.) So that tells you how truly frustrated these folks are. [...] And the other thing is that because these are mostly juvenile offenders in the system, we could never – we couldn’t go to court, we didn’t have – I had to rely on people who were prepared to break the law, although sending them back without reporting to ICE theoretically was also breaking the law. But anyway, the people would be able to give me their records so we could see how many times that Mr. Ramos, who was – is now charged with killing three family members of the Bologna family - he had benefited not once, but twice.<sup>396</sup>

SFIRDC members condemned Van Derbeken’s acceptance of the award by writing an Op-Ed in the online news blog *Beyond Chron*. The authors pointed out to the public that the CIS founder circulates in white nationalist and holocaust denier circles, that CIS is against all immigration to the U.S., and in support of sterilizing third world women. They also argued that awarding Van Derbeken makes sense given his stereotype-laden, anti-immigrant attacks in his immigration articles – articles that successfully generated political pressure on Mayor Newsom to change the youth referral policy in July 2008. By this point, 130 youths had been referred to ICE since the July 2008 change. In response to SFIRDC’s criticism and various articles that exposed Van Derbeken’s acceptance of the award, CIS Director Mark

Krikorian responded by claiming there is a “jihad against dissent from the elite consensus for open borders.”<sup>397</sup>

During a Board of Supervisors meeting Supervisor Campos would also address Van Derbeken’s acceptance of the award and question his objectivity in journalism and the objectivity of the Chronicle in covering the issue of sanctuary:

So as we go forward and we look objectively at the past coverage that this reporter provided on this issue it does make you wonder about objectivity. If you look at the society of professional journalists which, by the way, is a society of journalists throughout the country, they issue what is called the code of ethics which is voluntarily embraced by thousands of journalists throughout the country as a basically guide for the kinds of actions and conduct that you as a journalist, a reporter, should follow. And a basic tenet of that code of conduct is the principle you should act independently - that journalists should be free of obligation to any interest other than the public's right to know and one of the things they point to in describing compliance with that tenet is that a reporter should remain free from associations and activities that may compromise your integrity or damage credibility. So the question to this reporter and the "*Chronicle*" is: do the actions that have taken place in the last couple weeks comply with that tenet? Going forward, can it be said that this reporter is going to bring objectivity to this issue ask what is remarkable about his appearance at the CIS Awards is that not only did he go and accept the award but he made a number of statements, many of them derogatory statements about this city and the people who disagree with some of the coverage and the policy changes that happen. [...] In this case, I can't say that the actions of this individual point to objectivity. [...] So going forward, I hope and I plead with *The Chronicle* that they provide objective coverage, the city deserve nothing less. We deserve fair, objective coverage, that's all we ask for. Thank you very much. [Applause]<sup>398</sup>

During this same period in May 2009, SFIRDC was working with the Democratic County Central Committee (DCCC) to pass another resolution, this time condemning the recent ICE raids, which had been occurring since May 2008. ICE had continued to raid the homes of several San Francisco families, forcibly entering their residences without warrants, threatening individuals inside the homes with lengthy periods of incarceration, and detaining and interrogating individuals based on their appearance and without individualized suspicion as to their immigration status. SFIRDC and DCCC’s resolution found these raids to constitute “an ineffective, costly governmental tactic that terrorizes San Francisco communities, tears apart hard working families, and creates a fear that no modern society built on laws and justice should tolerate.” The resolution declared that the DCCC

hereby condemns the recent ICE raids, arrests, detentions, and deportations; urges the U.S. Department of Homeland Security to end these military-style activities against immigrants within its boundaries and to review the conduct of recent raids in San Francisco; supports comprehensive immigration

reform that includes the right to family reunification and a path to citizenship for all undocumented immigrants; and opposes policies and programs that terrorize immigrant workers.<sup>399</sup>

In addition, the DCCC resolution urged the “San Francisco federal delegation” in Congress, including Senator Dianne Feinstein, Senator Barbara Boxer, Speaker of the House Nancy Pelosi, and Congresswoman Jackie Speier, to call on the Obama Administration to appoint a new U.S. Attorney for the Northern District of California. If done, this would oust Joe Russionello who was continuing to threaten the City with federal prosecution over the City’s sanctuary policies. Lastly, the DCCC resolution, sponsored by San Francisco Supervisors Eric Mar, David Campos, and David Chiu, along with Laura Spanjian, Debra Walker, Aaron Peskin, Robert Haaland, Hene Kelly, Rafael Mandelman, Michael Bornstein would concisely express the city’s sanctuary values:

The City and County of San Francisco values the contributions of all residents, including immigrant residents, and respects the rights of all residents to live free from discrimination, exploitation, and repressive federal immigration enforcement; and thus has had a Sanctuary Ordinance since 1989 to promote community policing, encourage diversity, and welcome full civic and community participation by all residents regardless of their immigration status.<sup>400</sup>

The coalition had also made some forward progress on the youth policy. Working with Sheila Chung Hagan in Supervisor Campos’ office, a first draft of the youth policy had been completed and they had sent the language to the City Attorney to review as to form. For the City Attorney to review it as to form would mean that he or one of his staff would review it with the intent of assessing whether or not it would withstand legal challenge if the city were sued.

However, in the midst of all this movement to restore sanctuary in San Francisco, the coalition soon became aware that the Obama Administration was planning to expand a program that would undermine sanctuary city procedures in San Francisco. ICE’s new finger-print sharing program called “Secure Communities” was going to be implemented in all local jails throughout the country by the end of 2012. The program which started in 2008 by the Bush Administration provided local law enforcement agencies with fingerprint technology that allowed for all fingerprints taken by police or sheriffs officers at the booking stage and which normally were merely sent to the FBI for a criminal background check to be further passed on to ICE for an immigration status check. At this point, Secure Communities was operational in 48 counties including Los Angeles, Dallas, Houston, Miami, Boston, and Phoenix. President Obama was seeking, through his 2010 Budget proposal, a 30% increase in funding for Secure Communities, which would amount to another \$200 million, with the plan to increase the budget to \$1.1 billion by 2013. This had the potential for surpassing all officer discretion with reporting immigration status, but at the same time, by taking the reporting out of their hands, was not a mandate to report status. It could simultaneously use the local police and

sheriff's department as a node or tool for the collection of information, while removing their ability to make a decision about whether or not they would report an immigrant to ICE. This would threaten to nullify the entire policy world of Sanctuary in the law enforcement agencies that SFIRDC was battling over. But seeing that there was no immediate threat of Secure Communities being initiated in San Francisco, SFIRDC needed to maintain their focus on the issue at hand – the rapid deportation of youth by Juvenile Probation Department triggered by Police Department charges.

### **The Sanctuary City Needs a New Police Chief**

In mid-May, with the impending retirement of SFPD Chief Heather Fong, the Police Commission's process of looking for a new police Chief became increasingly public. The media contacted the Police Commission President Theresa Sparks to ask about certain candidates even though the candidates' names had not been made public. The Commission President suspected that someone who had been consulted during the police chief search process, which had been taking place since January 2009, had leaked the names to the press maliciously to get those candidates to withdraw from the competition. The idea was that a candidate would fear losing their existing job if the city or county they worked for found out that they were applying for the San Francisco position.

While the candidates were all confidential, Mesa, Arizona Police Chief George Gascón was a suspected first choice for his vociferously oppositional stance on using local law enforcement for conducting immigration raid-like sweeps in his city. He had made a name for himself as the arch-nemesis of the staunchly anti-immigrant Maricopa County Sheriff Joe Arpaio who was known for aggressively involving sheriff's officers in assisting immigration authorities with detaining and deporting immigrants entering through the Arizona border from Mexico. Arpaio, who had called Gascón an "illegal alien-lover", had been taking his ICE-trained Sheriffs officers into various towns around Phoenix to conduct "crime-suppression sweeps" which were essentially roundups of Mexican immigrants and Latinos. Back in June 2008, Arpaio had planned a sweep in Mesa. Gascón, who was opposed, demanded notification before the sweep was conducted and when he received it, sent out an enormous force of 132 police officers to the area of the sweep immediately before it started. This would not only signal to immigrants and Latinos to get out of the area, but also make the Sheriff's deputies seem puny in comparison and in need of police protection. Gascón too was in the area with his officers, sophisticatedly addressed the media like a police pop star, and received acclamations from immigrant leaders at a nearby anti-Arpaio, anti-sweep rally. The Sheriff's efforts at a sweep, which would net undocumented immigrants for, according to Arpaio, public safety purposes was thwarted. Gascón claimed that he had dispatched the officers for the sole purpose of keeping the Sheriff's Officers safe during the sweep.

Gascón was himself a Cuban immigrant who immigrated with his family to a suburb of Los Angeles when he was in high school in 1967. Prior to his position as Chief of Mesa Police, which began in 2006, he had served in the U.S. Army as a sergeant for three years in his late teens, then briefly worked for the Los Angeles

Police Department (LAPD) as a line officer before finishing college and then obtaining a law degree. In 1987 he re-joined the LAPD and rose in the ranks to Assistant Chief and Director of the Office of Operations. While at the LAPD, he was also vocal against Sheriff Arpaio's dragnet activities targeting immigrants and Latinos loudly expressing his opinion in the media that if victims and witnesses thought talking to local police would result in deportation, they would be less likely to report crime. Having been hired in Mesa as an outsider, one of his main roles was to clean up the department's rampant corruption and provide a fresh perspective on law enforcement. However, for many in the city and in the department, he was leading the police in the wrong direction – that direction included defending immigrants from bigots like Arpaio. While many found Arpaio. Many found Gascón to be highly educated and intellectual, others found him too liberal for Mesa.

Interestingly however, Gascón wasn't opposed to police involvement in immigration enforcement – in fact he took many steps to increase police involvement in immigration enforcement while at Mesa. When he arrived to Mesa, the department had a sanctuary policy outlining under what conditions Mesa PD could assist in immigration enforcement measures – “FLD 441-Arrest-Undocumented Foreign Nationals”. This policy had been approved by the prior Chief Dennis L. Donna and it had become effective on March 18, 2004, two years before Gascón had arrived in Mesa. The policy would state that

the responsibility for the enforcement of federal immigration laws rests with the Bureau of Immigration and Customs Enforcement (ICE). The Mesa Police Department will not participate in enforcement of federal immigration laws. The Mesa Police Department will take appropriate actions for violations of city or state criminal codes and or responsibility to any immediate threat of officer safety encountered during any ICE assistance.<sup>401</sup>

The policy stated “Do not stop persons for the sole purpose of determining immigration status. Do not arrest or detain a person when the only violation is an infraction of a federal immigration law. Do not contact ICE for the sole purpose of language interpretation.”<sup>402</sup> In the case that an officer were to determine that a violation of city or state criminal codes had occurred, the officer would determine if a welfare check was necessary or appropriate and to notify the patrol lieutenant of any calls of kidnapping, or immigrant smuggling. If the officer were to identify a building being used as a “transfer or holding facility for smuggling undocumented persons” or if they found out about “vehicles being used in smuggling undocumented persons”, they were to notify the patrol lieutenant. However, officers were not to notify the patrol lieutenant about undocumented persons they came across if they were “victims and/or witnesses of a crime or family disturbance”, if they were “found in the enforcement of minor traffic offenses”, or if they were discovered “when seeking medical treatment”.

The patrol lieutenant was the person in the Mesa PD who under this policy was also appointed as a liaison with ICE and he or she would attend ICE law enforcement quarterly meetings with the job of then dispersing all pertinent information from those meetings back to all Mesa PD lieutenants as needed. When a



Mesa PD officer notified the patrol lieutenant of an undocumented person, the patrol lieutenant would, under FLD 441, determine the need for additional response from specialized Mesa PD department units such as Intelligence, would call out those specialized units to the scene, or notify ICE's human smuggling/narcotics smuggling law enforcement unit by telephone.

However, aside from reporting for smuggling and kidnapping purposes, like San Francisco's sanctuary policies, there were also criminal triggers for Mesa PD's reporting individuals to ICE. They could notify ICE of a person in their custody who they suspected was undocumented if the person was arrested and booked on a felony charge or misdemeanor charge that was not a minor traffic violation. The officer could then continue holding that person in Mesa PD custody only if ICE placed an ICE hold, a "detainer", for that individual, but if they didn't the officer was not authorized to continue holding that person for ICE. However if the person was arrested in a more minor manor – a "cite and release", they typically could not notify ICE unless under certain other undescribed circumstances. Under no circumstances could juveniles be reported to ICE – officers were instructed to "process juveniles contacted, arrested, or detained for suspected criminal activity without regard to immigration status." Officers were also instructed to refer immigrants to community organizations *Chicanos Por La Causa* and Friendly House for assistance with immigration, housing, and social services.

However, two years later, in July 2008, the same month as the Edwin Ramos shootings in San Francisco were blowing up in national media, Mesa Police Chief Gascón would change the policy to expand instances where police could report individuals to ICE. While it was announced in July 2008, Gascón had been working on it with his legal staff since August 2007. The policy, Special Order 2009-01 "Immigration and Customs Enforcement Protocol" included a background for the policy change. The special order stated that

In 1996, the United States Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. 1101, et. seq (IIRIRA). IIRIRA made many changes to immigration laws including adding immigration consequences to certain crimes and requiring mandatory detention of Undocumented Foreign Nationals (UFNs) convicted of certain crimes. IIRIRA also addressed the relationship between the federal government and local governments by permitting certain designated officers to perform immigration law enforcement functions provided they receive the appropriate training and agree to function under the supervision of officers from Immigration and Customs Enforcement (ICE) to identify, process, and when appropriate, detain UFNs they encounter during their regular, daily law-enforcement activity.

Federal immigration laws are complicated in that they involve both civil and criminal aspects. Federal agencies such as ICE have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Immigration violations are different from the typical criminal offenses that

patrol officers face every day, whose law enforcement activities revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters. The immigration status of any particular person can vary greatly and whether they are in violation of the federal immigration regulations, civilly or criminally, can be very difficult to determine without a special expertise.

The MPD is committed to partnering with federal agencies and others to the extent allowable under federal, state and local laws to address criminal activity within our community. This practice is consistent with our duty to ensure the safety and well being of all persons, regardless of their immigration status. The MPD provides law enforcement services and enforces the laws of the City of Mesa, the State of Arizona, and the United States Constitution impartially. While the investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to ICE, the MPD commits to cooperating with ICE and others, to the extent permitted by law, on any criminal activity that threatens the safety and well-being of our community. In enforcing the laws, officers may legally stop, detain or arrest anyone when reasonable suspicion or probable cause exists that a crime has occurred. [Appendix-0\_0(1)]<sup>403</sup>

Gascón's Special Order, like the FLD 441 which preceded it, mandated police officers to ask adults who were "arrested for committing a state or local crime" about their immigration status. But it went further than FLD441 and like Mayor Newsom's JPD policy in San Francisco, it also mandated arresting officers to ask juveniles who had been charged on a felony charge (those covered in law 13-501A 1-5 of the Arizona Revised Statutes) about their immigration status. The order instructed officers who "developed information that the suspect is in the United States unlawfully" that the

the information shall be detailed in the DR (Department Report). The detention supervisor shall contact ICE (Law Enforcement Agency Response Team (LEAR)), complete an ICE Inquiry (NLLQ) [criminal history inquiry to ICE's Law Enforcement Support Center] as needed, and shall notify the Support Services Lieutenant as soon practical. A copy of the NLLQ and any ICE response shall be forwarded to the Support Services Lieutenant.<sup>404</sup>

Also, going beyond what San Francisco's sanctuary policy allowed for and what the previous Mesa policy allowed for, Gascón's policy allowed for police officers to inquire about immigration status any immigrant was merely being cited and released rather than just those being booked, or if a "long form complaint" was being sought for a state or local crime. In this case, if the officer(s) "developed information that the suspect is in the United State unlawfully", the officer was mandated to

document it in a DR and shall refer the individual to ICE by completing an ICE Request for Inquiry Form, noting in the remarks sections that the person was

cited and released, and forwarding the form to the affected District Coordinator/Metro Resources Lieutenant. The District Coordinator/Metro Resources Lieutenant is responsible for ensuring the notice to ICE (NLLQ) is completed. The ICE Request for Inquiry Form, NLLQ and any response from ICE shall be kept at the affected district.<sup>405</sup>

In each of these cases under the Special Order, if the arresting officer developed information that the individual was in the United States illegally without asking about his or her immigration status, that is if it was voluntarily provided or by some other manner, they found out without asking, the officer was also allowed to complete the ICE Request for Inquiry Form and Mesa PD's District Coordination department would then refer the information to ICE. Officers were also allowed to include unsolicited information that they came upon about someone's immigration status "during the course of his or her enforcement efforts" of the "person(s) being investigated", in a Field Interview Card. They could also put that information in the ICE Request for Inquiry Form, which would be sent to the affected District Coordinator or Metro Resources Lieutenant who would forward it to ICE. The order directed the officers to consider the individual's "ties to the community, including family ties and relationships, and length of residence, prior criminal activity, and any other facts bearing on the risk of nonappearance or danger to the public" when considering whether to cite and release an immigrant.

However, the policy expressly forbid Mesa police officers from engaging in "bias-based profiling, also referred to as 'racial profiling', when conducting stops, detentions, or arrests of any subject." Also the policy would indicate that

Consistent with our efforts to protect the safety and well-being of the community and to encourage the public to report criminal activity, department personnel shall not ask a person about his or her immigration status who is a victim of a crime, a witness to a crime, a juvenile, unless chargeable for a crime covered in ARS 13-501A 1-5 (felony), [someone] stopped and/or cited for a civil traffic violation with a valid driver's license or evidence of identity pursuant to ARS 28-1595(B), someone seeking medical assistance, a victim of a domestic violence incident, or a community volunteer in police service (including but not limited to police service based programs such as neighborhood watch, community forums, or community advisory board; youth programs, Making Every Student Accountable (MESA) Program, or the citizens police academy or similar volunteer organization).<sup>406</sup>

In the case that an officer received a Detention and Removal Order (DRO) "hit" or response from ICE after notifying them that the individual was in custody, that meant ICE was requesting the Mesa police to hold the individual for ICE to detain and deport them, officers were instructed to call ICE to check if the DRO was of a civil nature or criminal in nature – that is, they wanted to know if the DRO was sent by ICE due to an immigrant perhaps missing a non-criminal immigration hearing or was it due to the fact that ICE prioritized the individual for removal due to criminal

activity that he or she was part of. While the police were waiting for a response from ICE, they were allowed to continue to detain the immigrant. The order indicated,

Arizona law authorizes police officers to enforce provisions of the criminal law. The authorization is limited to criminal and does not include civil. Therefore, officers shall not transport for civil violations or continue to detain if the only violation is a civil DRO hold.<sup>407</sup>

Therefore if the DRO were civil, then the officer would document that, forward the information to the District Coordinator/Metro Resources Lieutenant, and release the individual to the street. However, if the DRO were a criminal hold then the officer would continue to detain the individual, complete a Department Report titled "Possible Federal Immigration Violation", ask the individual about his or her country of birth and whether they were in the United States legally, and transport them to ICE custody if requested by ICE.

While Gascón announced the policy change in July 2008, he would conduct trainings on the new policy over the following five months before the policy would take effect on December 15, 2008.<sup>408</sup> For those who hadn't been arrested for a crime, Gascón saw his work as ensuring sanctuary for non-criminal immigrants as an issue of constitutional rights and common sense public safety:

People don't seem to grasp that there are some serious social and constitutional issues here that are at stake. If we allow one group of people to be treated with less than the full rights [within] our constitutional framework, then we all lose.<sup>409</sup>

The same month that Gascón announced the new ICE referral policy – July 2008 - he wrote an op-ed article in the New York Times noting:

If we become a nation in which the local police are the default enforcers of a failing federal immigration policy, the years of trust that police departments have built up in immigrant communities will vanish. Some minority groups may once again view police officers as armed instruments of government oppression. A wink and a nod will no longer suffice as an immigration policy. Effective border control is a critical step. But so is ensuring that otherwise law-abiding undocumented immigrants have the same protections as everyone else in a modern, free society.<sup>410</sup>

Mesa Police Association President Fabian Cota said, "They call us a 'sanctuary city', which is kind of a laugh. We arrest and call in more illegals than the Sheriff did."<sup>411</sup>

### **Mesa's 287(g) Program**

This wouldn't be the only action that Gascón had taken to increase Police involvement in immigration enforcement activities in this period. In July 2007, the same month that he starting to work on his Special Order policy change, he had

taken the most extreme action that a law enforcement official can take to intertwine the work of police officers with ICE by initiating conversations with ICE to create a 287(G) Memorandum of Agreement (MOA). This MOA would allow ICE would delegate “nominated, trained, certified, and authorized Mesa PD personnel to perform certain immigration enforcement functions.” 287(g) agreements had come into existence because in 1996, Section 287(g) of the Immigration and Nationality Act (INA) was amended by the Homeland Security Act of 2002, Public Law 107-296, authorizing the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel could perform certain functions of an immigration officer.

In response to Chief Gascón contacting Phoenix ICE to start discussions about a 287g program in Mesa in July 2007, ICE sent a response letter to Gascón in September 2007, appeared before Mesa City Council in October to give a 287(g) presentation. After the City Council showed more interest in moving forward with the program in December 2007, four months later in mid-March 2008, Chief Gascón wrote to Julie Meyers, Assistant Secretary of ICE in Washington D.C. requesting participation in the 287(g) program. Chief Gascón wrote Secretary Meyers saying:

I’m writing to request participation in the Delegation of Authority Program pursuant to 287(g) of the Immigration and Naturalization Act. Given our past relationship with ICE, this partnership will enable us to better serve and meet the needs of the residents of Arizona. I have been in communication with your office in Phoenix. ICE Group Supervisor Jason Kidd has been very helpful and encouraging. With his advice I am proposing the following: 1) Establishment of an Identification Review Officer at Mesa Police Department, located in Mesa, Arizona. 2) Train ten (10) Detention Officers assigned to our Holding Facility, who have passed a security background acceptable to ICE. 3) Training facilities are available at our Mesa Public Safety Training Facility where instructors can utilize computer training aids, videos and any other materials they may need in instructions.

This program will allow us to enter into a Memorandum of Understanding that will enable us to participate with ICE in identifying criminal illegal aliens who pose a risk to the citizens of Mesa. I look forward to your speedy endorsement of this request and moving forward with this program for the benefit of all.<sup>412</sup>

To explain the amazing degree of police integration in immigration enforcement efforts that the pro-sanctuary Police Chief Gascón initiated by beginning conversations with ICE in August 2007 and through this letter in March 2008, it warrants a more detailed investigation of the Mesa PD’s 287g program. The agreement with Mesa PD, which would eventually be signed by the Mesa Police Chief and the Mayor in November 2009, would state that the intent of the Mesa PD and ICE in entering into this MOA, was that these delegated authorities will “enable the Mesa PD to identify and process immigration violators and conduct criminal

investigations under ICE supervision, as detailed herein, within the confines of the Mesa PD's area of responsibility."<sup>413</sup>

The expressed purpose of the collaboration would be to "enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community." The MOA would set forth the terms and conditions for how the selected Mesa PD personnel would be nominated, trained, and approved "by ICE to perform certain functions of an immigration officer within the Mesa PD's area of responsibility." ICE officers provided supervision only as to immigration enforcement or immigration investigative functions as authorized by the MOA, while Mesa PD would retain supervision of all other aspects of the employment and performance of duties by the participating Mesa PD personnel.

Mesa PD would aim to complete all criminal charges with a suspected alien in their custody and ICE would then assume custody of the individual after their criminal sentence had come to an end. ICE would also take custody of them if someone Mesa PD encounter had prior criminal conviction when an ICE "detention is required by statute", or when the ICE Office of Detention and Removal Operations Field Office Director decided on a case-by-case basis to assume custody of an alien who didn't have criminal convictions or who hadn't been completing a criminal sentence following Mesa PD arrest. These circumstances surprisingly weren't that different from the instances when San Francisco's Police Department allow for ICE to take custody of people in their local custody.

ICE and Mesa PD would prioritize arresting and detaining "Level 1 aliens" who were the highest priority - aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping; "Level 2 aliens" - aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering; and "Level 3 aliens" - Aliens who have been convicted of or arrested for other offenses. Certain police officers after the signing of the agreement would be trained through ICE's 287g "Immigration Authority Delegation Program" with exams run by ICE's Office of Training and Development. If the Mesa PD officer didn't pass the exams he or she would be removed from the program. The training would include

among other topics: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) civil rights laws; (vi) the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies," dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligation under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.<sup>414</sup>

Onsite and review training would also take place throughout the period of the agreement, which was from November 2009 through November 2012.

Mesa PD would have ICE database network access and equipment and abide

by ICE information technology requirements. Specifically, they would use the ENFORCE processing system for statistics and other data on alien removals. While ICE didn't require Mesa PD to make ENFORCE data entries, they would require the Mesa PD to track arrest data that could be used to compare with ENFORCE data and to assess the progress and success of the Mesa PD's 287(g) program. However, the Mesa PD would be required to keep the ENFORCE data confidential. Certain ICE files were also permitted to remain at a Mesa PD facility as long as there was an ICE representative assigned to that facility and that representative had a work area where documents could be adequately secured. In that case, Homeland Security representatives would have needed to be given permitted access to the facility where the ICE records were maintained.

Mesa PD would also be allowed to perform certain immigration officer functions "outlined in 287(g)(1) of the INA". 287g programs would divide activities into two different models of activity – the Task Force Officer model (TFO) and the Detention model. Mesa would implement activities under both models. Under the TFO model, authorized Mesa PD officers became Task Force Officers under the program and assigned to task force operations supported by ICE. These officers would "exercise their immigration-related authorities during the course of criminal investigations involving aliens encountered within the Mesa PO jurisdiction or as directed by the SAC." These authorities and powers included the ability to

interview any person reasonably believed to be an alien about his right to be or remain in the United States and to take into custody for processing an alien solely based on an immigration violation (INA §§ 287(a)(1) and (2)) will be delegated only on a case-by-case basis.<sup>415</sup>

To exercise their authority, a Mesa PD TFO first must have obtained approval from an ICE supervisor, who then approved the exercise "only to further the priorities of removing serious criminals, gang members, smugglers, and traffickers and when reasonable suspicion exists to believe the alien is or was involved in criminal activity." When an alien was arrested for the violation of a criminal law, a TFO may process that alien for removal subject to ICE supervision as outlined in the MOA. The TFO could also make arrests

without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if there is reason to believe that the person so arrested has committed such felony and if there is likelihood of the person escaping before a warrant can be obtained (INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2). Arrested individuals must be presented to a federal magistrate judge or other authorized official without unnecessary delay (INA § 287(a)(4); Fed. R. Crim. P. 5).<sup>416</sup>

Notification of these arrests must be made to ICE within twenty-four hours. The Mesa PD officer TFO could also

arrest for any criminal offense against the United States if the offense is committed in the officer's presence [...]; execute search warrants; serve arrest warrants for immigration violations [...]; administer oaths and to take and consider evidence [...]; to complete required criminal alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review; prepare charging documents [...] including the preparation of a Notice to Appear (NTA) application or other charging documents, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors; issue immigration detainers (INA § 236, INA § 287, and 8 C.F.R. § 287.7) and Form 1-213, Record of Deportable / Inadmissible Alien, for processing aliens in categories established by ICE supervisors; detain and transport [...] arrested aliens subject to removal to ICE-approved detention facilities.<sup>417</sup>

If the Mesa PD officer in the program conducted an interview and verified identity, alienage, and deportability, they were required by the MOA to contact ICE for arrest approval. No arrest for a violation of INA title 8 (the sections listed above) was to be conducted by a Mesa PD TFO without prior approval from the ICE supervisor. The Mesa PD TFO was responsible for ensuring that proper record checks had been completed, obtaining the necessary court/conviction documents of the individual, and, upon arrest, ensuring that the alien was processed through the ENFORCE/IDENT database and served with the appropriate charging documents. Prior to the Mesa PD conducting any enforcement operation that would involve the use of its 287(g) delegation of authority, they were required to provide to the ICE Special Agent in Charge or the ICE Field Office Director a copy of the operations plan and they must concur and approve with the plan prior to it being initiated.

The ICE supervisor on the other hand was responsible for requesting alien files, reviewing alien files for completeness, approval of all arrests, and data checks and input. The ICE Field Operations Director's office was responsible for providing the Mesa PD with current and updated DHS policies regarding the arrest and processing of illegal aliens. ICE would also provide the Mesa PD with guidance for presenting any criminal prosecution cases that are referred for federal prosecution.

Mesa PD officers participating in the 287g program would also serve in ICE detention capacities under the "Detention Model", essentially transforming their local jails into temporary immigration detention centers. Mesa PD officers functioning in this capacity would exercise their immigration-related authorities only during the course of "their normal duties while assigned to Mesa PD jail or correctional facilities." 287g Detention Model powers would authorize all of the same powers that were given to Task Force Officers with regard to serving arrest warrants, administering oaths, taking evidence, preparing charging documents, issuing immigration detainers, and detaining and transporting individuals. However the focus of the Detention Model was to "identify and remove aliens amenable to removal that are incarcerated within the Mesa PD's detention facilities pursuant to the tiered level of priorities." These Mesa PD officers were more concerned with interrogating immigrants in Mesa jails, processing documents, coordinating



transportation for detainees processed under 287g authority to ICE, and notifying ICE if a detainee claimed that they are a U.S. citizen following an arrest under 287g authority. The Mesa PD officers were to transport aliens subject to removal to “a facility or location designated by ICE.”

The minimum requirement for Mesa PD officers to participate in the Task Force Officer model of the program as was that they had

knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions. The applicants should have a minimum of one year of law enforcement experience that includes experience in interviewing witnesses, interrogating subjects, providing constitutional rights warnings, obtaining statements, and executing search and seizure warrants. An emphasis should be placed on officers who have planned, organized, and conducted complex investigations relating to violations of criminal and civil law.<sup>418</sup>

To participate as officers in the Detention model of the program, a Mesa PD officer would need to have

specific experience that should consist of having supervised inmates. Candidates must show that they have been trained on and concerned with maintaining the security of the facility. Candidates must have enforced rules and regulations governing the facility on inmate accountability and conduct. Candidates must also show an ability to meet and deal with people of differing backgrounds and behavioral patterns.<sup>419</sup>

The Mesa PD officers needed to be U.S. citizens and would undergo background checks including filling out a personal history questionnaire and submitting fingerprints, the candidate's disciplinary history including allegations of excessive force or discriminatory action. ICE would query every national and international law enforcement database and upon request by ICE, the Mesa PD was required to provide continuous access to disciplinary records of all candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records. Each Mesa PD officer would then work in the program for a minimum of two years.

Under the MOA, Mesa PD could also enter into an Inter-Governmental Service Agreement (ISGA) with ICE where Mesa PD could provide more prolonged “detention for incarcerated aliens” in Mesa PD facilities and could be reimbursed by ICE after the alien completed their sentences. Through this ISGA, Mesa PD could also be reimbursed for transportation of immigrant detainees. Mesa PD would be in charge of personnel expenses for Mesa PD officers, including salaries and benefits, local transportation, and official issue material. This was also the case during the time that the Mesa PD officers were undergoing the 287g training. ICE was in charge for those personnel costs of its supervisors and trainers. ICE would purchase and install the technology – the computers and software – to support the 287g functions for the Mesa PD facilities, and would provide on-going technical support. This

technical equipment would remain the property of ICE and would leave the Mesa PD at the end of the 287g-program period unless renewed. Mesa PD would provide the internet network and cables to run the database queries. The Mesa PD was also responsible for providing all administrative supplies, such as paper, toner, pencils, pens, or other similar items necessary for normal office operations, and was responsible for providing the necessary security equipment, such as handcuffs, leg restraints and flexi cuffs. Also, if ICE deemed it necessary, the Mesa PD would provide ICE, at no cost, with an office within each participating Mesa PD facility for ICE supervisory employees to work.

In the case that Mesa PD were to be the target of a liability claim in court as a result of their 287g activities, those officers involved in the lawsuit may be treated as federal employees. The MOA would indicate that

Participating Mesa PD personnel will be treated as federal employees only for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. It is the understanding of the parties to this MOA that participating Mesa PD personnel will enjoy the same defenses and immunities for their in-scope acts that are available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357(g)(8).<sup>420</sup>

Mesa PD officers could have even requested representation by the U.S. Department of Justice by requesting those services through the Attorney General of the United States.

Finally, if the Mesa PD wanted to release statistical data regarding their 287g program actions to the media, that needed to be coordinated with ICE's Office of Public Affairs. In the Task Force model setting, all contact with the media involving investigations conducted under Mesa's MOA by Task Force Officers (TFO) was required to be done pursuant to ICE policy.

In April 2009, Police Chief Gascón would testify in front of the *Senate Committee on the Judiciary, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, and the *Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law* about 287g programs. While he would not that while

The application of 8 USC 1357(g) (hereinafter 287(g)), by local police has created a variety of challenges for public safety. Increased political pressure on local law enforcement to reduce undocumented immigration coupled with the federal deputation of local police to enforce federal immigration statutes is jeopardizing sound and well established policing practices.<sup>421</sup>

While couched in language that would seem to promote community policing measures and constitutional protections for immigrants in the midst of federal immigration enforcement action, he asked the government to make the 287g

program better so that local police could continue in assisting in removing criminal immigrants. Gascón wanted the federal government to act to remedy this situation by providing police involved in 287g programs clear guidelines that “provide police with the tools necessary to deal effectively with serious criminal activity committed by removable undocumented immigrants.” He also wanted the 287g programs to contain “clearly stated constitutional protections to ensure communities and individuals are not being racially profiled.” Finally he wanted the program to ensure that “sound community policing practices are encouraged.” To do so, he thought “positive and respectful public engagement and partnerships must be embedded into any federally supported process aimed at addressing serious criminality by undocumented immigrants through the use of local police.” Gascón also wanted police to have “fast access to relevant information concerning wanted criminal aliens so that they can protect themselves and our communities. Currently that level of information is not readily available in the field for police personnel regardless of their 287(g) status.”

Gascón found the 287g program to instead of meeting its stated goals of addressing criminal elements in the undocumented community, being based on politics which resulted in a numbers game – trying to deport as many immigrants as possible. This argument would mirror his position on Sheriff Arpaio’s immigration sweeps which rather than targeting criminals, netted non-criminal immigrants like hard-working gardeners in the wrong place at the wrong time. He found that 287g programs had led to Latino communities seeing race-based enforcement practices, which were “driving a wedge between the police and the impacted communities”, derailing community-policing efforts. He argued that immigrants were as a result becoming afraid of talking to local authorities, which “gave thugs control of their neighborhoods.” He would note that “It is nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, friend or relative.”

Gascón would conclude that

America’s police officers deserve thoughtful federal leadership so that we can continue doing our best to provide our country with the security that defines a civilized society. In the case of the 287(g) program, any future participation should be predicated on clearly stated guidelines that ensure

(1) all field officers of the concerned agency have immediate access to information regarding non-citizens who are charged with or convicted of serious criminal conduct;

(2) strict constitutional requirements are placed on any participating agency; and

(3) engagement strategies by the impacted community in the form of participation and problem solving partnerships must be required to partake in the program.<sup>422</sup>

In other words, Gascón, rather than arguing for less local police involvement in immigration enforcement activities, was criticizing the existing enactment of the 287g program using arguments made by sanctuary policy proponents in order to

strengthen 287g enforcement activities and strengthen public safety through minimizing the effect of those activities on community policing.

While it is uncertain to what degree Gascón had in establishing the details of the Mesa 287g MOA which was signed in November 2009, his initiation of conversations with ICE about signing a 287g MOA would indicate that he was taking steps toward establishing some form of program of higher integration with ICE operations to target what it considered criminal immigrants. Such a program would integrate Mesa police officers in the objectives and priorities of ICE, subject them to ICE training and supervision, mandate the approval of their actions and plans by ICE officials, regulate their disclosure of information in line with ICE policies, and allow for their personal and professional background information to be thoroughly reviewed by ICE. Conversations discussing this kind of arrangement would occur at the same time as Chief Gascón battled with Sheriff Joe Arpaio in the media about his sheriff's officers inappropriately enforcing immigration sweeps which netted non-criminal immigrants.

### **Mayor Newsom's Decision**

By the time that the San Francisco Police Commission was considering Gascón's candidacy for San Francisco Police Chief in the Spring of 2009, Mayor Newsom was in the middle of building his campaign for the Governor race. If Newsom, who ultimately appoints the Police Chief following a Police Commission vetting process, were to hire Gascón, an outsider, he might be going against the wishes of the San Francisco Police Officer's Association, the powerful union representing line officers, who wanted an insider and whose endorsement Newsom needed for his bid for Governor.

At this time, SFIRDC reached out to Police Commissioner Petra De Jesus, an advocate for undocumented immigrants and sanctuary policies, about finding out how SFIRDC can influence the hiring of the new police chief. A few SFIRDC members researched different candidates mentioned in Chronicle articles, including Gascón, and call community organizations in those cities to hear about the candidates' positions on immigration enforcement and working with immigrant communities. The SFIRDC members who were also Immigrant Rights Commission Commissioners, talked to the IRC about meeting with the Police Commission to state IRC values in looking for a police chief. They wanted to find someone who supported language access for immigrants and someone who highly valued community policing and sanctuary city policies.

Over the next month, the Police Commission, led by President Theresa Sparks, would conduct a series of public meetings and community forums at every district police station and bureau with various stakeholders in the community and in law enforcement to identify a detailed profile of roughly 12 characteristics against which all candidates for the Chief position were graded. Gleaned from several hundred pages of public testimony that occurred in the public meetings and also notes of testimony that occurred at group meetings with SFPD administrative staff, labor committee meetings and also the meetings of the rank and file police officers. They were looking for someone with

1. A community focus, community policing and engagement.
2. Respect for the rank and file members of the SFPD – “a cops’ cop.”
3. An inspirational leader and subject matter expert.
4. Someone who would stand up to political leaders.
5. Someone who would not to participate in politics in and for themselves.
6. A change agent, willing to stand up to trend ideology.
7. A Crime fighter with strong patrol experience and leadership in district operations.
8. An Innovator, someone willing to accept and promote new ideas.
9. A communicator both inside the department and outside the department.
10. Someone who is media savvy.
11. Someone who has diversity inside the department and someone knowledgeable and willing to promote career and professional develop within the department and
12. Someone with a firm basis and understanding of immigration issues and someone who is willing to embrace the sanctuary city ordinance of the city.<sup>423</sup>

The commission then conducted phone interviews with candidates and created transcripts of the calls. After reviewing the transcripts of the phone interviews for every applicant, they selected 13 individuals for further interviews and then forwarded those individuals a detailed questionnaire of 13 questions ranging from immigration policy, to their views and vision for the department. After receiving back written responses, the Commission then met through a deliberation process considering the entire interview process of all 13 of the individuals. From the 13, the Commission, by vote, came up with three different individuals that they decided to forward to the mayor for his consideration. One of those individuals was George Gascón. At that point, it was June 1, 2009 and the function of the Commission in finding a new Police Chief was formally completed. The Commission turned the decision over to the Mayor the day following the vote, for him to conduct his deliberations and make the selection.

Meanwhile, the Board of Supervisors was in the middle of the city budget approval season and though Supervisors Campos and Avalos were on the Budget and Finance Committee and heavily occupied at that moment, Campos planned to meet with the City Attorney whose office had been dragging their feet on approving the youth policy. The attorneys who had been assigned to work on it were different than the previous year and had tabled it because they had been working on other charters. Campos’s goal was to draft something that would be ready to introduce in July just before the Board went on recess in August for a month. The coalition set up monthly meetings between the supporting Supervisors and Immigrant Rights Commission members with the first one starting in early July. They continued to target potential swing votes Maxwell and Dufty to educate them further on issues related to the youth policy. Campos’ office and SFIRDC continued to talk about their media strategy and setting the tone for bringing forward a new youth sanctuary

policy. The coalition as a result worked with a *New York Times* journalist who published an article in mid-June outlining the Mayor's JPD youth referral policy, highlighting the story of a minor who brought a bb gun that his father had bought him for a present to school and who ended up getting detained and placed in deportation proceedings. The coalition also put together a Frequently Asked Questions document highlighting the fact that 30% of juvenile petitions, verdicts from the juvenile court, were not sustained, and of the importance of confidentiality of immigration status information. They also worked on talking points to address the climate of fear of litigation that the Mayor and U.S. Attorney Joe Russionello had stirred up over the previous year.

Finally, in mid-June, Mayor Newsom announced what many had suspected - that the new San Francisco Police Chief to replace Heather Fong would be George Gascón. This was rather controversial because the SFPD wanted an insider who understood San Francisco "cop culture" to take the job. However, none of the final applicants that the Police Commission forwarded to the Mayor were from inside the department. Gascón would be the first outsider Chief since 1975 when Charles Gain came from Oakland. Though the police union's president Gary Delanges was consulted, he indicated, "Gascón was the Mayor's selection." Newsom wanted him primarily because in Mesa, his investigators were making arrests in over 90% of the homicides because investigators worked more closely with patrol officers. San Francisco at the time had a centralized investigation unit, which was not located in the stations and a low arrest rate for homicides - only 25%. Gascón would be paid \$292k per year, a bump of \$120k more than his job in Mesa, making him the highest paid City and County official. Gascón would be sworn in to begin work in early August 2009.

Following his appointment Gascón told Heather Knight of the *San Francisco Chronicle*

Undocumented immigrants shouldn't face arrest by local police just for being here illegally because that prevents them from reporting crime and allows gangs to take over entire neighborhoods. But if you're here committing crimes other than the undocumented crossing of the border, I believe the police should use every tool in the toolbox.<sup>424</sup>

When asked about his position on reporting youth to ICE, the new San Francisco Police Chief Gascón said he didn't believe in a blanket policy for undocumented youth, but that it would be appropriate to turn them over upon arrest at an older juvenile age and if the crime were severe. "If the juvenile commits a homicide...I don't distinguish at that point between someone who's 18 and someone who's 16 or 17. On the other hand, if you have a 9 or 10 year-old and he commits a crime, he should be looked upon differently." SFIRDC was very disappointed, that despite the new Chief being Latino, outspoken against Arpaio, and pro-sanctuary in general, that he was siding with the Mayor in deporting youth.

SFIRDC would suffer a minor setback with the District Attorney Kamala Harris as well. In late June, the media broke a story on how Harris was unknowingly allowing undocumented immigrants to participate in the Back on Track program, an

incarceration diversion program focused on job training and placement. If individuals, including immigrants were to fulfill all the requirements of the program, their criminal records for the charges they were convicted for would be cleared.<sup>425</sup> The program was created in 2005 as a way to reduce the number of drug offenders who were sent to overcrowded county jails and state prisons. Over 113 people had completed the program and 99 failed to complete. The media framed this as Harris letting “illegal immigrants stay out of prison by training them for jobs they cannot legally hold.”<sup>426</sup> One of the undocumented participants of Back on Track had plead guilty to selling crack in the Tenderloin prior to the Mayor’s JPD policy going into affect, been placed in Back on Track, and then four months later stole a purse and attempted to run over the woman he stole it from in a car in Pacific Heights, an affluent neighborhood of San Francisco. The victim of the crime said, “I understand the whole sanctuary thing – if people aren’t causing any problems, why waste time and resources going after them? But if they are committing crimes, they should not be here.”<sup>427</sup>

Back on Track was one of the cornerstones to Harris’ electoral campaign to become Attorney General of California and SFIRDC was worried that this would influence the District Attorney to not support the coalition’s youth sanctuary ordinance amendment. Harris responded to the stories by barring undocumented immigrants from enrolling in Back on Track not on the basis that they should be deported for committing crimes but because the program wouldn’t serve them because they would not be able to legally find employment. She commented that “It was a mistake to let illegal immigrants into the program, a ‘flaw in the design’. I believe we have fixed it. So moving forward, it is about making sure that no one enters Back on Track if they cannot hold legal employment.”<sup>428</sup> People in the DA’s office who ran the program had never asked about immigration status of participants, likely due to their procedures in compliance with the sanctuary ordinance. Harris did however allow the undocumented immigrants that were still completing the program to finish, saying, “It is not the duty of local law enforcement to enforce immigration laws. My issue was more ‘what are we going to do to prevent this from happening in the future?’”<sup>429</sup>

### **The Grassroots Legislative Campaign Grows Beyond SFIRDC**

At the end of June, SFIRDC held a “Youth Policy Strategy Session” in the Arab Resource and Organizing Center auditorium to bring community based organizations (CBOs) that were not members of SFIRDC into the organizing and lobbying campaign. They reached out to the community-based organizations Center for Young Women’s Development, Filipino Community Center, HOMEY, Community Response Network, Horizon, United Playaz, Intertribal Friendship House, Larkin Street, Vietnamese Youth Development Center, Instituto Familiar de la Raza, PODER, and Ella Baker Center. These groups had clients and members located in various districts of the city and could each lobby their respective District Supervisors on the issue of a need for a policy change to delay ICE referrals for youth to the adjudication stage. As organizational constituents of the Supervisors who had large memberships and client bases composed of the Supervisors’ district residents,

Supervisors took the opinions of the leaders of these organizations very seriously. Also, expanding the base of support for the policy to organizations that didn't just serve immigrants would increase the legitimacy of the policy and show the media that this was a citywide issue that affected everyone, not just Latino immigrants in the Mission and Tenderloin or Asian immigrants in Chinatown. At the session, SFIRDC discussed with them the background on the undocumented youth referral issue starting in the summer of 2008, the status of policy changes that SFIRDC was proposing with the supportive District Supervisors, how they were building support for the new youth sanctuary amendment among the swing vote Supervisors especially Maxwell and Dufty, as well as with the Mayor, the Media, and the public.

Coming out of the meeting each group committed to lobby their supervisor for the policy by meeting with them and bringing clients or members to discuss their stake in the policy and how the issue of undocumented youth ICE referrals affected them. Ella Baker Center would set up a meeting with Supervisor Maxwell and contact another organization the Black Alliance for Just Immigration to do the same. CARECEN contacted the Black and Brown Coalition and La Colectiva de Mujeres both who had many members who lived in Maxwell's district, which included the Bayview-Hunter's Point neighborhood. POWER and the San Francisco Interfaith Coalition on Immigration (SFICI) planned to meet with her as well. To lobby Supervisor Dufty, the San Francisco Organizing Project (SFOP), an organization started by Sister Kathleen Healy -one of the original organizers of the San Francisco sanctuary movement in the 1980s - would set up a meeting with the Supervisor and Coleman Advocates for Youth. Also in order to set up lobby visits with Dufty, CARECEN would contact the San Francisco Youth Commission, La Vow Latina would contact the LGBT Coalition, Instituto Familiar would contact the National Center for Lesbian Rights (NCLR) - which was founded by San Francisco Supreme Court Judge Donna Hitchens - and Communities United Against Violence (CUAV) would contact the Transgender Law Center. and a Mission High School Teacher involved with SFIRDC would talk to school officials and teachers. Sunset Youth Services would set up a meeting with Supervisor Chu who had been a consistent no vote, and would contact Sunset Beacon also. To target Chu, CARECEN would contact Sunset PTA and Asian Law Caucus would reach out to City Assessor Phil Ting.

The coalition's aims were to send a positive message to Supervisors Avalos, Chiu, Campos, Daly, Mar, and Mirkarimi who were strong supporters and who could be counted on to vote for the policy change, to secure the votes of Dufty and Maxwell, and to advocate for Supervisors Elsbernd, Chu, and Alioto-Pier to not actively oppose the change. Members of the coalition had met with Dufty's office who were most concerned about having more positive stories to counter the negative stories that the media was repeatedly publishing, so SFIRDC passed a few to them. The coalition would also continue to fight the media war with *The Chron* by writing letters to the editor that focused on the impact of the Mayor's JPD policy on parents and youth and letters highlighting the cases of successfully rehabilitated undocumented youth who ended up changing around their lives. The coalition also sought to garner more public support by continuing to attend Board of Supervisor hearings, starting an online petition, which would be sent to the Board and the



Mayor, creating a Facebook group with event pages for SFIRDC, and rallying parent and student groups. CUAV also met with domestic violence survivor advocacy coalition, the Domestic Violence Consortium, of which CUAV was a part to bring in the voices of the DV community. Additionally Sunset Youth contacted Juvenile Justice Providers Association and Larkin Street Youth Center contacted the Local Homeless Coordinating Board.

By mid July, the youth policy draft had been in the City Attorney's possession for two months and they had still not moved on it, which was frustrating for the coalition and Campos since they were not going to introduce it at the Board until it had been signed off as being legally defensible by the City Attorney. After meeting with the City Attorney, Supervisor Campos's office told SFIRDC that introduction of the youth policy was likely not going to happen until the third week in August after the Supervisors returned from August recess. Edwin Ramos' court case would be going on all summer and fall, so the coalition was expecting bad press coverage on sanctuary and the youth sanctuary ordinance amendment to increase.

As the coalition was growing with new organizations coming to their weekly meetings following the "Youth Police Strategy Session", the coalition decided to clarify their decision-making process. They decided that when a decision needed to be made and a majority of the organizations were not present, the urgent decision would go to a steering committee of core organizations, which consistently showed up at meetings and were at the center of the work. While the coalition had grown to 35 organizations, roughly 15-20 were actually active, and 6 composed the steering committee core: La Colectiva de Mujeres, Mission Neighborhood Center, CARECEN, Tenderloin Housing Clinic, Asian Law Caucus, SFOP, and Filipino Community Center. The responsibilities of the steering committee were

- 1) Set the agenda and facilitate the overall Friday Meetings
- 2) Represent the overall constituency of the committee
- 3) Fairly represent the immigrant rights work and committee.
- 4) Represent the immigrant rights community, committee work and its members
- 5) Assess and address urgent decisions.
- 7) Leadership of the committee
- 8) The leadership is accountable and transparent in all decisions.

No decision could be made unless at least these six SFIRDC member organizations were part of it, though most decisions were made by a larger number of organizations within the coalition.

By early August, immediately following ICE reporting that it had seized 8 San Francisco alleged gang members during a "six-hour surge", some who were being processed for deportation,<sup>430</sup> SFIRDC locked in their final two votes for a veto-proof majority for the youth amendment. On August 5<sup>th</sup>, the coalition and the LGBT groups they had been working with had met with Supervisors Dufty and Maxwell about the youth sanctuary amendment. Both Supervisors not only wanted to vote in support of the policy but also wanted to have their names added as co-sponsors of the legislation with the other six supporting Supervisors. The following day, each

coalition member made phone calls to lobby the remaining Supervisors who the coalition hadn't recently met with about the youth policy to keep the policy in the forefront of their minds and to make sure that the Supervisors' support remained steadfast. SFIRDC asked the Supervisors to co-sponsor the policy or thanked them for already doing so. In their calls, the coalition members would approximate the following script:

Hello Supervisor, my name is [name]. On behalf of (organization), I am calling to ask for your support of a policy change that will ensure all immigrant youth in the juvenile system are provided with due process before any referral to immigration enforcement. This policy reform is needed because the current policy disregards basic principles of fairness and justice. Please stop San Francisco from unnecessarily tearing more youth away from their families. Can we count on you for your support? Thank you (or 'what can we do to obtain your support?')!

All of the co-sponsors of the policy reaffirmed their co-sponsorship. The coalition also sent each Supervisor organizational letters of support for the policy that stated:

Dear Supervisor [Name]:

On behalf of (organization), I am writing to ask for your support of a policy change that will ensure all youth in the juvenile system are provided with due process before any consideration of referral to Immigration and Customs Enforcement (ICE). This policy change is needed to reform a troubling San Francisco Juvenile Probation Department policy, implemented in July 2008, which disregards basic principles of fairness and justice by requiring that all youth suspected of being undocumented are referred to ICE right after arrest by a probation officer *before* they are even given a chance to appear in court or are appointed an attorney.

The current undocumented youth policy must be revised to guarantee due process for all youth as the impact of this draconian policy on San Francisco's immigrant children and families has been devastating. To date, the current flawed policy has resulted in the referral of over 130 youth to ICE, including youth who are innocent of the charges and many first-time, nonviolent cases. Once detained by ICE, these youth are transported to federal detention centers out of state, including Indiana and Florida, far away from their families and often in remote areas without access to immigration legal services. The current policy falls far short of state mandated goals of the juvenile system (*i.e.*, rehabilitation, stability, reunification, public safety, and the best interests of the minor).

We would greatly appreciate your support of a policy change that would move the point of referral from the booking stage to after the youth has had an opportunity to appear in court, and the court makes a finding that the youth did commit an alleged felony. This very reasonable change would prevent referral of youth to ICE in cases where youth are completely

innocent of any charges, are actually documented or qualify for immigration relief, and/or were overcharged.

Thank you for your time and consideration. San Francisco should remain a leader for the nation in showing how immigrant inclusion is not only an effective way to increase public safety and community, but also enriches the fabric of our community. Please support fair treatment and due process for all of San Francisco's immigrant youth and families.

Sincerely,

Name

These letters would become part of the official Board Packet that was provided to all Supervisors on a particular policy, which becomes attached to the policy file archived with the Clerk of the Board, and available to the public upon request.

### **Conclusion**

On August 8<sup>th</sup>, Mayor Newsom inaugurated George Gascón as the next Police Chief, the culmination of not only a hiring process, but also a cultural process. Sanctuary values as a had seeped into not only the legislation of the city, but into the official job requirements of the city's highest paid employee and foremost law enforcement official – the ethic of sanctuary was an imperative of governance. However, requiring sanctuary ethics of a government official did not mean that the official found federal deportation to be an affront to municipal governance. Rather, sanctuary-supporting officials may also find deportation to be an effective method of reducing crime. Sanctuary policies could be amended by these officials to serve as policies that would clarify when it is appropriate to assist in deportations of certain individuals and when it was not appropriate, not because deportation was harmful to families, but because deportation may lead to a diminished ability to police communities. In this case, George Gascón, like Mayor Newsom, was able to both advocate for sanctuary policies and advocate for deportation as a policing method when it was warranted. He was also able to both criticize heavy handed, locally-led, universally-deployed immigration enforcement practices of Maricopa Sheriff Joe Arpaio, while at the same time advocating for a high level of integration of the Mesa Police Department with ICE through a 287(g) program to narrowly target what he considered criminal immigrants. This case demonstrates that sanctuary policies are the meeting grounds for a variety of value systems – a fought over turf of anti-deportation activists and public safety oriented cops who may at first glance seem on the same page but have different uses, aims, and justifications for sanctuary polices.

## **CHAPTER 9**

### **DELAYING ICE REFERRALS AND CONTESTING LEGAL ADVICE: THE INTRODUCTON OF THE DUE PROCESS FOR YOUTH SANCTUARY ORDINANCE AMENDMENT**

#### **Introduction**

The prior chapter outlined how when the discourse of governmental sanctuary meets the discourse of public safety, one of the results for policy implementation can be the increased municipal cooperation with federal deportations accompanied by the normalization of that cooperation as justified and necessary for crime prevention. This chapter will focus on the legislative solution that Supervisor Campos' office and SFIRDC came up with to amend the sanctuary ordinance in a manner that would be consistent with federal immigration law while simultaneously remaining consistent with state law regarding juveniles, in particular the Welfare and Institutions Code. In particular, the pro-sanctuary community-government forces created a correction to the sanctuary ordinance which would distinguish youth from adults by requiring that no youth would be referred to ICE unless either the Juvenile Court Commissioner or Judge found the youth to have been guilty of a felony crime or if the court found the youth unfit for Juvenile Court, the District Attorney filed charges against the youth in adult court, and the Superior Court of San Francisco found probable cause that the youth had committed the crime. This solution would allow for the discourse of public safety remain a guiding factor in the clarification of when municipal employees could assist in deportations – which would address the concerns of the pro-deportation politicians - all the while preventing the vast majority of deportations of youth that were occurring under the Mayor's JPD referral policy.

Subsequently, the Mayor attempted to thwart passage of the policy on the day it was introduced by disclosing to the public a confidential cautionary memo written by City Attorney's Office staff attorneys which spelled out the worst case scenarios under which the City could be sued if the amendment passed. This would amount to handing opposition legal advocates their case to which they could argue in court. In response, SFIRDC, and the Board of Supervisors would counter the Mayor's political action by addressing the legal concerns raised by the memo in the political space of the Board of Supervisors hearings and through issuing their own legal memos contesting the legal assertions of the Mayor and the City Attorney. This chapter will examine these competing legal discourses of sanctuary city policy implementation as they were embedded in political maneuvers of the Mayor, the City Attorney, the Board of Supervisors, and the San Francisco Immigrant Rights Defense committee that occurred in late August 2009 around the introduction of SFIRDC and Supervisor Campos' youth sanctuary amendment.

## **The Spectacle of Banality in the Introduction of Sanctuary Legislation**

Immediately prior to the Board's August Recess, Supervisor Campos received a "cautionary memo" from the City Attorney, a standard confidential, client-privileged legal memo outlining the legal risks of the piece of legislation he was preparing with a finding that the policy was approved as to form. This would mean that despite the legal risks, that it would be defensible in court. With this in hand, Campos, the seven co-sponsors including Dufty and Maxwell, and SFIRDC moved forward with introducing the youth sanctuary ordinance amendment at the Board of Supervisors meeting on August 18<sup>th</sup>. As with all ordinances that are introduced, it would have a 30-day waiting period before the Public Safety Committee would hold a hearing and committee vote on the legislation in September. Following that vote, if it passed out of committee, it would be sent to the full Board for two full-board votes. The amendment would be summarized in the Board packet for the August 18<sup>th</sup> meeting as an ordinance

amending the San Francisco Administrative Code by amending Sections 12H.2, 12H.2-1, and 12H.3 to allow City law enforcement officers and employees to report information regarding the immigration status of a juvenile to any state or federal agency when the juvenile has been adjudicated to be a ward of the court on the ground of felony conduct, the court makes a finding of probable cause after the District Attorney directly files felony criminal charges against the minor, or the juvenile court determines that the minor is unfit to be tried in juvenile court and the superior court makes a finding of probable cause; and to update references to the federal agency responsible for enforcing federal immigration laws.<sup>431</sup>

The policy started by justifying the need for the amendment by outlining how San Francisco's City of Refuge Ordinance – the sanctuary ordinance – was fundamentally flawed in failing to treat juveniles separately from adults. The sanctuary ordinance stated that law enforcement personnel may report to federal immigration authorities any individual, regardless of age, who is in custody after being booked for a felony and is suspected of violating the civil provisions of the immigration laws. However, this was inappropriate because adults and juveniles were treated fundamentally differently by the courts they were subject to - the focus of the adult criminal justice system was on punishment, while the juvenile justice system focused on rehabilitation, guidance, treatment, stability and family reunification.

What this would lead to was, according to the introduced policy, that the sanctuary ordinance was getting in the way of local agencies' proper functioning and ability to meet their goals. The juvenile justice system was being denied a line of communication, information, and assistance from immigrant juvenile families, as well as being thwarted in its efforts to preserve and strengthen a juvenile's family ties, and his or her ties to the community. The policy argued that the juvenile courts and Juvenile Probation Department relied on assistance from juveniles' families and community agencies to ensure that juveniles who come into contact with the juvenile justice system receive the guidance, treatment and rehabilitation they need.

The coalition's language stated that the family's and the community's trust in the Juvenile Probation Department, and their belief that the Juvenile Probation Department's primary focus and concern were the juvenile's best interest, are critical to the ability of the Juvenile Probation Department to gather the information it needs to assist the juvenile and his or her family. It argued that if juveniles, their families, or members of the community were afraid to provide information to the Juvenile Probation Department, they would be unwilling to cooperate with the Department. They would note that, "This lack of cooperation could undermine the effective functioning of San Francisco's juvenile justice system."

Ultimately the juvenile court's purpose was to provide for the protection and safety of the public as well as each minor. They argued that if the minor were detained and reported at the booking stage upon suspicion of committing a felony, that was

insufficient to justify reporting in the interests of public safety except if the court declares the minor to be a ward of the court on the ground that he or she engaged in felony conduct; the court makes a finding of probable cause after the District Attorney directly files felony criminal charges against the minor in adult criminal court; or the juvenile court determines that the minor is unfit to be tried in juvenile court, the minor is certified to adult criminal court, and the superior court makes a finding of probable cause.<sup>432</sup>

The policy also argued that this failure to distinguish between juveniles and adults for referral to ICE was also providing an impediment to law enforcement to meet its goals. It reasoned that juveniles and their family members might be deterred from providing information to law enforcement personnel because a juvenile may be mistakenly reported to federal immigration authorities. It also argued that the consequences of reporting and detention were the removal of the juvenile from his or her family and community, as well as deterring school officials and other members of the community from contacting the police when they suspect that a juvenile has committed a crime.

For the authors, confidentiality was key to this proper functioning of the local institutions. The coalition and Campos' office included language on how the city and county must maintain the confidentiality of juvenile records and that such confidentiality allowed for the juvenile justice system to function properly. Leaks of confidential records along the lines of what JPD officers leaked to Jaxon Van Derbeken would create an impediment to JPD meeting its goals of providing JPD services to all San Francisco residents.

[...] California law also requires that those who have access to juvenile court records maintain the confidentiality of those records to avoid stigmatizing juveniles and to promote the rehabilitation of young offenders. Juvenile court records include records and information maintained and gathered by police, probation, and dependency agencies. State law prohibits state and local officials from releasing these records without a court order, except under specific and limited circumstances. The city and County of San Francisco

recognizes the importance of maintaining the confidentiality of juvenile court records to the effective functioning of the juvenile justice system, and it is the policy of the City and County to maintain that confidentiality to the full extent required and permitted by state and federal law.<sup>433</sup>

The policy language also pointed to the problem of how the sanctuary ordinance, in allowing for the reporting of people at the booking stage, allowed for immigrants who were in the country legally or even U.S. citizens who were inappropriately identified to be wrongfully reported to federal immigration authorities. On account of these shortcomings of the sanctuary ordinance, the youth amendment would propose that law enforcement personnel should follow a different procedure for children than for adults. To flesh out how the sanctuary ordinance would mandate these differential procedures, the authors modified section 12H.2-1 of sanctuary ordinance, "Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes." They changed the existing language to only allow for adults to be reported at the booking stage if booked on a felony, and by additional text on the treatment of juveniles (all strikethroughs being deleted and all underlined text being added):

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any ~~person~~ **adult** pursuant to State or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. **In addition, nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any juvenile who is suspected of violating the civil provisions of the immigration laws if: (1) the San Francisco District Attorney files a petition in the juvenile court alleging that the minor is a person within the description of Section 602(a) of the California Welfare and Institutions Code and the juvenile court sustains a felony charge based upon the petition; (2) the San Francisco Superior Court makes a finding of probable cause after the District Attorney directly files felony criminal charges against the minor in adult criminal court; or (3) the San Francisco Superior Court determines that the minor is unfit to be tried in juvenile court, the minor is certified to adult criminal court, and the Superior Court makes a finding of probable cause in adult criminal court.**

In order to implement this major policy change, the policy would mandate the San Francisco Juvenile Probation Department to, within 60 days of the effective date of the Ordinance, modify its policies and practices to comply with the provisions of this Ordinance to the extent permitted by state and federal law. Aside from this, they replaced the outdated language naming the Immigration and Naturalization Service with the "federal agency charged with enforcement of the federal immigration laws".

On the morning that the policy was to be introduced, SFIRDC and Supervisor Campos' office held a rally and press conference titled "Justice for Immigrant Youth" on the front steps of city hall to announce the introduction of the undocumented

youth amendment. Over 200 people attended from over 70 organizations. Along with SFIRDC members were youth who were members, clients, or activists from Coleman Advocates, CARECEN, Community Response Network, Mujeres Unidas y Activas (MUA), Youth Together, Center for Young Women's Development, PODER, POWER, Excelsior Teen Center, Bernal Heights Neighborhood Center, Boys and Girls Club, Loco Bloco, YMCA Mission, Filipino Community Center, Black and Brown Coalition, ASPIRE, Community Youth Center, Vietnamese Youth Development Center, and the Gang Injunctions. Also present were national Latino organizations, and community organizations brought in to the campaign during the Youth Policy Strategy Session.

To visualize the situation of undocumented immigrant youth and the need for the sanctuary ordinance youth amendment, everyone standing on the steps wore all black and held a mask representing a young person, one of the 130, who had been deported under the Mayor's JPD policy. The event called on Mayor Gavin Newsom to 'Stop tearing apart our families!' and featured youth speakers from Homey and La Vow Latina. Speakers would emphasize that the youth amendment being introduced would protect against the overcharging and mischarging of youth and increase public safety by recognizing that immigrant residents have a right to be presumed innocent before proven guilty. They argued that it would also improve the relationship between the immigrant community and law enforcement. They exclaimed that "It's important that immigrants feel comfortable going to the police to report crimes if they are victims or witnesses of crime."

Immediately following the rally, news stations would step aside with various SFIRDC members and Supervisors present at the rally to get individual interviews. Prior to the rally, SFIRDC's communications leaders had prepared a "messaging sheet" filled with short sound-bites for all SFIRDC members to commit to memory and use to respond to questions posed in the individual interviews. The coalition emphasized that

The current policy destroys families and denies them the basic right to due process. This policy gives too much discretion to officers who can overcharge or mischarge cases. U.S. citizens could be erroneously sent to federal detention. The Mayor's JPD policy hurts public safety. Immigrant parents are afraid to send their kids to school. This will cut off avenues of federal immigration relief for the majority of eligible youth [T and U visas for victims of crime and trafficking]. The policy being introduced today recognizes that just like all other residents of San Francisco, youth have a right to due process. We need to create smart policies that hold young people responsible for their actions while at the same time protect them from unnecessary family separation, wrongful detention, incarceration with adults and being put in a situation where they are alone and exposed to danger.<sup>434</sup>

SFIRDC would give interviews to local and national television, radio, and newspaper outlets KTVU, KGOTV, Univision, Telemundo, Filipino Channel, KCBS Radio, KPFA Radio, AP, Bay City News, *San Francisco Chronicle*, *Bay Guardian*, *Sing Tao*, *World Journal*, *New America Media*, *Mission Local*, and *the Guardian*.



Later in the day, the Board meeting would convene at 2pm and the youth sanctuary amendment would be introduced by Supervisor Campos at the “roll-call for introductions” portion of the meeting. Though “Introductions” was number 40 in the agenda, Campos’ office had let the SFIRDC members who stayed at City Hall after the morning rally know that the item would be coming up rather quickly after the start of the meeting. The supporters stood in the hall immediately outside of the Board Chambers waiting for their issue to be called up.

The Clerk of the Board, Angela Calvillo, took account of all Supervisors who were present, acknowledging Supervisor Dufty’s absence. Board President David Chiu then called on all Supervisors and members of the public to stand, turn to the flag of the United States, which was immediately behind him, and to say the pledge of allegiance in unison before starting with their proceedings. They then without discussion approved the meeting minutes from the previous full board meeting and then President Chiu notified the public that, “this is the last day that the Board will meet before its summer recess. The next time our Board and Committees will meet will resume the week of September the 14<sup>th</sup>.” Between each item, President Chiu would strike the gavel and move forward with routine expediency. While there was a special order for 2pm, President Chiu turned to a Mayor’s office representative Ms. Terrell to ask if the Mayor would be attending today’s meeting. Ms. Terrell responded, “President Chiu, the Mayor will not be attending today’s meeting.”<sup>435</sup> The Board then moved to a single roll-call vote on items 1 through 16 on the Consent Agenda, items that were routine business with little to no discussion needed and which could be decided with a single vote unless a Supervisor wanted to discuss an item further. In that case the item would need to be “severed” out the bundle of items being considered in the roll-call vote. These consent agenda items included items to accept and expend federal grant money for the Airport commission, appropriate debt funds for maintaining a wastewater system, accept and expend grant money for HIV Testing and Counseling in STD clinics, make modifications to the city’s Building Code and Zoning Code, settle various lawsuits brought against the City, provide members of the public with access to language services, and make appointments to an oversight committee regarding the enforcement of marijuana offenses, to the Commission of Animal Welfare, and to the Immigrant Rights Commission. The last appointments to the IRC would be to replace one Commissioner who was an SFIRDC member with another SFIRDC member Lorena Melgarejo of the San Francisco Organizing Project, and to re-appoint Ana Perez, SFIRDC member from CARECEN. With a routine banality, the Clerk Angela Calvillo took the roll-call vote, which ended in 10 “ayes” from all of the Supervisors present.

The Board then moved expeditiously through additional settlements, appropriations of funds, the settlement of property tax rates, rates for residential properties and major city agencies and institutions, the acceptance of major grants and contracts, lease purchases, street closures, minor modifications to the Public Works code, and a few further appointments to local and regional commissions. With each vote, rather than calling out every Supervisor’s name, President Chiu would call out “Colleagues can we do this Same House, Same Call?” and seeing no one opposed, would strike his gavel and say, “The resolution is adopted” in indication that the issue had been approved. All issues were approved with the

exception of only one, which Supervisor Elsbernd requested to be “continued” to the following week’s Board meeting.

By item 33, all members of SFIRDC and those who attended the rally were let into the Chamber by the Sheriff’s officers, where they then quickly took their seats on the wood benches in the audience. From the moment that Board President David Chiu struck his gavel to open the meeting at 2pm to the point at which the youth sanctuary ordinance amendment would be called for introduction in item 40, would be around half an hour of anxious anticipation. After over a year of preparation, holding weekly meetings in the offices of the coalition members, meeting with city officials and community stakeholders, talking to the media, attending hearings, holding rallies, and working with the legislative aides to draft a legally-sound policy, finally the product of their efforts would be unveiled to the public and recorded in the archives of city government. Following Supervisors Maxwell, Alioto-Pier, and Mirkarimi, finally Supervisor Campos would have his turn to introduce the legislation. Supervisor Campos said

Thank you Madam Clerk. Good Afternoon Colleagues. Let me begin by talking about a very important piece of legislation I will be introducing and that has to do with treatment by the Juvenile Probation Department of undocumented youth in San Francisco. This is something that has been an ongoing issue for a number of months since the mayor decided to change the city’s policy on this issue. And I’d like to begin by thanking the number of advocates of youth throughout the city who have been working on this issue beginning with the San Francisco Immigrant Rights Defense Committee. I think some members are here, as well as the San Francisco Interfaith Coalition on Immigration. There was a press conference today where a brief presentation on the legislation was made and a number of people have talked about the reasons why this legislation is needed. Before I delve into that, I’d like to also thank my own staff, my two legislative aids, Sheila Chung Hagan and Lynette Peralta Haynes who have been working on issues around immigration for a number of months and in particular Sheila who took the lead in this legislation for all the work she did in putting this together. This is a very complicated piece of legislation and I also want to thank the City Attorney’s office, Deputy City Attorney Miriam Morley who spent a lot of time carefully drafting this legislation to make sure that it is as legally viable as possible. Let me say also that this would not be possible without the support of my colleagues on the Board of Supervisors. The reality is that given the climate throughout our country when it comes to the issue of immigration, even in progressive San Francisco, it becomes very difficult to talk about immigrant rights. And so I want to thank the seven co-sponsors of this legislation, beginning with Supervisor John Avalos, Supervisor President David Chiu, Supervisor Chris Daly, Supervisor Bevan Dufty, Supervisor Eric Mar, and Supervisors Sophie Maxwell and Ross Mirkarimi.

You know, this legislation is essentially about striking the balance between two extremes. On one hand, the prior extreme of never reporting anything to immigration, any conduct even where that conduct had been

found to be illegal; and what we would describe as the current extreme of reporting every child, every young person who is accused of wrongdoing without any consideration for whether or not they actually engaged in that of which they are accused. This legislation strikes the right balance between the need to protect the public by reporting wrongdoing but the recognition that we in California do accord children certain rights, and that the right to have a judicial review of what is being alleged is a fundamental right that has to be protected.

In the end, this legislation is about giving courts and the judicial process the final say over whether or not a young person accused of wrongdoing did something that warrants reporting to federal authorities.

Now, the last thing I would say about this piece of legislation is that I want to thank the Mayor's Office for engaging in a discussion about this issue for a number of months. We have had many discussions about this, including discussions with Mayor Newsom himself, and my hope is that as this process goes forward with this piece of legislation, that the Mayor will recognize that though not perfect, this piece of legislation does strike the right balance for San Francisco, it recognizes, as the Mayor has acknowledged, the need to protect the public, but also tries to balance the need against the rights of young people.

And the reality is that the policy we have in place today has had many unintended consequences. There is the unintended consequence of an entire community of immigrants, not only in the Mission but throughout this city feeling that we as a City no longer support sanctuary when the reality is that we do, and the unintended consequence you see in a lot of our schools where you have school administrators, teachers, personnel afraid to contact police for fear that by reporting an incident to police, that reporting will automatically lead to reporting to I.C.E. and therefore deportation. And there have been a number of stories where people on school sites are reluctant to pick up the phone and call the SFPD for fear that somehow their students because of some minor incident or altercation will be deported to countries by the way that they have no longer ties to. I hope the Mayor reviews this policy and sees it for what it is, something that is broadly supported throughout the city.<sup>436</sup>

During public comment, many of the SFIRDC members came forward to thank the Supervisors for sponsoring the legislation, to provide further stories of youth who the public defender was defending in criminal court who had been referred to ICE, and to encourage them to pass the ordinance amendment that they had been working on for over a year. Diana Oliva, CARECEN programs manager and SFIRDC facilitator would remind the Supervisors that, "Our youth should be treated equally and also with due process and we need to be understanding that these are children at the end of the day and that children deserve a second chance in order to become leaders in the community and in San Francisco." San Francisco Unified School District Superintendent Carlos Garcia and President of the Board of Education Kim-Shree Maufas also both made comments on how parents will feel safer sending their

kids to school without worry of their children being referred to ICE. Garcia noted that “Our city and schools must continually work hard to uphold the sanctuary city ordinance and this new 2009 language clearly strengthens the existing work that so many before us have committed to.”

Following the relatively routine and otherwise uneventful Board meeting, the media interviewed the Supervisors who were all asked if the legislation would allow for criminals to go free without being deported. The Supervisors responded that under the youth amendment, Edwin Ramos would have been reported to ICE. Supervisor Dufty would note that

If the proposed policy were in place when Edwin Ramos had committed crimes as a juvenile, he would have been referred to ICE. As it is now, too many residents are afraid to cooperate with police investigations, testify in court or communicate with government employees. Teachers, SFPD officers and hospital employees have no training in being effective enforcers of federal immigration law.<sup>437</sup>

Avalos would comment, “I am from the district where the poster child for people who oppose this legislation had committed three murders in one event [Edwin Ramos]. The poster child under this legislation would be deported.”<sup>438</sup> He would also comment that

The new policy can be easily abused, as it allows police and probation officers to report children to immigration without any court review, based on reasons completely unrelated to public safety. The current policy has resulted in the initiation of deportation proceedings against youth who were innocent of the charges they faced or were overcharged, and were subsequently separated long distances from their families in immigration detention facilities out of state.<sup>439</sup>

Sophie Maxwell emphasized that the issue of youth deportations was a human rights issue and that,

The basis of our law is ‘innocent until proven guilty. If it is the same for you [citizens], the same thing should be for them [undocumented youth]. Seeing that the IRC, Youth Commission, and the Board of Supervisors have all passed *resos* [resolutions] supporting restoring due process rights to undocumented youth over the past year, this policy change has strong support and is rooted in San Francisco’s deeply held values of keeping families together.<sup>440</sup>

Board President David Chiu, like Maxwell, found the legislation to be uncontroversial and within a broader policy world wherein undocumented immigrants were supported. He would not that, “We have always supported policies that are supportive and sensitive to the needs of our immigrant communities. This is just another law in that realm.”<sup>441</sup> He also found it a straightforward and entirely consistent with the principles of normative due process, noting, “If a young person is

detained by the police, they should be afforded access to legal counsel and a hearing before any decision is made to deport them.”<sup>442</sup> Campos called attention both to the fact that this policy was not only about making the city agencies function properly given that they serve a mixed-status city population, but also because this policy was rooted in typical San Francisco beliefs and values. He would note that, “We in San Francisco believe in due process, we believe in fairness, we believe in the justice of the system. The decision on whether to refer to ICE should rest with the courts and not with the JPD. This is not harboring. Reporting will take place.”<sup>443</sup> He would further note that, “Being accused of something is different than actually doing it. If you report someone at the booking stage, you could have a situation where someone is wrongly accused and because you reported them, they are automatically deported.”<sup>444</sup>

**Igniting Legal Fears, Breaching Confidentiality:  
The Mayor Leaks the City Attorney’s Cautionary Legal Memo on the Youth  
Amendment**

The same day that Supervisor Campos introduced the sanctuary ordinance youth amendment to the Board of Supervisors, the City Attorney’s office would provide Mayor Newsom, following his request, a “cautionary legal memo” on the youth amendment, a memo which is client-attorney privileged and which outlines all of the potential legal risks to the city if the amendment were passed and implemented. The City Attorney’s aim is to present the worst case scenarios that could result so that the City would be prepared to mount a legal defense of the legislation in the case that the City were sued or prosecuted for the practices that the policy mandated. This was not a public document that someone could submit a public records request for. If this document were to be made public by the client, the owner of the memo, the legal arguments against a policy might be clearly accessible to the opponents of the policy. In the case of the sanctuary city ordinance, there were many opponents nationally, such as Judicial Watch, Charles Fonseca, and Danielle Bologna who already had attempted to sue the City to force them to change the policy. Normally, this kind of memo was only given to the Board sponsors of the policy prior to the passage of the policy and then to the Mayor after the passage. In this case, Mayor Newsom’s staff member Christine DeBerry, on behalf of Newsom, requested the memo earlier in the process - before it had even been introduced. The policy had already been approved by the City Attorney to form and content that it was not illegal or unconstitutional. It was normal for the Board to still pass the policy even given the legal risks of litigation that a memo like this pointed out. In many cases, such as with gay marriage, the Board and the Mayor push beyond the legal status quo to achieve new progressive policy objectives despite the legal risks, and the City Attorney’s job, once the policy is passed, would still be to defend the policy if the City is sued over the policy.

When Mayor Newsom received his cautionary memo on the sanctuary amendment, to counter the Board’s veto-proof majority who had just introduced the amendment, he gave it to the *San Francisco Chronicle* who had consistently been running anti-immigrant and anti-sanctuary stories. Two days later, Jaxon Van

Derbeken, with Heather Knight would publish the details of the confidential memo for all to read online. The cautionary memo was written by Deputy City Attorney Miriam Morley who had assisted Campos in writing the youth sanctuary ordinance amendment text, as well as Buck Delventhal and Wayne Snodgrass.

The memo stated that enactment of the amendment was

1) likely to result in a federal legal challenge to the proposed Amendment, and possibly the entire City of Refuge Ordinance, and 2) could adversely affect a pending civil suit in state court challenging the SFPD's immigration reporting policies, a federal criminal investigation into the JPD's reporting policies, and a pending wrongful death lawsuit against the City.<sup>445</sup>

The memo argued that federal law doesn't permit local governments to prohibit its officials from providing information to federal immigration authorities about any individual's immigration status (8 USC 1373).

Under federal law, no federal, state or local officials or entity may "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individuals." (8 USC article 1373.) Section 1373 does not require the City to turn over information about an individual to ICE, but it prevents the City from prohibiting City officials from turning over information.<sup>446</sup>

Since the proposed amendment, as the Deputy City Attorneys saw it, "imposed a new restriction on the authority of the City employees to communicate with federal authorities about a juvenile's immigration status", they cautioned that this may not comply with Section 1373. No one had legally challenged San Francisco City of Refuge ordinance to date under Section 1373, even though it already prohibited providing information about immigration status to ICE, so the memo cautioned that "a new amendment would shed light not only on the amendment's restrictions on communication with ICE, but also more generally the sanctuary ordinance's restrictions on communications with ICE." They feared that enactment of the proposed Amendment with its new prohibition on reporting could prompt anti-immigrant groups to challenge the entire ordinance. They also anticipated that "an employee or organization representing that employee would almost certainly raise such a challenge if the City attempts to enforce the ordinance by disciplining law enforcement personnel for contacting ICE." This clearly referred to the Juvenile Probation Department officers and their union, which would likely express opposition to the youth amendment. They thought that if the City attempted to enforce the new policy by disciplining an employee, for instance by terminating the employee for violating it, the City could be exposed to damages for unlawful termination.

The City Attorney memo also pointed out that the 9<sup>th</sup> Circuit Court of Appeals and U.S. Supreme Court had not reviewed the legality of local sanctuary ordinances - whether federal law pre-empts sanctuary city ordinances - and had not addressed

the question in the context of juveniles. If the amendment's enactment led to a lawsuit where these courts would rule on the ordinance, one outcome could be that they potentially rule against the ordinance as a whole as federally pre-empted.

However, what was interesting about this position was that title 8, section 1373 stated

(a) In general, Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service *information regarding the citizenship or immigration status*, lawful or unlawful, of any individual. ([Pub. L. 104-208, div. C, title VI, § 642](#), Sept. 30, 1996, [110 Stat. 3009-707](#).)

So the information that this statute protected was “information regarding the citizenship or immigration status” of a person. The JPD only would obtain that information if a person self-reported that or because they chose, under the Mayor's ICE referral policy to ask questions, which would yield that information in the first place. If an undocumented person had been merely arrested on a felony charge, and the probation officer did not ask specific questions that would yield information about immigration status such as “did you come to the United States illegally”, then JPD officers would only have person's name, race, stated age, the crime they were charged on, whether they had an ID on their person, whether they spoke English, and other circumstantial evidence related to the crime they were accused of. Therefore, if JPD officers were prohibited from asking about immigration status and reporting information about immigration status until after the adjudication phase as the youth sanctuary amendment called for, JPD officers would not be prohibited from relaying “information about immigration status” to ICE at the booking stage because they would not yet have that information. Further, the youth sanctuary amendment did not require JPD to ask questions that would yield immigration status information, nor did any state or federal law.

This same argument could be made for the sanctuary ordinance in general. Since the sanctuary ordinance explicitly forbid city employees from “requesting information about, [...] the immigration status of any individual” (12H2.c) or “Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or State statute, regulation or court decision” (12H2.d) there would never be a circumstance in which a city employee would have information about an individual's immigration status that the city would prohibit them from communicating to ICE in violation of title 8, section 1373. However, beyond this, legal experts in SFIRDC found that title 8, section 1373 was read to require local agencies to respond to ICE requests for this information not to voluntarily offer it up when they came across it. In fact, there were no federal laws that required them to report immigration status information when they came across in situations when they had not received a request for that information from ICE. Therefore, the youth

sanctuary amendment *and* the sanctuary ordinance in general would arguably not conflict with Title 8 section 1373 and not be in peril if the federal government clarified the issue in court.

In outlining the potential defense in the case of a lawsuit, the City Attorney's memo pointed out that a legal case involving New York City's sanctuary policy left open the question whether there might be a generalized confidentiality policy 'necessary' to 'legitimate municipal functions' that could survive federal challenge. Interestingly, this would indicate that municipal functions, which serve a mixed-status population require sanctuary-policies, however this argument was left undecided by the courts. The cautionary memo authors stated that in drafting the amendment, they had "attempted to bring the proposed Amendment within this potential exception by emphasizing the different way the judicial system addresses crime committed by juveniles." In other words, in drafting the sanctuary policy, they did not intend for the legislation to be ethically imbued anti-deportation policy, but rather routine, efficacy-focused city-service provision policy.

Nonetheless, they cautioned that they could not "predict the outcome of likely legal challenges to the proposed Amendment. Until further clarification by the federal courts, the City Attorney "has advised JPD to not take any adverse action against a City official or employee who reports a juvenile to federal immigration." The fact that the City Attorney would advise against "adverse action" was interesting - a single legal move which would gut the power of the sanctuary ordinance given that enforcement measures, while not the sole factor keeping the culture of sanctuary in place, would provide one of the main sources of executive threatening force - Department Heads who under the advise of the City Attorney taking disciplinary action - pushing employees to behave in certain ways towards immigrants and follow certain protocols. This position would also be completely inconsistent with other policy stances they had taken such as on gay marriage where the City acted to issue marriage licenses knowing the likely legal challenges and despite gay marriage having not been adjudicated to the full extent at the federal level.

The City was also still involved in settling the *Fonseca v. Fong* case on terms that "minimize the involvement of SFPD patrol officers in making reports to federal immigration authorities." The Deputy City Attorneys thought that passing this amendment would raise additional questions in the middle of that case about compliance with state law, Section 11369 of the Health and Safety Code, which required for the reporting of people arrested on certain controlled substance (drug) offenses. They thought then that this would delay that settlement and inject into the case, the issue of reporting juveniles since 11369, like the sanctuary ordinance, didn't distinguish between adults and juveniles. One outcome could have been that the settlement of Fonseca would lead the City to be forced to report more youth who were booked not only on felonies, but also misdemeanor drug offenses. This might not be an issue though since 11369 reporting to ICE was triggered by an "arrest", and juveniles technically were not "arrested" when taken into police custody. The California Supreme Court in *TNG v. Superior Court*<sup>447</sup> had noted that "arrest" terminology, such as that used in Health & Safety Code § 11369, was not used in juvenile cases. The holding for this case would state:



in order to effectuate the legislative policy of confidentiality and the juvenile court's purpose of protective rehabilitation, we believe Welfare and Institutions Code sections 676, 781, and 827 should be interpreted to permit the juvenile, who has been temporarily detained by the authorities and subsequently released without further proceedings, not only to deny that he has been arrested, but, also, to deny that he has been detained or otherwise subjected to juvenile court proceedings. Given this holding, CA Welfare and Institutions Code 11369 shouldn't apply to when juveniles are detained but subsequently released since they were not "arrested."

They also cautioned that due to the JPD being under federal grand jury investigation by Joe Russionello for criminal charges of transporting or harboring undocumented immigrants, that the sanctuary amendment would likely have negative effect on the City's ability to terminate the investigation soon without the U.S. Attorney filing charges. Federal law made it a crime for any person, in knowing or reckless disregard of the fact that an alien is illegally in the U.S, to "transport" the alien within the U.S. "in furtherance of such violations of law" or to "conceal, harbor or shield from detection such alien in any place, including any building or any means of transportation."<sup>448</sup> Russionello had initiated the investigation in response to JPD flying back undocumented juvenile offenders to their home countries and housing them and allowing them to participate in their youth programs prior to the July 2008 youth ICE referral policy change. The Deputy City Attorneys would note that

We are not aware of any criminal prosecution brought against a government entity for transporting or harboring aliens under this federal criminal law" [8 USC 1324(a)(1)(A)(ii) and (iii) "transport, move or attempt to transport or move the alien within the U.S. 'in furtherance of such violation of law,'" or "conceal, harbor or shield from detection such alien in any place, including any building or any means of transportation."].[...]All of the City's actions in connection with juvenile offenders were done under orders of the Superior Court.<sup>449</sup>

The City Attorney had asked the U.S. Attorney if city employees would be targets of the investigation on criminal charges, but he refused to respond. As a result, the City had hired criminal defense counsel to represent certain individuals and to advise on the investigation. The Deputy City Attorney's advised, "If you pass the amendment, the private counsel may still advise the JPD to report undocumented youth at the booking stage to avoid the wrath of further criminal investigations while the case is pending." Speaking outside of the realm of the legal, the memo went on to comment on how due to the federal investigation, "JPD Department members may be reluctant to attend or testify at public hearings. They also may fear arrest or indictment by federal authorities if they alter their current practice of providing to ICE information on juveniles in custody after being booked on a felony. [...]" Ultimately, they thought that a change in City policy was

likely to cause the U.S. Attorney to extend the investigation, which will force the City to incur significant additional expense, including out-of-pocket costs to outside counsel. The return to a policy of not reporting juveniles could also encourage the U.S. Attorney's Office to file charges it might otherwise exercise its discretion not to pursue.

Lastly, the cautionary memo warned that passing the amendment might prolong the Bologna lawsuit which claimed that had it not been for the sanctuary ordinance, Edwin Ramos would have been reported to ICE and the Bologna family members would not have been shot. At the time of the memo, the federal court dismissed all the federal claims in the suit and sent it back to state court but the case was still pending. The authors of the memo cautioned, "Any changes to the sanctuary policy might prolong that case if it gets litigated and we have already spent \$300,000 on it. Based on our prior large-scale litigation, we believe that the litigation could take years to resolve, and the total fees and costs to the city could exceed \$1 million particularly if the case reaches the U.S. Supreme Court. If the City were to lose, it could be required to pay the same amount or more to plaintiffs for their attorney's fees and costs. So the argument could have amounted to not providing due process for youth because it would cost the City too much money – deport them to save a buck.

Following the publishing of this memo in the *Chronicle*, the opponents of the policy voiced their concerns. District Attorney Kamala Harris, opposed the amendment because she found it to "contradict federal law," and George Gascón, the new and publicly pro-sanctuary Police Chief said that he opposed the policy because juvenile court judges could reduce the charges of drug offenders and violent offenders to misdemeanors and therefore allow for these immigrants to be released without having been reported to ICE. This position was identical to the conservative Bush-appointed Republican U.S. Attorney threatening to federally prosecute JPD officers. U.S. Attorney Joe Russionello would say, "JPD judges will have complete authority on how to deal with felony cases and therefore no one will be reported – they are creating their own immigration policy again."<sup>450</sup> The Judicial Watch attorney David Klem, who was representing Charles Fonseca in his lawsuit against the city said, "They [immigrants] shouldn't be given a special status protected from federal law".<sup>451</sup> He claimed that reporting to ICE should be about drug enforcement, not finding hardworking undocumented kids who got in a school fight. He also mentioned that he would support a policy that only refers kids who have been charged with drug offenses. Though this sounded more lenient than reporting kids who'd been found guilty of any felony, Klem's suggestion would also allow for the reporting of kids charged on misdemeanor drug offenses, essentially extending the reporting policy to lower-level crimes – the situation that the Deputy City Attorney warned against.

The City Attorney Dennis Herrera responded directly to Mayor Newsom through a very public letter about leaking the memo to *The Chronicle* by reminding him that cautionary legal memos did not amount to advise stating that the

amendment was illegal or unconstitutional. He noted the City Attorney's job is to approve proposed legislation as to form, the substance of which is

not patently unconstitutional or otherwise clearly illegal. When a particular proposed ordinance presents significant legal issues or could subject the City to costly litigation this Office usually provides confidential, consistent written advice to the Board and the Mayor as part of the process... The legislative authority of the Board and the Mayor includes the prerogative to push the limits of existing law, and even to attempt to shape case law, so long as there are legally tenable arguments to support doing so. [...] We try to identify possible options to avoid or reduce those risks and still achieve the intended policy objectives or as close to those objectives as feasible.<sup>452</sup>

He also told the Mayor that he should have contacted the City Attorney's office prior to waiving the client-attorney privilege to the information in the memo and leaking it to the press, since the City Attorney could advise him on the best course to take in the process of legally representing the City:

Only the City, acting through the particular officer or board to whom the memorandum is addressed, may waive the [client-attorney] privilege. But as we explain further below, because the disclosure of confidential advice can have serious legal and financial consequences for the City and could violate the principle of comity that underpins the legislative process, officials should always consult with this Office before waiving the privilege. [...] The client of the City Attorney is the City and not individual elected officials, members of boards or commissions or even departments. [...]<sup>453</sup>

Further, the City Attorney would comment on the importance of confidentiality for the proper functioning of city government:

Confidentiality serves two purposes. It ensures that the policy makers understand the full consequences of the decisions they may be taking without injecting the City Attorney's opinion into the policy debate. Confidentiality also preserves the ability of the City Attorney to defend the City's official decisions, especially where the policy makers exercise their prerogative to decline to choose the legally safest course of action. Officials can choose to follow or not follow the advice of the City Attorney, and the City Attorney is duty bound to vigorously defend the policy decision of the officials, except where the action is unquestionably unconstitutional or illegal.<sup>454</sup>

In clear reference to the sanctuary amendment's 8 sponsors, the City Attorney would write that if one branch of City Government, such as the Mayor's office were to waive an attorney-client privilege, it "may discourage City officials from seeking legal advice from the City Attorney, to the detriment of the City."<sup>455</sup>

However, ultimately, the Mayor was in a position to waive confidentiality on behalf of the City and his office according to the City Attorney's response. He was also able to authorize one of his staff to waive confidentiality as the recipient of the memo acting on behalf of the *City*.

A city official who receives such confidential advice may not waive it without following appropriate procedures, as discussed below....A City official who receives confidential advice from this Office may not waive it unless authorized to do so...The attorney-client privilege may be waived only by the holder of the privilege. (*See* Cal. Evid. Code 912.) When the holder of the privilege is an entity like the City, the privilege belongs to the entity rather than to any individual officer or employee....Accordingly, privilege may be waived only by the City, acting through the body or office to whom the City Attorney directs the attorney-client communication. Under these principles, when the City Attorney provides confidential written advice directly to an individual Board member or to the Mayor, that individual recipient may waive the privilege on behalf of the City. No other person, including the official's aides and staff members may waive the privilege without authorization from the memorandum's recipient. [...]<sup>456</sup>

The City Attorney notified the Mayor that had the disclosure been unauthorized, the person making the disclosure could face significant penalties. Local ethics laws prohibit City officers and employees from willfully or knowingly disclosing any confidential or privileged information to advance the private interests of themselves or others. He warned that violations of these laws carried the potential of "administrative, civil and criminal penalties, and may subject an official to removal for official misconduct."<sup>457</sup>

But the Mayor did authorize the disclosure of the cautionary memo to the press - it had just never happened before. Newsom said he authorized the leak because "It's my memo and San Franciscans need to know the legal jeopardy the legislation would bring to the city and its sanctuary ordinance."<sup>458</sup> Supervisor Avalos called for an investigation into the leak to see if the Mayor ever consulted the City Attorney and Supervisor Chris Daly expressed outrage at the Mayor's political move. In analyzing the significance of this political move at a subsequent Board meeting, Daly noted

And here in San Francisco, where I believe immigrant rights are very much one of the core San Francisco values, we have some political problems. [...] I'm holding a memorandum from the City Attorney on this item that's marked 'privileged and confidential.' I've been on this Board of Supervisors now - I think in two months, it will be nine years on the San Francisco Board of Supervisors - [...], I believe that there are times when that privilege has been skated on, walked upon, the line has gotten blurry, maybe crossed, maybe not. We've had closed sessions, maybe someone said something to their staff and said something to a third party. But never, not once in nearly

nine years in elected office have I ever seen an entire memo given to the press. And we're all for freedom of the press, but let me talk for a moment about why we have closed sessions here at the board of supervisors, why we have privileged memoranda here in local government. It is for very limited subject matter. It is for personnel matters, it is for matters where there is or there is likely to be litigation. And as far as personnel matters go where there are privacy issues, this makes sense that we would keep those matters confidential. With regards to litigation, oftentimes, there are very big stakes, and going into litigation, you don't have to be a trial attorney, you don't even have to have watched too much courtroom television to know that when you go into these cases, when there's potential litigation, you want to make your case. You're guessing what the opponents, in this case a potential appellant. You're guessing what their case is going to be. You're going with your facts and your arguments and you're attempting to come out of the case with your side prevailing. We frequently receive memoranda from the City Attorney on potential legal conflicts. We call them advice memos. We have received one on this legislation, [...] my understanding is that the Mayor also asked for similar information of the privileged and confidential memorandum on the same subject, which he released to the press. Now, in doing so, I think I know why he did it. There's eight members of this board who are co-sponsors of this legislation. Eight is the magic number in terms of the ability to override mayoral veto. The Mayor has set his course on this issue to seek to turn over kids who may be undocumented who have been accused of committing a felony over to ICE. I don't think that's the San Francisco position. It's certainly not the position of eight members of the Board of Supervisors, but I have found that this particular man, when it comes to pushing his political agenda, he will resort to just about any tactic. And this tactic was one where there is a memo - a good attorney will usually give the most conservative legal advice that they can so that you're well aware of the worst-case scenario. So it may not read well. Which advantages the political position of the Mayor of San Francisco who doesn't have the votes here at the Board of Supervisors. So they leak that memo. Now, in leaking that memo, I'll deal with whether or not that's legal in a minute, and the city attorney probably won't offer us anything conclusive because that's usually how this stuff works. But in leaking the memo, they give our potential opponents - and that's right wing foundations, whoever - they give them their case. The case for the appellants if this legislation is passed and they sue for relief. The case is presented to them. In court, they're going to be able to say the city and county of San Francisco passed this law with this memo -- not this one, but the ones the mayor gave out - which may or may not be very similar. It really, really hurts the city's case in court, and the City Attorney is going to be in a position, if that happens, to talk away the arguments that they make, which are the worst-case scenario arguments. [...]. So when the mayor did that, he compromised the position of the city and county of San Francisco. He violated the trust of the legislative branch of government, including the three supervisors who are likely to vote against this measure. [...]Let me say, it is

clear that a member of this board cannot leak this document. This document, which was given to this committee, unless this committee and/or this board waives a privilege, we are forbidden from providing this document to any member of the public, anyone who is not within the privilege in terms of the city family. [...] For the Mayor of San Francisco to waive his privilege on a document, which is very likely to be identical or very, very similar to a privileged document given to this deliberative body, I think is beyond a gray area in the wall. I think that there was a responsibility for the Mayor's office to understand or to assume or to know that this is a document, which would have privilege across city government, at the very least, at the level of a member of the San Francisco Board of Supervisors. And that no member, not the City Attorney, not the Mayor, not any department head who may or may not receive this, not any member of the San Francisco Board of Supervisors, can waive privilege for a deliberative body. [...] If you want to talk about liability that the city has, the Mayor of San Francisco has played a significant role in expanding the city's liability in making this city more vulnerable, and as the chief executive officer of San Francisco, that is the last thing that the Mayor of San Francisco should be doing. I think that he should be taken to task.<sup>459</sup>

A week after the leak, Asian Law Caucus staff attorney and SFIRDC member Angela Chan would submit a public records request to the Mayor's office for a copy of the leaked memo and all copies of any communications such as emails that the Mayor's office had with the *Chronicle* regarding the cautionary memo leak. However, the Mayor never responded about the request for communications documents even though he was legally obligated to provide them under the city's public requests laws. In response, Chan would file a complaint with the city's Sunshine Task Force, which investigated and ruled on violations of the public records laws.

### **Competing Legal Advice: SFIRDC Lawyers Counter the City Attorney's Legal Arguments**

To neutralize the fears stoked by the Mayor's interpretation of the City Attorney's cautionary memo which amplified the unlikely risk that it would usher in the sanctuary ordinance's legal demise, SFIRDC challenged this interpretation by offering their own interpretation of the legal advice of the City Attorney and relevant state and federal law, as well as challenging the overblown Deputy City Attorney's legal warnings in the memo through issuing two legal memos of their own.<sup>460</sup> The first memo would argue that the youth amendment was sound under state and federal law, saved the city from costly lawsuits, strengthened the city's position legally and morally, and improved public safety. The second memo would go on the offensive and outline the legal risks to the City of continuing to implement the Mayor's JPD policy. Both memos were prepared by SFIRDC member leaders who were staff attorneys from Asian Law Caucus, Legal Services for Children, Immigrant Legal Resource Center, Lawyers Committee for Civil Rights, American Civil Liberties Union of Northern California, and the San Francisco Immigrant Legal and Education

Network. To announce the memo, SFIRDC planned a “tele-press” conference to release their memos, which they would send to the Board of Supervisors, the Mayor, and the press. During the conference, SFIRDC leaders would note, “We cannot continue with the currently unjust policy for the sole purpose of ‘looking tough’ on immigration. The current policies encourage unfair detentions, exaggerated charges, and racial profiling, creating civil liability for the city.”

SFIRDC by affirming the legally based purpose of the youth amendment was to “ensure that innocent youth are not wrongly reported to immigration officials for deportation.” They then justified the legality of the policy change by reminding their audience that legal experts in immigration law, constitutional law, and juvenile law support the policy change – namely Professor and Dean Kevin Johnson and Professor Bill Ong Hing at UC Davis School of Law, Professor Michael Wishnie of Yale Law School, and Professor Jayashri Srikantiah of Stanford Law School. The SFIRDC lawyers also invoked the expertise of the City Attorney, reminding the public, the Mayor, and the Board, that the policy was reviewed by the City Attorney prior to introduction and that the City Attorney approved the policy as to form. They explained that this would signify that the amendment is “legally tenable and defensible” with “legally cognizable arguments” which the City Attorney could make in court if the policy were challenged by a lawsuit. This would also mean that despite the Mayor’s argument that there were legal reasons not to pass the policy, that the City Attorney’s approval of the policy meant that the Board of Supervisors were in their authority to enact the legislation and that ultimately whether or not to enact was a “policy decision” or a matter of political will that rested upon the Board and the Mayor.

They would also point out that in the City Attorney’s response to Mayor Newsom, he rejected the Mayor’s argument that the proposed legislation is patently unconstitutional or otherwise clearly illegal on its face. The references to possible legal challenges in the memo, SFIRDC urged

[...] should neither be overstated nor dissuade the Board from exercising its policymaking role. Time and again, the City has successfully defended against legal challenges to its policy initiatives, including the municipal identification card program, universal health care initiative, and expansion of domestic partner benefits. Indeed, the City’s Sanctuary Ordinance has stood strong for two decades and strengthened ties between the City and immigrant communities, despite the pessimistic predictions offered by opponents since the Ordinance’s enactment.

SFIRDC lawyers then went on to attempt to debunk the myths underpinning the *Mayor’s* legal interpretation of the City Attorney memo. They began by echoing the City Attorney’s cautionary memo, which said that City officials have no legal duty to expend limited City resources on immigration enforcement. They also went further and argued that local officials who engage in migration enforcement may themselves be violating the law. Citing legal cases in State court,<sup>461</sup> SFIRDC lawyers argued that in these cases officials had impermissibly intruded on the “federal preserve” when allowing LAPD officers to arrest for civil immigration purposes, and

inquiring into immigration status based on an individual's appearance of Mexican ancestry.

SFIRDC found the City Attorney's warning of the risk of extending the U.S. Attorney's federal prosecution of the Juvenile Probation Department and of the U.S. Attorney filing federal criminal charges on federal harboring and transporting laws to be overblown and unprecedented. The coalition attorneys pointed out that

Notably, there has never been a successful criminal prosecution under federal harboring laws of any municipal government entity, employee or officer acting pursuant to a policy such as San Francisco's sanctuary ordinance. In order to be held criminally liable under federal harboring statutes, an individual must have the requisite criminal intent, which cannot be established against officials under these types of circumstances. As a recent Court of Appeals case illustrates, even an immigration officer who counseled an individual how to avoid detection by staying out of trouble was not criminally liable for harboring in *United States v. Ozcelik* (527 F.3d 88, 100-101 (3d Cir. 2008)).

Going on the offensive, SFIRDC argued five main points for the need to change the Mayor's JPD policy. The first would be that it undermined the immigrant community's confidence in the Police. They argued that JPD's policy of referring immigrant youth for deportation exacerbated prevalent fears in immigrant communities that police cannot be trusted since JPD ICE referrals are based only on police charges of felonies without regard to a youth's actual guilt or innocence. As stories spread of innocent youth and families being unfairly deported, SFIRDC argued, immigrants will be further discouraged from reaching out to police. Using language similar to that used by conservatives against sanctuary policies, they argued that cities and states that reject a community policing approach where immigrants are fearful of coming forward to the police "are quickly becoming 'sanctuaries' for criminals, not undocumented immigrants, because a vulnerable segment of the community that experiences crime has become alienated and fearful to report crime." They further argued that

In San Francisco, immigrant victims and witnesses have come forward to report crimes and cooperate with law enforcement officials because of the sanctuary ordinance. Although immigrant victims and witnesses who work with police and prosecutors to solve crimes are largely invisible to the public, we should never forget that we are all safer as a result.

SFIRDC argued also that the collateral effect of the JPD policy would be that the family members of the reported youth might face immigration enforcement action because when ICE agents take a minor into custody, they often seek more information about the youth's family in the U.S. Once ICE agents become involved, family members without status – including parents, grandparents, brothers, sisters, and extended family members who reside in the same household- are at greater risk of deportation. SFIRDC found that since the implementation of the policy, there had



also been a number of incidents in which juvenile probation officers threatened not just youth, but also the youth's family with deportation.

Secondly, SFIRDC argued that the Mayor's JPD policy "subverts our core values" of due process and maintaining a fair judicial system by presuming youth to be guilty and deserving of deportation based on a mere accusation of wrongdoing, no matter how unfounded. According to JPD data SFIRDC had obtained, in 2008, 68% or 1100 of the 3446 referrals to Juvenile Probation did not result in a sustained petition - the juvenile system counterpart to a guilty finding in adult criminal court. SFIRDC argued that automatic referrals of youth to ICE at the booking stage were therefore often premature and erroneous because the youth could be innocent of any charges, could have been overcharged by law enforcement, or could actually be documented. However, they noted

Even if criminal charges against a youth are later dismissed, the youth still faces deportation. Contacting ICE is ringing a bell that cannot be un-rung. Even if the City acknowledges that the arrest was in error, the youth still remains subject to deportation under our immigration laws.

Another element of the justice process, which the JPD policy damaged in the eyes of the SFIRDC lawyers, was the ability of youth to obtain legal counsel to help them obtain legal status and stay their deportations. The JPD referrals to ICE were happening before youth had the opportunity to access legal services, contest the charges against them, and confront their accusers in juvenile court. Additionally, ICE didn't screen juveniles to see if they could obtain immigration relief. Since youth don't have access to legal counsel, they were also unable to comprehend removal proceedings or to assert a claim for relief. For the SFIRDC lawyers, this amounted to differential treatment for undocumented youth facing the criminal justice system. SFIRDC also repeated their argument that the Mayor's JPD policy exposed the City to the risk of costly lawsuits based on racial profiling, denial of youth confidentiality rights, and unlawful detentions of legal immigrants and citizens.

Further SFIRDC found that once in JPD custody, under the policy, juvenile probation officers were essentially given the green light to racially profile youth in the booking intake process. JPD officers, all who lack expertise in immigration law, were required to determine a youth's immigration status based on eleven factors enumerated in the JPD referral policy. Several of the factors in JPD's policy required direct inquiry into immigration status in violation of the Sanctuary Ordinance - factors such as a "self-report of immigration status," "inconsistent report of immigration status," and "method of entry into the country".

SFIRDC argued that other factors provided very little to no information about a youth's immigration status, but instead were based on JPD inquiries that relied heavily on racial profiling. One of the factors a JPD officer was required to take into account was whether the youth was arrested in an area where there was the "presence of undocumented persons" which, in JPD's view, suggested that a youth in that area must also be undocumented. SFIRDC found this to encourage probation officers to "make assumptions about the immigration status of youth based on the demographic characteristics of their neighborhoods, for instance neighborhoods heavily populated by Latinos. SFIRDC pointed out that it was unclear how JPD would

even know that there were persons who appeared to be undocumented in the areas where the youth was arrested without relying on brute racial profiling. For instance, would JPD assume that if there were other people who “appeared” to be immigrants in the area then the youth also must be an immigrant, and beyond that, an undocumented immigrant? SFIRDC argued that

even if probation officers could make such determinations without engaging in ethnic or racial stereotyping, which seems unlikely, “reasonable suspicion” about the youth’s own status cannot be inferred from characteristics shared by people in the neighborhood as a matter of constitutional law.

Another factor that JPD officers were to consider when assessing reasonable suspicion that a youth was undocumented was the “length of time in the country.” The SFIRDC lawyers found that it was simply wrong for JPD officials to assume that “length of time in the country” indicated additional evidence of an individual’s immigration status. SFIRDC found that “JPD’s reliance on such factors betrays its ignorance of how our immigration laws actually operate and only heightens concerns that JPD officials will erroneously refer youth for deportation based on misconceptions or uninformed hunches.”

Also alarming to SFIRDC was JPD’s insistence that juveniles could be referred for deportation based in part on factors such as a his or her “perceived or actual national origin” or “inability to speak English.” The coalition lawyers found that these kinds of factors “reek of racial profiling” and underscored the likelihood that juvenile probation officers would engage in unlawful race and national origin discrimination in carrying out their duties under the policy. The JPD also lacked language access protocols for the provision of JPD services or intake interviews in languages other than English, so SFIRDC suspected that there would be inaccuracies in the interviews that probation officers conducted with youth to determine whether they were undocumented, therefore increasing the risk of inappropriate referrals to ICE.

These kinds of imprecise determination methods, SFIRDC would argue, could lead JPD not only to racially profile youth, but to wrongfully refer legal immigrants and citizens to ICE, and in the process face litigation for wrongful detention and deportation. In a seemingly veiled legal threat to the City, SFIRDC would point out that a case from San Joaquin County illustrated how costly these mistakes can be. In *Soto-Torres v. Johnson* (1999)<sup>462</sup>, local and federal government officials had to pay \$100,000 to settle a lawsuit brought by the Lawyers’ Committee for Civil Rights, an SFIRDC member organization, after a County probation officer made an erroneous determination regarding the plaintiff’s deportability, which resulted in the wrongful arrest and detention of the plaintiff by immigration agents. They also pointed to ongoing litigation in the U.S. District Court for the Central District of California in *Guzman v. Chertoff*,<sup>463</sup> a case brought against Los Angeles County Sheriff’s employees and federal immigration agents by a U.S. citizen who was deported upon the advice of a County employee. Guzman, who was developmentally disabled, was lost in Mexico for three months following the improper deportation and was suing local and federal officials for damages.

SFIRDC's third major argument against the continued enactment of the Mayor's JPD policy was that it disregarded the distinctions between the adult and juvenile justice systems. Under Mayor's JPD policy, the juvenile court was prevented from resolving cases in a manner that "best reflects the core principles of the juvenile justice system, such as rehabilitation and reunification of families." Instead, youth were automatically referred for deportation before there had even been a hearing, which led to the JPD "tearing many families apart in the process." SFIRDC argued that ultimately JPD's policy was premised on a flawed interpretation of the Sanctuary Ordinance, which was never intended to authorize the reporting of youth or juvenile dispositions to federal immigration authorities. JPD had been operating under what SFIRDC considered to be the false assumption that its ICE referral policy was consistent with the Sanctuary Ordinance. In support of this position, the JPD was citing the 1993 amendment to the City of Refuge Ordinance, which stated that,

Nothing in this Chapter shall prohibit or be construed as prohibiting a law enforcement officer from identifying and reporting any person pursuant to state or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws.

However, SFIRDC pointed out that this amendment was created to comply with a federal law, the Immigration Act of 1999,<sup>464</sup> which targeted the efficient reporting of state conviction records, not records of juvenile dispositions. Therefore, the amendment to the sanctuary ordinance, though it did not specify whether "person" referred to adults or juveniles, meant only to allow for the proper reporting of adults arrested on felonies to the state and federal government.

And finally, they called out the Mayor for violating the City Charter and Administrative Code. They pointed out that in its haste to respond to media stories, the Mayor's Office and JPD "acted precipitously, usurping the role of the Juvenile Probation Commission under the City Charter, and failed to abide by the measured approach embodied in the City of Refuge Ordinance." SFIRDC contended that

Ultimately, JPD's assumption that it can unilaterally reverse course and instruct its employees to disregard the Commission's longstanding policy toward undocumented youth is untenable [...] JPD's failure to act in accordance with official Commission policy can have serious legal consequences. The City faces legal exposure if it continues to allow Juvenile Probation officers to act in a manner that plainly violates the Commission's 1996 policy, in flagrant disregard of the Charter. Nor should the City condone JPD's attempt to evade our open government laws, which ensures that members of the public have the opportunity to comment on proposed policy changes before any such changes occur.

To minimize the legal risk to the City, the SFIRDC lawyers argued that at a minimum, youth should not be referred to ICE unless a youth's felony delinquency petition had been sustained, the youth had undergone immigration legal screening by an

immigration attorney, JPD created a comprehensive language access protocol to minimize the risk that youth will be erroneously referred to ICE because of language barriers, and following a probation officer making a recommendation to the juvenile court, “the court agrees that ICE should be notified based upon an individualized determination, which takes into account the nature of the offense, availability of suitable caregivers, offense history, previous illegal entries, and other relevant factors.”

In order to clarify the misconceptions held by the public due to the Mayor’s assertions about the youth amendment SFIRDC lawyers explained what the amendment would and wouldn’t do. They explained that it would “allow immigrant youth to have their day in court and be heard by an impartial judge, ensuring due process is upheld for all of San Francisco’s youth.” They argued it would encourage cooperation between law enforcement and immigrant communities by re-establishing a relationship based on trust and therefore increasing public safety. They also claimed that it would lessen the risk that the City would be liable for racial profiling, unlawful detention and mistaken referrals of United States citizens and lawful immigrants for deportation. Lastly, rather than undermining the sanctuary ordinance, SFIRDC argued that it would bring the sanctuary ordinance and the City’s juvenile probation practices into compliance with state confidentiality laws for youth.

However, they stressed that the youth amendment would not prevent referral to ICE of youth who had sustained felony charges. Nor would the policy allow juveniles who were accused of serious crimes to be automatically released after they were arrested. SFIRDC lawyers explained that under the youth amendment, after a youth was arrested, the Juvenile Probation Department would continue to use “an evidence-based risk assessment instrument” to determine whether it was safe to return the juvenile to his or her family while the case proceeds through the juvenile court process. This risk assessment, which was conducted for all youth at the booking stage, weighed a number of factors to determine if the youth was a flight or public safety risk. If the youth had an unfavorable assessment, then the probation officer would detain the youth throughout the adjudication process. Ultimately, a judge reviewed this risk assessment decision at a hearing, after considering recommendations and evidence from the District Attorney, the Public Defender, and the Probation Department.

SFIRDC also pointed out that the youth amendment would not change or hamper the ability of the JPD officers, or officers of the juvenile court to do their jobs. They argued that the proposed legislation recognized that juvenile court judges were “skilled and experienced in adjudicating charges against youth and evaluating all the evidence in a juvenile justice case in an impartial manner.” Juvenile probation officers would also continue to play a critical role in determining whether youth should be released or detained and also in determining the ages of individuals in custody, through a variety of investigation methods including having dental records examined. SFIRDC lawyers argued that the juvenile court process would “continue to provide an opportunity for all sides, including the public defender and the district attorney, to produce their evidence and witnesses.” This policy, they argued, would allow the juvenile court system, which included a number of state-mandated checks

and balances, to “ensure due process for all of San Francisco’s youth, without compromising the court’s ability to deliver a fair and just decision in each case.”

### **Conclusion**

This chapter showed that the purpose of the City Attorney’s legal advice, which was officially to provide the worst case legal scenario of passing the youth sanctuary amendment – that the city could be sued on the grounds that it violated federal law – was a political maneuver in that it provided an overblown and unlikely scenarios that provided the Mayor political cover in opposing the youth sanctuary amendment. As a result, SFIRDC and the Board would need to counter both the Mayor’s interpretation of the City Attorney’s legal advice, as well as aspects of the City Attorney’s legal advice itself. SFIRDC would do this by issuing their own legal memos, which in turn would serve as a political organizing action targeting the swing votes on the Board who would be voting on the youth sanctuary amendment. This chapter highlighted that sanctuary city legal discourse both had the power to move or stall policy enactment and to push legislators to take decisive action to either support the deportation of youth or support the affordance of due process. However issuing legal discourse on sanctuary city was also used by SFIRDC as a tactic of resistance to youth deportations and Mayoral power. However, all parties invoked state and federal law to maintain the sanctuary city in accordance with the tenets of such laws to insist on the legality of sanctuary as an extension of state and federal law rather than a set of policies in defiance of the state and federal government.

## **CHAPTER 10**

### **ARGUMENTS FOR PROVIDING GOVERNMENTAL SANCTUARY FOR YOUTH**

#### **Introduction**

This chapter provides an overview of pro-sanctuary for youth arguments by examining them as they were expressed in public testimonies at public hearings from late August 2009 to mid-October 2009 following the introduction of the youth sanctuary amendment. These arguments are not rational theoretical abstractions that are alienated from the political battles that gave birth to them. For this reason, an anthropological analysis of the entire context of power is needed if this study is to show that sanctuary city as an ethic of government does not consist of arguments or values as philosophical concepts, but rather as politically-embodied discourse – arguments with illocutionary force, that provided inspiration or motivation for governmental action and community organizing action, and which in turn were modified based on the outcome of such action. The discourse of sanctuary is one part of a field of power, which is produced, used, and modified in the confrontation of pro- and anti-sanctuary forces, coalitions, governmental actors, and political maneuvers. Without this field of power, the discourse of sanctuary would not exist.

To further study how governmental sanctuary discourse was expanded through the political battle for amending the sanctuary ordinance, this chapter will focus on discourse in a hearing of the San Francisco Unified School District's Board of Education where SFIRDC members worked with Commissioners to pass a resolution supportive of the coalitions youth sanctuary amendment. It will also focus on a hearing of the Board of Supervisors' Public Safety Committee that would analyze the youth sanctuary amendment and vote to refer it the Full Board of Supervisors for a series of two votes. This chapter shows that arguments in favor of the youth sanctuary amendment hinged upon four major foci: that the amendment would restore constitutional rights due to youth, that the youth sanctuary amendment would make the municipal government function better than under the Mayor's JPD policy, that passing the amendment was the right thing to do, and that it was in line with religious tenets of providing sanctuary for the stranger in our midst. Each of these arguments were made not on a purely rational basis but with the intended aim of appealing to the various sensibilities and concerns of Board members to convince them to pass pro-sanctuary policy.

#### **Ensuring Access to Education for All through the Youth Sanctuary Ordinance Amendment**

In the weeks following the introduction of the youth sanctuary ordinance amendment, both the Mayor and SFIRDC worked to secure their votes on the Board of Supervisors for and against the policy change. Only a few days after the introduction of the amendment and leak of the Mayor's confidential legal memo, SFIRDC and their allies called Supervisor Dufty's legislative aides Nicolas King and Boe Hayward and Supervisor Maxwell's aides Jon Lau and Alice Guidry to make sure

that their support had not been compromised in the wake of the press about the cautionary legal memo leak. Each time they called, they asked them to reaffirm their support for the youth policy over the phone. Supervisor Dufty was the main target of the Mayor seeing that he was often the Mayor's fourth moderate vote to deny a veto-proof majority on an ordinance seeing that the board needed 8 out of 11 votes to override a Mayoral veto. Despite Dufty going on vacation in this legislative recess period, a Mayoral staffer tried to call him a week after the policy introduction to persuade him to oppose the amendment. Dufty was surprised that they were calling him at this point since the policy had already been in process for months. The Mayor had assumed he would be opposing until he put his name on the policy as a sponsor.<sup>465</sup> Dufty however, remained supportive of the amendment and planned to vote in favor of it.

SFIRDC also re-sent support letters for the youth amendment from each of their organizations to all of the Board of Supervisors and conducted more outreach work, this time to labor - the San Francisco Labor Council and Service Employees International Union Local 1021 - as well as the LGBT progressive political organization, the Harvey Milk Club. They also did outreach to local school administrators and students at Gateway High School, Demar Middle School, The Newcomer School, John O'Connell High School, Mission High School, City College of San Francisco, and San Francisco State University. They did phone banking and started a Facebook page. To reach out to the public, SFIRDC conducted an info postcard campaign to clarify myths and disseminate facts on the youth issue. They put 1,000 cards in cafés, handed 1,000 out by hand, put 5,000 on *San Francisco Chronicle* stands, and 5,000 in various public locations in the business districts of the Mission District, Excelsior, Tenderloin, and Bayview-Hunters Point.

SFIRDC also worked with a few of the City's commissions and boards to take action to provide support for the youth policy. Two weeks after the introduction, the Youth Commission would pass a resolution in support of the proposed ordinance and the Human Rights Commission would begin to finalize a report that consisted of critical analysis of the Mayor's JPD policy as an additional follow-up document to their April 2009 joint hearing on immigration enforcement with the Immigrant Rights Commission.<sup>466</sup> This was surprising given that because all of the Commissioners of the HRC were Mayor appointees and the HRC Executive Director Theresa Sparks was hired by Mayor Newsom. The HRC report argued that the sanctuary ordinance's intent was to make the City comply

with human rights principles and the Universal Declaration of Human Rights especially for the right to live a 'normal' family life - the case of family with both documented and undocumented members - especially between siblings, depending on whether they were born before or after their parents' arrival in the US. If the purpose was to allow for the respect of human rights for the immigrants (documented or not), the current legislation [the Mayor's JPD policy] violates the original intent of the Sanctuary City ordinance.<sup>467</sup>

The report echoed many of the points that SFIRDC had been making for months. First, it argued that the current JPD system presumed that the juveniles were guilty

of what they had been accused of and should be deported whether or not charges were sustained. However, in reality, most arrests do not lead to petitions being filed. Further, it pointed out that the referral to ICE took place at the booking stage, before the youth received any legal advice, and without legal advice some of the juveniles who may be eligible for immigration relief (for instance through obtaining T and U visas, asylum, or Special Immigrant Juvenile Status) might be prevented from claiming their rights. This in effect was denying the Juvenile Court the ability to make a plan of action in the best interests of the Child. As a result, the report argued, due to the JPD procedures, by initiating deportations, juveniles were taken away from their families, and many children who were deported were left on their own in the country of origin. Elaborating on this point, it would explain that

since communications between the United States and the home country are not always efficient, juveniles sometimes arrived in their country of origin without anyone waiting for them. 15% of juveniles dropped at the borders don't have anyone to provide for them and so a significant portion end up in the street where they are at high risk of abuse.

Finally, it would argue that the JPD policy effectively created a two-tier system where undocumented youth were treated differently than documented youth. They found that it may also lead police to target specific groups - in particular Latinos - for profiling and when police had discretion over the level of charges someone was arrested for, it might lead to overcharging if the police wanted to trigger an ICE inquiry.

In advance of the release of the HRC report, SFIRDC made recommendations to the author Lupe Arreola for including solutions to stabilize the situation for youth. SFIRDC would recommend that the City

1. Offer increased services to immigrants, including undocumented immigrants and their families, with a recognition that they are unable to receive federal benefits.
2. Offer support for basic human needs to those who can't work because they are on ISA, waiting for asylum clearance, or in visa/employment verification backlog.
3. Support the city of San Francisco City Attorney's office in fighting any lawsuit by the federal government or outside actors that challenges the ability to provide these services. Denial of these services to anyone based on nationality/citizenship status is a human rights abuse
4. Support the census 2010 and the "fair and just census coalition" by advocating for census advance letters sent out in multiple languages (as the city attorney and board of sups has requested).
5. Take nationality/citizenship questions off of the police arrest card. Require SFPD booking officers to tell arrested individuals "if you are a citizen of another country and need assistance from your consulate, we can provide you with their phone number"



6. No referrals to ICE in San Francisco County Jail. Referral to ICE occurs only after a felony conviction.
7. Any federal ICE raid must be accompanied by an independent legal representative who will observe and record ICE actions as well as alert arrestees. City officials speaking the language of arrestees must be on hand.
8. Encourage City Attorney's office to sue the federal government for any raid conducted without a warrant in the city of San Francisco
9. Condemn the San Francisco Chronicle for racist articles (in particular by Jaxon Van Derbeken, including allowing him to receive an award by a hate group this year).
10. HRC should endorse SFIRDC's platform, representing a strong voice of united immigrant communities
11. SFPD should stop all non-mandatory car impoundments, and allow drivers adequate time to find someone with a license to move their car.
12. HRC should condemn any racial profiling and harassment of immigrants by SFPD
13. Support Supervisor Campos' legislation introduced last week.
14. Recommend that all undocumented youth are protected by San Francisco as a city of sanctuary, and not torn from their families or homes (including non-traditional families and homes).
15. San Francisco City pressure federal government to end the raids; take a firm stance in lobbying to federal government for equal benefits to LGBTQ couples; No employer no-match letter program; Shorten visa backlogs, employee verification wait periods, etc.; Must pass CIR immediately

However, due to rules governing HRC endorsements of proposed legislation, officially HRC could not take a position on the coalition's youth sanctuary amendment. The issuing of the HRC report on the negative impact of the JPD policy however, would be the next best thing – a technical side-step that would politically amount to the Mayor's own people taking a stance against the him.

Towards the end of September, SFIRDC worked with the San Francisco Unified School District (SFUSD) Board of Education, the District's policy-making body, to pass a resolution in support of the youth sanctuary ordinance amendment. Board of Education President Kim-Shree Maufas, Board Vice-President Jane Kim, and Commissioner Sandra Fewer co-sponsored the resolution, which linked the Mayor's JPD ICE referral policy to families fearing sending their kids to school. Written by SFIRDC member Angela Chan and Board of Education Legal Counsel Maribel Medina, the resolution urged the City and County of San Francisco to "remember its status as a City and County of Refuge as set forth in San Francisco Administrative Code Chapter 12H" and in reference to the Mayor's JPD policy, "condemn the City for reporting undocumented San Francisco Unified School District students to Immigration and Customs Enforcement (ICE)."<sup>468</sup> The resolution would also declare that, "The Board of Education of the San Francisco Unified School District is mindful of its duty and responsibility to provide each child in the District

with a high quality public education in a safe and nurturing environment free from unnecessary conflict and tension.”

Much of the resolution revolved around the District’s obligation to abide by a United States Supreme Court decision in the case *Plyler v. Doe* (1982)<sup>469</sup>, which held that the state of Texas could not withhold funds from local school districts for the education of children who were not “legally admitted” into the United States, because to do so would violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The Equal Protection Clause would state

No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The intent of the equal protection clause was to provide "equal application" of the laws in a manner wherein a state treats an individual in the same manner as others in similar conditions and circumstances. If a state prohibited an individual accessing certain rights or from engaging in a certain activity because he or she was a member of a particular race, from a particular nation, or in some cases because of their immigration status, a violation of the 14<sup>th</sup> amendment would likely have occurred.

According to the SFUSD Board of Education resolution, since the decision in *Plyler v. Doe*, public education officials had recognized that “it was their duty to guarantee to all persons, regardless of immigration status, the right to a free elementary and secondary public education on Equal Protection grounds.” The Board of Education contended that *Plyler* Court recognized that the Equal Protection Clause “was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation”. The San Francisco Board of Education’s resolution would state that the that

reporting a student’s immigration status to ICE may create a chilling effect on access to public education in the City and County of San Francisco, deterring some parents from sending their children to school for fear that their children may be prosecuted by ICE and deported. This chilling effect may deny students their right to a public education as established by *Plyler*; and the denial of access to an SFUSD education to undocumented students would ‘impose a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation,’ as recognized by the Supreme Court in *Plyer*, 457 U.S. 202, 223.<sup>470</sup>

As a result of these circumstances for undocumented students, the Board of Education resolved to

condemn the practice of the City and County of San Francisco of reporting undocumented students to U.S. Immigrations and Customs Enforcement as a violation of Ordinance No. 375-89 [the sanctuary ordinance]. The Board further encourages the City and County to cease and desist in any action that might serve to chill access to a public education, remembering that the City and County is a City and County of Refuge, and that access to a public education is a critical and important right protected by the U.S. Supreme Court's decision in *Plyler v. Doe*.<sup>471</sup>

Further, the Board of Education resolved to support "a proposed amendment to the City and County of Refuge introduced on August 18, 2009, by Supervisor David Campos and co-sponsored by Supervisors John Avalos, David Chiu, Chris Daly, Bevan Dufty, Eric Mar, Sophie Maxwell, and Ross Mirkarimi, that would restore due process rights to undocumented youth in the juvenile justice system. ", The resolution urged *all* members of the Board of Supervisors to support the amendment as well.

Prior to the Board of Education vote on the resolution, during the public comment portion of the meeting, an immigrant mother of a SFUSD student who had been reported to ICE after being detained by JPD in Juvenile Hall would testify to the Board with the help to a Board-provided interpreter on what happened to her son and why the Board of Education should pass the resolution:

**Maria T:** Buenas noches. Estoy aqui en representaci3n de 160 familias que han sido destruidas por esta politica . Y al principio me sentio poco triste pero ahora me siento apoyada por toda ustedes. S3 que no estoy sola. [Begins to cry and continues in a trembling voice] Mi hijo esta 7 dias esperando que migracion, lo que coja. Y es dificil para mi esto porque 3l es un buen estudiante. [Crying, the interpreter puts her hand on Maria's back to console her] Tiene catorce a3os y pienso que no habido un evaluacion justo en el caso de 3l y de muchos jovenes que estan en ese centro. Y solo el hecho de entrar en esa parte es traumatica para uno, el padre, como parar los jovenes que se encuentra ahi. Vivo dia a dia pensando y viendo las madres luchar y llorar. Y me he unido con todas a ellas apoyandolas, llevandolas a programa, dandolos consejos. Buscandoles una mano le ayuda, una palabra de alimento. Porque yo s3 en este momento ellas necesita al igual que yo. Les agradezco a todos ustedes por estar con nosotros apoyandonos... Pedir que sean evaluados estas jovenes justamente porque no sean mandado como corderos al matar sin antes ser evaluados. Es dificil para mi como madre estar aqui. Pero, que uno hace un madre por un hijo, gracias.

**Interpreter:** Uh, I'm going to summarize. Ah, basically, I share the pain of all these, of more than 150 parents that have been in this difficult situation. And these kids are placed in, this institution I guess, a facility where the ICE is waiting, and the mothers are outside not knowing what's going to happen to their kids. And some of these kids have been placed there by wrong reasons, and they have not gone through [with emphasis, she nods her head] a *due*

*process*, and uh, I'm heartbroken. [Speaking for herself] I can hardly explain what she was feeling, but I guess this was basically it. And she's, [switching back into interpreting] I'm very grateful for what you've done and by being here and listening to me, for supporting us in this cause to protect our children.

**Superintendent of the SFUSD Carlos Garcia who speaks Spanish:** And that she has a 14-year old son.

**Interpreter:** Yes, I'm sorry Don Carlos. Yes, [interpreting] I have a fourteen-year-old son that is in that particular situation and I'm sharing the pain with all of these mothers. Thank you Don Carlos.

**What Maria literally said:** Good evening, I am here representing the 160 families that have been destroyed by this policy. And at first I felt a little sad, but now I feel supported by all of you. I know I'm not alone. My son has been waiting for 7 days for immigration to get him. And it is difficult for me because he was a good student. He's fourteen years old and I think that he didn't receive a fair assessment in his case, and neither did many of the youth that are in that center [juvenile hall]. And just the fact of him having entered in that place is traumatic for someone, for a parent, how those young people end up there. I live day-to-day thinking and seeing the mothers struggling and crying. And I have joined all of them, helping them, taking them to the program, giving them advice. Looking for a helping hand, a healing word for them. Because I know that right now they need the same as what I need. Thanks to all of you for being with us, helping us. Asking that these youth be judged justly so that they aren't sent like lambs to the slaughter without being judged. It's difficult for me as a mother to be here. But that's what you do as a mother for your child. Thank you.<sup>472</sup>

Such an intervocalic testimony which incorporated not only the testimony of the affected immigrant but also the imprecise and politically inflected voice of the interpreter which was received differentially by a legislative body would be part and parcel of the communication of the immigrant experience to City officials in San Francisco. Those officials who spoke Spanish could understand the immigrant testimony in its specificity, while non-Spanish speakers would be reliant on the testimony of the interpreter.

Derelyn Tom, a Mission High School teacher also testified to the impact that the JPD policy was having on her decisions when dealing with her students:

This policy causes me to hesitate to call any authority to come in if I think any student of mine, whatever their documentation status is, may end up getting deported. I don't think I should be in that position as a teacher. I also feel, not only the hesitation, but my students won't come to school if they know that I can report them to ICE. They may not think I would do that, but I am put in that position if any authorities are brought into the schools. And

it's happened at Mission. So I don't want mothers to need to come here telling you to please do the right thing and I don't want to have to come here and tell you to do the same. I want my students to know that Mission High is a safe learning environment and if they come to school they will not be deported.<sup>473</sup>

SFIRDC members who were present, highlighted the fact that kids who teachers are required to call JPD about are often the kids who get in fights at school as a result of being bullied and fighting back. They also would note that human rights organizations have documented how many of the students who are deported back to countries in Central America, in particular in Honduras, were being killed. SFIRDC member from the Tenderloin Housing Clinic, Bobbi Lopez, would note that, "Over 3,000 youth deported from the United States have been killed in Honduras, so this is a real human rights issue."<sup>474</sup>

Following the public comment portion of the hearing, Board of Education Vice President sponsor of the resolution Jane Kim would note about that the youth sanctuary amendment

This is really a restraint amendment to the ordinance to restore the spirit of our sanctuary city ordinance and it doesn't prohibit employees from reporting children to ICE once they've been through the due process system. But it merely prevents us from using city funds to report students when they've not had any due process or even adjudication of probable cause of committing any type of felony. And having worked in juvenile justice and having worked with high school students, you know many of them do get picked up on felony charges a lot of times due to misidentification or because the police are really scouting neighborhoods looking for young people with descriptions that witnesses have provided. So a lot of young people get into juvenile justice that way that aren't meant to be there. And it's really important that we protect these students and that they stay in our schools, because they are our students. And I'm really grateful that I'm in a city that believes in sanctuary city policies. It's really important for us as leaders in the community that we stay true to the spirit of sanctuary city. I think San Francisco is really on the cutting edge of this issue. It's a human rights issue and it's a big legal battle in terms of what the constitution means around this issue and I actually think we are on the right side. And I'm really proud that we are going to be taking this stance and this position.

Superintendent Carlos Garcia would also have a chance to comment on the Board of Education's resolution. He would first address the Board, putting the political weight of his position as head of the District behind the resolution, claiming his position as out of the ordinary. He would then address the immigrant parents directly in Spanish. He noted that

Everyone knows that I am not a big fan of resolutions, but this one I am a big fan of. Para los padres, es realmente un desgracia a llegar a un punto tener algo como esto porque realmente no deben usar los niños como en el partido

de la politica porque realmente los que pierden no son solo las familias pero especialmente los niños y es algo muy injusto. Es un derecho civil, por eso queremos asegurarles que es algo que todos nosotros creyemos en esto. Gracias para traerlo a nuestro atencion. [He then translates what he said to the parents to the Board] I want to thank all of the parents for bringing this to us because it is a civil rights issue and that I think we are all pretty tired of using children as a political football game. And our children are not a game. Parents make decisions but children don't vote. So I'm really proud of the board standing up for the rights of our children here in San Francisco

[Translation of the Superintendent's address to the immigrant family members: To the parents, it's really a disgrace to arrive at a point of having something like this because really, they shouldn't use kids like pawns in a political game because really, those who lose are not only the families but especially the kids, and it's something very unjust. It's a civil right, that's why we want to assure you that it's something that all of us believe. Thank you for bringing this to our attention.]

Following these comments, the Board of Education discussed the specific language of the resolution before taking a vote. Vice President Jane Kim would make a comment first. During her comment, she moved to make an amendment to the resolution to remove the language in the title and text, which stated that the Board of Education resolution was "Condemning the City for Reporting Undocumented SFUSD Students to Immigration and Customs Enforcement (ICE)". She explained that to acknowledge the Board of Education's "positive relationship with the city and county of San Francisco and our supportive relationship" she wanted to replace this language with other language stating the resolution was about "encouraging the City and County to respect due process principles." Board President Maufaus seconded the motion and the Board passed the amended language.

Commissioner Norman Yee, then in making a comment, asked that his name be added as a co-sponsor of the resolution, and then told the Board that he was "a little uneasy" that the Board would be passing a resolution supporting an amendment to the sanctuary ordinance that he had not even read the specific language of. He said that the only thing he knew about "Supervisor Campos' resolution" was what he read in the newspaper. Angela Chan of the Asian Law Caucus then passed out to the Board a document with the full text of Campos's sanctuary ordinance amendment. Commissioner Yee then commented on how the Board of Supervisors was going through "some discussion" about changes to the proposed sanctuary amendment. Commissioner Yee moved to change the language of the Board of Education resolution to be "reflective of exactly what we want the Supervisors to do in case they add a bunch of things or delete a bunch of things that we would not consider consistent to what we thought we were voting for." The Board of Education resolution had stated support for "a proposed amendment to the City and County of Refuge introduced on August 18, 2009, by Supervisor David Campos and co-sponsored by Supervisors John Avalos, David Chiu, Chris Daly, Bevan Dufty, Eric Mar, Sophie Maxwell, and Ross Mirkarimi that would restore due

process rights to undocumented youth in the juvenile justice system.” Commissioner Yee requested that they change the language of the resolution so that it did not specifically name the authors of the youth sanctuary amendment to one that merely said, “a proposed amendment that would restore due process rights to undocumented youth in the juvenile justice system.” This would decouple the Board of Education’s support for the values of due process for undocumented youth from the specific policy of the coalition and of Supervisor Campos.

Commissioner Kim questioned him on why they would be deleting the Supervisors names, which the authors of the Board of Education resolution included to identify the specific ordinance amendment in light of the fact that amendments don’t have a titles like resolutions do. Commissioner Yee explained that it is not that he wanted to ignore that those particular supervisors are putting forward an amendment, but that if the Campos amendment were changed to be “weaker than we want it” his intention was to communicate what they wanted to see in the amendment. He found that would make it clearer as to what the Board was supporting – the values of due process rather than the specific ordinance amendment proposed by Campos. Commissioner Yee then made a motion to strike the names of the Supervisors from the resolution and Commissioner Norton seconded the motion. The Board of Education then approved that amendment to the resolution, striking the names and the date of introduction of Campos’ sanctuary amendment.

The Board of Education resolution would be sent to the Board of Supervisors and the Mayor, bolstering the support for the youth sanctuary amendment and allowing the Board of Education members to reaffirm their own commitment to the values of due process and sanctuary. This action would also fortify relationships between members on the Board with SFIRDC and pro-sanctuary District Supervisors such as David Campos.

### **Arguing for the Youth Sanctuary Amendment**

At this point, the case of MS-13 gang-member, Edwin Ramos, who had been accused of murdering the members of the Bologna family, went to trial. Earlier in the month, District Attorney Kamala Harris announced she would not seek the death penalty for Edwin Ramos, but rather life in prison without parole. Harris’ Assistant District Attorney, Harry Dorfman, said outside of the court that the District Attorney’s office “will do everything it can to make sure Ramos ‘dies in prison for these horrific crimes.” When asked about Harris’ decision to not seek the death penalty for Ramos and how the issue of sanctuary was affecting his political campaign, Mayor Newsom told the media that he deferred to the DA on her decision and that he doesn’t “look at issues like this as campaign issues. This is about human beings, about real people. It’s not about politics.”<sup>475</sup>

SFIRDC knew that in this environment focused on Edwin Ramos, that it would need to double down its efforts to fight back against the Mayor’s efforts and the media’s efforts to undermine support for the youth amendment on the Board of Supervisors. By the end of September 2009, SFIRDC would aim to use the upcoming hearing on the youth sanctuary amendment at the Public Safety Committee to

change the discourse on undocumented youth immigrants and the need for the introduced policy change. The Public Safety Committee was a three-member subcommittee of the Board of Supervisors that would need to vote on passing the policy on to the Full Board for final passing votes. Supervisors David Chiu, Ross Mirkarimi, and Michaela Alioto-Pier sat on the Public Safety Committee, which had scheduled the hearing for October 5<sup>th</sup>.

SFIRDC leaders from Asian Law Caucus and St. Peter's Housing Committee made turnout phone calls to SFIRDC organizations' members and clients and the Arab Resource and Organizing Center made calls to the media to remind them to come to the hearing. The coalition would also continue their work to solidify their support and neutralize their opposition on the Board. The SFIRDC legal team, with an ally coalition of faith-based immigrant advocates, the San Francisco Interfaith Coalition on Immigration (SFICI), met with Supervisor Sean Elsbernd, a likely opposition vote, to answer his questions about the youth amendment. Chinese for Affirmative Action, another SFIRDC member organized their members who were immigrant parents in Visitation Valley to create a petition of parents in support of the youth sanctuary amendment and to send it to their District 10 Supervisor Sophie Maxwell.

The coalition was also continuing its work to solidify the support of Supervisor Bevan Dufty, whose District 8 included the part of the Mission District where Mission High School was located. SFIRDC and Derrlyn Tom, the teacher at Mission High who had testified at the Board of Education resolution hearing, met with Supervisor Dufty to discuss him authoring an op-ed in the *Chronicle* in support of the youth amendment. SFIRDC would write an initial draft of the op-ed and Dufty, with his staff would edit it to his liking. A week earlier, Supervisor Dufty had attended an interfaith service at St. Mary's Cathedral organized by the San Francisco Organizing Project which highlighted the experience undocumented youth facing deportation and which was attended by around five hundred people. Dufty had found the service to be moving and would comment at the service that

Sanctuary city recognizes the humanity and dignity of each individual, and as important is its role in protecting public safety. I really feel like the current [JPD] policy leads to a two-tier system of justice, and that's a threat to all of us when people are afraid to go to police and report crimes. I'm hearing stories about schools who are afraid of calling law enforcement because they don't want to see families torn apart.<sup>476</sup>

SFIRDC and SFICI would bring to the meeting with Dufty, 300 signed cards expressing the SFOP's St. Mary's service attendees' support for the youth sanctuary amendment. They would give these cards to Supervisor Maxwell as well.

The day of the hearing, October 20<sup>th</sup>, SFIRDC and their allies would show up in force, packing the Board of Supervisors main chamber. The San Francisco Interfaith Coalition on Immigration brought around ten faith leaders, and SFIRDC brought roughly 100 members and clients from Mujeres Unidas y Activas, St. Peter's Housing, Arab Resource and Organizing Center, La Raza Centro Legal, Communities United Against Violence, La Colectiva, POWER, La Vow Latina, Pride at Work,



Mission Neighborhood Center, the San Francisco Labor Council, and CARECEN. Additionally, seven members of the City's Youth Commission were present, as well as Public Defender Jeff Adachi, Jane Kim from the Board of Education, and Supervisors who were not on the Public Safety Committee but who were co-sponsoring the legislation – David Campos, David Chiu, Chris Daly and John Avalos. SFIRDC had handed out stickers for people to wear that read “Keep Families Together” and “Youth Deserve Due Process.” The hearing would have simultaneous translation in Spanish and Cantonese for all in attendance who were wearing translation headsets.

The hearing started with Supervisor Campos providing initial remarks on the legislation and the political battle taking place between the Mayor, City Attorney, and the Board of Supervisors, followed by Supervisors Avalos, Chiu, and Daly making comments on the legislation adding up to roughly one hour of Supervisor statements. The hearing then moved into the public comment portion that would last for three hours, followed by further Supervisor discussion coming out of statements made during public comment, and then finally, a vote on whether or not to recommend that the legislation move onto the Full Board for two votes on whether or not to enact the legislation.

During the hearing, the proponents of the youth sanctuary amendment would make arguments that we could fit in four broad categories: 1) *the constitutionality argument* that the amendment aimed to ensure the constitutionally guaranteed rights of undocumented youth to due process and that the amendment was itself legally defensible 2) *the functional system argument* that the amendment restored the proper functioning of the municipal “system” that was threatened by the Mayor’s JPD youth referral policy 3) *the ethical argument* that the city should act to do what was *right* to keep immigrant families intact and together and to take a courageous trend-setting stand despite the risk of litigation 4) *the religious argument* and that the city should take care of “strangers in their midst” in accordance with the sanctuary mandates of the Hebrew scriptures.

### *The Constitutionality Argument*

Following initial announcements, Supervisor Campos would address the audience to introduce the amendment. He would introduce the legislation as a piece of civil rights legislation and thank SFIRDC and his legislative aides Sheila Chung Hagan and Lynette Peralta Haynes for their work on the policy over the last year. He would then address the Mayor’s claims that the amendment put the sanctuary ordinance in legal jeopardy. Campos would make all of the arguments that SFIRDC lawyers made in their legal memo, and use the fact that the City Attorney had approved the policy as to form and that the City Attorney’s office had assisted in the drafting of the policy to legitimize the legality of the amendment. Campos would note of the City Attorney approving the policy as to form, “That means, that the legislation on its face cannot be unconstitutional, that the legislation on its face cannot be illegal, otherwise he would not have approved this legislation as to form.” Campos argued that the amendment he had introduced was “very narrow” and

using the education system's legal discourse, argued that what this amendment was about was merely upholding the U.S. constitution. He noted,

It simply changes the time when the city reports children who are accused of a felony. It merely notes that we in the city and county value and respect due process and the rights of an individual to have his or her day in court before we jump to the conclusion that they are actually guilty of something that they have been accused of. That is all that this legislation does. It provides for reporting of any child who is accused of a felony charge only once that child has had his or her day in court. Many people have said that due process does not apply to these kids. Many have said when it comes to undocumented youth that the constitution does not apply to them. And I simply remind my colleagues that it is not the first time that argument has been made. In 1982, the state of Texas in the case *Plyler v. Doe* went to court, and was taken to court, because at the time the State of Texas was denying undocumented children the right to an education. In its argument, the State of Texas said that by virtue of being undocumented these children did not have a right to due process under the U.S. constitution. Writing for majority of the court, Justice William Brennan wrote "we reject this argument. Whatever his status under the immigration laws, an alien is surely a person under any ordinary sense of that term. Even aliens whose presence in the country is unlawful have long been recognized to be persons - persons guaranteed the due process of law under the fifth and fourteenth amendment of the constitution. That is the law of the land." You are entitled to due process irrespective of your immigration status. That is the principle we are upholding today.<sup>477</sup>

In this sense, rather than the youth sanctuary amendment somehow extending the legal rights to due process under the constitution to people who had previously not had those rights, it was merely upholding the constitution that already existed without attempting to modify the constitution or even applying the constitution to a new class of people. Very literally, sanctuary, under this argument, was about maintaining the legal status quo for people that it had already afforded rights to. The only difference here was that the local institution where those rights would be enforced, the JPD, was being newly scrutinized. The focus of these rights in the case of the youth sanctuary amendment was largely on the right to be granted access to a court proceeding wherein a youth would be granted final judgment of a judge. This judgment would be made based on the presentation of all of the evidence speaking to the accusation and which all factors relating to the youth's well-being and community relations would be measured. Therefore, restoring constitutionality through a sanctuary ordinance amendment would mean providing the suspected undocumented immigrant more than a preliminary accusation, an unsubstantiated initial judgment of a police officer – an enforcer of the law. Ultimately, a sanctuary amendment would provide that undocumented person with the more terminal finding of guilt or innocence by a judge – an individual who decides on the law's application given the specificity of new contexts in which the law is being invoked. Cynthia Munoz, SFIRDC member from St. Peter's Housing Committee would state

this succinctly in her short testimony: “The new policy will allow the youth to have a hearing in front of a judge. It’s very simple.” Stated differently, this argument for sanctuary city due process was also an argument for routine justice and fairness to be served so as to correct the injustice and unfairness produced by the existing JPD youth referral policy.

To support this argument, various individuals during public comment provided examples to the Public Safety Committee on just how the JPD policy was denying due process to such a court hearing for undocumented youth. Ilona Solomon, a paralegal in the Public Defender’s office who conducted all intakes of the Public Defender’s office’s undocumented youth clients provided testimony of a girl who had been wrongfully accused of a crime who was reported to ICE before a court process cleared her of her charges. Ilona stated

Good morning. We are here because it is important for you to hear what is happening with the undocumented clients under the current [JPD] policy. Recently we had a girl charged with assaulting her sister - a sibling rivalry fight that never should have entered the juvenile justice system. After we conducted an investigation, we found that our client was not the aggressor and that our client had been previously assaulted by her sister. Nevertheless, this girl was ICE’d, sent to ORR [Office of Refugee Resettlement] in Miami, and spent several weeks in a Miami shelter before she was returned to her home in San Francisco. Charges were dismissed but she is still facing deportation proceedings.<sup>478</sup>

Chris Punambang, Deputy Director of the Asian Law Caucus, member of SFIRDC, and past Chair of the Immigrant Rights Commission, reminded the Public Safety Committee, that in 2008, the IRC passed a resolution he authored in support of undocumented youth’s right to due process and to “bring San Francisco law in line with international law on this matter, namely the UN convention of the rights of migrants and their families.” Punambang would argue

A basic tenet of this convention is that immigrants are afforded the same basic rights as people who are natural born citizens, not in every context but in certain matters that relate to the marks of civil society such as the right to be free from discrimination and the right to due process of law.<sup>479</sup>

In July of 2008, the IRC also voted to approve a resolution urging the Mayor and the Board of Supervisors, according to Punambang, “to create a system where youth are afforded due process of law while any legal adjudication is pending in a San Francisco court of law.” Punambang pointed out that at this point, 160 youth had been reported to ICE on unsubstantiated unproven allegations, and that once a youth has been referred to ICE, there “was no turning back. There is no defense for a youth who was mistakenly referred, and this is because they have no legal or constitutional guarantee to an attorney in immigration proceedings.” On the other hand, the interests of the U.S. government are always represented by an attorney in these proceedings and in this sense the system is stacked against the immigrant

youth. Punambang explained that is because a deportation hearing is not a criminal matter, even though “the consequences of banishment from the country are equally as severe.”

The Executive Director of legal advocacy group La Raza Centro Legal, Ana Maria Loya would focus her comments on the denial of court-ensured justice, noting

I just want to say that it breaks my heart that we need it [the youth sanctuary amendment]. It breaks my heart that people who are accused, but not found guilty of serious crimes are not given the chance to simply be represented and be able to make their case and have themselves adjudicated by a fair body, that children in particular are being targeted to instead be reported to I.C.E. And the implications of being reported to I.C.E. Are serious and impacts the liberties and the life, not only of the young person, but of whole families. It breaks my heart that we're doing that here in San Francisco. And I'm very proud of you, Supervisor Campos, and the co-authors of this legislation in making a change to that wrong, unjust, inhumane policy that violates the civil rights of children.<sup>480</sup>

Gloria, an undocumented immigrant and member of SFIRDC member organization POWER would connect this argument for justice in the juvenile courts to a broader need for equality for immigrants in San Francisco who have been subjected to systematic discrimination, pushed into lives of poverty, and disproportionately penalized:

**Gloria:** Mi nombre es Gloria. Yo creo que la mayoria de ustedes va votar a favor de que se haga el proceso debido para los jovenes.

**SFIRDC translator:** Hi my name is Gloria and I know that you are all going to vote to protect the due process rights of youth.

**Gloria:** Porque los resultados de que esto suceda ha provocado mucho dolor en los jovenes. **Translator:** Because the results of the current policy have caused a lot of pain on the part of youth.

**Gloria:** Y sobre todo, mucho indignación en los trabajadores que somos los que estamos produciendo la comunidad que existe para la gente que tiene privilegios en este pais. **Translator:** And also a lot of anger on the part of immigrant workers in this city who are the ones who produce the wealth of this city and country.

**Gloria:** Y no estamos en contra de que se tengan esas privilegios porque es algo que la humanidad necesita pero tambien lo necesitamos para nuestros jovenes y para nuestras families.

**Translator:** And we aren't against you having privileges because those are privileges that everyone should be entitled but immigrants and youth, immigrant children should be entitled to these privileges as well.

**Gloria:** Nuestros jovenes han padecido desde ninos en un cuarto pequeño, han padecido que no tienen ayuda de ninguna manera, han padecido los ultimos recortes, y que quieren ustedes? Que nuestros jovenes serian perfectos?! **Translator:** Our children have grown up crammed into tiny rooms, they have suffered from social welfare cuts, what do you want, that they are still perfect?!

**Gloria:** Ellos tienen derecho a que se les juzgue con la verdad con la justicia. Que quieren? Ponerle una venda mas sobre la insignia de la justicia? **Translator:** They deserve justice, they deserve a fair trial. What do you want? That they have chains on their arms? [Gloria had actually said, "What do you want, to put a blindfold over the insignia of justice?"]

**Gloria:** Que opción estan dejando? Todos las comunidades estamos aqui protestando contra lo que ya ocurrio sobre nuestros jovenes en las manos de ustedes. Estan mandar tanto dolor y tanta injusticia. **Translator:** We are here because we are fighting against all the injustices that our immigrant youth have faced and we urge you to right these wrongs. [Gloria had said "What option are you leaving us? All of the communities that are here today are protesting against what happened with our youth by your hand. You are sending such pain and such injustice.]

**Gloria:** Si ustedes se pusieran en nuestros zapatos, quizas no estarian aqui sentados, quizas harian algo mas fuerte para que esta injusticia se acabara. **Translator:** If you were in our shoes, maybe you wouldn't be here sitting, suggesting minor changes, instead you might be fighting for real justice. [Gloria had said, "If you put yourselves in our shoes, maybe you wouldn't be sitting here, maybe you would be doing something stronger to stop this injustice.]

**Gloria:** Por lo tanto ojala sus conciencias les haga votar por lo que es justo. *Lo justo no tiene chipotes, tiene que ser parejo.* [Crowd laughs. She said, 'justice doesn't have lumps (euphemism for breasts), it has to be even!')]! [Translator struggles to translate] Gloria [trying to help the translator and laughing a little]: *Chipotes, chipotes!* [Translator looks to Supervisor Campos for a translation]

**Supervisor Campos:** [Chuckles] I think the idea is that justice has to apply to everyone – that's the concept [he chuckles].

**Gloria:** Tambien a los jovenes blancos han equivocado y sin embargo no se les da lo trato. Cual sera la respuesta de ustedes antes los ninos justos cuando les pregunten "porque estos ninos se les tratan

diferente? Porque mi companerito le deportaron por un simple pelea.” Yo creo que esa va quedar en la memoria de estos jovenes y que tipo de jovenes va a formar? **Translator:** And I say to white children, what kind of lesson are we teaching them when their fellow students are being deported for a simple argument or fight? What kind of lesson are you teaching your youth. [Gloria had said: Also, white kids have done things wrong and nonetheless, they don’t get the same treatment. What will be your response to children when they ask you, ‘Why do you treat those kids (immigrants) differently? Why did they deport my friend for a simple fight?’ I think that’s going to stay in the memories of those youth and what kind of youth is that going to form?]<sup>481</sup>

### *The Functional Municipal System Argument*

During the public comment portion, Abigail Trillin, Managing Attorney at Legal Services for Children and a leader in SFIRDC came to the mic’d podium next to explain that the JPD policy not only was causing damage to families, but also “*to our system.*” She argued that the current policy was “putting our adults, our teachers, our social workers in the terrible position of having to choose whether to call the police in a potentially dangerous situation, or risk that that call could send an innocent young person to immigration.” Echoing the SFRIDC’s legal memos, Trillin argued that by reporting undocumented youth at the booking stage, the policy created a motive for racial profiling and wrongful detention of lawful citizens who JPD officers incorrectly assess as suspected undocumented persons. To illustrate this, Trillin told the Public Safety Committee that she represented a client who was detained by JPD based on a false accusation by his abusive mother that he committed a felony level offense. JPD wrongfully suspected his immigration status as undocumented though he was a legal citizen and reported him to ICE. He luckily knew Abigail and called her to tell her what had happened. She contacted the youth’s father who brought the youth’s birth certificate to JPD the next morning and had him released. Trillin argued that this faulty assessment by the JPD officer was to be expected because asking a JPD officer to determine immigration status would be similar to “asking a lawyer to read your M.R.I. [medical exam].” She argued that as a result, the policy made “our juvenile justice system less effective and has made our community less safe.” She called on the Supervisors to approve the amendment to bring the juvenile justice system “back in line with our values and create a system that we can teach our children to respect. Currently, it’s very hard as an adult, as an attorney, to teach my clients to respect a system that teaches that racial profiling is ok, that due process is unnecessary.”

This *functional system* argument would focus on how municipal institutions function best when they serve all immigrants regardless of their immigration status. To do the opposite and to cooperate in immigration enforcement activities would not just be harmful to the immigrant and his or her family who was placed in deportation proceedings, but also to the system itself. The idea is that inserting immigration status and immigration enforcement into the considerations of local

service provision and governance hampers the ability of the agents of that local institution to meet their stated objectives set out by the Chief Officer, Department Head, the Commission overseeing the department, or the broader systems such as the state courts, of which the local department plays a local role. Some people who argued along these lines during the hearing went further to claim that inserting immigration enforcement in local service provision and governance may even consist of local agencies enacting illegal governmental practices, such as denying immigrants their constitutionally afforded due process rights. To restore sanctuary, therefore through the youth sanctuary amendment, rather than restoring justice or values and morals, is rather to restore the proper or efficient immigration status-blind practices for the execution of general department objectives, to bring the department into line with the ideals of functionality in service provision. This would not only benefit immigrants, but would improve the system by providing services to all residents of San Francisco in an effective manner. The argument was therefore about making the city fully operational in light of institutional dysfunction brought on by cooperation in immigration enforcement.

Maria Villalta, an SFIRDC member from CARECEN would express this argument as it regarded the JPD's youth referral policy. She argued that the JPD policy and the political climate that led to its creation had created a more general cultural environment promoting municipal immigration enforcement that was leading JPD officers to go beyond even the Mayor's youth policy to also make immigration enforcement-themed threats to juveniles booked on lower-level misdemeanor offenses.

**Maria:** I would like to inform the Public Safety Committee of the abuses of authority that are occurring at the juvenile justice center. We have parents of detained minors that are currently on probation for misdemeanors or have only been arrested for misdemeanors who have been personally and directly threatened by the probation officers. The probation officers are abusing their positions by using scare tactics. For example, they are threatening the parents that they will report the whole family to immigration. This is a real concern for San Francisco families who are living here undocumented. Once they hear these threats, they are scared to work with the juvenile justice system. We believe this is a direct violation of our sanctuary city policy. Our community does not trust the system. This is a great concern to us because our community must trust the juvenile justice system so that it can be effective in our youth's rehabilitation. We ask for to you give undocumented minors due process in the juvenile system. These are families are San Francisco families that have lived here for years. They deserve the same rights and protections as everybody else.<sup>482</sup>

Alejandra Calderon, Interim Executive Director at the non-profit HOMEY would echo Maria's testimony explaining that, "Scare tactics are being used by probation officers at juvenile hall.

Approximately 70% of the youth that I work with have contact with the juvenile justice system and what we've been noticing is that the probation officers at

Juvenile Hall are using ICE as a threat, as an intimidation tactic to scare the youth and their families. So I really want to put that out there that I really hope that with the passing of this legislation that will cease.” Juvenile Probation Commissioner Susana Rojas would also mention that she had dealt with cases of probation officers making the assumption that even legal immigrant youth were undocumented and putting the responsibility on those immigrants to prove their legal status to the probation officer rather than the other way around – that the responsibility was on the probation officer to obtain reasonable suspicion that the youth was undocumented. Rojas testified that

This summer I had the unfortunate situation of having to deal with a 14-year-old who just arrived from El Salvador. He came because his uncle was murdered and his family was being threatened. He was a legal immigrant. Unfortunately, when he came here, he thought he had found a cell phone on a muni bus. He went to grab it and then the owner came back and pushed him. He pushed him back and was taken into juvenile probation and accused of a felony assault. He was getting ready to be reported to ICE until his aunt who knew the system came and tried to explain the situation. When she came to speak with the probation officer, she was greeted by saying, “Well you're all illegal, right?” That was the first thing that was said to them. She then had to gather all of her documents and the children's documents to prove that they were not - that he was not only not illegal, but that had the right papers to be here.<sup>483</sup>

Rojas advised the Supervisors at the hearing that given this kind of a story, they should “look at the bigger picture. It's not just about criminalizing our youth, it's giving due process to all people that deserve it.”<sup>484</sup>

In this climate of increased cooperation with ICE, police officers too were acting to doubly punish immigrant youth. The Public Defenders Office had represented three youths in juvenile court who had been booked on felony charges by Police, charges that were not re-filed by the District Attorney after she had reviewed the evidence of the cases. One was a Latino youth that was picked up in the Tenderloin. According to Public Defender's Office hearing testimony, at the station where the youth was detained, the police searched him, and just before one officer was going to release him, his partner said “no, let's book him because if we taken to juvenile hall he will just get turned over to ICE anyway.”

Francisco Ugarte, staff attorney with the San Francisco Immigrant Legal and Education Network called attention to how the JPD policy was systematizing this type of racial discrimination in the Police Department and Juvenile Probation Department and that it was forcing probation officers to illegally ask about immigration status on the basis of their race – a form of illegality governed by racial discrimination laws. The youth sanctuary amendment, which he contended was “moderate” (measured) would de-incentivize this type of governmental racial discrimination, bringing the department back into those laws.

Public Defender Jeff Adachi, provided testimony at the hearing that extended the focus of this *functional system* argument beyond the dysfunction of the Juvenile



Probation Department by highlighting how the Mayor's JPD policy was also undermining his office's ability to function appropriately in their objectives of legally defending clients accused of crimes. Adachi's office provided legal representation to 28,000 people every year, including 2,000 children represented through the Public Defender's Juvenile Unit, 2-3% of which were undocumented. All of these children were entitled to "competent and effective legal representation under both the United States constitution and the California constitution" regardless of their immigration status. Adachi would note that

And as the attorney for the child, we have the responsibility of ensuring that the child's rights are respected, that the cases are properly investigated, that witnesses are interviewed, and that we determine the facts, what the facts are of underlining the arrest. Where there is a legal defense, we raise that defense in court. The current policy deprives us of the ability to fully investigate the case before a child is referred to immigration. And it's really a question of due process. What Supervisor Campos' legislation does is ensures that before a child is reported to the immigration authority, we first make sure that a crime has been committed. Now, in juvenile court, there is no right to a jury trial. That's one big difference. And a determination of guilt or innocence is made by a judge. So a minor would not be reported unless the case was first proven to a judge. And there's a very good reason that we treat children differently than adults. [...] This legislation will ensure that children who will later be exonerated or where charges initially filed are later dismissed, do not suffer the consequence of deportation. The legislation will give my office the opportunity to investigate a case and where there is evidence of innocence, will be allowed to present that to a judge. Because they are reported to report a child to ICE, there is no opportunity to prove or disprove the charge. [...] So this legislation simply moves the reporting requirement to the point and time after determination has been made that a crime was actually committed. It's good, sound policy. Strikes a balance between protecting public safety and helping us achieve the best result for children and families irrespective of their immigration status. Thank you.<sup>485</sup>

Patty Lee, Managing Attorney of the Juvenile Unit of the Public Defenders office expanded on the effect of the JPD youth referral policy on the work of the Public Defender's office. She mentioned that when the PD's clients get turned over to ICE by JPD they can be sent anywhere in the United States. "It is difficult for our office to maintain contact with the clients. We've often lost touch with them. They can stay in detention anywhere from weeks to half of the year. She also commented on how the fear to report crimes to the police and interact with the juvenile justice system also impacts the Public Defender's work because immigrants are also afraid to show up to court. Lee said,

We've had many parents, family members, guardians, who have told us they are afraid to come to court to advocate on behalf of their children. Our children are being abandoned to the black hole. [Chime] We have had

independent witnesses that have no relationship with our clients that are reluctant to come to court to testify for fear of being reported to ICE.<sup>486</sup>

It was especially hard for her client families who had their homes raided.

Two community members would comment on how the youth sanctuary amendment would ensure proper municipal system functions argued on the basis that it allowed the city to use its financial resources and other resources in a manner that met municipal objectives of public safety rather than diverting those resources for federal purposes that undermined those municipal objectives. Angela Chan, from the Asian Law Caucus would speak next commenting that after analyzing the sanctuary ordinance, SFIRDC's lawyers had found that

local governments have the power to determine how we use our limited local resources and employee time. As such, local governments have the right to focus on carrying out local responsibilities, including taking care of our schools and hospitals, ensuring public safety by building trust between law enforcement and immigrant residents. In contrast to common misconceptions, local governments are under no obligation to report youth to ICE and under no obligation to become entangled in a federal immigration enforcement system that already has a budget of over \$200 million devoted to immigration enforcement. There is no reason why San Francisco needs to waste any of our resources in that effort.<sup>487</sup>

Lawyer Bill Ong Hing from UC Davis Law School, would echo this policy-objectives-based financial argument stating that enacting the youth sanctuary amendment was about the City and County appropriately making decisions about the allocation of city resources which affected the proper management of public safety rather than a federally pre-empted attempt to regulate immigration. He would note that

There is nothing in federal law that requires what the city and county currently does with juveniles. There's nothing in federal and state law that would nullify the action that is in the current proposal. It certainly is in the City and County's police powers and funding and budgeting powers and authority to spend its money in the manner that it sees fit when it comes to public safety.

This argument of promoting public safety through the passage of the youth sanctuary amendment and of the sanctuary ordinance in general would be a central recurring theme throughout the hearing. In his introductory statements, Supervisor Campos argued that the underlying "principle" of sanctuary was a principle of public safety and the encouragement of undocumented witnesses to crimes to come forward with information to help solve crime:

Campos: In underlying the sanctuary ordinance is a very important principle that sanctuary makes our society safer. The reality is that the sanctuary ordinance not only protects the undocumented people who are covered by it,

it protects all of the residents of the City and County of San Francisco. If you are a documented, legal resident of this city and you are the victim of a crime, and an undocumented person is a witness to that crime, unless there is sanctuary, that person is not going to come forward and report what he or she saw. If that undocumented person is him or herself a victim of a crime, they are not going to come forward. Sanctuary allows them to come forward and in the process makes all of us safer.

In this sense, Campos was arguing that general city-wide police services could only be effective in meeting general public safety objectives if sanctuary policies like the youth sanctuary amendment were in place. Without these policies, policing in general would fail. Bobbi Lopez, staff of La Vow Latina, Vice President of the Harvey Milk Democratic Club, and member of SFIRDC, agreed with Campos saying that

And what the sanctuary policy really means is allowing immigrants and folks to feel like they can cooperate with police. We keep on hearing about [Edwin] Ramos but I want to talk about another family. I'm going to call this family x. They can't come forward because they're undocumented. I had a young man who was killed last year, the only reason that case was solved was eventually the witnesses who are now in witness protection were convinced to testify. And you know what, they were undocumented. It took months of other people getting hurt by this group of people for them to testify and the reality is sanctuary makes sure that immigrants feel they can cooperate. If you want a city where we can talk and cooperate with each other, please pass this legislation.

Speaking on behalf of undocumented immigrants, Supervisor Campos himself noted that undocumented immigrants supported public safety measures that allow for the reporting of criminals:

Let me make it clear, and I say this as someone who came to this country as an immigrant in search of a better life. We immigrants come here to work, we come here to be productive members of society. None of us want to condone criminal activity. In fact, the immigrant will be the first to tell you that people that engage in criminal activity should be reported. There is a difference of being accused and actually having been found of having engaged in criminal activity and that is the distinction here.

Board President David Chiu, following Supervisor Campos' arguments would, like Campos, state that sanctuary policies were an important part of law enforcement in places like San Francisco with such a large immigrant population: "I believe, as I think most of law enforcement here locally believes, that it is critical to have policies in place that encourage cooperation between law enforcement and our immigrant communities given that almost half of our city is related to someone who recently immigrated."

To illustrate this public safety point within the context of the Mayor's JPD policy, Public Defender's Office paralegal Ilona Solomon told a story of how JPD participating in immigration enforcement can lead immigrants to not cooperate with the Police and help solve crimes:

I wanted to give two examples that highlighted the importance of the change of policy. We had a child and his family come in our office on a citation for felony assault. The mother said she had called the police because another boy at school had assaulted her son. The police officer went to the school and cited both kids. The family, when I informed the mother of the possibility that probation officers could notify the immigration, the entire family was shocked and started crying because it was the mother who had called the police in the first place. Her comment to me was, "I'm never calling the police again now that I know my son could be deported and not with me anymore."

Juvenile Probation Commissioner Susana Rojas would argue that the JPD policy was not even effectively achieving the public safety objectives that the Mayor had designed it to achieve – to mitigate the risks of releasing undocumented immigrant criminals back onto the streets where they might commit more heinous crimes. She argued that it failed to do this because it didn't distinguish those who were merely accused of crimes from those who were found guilty of committing crimes. To achieve public safety objectives, she urged the Supervisors to vote in favor of the youth sanctuary amendment arguing that the current JPD youth referral policy, "offers the false hope and false protection to the public when they hear that felons are being deported. The fact is that not everybody that is being deported is a criminal or a dangerous criminal and dangerous criminals come in all shapes, sizes, and colors."

For all of these reasons, Public Safety Committee member Supervisor Mirkarimi supported the youth sanctuary amendment because he didn't "see anything radical or I don't see anything overdramatic that it does not, speak out to a more common sense response."

### *The Ethical Argument*

Some testimonies provided during the public comment portion of the Public Safety Committee hearing on the youth sanctuary amendment would, rather than focusing on the legality of the amendment, the institutional functionality that needed to be restored, or the fact that sanctuary and due process promoted public safety, would focus on the ethical obligation of Supervisors to do what was right. This argument urged the Supervisors to pass the amendment to ensure that immigrant families would not be torn apart by municipally instigated deportations and that the future of reported youth would not taken away from them. The first person to argue in this manner was SFIRDC secretary and facilitator Diana Oliva. Oliva, also staff at CARECEN, stated

We want to make sure that when you analyze this policy, it is imperative to uphold public safety but in a way that you restore the rights of our youth and give them a right to due process in San Francisco. Tearing apart families is not the answer. The current undocumented youth policy shatters families. That's what brought us together to be able to organize for and mobilize so many members of the community for this policy because we want protection for youth. We want to make sure if a youth has committed a misdemeanor crime, that they're not actually being criminalized and being criminalized to the point where they lose their life and opportunity forever. So we want you to please, please, please make sure that you restore human rights, restore due process for youth, that you make sure that you take into account that you represent many hundreds of people here, residents of San Francisco, and at the same time, that you value our work and our voices into hearing that it is really, really, really important to be able to protect children and not to break up families here in San Francisco.

Ariana Gil, an SFIRDC member and organizer with Mujeres Unidas y Activas who worked closely with undocumented Latina women, also added that the deportations initiated by JPD had a collateral effect of inflicting psychological trauma across the entire immigrant community in San Francisco:

**Ariana:** I'm here today standing with what sounds like most of the people in this room in support of Supervisor Campos proposed undocumented youth policy. The negative impact of the current policy stretches much further than those youth who are directly affected. It stretches to an entire community, increasing fear and isolation in a community that is already vulnerable. The current policy separates families unnecessarily punishing youth before they're even convicted of crimes they're accused of. Family separation is serious. I was listening to a woman who said a second ago that she is still dealing 54 years later with the separation of her father. It's a different case, but my point is that this policy is inflicting trauma on youth and families which may take years to overcome, sometimes entire lifetimes. Years which could be spent developing strong socially conscious members of our community and instead they're trying to recover from traumas, which are unjust and completely unnecessary. I urge all the supervisors to support this policy, thank you.

Community members through the hearing would urge the Supervisors to pass the sanctuary amendment in order to forestall the infliction of this trauma and family separation so that, and echoed Supervisor John Avalos' opening statements that the policy allows immigrants who've been arrested and in JPD custody, "an opportunity for rehabilitation and the opportunity to make sure that they can be reunited with their families."

Supervisors Campos and Chiu would make additional ethical arguments for passing the youth sanctuary amendment. They argued that San Francisco had historically been a trend-setting municipality for passing civil rights legislation, for

being “on the right side of history” at critical junctures, taking courageous stands when it might have not been politically popular elsewhere. In Supervisor Campos’ opening remarks, he would make this assertion, pointing out that the City had a long history of pushing legislation even in the face of likely litigation because “it was the right thing to do”. He would note that Mayor Newsom in specific had a marked history of taking a stand despite knowing he would be taken to court:

Campos: This city has had a history of consistently standing for what is right even when faced with the possibility of being taken to court. [...] Perhaps the most obvious example is that this Mayor and this Board of Supervisors correctly stood on the side of protecting the rights of members of the LGBT community for same-sex marriage. There are many examples of that. As recently as September of this year the Mayor was quoted discussing the idea he had, to tax soda pop, and in the article, the City Attorney noted that there would likely be a legal challenge to that legislation. The Mayor correctly noted that even though the legal challenge was eminent, he was going to move forward with the legislation because it was the right thing to do. “We know we will be sued, but I believe that this is important to do.” You are absolutely right on that issue, Mr. Mayor. But that is not the only issue where it is important to stand our ground. I will respectfully submit to you today, that protecting the due process rights of children of the city and county of San Francisco is also important to do. [Applause]

Finally, Campos emphasized that while the Board of Supervisors had taken some incredibly anti-immigrant stances in the past, that in this moment, they had a significant opportunity to do the right thing:

And so, we are at a critical juncture in the history of this city. I hope that today we stand on the right side of history, because while there may be some -we know that there are some - who will applaud that we take away the rights of these children. But San Francisco has to be better than that. And so I ask my colleagues to join me in being on the right side of history so that 109 years from now, when that generation looks back at what this Board did on this very important issue, that people who live in San Francisco at that time can be proud of what we have done. So please join me and support my legislation today. Thank you. [Applause]

Board President David Chiu went on to argue that approving the youth sanctuary amendment would be maintaining a tradition of being a trend-setting municipality in doing what was right. Given that the nation’s immigration system was “broken”, leading some immigrants to wait as long as 10 years to go through the legal immigration process, which creates an impossible backlog situation and a legal mess, Chiu argued that it was time to act.

We ought to make sure that our young people are not the victims of that mess, and that as a city, we need to stand up for our young folks and make

sure that their constitutional rights, their civil rights, their due process rights are protected.[...] We'll proceed forward, but, again, San Francisco - we do stand on the forefront of the civil rights movement. We stand on the forefront of the marriage equality movement, on the equal rights movement, and I think it's appropriate for us here to take the stand that we need to take a stand that I think history will show us to be on the right side of.

### *The Religious Argument*

Members of the San Francisco Interfaith Coalition on Immigration (SFICI), an organization allied with SFIRDC, would share with the Supervisors arguments that evoked the religious sanctuary practice of providing refuge to the “strangers in our midst”. SFICI was composed of a broad base of congregational leaders of religious organizations and advocates representing a wide variety of faiths including Jewish, Roman Catholic, Mainline Protestant, and Protestant Evangelical faith traditions. Despite their religious differences, these religious leaders had come together as a result of their “shared and growing concern about how immigrants in this moment in our nation's history have been treated, particularly by our own government.”

Craig Wong of Grace Church in the Mission District spoke on behalf of SFICI at the Public Safety Committee hearing and explained that SFICI found the sanctuary ordinance to reflect the essence of Hebrew scripture calling on the people of God to provide sanctuary. From these values, SFICI also found the youth sanctuary amendment to be the appropriate anti-dote to anti-sanctuary immigrant fear-mongering. Addressing the Supervisors, Craig read the Hebrew scripture and expressed his organizations support for the amendment:

‘Don't mistreat any foreigners who live in your land. Instead, treat them as well as you love citizens and love them as much as you love yourself. Remember, you were once foreigners in the land. I am the lord your God.’ We are held to this ancient commandment, and we celebrate the sanctuary city status we have because we believe it reflects the very heart of this scripture, that there is a Creator who deeply loves the whole of his creation -every human being - and he expects us to do likewise. We believe his heart is reflected when we extend to all people, health care, social services, and the due process of law, especially for vulnerable youth. Please know that this posture neither condones violent acts nor disregards the requirements of public safety. On the contrary, we believe public safety is strongly enhanced when all members of the community are extended equal dignity, sense of belonging and protections under the law. Public safety policies driven by fear ultimately breed further fear, distrust and violence. For this reason, we stand firmly behind Supervisor Campos' legislation to turn back this ugly tide of fear-driven scapegoating that we are seeing in our society today. We thank you for your efforts.

The sanctuary ideals that Craig expressed in the Public Safety Committee hearing hearkened back to the 1980s when sanctuary movement organizers in the San

Francisco Sanctuary Covenant and Catholic Social Services worked to pass the first City of Refuge resolution in 1985.

### **Contesting Due Process for Youth**

While nearly 100 people testified in favor of the youth sanctuary amendment at the Public Safety Committee hearing, only two individuals presented oppositional testimony. The first was Collin Gallagher. Gallagher would echo many of the resentful attitudes commonly found in anti-immigrant media, which felt the government was inappropriately “shieling” undocumented immigrants from the consequences of their criminal actions, providing them “get out of jail free” protections not afforded to citizens, putting at risk the lives of lawful residents, and creating its own immigration law. Further, Gallagher would echo conservative threats that if the City didn’t stop disobeying federal immigration law then the federal government should deny them federal funding. Gallagher noted

As an openly gay person [...] my sexual orientation is not a choice, however, coming to the United States in violation of immigration laws is a choice. Under federal immigration law, that choice does have consequences. I don’t think it’s the Board of Supervisors’ business to shield people from those consequences. It’s unfortunate that the Board would assign a greater priority to the freedom of illegal aliens, some of whom may not be juveniles, from deportation, than to the lives of citizens and lawful permanent residents in San Francisco. As a tax-paying resident of San Francisco, I resent that my taxes will likely go to pay a substantial judgment in the settlement of the claim of the Bologna family against the City, especially when the City had failed twice to report the alleged assailant Edwin Ramos to the immigration authorities after he had been arrested on felony charges in San Francisco. I would strongly urge the Board to reconsider support for Supervisor Campos’ proposal. This legislation would only hinder passage of any immigration reform before the U.S. Congress. Tax payers would certainly ask why should we pay for immigration enforcement at all if cities like San Francisco refuse to cooperate with immigration authorities in identifying and reporting members of violent gangs such as MS-13 who happen to be illegal aliens when they’re arrested. I would remind the Supervisors that under article 6, paragraph 2 of the Constitution, the Constitution and federal statutes including immigration statutes are the supreme law of the land. There is no basis for the City to refuse cooperation with federal immigration authorities. Should the City persist in its refusal to cooperate [bing] can and should hold stimulus funding from the City. I remind Supervisors that challenges to the existing immigration law should be made within the federal court system, not before the local government. Thank you.

A second opposition voice was Clyde, a seemingly inebriated man who wanted to “stand up behind Gavin Newsom and our new Chief Gascón on opposing this policy.”



Clyde's focus was on how undocumented immigrants were criminals deserving of deportation:

**Clyde:** Do we need to talk about Mr. Ramos who is in S.F. County jail for killing a whole family, that is an illegal who should have been deported out of the city? Do we need to talk about Hyde Street where illegal immigrants sell heroin 24-7, who inflict our city with corrupt demeaning... Hey, you want to come to our city and work and be good. Great, you're welcome. You come here to do crime, we don't want you. And if our San Francisco Police Department needs to send a message, Mr. Gascón is correct - being an illegal alien, number one, you violated the law from the git-go. Have a nice day.

After Clyde's public testimony, Supervisor Campos interrupted the flow of public speakers to note that there has been a lot of misinformation that had been given about the Bologna family case. Campos argued that

If you look at the facts, and if this policy had been in place when that incident took place, the individual that has been accused of wrongdoing in that case would have been reported, not once, but twice under this policy. So let's make sure that before we start scaring people that we get our facts straight. Next speaker, please.

Bobbi Lopez, staff of La Vow Latina, Vice President of the Harvey Milk Democratic Club, and member of SFIRDC, would point out that of all of the people who turned out at the hearing, only two people were opposed to the legislation – a drunk man, and a “not so nice” man who was part of her LGBT community. She also went on to counter Gallagher's statements by mentioning that the LGBT community supported this youth sanctuary amendment. Lopez noted, “Due process affects gays, African-Americans, anybody in the minority. That's why we have due process. We want that safeguard so we don't get stopped or deported or torn away from our community at the get go.”

However, what was glaringly apparent was that the main voices of opposition to the youth sanctuary amendment, the Mayor, leaders of the City's law enforcement agencies SFPD Chief George Gascón and JPD Chief William Sifferman, and District Attorney Kamala Harris were not present. Supervisor Mirkarimi, one of the members of the Public Safety Committee, interpreted their absence as reflective of a deep level of dysfunction in the city around immigrant rights and sanctuary. He commented that

I also find troubling and disconcerting is [...] where are all the leaders within public safety in this particular committee, where is the District Attorney? Where is the Chief of Police? Where is the Chief of Juvenile Probation? And frankly, where is the Mayor or senior staff? By their absence reflects a complete disconnect and I think dysfunction on this issue, and that is deep institutionally. That is exactly why we got into this place over a year, year and a half ago because of the deep-seeded schisms that are not necessarily

going to be fixed by whatever we make compulsory by legislation by something that is more deeply rooted in the fact that those that might have quiet opposition to it that are employed in the most senior ranks of our city choose not to come here because they are fearful of an open and honest discussion or debate.

Supervisor Campos responded that

Anyone who wanted to say something about this legislation had an opportunity to be here. The Public Defender was here because he wanted to come here and speak to it and by the same token, the District Attorney, the Mayor's office, the Mayor's Office of Criminal Justice, all of them had the opportunity to be here today had they wanted to be here and speak to this item. And quite frankly, I wish that the Mayor's office had come here to explain and justify why it is that they made the change that they made.

Following the closing of public comment, the Supervisors on the Public Safety Committee then discussed outstanding issues they were considering before they took a final recommendation vote on the amendment. Moderate Supervisor Michaela Alioto-Pier had some outstanding worries that largely had nothing to do with the youth sanctuary amendment – they were seemingly just excuses that she could use to justify voting no in the presence of over 100 immigrants and immigrant advocates in support of the policy. Alioto-Pier cited her concern about “the plight of young women and girls brought to America through human trafficking” without explaining how the amendment would negatively impact their plight. Her second stated purpose for feeling uncomfortable with the amendment was that despite legal scholars and practitioners telling the Committee during the hearing that they found the law to be legally defensible, and even after the City Attorney clarifying that the law was legally defensible in his memo to Newsom about the leak to the press, she was still concerned, “about the cautionary memo that the City Attorney has given us.” Hiding behind the legal uncertainty of whether the City could be sued for practices mandated in the youth sanctuary amendment, a legal uncertainty common for the Board of Supervisors, Alioto-Pier, like the Mayor, used the idea that the City needed to safeguard the sanctuary ordinance legally to argue that they should not pass the youth sanctuary amendment:

I certainly understand that the current document is signed to form, but I still have certain outstanding questions. Because of that, I am not prepared to support the legislation currently. What I ask my colleagues for is to have a closed session at the full board. I would like to discuss it among all of us. Supervisor Campos had said through some of his discussions, it had been noted that there were certain things that could be done so that in court we would be able to uphold this legislation in court. I would like to have those conversations. I would like to know strategically where the City Attorney thinks we can win this. [...] and we're not allowed to talk about the memo, but we don't want to do anything to jeopardize our current sanctuary city

policy and there are concerns about that. What I don't want to do is a don't want to vote one way because it seems to be the easy thing to do and then to turn around and find out that that vote actually brought us back in time to hurt the sanctuary city policy that we have fought so hard to implement and to obtain here in San Francisco.

Supervisor Campos, while not being opposed to the Board going into closed session, he questioned “whether there is a point to that in the sense that the legal issues that have been outlined here having discussed more than I think most issues involving most pieces of legislation that have come before this Board.” He also found it ironic that Alioto-Pier was dancing around the legal issues at stake, asking to delay the Public Safety Committee vote to discuss legal issues in private when the Mayor had made all of the legal issues, including the City Attorney’s proposed defensible arguments more public by waiving confidentiality of the memo than had happened for any other piece of legislation. As a retort, Campos wanted to discuss those issues in public. Campos remarked,

I do think this is one of those issues where people are hiding behind legality because they cannot justify from a public policy standpoint why we're going back on this issue. And so I think that at the end of the day, the legal issues speak for themselves and I urge my colleagues to support this legislation because it is the right thing to do and the last thing that I would say is that if anyone has jeopardized the legality and the viability of the sanctuary ordinance, that is the people who released that document that provided a road map for people to challenge sanctuary. I think it's ironic that people talk about how they want to protect sanctuary when they in turn are the ones who released the confidential memo without any concern for how people who actually oppose sanctuary could use that memo. You cannot have it both ways. You can't speak out of both sides of your mouth. You cannot in the Mayor's office say you want to protect sanctuary and then release the very document that discusses the legal issues implicated in that issue. Let's be consistent here. [Applause]

Supervisor Chiu then called Supervisor Alioto-Pier’s bluff stating that he appreciated the idea that at the full board convene a closed session to discuss the arguments on this but that, “frankly, if we are all going to be honest with ourselves, we all know how we are going to vote on this and almost all of us have had numerous briefings by numerous attorneys on numerous occasions on this issue and I just don’t see where the additional discussion is going to take us. So as I see it the chips are as they are and we will proceed forward.”

Supervisor Alioto-Pier’s motion to go into a closed session, delaying the Public Safety Committee vote, failed due to it not receiving a second motion from either Supervisor Chiu or Supervisor Mirkarimi. Mirkarimi then made a motion to recommend the youth sanctuary amendment to the Full Board and Supervisor Chiu seconded the motion. The Board Clerk then called each Supervisor’s name and received their vote response:

Clerk: Supervisor Mirkarimi  
Mirkarimi: Aye  
Clerk: Mirkarimi, Aye. Supervisor Alioto-Pier  
Alioto-Pier: No  
Clerk: Alioto-Pier, no. Supervisor Chiu.  
Chiu: Aye  
Clerk: Chiu Aye. We have two ayes and one no. The recommendation passes.  
[Applause]

With the passage of the Public Safety Committee recommendation of the youth sanctuary amendment to the Full Board, Mayor Newsom vowed to veto the policy even if the Supervisors had 8 votes to override his veto.<sup>488</sup> The Mayor also for the first time said that “the amendment is unenforceable” because it conflicted with federal law regarding prohibiting local employees from communicating with ICE.<sup>489</sup> This would indicate that even if the Board had a veto-proof majority and over-rode his veto, that the Mayor might not enforce the amendment – an unprecedented move where he might not direct the JPD to change their policy or hold JPD Chief Sifferman accountable if he doesn’t institute the requirements of the youth sanctuary amendment. Nathan Ballard, the Mayor’s Communications Director reaffirmed to the media the same line that they had been repeating over and over again:

Our sanctuary city policy is designed to protect our residents regardless of immigration status, but it is not a shield for criminal behavior, and the mayor won’t let it be used that way. If you are booked for a felony, you have lost the protection of the sanctuary city policy.<sup>490</sup>

The *San Francisco Chronicle’s* Senior Editorial Team wrote an editorial article opining on the due process for youth amendment stating

The concept of sanctuary from uncertain federal laws is being misused. Criminal suspects are getting an extra, undeserved break. The delay in enforcement will undercut the fight against drug gangs, whose strongholds are immigrant neighborhoods such as the Mission District. Who are the supervisors really helping? [...] If (Supervisor David) Campos’ proposal passes, it will amount to San Francisco hand-tailoring its own immigration policy, an action that waves a red flag at federal authority. The city already has a low-key and widely supported stance on illegal immigrants. Withholding the identities of felony suspects doesn’t belong in this humane policy.<sup>491</sup>

At the end of their article, the San Francisco Chronicle editors encouraged the paper’s readers to email the Mayor “to let him know your views” and posted his email address.

## Conclusion

This chapter outlined the manner in which sanctuary city discourse was embedded in political battles to transform municipal department policy and protocols through passing a citywide amendment to the sanctuary ordinance. While the Mayor's arguments explained in previous chapters had focused on the legal liability that the youth sanctuary amendment presented to the city and to the viability of the sanctuary ordinance as a whole, SFIRDC's arguments and the arguments of supporting Supervisors focused on the how the amendment would ensure the already existing legal protections due to undocumented immigrants under the constitution. In this sense, sanctuary city policy was presented as an extension of the most core tenets of the existing federal legal system. Secondly, the amendment proponents appealed to the moral sensibilities of the Supervisors and Board of Education members by arguing that to ensure these constitutionally protected rights of undocumented youth would amount to doing what was morally right to prevent the destruction of families through youth deportations. In this manner, they were called as leaders to act according to their conscience beyond fighting for what was just legal. Thirdly, the advocates argued that in passing the amendment, they would be restoring functionality to the municipal government, which had been damaged by the Mayor's JPD youth referral policy. They argued that reporting youth in this manner had made immigrants fearful of cooperating with the police and other city agencies, effectively denying those agencies information that they needed to do their jobs well. To delay reporting of undocumented youth until they had been found guilty of felonies would, according to the advocates rebuild the trust of the immigrant community which would bring them forward to participate in public safety initiatives with the police as well as participate in school life and the rehabilitation of juvenile offenders. Finally, advocates argued that the sanctuary ordinance, which was originally passed at the urging of religious leaders in the sanctuary movement, had religious values at its core and the Supervisors needed to once again live up to those religious values of helping strangers in our midst. The outcome of such arguments was that the Board of Education passed a resolution supporting due process legislation, and the Public Safety Committee voted to refer the youth sanctuary amendment with a recommendation to pass it at the Full Board of Supervisors. In this sense, the discourse had an effect – the youth sanctuary amendment passed this hurdle and moved onto the Full Board of Supervisors.

## **CHAPTER 11**

### **LEGISLATING DUE PROCESS FOR YOUTH**

#### **Introduction**

This chapter provides an overview of the discourse and political maneuvers of the Board of Supervisors, SFIRDC, and the Mayor to pass the youth sanctuary amendment at the Full Board of Supervisors in late October and early November 2009. With 8 votes in favor of the policy change the Board was able to pass the ordinance and override a subsequent Mayoral veto by Gavin Newsom. This show of legislative force by the Board in conjunction with the immigrant rights community would provide them the sense of ultimate justice in a long saga initiated by the federal government in May 2008. The community's faith in the democratic process whereby constitutionality would be restored if community members lobbied their representatives who would in turn pass laws to protect constitutional rights that had been trampled upon by the Executive Branch, was restored, if at least for a short period of time.

#### **The First Vote**

In the two weeks following the Public Safety Committee vote to recommend the youth sanctuary amendment to the Full Board, SFIRDC continued their work to maintain Supervisor support for the youth sanctuary amendment. They made phone calls to all of the Supervisors thanking them for their support for the youth policy and encouraged their support for the amendment at the upcoming Full Board meeting on October 20<sup>th</sup> where the Board would take it's first vote on the amendment. Each day, the coalition would make one to two calls to the Supervisors over the two-week period. They would also continue to check-in with Supervisors in person when needed. While Dufty and Maxwell had continued to state support the amendment, SFIRDC was still uncertain whether they would stay solid and vote yes given the media attack and given that Mayor Newsom had requested private meetings with Dufty. Chu, Alioto-Pier, and Elsbernd were still expected "no" votes.

A week before the Board would vote on the youth sanctuary amendment, Mayor Newsom hosted the annual Latino Heritage Month Celebration in the rotunda at City Hall. SFIRDC considered doing a protest to point out the contradiction of Newsom's efforts to report undocumented youth to ICE and dividing immigrant families while at the same time hosting an event honoring Latinos – those who were most targeted by his policy. They thought that the Mayor was merely trying to appear close with Latinos, essentially using them for political campaigning purposes in light of campaign polls showing a resounding lack of support for his bid to be governor. The program included a music performance by various Latino youth groups from the Mission District, as well as an award ceremony for local Latino leaders wherein awards were handed out by local Latino City officials. While Mayor Newsom did not attend event, he sent Christine Soto-DeBerry, his Deputy Chief of Staff, in his place. Christine, a Latina herself, addressed the audience in Spanish and

English and presented an award of recognition from Mayor Newsom to Juan Gonzalez, founder of *El Tecolote*, a bilingual Spanish-English newspaper covering stories of interest to progressive Latinos and immigrants. This recognition would be ironic since *El Tecolote* covered the sanctuary amendment developments primarily from the perspective of community advocates. Rather than SFIRDC protesting, Supervisor Campos, who was invited to speak and to confer some of the awards, would address the crowd reminding them of San Francisco’s history as a sanctuary city welcoming to Latinos from all over the world, and that now more than ever, sanctuary city due process was needed for all San Franciscans.

On October 20<sup>th</sup>, the day of the Full Board’s first vote on the youth sanctuary amendment, SFIRDC turned out so many people that they would fill the entire Board Chamber and two overflow rooms where the hearing was projected onto video screens. 120 San Francisco Unified School District students from Lincoln High School, Mission High School, Balboa High School, and June Jordan School attended, in addition to 20 college students from the San Francisco State University’s Ethnic Studies department. In addition to the San Francisco Interfaith Coalition on Immigration’s 5 attending members, SFIRDC member organizations Pride at Work, La Colectiva de Mujeres, San Francisco Day Labor Program, San Francisco Immigrant Legal and Education Network, Mujeres Unidas y Activas, Communities United against Violence, and the Arab Resource and Organizing Center would turn out an additional 130 of their immigrant members. There were so many people in the hallway outside of the Board Chamber that SFIRDC members worked directly with City Hall’s Sheriff’s officers to manage crowd control and maintain safety while the huge group waited for the meeting to begin.

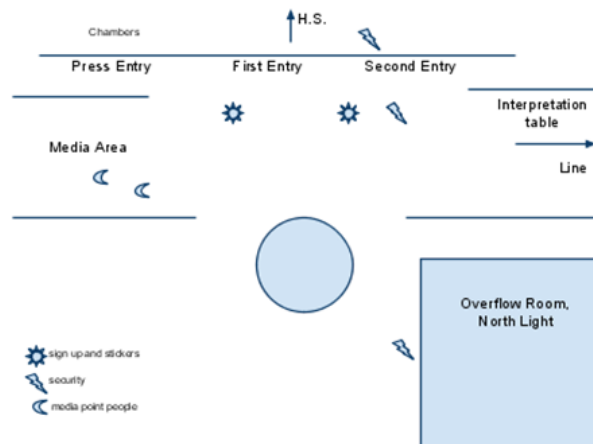


Figure 2. SFIRDC Planning Schematic for Crowd Control Outside the Board of Supervisors Chambers.

Since the Public Safety Committee hearing on the youth sanctuary amendment yielded such extensive public testimony, this Full Board meeting would not hold public comment. Nonetheless, the immigrant members of SFIRDC and the kids from the local schools showed up to send a symbolic message to the Supervisors and the Mayor that they supported the policy and would remain present and vigilant over

the policy's development. Since many of these immigrants were monolingual Cantonese or Spanish speakers, SFILEN would provide simultaneous translation services to all attendees who needed it.

Soon after the meeting began, Board Clerk Angela Calvillo called the item for the Board's action. Rather than describing the youth sanctuary amendment in the negative as something that "restricts" or "delays" reporting youth to ICE, the authors had listed the ordinance amendment in the positive – that the amendment they were considering was an amendment which allowed the city to participate in immigration enforcement activities. Calvillo read the amendment description:

**Clerk Calvillo:** An ordinance amending the administrative code to allow city law enforcement officers and employees to report information regarding immigration status of juvenile to any state or federal agency when the juvenile has been adjudicated to be a ward of the court on the ground of felony conduct.<sup>492</sup>

While this might have been a strategic framing move on the part of the authors of the legislation, this would point out a rather significant truism about what sanctuary city policies really are contrary to what many conservative pundits might portray them to be. Rather than policies, which aim to disobey or ignore federal law, they are actually policies, which clarify the manner in which it is appropriate for the City to cooperate in immigration enforcement with ICE. This youth sanctuary amendment would be just that – a detailed clarification outlining exactly how and when City-initiated deportations were appropriate and justified. In that sense, they are policies which define how City resources can be used for immigration enforcement in a seemingly more balanced and measured way than cities which either do not clarify the manner in which it is appropriate to work with ICE, or cities which aim to maximize municipal cooperation with ICE to the detriment of municipal objectives of public safety and other municipal service provision.

To open up the discussion on the youth sanctuary amendment, the sponsor, Supervisor David Campos addressed the Board in the presence of the audience who were electrified with anticipation. After thanking all of the sponsors of the legislation, his legislative aides, and the advocates in SFIRDC and SFICI, Campos acknowledged all of the students present in the audience, asking them to stand up. Campos then showed the Supervisors hundreds of signed cards in support of the legislation that SFICI members had brought. He then repeated the argument that the legislation was legally defensible and that it upheld the constitution. Campos would then re-emphasize that what the Board was doing was making policy that allowed for the City to participate in cooperating with immigration enforcement activities, albeit in a measured manner. Campos commented, "Now in terms of what this legislation does let's be clear about this. Contrary to what has been said, this legislation does allow for the reporting of youth, of children who are adjudicated to having engaged in criminal conduct."<sup>493</sup> What would distinguish this sanctuary policy from "extreme" anti-immigrant policies that incorporated local employees in immigration enforcement would be that San Francisco's youth sanctuary amendment was "balanced". Campos noted:



The difference is that [the youth sanctuary amendment] changes the time at which reporting takes place. In a sense this legislation tries to strike a balance between two extremes. The prior extreme where there was never reporting going on where in fact people were engaging in criminal activity but were not reported to immigration and the current extreme where you report anyone the moment that they are accused of a felony without any consideration for whether or not they are guilty. That is what we're trying to do.

Supervisor Campos then would argue that the sanctuary amendment was not opposed to immigration enforcement, but rather merely aimed at “trying to protect the very basic principle that in this country you are innocent until proven guilty.” Campos then went on to make the ethical argument, discussing that while the Mayor is a good person, Campos found him to just be wrong on this issue. Campos said, “But the thing about being wrong is that you can always correct your mistake. And the Mayor has an opportunity. He has the opportunity to do the right thing. Because the fact is that this policy is having many unintended consequences.” After providing a few case examples of U.S. citizens who were wrongly reported to ICE and detained well beyond the point when they should have been released by the JPD, Campos then closed his statements by noting that also people throughout the country were watching what San Francisco was doing. As a result of the Mayor’s JPD policy, *La Opinion*, Los Angeles’ largest bilingual Spanish-English newspaper had characterized San Francisco in a negative light with regard to being hospitable to undocumented youth and Campos wanted to restore that hospitality by passing this legislation. Campos closed his opening remarks by saying

San Francisco went from being a leader when it comes to the issue of sanctuary to now being a ‘dangerous place’ for undocumented youth. That is the image - that is the image that we have. So in closing what I simply will say is that other people are watching - the rest of the state is watching. But more importantly, our community is watching. [...] So I hope that we as a Board, we give this city, we give those young people hope. Hope that we will remain a beacon for freedom, for equality, and that we are going to stand firm for those principles even when it is unpopular. Let’s give them hope. Let’s let these young people know that we in this city, we stand by what is right even when it is difficult. Thank you very much. [Applause]

Following Supervisor Campos’ opening remarks, the audience loudly applauded, leading Board President David Chiu to remind them of the Board rules that “ask the public and the audience not to applaud so that we can move forward with the proceedings.” With that, he called on the Supervisor that everyone had been waiting to hear from – swing-vote Supervisor Bevan Dufty.

Bevan Dufty stood up and read his speech, not unlike how all of the Supervisors would give speeches, from a piece of paper, taking pauses every now and again to look up and address his colleagues on the Board. Dufty said

Thank you, I appreciate Supervisor Campos' leadership immensely on this issue. And I think he has distinguished himself in the way he has worked steadfastly and as he said, even on an issue that at times seems unpopular. I have to say for me, this is not a difficult vote. And from my early meetings with groups, attending vigils at St. Peter's, at St. Mary's, it really took me back to my childhood. And at times, I have talked about my mother who has now been gone for 25 years who came to America during the war. She was born in Czechoslovakia, but it was annexed by Germany during the war. So when she came to America, she was stateless. She had no standing. And very soon after I was born, I was maybe four or five, she and my father split and I didn't see him until I was 21. I have never met anyone in my mother's family. And every year as a child, I would go with my mother to the post office where she had to register as an alien. And I remember as I learned to read, to read that sign and to know that I was different from my mother and that somehow I felt unsafe and uncertain because I wondered if something happened where she would have to leave this country, what would happen to me. Who would I turn to, and I felt fearful. And for me that resonates and connects to what is going on here where families are being torn apart by this policy.

No one loves Mission High School more than I do. I feel a tremendous responsibility to want to see this educational institution and its students achieve their goals. [...] But here [at Mission High School] a young man had been threatened [...] by people that were involved in gangs, and being fearful he brought a toy gun to school. When that toy gun was discovered, the leaders of that school had no choice under school district policy but to refer this young man who was immediately then, based on an accusation, not on a conviction, not on a hearing, not on any consideration of extenuating circumstances or our own responsibilities but based simply on the filing of charges against this young person, was separated from his family and his family has been devastated since this time.

I see more than one purpose for sanctuary city. I see sanctuary city as having a purpose of recognizing the value and dignity of each human being and that people are not labeled as people as to whether they are documented or undocumented or American or not American, that individuals have human value. But there is a very selfish reason for people in San Francisco to be grateful that we have sanctuary city and that is so that no person is afraid to approach public safety or law enforcement or public health, that we never have a city in which there is a dual system of justice that takes place here and that people who because they may not have status for a variety of reasons feel that they cannot go to the police and say, I've been robbed, I've been mugged, I'm in danger. And you know what - *my* safety is compromised when that person feels they can't approach law enforcement. People who commit crimes are going to have the opportunity to commit that crime upon me so this is not an assault on public safety vote that we are going to cast today. This is a vote saying we are one city.

And to see the people in this audience today, to see from the young people to the interfaith council to every parish I have been to, people from the Irish community, they get this. There is no secret about this. For these people, this is not about politics and it's not about taking a popular position and it's also not about false promises. I am awake at night thinking about the tragedy of the Bologna family. Those of us who are city leaders - we reflect oftentimes on the tragedy [...] we think about these things and wonder what could we do? How could we have a better city, a more whole city? I can't explain it. I don't know if Edwin Ramos is guilty or not, I know he's been charged. In my mind how can someone who is recently married, someone who has a child of their own, how could this happen? I don't know.

But I tell you that I am voting for this legislation because I believe that under the provisions of this legislation, someone like this individual who stands accused of this crime would have been referred to immigration. You don't get sent to [JPD's] Log Cabin [Ranch] facility unless you've been convicted and I honestly believe that if the circumstances were appropriately handled under this legislation as it will be handled, that someone in this situation would be referred.

I simply want to say again I think there is too much discretion in this [existing JPD] policy. We all know that in the public safety system, there is an enormous amount of discretion in how cases are charged, whether it's a misdemeanor or felony. I think that if you are asking if we are going to tear a family apart, if we are going to deport somebody, it should not be based on a charging discretion. It should be based upon conviction and I certainly stand here as someone who has benefited from the legal advocacy of this city to fight for marriage equality and other issues that we have cared about and think this is an issue that we as a city should fight for.

[...] Perhaps there will need to be some healing but I honestly believe that the stories people are bringing forward about what has happened under this [existing JPD] policy are going to help people understand that we are putting our city more at risk by this [existing JPD policy] and we need to respect the right to due process for young people in our city. Thank you. [Applause]

Supervisor Eric Mar followed Dufty, commented that this youth sanctuary amendment wouldn't have been brought about without the broad grass roots coalition of over 40 organizations that composed SFIRDC. Mar would also comment on how in another sense, this policy battle had brought into existence SFIRDC and united them as a social movement with youth, legal scholars, and city supervisors. He reminded them that despite what happens with the youth sanctuary amendment, that there will likely be back and forth with the anti-immigrant sentiments in the mainstream media but that

the solution and the answer is to stay organized and for young people to get involved with the organizations that have been here today and to keep working with the legal scholars and advocates and others to build a strong

movement from the bottom up.[...] This is such a historic moment but the fight is not over and we to have keep standing up for constitutional rights for due process rights and for human rights for everyone but thank you for building a strong movement, all of you.

However, not all of the Supervisors who spoke about the amendment spoke in favor. There are sometimes when a Supervisor is compelled to explain their oppositional vote because they know that their constituents will take note and it may, if unexplained, lead to criticism and political fallout. At this first vote, moderate Supervisor Carmen Chu, representing the Sunset was in this position. While SFIRDC had expected her to vote no on the legislation, her reason for opposing the youth sanctuary amendment seemed a bit disingenuous. She explained that

The question that I continue to ask in my conversations was what was the harm in reporting at the end of an adjudication process. And that was the question that I really had at the back of my mind and tried to answer. After many, many conversations and trying to alleviate my concerns, I still remain uncomfortable with the legislation and I want to tell you why it is that I remain uncomfortable. I think that as proponents have underscored there is something fundamental about the right to due process and I think that that's something all of us agree with at the heart of us. The discomfort that I have with this legislation is that I have a question about whether we will be able to make sure all individuals actually complete that adjudication and judicial process. My understanding is that individuals, as they await adjudication, actually have judges tell them where they are to be held - whether a group home, whether it's a facility or whether it's at juvenile hall. [...] That they show up to court - I think that that may be compromised. I know that our current system is far from perfect - I don't think it's the right solution what we have now, but at the same time I do remain uncomfortable with having the reporting happen at the very end, so I unfortunately have to respectfully disagree with this legislation.

Supervisor Campos responded that the concern Chu articulated was “a concern that is actually at the very heart of this legislation and it is something that we have tried to address because there is that concern.” He re-iterated that “no one wants to see someone who is a danger to the community somehow end up being released into the community.” He found the issue of flight risk to be already addressed in two ways. The first was that if a juvenile had committed a seriously violent crime then, the juvenile will be tried like an adult, and therefore referred to ICE. The second way it was addressed was that if referral happened at the adjudication stage, “a judge will have to look at an instrument that includes a variety of factors including that very issue of danger to the community and whether or not there is a possibility of flight.” If the judge finds that individual to be a danger to the community and a flight risk, under this instrument, that child will not be released by a judge if the judge concludes that that individual in fact is a danger to the community. Campos then pointed out that to cast a no vote on such a basis essentially was ensuring that one

that would continue denying the vast majority of people from their day in court by reporting kids who may not have actually committed the crime they are accused of. Campos asked rhetorically, “why should they pay the price of someone else when we have in this policy checks and balances to make sure that the public is protected.”

After all discussion was finished, Board President David Chiu called for a roll call vote.

**Clerk Calvillo:** On item 21... [Calvillo calls out each name]

**Supervisor Maxwell:** aye.

**Supervisor Mirkarimi:** aye.

**Supervisor Avalos:** aye.

**Supervisor Campos:** aye.

**President Chiu:** aye.

**Supervisor Chu:** no.

**Supervisor Daly:** aye.

**Supervisor Dufty:** aye.

**Supervisor Elsbernd:** no.

**Supervisor Mar:** aye.

**Clerk Calvillo:** There are eight ayes and two nos.

**President Chiu:** The ordinance is passed on the first reading. [Applause]

Following the passage of the ordinance amendment’s first vote, the audience burst out in applause, chanting in unison, “Si se puede, si se puede!” They then left the Board Chamber and poured out into the rotunda continuing to chant. Campos left the chamber too, to celebrate with the crowd as the meeting inside continued on to the next issue on the agenda in his absence. In the rotunda, Campos addressed the crowd of immigrants and their advocates in Spanish and English:

I think it's a proud day for San Francisco. This vote sends the message that we in San Francisco still believe in the Constitution and the basic principle of due process, that in this country you're innocent until proven guilty. The fact that you're undocumented doesn't mean you're not a person under the United States Constitution! If we can't stand up for the Constitution in San Francisco, then where can we stand up for it in this country? This is for our youth because they deserve nothing less than full equality when it comes to how the law treats them!<sup>494</sup>

Back inside the Board Chamber, the meeting, though it continued on, the raucous sounds of cheering from the immigrant rights community outside permeated the walls of the chamber, imbuing the unrelated and relatively banal proceedings with sounds of pro-sanctuary victory. After the remaining agenda items came to a close, public comment opened and anti-sanctuary activist Colin Gallagher came to the microphone:

Good afternoon supervisors, my name is Colin Gallagher, I'm a San Francisco resident. Following my public comment at the Public Safety Committee meeting on October 5, I had received a rather ugly, homophobic, and threatening phone call from an anonymous caller. I had reported the call to the San Francisco Police Department. This is the message that had been left by the caller. [He plays the tape: *'Pick up the phone Colin Gallagher, I am leaving this message for you. It's yuppie fags like you are ruining the city...[inaudible] you gotta have your facts straight with your silly fuckin' editorial...[inaudible] I am going to call you every single day hour after hour until you pick up. It's fuckin' yuppies like you and your ideology that's ruining this city...[inaudible].. fuckin' yuppie scum is what you are. A fuckin' asshole.'*] Supervisors, I understand that many of you have already made your minds up on the sanctuary issue however I would caution you please avoid making statements labeling critics of the sanctuary...<sup>495</sup>

Board President David Chiu then interrupted Mr. Gallagher saying, "Excuse me sir, this is an item that has already been considered by the Board and we have already had public comment on it. And this public comment is for future legislation." Gallagher then spoke though the mic had been turned off. 20 seconds later it was turned back on and he continued:

Supervisors, this is not acceptable for any person coming before the Board to be targeted with any type of homophobic or other language disrespecting themselves as a human being. I would caution you to avoid making statements in the future labeling critics of any – the sanctuary measure - as racist, this is just simply McCarthyism, it's not American and the reason why you don't hear from more people who have their doubts about this measure is that you have quite frankly a climate of intimidation directed against the critics. Thank you.

Back outside the Chamber, the media had been waiting to interview the Supervisors, immigrants affected by the JPD policy, and the immigrant advocates pushing the youth sanctuary amendment. One of the media outlets was the *New York Times* who interviewed the Mayor's communications director Nathan Ballard. Ballard repeated the fear that this legislation would incite a lawsuit against the city, telling the *Times*

The supervisors did a foolish thing today by passing this bill that moves one step closer to imperiling the entire sanctuary city ordinance. David Campos is taunting the opponents of sanctuary city to file lawsuits against us. If the Mayor's veto is overturned we'll work with the City Attorney to ensure that we don't put our law enforcement officials in the untenable position of becoming lawbreakers.<sup>496</sup>

This would indicate that the Mayor planned to ignore the youth sanctuary amendment if passed on a second vote and if the Board subsequently overturned the Mayor's veto – that he would continue to direct JPD Chief Sifferman to turn

youth over to ICE as soon as they're arrested on felony charges. Ballard went on to say, "The Campos bill isn't worth the paper it's written on - it's unenforceable and he knows that. We are not going to put our law enforcement officers in legal jeopardy just because the Board of Supervisors wants to make a statement."<sup>497</sup> When the Mayor was asked about the legislation, he reaffirmed Ballard's statement saying "By definition, it's a symbolic piece of legislation."<sup>498</sup> Essentially, Ballard and Newsom would be arguing that the ordinance, which in reality would mandate protocol change by law, was actually the equivalent of a resolution – a symbolic gesture – because if the protocol changes it mandated occurred, the enforcement of those changes would be illegal.

When the Media informed Campos of the position of the Mayor, he responded that

The Mayor can't pick and choose which city laws to follow. We expect the Mayor's office to follow the laws of the City and County of San Francisco - that's his job. If he refuses to do that, the Board will have to figure out what our options are.<sup>499</sup>

Following the first vote on the youth sanctuary amendment, and in the midst of the 20<sup>th</sup> anniversary of the passage of the sanctuary ordinance on October 24, 1989, Mayor Newsom's supporters in law enforcement circled their wagons against the youth amendment, reaffirming their position that the youth amendment was unenforceable and that they would not abide by it. JPD Chief Sifferman commented that, "My ability to override federal law doesn't exist. I can't prohibit any officials from reporting instances where there's a reasonable belief that civil immigration laws have been violated."<sup>500</sup> This opinion was shared by Gabriel Calvillo, the representative of the San Francisco Deputy Probation Officers Association, the union representing JPD's 60 probation officers. Calvillo explained that when youth are booked at juvenile hall, probation officers ask them several questions during intake "including their country of birth, whether they have family in the United States with them, and how long they've been in the country. If an officer has questions about the youth's immigration status, he or she is bound by federal law to call ICE."<sup>501</sup>

Police Chief George Gascón too would reaffirm his position with the Mayor that, "I don't think the mayor has a choice. Federal law is really clear on this issue. I think this is really unfortunate that it's gotten to where it has, but frankly I don't think the Mayor has a choice in the matter."<sup>502</sup> Gascón then claimed that the legislation doesn't affect SFPD officers. This denied the claims of Juvenile Probation Commissioner Susana Rojas and SFIRDC that police officers were engaging in pre-textual arrests – arrests conducted with the knowledge that regardless of whether a person committed a crime, the person could be deported if charged on a felony crime.<sup>503</sup>

The *San Francisco Chronicle* Editorial Board too reminded the public that the original sanctuary ordinance was not for people accused of serious crimes. In an editorial article, they argued that

The "sanctuary policy" was established two decades ago with the best of

intentions: to assure people who might have come here without documentation - but were otherwise living within the law and contributing to the community - that they had nothing to fear in the city of St. Francis. But it was made plain from the outset that this refuge was extended only to law-abiding residents. There would be no sanctuary for those accused of serious crimes, the original ordinance declared in 1989.<sup>504</sup>

This assertion was referring to Mayor Diane Feinstein's addition to the original resolution's findings section in 1985, which was repeated in the 1989 ordinance findings section, barring sanctuary for people who commit crimes. The Editorial Board then went on to claim that this original anti-criminal immigrant intention was disregarded in 2005 by JPD who began shielding drug dealers, that the Mayor stopped the practice in 2008, and that Mayor Newsom, once again was stepping in "as a voice of responsibility" to stop the youth sanctuary amendment from going forward:

That policy was twisted and distorted in 2005 when San Francisco's Juvenile Probation Department decided to stop turning over accused drug dealers to federal immigration authorities. Newsom claimed to have stopped the practice as soon as he learned about it in May 2008. That should have been the end of story. [...] Once again, Newsom has stepped in as a voice of responsibility, vowing to veto this unenforceable measure and to prevent its implementation if the veto is overridden. The mayor is right to restore the original intent of the sanctuary law.<sup>505</sup>

On October 24, the 20<sup>th</sup> Anniversary of the sanctuary ordinance, other media organizations would also take pot shots at the policy. Mayor Newsom too would take his shots by going on Fox News national television a day later to talk about the youth sanctuary amendment. The Mayor called the amendment "perverse and absurd" claiming that the Board of Supervisors was using sanctuary to create a framework where people can commit crimes and be shielded against those crimes.

### **The Second Vote**

In this political climate, on October 27<sup>th</sup>, SFIRDC and the Board of Supervisors headed into the Board's second vote to enact the youth sanctuary amendment. The morning of the second vote, prior to the Board meeting and unbeknownst to SFIRDC, POOR Magazine, a local media outlet covering issues affecting low and no-income communities nationally and internationally, organized a press conference on the front steps of City Hall on the youth sanctuary amendment. The Press conference titled "Mothers from all communities in the Bay Area Stand against child abuse and criminalization of immigrant youth by Mayor Newsom and ICE" was called by the Executive Director Lisa Grey Garcia in response the Mayor's claims that he would not enforce the youth policy and aimed to publicly accuse the Mayor of child abuse and criminalization of immigrant youth. POOR magazine had not contacted SFIRDC about the rally/press conference and as a result, SFIRDC didn't



endorse the press conference, nor did POOR magazine speakers speak on behalf of SFIRDC. However, the speakers, which included Grey Garcia, Kim Swan – “mother of three African American children” – POOR magazine reporters, and other mothers associated with the magazine, explained to the press, “immigrant children, like all children, are our children, our responsibility, and our future.” The conference would emphasize black-brown unity and would argue that it “takes a village to raise a child” and that the city should not be abandoning its youth.<sup>506</sup>

The Board meeting began in the afternoon and SFIRDC again packed the Board Chamber with immigrant organization members, advocates, and high school students. This time as with the previous vote, there would be no public comment – only introductory comments by Supervisor Campos and then a final vote. Campos began by remarking that the Mayor’s comments on Fox News about the amendment being “perverse and absurd” and creating a framework for letting criminals go free were not helpful to the debate, and that according to JPD statistics, as many as 68% of charges in juvenile court are not sustained. He also argued that Fox News did not have the final word on sanctuary and that other media outlets such as *La Opinion*, found the Board’s stand on passing the youth amendment to be courageous. Ending his comments, Campos would address the Mayor’s precedent-setting assertion that he would not enforce a law passed by the Board of Supervisors and comment on the power of the Mayor:

**Campos:** Now, let me make a final point about something which has been circulating in the media and this notion that the Mayor is not going to enforce this law should it come to pass that it is passed today, enacted today and then if it is vetoed, that the veto's overridden, and the Mayor has indicated he has a duty not to enforce something he thinks is illegal, unconstitutional. **Let me say this** - you don't have to search very far to get guidance on this issue because even though [...] we're going down the path of uncharted territory [with regard to sanctuary], the reality is that courts have actually addressed this issue [of Mayoral enforcement] before. I don't know where the Mayor is getting legal advice but I would hope that before they decide to do something that they look carefully at what the courts have said about this because even though we have a strong-mayor system of government, the power of the mayor is not absolute. We have a duly elected board of supervisors that has the authority under our charter to enact laws that reflect the values and interests of the people who elected them. We have three branches of government – an executive, a legislative, and judiciary - and each one has their role.

And this is what the judiciary by way of the California Supreme Court has said about this very issue. Ironically it said this in the context in a case decided in 2004 involving this very Mayor, this very mayor on the issue of same-sex marriage. And the question that they addressed in an opinion dated August 12, 2004 is “can an elective executive unilaterally decide that he or she will not follow a law that he or she believes is illegal?” And a number of points are made. “To begin with,” says the court -- and I'm quoting the supreme court -- "most local executive officials have no legal training and

thus lack the relevant expertise to make constitutional or legal determinations." It says that "certainly attorneys have no monopoly on wisdom but a person trained for three or more years in a college of law and then tempered with at least a decade of experience within the judicial system is likely to be far better equipped to make difficult constitutional judgments than a lay administrator with no background in the law." The second point the California supreme court makes is that when the elected official makes that unilateral decision without any consultation with the courts, it has the effect of not affording, and I quote "the affected individuals any due process, safeguards and in particular without providing any opportunity for those supporting the constitutionality of the statute to be heard." In other words, if a mayor has the authority on his or her own to say I won't follow a law because I believe it is illegal that Mayor in so doing is depriving the people affected by that law of due process. And once again - due process - it comes back to due process.

Then the court said "if each official were empowered to decide whether or not to carry out each ministerial act based upon the official's own personal judgment of the constitutionality of an underlying statute, the enforcement of statutes would become haphazard, leading to confusion and chaos and thwarting the uniform statewide treatment that state statutes generally are intended to provide." Because as the court notes there is a presumption once a statute is duly enacted that in fact it is legal until there is a finding by a court that in fact it is not. It is for that reason that they then wrote this language I will read: "A public official faithfully upholds the constitution by complying with the mandates of the legislature, leaving to courts the decision whether those mandates are invalid." [Applause]

Contrary to what some believe and contrary to what has been said by the Mayor, this is what the court also said: "A public official does not honor his or her oath to defend the constitution by taking action in contravention of the restrictions of his or her office or authority and justify in such actions by reference to his or her personal constitutional views. On the contrary, the oath to support and defend the constitution requires a public official to act within the constraints of our constitutional system, not to disregard presumptively valued statutes and take action in violation of such statutes on the basis of the official's *own* determination of what the constitution means." The fallacy of the argument that an elected official can unilaterally ignore a statute that is duly enacted by a legislature... "the fallacy in that thinking, is that in every act of the legislature, it is presumed constitutional and legal until judicially declared otherwise," in other words - until a court decides it. "And the oath of office to obey the constitution means to obey the constitution, not as the officer decides, but as judicially determined."

So when this law is passed today, when the Mayor, if he decides to veto it, this board should decide to override the veto and we ask this mayor to follow his constitutional duty outlined by the California Supreme Court and the very same case that his office took to court, do his constitutional duty, let this law be implemented as the system requires, as the law requires.

You took an oath to make that happen, we expect nothing less. Thank you very much. [Applause]<sup>507</sup>

Without further discussion, the Board took a roll call vote to enact the youth sanctuary amendment:

**Clerk Calvillo:** Supervisor Avalos

**Supervisor Avalos:** aye.

**Clerk Calvillo:** Avalos aye. Supervisor Campos.

**Supervisor Campos:** aye.

**Clerk Calvillo:** Campos aye. Supervisor Chiu.

**President Chiu:** aye.

**Clerk Calvillo:** Chiu aye. Supervisor Chu.

**Supervisor Chu:** no.

**Clerk Calvillo:** Chu no. Supervisor Daly.

**Supervisor Daly:** aye.

**Clerk Calvillo:** Daly aye. Supervisor Dufty.

**Supervisor Dufty:** aye.

**Clerk Calvillo:** Dufty aya. Supervisor Elsbernd.

**Supervisor Elsbernd:** no.

**Clerk Calvillo:** Elsbernd no. Supervisor Mar.

**Supervisor Mar:** aye.

**Clerk Calvillo:** Mar aye. Supervisor Maxwell.

**Supervisor Maxwell:** aye.

**Clerk Calvillo:** Maxwell aye. Supervisor Mirkarimi.

**Supervisor Mirkarimi:** aye.

**Clerk Calvillo:** Mirkarimi aye. Supervisor Alioto-Pier.

**Supervisor Alioto-Pier:** no.

**Clerk Calvillo:** Alioto-Pier no. There are eight ayes and three no's.

**President Chiu:** The ordinance is finally passed.

[Applause from the audience]<sup>508</sup>

### **The Mayor's Veto**

SFIRDC members were ecstatic with the Board's vote, and following the vote, Angela Chan of the Asian Law Caucus commented to the media that, "Requiring due process for children before they are referred to ICE is an innovative strategy and could be implemented elsewhere." However, without the Mayor's support, the passage of the ordinance amendment did little to persuade JPD to change its ICE referral protocols. Gabriel Calvillo of the San Francisco Deputy Probation Officers Association would remain steadfast in his position that, "We just want to be safe, to make sure our officers are not put in the cross hairs of federal officials. We're going to continue to follow the Mayor's direction."<sup>509</sup>

Following the final passage of the youth sanctuary amendment, the Mayor would have 10 days to either veto or sign the ordinance amendment into law, however it didn't take him that long. The day after the Board's vote, on October 28<sup>th</sup>,

and in the midst of SFIRDC meeting with Supervisor Campos to discuss implementation of the amendment, the Mayor issued his veto with an accompanying letter explaining his veto. The letter began with the Mayor repeating his support for the sanctuary ordinance and again attempting to graft on to its original intent, the idea that sanctuary was also at its core a public safety initiative:

I am vetoing the legislation the Board of Supervisors passed to amend our Sanctuary Ordinance. I have long supported our sanctuary policy and a range of policies and programs designed to assist our immigrant community. Our Sanctuary Ordinance struck the appropriate balance between offering a welcoming hand to the immigrant community and protecting the public safety of the city. However, the legislation passed by the Board of Supervisors makes changes to the ordinance that contradicts this core tenet of our sanctuary policy.<sup>510</sup>

He then stereotyped undocumented immigrants as hard working, law-abiding community members – a stereotype which he then used to marginalize undocumented juveniles in Juvenile Hall as not that because they, as he explicitly stated, were accused of crimes:

The vast majority of undocumented residents in San Francisco are hard working, law-abiding community members. Immigrants work long hours and send their children to school with the hope that they will have a better life. Undocumented youth in the juvenile justice system are the extreme exception and not the norm in the immigrant community. The sanctuary ordinance as originally conceived and adopted was designed to protect those residents of our city who are law abiding. It was never meant to serve as a shield for people accused of committing serious crimes in our city.<sup>511</sup>

This reification and normal undocumented immigrants as law-abiding, hard workers who value education and support their kids largely denied undocumented immigrants their humanity in all of its aspects. Undocumented immigrants, as with all groups of people are more than their ability to obey authority and serve as a source of labor for the San Francisco economy. Like all groups, including citizens, many undocumented immigrants break the law and otherwise make mistakes. The consequence of Newsom's normalizing stereotype of normal undocumented immigrants expressed in his veto letter would be that abnormal undocumented juveniles who were merely accused of crimes, including all of those immigrants found to be innocent and law-abiding by the juvenile courts were for the Chief Executive of the City, worthy of temporary banishment through deportation.

Newsom, seemingly in the spirit of defending the sanctuary ordinance, went on to repeat his claim that the City Attorney's cautionary memo that he had leaked to *The Chronicle* indicated that the amendment threatened to undermine the ordinance itself. What was interesting however was his change in focus in his veto letter from arguing that sanctuary was not meant to protect criminals as a general

statement, to an argument that sanctuary was not meant to protect “suspected felons”.

Our Sanctuary Ordinance was never meant to prevent federal immigration officials from discovering the identity of suspected felons. The change made to our Juvenile Probation Department policy last year was a measured response to comply with the local sanctuary ordinance, and state and federal law. Many other counties in California have a similar policy of reporting suspected juvenile felons to Immigration and Customs Enforcement at the booking stage.

Later in the veto letter he would repeat this concept saying that the sanctuary ordinance “was never meant to serve as a shield for people accused of committing serious crimes.” This slight modification to his language on who he was targeting would indicate that SFIRDC and Supervisor Campos had been successful in changing the discourse so that the public understood that the people being reported were not in fact convicted felons or undocumented *criminals* in a general sense, but that many had turned out to be entirely innocent of their felony charges. Mayor Newsom, in making a slight modification to his language here, would actually be asserting something more draconian and show that he too understood the distinction rather than glossing over it for political expediency. He was truly arguing for deportation for all people innocent and guilty on the basis of accusations, not of criminals in general.

The Mayor also argued that, “The courts have held that the collection and dissemination of such information does not deny the person equal protection of the laws or due process”. Citing court cases *Gates v. Superior Court (1987)*<sup>512</sup> and *American G.I. Forum v. Miller (1990)*,<sup>513</sup> the Mayor clarified that

The courts have stated that when an officer ‘legitimately comes across information in the course of investigating a crime which reasonably leads to the belief the person arrested is illegally present in this county, nothing in either state or federal constitution prevents the officer from advising INS of this data.’<sup>514</sup>

The Mayor’s veto letter then repeated the City Attorney’s assertions that the amendment would be placing a new restriction on city employees for communicating with ICE, which could be found to be illegal. Then interpreting a part of the City Attorney’s memo which advised that the City not take any “adverse action against a City official or employee who reports a juvenile to federal immigration authorities” - which clearly referred to disciplinary measures - the Mayor asserted that the City Attorney’s Office was advising JPD to ignore the youth sanctuary amendment.

To end the veto letter, the Mayor would reaffirm an exceptionalist attitude that San Francisco continued, “to be an international leader in our efforts to protect law-abiding immigrants in our community. We excel in providing services to our

diverse immigrant community and have developed a comprehensive sanctuary policy that ensures access to city services for all people.”<sup>515</sup>

Supervisor Campos responded to the letter by emphasizing a point that actually wasn’t that far from what the Mayor was saying - that what this legislation was about was about protecting “innocent immigrant children.” In this sense, the Mayor and Campos wouldn’t disagree that sanctuary was only extended to the law-abiding immigrants, but that people who were merely accused but not found guilty should not be deported.

### **Overriding The Mayor’s Veto**

On October 31, three days after the Mayor issued his veto letter, he dropped out of the electoral race for Governor. Reasons that the *San Francisco Chronicle* cited were his lack of campaign funds and political momentum.<sup>516</sup> Newsom cited having a “young family and responsibilities at City Hall” and therefore he couldn’t dedicate the needed time to his campaign. Attorney General and former Governor Jerry Brown, who at this point had yet to formally declare his candidacy, became the lone Democratic candidate for the 2010 election. The latest field poll showed Brown led Newsom with a 20-point advantage, double what it was in March 2009. Brown also brought in \$7.4 million more than Newsom in campaign funding as Newsom had just \$1.2 million. Newsom told the *The San Francisco Chronicle*, “I will continue to fight for change and the causes and issues for which I care deeply - universal health care, a cleaner environment, and a green economy for our families, better education for our children, and, of course, equal rights under the law for all citizens.”<sup>517</sup> His choice of words could not have been more telling.

Meanwhile, at the Board of Supervisors, Supervisor Campos continued to strategize about a way forward given the Mayor’s defiance on the enforcement of the youth sanctuary amendment. At the next full Board of Supervisors meeting on November 3, he had the Board send a letter of inquiry to Chief Sifferman requesting that JPD provide information and documentation that would provide the Board four things within 30 days of the request. The first was an accounting of how the department “uses city funds to comply with Juvenile Probation Department policy 8.12 the Department’s policy regarding the intake processing and release of undocumented minors (effective date August 2008)”.<sup>518</sup> This kind of request would in a sense invite Sifferman to put a dollar amount on their deportation practices that the Board might be able to withhold during the next budget season. Secondly, Campos requested all intake and processing forms used by the Department at the referral and booking stage. Thirdly he wanted their caseload for the last two years, broken out by month. And finally, Campos wanted

An explanatory memorandum and any relevant Department materials related to answering the following questions: a. Does the Department consider itself and/or intend to act as a de facto arm of the United States Bureau of Immigration and Customs Enforcement? How is the Department ensuring that probation officers are not doing the work of federal immigration officials?<sup>519</sup>

A week later, on November 10, the Full Board of Supervisors would take a vote on whether or not to override the Mayor's veto of the youth sanctuary amendment. Prior to the vote, Supervisor Campos made opening remarks. He indicated that following the passage of the youth sanctuary amendment, his office received an unordinary amount of hate mail, emails, and calls, and then he shared two stories. The first was about a 43 year old undocumented immigrant who witnessed a murder and how because of Los Angeles Police Department's sanctuary policy, overcame fear to help the LAPD solve the crime when they had no other leads. Campos argued that this is what sanctuary city is about – immigrants feeling safe in trusting the police to solve crimes and increase public safety. The second story was about a 16 year old who cooperated with police following a crime, he was booked for the crime, and though his charges were dropped, he was given to ICE and moved to a detention facility in Oregon. Aligning himself with the community, Campos would note:

That is what is happening in San Francisco today and that is why we as a community urge the Board of Supervisors to do the right thing today and override this veto. And we urge Mayor Newsom if that happens to do the right thing and implement this policy. You may not agree with it but members of my community from District 9, from throughout the city, believing in our system of government, have invested themselves in this process and followed the democratic process that is in place and worked for more than a year to get this law enacted. Those members of our community have come to this Board, they believe in the system, it's those two classes, high school classes that came, just a few weeks ago to learn a civic lesson. They keep asking me, once you pass the law, if the veto is overridden, when is the law going to go into effect? It pains me to say what we hear from the Mayor is he's going to ignore the democratic process that has been followed. Colleagues today I respectfully ask you to continue with your support. It is important for us to show our community that has waited for so long that we in San Francisco still believe in what's right, we still stand up for what is right, even when it is difficult and I would ask the mayor respectfully to please work with us to please follow the laws that are duly enacted by this board and that our communities have worked so hard to make a reality. Thank you very much.<sup>520</sup>

President Chiu then called for a roll-call vote.

**Clerk Calvillo:** Supervisor Alioto-Pier

**Supervisor Alioto-Pier:** no.

**Clerk Calvillo:** Alioto-Pier no. Supervisor Avalos

**Supervisor Avalos:** aye.

**Clerk Calvillo:** Avalos aye. Supervisor Campos.

**Supervisor Campos:** aye.

**Clerk Calvillo:** Campos aye. President Chiu.

**President Chiu:** aye.  
**Clerk Calvillo:** Chiu aye. Supervisor Chu.  
**Supervisor Chu:** no.  
**Clerk Calvillo:** Chu no. Supervisor Daly.  
**Supervisor Daly:** aye.  
**Clerk Calvillo:** Daly aye. Supervisor Dufty.  
**Supervisor Dufty:** aye.  
**Clerk Calvillo:** Dufty aya. Supervisor Elsbernd.  
**Supervisor Elsbernd:** no.  
**Clerk Calvillo:** Elsbernd no. Supervisor Mar.  
**Supervisor Mar:** aye.  
**Clerk Calvillo:** Mar aye. Supervisor Maxwell.  
**Supervisor Maxwell:** aye.  
**Clerk Calvillo:** Maxwell aye. Supervisor Mirkarimi.  
**Supervisor Mirkarimi:** aye.  
**Clerk Calvillo:** Mirkarimi aye. There are eight ayes and three no's.  
**President Chiu:** Motion passes and veto has been overridden. [Chiu strikes the Gavel]  
[Applause from the audience]<sup>521</sup>

## Conclusion

This chapter provided an overview of the discourse and political maneuvers of the Board of Supervisors, SFIRDC, and the Mayor to pass the youth sanctuary amendment at the Full Board of Supervisors. SFIRDC throughout the process, at every step took action to maintain their support among Board members, educate them on the amendment, and provided them reason after reason to vote in favor of the ordinance. Simultaneously, they fought the media war, which would ultimately culminate in the Mayor vowing to not enforce the ordinance if duly passed by the Board of Supervisors. Ultimately, the Board passed the ordinance amendment and overrode the Mayor's veto. However, while the coalition had effectively used the legislative bodies of government to enact a policy change, which would mandate JPD to delay their referrals of youth to ICE, they did not have the support of the Executive Branch from the highest levels in the Mayor's office down to the law enforcement agencies that were to implement the policy. The community's faith in the democratic process was temporarily restored with a sense of legislative victory – the undocumented community and their advocates had successfully fought off the Mayor's attempts to persuade Supervisors to vote against the amendment. However, without the Executive Branch's support, advocates and the Board of Supervisors would be faced with a new kind of problem – the problem of the Executive Branch's refusal to implement the amendment.



## CHAPTER 12

### IMPLEMENTATION THWARTED

#### Introduction

This chapter examines Mayor Gavin Newsom's executive decision to instruct Juvenile Probation to not implement the youth sanctuary amendment, the City Attorney's offers to force federal litigation of the youth sanctuary amendment, and the actions taken by the Board of Supervisors and SFIRDC from mid-November 2009 through late February 2010 to persuade the City Attorney, the Mayor, and JPD to implement the policy change. This chapter highlights how the life of sanctuary city policy does not progress smoothly through transitions of legislative enactment to implementation. Rather, sanctuary city policy, which comes from the community and the Board of Supervisors, is ultimately only effective as it is implemented and enforced by the Executive Branch. Without the political will of the Mayor, the coalition and the Board of Supervisors moved to mount a campaign calling on the City Attorney to change his policy implementation advise to the Mayor, calling on the Mayor to do his duty to enact policy passed by the Board, and thereby restore the faith of the public in the municipal legislative process.

#### Reigning In Mayoral Authority

The same day that the Board of Supervisors voted to override the Mayor's veto on the youth sanctuary amendment, the City Attorney sent U.S. Attorney Joe Rusionello a letter asking him for his assurance that if the City proceeded to implement the youth sanctuary amendment, that City law enforcement officers and employees, in particular JPD, would not be prosecuted for violating federal criminal laws. The City Attorney noted

If the U.S. Attorney's Office does not provide us with an adequate assurance that it will not prosecute City officials or employees who would implement the Amendment, my Office may be compelled to explore with City policymakers other options regarding the implementation and enforcement of the Amendment, including the possibility of filing a declaratory relief action in federal court.<sup>522</sup>

While the City Attorney entertained the idea of filing a *declaratory relief action*, which the City Attorney insinuated was a manner in which to make implementation possible, SFIRDC member Community United Against Violence (CUAV) found this to unhelpfully provoke Joe Rusionello to grandstand in the media and renew his threats of prosecution. Interestingly, a declaratory relief action is a legal action that is essentially a request to a court to declare the status of a matter in controversy in order to prevent further litigation on that topic. What is interesting about the City Attorney offering to take this action was that it might do exactly what his office had advised could be an outcome of anti-sanctuary litigation – to get a court to rule on

the issue, which might lead to the court ruling that the entire sanctuary ordinance was pre-empted. Without a declaratory relief action, as Supervisor Campos had indicated in his speech prior to the Mayoral veto override vote was that the youth sanctuary amendment was legally sound and assumed to be constitutional until a court found it to be otherwise.

The case law that Supervisor Campos was referring to was *Lockyer v. City & County of San Francisco*, (2004)<sup>523</sup>. Campos interpreted this case to mean that

a fundamental principle of our system of government is that properly enacted legislative mandates are presumed to be legal unless illegality is clearly shown, and that such presumption means that doubts should be resolved in favor of a mandate's validity. In other words, a Mayor may not disregard a duly enacted law unless the "invalidity" of the law is "patent" or "clearly established[.]" Id. At 1103.<sup>524</sup>

Seeking a declaratory relief action would have forced the issue to be judged even though no anti-immigrant or anti-sanctuary litigation threatened the amendment – that is, no litigation claimed that the amendment was "invalid" in the terms of *Lockyer*. So while this would appear to be a legal action the City Attorney portrayed as defending the city from U.S. Attorney litigation, it actually had the potential to undermine the whole ordinance, which hadn't up to this point been ruled on in state or federal courts. A negative ruling on San Francisco sanctuary city policy wouldn't just impact San Francisco, but likely all cities with similar policies.

CUAV thought this letter was also the City Attorney's manner to give the Mayor political cover, which would also lead city employees to be hesitant to implement the youth sanctuary amendment.<sup>525</sup> On November 20, nearly a month after the passage of the ordinance, CUAV sent letter to City Attorney requesting that his office "take any and all steps to assure that the [youth] amendment is implemented, and aggressively defended, without affirmatively filing a lawsuit which could take years to resolve."<sup>526</sup> They requested that he also issue a public statement stating his intention to implement the policy and defend it if necessary.

In response to the CUAV letter, the City Attorney Dennis Herrera met with SFIRDC members American Civil Liberties Union, Asian Law Caucus, Dolores Street Community Services, Immigrant Legal Resource Center, Lawyers Committee for Civil Rights, and Legal Services for Children. When asked in the meeting to implement the youth sanctuary amendment which had still been entirely ignored by JPD and the Mayor, the City Attorney responded that implementation rests in the hands of the JPD, as well as in the hands of the Mayor and Board of Supervisors, but that he intended to "pursue aggressive, vigorous defense to enable the law's fullest possible force and effect."<sup>527</sup>

In this same week, Kevin Ryan, Mayor Newsom's head of the Mayor's Office of Criminal Justice and former U.S. Attorney who SFIRDC suspected was the main influence on the Mayor to report youth to ICE at the booking stage as well as to oppose the youth sanctuary amendment, resigned. His last day would be December 18<sup>th</sup>, a month after his resignation. His job had been to act as a liaison between the Mayor's office and the SFPD and other criminal justice agencies like the Juvenile

Probation Department, as well as being the Mayors lead staff person responsible for “ironing out the sanctuary city policy.”<sup>528</sup>

Finally, in the beginning of December 2010, U.S. Attorney Joe Russionello, who was on his way out of his federal position, responded to City Attorney Dennis Herrera about prosecuting city employees who implement the juvenile sanctuary amendment saying he “has no authority, discretionary or otherwise to grant amnesty from federal prosecution to anyone who follows the protocol set out in the referenced ordinance.”<sup>529</sup> He said that

Shielding the youth is not only potentially illegal but probably futile [...] The federal government has determined that illegal aliens, including juveniles, who are either accused of committing serious crimes, including but not limited to selling Schedule I controlled substances, or are gang members, are subject to deportation regardless of whether they are convicted or not. In fact, technically, anyone “out of status” is subject to deportation, though enforcement priority is directed toward those persons whose arrests evidence probable cause to believe they pose a threat to their communities.

Of the numerous proposals advancing immigration law reform, none that I am aware of provide for or hint at, for that matter, creating a mechanism whereby illegal aliens who have or are engaged in dangerous criminal misconduct will be entitled to adjustment of their status or any other favorable treatment, which is why shielding them from detection by federal authorities now is not only potentially illegal but probably futile.<sup>530</sup>

JPD Chief William Sifferman also responded to Supervisor Campos’ request for information on whether the Juvenile Probation Department “considers itself or acts as a de facto arm of the U.S. Bureau of Immigration and Customs’ Enforcement. Citing case law on law enforcement cooperation with ICE, Chief Sifferman argued that JPD was not acting as an arm of ICE, nor were they violating the due process laws of arrested minors:

The Department does not consider itself, act and/or intend to act as a de facto arm of the Immigration and Customs Enforcement (ICE) Group of the U.S. Department of Homeland Security. Juvenile probation officers do not perform the work of federal immigration officials. Case law has established that a local law enforcement agency does not act as an arm of the federal immigration system when it notifies federal immigration authorities that an arrested person appears to be here illegally. *Gates v. Superior Court (1987)* 193 Cal. App. 3d 205, 219; *Fonseca v Fong (2008)* 167 Cal.App 4<sup>th</sup> 922, 936-939. Nor does the local agency violate the due process rights of the arrested person. *American G.I. Forum v. Miller (1990)* 218 Cal.App. 3d 859, 866-867.<sup>531</sup>

Further, the Chief also informed the Supervisor that the training that JPD officers get, as well as the Department’s *Values, Vision, and Mission Statement*, does not include performing the work of federal immigration officials. Supervision of JPD probation officers was limited to enacting policies compatible with the Welfare and

Institutions Code, not the Immigration and Nationality Act, the main federal law governing immigration enforcement.

In light of this recalcitrance to implement the youth sanctuary amendment, and the unprecedented stance that the Mayor was taking by unilaterally deciding to not enforce the amendment, Supervisor Campos emphatically called upon the Mayor to implement the amendment at a subsequent Board meeting on December 8 – two days before the ordinance was legislated to go into effect. His argument was no longer merely about ensuring due process for undocumented youth in JPD custody, but for the proper functioning of the democratic municipal legislative process, which included the advocacy and organizing of undocumented immigrants, and which the Mayor was ignoring.

**Supervisor Campos:** The last thing that I will note is that with respect to the sanctuary ordinance legislation that I introduced and that this Board approved after a long process that involved an override of a mayoral veto, I simply remind this body and remind the citizens of the City and County of San Francisco that under the rules, the effective date of that ordinance is December 10 and that is two days away. I make that statement because I think it's important that the Mayor's Office be reminded that the people who invested time and energy, who believed in the democratic process and who came to meeting after meeting in these chambers and pleaded with this body to enact that legislation, that those people who believed that we are a democracy, where laws are enacted by a legislative body and that are then enforced by an executive, expect full implementation of the ordinance effective December 10. We have a strong Mayor system of government but it is not a monarchy. The Mayor does not get to decide what laws he or she implements or fails to implement. State law is very clear on that issue. The Mayor as the executive of a city took an oath to follow the constitution and laws of the state of California not as he or she interprets them to be legal but as the courts interpret them, and the fact this Mayor does not believe this law is legally viable does not give him the authority to simply and unilaterally ignore implementation. So I will simply respectfully request once again this Mayor do his duty and comply with the oath of office he took and implement the law, direct the appropriate on the grounds including juvenile probation to implement the law and in so doing, he will be doing what Mayors have done for the last 20 years that sanctuary has been in existence - recognizing that we will comply with federal law, we have every right to expend the very limited resources on things that are of a local nature that we are not in the business of enforcing immigration law and that our juvenile probation department is not an arm of immigration, so I respectfully ask the Mayor implement the law. Thank you.<sup>532</sup>

On the same day, SFIRDC member Asian Law Caucus submitted a Draft Policy change for a new JPD ICE referral protocol in compliance with the youth sanctuary amendment to the City Attorney for review.

The day before the youth sanctuary amendment would go into effect, as with all new policies, Board of Supervisors Clerk Angela Calvillo sent a memo to all City Department Heads, City Agencies, and Commissions, CC'ing United States President Obama, U.S. Secretary of State Hillary Clinton, U.S. Attorney General Eric Holder, Chief of Staff of ICE and Commissioner of Federal Immigration Suzie Barr, Senator Barbara Boxer and Senator Dianne Feinstein, which notified them that the youth sanctuary amendment would go into effect the next day on December 10. Calvillo's memo provided the ordinance text, and informed them that all "appointing officers" shall inform the employees "under his or her jurisdiction of the prohibitions of this Ordinance, and the duty of all employees to comply with the prohibitions of this Ordinance." However the memo would fall on deaf ears – the effective date of the youth sanctuary amendment, December 10, would pass by with no changes in the JPD' ICE referral practices.

### **The Community Loses Faith in the Human Rights Commission**

On December 10<sup>th</sup>, 2009, the day of the youth amendment enactment, the Human Rights Commission (HRC) organized a special hearing in the Mission District on the Sanctuary Ordinance, however, very few people attended. The HRC staff put in roughly 60 hours doing outreach for this event with SFIRDC and other community groups, and so they were upset by the low turnout. However, SFIRDC had lost trust in the HRC, who in their eyes had failed to take a strong stand on due process for youth at the critical moment before the Board's key votes. HRC had held the joint hearing on immigration enforcement with the Immigrant Rights Commission well before the Board votes and prepared the hearing report, which emphasized the negative impact of referring youth to ICE, but the report was not finally issued until the day before the Mayoral veto override vote on November 9<sup>th</sup>. They never came out and issued affirmative support for the youth sanctuary amendment, and were felt to be largely absent from the fight when the community needed them. Rather than attending the HRC hearing on the sanctuary ordinance, SFIRDC organized a protest on the front steps of City Hall at the same time, in front of Mayor Newsom's office demanding that he instruct JPD to implement the youth sanctuary amendment.

While SFIRDC was not at the HRC hearing, Supervisor Campos did attend and address the Commission, telling them that the HRC did not have the support of the community because it had failed in its role to oversee compliance with the sanctuary ordinance. He also told them that the only way to fulfill their legal mandate to oversee compliance of departments with the sanctuary ordinance, the HRC would need the trust of the immigrant community:

**Campos:** I think the HRC does have an uphill battle because the reality is that HRC, in terms of overseeing compliance with the ordinance [it's role as defined in the ordinance text] has really not been relevant. And I say that not to take anything away from the Commission, but to the contrary, to say that because it is the reality in the community. I have worked with a very broad coalition of individuals in the last year to implement new legislation, an

amendment to the sanctuary ordinance – that coalition is aware of this meeting and quite frankly many of them were reluctant to come because they feel that the HRC has not really lived up to its obligations under city law. And I think that overcoming that hurdle is going to be key to compliance. You can come up with the best policy possible and I think that with this staff you will indeed be able to do that, but unless the HRC regains the trust of the community, certainly the community that I represent, I don't think that you will be able to fully live up to what is expected of you under the ordinance.

And I really believe that *trust* is a key word here. You are going to have to meet with the various groups who work with the immigrant community in San Francisco, especially in this neighborhood and you are going to have to demonstrate to them not only in words but most importantly in actions that you are committed to fulfilling your legal obligations. And unless you are willing to do that, I will say that full compliance with not only letter and spirit of the ordinance will not be possible.

And what I add to that comment is the commitment on the part of my office to help you in whatever way that I can to make sure that you are fully compliant. And Commissioner Richardson – in order for the HRC to play the role that they have, they have to have the resources provided to HRC. And even though we have a tough budgetary time that is unprecedented in our history, we remain committed to civil rights and the work of the HRC. And supervisors like myself will be more than ready to advocate for the HRC to get the resources that it needs. But again, there has to be a demonstrated commitment on the part of this commission to live up to its mandate. Because in a time of limited resources, this Board of Supervisors will not make that commitment to advocate unless that commitment on your part is demonstrated.

So I hope that tonight will be the beginning of a partnership between the Board of Supervisors and this Commission. We want you to be successful. Implementation, full implementation of the sanctuary ordinance requires that you be successful – we want to help you to make that happen. To make that happen, we need you to really look at what the law requires and to do it irrespective of whatever political fights might be going on between the Board of Supervisors and the Mayor. Because at the end of the day, you are San Francisco's Human Rights Commission and that transcends anything that may or may not be happening in City Hall.<sup>533</sup>

The new Executive Director of the HRC was the former President of the Police Commission Theresa Sparks. Mayor Newsom had appointed Sparks HRC Executive Director in July 2009, just three months after the Human Rights Commission joint hearing with the Immigrant Rights Commission on immigration enforcement – a hearing which called attention to police and JPD cooperation with ICE - and immediately following the Police Commission's hiring of Police Chief George Gascón, which Sparks presided over. She would take over the position of HRC Executive Director from Larry Brinkin, who had retired from the position after three decades

of serving in a staff and management role. Brinkin had been heavily involved in the Sanctuary City Initiative, including sanctuary ordinance implementation efforts in 2007, and had kept informed of the developments in the youth ICE referral issues in 2008 and early 2009.

The fact that in that critical moment in the summer of 2009, Newsom had hired the person who hired the Police Chief who took Newsom's side in the youth sanctuary battle – and who agreed that undocumented youth accused of crimes should be deported – made Newsom's decision look suspicious. Whether or not it was true, it had the air of appearing like Newsom was giving the HRC - the agency charged with overseeing compliance with the sanctuary ordinance - a Director, who might keep the HRC from heavily scrutinizing the Mayor's JPD ICE referral policy or from aggressively supporting Campos's youth sanctuary amendment. The fact that the HRC largely stayed out of taking the community's side in the grassroots campaign leading up to the passing of the amendment would provide further confirmation that the HRC was either ineffective or too politically over-shadowed by the will of the Mayor and therefore not to be trusted.

Responding to Campos' advise to build trust with the community and take real steps to ensure compliance with the entire sanctuary ordinance as amended, Director Theresa Sparks reaffirmed the HRC's role in following the sanctuary ordinance's mandates that the HRC take responsibility for training department staff. She mentioned that she "made that offer to department heads that we will be willing to do that and that we will ask for resources from the Mayors office and the Board of Supervisors to be able to do that." She said also that they would ask that the departments also reimburse the HRC for the training of each department and that they would be pursuing trainings in the sanctuary ordinance very quickly.

One of the few SFIRDC member leaders who did go to the HRC hearing on December 10<sup>th</sup> was San Francisco Immigrant Legal and Education Network (SFILN) attorney Francisco Ugarte. Francisco served in the capacity of representing immigrants in federal immigration court who were in the middle of deportation proceedings. However, his organization also conducted extensive work to educate undocumented immigrants of all ethnicities, language groups, and national origins about their rights, the provisions of the sanctuary ordinance through workshops, events, and in making referrals for local services. Francisco explained to the Commission that

There's been issues around whether the public is knowledgeable about sanctuary city – my organization does a lot of education around it and if you were to poll people around the city, I am confident they would know what sanctuary city is. But the trust issue is the key issue. People don't trust that there really is a sanctuary city here. And after seeing hundreds of families ripped apart as a part of referrals by the SFPD, that trust is quite frankly compromised. There are a whole host of activists in this city fighting for immigrant rights and they are not here. I can tell you about many cases that come through my office – people that are being arrested on misdemeanors, minor crimes and are being referred to immigration, including recently an undercover operations for MUNI bus fares. Someone was arrested for failing

to have a proper ticket – he got in the back door of the bus, he had a fast pass [a rechargeable fare card], was arrested, then later transferred to immigration.

These stories are occurring. And what we really need, is an HRC willing and able to hold all city departments accountable, especially the Police Department. And I know that is difficult, but frankly, that is the most important department to hold accountable here. [...] I think that what needs to happen is that when complaints are [lodged] with the HRC that there is an investigation and determination as to whether there was a sanctuary violation. Now I think that sanctuary violations are also discrimination violations. We often hear of sanctuary violations happening for no other reason than for someone's appearance and so I think that a body that has the capacity to investigate the complaints and identify certain officers who are discriminating, interrogating certain immigrants about immigration status, that would be helpful.<sup>534</sup>

The HRC commissioners proceeded in this meeting to then contemplate the idea, which Director Sparks mentioned that they had already talked to Supervisor Campos and the City Attorney about, that whenever a referral to ICE is made, that the referring department notify the HRC and provide the underlying reason for the referral. This might allow the HRC to intervene in some way to stop the referral. Director Sparks then noted that

We do not think that the ordinance or our policies and procedures of any city agency preclude us from directing the agency to notify the HRC prior to referral to ICE. This is something we need to run through the city attorney's office that there is nothing that precludes us then from notifying community advocates and legal advocates to notify them prior to the time of when notification occurs.<sup>535</sup>

However, this plan would, like many ideas that are presented in meetings throughout the city, fall into the dustbin of ideas that are not acted on.

### **Enforcing the Youth Sanctuary Amendment to Restore Democracy**

Also on December 10, the effective date of the youth sanctuary amendment, David Campos wrote a letter to City Attorney Dennis Herrera not only about implementing the youth amendment but also to address the precedent that the Mayor was setting for the balance of powers between the legislative and executive branches of the city government. Campos found that it was a gross understatement to say that the Mayor's decision to disregard the youth sanctuary amendment, legislation that the Board properly passed, "would undermine the Board's authority."<sup>536</sup> He reiterated that according to the Supreme Court of California case *Lockyer v. San Francisco* that laws duly enacted would not be considered illegal and invalid unless a court ruled them to be so, and that the Mayor could not determine the illegality of a law on his own and choose to not enforce it, essentially usurping the power of the legislature



and the judiciary. In this case, the youth sanctuary amendment, Campos argued, had been approved by the City Attorney's office as to form, meaning that it was not on its face patently invalid. On account of this, Campos requested that the City Attorney issue a written opinion "on whether Mayor Newsom had the authority to unilaterally refuse to implement the duly-enacted civil rights legislation at issue, where such legislation was reviewed and approved as to form by you and your office." What was at stake, according to Campos was not merely the enforcement of the constitutional rights of juveniles being referred to ICE, but of San Francisco residents' "trust in the democratic system."

A week later, on December 16<sup>th</sup> 2009, Dennis Herrera responded to Supervisor Campos' request for a public statement essentially letting the Mayor off the hook. The City Attorney did describe the obligations of the executive branch in implementing new laws, stating, "Once the Board legislation goes into effect, the executive branch must implement it in accordance with its terms. The Mayor also has a duty to enforce all laws relating to the City and County."<sup>537</sup> However, the City Attorney also said, according to the amendment text, it wasn't the Mayor's job to implement, but rather the amendment specifically named the Department Head as the responsible party, subject to the supervision of the Commission overseeing that Department. The department head was responsible for assessing his or her own policies and, given legal advice on compliance with state and federal law, the Department Head ultimately determined how best to change their policies and procedures. Therefore, if it was not the Mayor's job to implement the amendment, then he wasn't actually choosing to not implement it unilaterally. The Mayor was merely responsible for holding the Department Head accountable for the failure to follow the Mayor's direction. This would completely side-step the fact that a Department head, in choosing to enact this duly passed law, would be defying the Mayor's direction to not implement the amendment, the Mayor would take some sort of action against that Department Head. The City Attorney wrote:

[...]The Mayor may provide direction to the Department and the Juvenile Probation Commission (the "Commission") that oversees it, and the Mayor may hold the head of the Department and the commissioners accountable for their failure to follow his direction. But ultimately the decision-making authority reposes in the Department head, subject to the supervision of the Commission. The Commission may defer to the Department head's policy decisions, give policy directions to the Department head, or revise the Department head's policies. [...] Now that the Ordinance has become effective, the Department must review its policies and practices consistent with the Ordinance. While the exercise of that judgment turns on evaluating objective legal advice, the decision is ultimately the Department's.<sup>538</sup>

The City Attorney would also make a point to emphasize that the youth sanctuary amendment included a phrase that stated that the Department responsible for implementing the provisions of the ordinance - JPD - was to do so only "to the extent permitted by state and federal law."<sup>539</sup> The City Attorney argued that that language was included at Supervisor Campos' request to enable the City Attorney's

office to approve the ordinance as to form. He also argued that this provision empowered the Department

to make the judgment about the extent to which current state and federal law allow it to change its reporting to implement the Ordinance's new policy. The Department must make that determination, exercising its reasonable discretion, after considering an independent assessment of the applicable state and federal law, based on advice from the City Attorney's Office. And the Department may take into account advice from outside criminal counsel retained by the City for certain Department officials in connection with the U.S. Attorney's investigation of the Department's past practices and express threats of possible prosecution. [...] The Department must review its policies and practices consistent with the Ordinance, though the Ordinance does not require changes that the Department reasonably determines would violate state or federal law. As mentioned above, in carrying out its administrative duty to exercise this judgment under the Ordinance, the Department should consider our legal advice. [...] the law in this area is not settled. In particular, we advised that the Ninth Circuit Court of Appeals and the United States Supreme Court have not addressed whether federal law pre-empts sanctuary city ordinances such as San Francisco's. Nor have the federal courts addressed the question in the context of juveniles, whom state law affords special confidentiality and other rights.<sup>540</sup>

What Campos would point out is that this extra language stating that implementation was only possible to the extent permitted by state and federal law was redundant because all laws that the Board passes must meet this requirement. There is no law that the Board passes which is exempt from being compliant with state and federal law, including the sanctuary ordinance.

However, the City Attorney disagreed with the way that Campos was citing the *Lockyer v. San Francisco* case. He argued that the Supreme Court held in *Lockyer* that a public official was charged with the ministerial duty of enforcing a *state statute* and may not choose to ignore that statute because of his belief that it is unconstitutional unless a court has held it to be unconstitutional. In this sense, *Lockyer* was different than the case of the youth sanctuary amendment because it dealt with a municipal official making a decision about the constitutionality of a superior state law - a law that was a level above that level of government in which the official was acting. The City Attorney flipped Campos' use of *Lockyer* then to argue the opposite - that actually, a local official is not free to implement a duly adopted policy that is seemingly in conflict with federal law, even if that local policy relies on a legally tenable constitutional argument and on the argument that the federal law is unconstitutional:

While the holding in *Lockyer* does not extend to this situation for the reasons discussed above, arguments could be made by analogy about the limits of local authority of a local official to ignore the express language of a statute to local government, where no court has held the federal statute's application to

local government to be unconstitutional. Just because a local government, relying on a legally tenable constitutional argument, has duly adopted a policy that seemingly conflicts with the federal government's policy does not necessarily mean the local officials are free as a matter of law to conclude that the federal statute is unconstitutional and proceed to implement and enforce that policy.<sup>541</sup>

### **Defining the Role and Power of the City Attorney through Sanctuary City Implementation**

By early January 2010, the relationship between SFIRDC and the City Attorney would become increasingly strained due to his insistence on advising JPD that they should not implement the ordinance until federal courts had ruled sanctuary city policies legally valid and not pre-empted. While the Mayor and JPD Chief Sifferman were both the force behind the decision, SFIRDC found that the only way they could make that decision was with the political cover provided by the City Attorney's legal advice. To push the City Attorney into action to change his tune on this issue and advise JPD that they could go ahead and implement the youth sanctuary amendment despite the legal risk, on January 7<sup>th</sup>, SFIRDC held protest inside the North Light Court in City Hall at City Attorney Dennis Herrera's swearing in ceremony.<sup>542</sup> SFIRDC members stood in the back of the hall in front of the press cameras with signs that say, "Herrera's advice sends kids to ICE!" Needless to say, that upset him.

In the same week, Angela Chan of Asian Law Caucus and member of SFIRDC would be called to a hearing in front of the Sunshine Ordinance Task Force (SOTF), the municipal agency that oversees violations of the public records law in San Francisco – the sunshine ordinance. Chan had filed a complaint that the Mayor's Office had refused to hand over documents in their possession that she had requested about communications with the San Francisco Chronicle about the release of Mayor Newsom's youth sanctuary amendment cautionary memo. Both Chan and the Mayor himself were supposed to be at the hearing to discuss the facts. At a previous hearing during the week of the Board's veto override vote, the Mayor had not shown up and so they rescheduled the meeting on January 5<sup>th</sup>. The day had come and again, Newsom did not show up to provide answers to why he violated the sunshine ordinance which required him to hand over the communications with the Chron in response to Chan's "sunshine request". The SOTF had been known to be a rather toothless task force only with investigatory powers but no power to compel a city agency to follow the tenets of the law. As a result of the Mayor not showing up to answer SOTF's questions, SOTF engaged in a discussion about how it could change its powers so that it would become a "commission" – the "Sunshine Ordinance Commission" - with the power to hire a civil attorney to bring violating officials to civil court to sue them to release the public documents upon request. They wanted to levy a \$500-5000 fee to be paid by officials with personal funds or if it was a department issue, then that money would be taken from department budget and placed in a litigation fund to be used by the Commission to take future violators to court. However, this idea did not go anywhere. Chan would comment that the

only way to get them to release information would be to file a lawsuit seeing that the SOTF's rulings, this case included, could be easily ignored.

By the end of January 2010, the sanctuary amendment would still not be implemented by JPD, so SFIRDC continued its campaign to push the City Attorney to change his position not on the legal risk of implementation, but on his advise to JPD to not implement. SFIRDC, in finding out that the American Constitution Society (ACS) had chosen San Francisco City Attorney Dennis Herrera, one of their Board Members to be their Master of Ceremonies for their annual Gala in 2010, decided to intervene in that decision. The core organizing committee of SFIRDC wrote an open letter to the American Constitution Society to express their "serious concern" for their choice in Herrera. They wrote

While acknowledging Mr. Herrera's advocacy for the LGBT community, he has at the same time failed to advise implementation of San Francisco's historic civil rights legislation, passed in December 2009, which protects the rights of undocumented youth in San Francisco. We therefore ask that he be removed from the program of your upcoming Gala, as his lack of support for the due process rights of immigrant youth is not consistent with ACS's mission and values.<sup>543</sup>

They explained that upon passage of the youth sanctuary amendment, Mayor Newsom publically stated that he would not implement the new law, using City Attorney Herrera's refusal to advise implementation as a shield to duck the democratic process. Further, they informed ACS that since November 2009, SFIRDC and Supervisor Campos had repeatedly urged Herrera to advise implementation on the basis of his staunch advocacy of LGBT civil rights, but that he had refused. In lieu of Herrera issuing advise to implement the ordinance, he instead he chose to issue several press releases and legal memos directed at the U.S. Attorney which led the U.S. Attorney to renew his bluffing threats to litigate, and therefore provided the Mayor and JPD more cover to avoid implementation.

SFIRDC referenced Herrera's memo to Supervisor Campos dated December 16, 2009, where Herrera had specifically stated that the responsibility for implementation laid solely in the hands of the Department Head, thereby permitting city officials to ignore the policy if in their subjective opinion, the ordinance violated federal law. SFIRDC explained to ACS that this would amount to Herrera advising "non-lawyers at the Juvenile Probation Department [that they] were within their right to refuse to implement the civil rights legislation—if they believed the law violated federal law." Said differently, Herrera had essentially told San Francisco's Juvenile Probation Department, which did not have an attorney on staff, that it must decide if this policy is legal—despite the complexity and novelty of the law in this area—and may therefore choose to ignore the law. SFIRDC argued that by not taking a position advising the Mayor and JPD that the amendment was not illegal, leaving them to positively make that legal judgment when they were not trained lawyers, as a result, Herrera, who was sworn to defend the city of San Francisco legally, and to support the executive and legislative branches of the City government in providing legal advice had refused to fulfill his duties and protect this historic civil rights

legislation.

SFIRDC argued that Herrera's failure to provide clear legal advice defending the constitutional rights of undocumented youth "not only evinces a tremendous lack of courage to advocate for the rights of immigrant youth, but it also stands in stark contrast to his position on marriage equality." SFIRDC found the legal issues to be similar in that anti-gay marriage legal advocates argued that San Francisco's gay marriage law violated federal law – arguments supported by case-law and federal statute. However, in the marriage dispute, Mr. Herrera, in SFIRDC's view, rightfully rejected the arguments promoting inequality, and instead advocated for the city of San Francisco, his client, and stood up for the right to marriage.

From this perspective, Mr. Herrera's non-position on whether the city should implement the new youth sanctuary amendment stood in sharp contrast to the "sound legal opinion of an array of respected constitutional scholars, including, inter alia, Professor Michael Wishnie from Yale Law School, Professor Jayashri Srikantiah from Stanford Law School, and Dean Kevin Johnson and Professor Bill Ong Hing from the University of California, Davis School of Law." SFIRDC informed the ACS that "each legal scholar has stated unequivocally that San Francisco's civil rights legislation toward undocumented youth is legally sound and complies with federal and state law."

SFIRDC signed the letter including all 40 of the organizations that had become members of SFIRDC.<sup>544</sup> However, during the main policy campaign, a little over a quarter of the SFIRDC member organizations were driving the organizing, drafting of the policy, the media work, lobbying, and community and political outreach efforts. The remaining organizations played certain roles in supporting the work of the core group, showing up to the hearings to provide testimony, writing articles in the media, and reaching out to Supervisors to secure their support. As a result, when the City Attorney made the SFIRDC letter public, some of the organizations listed as SFIRDC members disagreed with the message and intentions of the letter, denounced the letter, and told Dennis Herrera that they were not consulted by the coalition nor had they seen the letter before it was sent.

Likely due to the blowback the City Attorney was bringing upon SFIRDC in the media about the letter, Randy Shaw, Executive Director of the Tenderloin Housing Clinic (THC) wrote to SFIRDC saying that THC had not seen the letter before it was sent and would have asked to remove THC's name from it, defending Dennis Herrera as an ally of his organization. Public Defender Jeff Adachi, the Mission Neighborhood Health Centers, and the San Francisco Labor Council, all organizations who had signed on as members of SFIRDC all also responded to Herrera in writing saying that they hadn't seen the letter and had disagreed with its message. Tim Paulson, Executive Director of the San Francisco Labor Council wrote to the ACS Gala host committee telling them that he thinks they "should be fortunate to have Herrera as the Master of Ceremonies." In response to these organizations' disapproval, the SFIRDC members that sent the letter to Herrera apologized to all of the organizational members they hadn't consulted before sending the letter, though some would disaffiliate with SFIRDC.

Herrera responded to SFIRDC four days later on January 29<sup>th</sup>, in a letter shared with the media that he had given the issue of sanctuary just as much

attention if not more than he had given the LGBT community. He contented that he committed to aggressively defend the sanctuary ordinance from legal challenges, file an affirmative declaratory relief action for the amendment, had discussed the amendment with community and legal advocates, and had devoted significant personal attention and resources to the issue. He said he worked with Supervisor Campos to draft it, including drafting findings to support the measure's validity. He also claimed that he had

committed enormous resources on sanctuary matters related to the U.S. Attorney's grand jury investigation into whether San Francisco officials violated federal laws in transporting and housing certain juvenile offenders. This criminal investigation involving the City's policies and practices involving sanctuary has required my office to work with clients to produce thousands of documents in response to federal criminal grand jury subpoenas, and to obtain outside criminal counsel for City officials who may be the targets of this federal investigation. On the issue of marriage equality, we faced no similar criminal investigations or threats of criminal prosecution.<sup>545</sup>

SFIRDC would find this argument that the City should not implement the youth sanctuary amendment because the U.S. Attorney was threatening to federally prosecute JPD Chief Sifferman and his employees for illegal "harboring" and "transporting" of undocumented individuals, to largely be a ruse. Seeing that it was very unlikely in their opinion that the Obama Administration's Department of Justice would ever green-light Republican Joe Russionello to prosecute a sanctuary city government official - a *peace officer* - on transporting and harboring grounds, which would be an unprecedented application of federal transporting and harboring laws, SFIRDC found Joe Russionello to be very effectively bluffing. The result of the bluff would be almost as effective as if he had prosecuted the City to get them to report juveniles to ICE and not keep them in their custody. The bluff was cited by the Mayor, the JPD Chief, and the City Attorney as a main reason for not implementing the youth sanctuary amendment, which is what Russionello wanted as an outcome of federal prosecution. In this sense, in the absence of Department of Justice approval to prosecute, he used the bluff of prosecution to achieve the same end and it had worked.

In his response letter, Herrera then argued that the immediate implementation of the amendment to the Sanctuary Ordinance, as SFIRDC asserted was legally required, "could place in serious issue the authority of a local official to ignore the express language of a federal statute. That federal statute, which does not require local governments to report to ICE, expressly prohibits local officials and governments from prohibiting in any way reporting to ICE. (8 U.S.C. 1373.)" Herrera clarified that

we have advised that San Francisco has legal arguments that the U.S. Constitution precludes application of that federal statute to sanctuary laws adopted by local governments, particularly where those sanctuary laws

involve juveniles. But no court has yet held the federal statute's application to local governments' sanctuary laws to be unconstitutional.<sup>546</sup>

To respond to SFIRDC's allegations that he had made non-legal experts in JPD responsible for determining to what degree a local ordinance was legal and how to subsequently modify its policies to the extent it found itself to be permitted by state and federal law, Herrera reaffirmed that that is exactly what the law required - that "the Juvenile Probation Department to decide for itself the extent to which current state and federal law allow it to change its policies and practices, and to assess for itself—as a question of policy, and in light of the City Attorney's legal analysis—the consequences it is willing to risk on behalf of City officials and employees."<sup>547</sup> Herrera would note that asking the City Attorney advice to rather serve as a policy directive to the Mayor or to JPD "overstates the City Attorney's Charter authority to order or implement City policy."<sup>548</sup>

The interesting thing about this denial of the City Attorney with regard to providing policy directives to the Mayor and to JPD, while statutorily correct, masked the true political power he really had and the power to implement a policy. He had been providing policy advice of non-implementation using legal advice based in case law, and while that might have been more of a tool taken up and used by the Mayor to meet the Mayor's pre-existing ends rather than an issue of ideological force in and of itself which may have swayed the Mayor and the JPD Chief to do something they wouldn't have had his advice not been provided, the City Attorney's non-implementation advice had played a role in the very real actions taken by the Mayor and Juvenile Probation Department -the pro-active non-implementation of the youth sanctuary amendment. The City Attorney would contend that by SFIRDC was urging him to

advise implementation of the recently enacted sanctuary amendment in full accordance with its terms—absent accompanying legal advice that such implementation may risk federal criminal prosecution and civil litigation—the SFIRDC's letter is necessarily urging me to embrace a legal position that is unprecedented, unethical and potentially unlawful. As I have said before, that I cannot and will not do.<sup>549</sup>

What was interesting about this response was it missed what SFIRDC was demanding all together. SFIRDC was not demanding that the City Attorney retract his legal advice about the risk of federal criminal prosecution and civil litigation, but rather that he advise implementation - that is give policy advice or advice on how to take action in light of the legal advice which included the legal risks of the action - in full knowledge of the legal risks his office laid out in the cautionary memo, knowing that the amendment also stood on defensible constitutional legal grounds if those legal challenges were brought to court. Essentially, they were demanding that his advice about action to take given the legal risks should change, not his opinion on what the legal risks were, and that his advice about acting on the legal advice would parallel the kind of advice he gave the city for acting on instituting marriage equality given his legal advice that the city would likely face litigation from anti-marriage

equality activists. However, the City Attorney either completely missed this distinction or was purposefully denying that there was a distinction in order to politically hide behind the law.

### **The Juvenile Probation Department's Reaffirms its Refusal to Implement the Youth Sanctuary Amendment**

After three months of the youth sanctuary amendment being disregarded by the Juvenile Probation Department, Supervisor Campos met with JPD Chief William Sifferman on February 9, 2010 to discuss implementation. In that meeting the JPD Chief indicated to Campos that he had no intention of complying with the ordinance.<sup>550</sup> As a result, Campos, at the full Board of Supervisors meeting that same day, called for a hearing to analyze JPD's failure to implement the policy. Campos called for the hearing because he wanted all of the people who worked on the passage of the legislation to have a public forum where they could hear directly from the Department about their decision not to implement and to hear directly what is happening within juvenile probation in terms of its treatment of undocumented youth.

Campos also wanted the hearing to look at the specifics of cases of undocumented immigrant youth that had been reported to immigration, ask for information from JPD about the policies and procedures that are in place with respect to the treatment of undocumented youth, whether or not any revisions had been made in light of the passage of the youth sanctuary amendment and whether or not additional training had been put in place to satisfy the requirements of the ordinance amendment. Campos also reaffirmed the request that he made in November 2009 to Chief Sifferman that Sifferman never responded about in his mid-December 2009 response - for information about the amount of money and other resources that were being allocated by JPD for the purposes of collaboration with immigration. Campos would comment

As an elected member of this body, I have concerns about the Juvenile Probation Department using very limited city resources for the purposes of enforcing immigration law. Not only is that inconsistent with the sanctuary policy which has been in place for more than 20 years, but it is in clear violation of the [recent youth sanctuary] law that has been enacted by the Board of Supervisors.<sup>551</sup>

Campos asked that this hearing be referred to the Board's Rules Committee, which he chaired.

The next day, February 10, 2010, JPD Chief William Sifferman issued a "PO Memo" formally explaining to his probation officers why he would not be implementing the youth sanctuary ordinance amendment. It repeated his position that he could not implement the amendment because it appeared to him like federal law prohibited it:



Federal civil law does not require an entity such as the Department to report to federal immigration authorities. But until a court rules otherwise, a federal civil statute appears to prohibit the Department from further restricting its reporting policy.<sup>552</sup>

Chief Sifferman's PO memo then reaffirmed his position by repeating that he couldn't implement the amendment due to U.S. Attorney Joe Russionello's claims that JPD was breaking criminal laws of transporting and harboring, something that had not yet been adjudicated for peace officers.

More importantly, federal criminal authorities have indicated that Department employees may violate federal criminal law if they harbor or transport juvenile detainees who are undocumented. Although the Department believes that our staff have at all times acted legally, we must seriously consider these statements by federal authorities. Until these issues of federal civil and criminal law are resolved, the Department cannot modify its policies and practices.<sup>553</sup>

This was an interesting position to take considering that the JPD was otherwise honoring the tenets of the sanctuary ordinance, which forbid employees from reporting youth booked on misdemeanors. Under the logic that the City Attorney, the Mayor, the Chief, and the U.S. Attorney were using to thwart implementation of the youth sanctuary amendment, they could have likewise argued that reporting youth booked on misdemeanors would also be found to violate federal law if the city were sued, if city agencies prohibiting employees to transmit information to ICE amounted to a violation of federal law. In this sense, this JPD Chief's interpretation of the City Attorney's legal advice was another affirmation that in certain cases – those concerning misdemeanor bookings - he found it appropriate for the city government to take the legal risk of enacting sanctuary city prohibitions on communicating information to ICE without the courts having ruled on those prohibitions, while in other cases – those concerning felony bookings - it was not appropriate to take that legal risk and to instead not enact those sanctuary city prohibitions until courts had ruled on the legality of those prohibitions.

This fact is that the Mayor and the JPD Chief, were equating taking a legal risk through enactment of sanctuary city prohibitions with actually violating federal law as if the youth sanctuary amendment had already been ruled to be illegal by a court. Nonetheless, they were making a political decision to take that position selectively - only for youth booked on felonies - likely because felony cases where undocumented immigrants garnered media attention had given the Mayor and JPD significant political blowback, while misdemeanor cases had not. In this sense, appropriate municipal deportation practice was defined as that which was politically palatable rather than that which did not risk federal pre-emption as the Mayor and the JPD Chief were contending. Had they actually been nullifying legal risk as they defined it, they would have begun to report all youth booked for all levels of crimes who were suspected to be undocumented including those booked on misdemeanors.

Chief Sifferman's memo would also mark a minor modification to the language he had been using when defining who JPD served. Rather than the JPD serving "all juveniles regardless of immigration status", his PO memo stated that JPD was still committed to provide services and equal treatment to "all juveniles without regard to race or ethnicity" explicitly excluding language that their services disregarded immigration status. However, he re-emphasized his prohibition on probation officers reporting juveniles to immigration authorities based on ethnicity or ability to speak English as well as prohibiting probation officers from detaining juveniles based on perceived undocumented status. Finally, he noted that under state law, juvenile probation officers were required to ask juveniles about their living situation, but "we are not to directly question juveniles, their parents or their guardians about whether they are undocumented."

### **LGBT Organizations Weigh in on Sanctuary Implementation**

In the next two weeks, two issues would modify the field of power in San Francisco. A week after JPD Chief Sifferman issued his PO memo, on February 17<sup>th</sup>, Mayor Gavin Newsom filed paperwork to run for Lieutenant Governor, a historically no-power, political career-killing position. With the Mayor's campaign for governor over and his bid for the Lieutenant Governor position, he would be competing in the race against Abel Maldonado, the incumbent Lieutenant Governor and a Republican who immediately began to take shots at Newsom over allowing undocumented criminal immigrants to be let back out on to city streets. In order to beat Maldonado, Newsom would however, need the Latino vote in California.

The second issue that occurred was that, contrary to the City Attorney cautionary memo's warnings that passing the youth sanctuary amendment would delay settlement in the Bolognas' case against the City which blamed the sanctuary ordinance for the wrongful death of Tony Bologna and his two sons, the case was dismissed. Judge Charlotte Woolard of the Superior Court of California, County of San Francisco threw out the Bologna case saying that San Francisco had no duty to protect the Bolognas or anyone else from Ramos unless city officials had information that at the point of releasing him, he posed a specific danger to the Bolognas. In this case, there was no specific evidence of such a threat.<sup>554</sup>

In the wake of these two significant events, SFIRDC decided to further counter the City Attorney's comments on his role in the implementation of the youth sanctuary amendment, which he was claiming was purely legal and having nothing to do with providing implementation advice, and how it was not comparable to his role in Mayor Newsom's earlier decisions to issue marriage certificates to gay couples having been advised legally by the City Attorney. The SFIRDC counter argument would come from its LGBT member organizations – Communities United Against Violence, Equality California, National Center for Lesbian Rights, San Francisco Pride at Work, and the Transgender Law Center - in a letter to City Attorney Dennis Herrera, Mayor Gavin Newsom, and JPD Chief William Sifferman that drew together the struggles of the LGBT community with the immigrant community and urged them to implement the youth sanctuary ordinance immediately.

In the letter dated February 24<sup>th</sup>, the LGBT members expressed their concern that the ordinance had not been implemented and alleged that the addressed officials had taken “no active role or appropriate steps ... to make this happen.”<sup>555</sup> To explain that the LGBTQ movement and the immigrant rights movement shared similar trajectories, the coalition members wrote

The LGBTQ and Immigrant communities have both faced oppression and displacement and we stand united in a powerful movement for social justice and equality for all. In San Francisco, LGBTQ and Immigrant communities are inextricably intertwined. There are many LGBTQ individuals who come to San Francisco escaping political and economic hardships in their homelands. We seek refuge in San Francisco, a Sanctuary City, and have the right to be integrated and remain in our communities. As Immigrant Rights leaders some of us are immigrants, children of immigrants and LGBTQ identified. We believe that an injury to one is an injury to all.<sup>556</sup>

In addition to adding the LGBTQ voice to the chorus of SFIRDC organizations calling for immediate implementation, the organizations would also point out that in addition to the legal viability of the law

...there has never been a prosecution, let alone a conviction, anywhere in the United States for following Sanctuary ordinances. Threats from U.S. Attorney Russoniello - a Bush appointee - should not be used by city officials as an excuse to continue deporting innocent children. San Francisco, a progressive city, should be leading the way in having policies that protect all communities.<sup>557</sup>

Countering the dominant sanctuary discourse, which posited that sanctuary was only for law-abiding immigrants, the LGBTQ groups in SFIRDC called on the officials to implement sanctuary for *all* youth, nonetheless, on the basis that the city needs to be safe for everyone:

We are proud that San Francisco has taken many bold and visionary stands, from gay marriage to extending access to healthcare. As leaders in the LGBTQ community we call upon San Francisco to uphold its standing as a beacon of fairness by immediately implementing this legally sound, ethically necessary and democratically enacted policy to restore due process to all youth in our city. For San Francisco to continue being Sanctuary City it needs to be safe and accessible to everyone in our communities.<sup>558</sup>

Herrera took issue with the LGBT group’s comment that he had done nothing to implement the youth sanctuary amendment, and in a response letter on March 1, 2010, he repeated what he had done.

My office has devoted countless hours both to advise City policymakers and employees about the amendment’s legal requirements and risks, and to

inform journalists, community leaders and members of the public about the policy's provisions and my office's role in advising City departments about them. I have repeatedly committed to aggressively defend the newly amended Sanctuary Ordinance from all legal challenges, including pursuing an affirmative declaratory relief action against the federal government [against U.S. attorney Joe Rusionello] if necessary. In fact, my office only last week successfully won the dismissal of a civil lawsuit that sought—among its original prayers for relief—to invalidate the San Francisco Sanctuary Ordinance, or to have the City legally enjoined from enforcing it.<sup>559</sup>

This argument would provide further indication to SFIRDC that rather than illegal, the sanctuary ordinance was defensible given that a lawsuit did attack the validity of the sanctuary ordinance and the City Attorney's Office prevailed. However, the issue of the prohibition on city employees from reporting information to the federal government remained un-litigated by federal courts. The City Attorney then informed the LGBT groups that he had taken steps to explore ways that the new amendment could be implemented:

I have continued to engage personally in public meetings and in private discussions with community members and legal advocates to explore ways that the City may best enable the policy modifications contemplated by the newly implemented amendment. Among the results of these efforts is a training program that my office is initiating later this month, in which Deputy City Attorneys will work directly with Juvenile Probation Department staff to assure maximum confidentiality protections for juvenile detainees.<sup>560</sup>

However, despite these efforts, the City Attorney's advise did not move in any manner JPD Chief Sifferman to take any steps to change the JPD department policy of reporting youth booked on felony charges following a determination of reasonable suspicion that they were undocumented - the key protocol in question.

### **Conclusion**

This chapter showed that the Mayor's unprecedented orders to not implement a local law, which according to Supervisor Campos, was a step outside of his official authority, forced the Board of Supervisors and SFIRDC into a position where they would need to continue their efforts to change JPD's policies through a public relations battle framed in terms of the safeguarding of municipal democracy. It would also lead SFIRDC's LGBT members to again link the rights of LGBT residents with undocumented immigrants in order to juxtapose the political maneuvers of the City Attorney and the Mayor when implementing the practice of issuing of marriage licenses for LGBT couples and implementing due process for undocumented youth. This coalition tactic had the aim of undermining the claims of the City Attorney and the Mayor that they could not implement a law that some argued ran counter to federal law and which had not yet been decided upon by federal courts. However, ultimately, this tactic would fail, the City Attorney and Mayor remained steadfast in

their opposition to implementation, and implementation remained thwarted.

## CHAPTER 13

### THE JUVENILE PROBATION DEPARTMENT AND THE MAYOR'S OFFICE FACE THE COMMUNITY

#### Introduction

This chapter examines the arguments of the Mayor's Office and the Juvenile Probation Department for non-implementation of the youth sanctuary amendment as expressed in a hearing of the Board of Supervisors Rules Committee on March 3, 2010.<sup>561</sup> It also analyzes SFIRDC counter-arguments directly addressed to JPD Chief Sifferman and Assistant Chief Alan Nance. The hearing was the first time that the conversations between the immigrant rights community and the opponents of the youth sanctuary amendment in the Mayor's Office and in JPD would occur before the Board of Supervisors to maintain accountability of the Executive Branch and to pressure them to uphold the laws of the city.

#### The Accountability Hearing

On March 3, 2010, three days after City Attorney Dennis Herrera's letter was sent to SFIRDC's LGBT groups, the Board of Supervisors' Rules Committee convened the hearing that Supervisor Campos had called for on the status of the implementation of the youth sanctuary amendment in the Juvenile Probation Department. This would be the first time that Chief Sifferman would be brought to a public hearing and directly asked questions about why he was not implementing the youth sanctuary amendment. Campos, the Chair of the Rules Committee opened the hearing by noting that the aim of the hearing was not to "beat up a Department Head." Campos commented that despite the mandates of the law, which according to the City Attorney, placed the responsibility for implementation solely in the hands of a Department Head, in reality, the Department Head does what the Mayor wants him or her to do:

As a member of the Board of Supervisors, I feel, quite frankly, very disappointed that we are even in this position. That a committee of the Board of Supervisors has to engage in a hearing where we are asking a department about their decision to not comply with an ordinance that what ever you think of its merits or demerits was duly enacted by the Board of Supervisors. That is not a conversation that I, certainly, enjoy having to engage in. [...]The way that things work in city hall, and quite frankly, in any City agency, is that when a law is passed, implementation begins according to the requirements of that law. [...] Even though under the charter, ultimately, each department is responsible for implementation and for the function of every area of its operations, when the Mayor, the Chief Executive of a City says, 'We are not going to comply,' you are not going to see a Department Head go against that. So to that extent, I do not blame the Chief of Juvenile Probation for doing exactly what is being asked of him to do. [...]

Campos went on to note that the only reason why they called the hearing to hold Chief Sifferman accountable was because the City Attorney had issue his memo which Campos found to be unprecedented, that said that the ultimate say over implementation rests with the Department Head, absolving the Mayor or himself of any responsibility in non-implementation. Campos would comment that while the City Attorney's office was not responsible for implementing a law, they were responsible for advising on implementation, something that the City Attorney was denying was his job.

### *Juvenile Probation Speaks*

After Campos had finished his opening remarks, he invited Chief Sifferman to the public comment podium to provide a report of the information that Supervisor Campos had requested almost a month prior. Campos had asked him to provide information on the total number of undocumented youth reported to ICE; original charges and final determination by the courts for all youth referred to ICE; policies, procedures, and training provided to staff regarding inquiry into the immigration status of youth and compliance with the sanctuary ordinance; changes in JPD's caseload and staffing as a result of implementing the Mayor's ICE referral policy in July 2008; and information about department financial resources and human resources dedicated to collaboration with ICE.<sup>562</sup>

The Chief, flanked by the immigrant rights community, began by reading a statement into the microphone reiterating his position to not implement the JPD policy.

Chief Sifferman: With the benefit of legal advice provided by the City Attorney's Office and outside legal counsel, and in light of the current restrictions imposed by federal law, particularly the position taken by federal law enforcement authorities, the department has concluded that it cannot modify its policies and practices. [...] Subsequently, the U.S. Attorney's office convened a federal grand jury to criminally investigate the practices of the juvenile probation department in housing and transporting of undocumented juveniles. That investigation continues to this day.

Sifferman then went on to explain that if the U.S. Attorney was willing to prosecute the JPD on criminal grounds of illegally "transporting" and "harboring" undocumented immigrants, then if Sifferman implemented the youth sanctuary amendment, probation officers could be found criminally liable for certain activities related to supervising undocumented immigrants who had been accused of committing felony offenses and who were released to go home without being reported to ICE, while awaiting adjudication. Sifferman then went on to cite "federal law enforcement authorities" who had have also asserted that under Title 8, section 1373 of the U.S. code, they were not in any way to prohibit or restrict any government entity or official from sending to or receiving from ICE information regarding the citizenship or immigration status of an individual.

Federal law enforcement authorities have asserted that department employees violate federal criminal law if they harbor or transport undocumented juveniles. They have referred to the department to title 8, section 1373 of the united states code which provides that “a federal, state entity or official May not prohibit or in any way restrict any government entity or official from sending to or receiving from I.C.E. information regarding the citizenship or immigration status, lawful or unlawful of any individual. Until a court rules otherwise, the department must conclude that this law would not allow the department to change its policy to comply with the restrictions contained in the city of refuge of ordinance.[...]

But as SFIRDC had pointed out, given that title 8, section 1373 prohibited city governments from prohibiting their employees from conveying information about immigration status to ICE, information that could only be yielded by immigrants who self-report that information or if JPD officers ask questions that yield that information, then they wouldn't otherwise have that information to convey in the first place- they would only have the individual's name, race, age, charge booked on, language ability, and the evidence surrounding the crime the juvenile was accused of. And, as the sanctuary ordinance already prohibited asking questions about immigration status, then the sanctuary ordinance couldn't effectively prohibit city employees from conveying information that the employees don't have. The only reason JPD would have that information at the booking stage is because Mayor Newsom's July 2008 ICE referral policy required probation officers to determine reasonable suspicion that a youth booked on a felony was undocumented, based not on directly asking about immigration status, but through guessing about immigration status based on a variety of related criteria. If the youth sanctuary amendment were implemented, asking questions that would yield information used to guess at immigration status would occur after the youth had been found guilty of a felony and then that information could be reported to ICE in compliance with Title 8, section 1373. Therefore, the Chief's argument at this late state three months after the effective date of the youth sanctuary amendment was glaringly political to SFIRDC.

Interestingly, the Chief went on to discuss the circumstances of those youth who had been referred to ICE under the Mayor's JPD youth referral policy. He mentioned that over the previous 15 years, most of the undocumented youth arrested and in JPD custody had been unaccompanied Hondurans arrested for dealing crack cocaine in the Tenderloin neighborhood. However since the Mayor's JPD youth referral policy had been enacted in July 2008, the number of detentions of undocumented unaccompanied youth from Honduras arrested for selling crack had declined sharply. However, most interestingly, an increasing number of these youth who'd been referred and released to ICE custody were returned by ICE to their homes in San Francisco rather than deported. As they were still in San Francisco, they were subject to juvenile court jurisdiction and remained under JPD supervision. In other words, even under the Mayor's JPD youth referral policy, after referral to ICE, many probation officers were still supervising undocumented youth



who ICE decided not to deport. Further, the Chief indicated that probation officers also continued to supervise suspected undocumented youths who resided in San Francisco, who had not been reported to ICE, because their entry into the juvenile justice system came by way of a non-detention citation referral. In other words, youth that were not booked on felony or misdemeanor citations but rather through infractions which do not require detention, or if contact was made with JPD for a “status offense” such as the youth ran away from home, was outside parental control, or for truancy.

This would amount to the very situation that the Chief warned that the youth sanctuary amendment would place him in with regard federal criminal prosecution. The Chief had cited U.S. Attorney Joe Russionello’s threats to criminally prosecute probation officers on harboring and transporting grounds related to their work supervising undocumented youth. This would all indicate that under the U.S. Attorney’s logic, rather than being exposed to the potentiality of being in violation of transporting and harboring laws only after implementing the youth sanctuary amendment, JPD probation officers were already exposed as they implemented the Mayor’s JPD policy. SFIRDC however had long found Joe Russionello’s threats to be bluffs since no peace officer had ever been prosecuted on these grounds nor would the Department of Justice allow for that going forward under President Obama, and found that JPD was hiding behind the bluffs to not implement the policy.

Then finally, the Chief claimed that he had “dedicated absolutely none of his department’s financial and human resources to collaboration with I.C.E.,” although he did in fact expend probation officer labor on interacting with I.C.E. by “sending fax transmittals and making necessary follow up phone call in those instances occasioned by the initial reasonable belief that a person may be in violation of civil immigration laws.” JPD officers also followed-up with a response to detainers - ICE requests to hold certain juveniles- after JPD had reported them to ICE. The Chief reported that

Time expended in the performance of these infrequent ministerial functions is deminimus.” Probation officers do not arrest or detain youth based on suspicion of undocumented status, nor do they assist I.C.E. in taking undocumented persons into custody. The department continues to provide all undocumented youth in our custody with the same quality care provided to all other detainees, and provides vigilant supervision over the cases of youth returned to the community by I.C.E. Who are still under our jurisdiction and theirs.

Supervisor Campos, trying to get to information he had previously requested on the amount of real hours of labor and real amounts of funds expended for those labor hours, he pressed further, “How many hours are we talking about? We have asked for a breakdown of that.” The Chief responded explaining the ICE referral process, “the functions are ministerial that involve minutes of time on the case that would require a fax being sent, a fax being received, placed in the file, a telephone call to confirm a potential release date. That would be it.”

Supervisor Campos was frustrated. He had asked that the Chief come prepared with this information and was acting as if he were being asked for the first time. Campos reminded the Chief that

The power of the Board of Supervisors is limited, but one power we do have is the power of inquiry. The expectation is when an inquiry of this type is made to a department head that they will do their best to provide that information. This is something that we asked a long time ago. [...].

In response to Chief Sifferman's claim that the youth sanctuary amendment would require probation officers in supervision of youth to transfer them in defiance of federal immigration laws, Campos would respond, "I have previously and consistently indicated that the ordinance that is currently in place is an ordinance that does not call for the prior policy of transporting youth across the country." Sifferman clarified that the transporting he was referring to was not necessarily flying them back to their home countries but rather other instances prior to adjudication wherein probation officers would be required to "transport them to various locations" as directed by the juvenile court.

Campos then switched topics to analyze the existing JPD youth referral policy, which mandated probation officers to determine reasonable suspicion that a youth being booked on a felony charge had violated civil immigration laws and was undocumented. One of the requirements that Campos was particularly concerned about was the "presence of undocumented persons in the same area where arrested or involved in the same illegal activity." Campos wanted the Chief to explain, "to me and to the public how it is that you know when a juvenile is arrested that there's a presence of undocumented persons in that vicinity?" The Chief responded, "there could be information contained in the arrest report suggesting what the conditions and what the environment was at the time of the arrest." The Chief also added that no one factor should be used as a sole determining factor, but many factors taken together. Campos pressed further, asking, "What conditions would you point to the presence of undocumented persons in the vicinity?" The Chief responded that if the individual had been arrested in that same area at a prior time then the area would be considered to contain undocumented people. Campos pointed out that prior arrests were not included in the language of the policy, but rather that the officer would need to know that people are undocumented in that area regardless of prior arrests of the individual being booked. Campos then asked, "How do you decide that? How do you make that determination?"

Chief Sifferman, in sudden break of the formal pageantry of the hearing and in what seemed to be acknowledging the problematic nature of the criteria, threw the City Attorney under the bus, saying, "this criteria was added to our list of areas and criteria that we used to establish reasonable belief. This is one of the items that was added based on research and advice that we obtained from the City Attorney's Office." Campos then responded in disbelief, "Excuse me? From the City's Attorney's office?" What was blatantly exposed in this slip was not only that Sifferman was not fully backing the legitimacy of the criteria but also that the City Attorney, who had been denying all responsibility in the implementation of the youth sanctuary

amendment provided a seemingly unconstitutional criteria for referring youth to ICE under the Mayor's JPD policy that the JPD Chief seemingly could not explain the justification for. This implied that the reason for that criteria was not because JPD wanted it implemented – that they were the sole responsible party for implementing the Mayor's JPD policy, but because the City Attorney wanted the criteria included and implemented in the booking process. When Supervisor Campos asked for clarification, the Chief added:

In our collaboration with the City Attorney's office in developing this policy, they provided assistance and guidance in what the criteria would be that would be added to our policy. The entire policy was based on a review and approval from the City Attorney's Office - in collaboration with that office.

Supervisor Campos was shocked – it was the first time that he had heard this. Campos, moving forward, and increasingly more aggravated explained that he sympathized with the Chief in the difficult position that the Mayor and the City Attorney had put him in. The Chief had been called the sole responsible party and therefore the sole party accountable to the Board of Supervisors and the public, according to the City Attorney, for implementing his policies on referrals of youth to ICE despite the Mayor and the City Attorney in reality making decisions in their offices which clearly were mandating the way that implementation of these policies were happening. Campos then pointed out the racial profiling implications of such a vague criteria

The problem with this factor is that we, certainly in District 9, know that when it talks about the presence of undocumented persons, we know what that means. We know how that's going to be implemented. Or how it could potentially be implemented. For instance, does that mean that if you have a large presence of people with a Spanish surname, do you assume there's a presence of undocumented persons? Can't you see how something as open-ended as this could lead to racial profiling?

Chief Sifferman responded, "It could, but it requires vigilant supervision over the applications of the criteria [...]." SFIRDC members, prior to the development of the youth sanctuary amendment, in the summer of 2008 had brought this very issue up with the Mayor's senior staff, Chief Sifferman and Chief Nance, explaining to them, "this criteria stinks of racial profiling and cannot be legal." JPD implemented the Mayor's JPD policy with full knowledge of SFIRDC's position on that matter.

Supervisor Campos then moved on to question the Chief about his claims that the youth sanctuary amendment and the sanctuary ordinance in general did not comply with Title 8, section 1373 which prohibited cities from prohibiting their employees from reporting immigration status information to ICE. After claiming that the sanctuary ordinance and the youth sanctuary amendment both comply with section 1373 because they allow for reporting to ICE, Campos asked the Chief if he found any section of federal law that required him to report this information? The Chief responded, "No, I cannot and there is not."

Supervisor Campos then opened the hearing to public comment so that he could allow community leaders to respond to what Chief Sifferman had said about not implementing the youth sanctuary amendment. However, in addition to immigrant rights advocates in the public speaking directly to Chief Sifferman, for the first time since the issue became public, JPD probation officers themselves came to a public hearing to speak directly to Supervisor Campos and the community. Before they did, Gabe Calvillo, the President of their union - Deputy Probation Officers Association - took the microphone to address Supervisor Campos. In his comments, he defended the probation officers and gave further weight to Supervisor Campos' acknowledgement of the power dynamic which implicated the Mayor and City Attorney in the implementation of JPD policies. However, ultimately, he argued, while the youth sanctuary amendment didn't seem to conflict with federal law, in specific title 8 section 1373, the implementation of it for other reasons put probation officers in the position of being federally prosecuted under transportation and harboring laws - something SFIRDC lawyers had repeatedly argued would never be prosecuted:

I share your disappointment, Supervisor Campos that we are here. Let me be the first to say that we are partners with the immigrant community. We have been put smack dab in the middle of this firestorm. I understand what law professors say that the federal government will never file charges, but there is an investigation going on right now if I'm correct, and that is where my concern comes from in that our officers are protected and that issue is brought to light. Of course, nobody wants to see families torn apart. The men and women I have worked with for 13 years - I was at Juvenile Probation for 13 years - and you have some very hard-working, compassionate men and women up there that care about all children, not just U.S. citizens. I want the community groups to know that. I was born and raised here in the city, and this issue has been on fire for a long time. On behalf of the men and women up at Juvenile Probation, I want them to know that they have my support.

It's unfortunate that the Mayor has given the Chief a directive, and like you said, he is obligated to follow the Mayor's directive. We are obligated to follow the Chief's directive. I would hate to see people under my charge to be the subject of any criminal investigation, let alone punished.

Supervisor Campos responded to Calvillo that he appreciated Calvillo's comments. He then told Calvillo that he did not think anyone could blame JPD probation officers for following a directive and that "I don't think any one of us wants to see any Probation Officer in any way face the threat of criminal prosecution." However, he also asked if Calvillo and the probation officers agreed with Chief Sifferman that federal law, in specific Title 8, section 1373, required them to report undocumented youth to federal immigration authorities or that they could not implement the youth sanctuary ordinance on account of title 8, section 1373. Calvillo responded

There's nothing documented that says Juvenile Probation Officers must report. That is very clear. What we run into is the statements in the provision

that says federal law makes it a crime for [he begins reading the federal law regarding harboring from a paper in front of him on the podium] any person to knowingly, in disregard the fact that an alien is legal, to conceal, harbor, or shield from detection such alien in any place, including any building or means of transportation. That is where the sticky issue comes in. I think what the Chief was trying to say, I do not think the Chief is saying that your ordinance allows the probation department – and I hope I’m not speaking out of school but - to transport kids [making an arc waving gesture with his hand while pointing] but what happens is if we were to follow the ordinance, if a young person is detained, an undocumented person is detained, and ICE is not notified, the judge can release that youth to the community. The probation officers can be given orders to make sure that they attend school, make sure that they go to treatment, and maybe directed to transport those kids to different areas. Not in terms of transporting them across state lines or back home. But we run into the issue of if this young person is released and then commits another crime, then that probation officer is really in hot water.

Campos then interrupted Calvillo and also pointed out that this concern of a youth being released and committing a serious crime if the JPD implemented this youth sanctuary amendment was addressed by allowing for the reporting of youth who are charged on serious enough crimes that they are tried as adults and if it is lower than that, that a court makes the ultimate determination that if they find the youth to be a risk to public safety that they have the ability to not release the youth to go home pending adjudication. Calvillo then countered that the juvenile courts had not been doing an adequate job and as a result, it had the potential of putting probation officers in “hot water”:

The issue of release is not up to us, but is up to the court. That’s the issue. And the courts in my opinion, the courts have left us out to dry. We make our recommendations to the judges, and the judges decide...like I said, I was there for 13 years and I’ve seen cases of some pretty heinous action, not specific to undocumented kids, be released back into the community with services. Those kids go and then reoffend again. And that’s the concern with the particular ordinance, is that, if we don’t notify ICE upon the charges, if we wait until adjudication, and that minor is released by the court, and supervised by the probation officer, and something goes wrong, something goes very wrong, the probation officer falls under this federal...am I making my self clear?

Campos then responded, “I understand that but don’t you think that who should have the final say whether it’s the court or in the existing policy where you have the decision of how to charge done by a police officer split second in the moment, do you think that a court is better equipped to make that judgment?” Then in what seemed to be Calvillo inferring that probation officers knew better than the courts in making a determination, responded that “the court gets all of their information from

the probation officer – the probation officer does the entire investigation and gives it to the court for them to make the determination.”

The next person to speak from the Juvenile Probation Department was Richard Perino, a white, self-described “third generation San Franciscan” who appeared to be in his 70s. Actually, Perino was a Supervisor of Court Officers in the Juvenile Probation Department and former President of the Probation Officers Association, though he didn’t mention that. He did mention he was the “grandson of immigrants who came through Ellis Island” and that “I got nothing against immigrants.” Perino said:

I can tell you that the problem that I see with all of this - which is highly idealistic and there’s a lot of legal hairs being split - the big problem is what happens when criminal organizations take advantage of the sanctuary laws that we have here. And we have a perfect example of that – Honduran drug-dealers that created an issue that brought this whole thing to the fore. Just prior to the change in policy [Mayor’s JPD referral policy], 15-20% of our court time - our Juvenile Hall bids – of probation work was being monopolized by these individuals comin’ into this country in an organized fashion, claimed to be juveniles when they were arrested by the Police Department. We never had any reliable way of determining whether they were juveniles or not and it was a growing phenomenon. It was monopolizing a lot of our resources. Once the policy changed to the current one, the whole Honduran drug-dealer issue went away. I haven’t seen anyone in court - and I work in the Juvenile Probation Department – we haven’t seen anybody in the courts since the policy change. That to me is a practical impact of all of this. You can talk all you want about the idealism of sanctuary laws and what the meaning of the laws are, but the practical impact [of the Mayor’s policy] is that criminal organizations can take advantage of the sanctuary ordinance as it was. I think the way you are talking about reinstating it, it would still have the same advantages, and that to me is what you have to address – the practical consideration for San Francisco.

The last staff member of the Probation Department then approached the podium to provide public comment. Stephanie Speech was also a “born and raised San Franciscan” and an Deputy Probation Officer and wanted to “set for the record” that

It is unfortunate when we do have to report a minor to ICE, however there is in circumstances where there are kids who are reported to ICE that ICE do not pick up that we do supervise. I have supervised undocumented youth on my caseload at the Juvenile Probation Department, and they have received the equal services that would be given to anybody that we need to report or not. But we have received training also on the ordinance and things like that. People are saying we need more training for whatever the case may be but we do everything that we need to do legally. And we don’t ask all types of questions. A lot of information is given to us a lot of times, but for the record, we do treat each individual equally no matter what their documentation

status is. It doesn't matter whether you are an immigrant or not, we treat all kids equal whether they are born here or not. [...] I don't ask whether someone is a citizen or not a citizen. There are certain questions we ask to get information we need in order to make sure the kids receive the services.

*SFIRDC Responds to Chief Sifferman*

As with all public hearings on sanctuary SFIRDC had organized for immigrant rights organizers, lawyers, and affected immigrants and their families to speak. The first speaker advocating for the youth sanctuary amendment to be implemented was Bill Ong Hing, constitutional and immigration law professor at University of California, Davis. Hing was an expert on sanctuary policies and had been working with SFIRDC peripherally as an ally through SFIRDC members at the Immigrant Legal Resource Center, an organization he founded. Hing responded to the Chief's comments about Title 8, section 1373 stating

U.S. 1373 is fully abided by in the ordinance. There's nothing in it that prohibits you from responding to any I.C.E. inquiry. That is the way 1373 is read. When I.C.E. makes an inquiry, you respond. You do not have to volunteer any information to them if it's not requested. Every day across the country, there are encounters with law enforcement and probation officers that happen throughout the country with undocumented youth, who are arrested, but not yet prosecuted. The vast majority do not call ICE because they know that is good policing. They know that's not required. [...]The rules of federalism allow local government to do more than what the federal government does. A lot is not consistent or pre-empted by federal policies. But there's nothing that prohibits this ordinance.

Ong Hing would also respond to the Chief's reference that the U.S. Attorney's threat's to criminally prosecute San Francisco probation officers on harboring and transporting laws prohibited him from implementing the youth sanctuary amendment. Repeating what SFIRDC had been saying, Hing pointed out that there had never been a prosecution of the nature of the local U.S. Attorney apparently investigated, nor would it be authorized by the Obama Administration.

Before Ong Hing left the podium, Supervisor Campos asked him if he thought the City Attorney's criteria of "in presence of undocumented people" was an adequate criteria for determining immigration status of a youth. Ong Hing replied

It is a complete invitation for racial profiling. Case after case, where racial profiling has occurred, it is because of vague standards like that. Nobody knows who an undocumented person is by looking at them, looking at the color of skin, where they are located. The United States is so diverse that there's no way you could tell the presence of undocumented persons. You could walk into the I.C.E. Building and see people in chains that are being held for deportation hearings. I can tell you that a lot of those people in

handcuffs are not undocumented.

Following Bill Ong Hing, Betty Lee, managing attorney of the Juvenile Division of the Public Defenders Office then approached the public comment podium. She responded to the Chief's claims that if the youth sanctuary amendment were implemented, probation officers could be ordered by the juvenile court to transport undocumented immigrants and incur the prosecution of U.S. Attorney Joe Russionello. She clarified that since the enactment of the Mayor's JPD policy, "the court is not directing any probation officers to escort youth across the country." She then told two stories directly to the Chief of a 16 year old boy and a 13 year old she represented in the previous two weeks who both had been reported to ICE to highlight the "human tragedies" her office had been seeing.

We have a 16-year-old boy who has been here since he was a baby. He was arrested on a school incident. He had no idea whether he was undocumented or not until he was arrested and ICE'd. He served two months in federal detention, faced deportation and separation from his only family who lives here, and who also has an infant child.

Even more egregious, we had a 13-year-old who was brought into detention with no charges filed. He was released to I.C.E. His mother and siblings were fearful of deportation, so they have disappeared. This child is now in I.C.E. detention in Virginia without his family. His family has abandoned him. I know the Juvenile Probation Department has indicated that they will not comply with the law, however, they will also not directly ask families or youth whether or not they are undocumented. But this is what we see with our caseloads. Children, because of their skin color or accents, are asked if they have social security numbers and where they were born. Parents of suspected undocumented children are required to present original birth certificates or social security cards under threat of their children being reported to I.C.E.

We have a case that occurred with this exact situation. Just as recent as yesterday, a parent was directly asked if their child was undocumented. Families are afraid to speak to or work with probation officers. They are afraid to work and receive assistance for their children because now probation officers are viewed as agents of I.C.E. I asked the Probation Department to please redirect your efforts to rehabilitating children and family, and to establish trust amongst the families and communities that you serve. Thank you. [Applause]

Following this public testimony to the Chief, Supervisor Campos asked the Chief if as a general rule, JPD probation officers ask about the immigration status of a child? In seemingly ridiculous denial, the Chief responded, "No, that is not. I would be curious to talk with Ms. Lee in the confines of our office. We work in the same building. I would like to further investigate this."

When Supervisor Campos asked further about the types of questions that would lead to the youth being determined to be undocumented, taking into account



those criteria they had previously discussed but absent the probation officers directly asking the youth “what is your immigration status?” the Chief responded that the probation officer could ask about whether child had parents that they could be released to, and if not, if the youth had a social security number with which the child could use to access federal Title 4E benefits for foster care placement. Asking for social security number for determining city and county public assistance benefits was permitted under the sanctuary ordinance’s provision 12H.2c. stating that no city agency was allowed to request “

information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by federal or State statute or regulation, City and County public assistance criteria, or court decision.

However, this permission of the sanctuary ordinance, in this case of Juvenile Probation would interact with the Mayor’s JPD youth referral policy to allow probation officers to determine reasonable suspicion that the youth who had been booked on a felony charge was undocumented and referable to ICE in the case that upon asking about a social security number, the child didn’t have one.

However, JPD was not only asking for social security numbers when youth told them that they did not have parents they could be released to, nor were they refraining from specifically asking youth and their parents if they were U.S. citizens. In the week previous to the hearing, a boy with an American citizen father and an Australian mother, was put into deportation proceedings after bullying another child and stealing \$0.46 cents from the child while they were in an after school program. After he apologized and returned the money to the other child, the boy was reported to Juvenile Probation. While being questioned by JPD, the probation officer noticed that the boy had an accent and asked him where he was from. The boy told him Australia, and soon after, the JPD officer called his father to ask *him* if the boy had a social security number and if he was a U.S. citizen. When his father told him that he was not a citizen but was in the process of getting his citizenship, the probation officer decided to report the youth to ICE who then put him in deportation proceedings and in ICE detention. With the child’s deportation scheduled for the following week, the boy’s family called SFIRDC member Angela Chan, managing staff attorney of the Asian Law Caucus’ Juvenile Justice Division, to help defend the youth. Angela, realizing what had happened, called the Department of Justice and the White House to stay the deportation given that the youth was undergoing the process of becoming a citizen based on parentage. As a result, the White House ordered ICE to release the youth to his family though kept him in deportation proceedings. When Angela and the boy’s parents went to the ICE detention facility in downtown San Francisco to pick the boy up upon his release, ICE asked that his mother, who also was not a citizen, be put on an electronic ankle monitor in exchange for his release and placed her in deportation proceedings.<sup>563</sup>

Angela brought the case to the attention of the local media, pointedly indicating that Mayor Newsom’s JPD youth referral policy was the reason why the

youth was referred to ICE. When asked about the referral, Mayor Newsom's spokesperson claimed, to a new level of denial, that the release of the youth was because of the Mayor's policy, showing that it allowed for due process to occur. This was particularly disrespectful because Mayor Newsom had not so much as picked up the telephone to call the boy's family to talk to them about the incident. This also completely ignored the fact that the only reason the stay happened was because Angela Chan happened to find out about this one youth in a sea of youth who were being referred and who did not reach out to immigration lawyers, and she independently called the Department of Justice and the White House which was not an action called for by the Mayor's policy.

The father of the youth came to the hearing to provide testimony directly to Chief Sifferman and discussed the role of the JPD with regard to the enforcement of immigration laws. He contended that ICE was using the JPD to do its job despite having full knowledge of the location of the boy's family due to their application for residency.

I don't see the importance of what JPD is doing because that should be Immigration's [ICE's] job. In my family's case, Immigration had all of the necessary information to locate each and every member of my family. We have not moved one door down the street, let alone across the country. We've stayed at the exact location that they were notified upon entry into the country they have made a decision to have another department [JPD] try to do their job. Their job is to come find these people or talk to these people. They had a phone number, they had an address - they had a way of contacting us. Our family has never tried to hide, or break the law, or do anything that was incorrect. The same address that Immigration was notified of, the San Francisco Board of Education has because our children go to school here in San Francisco. They had the ability to come politely knock on the door if they wanted us - not be referred by the Juvenile Probation Department.

In response to Supervisor Campos asking the boy's father about the impact that the Mayor's JPD policy has had on the boy's family, the boy's father responded:

I believe it has had the same impact on my family as has been many other families. It has created unnecessary stress, hardship, and unnecessary lack of ability to be a family. Instead of being able to enjoy the time my family has together, we have to worry about whether or not we will be leaving the country. We do not have the ability to enjoy life, even though life as many things that are trials and tribulations that were promised. We have to worry about something that we should not have to worry about, which is whether we can even stay a family. That is not fair to my family. That is unfair to any family... How many families are going to know to do what we did? We got lucky. We did not know, there was no book out there that stated 'this is the procedure you go through - you contact a lawyer who will contact the

media,' and you get lucky if they talk to the right person. Not anybody is going to know this. And we didn't know. We got lucky.

Jennifer Cheng Newell of the National ACLU Immigrant Rights Project then came to the public comment podium to point out that given this disconnect between the provisions of the sanctuary ordinance which prohibited JPD from asking about immigration status information, which the Chief was claiming his probation officers abided by, and the cases where JPD was directly asking if youth and parents were citizens or not, the community wanted to see that policy of not asking enforced.

Another public speaker from SFIRDC, Abigail Trillan, Managing Attorney for Legal Services for Children would come to the podium exasperated having just prior to the hearing come from her office where she received a call about a 12 year old who had been referred to ICE by JPD.

Right before I came over here as I'm walking out the door, the mother of the 12 year-old, a 12 year-old child who's just been arrested, nothing has happened yet on his case, but a referral to ICE has already been made and he was directly asked by Probation staff about his immigration status. I am tired of explaining to families, 'It turned out he did not do anything, it turned out all charges had been dropped. That does not matter because the call to ICE has already been made and deportation proceedings have been started. The fact that you are innocent has no meaning in your case and your child who may have lived here his entire life may be deported.'

Then Trillin went on to discuss that the issue of sanctuary didn't merely provide justice for immigrant youth in the juvenile justice system, but ultimately it taught them about the concept of equality and the restoration of faith in the system.

The Juvenile Justice System is supposed to be one that educates our youth, and I shudder to think of the lessons that have been taught over the past 19 months [since the Mayor's policy was put into place]. What have we taught to our youth about due process when they can be deported based on a mere accusation? What have we taught our youth about equality when my clients who are citizens who commit an act of graffiti are sentenced to traffic court, and my Latino clients have been charged with a felony and reported to ICE for the exact same offense?

What do we teach our children about faith in adults when the calls made by their teachers or social workers lead to deportation? And I want to address the mayor's comment that he is protecting public safety. Public safety is not protected by a system that all of our young people have lost faith in and a system our community has lost faith in, and a system where teachers and social workers and parents of victims or parents of children that they are worried about fear calling the police. That does not protect public safety. That does not protect your children or my children or any of our children. In the last 19 months, a whole generation of teenagers have lost faith in the Juvenile Justice System and now because the Mayor and Juvenile Probation

are failing to implement a democratically enacted law, our entire community is losing faith in the democratic process. Thank you. [Applause]

Francisco Ugarte an immigration attorney with Dolores Street Community Services and the San Francisco Immigrant Legal and Education Network would speak next responding to the Chief's claims that his probation officers could be found to be illegally harboring and transporting undocumented immigrants.

These comments are directed toward Chief Sifferman and Mr. Allan Nance [Assistant Chief of Juvenile Probation]. We believe you've been getting very bad legal advice. In our analysis, the vast majority of harboring and transporting convictions involve cases of human trafficking and labor exploitation and false identification. In these cases, the essential unifying facts are there are attempts to conceal or exploit. Never has there been a harboring prosecution where basic government functions have been involved, such as a MUNI [public] bus driver being charged with harboring for taking an undocumented person's money. That would never happen, because the law is not supposed to address that.

There have been rare cases in humanitarian situations where people have been charged with harboring. In the 80s, that involved nuns and priests [in the sanctuary movement] who helped people cross the border, conceal their identity and *lie* to ICE agents. That is significantly different than the ordinance we are dealing with here. In 2008, an immigration officer who was accused of taking a bribe was not convicted for harboring when he told somebody to "disappear and change their address", because the Third Circuit [court] said there was no criminal intent to conceal that person's identity. Probation Officers, in following law, do not have a criminal intent to violate the harboring provisions. That will not happen. The only reason we have this issue is because Joe Russionello, the U.S. Attorney, has a political agenda here of undermining San Francisco policy. I can tell the Probation Officers that if there's an attempted conviction, there will be a defense of these individuals. *We cannot let a reactionary right-wing U.S. Attorney hijack San Francisco policy and change the law to make it illegal to do basic government functions.*

Then in the midst of SFIRDC public commentary, a member of the public unaffiliated with SFIRDC, Richard Hanlon, came up to the microphone to comment on the issue of Mayoral power and the denial of the will of the people of San Francisco through the Mayor mandating non-implementation or enforcement of a duly passed law of the Supervisors.

I disagree with this ordinance but I think there is a far bigger question here, far bigger than what we are discussing here. The Board of Supervisors is an extension of our will. There's 700,000 people that live in San Francisco. The Board of Supervisors are the extension of our will. And if they make a law and it survives a veto, that law should be honored. If a City employee such as Mr. Sifferman does not agree with that law, he can quit! [applause] A

probation officer can quit. They do not have to put themselves in a position of being arrested or having to pay fines. They can quit. If I don't like something that a Supervisor does, I can fire him [as an elected official], but I can't fire Mr. Sifferman. The sanctity of the legislative process is what is at stake here. Laws matter. [applause]

One of the last public comments to be made, was made by Renee Saucedo, immigrant rights organizer and attorney at La Raza Centro Legal and member of SFIRDC. Renee would call for the Supervisors to move away from attempting to convince JPD and the Mayor to implement the policy and instead to *force* them to implement the policy by using their power to withhold the funds due to JPD on the condition that they implement with the law. This would be the same tactic that the state of California Office of Criminal Justice had used in 1992 and 1993 to force the city to modify the sanctuary ordinance to allow law enforcement to report immigrants to the INS at the booking stage if they were booked on felonies or had felony convictions in their criminal record. Renee commented:

I just have one message to add: it's pretty obvious to me that neither the City Attorney or the Juvenile Probation Department has any intention of implementing this willingly, so I'm thinking perhaps its time instead of the Board of Supervisors trying to convince them both, we need to start forcing them to comply with this law. And so I just wanted to convey to you that you have our unconditional support in whatever creative idea you have. If you want to use your authority, the power of the purse string, we support you, so that the Juvenile Probation Department doesn't receive its budget until it complies with this law, perhaps that's what needs to happen. Perhaps a Supervisor going into the Youth Guidance Center (Juvenile Hall) one day to lead a training, showing what that Mayor and City Attorney are doing – perhaps that's necessary. And we'd be doing whatever we need to do to support you. I would encourage you to perhaps conduct these more creative activities because it's obvious to me after today that they have no will, even if the most prominent attorney, or the Supreme Court Justice came in here and told City Attorney Dennis Herrera that this was legal, he still wouldn't implement it because it is really not about that. It's about politics unfortunately. And the Mayor is wrong on this, so we just need to force them to do the right thing.

Supervisor Campos: Thank you Ms. Saucedo.

### *The Mayor's Office Faces the Community*

Finally, for the first time throughout the past year and a half since the Mayor mandated the referral of youth to ICE at the booking stage, Mayor Newsom sent a representative, Starr Tarrell, Fiscal and Policy Analyst, of his office to face the community in a public hearing. However, she would speak notably after all of the community advocates and legal experts had concluded their statements, not leaving

them the recourse to respond immediately to her statement. Supervisor Campos invited Starr to the public comment podium. In a flat, shaky monotone voice, Tarrell read a statement from Mayor Newsom to the Supervisors and the public:

Just to go back in time, the Mayor supported the original passage of the ordinance in 1989 as a policy to encourage undocumented residents to feel safe engaging in our city services, engaging in the process of government, and reporting public safety concerns to the authorities without fear of repercussions or fear of deportation.

Then, echoing the *San Francisco Chronicle* she went on to say, “And at its core one of the goals of this ordinance was to protect the public safety of residents in San Francisco ret large – undocumented and documented.” Then reaffirming the Mayor’s discursive move that he “clarified” the policy in 2008 she stated:

In 2008, the Mayor clarified the Juvenile Probation department’s implementation of the sanctuary city ordinance policy by stating that undocumented youths arrested on a felony charge should be reported to federal immigration authorities. For many years, the ordinance has permitted the reporting of individuals booked on felonies. In 2008, the Mayor clarified that this policy also applied to juveniles.

This use of the term “clarified” would mask the fact that actually, the policy exception, which allowed for the reporting of adults booked on felonies – a provision added in response to State requirements in 1993 that adults be reported to INS at the booking stage - was being extended for the first time to youth. Terrell went on to say

The sanctuary ordinance was never intended to be a shield for criminal behavior, nor was it intended to prevent federal immigration authorities from discovering the identity of *suspected* felons. So this 2008 policy change was a measured response to comply with our local ordinance and also with state and federal law.

Terrell’s use of the term “measured” too would serve as a form of epistemological violence upon the experience of the undocumented immigrants and their advocates in the room who had just poured their testimonies, emotions, and arguments into the public record about the tragedies caused by JPD initiated youth deportations. Terrell continued:

The recent amendment to the ordinance that you sponsored, Supervisor Campos placed a restriction on the authority of city employees to communicate with federal immigration authorities about a juvenile’s immigration status. And as stated in the past City Attorney memo - actually there are a number of memos on this topic, it’s hard to keep track of it all - there are legal risks for these changes. And just to clarify in respect to section

1373, which is the part of federal law, which says you can't prohibit an employee from reporting information to federal authorities regarding an individual's immigration status. The issue is not whether reporting individuals is required under 1373, it is that this legislation places a new restriction on reporting and that is what is prohibited by 1373. There is a rather large federal shadow of federal criminal prosecution which is hanging over the juvenile probation department at present where federal authorities have indicated that local officers may violate federal criminal law if they harbor or transfer juvenile detainees who are undocumented.

Then citing the City Charter section 3.100, Terrell explained the power of the Mayor to instruct the city departments to comply with state and federal law:

As per charter section 3.100, the Mayor is responsible for general oversight of departments in the city and county of San Francisco and within this authority, he has directed the chief of the juvenile probation department to maintain its existing policies in compliance with state and federal law. The act of reporting should not be likened to the act of deporting. Reporting is a city function. Deporting is a federal function and to that end, I think it is very important to commend the advocacy groups for the advocacy that was done to the Obama Administration. That was a very clear example of how local intervention can make a clear difference and a very positive one that we would support. I think it would be a different conversation today if the city had resolution on the pending criminal cases.

In the final closing statements of this chapter of governmental sanctuary's history, Supervisor Campos responded to Terrell. He pointed out that in 2007, the Mayor directed a number of departments to make sure that they were doing everything possible to embrace the concept of sanctuary:

The Mayor had directed every department to review their policies and interestingly enough the law that was in place with respect to how federal courts and State courts saw the issue has not changed between 2007 and 2010. The same legal principles that applied to sanctuary at that time are legal principles that apply to sanctuary today. What has changed is not legal. What has changed is the political context in which sanctuary has been viewed. I believe that the Mayor is a good person but he is wrong about this. The Mayor Newsom of 2007 who was talking about remaining a sanctuary city is the Mayor Newsom that I agree with. To the extent that this ordinance is being proposed as an amendment to sanctuary in a way that somehow challenges the legality of sanctuary, this simply changes the time at which reporting happens. That is something that we have every right to do. There is nothing that says that to the extent when you report, that you report at a specific point. Nothing says that. To the extent that the Mayor's Office believes that this is not about reporting, to this extent, I agree. Again, we're not changing anything in respect to that.

Much has been said by the mayor's office and the city's attorney's office about this language that says that the law should be implemented to the extent that it complies with state and federal law. I think that's a very funny thing to say because any attorney will tell you that any law that is passed by any legislature is subject to compliance with state and federal law. That is a given. The existence of that language does not change anything. Point to me an ordinance passed by this board that is not subject to that requirement. That ordinance does not exist.

What that language has become - it's created an opportunity for people who clearly do not want to do something for whatever reason to have a hook to hang their hat on. But the reality is that legally speaking to the extent that there is any lack of clarity about the legality of what we are doing. That lack of clarity has existed before on issues that this mayor and that this City Attorney were not afraid to take a stand on. Of course same-sex marriage comes to mind. The interesting thing about the discussion around that issue is that they say it was different because there was no threat of prosecution. I beg to differ. If state law defined marriage in a certain way and San Francisco took a position to say that we interpret the constitution to mean that marriage is something else, the threat of prosecution will always be there necessarily. Anytime you go against a specific interpretation of law, the Attorney General of the State of California could have said "San Francisco you are violating the law and we are going to prosecute you for doing that." But in response to that, neither the mayor or the city attorney said, "County Clerk, don't issue those marriage licenses." Nor did they say before issuing the marriage licenses, "let's go to court and get equitable relief to find out if it is legal to issue those licenses." Neither one of those offices said that. They were front and center saying, "It is the right thing to do." And we all saw them on TV, we saw it in the press. There's nothing different about what we're doing here today. The political calculation may be different, but it's nothing different.

That's the problem and the frustration that many people have with what has happened. I want to acknowledge the comments of a gentleman who talked about beyond the issue of sanctuary and what is happening to families being torn apart. This is truly about the fact that we are a democracy and we have a legislative process in place. Though not perfect, it allows for everyone's input. Everyone in this chamber had a chance to comment on this legislation. The Mayor had an opportunity to opine. He did that and he vetoed the legislation. And the Board exercised its right by overriding that veto. By saying that this law that went through that democratic process will not be enforced, it is not only an affront to the issue of the sanctuary, but an affront to the very system that we have in place - a system that we all took an oath of office to abide by. It is not just about the power of the Board. It is about the hundreds of people who engaged in that process who have been advocating in city hall - people who put their faith in the system, the people that believe that if they convince that Supervisor or the Mayor, if they follow and play by the rules that the right thing would happen. They have never gotten that in



this case. So Chief, going forward I hope that we get the information that we have requested. I think that that information is needed when we will be deliberating on your department's budget.

### **Conclusion**

This chapter demonstrated the supremacy of power and politics above law wherein law was used as one tool to affect a change in the behavior and activity of people. This was an instance wherein municipal politicians in the Executive Branch ignored municipal sanctuary city law enacted by the Legislative Branch in the name of a federal law and under presumption that the federal government would overturn the sanctuary ordinance entirely and prosecute probation officers in response. What was made very clear in this hearing was that no matter what kind of legal, ethical, or religious argumentation SFIRDC and the Board of Supervisors shared with Juvenile Probation and the Mayor's Office, it could not effect a change in their position against implementation. Unfortunately for SFIRDC and the Supervisors who sponsored the youth sanctuary amendment, accountability would not amount to a reversal of policy and protocols in the JPD department. Youth would continue to be referred to ICE at the booking stage and transferred to ICE custody following the termination of their dispositions that were spent in Juvenile Hall under the Mayor's JPD policy through the remainder of his tenure as Mayor.

## CHAPTER 14

### INVESTIGATING AND (NOT) DISCIPLINING VIOLATIONS OF SANCTUARY

#### Introduction

To complete this dissertation examining San Francisco's governmental sanctuary practices and deportation practices, this last chapter will explore the power of two of the city's department oversight agencies - the Human Rights Commission (HRC) and the Office of Citizen Complaints - to investigate violations of sanctuary city policies and to make recommendations to department heads to take action, including discipline, to correct the behavior of offending city employees. In the HRC/IRC joint hearing on immigration enforcement in April 2009 as well as in other hearings throughout the campaign to pass the youth sanctuary ordinance amendment, immigrants and their advocates impressed upon various legislative bodies that among many of the issues they faced, Police Department collaboration with ICE, in violation of sanctuary policies, continued to be a problem. Many of the charges brought against the police by immigrants at the hearing were formally lodged with the agency that investigates alleged police violations of their department policies - the Office of Citizen Complaints, also known as the "OCC". This chapter will further explore why sanctuary as a strategy or ethic of government has not been fully implemented and why immigrants might still distrust the municipal government despite the city implementing sanctuary city protocols at the frontlines of department work. It will do this by analyzing the only official complaint and investigation of a violation of the sanctuary ordinance lodged with the Human Rights Commission, and all complaints of violations of the Police Department's general order on immigration policing - Department General Order (DGO) 5.15 - from 2004 to 2012. What this chapter argues is that when sanctuary ordinance violations and violations of SFPD DGO 5.15 have occurred, they have led to seemingly ineffective action on the part of department heads to correct the behavior of the offending city employees. This calls into question the strength of the policy given that it is not enforced through disciplinary action but rather supported through training, investigation, further policy action, retraining, and a more general promotion of sensitivity to the needs of immigrants.

#### **The Office of Citizen Complaints Sustained Allegations of Non-Compliance with Department General Order 5.15**

The OCC was one of the largest civilian oversight-of-law-enforcement agencies in the United States and was created by voter initiative charter amendments in 1982 making it operational in 1983. It was placed under the direct supervision of the San Francisco Police Commission, also a civilian body, as an independent agency, separate from the Police Department. The OCC investigated civilian complaints against SFPD officers and made policy recommendations to the Police Commission on SFPD policies. The OCC was staffed by a diversity of civilians, who have never been San Francisco police officers, the majority of whom are investigators. However,

the OCC was also composed of attorneys and support staff. The goal of the OCC was to increase public trust in law enforcement by being the bridge between the public and the police in the matters of police misconduct and police procedures. They aimed for police accountability and attempted to conduct fair, timely, and unbiased investigations. While the OCC's name sounds as if it were to only take complaints from citizens, it actually took complaints from all San Francisco residents regardless of immigration status. As a city agency, they too were bound by the restrictions of the sanctuary ordinance when interacting with residents. To accommodate residents who didn't speak English, the OCC's staff spoke Cantonese, Mandarin, Burmese, Russian, and Spanish. For other languages they obtained interpretation services.

The OCC's claim process included receiving a claim of police misconduct by a resident in person, by phone, online, or by fax. They then investigated the resident's allegations that an officer violated department protocol by gathering evidence, conducting interviews with all involved parties and witnesses, and following the evidence trail until a determination could be made. Once the OCC completed their investigations and understood what happened, they researched whether officers violated any local, state, or federal laws. If the allegation is sustained, that is found it to be credible and true that an officer violated a policy or broke a law, the OCC then sent a report for further action to the Chief of Police who could impose discipline on an officer of up to 10 days' suspension. The OCC could also recommend that the discipline or corrective action be greater than 10 days' suspension at which point, the recommendation would be placed in the jurisdiction of the Police Commission to determine disciplinary action even up to firing the officer. In 2008, the OCC received 1021 complaints and sustained allegations in 4% of them. However, they found proper conduct in only 28% of the allegations they investigated. Of the allegations, the largest group was for unwarranted actions followed by neglect of duty complaints at approximately 27% of the complaints.

The OCC also ran a mediation program that allowed complaints to be resolved directly between the officer and complainant in a dispute-resolution format. The purpose was to achieve mutual understanding. The OCC partnered with community organizations and the San Francisco Bar Association who provided the OCC neutral mediators. The mediations were conducted in languages other than English if needed, including Cantonese and Spanish. Participation in the mediation program was voluntary and both the complainant and officers must agree to mediate for the mediation to go forward.

The complaints that the OCC received would be measured against whether or not the alleged police behavior violated specific department policies outlined in the *Manual of Police General Orders*. Among these departmental general orders (DGOs) was DGO 5.15 "Enforcement of Immigration Laws" which was part of the "Enforcement and Legal Aspects" section of the department's *Manual*. The general orders were department policies, procedures, and rules governing conduct of SFPD officers and other employees. Other chapters in this section of the manual included policies on the use of force, use of firearms, investigative detentions, arrests by private persons, response and pursuit driving, citation release, the rights of onlookers, non-uniformed officers, "abstentia bookings" and prisoner security, false

alarms, outside agency reports and responses, search warrants related to drug and alcohol abuse rehabilitation, diplomatic immunity, interagency operations, obtaining search warrants, prohibitions on biased policing, prisoner handling and transportation, and language access services for limited English proficient (LEP) persons. DGO 5.15. stated that employees of the Police Department could not attempt to enforce immigration laws or assist the INS in the enforcement of immigration laws except under very limited circumstances. They could not stop, question, or detain any individual solely because of the individual's national origin, foreign appearance, inability to speak English, or immigration status. Nor could officers ask for *documents* regarding an individual's immigration status or assist the INS in transporting individuals who'd been solely suspected of violating federal immigration laws.

If SFPD members received requests from ICE to back them up in a raid or other immigration enforcement activity, SFPD could only do so if there were a significant danger to ICE agents or if property damage was likely – this included instances when the targets of a ICE immigration enforcement action would likely have firearms or other weapons, the target had a history of violence, or otherwise, if it was likely that ICE agents could be physically attacked. However backup assistance could not be provided to ICE agents for routine operations or raids if these other elements were not part of the picture. In the case that backup assistance requests fit within these parameters, the request needed to first be approved by the SFPD Deputy Chief. The police officer would need to file an incident report describing the reasons for their assistance and notify their supervisor who would show up on the scene to ensure that the assistance was warranted.

In accordance with the sanctuary ordinance, DGO 5.15 did allow, however, for SFPD to inquire into immigration status, release information, or even “threaten” to release information to ICE in limited circumstances. SFPD could report people to ICE if they were booked on a felony charge or booked in a county jail on a lower-level charge like a misdemeanor or infraction but who also had a felony conviction on their record. The referral would not be made for all people with these kinds of charges, but only if the officer had “*reason to believe that the person may not be a citizen of the United States.*” Such *belief* could according to the DGO not be based solely upon a person's inability to speak English or his/her “foreign” appearance. This vague language about reasonable belief did not set out what kind of criteria police officers would use to determine reasonable belief, nor did it mandate training for officers for making that non-final non-determination determination. Further, these bookings that triggered ICE referral were police bookings with charges set by police officers, not the re-bookings that the District Attorney's office made after reviewing the case prior to going to trial.

Another provision in the DGO went beyond what the sanctuary ordinance required and beyond what state law had required – that if ICE requested information about someone with a felony conviction on their record, SFPD could provide that to ICE seemingly regardless of whether a booking occurred. The absence of booking language in this provision seemingly left the Police open to provide information to ICE about anyone in their presence who they were able to

look up their criminal record in the case that somehow the ICE might become aware of that interaction happening without SFPD notifying them.

As a result of the *Fonseca v. Fong* case, the DGO had also been modified from its original 1995 version to allow for reporting individuals to ICE who had been arrested and booked on a controlled substance (drug) booking which was included in the Health and Safety Code section 11369. This ICE referral could be for a felony-level booking or *for a misdemeanor drug-offense booking for a person who did not have a felony conviction on record.*

However, under no circumstances could the SFPD release information to ICE if the person had been arrested or convicted for failing to obey a lawful order of a police officer during a public assembly – including a protest - or for failing to disperse after a police officer had declared an assembly to be unlawful and ordered dispersal. If release of immigration information to ICE was allowed, most of the time, it would be made by jail personnel, employees of the Sheriff's Department, however SFPD employees assigned to the jail may have also released the information. If the release of information were to be made outside of the jail, the SFPD member would need the authorization of his or her Watch Lieutenant or other Officer-in-Charge.

Despite all of these restrictions, the DGO allowed the SFPD to inquire about immigration status of people seeking employment with the Department, as required by state and federal law. As with all DGOs, failure to comply with any provision of the DGO would subject the SFPD member to disciplinary action either by the Chief or the OCC.

From June 2004 until March 2012, the OCC received 12 complaints<sup>564</sup> that police officers violated DGO 5.15, three of which were sustained. By “sustained” the OCC meant that, “a preponderance of the evidence proved that the conduct complained of did occur, and that using as a standard the applicable regulations of the Department, the conduct was improper.”<sup>565</sup> If the complaint were “not sustained” the OCC meant that “the investigation failed to disclose sufficient evidence to either prove, or disprove the allegation made in the complaint.”

Other outcomes of OCC complaints could be that the officer was found to have enacted “proper conduct”, that is that the evidence proved that the acts which provided the basis for the allegations occurred; however, such police officer acts were justified, lawful, and proper. If the OCC found that the complaint was “unfounded” it would have meant that the evidence proved that the acts alleged in the complaint did not occur, or that the named member was not involved in the acts alleged. More interestingly, the OCC also accounted for systemic failures of the Police Department such as a failure of SFPD policy, supervision, or training. A “policy failure” finding would mean that the evidence unearthed in an investigation proved that the act by the member was justified by Departmental policy, procedure, or regulation; however, the OCC recommended a change in the particular policy, procedure, or regulation. A supervision failure referred to a finding that the evidence proved that the action complained of was the result of inadequate supervision when viewed in light of applicable law; training; and Departmental policy and procedure.

Interestingly, though the OCC could rule that an allegation was “sustained” due to the officer not understanding a department policy leading the Chief to eventually issue retraining for the officer, the OCC rarely issued a finding of “training failure”, another alternative to the “sustained” finding. Training failure findings referred to when the evidence in the investigation “proved that the action complained of was the result of inadequate or inappropriate training; or a absence of training when viewed in light of Departmental policy and procedure.” If the evidence proved that the action complained of did not involve a sworn member of the Department; or that the action described was “so obviously imaginary that their occurrence is not admissible by any competent authority”, the OCC would issue a finding of “information only”. Information Only allegations were not counted as complaints against “sworn members” of the Department - officers who had undergone police academy training and had the authority to make arrests, among other police officer activities. Complaints against non-sworn employees of the Department – civilian staff such as administrative assistants and counselors - were referred to Management Control Division. Complaints against employees of other agencies, were referred to the appropriate agency. Finally, if the complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint, the OCC would issue a finding of “no finding” for the complaint.

The following cases illustrate how discrimination against Latinos and anti-sanctuary police action are intricately intertwined in San Francisco despite the city’s sanctuary law and the Police Department’s general order on immigration enforcement.

#### *The News Delivery Man and His Employee*

The first sustained complaint lodged with the OCC against a police officer for a violation of DGO 5.15 occurred on June 16, 2004. It took the OCC six months to complete the investigation and issue a finding. In the complaint, the complainant, an owner of a newspaper delivery van who had been seemingly unjustifiably stopped by a police officer alleged first that the officer was rude in tone and manner to him and his employee who was a passenger in the vehicle – a form of conduct that the OCC categorized as “discourtesy”. Discourtesy was defined by the OCC as “behavior or language commonly known to cause offense, including the use of profanity.” The complainant stated to the OCC that in the process of the traffic stop, he asked the SFPD officer who stopped him what had he done wrong. The officer did not answer his question and according to the complainant was rude. The passenger serving as a witness to the allegation stated to the OCC that the officer made a comment but that it was made in a normal tone of voice and the officer denied being rude. The OCC could not determine whether the allegation that the officer was rude was true or not therefore the allegation was not sustained.

The complainant also alleged that the officer conducted an unjustified pat-down of his employee – a form of conduct the OCC considered “unwarranted action”. Unwarranted action was defined by the OCC as “an act or action not necessitated by circumstances or which does not affect a legitimate police purpose.” The

complainant was the sole driver of the vehicle and his employee who was a passenger was assigned to make deliveries of newspaper bundles on foot. The officer made an incorrect assumption when he accused the passenger of being the driver and of switching seats with the driver. Another witness, an employee at a nearby store, corroborated that the passenger of the vehicle delivered a bundle of newspapers to his business on foot during the period of time that the passenger was alleged to have been driving. Based on this false assumption, the SFPD officer requested the passenger's identification. When the passenger had none, the officer ordered the passenger out of the vehicle and conducted a pat search of him for "officer safety reasons" and to assure that the passenger had no weapons. The officer did not have reasonable suspicion to pat search the passenger because the complainant had already produced a valid California Driver's License. The OCC found that, "a preponderance of the evidence establishes that the officer's claim that the passenger had switched seats after he had been the driver is false," and the allegation that the pat-down was unjustified was sustained by the OCC.

The complainant made a third allegation that the officer cited his employee without cause - also an "unwarranted action". The complainant and the witness from a store where the employee delivered the papers stated the officer unjustly cited the passenger of the vehicle for Vehicle Code violations, when he was not driving. The officer denied the allegation when questioned by the OCC. The OCC found that "A preponderance of the evidence establishes that the officer cited the wrong party. The allegation is sustained."

The complainant also alleged that the officer towed the complainant's van without cause. The officer denied the allegation stating that he towed the complainant's van because he believed the passenger, who did not have a driver's license, was behind the wheel. The complainant stated that the officer's belief was erroneous, that he was the sole driver of the vehicle, and he had a valid driver's license. The passenger corroborated the complainant's version of events. The OCC found that "A preponderance of the evidence established that the sole driver of the van was the complainant. He had a valid license. The tow was improper. The allegation is sustained." Tied to this allegation was an additional allegation that the officer "misused his police authority by responding in a discriminating manner." This would be considered by the OCC in the category of "conduct reflecting discredit." The OCC defined conduct reflecting discredit to be "an act or action which, by its nature, reflects badly on the Department and undermines public confidence." The complainant viewed the officer's choice to claim that his passenger was the real driver, to claim that he switched seats because he had no driver's license, to cite his passenger despite the driver having a valid California license, and to tow his van leading to impoundment of the vehicle was based on the complainant's and the passenger's ethnicity. The OCC found that, "The witness corroborated this complaint, however, there is insufficient evidence to prove or disprove why the officer responded in this manner."

The complainant lodged an allegation categorized by the OCC as "conduct reflecting discredit" that in the exchange, the officer "questioned the passenger regarding his immigration status without justification." The OCC found that during the course of the traffic stop the officer did in fact ask the passenger about his

immigration status. According to the OCC report, "The officer admitted that he asked for the passenger's immigration status because it was relevant to the retrieval of the towed vehicle." The OCC correctly stated that the officer's questioning of the immigration status of the passenger violated DGO 5.15. 1. B.4 which stated that "A member [of the SFPD] shall not inquire into an individual's immigration status..." The context in which he asked the question was not included in the traffic STOP information sheet officers use, and "was irrelevant to the retrieval of the vehicle. The allegation is sustained."<sup>566</sup>

Three months after the OCC issued sustained findings on this OCC complaint, on April 20, 2005, SFPD Chief Heather Fong issued a decision to "admonish" the officer and close the case file.<sup>567</sup> According to DGO 2.07, "Discipline for Sworn Officers" an admonishment is "an advisory, corrective, or instructional action by a superior which does not constitute formal discipline. It is a warning only and not a punitive action."<sup>568</sup> Admonishment was essentially a slap-on-the-wrist, non-discipline discipline which is not even a written "reprimand", a formal written punitive action "which shall be noted or included in a member's personnel file. A subsequent violation of a similar nature invites more serious punitive action."

From least to most severe - the Chief can issue an admonishment, a written reprimand, suspend up to 10 days, or refer to the Police Commission to suspend over 10 days or to terminate the employee. The Chief could also prescribe corrective action such as retraining, find the action to not be sustained, or even exonerate the officer. A suspension is "time off without pay" imposed after a hearing, would not be counted toward the officer's retirement, and a record of the suspension was included in the officer's personnel file. If the suspension were a "Chief's Disciplinary Suspension," the suspension would follow an investigation and a recommendation from the OCC or unit within the Department and the officer would have a hearing with the ability to appeal the suspension at the Police Commission. This Chief issued admonishments or retraining for most cases. Issuing admonishments and re-trainings to an officer was a manner for the Chief to allow a commanding officer of the officer who violated a policy or regulation to dispose of the officer's "minor violation."

As we can see in this case of the newspaper van driver and his employee, this SFPD disciplinary system allowed for an officer to humiliate an immigrant without an ID in violation of the Department's general order and in violation of the sanctuary ordinance, tow a vehicle leading the driver to pay fines to release it from impoundment, and following a formal investigation have his actions be disposed of by the supposedly immigrant-friendly Chief Heather Fong with no punitive action taken, not even a written document placed in his personnel file or a call for retraining in DGO 5.15.

### *The Woman Who Sought Help from the Police to Enforce a Restraining Order*

At the end of December 2004, a complainant filed a complaint with the OCC after having gone into a police station for help because of harassing phone calls she was receiving from a person against whom she had obtained a civil harassment order.



She believed that the restraining order had not been appropriately filed by the SFPD and no action had been taken on it. The OCC investigation established that an officer helping the woman made a computer inquiry in a federal criminal database, using the "usual format," in an attempt to locate the restraining order to assist the complainant. The officer received a "federal advisement" for the woman in return to his query - a *civil* immigration warrant that ICE had placed on her file in the *criminal* database that the officer searched. The officer directed that the complainant be arrested. The warrant was not criminal in nature or issued by any court and therefore outside of the jurisdiction of the police. The civil immigration warrant the officer found was essentially was a non-mandatory request from ICE for assistance to local law enforcement. By federal law ICE cannot compel state or local law enforcement from cooperating in civil immigration enforcement. The arresting officer, according to the complainant, made inappropriate remarks and used "language meant to belittle" the complainant. Also according to the complainant, the officer failed to read her the Miranda advisement on her rights but a number of officers asked her questions about her immigration situation when she was brought into the station. The arresting officer then towed and impounded her vehicle.

The investigation of the complaint and its allegations lasted for 11 months with a final findings report issued in November of 2005. The OCC investigation established that while the arresting officer followed appropriate protocols in using the station computer system and queried the appropriate database, the arresting officer directed that the complainant be arrested in violation of the city's sanctuary ordinance and SFPD General Order 5.15. The OCC found that "since the investigation determined that the criminal exceptions [of DGO 5.15] did not apply and that there was no court-ordered warrant outstanding, the officer, by arresting the complainant, was not in compliance with Department regulations, and the allegation [that the arrest was unwarranted] is therefore sustained." This would be considered an "unwarranted action" by the OCC. This same action would be considered by OCC for a second violation in addition to the sustained "unwarranted arrest" allegation also as a sustained allegation that the SFPD "failed to comply with the SFPD policy regarding the enforcement of immigration laws". This second sustained allegation was considered a "neglect of duty". Neglect of duty referred to a "failure to take action when some action is required under the applicable laws and regulations." The complainant's allegation that the officer towed her vehicle without justification due to the unjust arrest was also sustained.

However, contrary to what the complainant thought that the SFPD did not take the appropriate action to file the restraining order and document the harassment, the investigation established that the officer assisting the complainant did, in fact, make a written report of the complainant's harassment and did what was required under the circumstances. The OCC therefore issued a finding of "proper conduct" for this allegation of "neglect of duty". Further, the complainant's allegations that the officer made insulting comments, that her Miranda rights were not read to her, and that the officers asked her information about her immigration situation once she was arrested - all "conduct reflecting discredit" allegations - were not sustained. This was due to the fact that the OCC found that "None of the officers known to be in the station at the time said that they made the comments or

questions or heard them being made. There were no independent witnesses.”

In January 2006, two months after the OCC findings were issued, Chief Fong made a decision to “retrain” the officer and then closed the disciplinary file.<sup>569</sup> While the disciplinary outcome of this case was slightly better in that it called for retraining, retraining was not considered punitive and the retraining disposed of the officer’s charge of misconduct and would not be placed in the officer’s personnel file. All the while a victim of harassment who was seeking police assistance was forced to deal with the trauma of being placed in immigration detention and deportation proceedings.

### *The Man Who Made a California Rolling-Stop*

A sustained allegation of an officer violating DGO 5.15 would not come for another five years after a complainant filed a complaint including 16 allegations with the OCC on June 8, 2010. The complainant was driving his vehicle with a passenger at an intersection with a stop sign. The complainant alleged that he made a complete stop at the stop sign, however he was stopped by police officers who claimed he failed to make a complete stop before the stop sign. They claimed that he drove through the intersection at approximately fifteen to twenty miles per hour without stopping. His passenger corroborated the story of the police officers that he rolled through the stop sign. The complainant alleged the officers engaged in biased policing and stopped him due to his ethnicity. The officers stated they stopped the complainant because he drove through an intersection without stopping and denied knowing the ethnicity or national origin of the driver prior to the traffic stop. The passenger corroborated the police’s story stating that the officers could not see the complainant inside the vehicle until after the traffic stop and assumed the complainant was stopped for failure to stop completely at a stop sign. The driver did not have a driver’s license or any other identification on him and asked if he could walk to his home with the officers and show them an identification card to avoid arrest. The officers stated to the OCC that the complainant was required to have a government issued identification on him at the time of the traffic stop and allowing him to leave the scene was a safety issue. DGO 5.06 mandates that when a person is arrested for a misdemeanor and does not provide satisfactory evidence of his/her identity, a custodial arrest is warranted rather than a citation release. Consistent with this policy, the officers decided to place him under custodial arrest, handcuff the driver, placed him in their patrol car, and transported the driver to the station to identify him. The complainant claimed that he asked both officers who arrested him about the reason for his custodial arrest but was not given an explanation. Further, he stated that the officers laughed and mocked him while placing him under arrest. The officers stated to the OCC that they informed the complainant he was under arrest for driving without a driver’s license or any identification in his possession. The passenger inside the car could not verify or deny the allegation.

Back at the station, in the process of running a background check on the driver, the officers used the same federal criminal database as the officers in the previous case of the woman seeking assistance with enforcing a restraining order. In response to their query about the driver, the officers noticed that ICE had placed the

same type of administrative civil immigration warrant in the database for the driver. A subordinate officer to the arresting officer then made a phone call to ICE to “verify the existence of an administrative warrant”. The individual was booked on two misdemeanor traffic violations and had no felony-level convictions or controlled substance violations on his record, and no court-ordered warrants outstanding for his arrest. Following the phone call, the officer asked the complainant questions about his immigration status, and released his information to ICE. The OCC investigation established that prior to making the call, the subordinate officer who made the call approached the more senior arresting officer with a generic question about booking a subject for an immigration warrant, but the more arresting officer denied giving that subordinate approval to contact ICE. There were conflicting statements among sworn officers regarding the question and what the answer given meant. A purported witness on scene could not recall this incident to either prove or disprove the allegation.

The complainant alleged that the officers detained him without justification, an “unwarranted action” form of conduct. The OCC ruled that the officers performed “proper conduct” due to the fact that the complainant having driven through the stop sign without stopping was the reason for detaining the driver. The complainant’s allegation that the police engaged in biased policing due to his ethnicity – an allegation of “conduct reflecting discredit” - could not be proven or disproven by the OCC leading the OCC to issue a “not sustained” finding. According to the police and the passenger, the original stop was made due to the driver rolling through the stop and his arrest was due to his not having an identification to prove his identity. The OCC also found that while the communication at the station between one of the officers and the Bureau of Immigration and Custom’s Enforcement (ICE) to verify the existence of an administrative warrant violated both Department General Order 5.15 and San Francisco Administrative Code section 12H-1, there was insufficient evidence to prove or disprove that the officers’ policing actions at the station were biased.

The complainant’s allegation that the more senior arresting officer violated DGO 5.15 was not sustained due to his contention that he was only “peripherally aware of an unauthorized contact by his [subordinate] partner with Immigration and Customs Enforcement in violation of DGO 5.15.” The OCC found that the “totality of statements from several members during this investigation was insufficient to reach a preponderance of the evidence to either prove or disprove the allegation against the [senior] officer.”

However, the allegation that the officer who made the call to ICE failed to comply with DGO 5.15 was sustained by the OCC. The OCC found that

SFPD regulations direct that members not assist federal immigration agencies with enforcement of immigration laws if the subject is not being booked for certain controlled substance violations or felonies and has no record of felony convictions. The investigation established that the complainant had no prior felony conviction and was booked by SFPD for two traffic misdemeanors. The complainant had no identification in his possession and during a warrants check the officer acted inappropriately

upon an administrative Immigration and Customs Enforcement (ICE) warning. The investigation also established that there was no outstanding warrant issued by any court but only an Immigration request for assistance. A preponderance of the evidence, including the officer's own testimony, established that his calls to ICE were unauthorized, and in violation of SFPD General Orders prohibiting cooperation with the federal immigration agency's enforcement actions and in violation of the San Francisco Administrative "City of Refuge" Code provisions. Since the investigation determined that the criminal exceptions did not apply and that there was no court-ordered warrant outstanding, the officer, by contacting ICE, asking questions from the arrestee, and releasing such information to ICE, was not in compliance with Department regulations.

Like in the previous case of the woman arrested in the process of seeking police help on a restraining order, the form of conduct in violation of DGO 5.15 was considered by the OCC as "neglect of duty" – neglecting to abide by DGO 5.15. Due to there having been no witnesses to whether the subordinate officer asked the more senior officer for his approval to call ICE, the story could not be proven or disproven, and therefore the complainant's allegations that the senior officer "failed to properly supervise" were not sustained by the OCC. Nor could the OCC determine whether or not the officers' behavior and comments were inappropriate when arresting the driver or whether they failed to inform him of why he was being arrested since the passenger could not recall these incidents. The OCC found the custodial arrest and transport to the station to be "proper conduct".

The Chief's decision on discipline in this case was not issued before September 2012 and therefore cannot be known. Prior to that time, the "Chief's Decision" reports issued by the Police Commission and which stated the discipline meted out for OCC complaints which were sustained, included the "Date filed with OCC", the "Date transmitted to MCD", and the OCC complaint number for each OCC complaint. The Management Control Division is the department within the SFPD that evaluates the OCC case report and makes a recommendation on the case to the "Risk Management Office" which in turn evaluates the case and makes a recommendation to the Chief on action to take. These dates corresponded to dates on the OCC's "openness reports" – complaint summary reports issued monthly that stated the date the complaint was filed with the OCC and the date that the investigation was completed. The Date that the investigation was completed was also the same date that the report on the investigation was transmitted to the MCD in the police department. Like the OCC "openness reports", the Chief's Decision reports also included a list of total alleged type of conducts in violation, as well as only those that were sustained which the Chief had to issue a decision on. Using the "Date Filed With the OCC" date, the dates when the investigation was completed and transmitted to MCD, total types of conduct, and sustained forms of conduct, one could identify the OCC complaint case on the Chief's report and the Chief's decision on that case. However, in October 2012, the Chief's Decision reports were revised to remove the date that the OCC complaint was filed and the OCC complaint number and from that point on, only an

SFPD Internal Affairs case number was included, making it impossible to link OCC complaint summary narratives in the openness reports to the cases that were listed in the Chief's Decision reports that the Chief ruled on. Public records requests to the Police Commission and the Office of Citizens Complaints for the disciplinary files for cases listed in the OCC's monthly openness reports were denied in the course of this study due to the OCC claiming that OCC complaint numbers and disciplinary files were protected by officer confidentiality laws. The OCC and Police commission would not release files even with officer identifying information redacted.

### **The Policy Failure of DGO 5.15**

In February 2007 a complaint lodged with the OCC led to a different type of finding - rather than issuing a "sustained", "not-sustained", or "proper conduct" finding, the OCC found that the scenario pointed to in the complaint amounted to an instance of "policy failure." Following the police arrest of two individuals during an ICE operation that involved the SFPD's participation, the two individuals were placed in deportation proceedings. A complainant met with an SFPD officer to ask the officer to look into the arrests of the two individuals who subsequently became his clients who he was defending in immigration court. The complainant stated the officer offered to receive and forward an OCC complaint during the meeting, but during a subsequent telephone conversation refused to receive or assist to forward his complaint to the Office of Citizen Complaints. During the OCC investigation, the officer denied that the complainant made that request. The officer also stated that it was the officer's understanding that the purpose of the meeting was to discuss the Department's policy regarding undocumented residents. The officer claimed that he asked the complainant if he wanted to lodge an OCC complaint about the matter, but that the complainant replied "no" and that he "would get back to us." The complainant alleged that the officer failed to take required action for failure to take a citizen's complaint of misconduct and failure to investigate a violation of DGO 5.15. Witnesses at the meeting gave conflicting statements regarding the purpose of the meeting and whether the complainant stated explicitly or by inference that he was making a formal complaint of police misconduct. There was insufficient evidence to either prove or disprove the allegation. This allegation of "neglect of duty" was not sustained.

The officer named in the complaint was one of the officers involved in assisting ICE during the joint operation, which led to the arrest and subsequent placement of the individuals in deportation proceedings. The complainant alleged that due to this fact, the officer violated DGO 5.15. However, the OCC found that the evidence indicated that the named officer acted in accordance with a Departmental approval to participate in the joint operation with the ICE. OCC found that San Francisco Police Department officers, ICE, California Department of Justice special agents, and Bureau of Narcotics Enforcement agents, participated in a joint operation to target members of the criminal street gang "Sureness 13" and Mara Salvatrucha (MS-13), Edwin Ramos' gang, over the course of three days during the spring of 2005. This was the era of raids that led to the formation of the San Francisco Immigrant Legal and Education Network and the efforts of Mayor Gavin

Newsom to reaffirm the city's sanctuary status through the Sanctuary City Initiative over the next two years. According to the ICE Enforcement Action Plan identified by the OCC in its investigation, the operation's objectives were to

- 1) establish surveillance at target intersections; 2) observe and identify criminal street gang members and associates; 3) apprehend and arrest subjects engaged in suspected criminal activities including counterfeit identification document sales and illicit narcotics distribution; 4) assist San Francisco County Probation with warrantless probation searches on eligible probation targets; 5) affect targets in violation of location specific stay away orders; and 6) gather gang related intelligence for analysis and further enforcement action.

The plan's third objective also included that "ICE agents will identify subjects eligible for felony 1326 Re-entry after Deportation prosecutions." Section 1326 Re-entry after Deportation prosecutions are prosecutions under federal immigration law, specifically 8 U.S.C section 1326. The OCC found out that SFPD officers requested and obtained written approval to participate in the joint operation with ICE. Approval was limited to "target identified gang members engaged in illegal activity." SFPD officers also received approval from their superiors to provide ICE a list of active gang members with reportedly prior felony convictions. The OCC investigation found that that SFPD officers rode with ICE agents to point out specific areas and individuals, and did surveillance of local gang members and arrested individuals for criminal violations involving stay away orders and narcotics offenses. The evidence found in the OCC investigation did not indicate that those arrested by SFPD were subsequently turned over to ICE. However, during the joint operation, ICE agents arrested the complainant's two clients, questioned them about their gang affiliation, and completed a Record of Deportable/Inadmissible Alien on each. The narrative which requests "an outline of particulars under which the alien was located/apprehended" did not include any observations that the two arrested individuals were involved in criminal activities. The arrested individuals were subsequently subjected to deportation proceedings. Neither individual was named on the list of active gang members with prior felony convictions that SFPD provided to ICE.

Since SFPD members received authorization to participated in a joint operation with ICE agents *to target identified gang members engaged in illegal activity* but that one of the operation's objectives was for ICE agents to identify subjects who were not engaged in criminal activity – they were merely eligible for prosecution under federal immigration laws – the OCC found this to present a new scenario under which the police role in immigration enforcement was murky. The OCC found that

To ensure strict compliance with DGO 5.15 and increase transparency and accountability, the OCC recommends that DGO 5.15 be revised to include provisions that clarify whether SFPD may engage in joint operations with ICE that target both criminal activity and immigration enforcement and require

the Police Chief to provide a written report to the Police Commission that identifies all joint operations, assistance and information provided to ICE, and the manner in which such operations, assistance and release of information comply with DGO 5.15. Therefore, the evidence indicates that the act occurred but that ambiguity in the Department General Order constitutes a Policy Failure.

According to the Chief's Decision reports, the OCC report of this complaint finding that there was a failure of policy in the DGO 5.15 and that it needed to be reformed never came to the Chief for a decision, literally falling into a policy black hole.

In light of the roughly 1000 OCC complaints per year, a total of 12 complaints of violations of DGO 5.15 with only 3 being sustained over an 8 year period seems insignificant, however, these cases represented only those instances when immigrants knew about the OCC and their complaint process, knew that they could register complaints as an undocumented resident, were not afraid of interacting with city government that had just violated their rights or potentially placed them in deportation proceedings, who were in most cases assisted by an immigrant serving organization, and who did not seek help from another city agency such as the Immigrant Rights Commission, their District Supervisor, or other local official whom they may have had a prior contact with. Further, given the disciplinary outcomes of OCC investigations that led officers to have their misconduct discharged and never even registered in their police file, immigrants and their advocates might have just given up on the process all together as a huge waste of time. As with all policies, they are only as good as they are enforceable.

### **Human Rights Commission Sanctuary Ordinance Violation Investigations**

While the OCC and Police Department investigations and disciplinary process left violators virtually unaffected following their violations, they were not the only agencies to receive complaints from residents and investigate violation of sanctuary. Under section 12H.4 of the sanctuary ordinance titled "Enforcement" the Human Rights Commission was named to

review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is a question of noncompliance or when a complaint alleging noncompliance has been lodged.<sup>570</sup>

While "enforcement" might include some sort of mechanism to "force" or impose upon a department discipline or a plan of action, actually, the HRC was merely given the power of investigation, to issue subpoenas, and reporting on the findings of the investigation, and issue written recommendations as to eliminating departmental practices that amounted to discrimination and violation of chapter 12H. The outcome of such a review would be given to the Department Head such as a Chief or Director, but ultimately, disciplinary or corrective action taken on an HRC ruling of a

sanctuary ordinance violation would only occur if the Mayor, who also received the report and who was the immediate superior of the Department Head, threw his or her weight behind the report and pushed on the Department Head to make reforms.

In addition to this political issue of enforcement of the sanctuary ordinance, there was also the problem of residents in the city even knowing that they could file a complaint with the HRC against a city employee for violating the ordinance, that it was worth their time, or that as a city agency, they would honor the confidentiality of an undocumented immigrant despite all of the pro-sanctuary rhetoric. The first time that the city had done massive outreach to immigrants to let them know that they could file complaints occurred during Mayor Newsom's Sanctuary City Public Relations Campaign launched in April 2008. The mayor's initiative created brochures with instructions on how to file a complaint with the HRC and the brochure was placed in every office of the City. Additionally, posters were put up in bus stops and on the side of MUNI buses, and advertisements ran on local television stations and on ethnic media outlets. However, it is likely that given that the Mayor completely backtracked on sanctuary and became the face of the anti-sanctuary politicians in the city two months after the PR campaign due to the Juvenile Probation fly-back policy and the Ramos killings, immigrants likely lost trust in the city and opted to not even engage the city in a complaint process if they even knew it existed. What is certain is that until 2011, the HRC had not received a single complaint of a violation of the sanctuary ordinance despite violations occurring many times since the ordinance passed in 1989. Former HRC Executive Director Larry Brinkin would note, "the sanctuary ordinance is perhaps the most unutilized law by residents."<sup>571</sup>

Nonetheless, if an individual did witness a violation of sanctuary or had their sanctuary city guaranteed rights denied by a city employee, and wanted to file a complaint with the HRC, the individual would need to undergo the following complaint process steps:

1. Contact the HRC by phone, in writing, or in person.
2. Schedule an intake interview and bring any documentation supporting the claim.
3. The complainant proceeds by filing a complaint. A complainant may remain anonymous through out the complaint process.
4. Depending on the nature of the case, a letter of concern or a formal complaint is sent to the respondent (department, agency, or commission), who will be required to respond in writing.
5. After the respondent's response is received, an HRC staff member will attempt to resolve the complaint through mediation. The mediation can occur with all parties in the same room or through separate meetings with the mediator.
6. If mediation is successful and both parties reach an agreement, the HRC will close the case.
7. If mediation fails or is rejected by one or all parties, an HRC staff may conduct a formal investigation.
8. If there is sufficient evidence of a violation, the HRC may issue a Director's



Finding of Non-Compliance with the SCO [sanctuary city ordinance]. Upon making a Director's Finding, the HRC can forward it to the Board of Supervisors and the Mayor's Office. HRC can also refer the case to the City Attorney for enforcement.

9. A Director's Finding may be appealed by the non-prevailing party to the HRC. Please contact the HRC for further information on the appeal process.<sup>572</sup>

What was curious about this process explanation was that upon a finding of a violation of sanctuary, the HRC was also saying that it could "refer the case to the City Attorney for enforcement." This too was rather presumptive seeing that the City Attorney's August 18, 2009 memo on Supervisor Campos' youth-focused amendment to the sanctuary ordinance advised the Mayor that

until the federal courts clarify whether sanctuary city ordinances are preempted by federal law, we will continue to advise City officials that the City may not penalize its employees for reporting this information [information in city databases on an individuals suspected to be undocumented] to ICE. To advise otherwise would be to place these employees at further risk of criminal prosecution [by the U.S. Attorney].<sup>573</sup>

Seeing that the City Attorney would likely contend that federal courts have still not "clarified whether sanctuary city ordinances are preempted by federal law," even if the HRC were to forward a case to the City Attorney, it is likely that the City Attorney's office would choose to not take any action to penalize City Employees or even forbid them from continuing the behavior in violation of the sanctuary ordinance.

Political will aside, complaints and even "requests for inquiry" (RFI) could be filed by "anyone who believes that a City Department is not or may not be in complete compliance with the Requirements of Chapter 12H". According to HRC's "Rules for Filing a Complaint Under Chapter 12H of the Administrative Code" which the HRC investigator would use to initiate a complaint case, a written complaint or RFI filing needed to contain

- a. The complete name and address of the person making the complaint or RFI, if the person making the filing does not request anonymity
- b. A plain and concise statement of the facts which provide a basis for the complaint or RFI, including the date, time and location of the incident.
- c. The name and department of the City employee alleged to have violated the ordinance. However, in the event that the person filing the complaint or RFI is unable to identify a person by name and/or a specific department of the City, the statement of facts should provide enough information to reasonably support a belief that the alleged actions constituting the violation were carried out by an employee or representative of the City and County of San Francisco.
- d. In the event that the Department, which is the object of the allegations has as part of its structure an internal agency which investigates

complaints against departmental employees, the person making the filing shall also be referred to that agency. Such a referral is exclusive of the obligation of the HRC to review departmental compliance.<sup>574</sup>

The identity of any person making a filing was to remain confidential and that confidentiality was extended to any person whose identity was revealed by an investigation made by the HRC under the sanctuary ordinance. On the “Sanctuary City – Complaint Intake Form”, the HRC would note for complainants that

all information given on this document will remain confidential. Complainants may choose to reveal no information, information to the HRC only, or to have their name appear during the investigation process. Complainants may name a contact person if they wish to remain anonymous. The Commission will investigate all complaints regardless of the confidentiality status.<sup>575</sup>

Breach of confidentiality would consist of a separate violation of the sanctuary ordinance. All investigative records, including filings were required to be maintained in a locked file, which was only available to the HRC Director and the HRC investigator who the Director identified in writing. All other access to the file would be given only upon written request and provided on a “need to know” basis consistent with the sanctuary ordinance. Release of any name, address, or identifying information contained in the filing could only be made on a written authorization of the person making the filing.

The intake form for sanctuary ordinance violation complaints would require that the complainant or HRC member taking down the complaint indicate as well, the manner in which the intake was done (phone, drop-in, or mail) and the name of the referring agency such as an immigrant-focused non-profit agency or District Supervisor’s office if one existed. In a section titled “Circumstances of the Alleged Violation of Chapter 12H”, the intake form would request in addition to the date of the alleged violation, the purpose of initial contact, how the contact was made (by phone or in direct meeting, mail, or other), whether “immigration information was provided to the respondent [city employee]”, and the names of other people involved in the case. Then on a second page was a request for the “description of complaint” followed by blank lines wherein the complainant could provide a narrative explanation. The final page requested optional demographic information on the complainant: age, race/ethnicity, “country of origin”, sex, sexual orientation, and a space to indicate if the complainant was disabled or transgender.

Complainants had 90 days after the alleged incident to file the complaint or RFI or after they became aware that the incident violated the sanctuary ordinance, however, this time could be extended by the action of the HRC Director when the Director determines that “mitigating circumstances permit it or fairness requires it.”<sup>576</sup> Once the complaint or RFI was received, the HRC investigator would then review the information to determine if the actions alleged were sufficient to constitute a violation of Chapter 12H and would make the determination in consultation with an HRC unit supervisor, and if necessary the HRC Director or the

City Attorney. The HRC Investigator was to first determine which City Department was responsible for the alleged violation. If insufficient information was contained in the written filing to make that determination, that fact on its own should not of itself cause the filing to be dismissed.

The HRC investigator had 10 business days following the receipt of the filing to complete a report, which included the filing, the investigator's determination that the allegations were sufficient to constitute a violation of the ordinance, and the identity of the city employee and department of City government involved. If the investigator determined that the allegations were not sufficient to constitute a violation of the ordinance and that further investigation would not provide such information, a recommendation of dismissal of the charge would be made with the approval of the investigator's supervisor. That dismissal could then be appealed to the director for the Director's review who could then make a final decision.

Once a complaint or RFI filing had been accepted, the HRC would mail a "Notice of Alleged Violation", including the investigator's report, to the appropriate department that allegedly violated the ordinance. The notice, which was signed by the HRC Director, advised the Department Head of the filing and asked for a written response to the allegations. In the case that the HRC investigator couldn't determine the specific department involved in the alleged incident, the notice would be sent both to the Mayor and the Chief Administrative Officer. The department receiving the notice would then have 10 business days of receipt of the HRC notice to send a response signed by the department head or his or her representative. However, the response time might be extended for good cause. In addition to responding to the specific charges contained in the filing, the response needed to include the steps that the department has taken to insure compliance with the sanctuary ordinance.

If the departmental response denied the allegations contained in the filing or if the response was incomplete, the HRC investigator would initiate an investigation which was to be completed within 90 days from receipt of the response. This investigation would attempt to determine not only whether the allegations contained in the filing about the individual city employee were true but also would have a systemic focus on "whether the department head has carried out the requirements of Chapter 12.H." Following extensive evidence gathering including collecting documents and interviewing all parties involved, the HRC investigator would then prepare a report for the HRC Director detailing the finding of the investigation, the evidence itself as attachments and the analysis that the findings were based on, and the recommendation that the investigator makes. The HRC Director then would make a determination based on the HRC investigator's finding or could direct the investigator to conduct further investigation before a final Director's determination. Once the HRC director made a final determination on whether a city employee or department had violated the sanctuary ordinance, the HRC Director would forward the determination to the Department Head and a copy would be sent to the Mayor or the Chief Administrative Officer (CAO). If the identity of the specific city department involved remained unknown, a copy of the Director's determination was forwarded to both the Mayor and the CAO.

## **The Only HRC Sanctuary Ordinance Violation Complaint to be Investigated in 25 Years**

Only one complaint to the HRC has ever been investigated – a complaint lodged in July 2010 against the Human Services Agency (HSA).<sup>577</sup> The complaint came forward because Abigail Trillin, an SFIRDC member and Staff Attorney of the immigrant-serving organization Legal Services for Children (LSC), and Deborah Escobedo, Staff Attorney at the Youth Law Center, brought forward a claim on behalf of an anonymous male youth client who was an immigrant from El Salvador. The two complainants filed this complaint as attorneys representing the minor who was the aggrieved party in the complaint.

The Human Services Agency is a department of the City and the central resource for public assistance in the city, employing over 1800 people. The department's mission is to "promote well-being and self-sufficiency among individuals, families and communities in San Francisco" and was formed in 2004 with the merger of two previously existing city departments, the Department of Human Services and the Department of Aging and Adult Services. The department runs a vast amount of programs for employment and job training, financial assistance for low-income residents, housing assistance, food assistance including CalFresh "food stamps", health care coverage, services for seniors and adults with disabilities, child care and early education subsidies, and runs other child and family services including Child Protective Services (CPS) and the child welfare system.

On February 1, 2010, only a few months after the very public showdown between the Board of Supervisors and the Mayor over the youth sanctuary amendment, a CPS worker employed by HSA conducted an interview with a youth, the complainants' client, at San Francisco International High School (IHS). Also present were the IHS Principal, the youth's teacher, and a bilingual Coordinator at the school. The interview was in response to a call that the IHS Principal made to the HSA hotline regarding suspected neglect of the youth. At the beginning of the interview when the IHS teacher and Principal came in the room, the CPS worker told them "This is private," and the teacher responded that the youth wanted them to be in the meeting. The CPS worker then asked the Principal why she had made the initial call to CPS about the youth. The Principal reported to the CPS worker information about the youth's living situation and hardship over the previous 9 months. The youth had been living in an emergency shelter and had nowhere to go between the hours of 6:30am and 8:00pm each day. The CPS worker did not take down the information and stopped taking notes during the explanation.

According to the complaint, during the interview, the CPS worker asked the youth several questions which indicated he was more interested in determining the youth's immigration status than in assessing his need for CPS emergency services including

1. When did you come to the United States?
2. How did you get here?
3. Who paid for you to get here?
4. Where did you cross the border?

5. How did you cross the border?
6. How did you get from Texas to California?
7. Who contacted your mother when you arrived, you or the coyote?
8. Were you stopped by immigration officials in the United States or in other countries?
9. Were you arrested in Mexico or Guatemala by immigration officials?
10. How did you get away from immigration officials?
11. How did you get a lawyer with Legal Services for Children?
12. Who are your friends?
13. Where do you go with your friends?
14. Do you go to 24<sup>th</sup> Street? [In the Mission District]
15. Are you a gangbanger?
16. Why aren't you living with your mom?

When the student advisor interjected during the course of the CPS worker's questions asking why it was necessary to know where the youth crossed the border, the CPS worker responded that it was "necessary to build his investigation." At one point in the interview the youth put his head down and started mumbling to himself during the interview and refused to answer some questions. The CPS worker responded, "If you don't answer my questions, I'm going to think you don't want help." The youth answered all of the CPS worker's questions because "he felt like he had to." As the interview progressed, and the youth was uncomfortable with the CPS worker's sarcastic tone, the youth became "afraid," hesitant and looked at the teacher when answering the questions. According to the complaint, the Worker only asked one question regarding the suspected neglect that had caused the IHS Principal to make a CPS hotline report. The CPS worker asked him about the shelter that he was living in: "Are there any problems with your shelter?" According to the teacher, the CPS worker didn't ask about food, about where the youth goes when he can't be at the shelter in the morning, after school, and on the weekends.

A Coordinator at the IHS then entered the room and asked the CPS worker why the youth was not placed in an emergency shelter. The CPS worker responded that, "It is *my* job to determine priorities. He [the youth] looks like he's making bad decisions. We are more concerned about kids who are being molested by their grandfather than kids like him. [...]" The Principal and Student advisor demanded that they attend each contact that the CPS worker had with the child and throughout the interview proceeded to interject questions and comments to the Worker. After the meeting was over, the Principal advised the youth to not answer questions if the CPS worker approached the youth alone or called the youth on his cell phone. IHS Principle and teacher thought that the questions asked by the CPS worker in the initial interview on February 1, 2010 with the youth indicated that the worker was interrogating the youth to determine his immigration status rather than evaluate his safety or welfare, and that the worker was not focusing on his neglect or the issues that the IHS brought up to the CPS about him having inadequate food, clothing, or shelter. The Principal worked with the student's teacher to draft a letter to the HSA complaining about the CPS worker's line of inappropriate questioning. In it they stated

From the school's perspective [the youth] has been profiled due to his race, culture, clothing and way of speaking. He was criminalized and verbally attacked by [the CPS worker]. [The CPS worker] made gross assumptions after a one-hour meeting with [the youth] and those assumptions are driving [the CPS worker's] investigation and will ultimately determine [the youth's] future. CPS is responsible and accountable to protect all children regardless of their clothes, where they are from, or where they go when they have no place to call home. These meetings have only served to instill fear, to demean, and to humiliate [the youth]. We are appalled by the line of questioning [of immigration status] and the assumptions made by [CPS worker] and we respectfully request another social worker be assigned to work with [the youth] and his mother immediately.

The Principal had been part of roughly 35 interviews with the HSA with youth of all backgrounds and immigration statuses and had never heard questions like those that the CPS worker asked the youth in the February 2010 interview.

Kimiko Burton, Deputy City Attorney, legally representing HSA, responded to the IHS Principal's letter castigating the IHS staff for interjecting themselves in and complaining about the CPS's investigation. Kimiko Burton was daughter of former state senator and Democratic Party powerhouse John L. Burton, formerly the first female Public Defender originally appointed by former Mayor Willie Brown, and married to a SFUSD School Board member Emilio Cruz. In a letter to the school district's general counsel, she stated that Penal Code Section 11174.3 stated that a child who is being interviewed as a suspected victim of child abuse on school premises, "Shall be afforded the option of being interviewed in private or selecting *any* adult who is a member of the staff of the school, including any certification or classified employee or volunteer aide, to be present at the interview." Burton interpreted the term "any" to mean that only *one* staff person could be elected to be present at the interview and that according to the same code that they could not participate in the interview, nor could they discuss the facts or circumstances of the case with the child. Further, they were subject to confidentiality rules of the code.

Burton lectured the IHS Principal and teacher that their presence in the meeting was not to "second guess the investigation tactics used by the social worker conducting the investigation." She made no mention of the CPS worker's inappropriate questions about immigration status that might amount to harassment. She also claimed that the Penal Code allowed for only *one* staff member to be there even though it didn't expressly say that, and they claimed that the child never consented to having more than one person in the interview. Burton claimed that the IHS staff made "gross exaggerations about what they perceive as the entire Department of Human Services [CPS] investigation into this case," referring to the assertions that the CPS worker was more interested in immigration status questions than underlying neglect that they brought to his attention. Burton accused the IHS staff of attempting to "force a social worker to take a child into protective custody because they say so." Burton added, "This type of meddling interferes with my client's ability to conduct open and honest interviews with possible victims of abuse,

and it needs to stop.” To end her letter to the general counsel Burton reminded her that “disclosing the type of information that Ms. \_\_\_ did in this letter [the complaint] to third parties [...] is illegal under Welfare and Institutions Code section 827, and that such a violation is a misdemeanor. In the meantime, consistent with Penal Code section 11174.3, we encourage the Superintendent of Public Instruction to remind district employees of their role in child abuse and neglect investigations so that social workers can do their job without unnecessary intrusion by school staff.” All this amounted to the City Attorney’s office, the office charged with defending the sanctuary ordinance against legal challenges, attempting to intimidate a Principle and a teacher out of complaining about and interfering with a CPS worker’s inappropriate line of inquiry and that was a potential violation of the sanctuary ordinance.

SFUSD’s General Counsel then responded back to the Deputy City Attorney that

It is difficult to comprehend how the line of questioning regarding the student’s legal status or method of arrival in this country was necessary to conduct an open and honest investigation into the alleged neglect, or a legitimate attempt to locate relatives who could assume custody of the student. [...] We disagree with your premise that an HSA investigator has carte blanche in the manner in which an investigation is conducted. Nor do we agree that a District employee who attends an interview pursuant to Penal Code 1174.3 must maintain a code of silence if s/he witnesses inappropriate conduct. We therefore do not agree that School District staff are prohibited from reporting inappropriate or questionable behavior to HSA if a social worker’s conduct appears to be discriminatory or harassing toward the alleged victim of abuse or neglect.

Following the initial interview with the youth, CPS worker later contacted the youth’s mother and scheduled an interview with her at her home. During that interview, the complainants claimed that the worker asked the youth’s mother why the youth could not live with her, as he was living in a shelter. She explained that she was unable to house or care for the youth because she was in remission for cancer, was living in a single room occupancy unit (SRO), and was unable to provide him food. The CPS worker then asked

1. How did you pay for your son to get here?
2. Who paid for your son to get here?
3. Who helped your son get here?
4. Do you have papers?
5. Do you receive government assistance?
6. Who is still living in El Salvador who could take care of the youth if he is sent back?
7. What are the names, numbers and addresses of your daughter in El Salvador (where the mother used to live)?
8. Why don’t you just send him back to El Salvador?

9. Does [the youth] hang out at 16<sup>th</sup> St? [a hub for drug sales in the Mission District]
10. Does [the youth] have tattoos?

The youth's mother explained that her mother, the youth's grandmother was sick and also unable to care for the youth. When the mother asked the CPS worker why he was asking about addresses in El Salvador, he responded that "it was necessary in order to send some documents." The CPS worker ended the meeting by saying, "We are going to continue to talk about this."

The youth's mother then called IHS staff "completely shaken and terrified that Immigration officials were going to come to her home." The family became scared about accessing HSA services or having further contact with child welfare workers. The family felt intimidated by the CPS worker and felt as if "this treatment was based on the Youth's national origin, his race and his limited ability to speak English."

Asking for immigration status information was actually a very routine part of HSA and CPS's work however this worker's intention in asking the questions seemed to cross a line. CPS workers routinely used the "Initial Emergency Response Documentation Tool: Undocumented Child", a form for providing intake with an undocumented child, which made determining if a youth is documented a standard part of HSA's investigation. HSA supervisors claimed that these questions were asked in interviews for "anyone who may need immigration services." However, the tool did not require workers to fill in where a minor crossed the border, whether coyotes contacted family members, whether they were stopped by immigration officials or if their parents have immigration documents. Another form that HSA routinely filled out was an application for PRUCOL dollars, funding from the State for foster care and Medi-Cal for undocumented people who immigration authorities already know about and do not want to deport. HSA normally submitted this form only once a determination had been made that the child would be placed into custody.

These forms were all however understood within the broader ethic of sanctuary, which was to provide residents access to services in the city without fear, not to deny them services or condition their services. Further, all CPS workers had been trained on the provisions of the sanctuary ordinance previous to the incident. In 2007, following Mayor Newsom's Executive Directive 07-01 to the departments to create department-level sanctuary policies and train all staff on them, HSA also held trainings on the obligations of the sanctuary ordinance. As a result, the HSA included in its Personnel Procedures Handbook a department policy reaffirming the "status of the City and County of San Francisco as City of Refuge". This policy stated that

City and County employees are prohibited from doing the following:

[...] Requesting information about or disseminating information regarding the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon



immigration status, except as required by federal or state statute or regulation, City and County public assistance criteria or court decision.

[...] Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or state statute, regulation, or court decision.

The youth's mother tried calling the CPS worker many times over the next few weeks without a response from the worker. She wanted someone to help her son, knowing that CPS helped youth find safe housing, and she wanted to know what was going to happen with the information she gave the CPS worker.

On February 12, 2010, the CPS worker had a second meeting with the youth at school also with the IHS teacher present, however this time no questions were asked about immigration status. At this meeting, the CPS worker commented that

The first priority is to place [the youth] with Mom and then with other family members. Why can't he go back to El Salvador? If we can't find him a home with Mom then we will find him a place with his relatives in El Salvador. He has to learn about the rules. Does he know about the rules? He will have to work soon – he will need to learn about rules then. Is he going to work? Maybe he won't ever work? He told me he hangs out on 16<sup>th</sup> St. No one will ever want a kid who goes there. Look at how he dresses. No one will want him in foster care. It is so hard to place a kid like him. No one will want him.

After weeks of the youth's mother calling the CPS worker to find out what was going to happen with her son, she finally reached the worker who told her that he was suspending or stopping the case, without providing the youth any assistance. This bothered the mother as she knew her son needed help. The CPS worker closed the youth's CPS case on February 26, 2010 finding that "allegations appear to be unfounded." The youth's mother then met with the youth's teacher and student advisor who'd met with the CPS worker on February 12<sup>th</sup> to ask them whether all of the questions that the CPS worker had asked her about the youth's immigration status and her immigration status were normal to ask.

When the Youth Law Center found out about the CPS worker's treatment of the youth, they sent a letter to the HRC in March 2010 stating

We are extremely concerned about the chilling effect that these experiences have on immigrant youth in San Francisco, and specifically the students and teachers of San Francisco International School. According to the information released by International School Network, 100% of their students have been in the U.S for 4 years or less and speak very little English and 70% of these students have been separated from one or both parents during their family's immigration to the United States. Many of these students and their families are likely to need services of the SFHSA. However given the incidents described above, students will be reluctant to share difficulties in their home

situations with school staff if they could be interrogated about their immigration status. Their teachers are now in a terrible position because of the actions on part of SFHSA employees.

The Youth Law Center also notified the HRC that this was not the first time that the CPS worker had been the focus of a complaint. Legal Services for Children (LSC), another immigrant serving legal agency had previously complained to the CPS worker's supervisor about inappropriate questioning with children and youth who were their clients. A minor had reported to LSC that the worker said, "If you do something the police will ask you if you have papers and they will deport not just you but everyone in your whole family." Additionally, the youth's case manager at Larkin Street Youth Services, an immigrant serving non-profit, also had assisted a different youth who had been asked by the CPS worker "Are you doing this for your papers?", "who paid for you to get here?", "where did you cross the border?", "how did you cross the border?", and "how much did you pay the coyotes?." This case manager had complained to the CPS worker's supervisor about the CPS worker's questions but the supervisor seemed unconcerned. In the view of the case worker, the CPS worker had a pattern of interviewing youths at school to avoid case workers sitting in on his interviews. In July 2010, the Youth Law Center and Legal Services for Children filed a joint complaint on behalf of the youth.

On October 8, 2010, after meeting with the complainants and reviewing the allegations of the complaint, the HRC filed a "Notice of Alleged Violation" with the HSA detailing that "the allegations if true, were sufficient to constitute a violation of the City's anti-discrimination ordinances, including Chapter 12A and 12H of the Administrative Code and Article 33 of the Police Code." In a letter responding to the notice and complaint, HSA Executive Trent Rhorer, claimed that

The facts and circumstances surrounding this particular case are more complicated than they have been presented in the Complaint, and after having thoroughly reviewed the situation I am confident that HSA staff's intentions were in the best interests of the safety and welfare of both the child and the family. I acknowledge however that the interview could perhaps have been conducted better by all who were involved. I cannot discuss the specific facts here because this information is confidential under state and federal law and any identifying information about the family cannot be disclosed to any entity not enumerated under applicable statutes, including the Human Rights Commission (Welfare and Institutions Code section 827, Penal Code 11167.5). However, we are prepared to address the broader issues of policy and practice stemming from the Complaint regarding how HSA handles its investigation of claims of child abuse involving immigrant children. As a threshold matter I wish to re-emphasize HSA's commitment to providing equal access to services to all children and their families without regard to race, ethnicity, or perceived or actual national origin.

*[...] No law requires HSA to report children or their parents, guardians or*

*families to federal immigration authorities, and it would be strictly contrary to our policy and practice for HSA staff to do so. [...] to perform their jobs consistent with their state law mandate to protect the safety of children from abuse, HSA Child Welfare Workers must ask children about their living situation. [...]the questions that were asked were necessary given the facts in the case.*

[...] I am committed to having HSA continue to educate and train child welfare workers on principles of equal treatment and appropriate questioning

Rhorer went on to point out that the sanctuary ordinance allowed for asking questions about immigration status if it was required by federal or state statute or regulation, City or County public assistance criteria, or court decision. He claimed that the federal and state mandates upon HSA Child Welfare Workers that

require them to provide reasonable efforts to keep children with their parents and to determine if they can receive services in their own home or with relatives if they can not remain in their own home [...] *requires asking questions related to immigration status and family background.*

Rohrer explained that the California Department of Social Services Manual of Policies and Procedures, Child Welfare Services 31-125.1 stated that

The social worker initially investigating a referral shall determine the potential for of the existence of any conditions which places the child, or any other child in the family or household, at risk and in need of services and which would cause the child to be a person described by Welfare and Institutions Code Sections 300(a) through (j)

While policies that HSA cited stated that the juvenile court must look at the totality of the child's living circumstances and family situation, none of the cited policies indicated that they were required to ask specifically about immigration status or the other immigration related questions. To end Rohrer's response letter, he mentioned that outside of this HRC complaint process, in May 2010, he met with SFUSD Superintendent Carlos Garcia and that they agreed that

HSA, with the assistance of legal staff would provide joint training to SFUSD staff explaining their role as mandated reporters and the role of and legal requirements placed on social workers conducting child abuse investigations. In addition, HSA Child Welfare Workers will continue to receive training on the principles of equal treatment and appropriate questioning that are consistent with HSA's mission to protect children from abuse and or neglect. I am confident that SFUSD's and our commitment to future trainings as needed, will address any issues raised in the Complaint.

Attached to Rohrer's response letter were three memos on how county agencies seeking federal "alien" foster care funding were to determine eligibility for undocumented youth. One of these memos was an "all county letter" dated June 15, 1999, Wesley A. Beers, Acting Deputy Director of the Children and Family Services Division of the Department of Social Services, California Health and Human Services Agency, provided information to all California county welfare Directors stating that the U.S. Department of Health and Human Services (DHHS) released a new policy interpretation providing guidance on how the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) affected Foster Care Program requirements "as they relate to alien children". It indicated that "aliens lawfully admitted for permanent residence, granted asylum (asylees), admitted as refugees, paroled into the United States for at least one year, whose deportation is being withheld, who are granted conditional entry, or who have been subjected to battery or extreme cruelty" were qualified to receive federal foster care benefits.

Additionally, some alien children who had PRUCOL status, or "permanent residents under color of law" status, were eligible for federal foster care benefits. In the case of PRUCOL, counties were required to submit a "G845S" form to the INS to determine eligibility largely hinging upon whether or not the alien was someone that the INS wanted to deport or not. If INS wanted to deport the person, they would respond to the submission by contacting the county notifying them of that fact. At the top of the G845S PRUCOL form was a note saying

The immigration and Naturalization Service (INS) provides a PRUCOL response for *entitlement purposes only* based on the information provided on this form. INS does not recognize PRUCOL as a legal immigration status; however, unless fraudulent information is knowingly supplied, or the applicant has an open felony criminal warrant, INS cannot use the information from this form for detention or deportation purposes.

This issue of the HSA routinely notifying INS to determine benefits eligibility was not questioned as Rohrer presented it as if they were complying with a mandate to determine benefits. Nor was the fact that the HSA might be routinely notified by immigration authorities following a PRUCOL benefits eligibility submission that a youth was ineligible and potentially deportable. What is interesting about this is that there was no law requiring the HSA apply for federal foster care benefits, an eligibility process which required a determination of deportability of a child. The City and County could have provided those benefits to the undocumented youth and avoided the whole INS determination process altogether for the youth as does the Department of Health with regard to providing local medical benefits for undocumented people who do not qualify for federal medical benefits due to their immigration status. However, the HSA Family and Children's Services Handbook's "Immigration and Child Welfare Practices" section (62-1 PRUCOL) was what really mandated HSA workers to apply for PRUCOL benefits. The policy section stated

The Protective Services Worker must apply for PRUCOL, for every child in Court dependency that is or may be an undocumented non-US citizen, within

30 days of the undocumented child/youth coming into care. [...] PRUCOL must be re-applied for each undocumented minor on an annual basis. Without an annual PRUCOL application, the county cannot utilize state funds to pay for foster care nor will the minors be eligible for full scope Medi-Cal benefits.[...] The intent of PRUCOL is for undocumented people to be identified as in the United States “under color of law. PRUCOL is not a tactic to identify and deport undocumented children or adults.

In this sense, the HSA itself, for financial reasons, not federal requirements, was mandating that it’s employees report immigration status information for *all* undocumented youth it encountered, bringing them “under color of law” with the idea that it was not a tactic for INS or ICE to identify and deport undocumented children or adults even though ineligibility meant that INS wanted to deport those people who they then had their addresses for thanks to HSA. The handbook policy also acknowledged however that deportation was still a possible outcome of the eligibility inquiry:

PRUCOL is not a separate immigration classification; and does not protect a youth from deportation if ICE chooses to do so. In order to claim State Funds for PRUCOL cases under State-only Foster Care, counties must submit form G845S, Document Verification Request to the USCIS [United States Citizenship and Immigration Services]. This should be done at the time of the initial eligibility determination and applies to the person whose basis for PRUCOL is “USCIS knows they are here and does not intend to deport them.” **The USCIS will contact the county if they plan to deport the person listed on the G845S. Otherwise, counties should keep a copy of the G845S in the case file as verification that the form was sent to USCIS. [...]**

When the Department of Homeland Security (DHS) received a PRUCOL verification form (G-845), it checked the Systematic Alien Verification for Entitlements (SAVE) database. SAVE, according to the HSA handbook

is a verification system designed solely for immigrants to receive social benefits. Its purpose is to aid benefit granting agency workers in determining a non-citizen applicant’s immigration status, and thereby ensure that only entitled non-citizen applicants receive federal, state, or local public benefits and licenses. It is an information service for benefit issuing agencies, institutions, licensing bureaus, and other entities. The DHS is by law prohibited to use any SAVE information and related information for removal proceedings based on civil immigration violations. **The information, however, can be used if there is a criminal violation.**

Pub. L. 99-603 article 121(c)(1) provided that “such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race,

religion, or nationality of the individual involved”

The HSA policy also indicated that “No sections can be left blank.” On the PRUCOL form were boxes for “birthplace” which included “country”, a line for “country of citizenship”. It also included a question asking “Do you have a Passport, visa, or other papers from your country of citizenship?” and “Have you ever been granted lawful permanent residence status in the U.S.?” each requiring the applicant to attach copies of their paperwork. The form asked for the first and last dates of entry into the United States, how the youth entered each time (with inspection, without inspection), and whether the youth received any entry documents. The form also asked if the applicant had ever been deported from the U.S, the dates of deportation and the city and state where the deportation occurred. The form also asked for the immigration status and address of immediate relatives including one’s spouse, mother, father, son, or daughter. Finally the form asked, “What would happen to the child if he/she were removed from the U.S. in the next 12 months?”. The options that the applicant could fill out were

- Can be removed with no detrimental effects
- Removal would be detrimental for the following reasons:
  - o No immediate relatives to return child to. Child would be unaccompanied/endangered
  - o Child can only communicate in English and the transition would be difficult
  - o No means of income/support for the child.
  - o Child would be separated from his/her siblings or relatives legally in the US
  - o Child would not have the financial resources to receive essential medical treatment.
  - o Other (explain):

The process for submitting a PRUCOL G-845S form to USCIS according to the HSA handbook was that the social worker forwarded the form to an HSA Eligibility Worker, who then would send the original to USCIS. The social worker would then, upon hearing back from the Eligibility Worker, start the one-year re-determination clock on the application and complete a case summary to be processed with the PRUCOL application. The social worker then made copies of the G-845S form and placed it in the youth’s case file with all supporting documents for benefits determination. The social worker would then send the originals of the G-845S form with all of the supporting documents and a “court report” to HSA's Foster Care Eligibility unit with the completed application packet. Once the packet was approved by Foster Care Eligibility, the funding for the youth would be shifted from “All County Funds” [San Francisco funds] to State Funding.

Under PRWORA, “Alien children” including PRUCOL children, who were placed with non-qualified alien providers were ineligible for federal foster care benefits until the child had resided in the country for five years however that requirement could be exempt if the child were a refugee, an asylee, an alien whose deportation was being withheld, Cuban or Haitian entrants, Amerasians from

Vietnam, or if the youth were placed with a qualified foster parent who was a U.S. citizen or someone with a qualified alien status. There was no durational residency requirement for the qualified alien foster care provider. This put the onus of verification of immigration status of both the youth and the foster care provider upon city and county workers such as the HSA' CPS social worker.

To verify eligibility of a youth for federal foster care funds, the U.S. Department of Justice issued guidelines<sup>578</sup> for county agencies. In all cases verification impinged upon a youth having a form of documentation that verified his status, not whether he or she answered questions about his or her immigration status in an interview. While the youth would need to present paper work with stamps or orders specific to his or her status, most statuses were proven by presenting Immigration and Naturalization Services (INS) Form I-551 commonly known as a "green card", or an unexpired temporary I-551 stamp in his or her foreign passport or on an INS Form I-94, an INS Employment Authorization Card or Employment Authorization Document, a grant letter from the INS Asylum Office, an order of an immigration judge granting asylum, or a Refugee Travel Document. The guidelines issued by the federal government did not include guidelines for interviewing undocumented children to determine immigration status through an interview process along the lines of what was conducted by the HSA CPS worker. The U.S. Department of Justice further stated, "counties should only verify the provider's status where the county is considering placing a qualified alien child who would be subject to the five year period of eligibility if placed with a non-qualified alien provider.

A second memo on the topic noted, "The California Department of Social Services (CDSS) would not support the placement of foster children with non-qualified alien providers due to the possible instability of such placement i.e. it may become necessary for such providers to leave the country on short notice." Cases involving placing qualified alien foster children with non-qualified alien providers, while ineligible for federal foster care benefits for five years *would however, "remain as otherwise eligible for state and county funded foster care benefits."* Local (county) foster care benefits could also be provided to non-qualified alien foster children.

### *HRC Mediation and Investigation*

An HRC mediation was then held on February 23, 2011 at the HRC office in San Francisco. Present at the mediation were the complainants – Abigail Trillin and Deborah Escobedo, HSA Executive Director Trent Rhorer, Deputy Director of Family and Children Services of the HSA Debby Jeter, and Deputy City Attorney Jennifer Williams. HRC Executive Director Theresa Sparks, Discrimination Manager Thomas Willis, and HRC staff member Lupe Arreola acted as mediators. The confidential discussion in the mediation led to no settlement of the dispute, and the HRC continued to meet with each of the parties separately over the course of *the next 5 months* in an attempt to reach a settlement, but the meetings were not successful.

In July 2011, a year after the complainants first lodged the complaint, the HRC determined that the parties could not agree to a settlement. As a result, the HRC decided to formally end the mediation and began an investigation, which would

lead to the issuing of a Directors Finding report.

The HRC's investigation, led by a new HRC investigator and attorney Zoë Polk, centered on the following evidentiary questions:

1. Whether HSA denied or delayed services to the minor on the basis of actual or perceived race, color, national origin or place of birth.
2. Whether the CPS worker's questioning of the youth amounted to harassment
3. Whether HSA delayed or denied services to the youth based on actual or perceived immigration status
4. Whether HSA requested information about the immigration status of a minor and his mother.

The investigation began with a review of the allegations, a review of the HSA's response, and a review of the documents that both parties provided to the HRC. The allegations of the complaint were that the CPS worker failed to do his or her duty to determine if the youth was suffering from neglect and in need of child protective services because of the Youth's perceived race, ethnicity, color, place of birth and national origin. Further, the complaint alleged that the CPS worker knowingly requested information about and conditioned services to the youth and his mother on the basis of their immigration status and conditioned services on the basis of the questions he or she asked.

Following the review of the allegations, HSA responses, and documents provided, the HRC then issued a draft investigation plan to the complainants for their comment, took their feedback, and then sent the investigation plan to the HSA. The HRC investigator then conducted interviews of the youth, the youth's mother, a program manager and former case manager at Larkin Street Youth Services who had complained previously about the same CPS worker, the HSA Ombudsman, the International High School Principal, a CPS intake manager at the HSA, and the CPS worker's supervisor. The CPS worker was on an indefinite leave from the HSA at the time of the investigation so could not be interviewed.

### *HRC Issues Findings and Recommendations*

Following the conclusion of the investigation, the HRC completed a Director's Finding report in December 2011 and forwarded the report to the HSA, the complainants, the Mayor, and Board of Supervisors. The HRC found that there was not enough evidence to prove that the HSA delayed or denied services to the Youth based on his "actual or perceived race, color, national origin or place of birth". While it was undisputed that the HSA did not take the youth into custody and provide him with child protective services, the HRC was unable to obtain information about why exactly his case was denied due to HSA's confidentiality requirements which denied the HRC access to the appropriate case files. While the HRC acknowledged that the CPS worker's assumptions about the youth being undocumented dominated the questioning, the HRC didn't have enough evidence to prove that this, what he was



wearing, or even if what the CPS worker thought were his “bad decisions” were the reason for denying him services or that they were based on assumptions about his race, ethnicity, color, national origin or place of birth.

The HRC also found that while it was normal for the HSA to ask questions about immigration status for the purpose of filling out certain forms, certain questions that the CPS worker asked the youth - for instance “Who contacted your mother when you arrived, you or the coyotes?” - documented by the youth’s teacher, Principal, and which were repeated by the youth and his mom were not on these forms.

While the HRC couldn’t prove the reason for the youth’s case being closed, they did find that the youth and his mother received “*disparate treatment* on the basis of his actual or perceived national origin and place of birth”. The evidence that the HRC gathered indicated that the CPS worker perceived and was informed that the youth and his mother were not U.S. nationals or born in the U.S. and that they suffered harassment because of the questions the CPS worker asked. In particular, the HRC found that the questions investigating the youth’s immigration status and method for immigrating to the United States would lead any “reasonable undocumented youth to feel harassed by the tone and content of those questions.” The HRC found that the youth’s physical responses of putting his head down and mumbling to himself indicated that he felt harassed by the questions “and thus, suffered adverse action.” Additionally, the youth’s mother felt harassed by the questions that the CPS officer asked her, leading her to call the IHS teacher in tears right after the interview, and so the HRC found that she “thus suffered adverse action.” The HRC found that the youth and his mother were only asked these kind of questions because of their actual or perceived foreign national origin and place of birth and that the questions wouldn’t have been asked had they been U.S. born citizens.

However, the HRC didn’t find enough evidence that the HSA conditioned services based on the youth’s actual or perceived immigration status. While the HRC found that the CPS worker did have the answers to the questions he asked about how they crossed the border, whether or not they were undocumented, whether they were stopped by immigration officials, and who they contacted when they arrived in the US, when he made his determination to close the youth’s case, the evidence didn’t amount to a determination that immigration status was the reason for closing the case. But the HRC found that while the worker asked questions about immigration status that were rather routine and which were for the purpose of “familial reunification,” he also asked non-required questions such as “How did you cross the border? Who contacted you when you arrived? And were you stopped by the Immigration official in the U.S. or in other countries?”

The HRC did find that the HSA did request information about the immigration status of youth and his mother in violation of Chapter 12H of the Administrative Code. The HRC found that the questions about immigration status that went beyond the required and routine questions provided on HSA’s forms

had no bearing on whether Youth was being neglected or needed to be taken into protective custody. The COMMISSION FINDS that [the CPS] Worker could

have obtained information about Youth's living situation and health without requesting information about his immigration status. The COMMISSION FINDS that by conducting the interview in this manner, Worker undermined Youth and IHS' school official's trust of HSA and thus, detracted from their ability to promote the well being of Youth.

Finally, the HRC pointed out that the sanctuary ordinance prohibits San Francisco City and County employees from "requesting information about or disseminating information regarding the immigration status of any individual or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, *excepted as required by Federal and State statute, regulation, City and County public assistance criteria or court decision.*" While the HSA had responded to the complaint and HRC questioning that several statutes and case law which outlines the responsibilities of social workers when interviewing and/or taking a child into protective custody included knowing the whole situation of a youth for making appropriate placement determinations, the HRC reviewed those laws and found that "none of the cited laws place a requirement on workers to ask Youth or their families about their immigration status."

As a result of their findings, the HRC recommended to the HSA that they meet with San Francisco Unified School District officials and IHS officials to discuss the procedure that "mandated reporters" - teachers who are required to report abuse or neglect of a child - follow when reporting abuse or neglect by an HSA worker, and the procedures that HSA supervisors should follow when they receive a complaint about abuse or neglect from a "mandated reporter" about an HSA worker. They recommended that this meeting should also discuss a plan for communicating these procedures to staff. The HRC also recommended that the HSA make it standard policy to provide youth and their families with the contact information for the HSA Ombudsperson who is in charge of receiving complaints at initial interviews with those youth and their families.

The HRC also recommended training for HSA staff in working with undocumented families. A HSA had a pre-existing relationship with trainer Yali Lincroft, an outside immigrant advocate working in the child welfare system, the HRC recommended that the HSA work further with Lincroft and the complainants Trillin and Escobedo to draft a training that addressed the issues that surfaced in the HRC investigation.

While the HSA did routinely ask questions regarding the immigration status of youth during intake interviews for the purpose of providing them access to services and benefits of the state and federal government, the HRC recommended that CPS workers

- a. Advise youth and their families that San Francisco is a sanctuary city
- b. Advise youth and their families why they are asking about immigration status
- c. Advise youth and their responses to those questions will not be reported to immigration officials
- d. Delay asking questions about immigration status until the worker has

determined that child will be taken into protective custody and thus eligible for PRUCOL.

Finally, the HRC recommended that the HSA put together a review task force with community input to revisit the policy on asking questions regarding immigration status to advise the HSA on when the questions should be asked, what questions should be asked and whether “non harassing alternatives exist.”

After not hearing from the Human Services Agency about the Directors Findings and about what kind of corrective action the HSA might have taken, HRC Executive Director Theresa Sparks followed up and sent a letter to HSA Director Trent Rohrer on July 17, 2012, nearly seven months after issuing the report. In her letter, Sparks mentioned that

In addition to working with HRC to resolve this matter, your staff also graciously agreed to work with recommended trainers to produce a new training for HSA employees based on the Sanctuary City ordinance. As I understand it, even before the finding was issued, HSS staff members including Deputy Director Debby Jeter and Training Manager Kathleen Kennett were working with Yali Lincroft to develop a training for the Family and Children’s Services Department. This training was to focus on strengthening HSA employees’ skills on working with all of San Francisco families including undocumented families. [...] **I’d be very interested in obtaining an update on the development of this training and ascertaining if there are ways in which HRC staff can assist with its implementation.**

It is uncertain what if anything happened at the Human Services Agency as a result of the HRC sanctuary violation investigation.

### Conclusion

This chapter explored the power of the HRC and the OCC to investigate and assist city departments in bringing their city employee practices that are out of compliance with the sanctuary ordinance into compliance. This power however, is restricted to conducting investigations, making recommendations, and providing assistance and support in re-training staff; however, it does not effectively mandate department heads who are appointees of the Mayor, to take corrective action recommended by these investigatory agencies. The symbolic power of the HRC or OCC finding of non-compliance may lead to some form of action, however, as is apparent from immigrant testimony it is not effective in assuring all residents regardless of immigration status that San Francisco truly is a *sanctuary city*.

## CHAPTER 15

### CONCLUSION: REFLECTIONS ON SANCTUARY-POWER

This dissertation has argued that while most accounts in the academic literature and the media portray sanctuary practice as antithetical to the function of government, as the weakening of the federal sovereign power to decide who may legally remain in a territory, as something which produces outside spaces lacking government oversight, or as some form of resistance to federal power in general, in fact sanctuary practice in San Francisco is government practice consistent with the current arrangement of federal power in a border-filled world. As such, governmental sanctuary practice aims to make the municipal-state-federal governmental system function better. This dissertation argues that in San Francisco, the power struggles to create, modify, and implement governmental sanctuary practices through the legislation of sanctuary city policies have led to the creation of a form of governmentality – *sanctuary-power* – that guides the direction of governance and immigrant-related social movement organizing in a manner that further integrates municipal, state, and federal government apparatuses around the notion of the “sanctuary city” and a subject population known as “all residents regardless of immigration status.”

Sanctuary-power draws various seemingly contradictory governmental prerogatives into a single strategic relation. In so doing, sanctuary-power safeguards the dominance and legitimacy of these various government bodies in the face of perceived potential crises caused by the presence of unauthorized immigrant city residents. Sanctuary-power attempts to balance on the one hand, the needs of the municipal government to serve and politically represent all residents regardless of immigration status so that city departments remain effective and operable, and on the other hand, the demands of the federal deportation regime and federal benefits programs which exclude undocumented immigrants and police national borders.

The regime of governmental sanctuary policies and practices that exercises sanctuary-power does not only protect the confidentiality of most undocumented immigrants that it serves but also allows city employees to follow codified protocols to initiate the federal deportation of a subset of the same population it protects. In deporting these individuals it deems “criminals,” sanctuary-power legitimates the assumptions that deportation is an effective crime-solving or crime-preventing tool. These particular immigrants are deemed by sanctuary city policy, protocol, and executive decree, to be un-deserving of sanctuary.

Therefore, as was stated in the introduction, this dissertation does not posit a unitary, harmonious, rational governmental logic, which is elaborated through the exercise of sanctuary-power, but rather a variety of logics in relation, which in some cases seem complimentary and other cases seem contradictory. Again, these logics hinge around the discursive technologies “sanctuary city” and “resident regardless of immigration status.” Given the historical analysis presented in this dissertation, the logics or strategies related in the exercise of sanctuary-power then are six-fold: to create the sanctuary city through serving and providing benefits to all residents

regardless of immigration status well, fostering trust and diminishing the fear of all residents regardless of immigration status, politically representing all residents regardless of immigration status well, judging and providing justice for all residents regardless of immigration status well, assisting in deporting undocumented residents “well,” and to therefore link the practices, programs, funding streams, and criminal and immigration-related information systems of the municipal government with the state and federal government well.

This last logic seems to be the most important one paradoxically. Sanctuary-power, through the elaboration of sanctuary city policy, clarifies how municipalities might relate to the federal deportation regime by defining the conditions when it is appropriate and when it is inappropriate to initiate the deportation proceedings of undocumented residents. It facilitates city authorities responding to ICE requests for assistance albeit in a manner which minimizes the challenges that creates for achieving municipal goals and maintaining legitimacy in the eyes of the immigrant public.

While legislative battles employing the discourse of “the sanctuary city” to fight back against federal attacks on immigrants have included a degree of symbolic municipal resistance to the state and federal government, by and large, the development of sanctuary city policies has been the product of a tense collaboration between city officials, immigrant advocacy organizations, religious organizations, federal immigration enforcement authorities, federal prosecutors, and state criminal justice planners. This collaboration has drawn these agencies and private actors together into a dynamic field of power and into local roles within a national governing apparatus.

At the same time, the historical analysis of the development of governmental sanctuary policies and practices shows that the relationship of governmental sanctuary and federal immigration enforcement has been a dialectical one. The initial crisis that gave birth to the development of San Francisco’s first governmental sanctuary practices was the sudden presence of undocumented refugees from Central America who needed not only private support but also municipal welfare services and benefits in order to safeguard the health and safety of all residents of San Francisco. However, what led to the development and entrenchment of sanctuary city practices was actually the ever increasing and evolving attack on these undocumented residents by the federal immigration enforcement agencies. With each attack and each attempt of the INS and later ICE to incorporate city employees in the process of detaining and deporting undocumented residents, immigrants and their advocates responded by working with city officials to modify city law and department protocols to ensure that the participation of city employees in immigration enforcement would never happen the same again. They weren’t successful at stopping all city employee cooperation, but over the 25 years discussed in this dissertation, they created more and more regulations upon city employee conduct. In the process, immigrant advocates and city officials experienced the real pain and heartache of immigrant families who were torn apart due to city cooperation in immigration enforcement. These actors educated themselves into the workings of the federal deportation regime, and in turn promoted a culture of governmental sanctuary among city officials in general. Department staff who

worked with undocumented immigrants were not always in agreement, but to be an official, not only did you have to at least feign support for sanctuary, but in some cases – for instance with regard to the Chief of Police position - support for sanctuary city policies was a requirement of all new job applicants. This requirement did not preclude that same Police Chief being in support of selectively using the deportation regime to fight crime as was the case with Chief of Police George Gascón.

Without the attacks on immigrants in the city by federal immigration enforcers, the sanctuary city and its sophisticated mechanisms would not have developed in the manner that they did, nor would ad hoc immigrant rights coalitions such as the San Francisco Immigrant Rights Defense Committee come together and formalize a unified anti-deportation policy advocacy wing of the immigrant rights movement. On the other hand, the fact that the city developed those governmental sanctuary protocols forced the INS and later ICE to also work around those policies as was apparent in Chapter 5 when the regional director of ICE sought the assistance of Mayor Newsom to convince the Sheriff to allow ICE officers increased access to the jails. That is not to say that sanctuary policies led to ICE's increasingly more heinous raid tactics or other enforcement activities, but rather that ICE's strategies for detaining and deporting immigrants in the city at least needed to take the city's sanctuary policies into account. In other words, in San Francisco, ICE tactics and sanctuary city protocols developed together.

All of this is to also say that sanctuary city is not aimed at undermining federal immigration enforcement even if various actors involved in its development wanted to see a total end to city-assisted deportations. While in some instances city officials fight back against federal immigration enforcement activities through passing symbolic resolutions against immigration raids, governmental sanctuary practices ultimately do not interfere with the practices of ICE beyond non-cooperation as outlined in sanctuary city policies. Sanctuary-power and governmental sanctuary practice, is not about defying deportation or the federal government as a whole, but about ascertaining when it is appropriate to engage and when it is not. That is to say that sanctuary-power calls into question the seemingly taken for granted assumption that all city employees should *always* assist ICE in any way they can in deporting anyone who is undocumented for any reason whether ICE asks them to do that or not. What's interesting is that this is usually what sanctuary cities come under attack for when even ICE doesn't contend that cities should be taking this approach – ICE sets priorities of who they should target just as sanctuary cities set their own priorities for who they should report to ICE.

The events that occurred in the summer of 2008 when the Mayor authorized the JPD to report all youth booked on felony charges at Juvenile Hall to ICE also highlights how the Executive Branch of the municipal government and ICE use each other for meeting each of their respective goals. While ICE and the U.S. Attorney aimed to enlist local police officers, Sheriffs Deputies, and probation officers in their projects to detain and deport undocumented immigrants, the Mayor's Office of Criminal Justice and the Juvenile Probation Department used ICE to rid the city of undocumented youth they saw as repeat criminal offenders. This municipal use of the federal deportation regime sought to legitimized the Mayoral discourse that San

Francisco was law-abiding, safe for citizens, tough on crime, that it did not extend sanctuary to criminals, and therefore, that it was reasonable.

As a result of these various factors, this dialectical dynamic between the sanctuary city and the federal deportation regime makes it difficult to claim that sanctuary-power expresses a form of resistant and autonomous localism, or that it produces abject spaces outside of federal control. What is glaringly apparent is that sanctuary city policy is not “local immigration policy” created in a vacuum of federal inaction on immigration reform. Sanctuary city policy formation and implementation history shows that despite it being legislated by the San Francisco Board of Supervisors, sanctuary-city policy was drafted over the years by local, state, and federal authorities together; has aims which serve the municipality, the state, and the federal government; the implementation of the policies occur with the “expert” input not only of local immigrants, immigration lawyers, and city officials, but also with the heavy and dominating input of the U.S. Attorney and ICE regional directors stationed at the ICE detention facility in downtown San Francisco; and finally the practices of city employees who implement sanctuary city policies are heavily scrutinized and investigated by city, state, and federal attorneys. To this degree, “policy” is not the sole prerogative of those who legislate that policy, but rather the axis around which a wide variety of actors engage in political battle. One thing is certain: there is no absence of “the state” in the “sanctuary city.”

This is not to say that there is governmental or more broadly “state” unity. Each of the agencies involved in the battle over sanctuary policy has its own tactics, power base, interests, and missions that they are pursuing, often in conflict with those of the other power players in the field of power. Contrary to conservative media pundits who would like to paint San Francisco as a monolithic radical leftist government that defies federal law through its enactment of sanctuary city policies, this dissertation shows that the municipal government – its officials, its agencies, its commissioners, its workers - is divided with regard to the creation and implementation of sanctuary city policy and practices. Governmental actors use laws and legal discourse, executive decrees and waivers of client legal confidentiality, the allocation of funds and threat of denying funds, appointments, information inquiries, and press conferences to fight each other to kill a policy, amend a policy, water-down and neutralize a policy’s affect, or outright refuse to implement policy.

In another sense, sanctuary-power in San Francisco exposes deep divisions between the main branches of government. Sanctuary-power was exercised through the practices of the Legislative Branch of government protecting or restoring the authority and determination-making abilities of the Judicial Branch with regard to the creation of undocumented youth dispositions. This occurred as a result of the Executive Branch’s unilateral actions in May and July 2008 that undermined Judicial Branch authority. In these instances, the Mayor and the Juvenile Probation Department began to unilaterally and without Juvenile Court approval, report undocumented youth to ICE when they were booked at Juvenile Hall on felony charges. They did this to “safeguard the sanctuary city policy” as a whole and to satisfy U.S. Attorney Joe Russionello who was threatening JPD with prosecution on federal harboring and transporting charges.

In a sense, this denied the California state Juvenile Courts the ability to make dispositions ordering rehabilitation plans in a youth's best interest as well as plans for what to do with the youth after they completed their sentences and rehabilitated. Prior to the policy change, Juvenile Court Judges could decide among a variety of youth dispositions that served a youth's best interest under state law - for example, putting them in out of home placements and then releasing them to their parents following the end of their sentence. After the policy change in July 2008, with the JPD officers refusing to do anything but hold undocumented youth for 30 days in Juvenile Hall and then release them to ICE, the Juvenile Court was faced with a situation of making dispositional orders that were in the youth's best interest but which put JPD officers in contempt of court if they refused to carry them out, or issue dispositions which were solely focused on deporting the youth without regard to their best interest.

Legislating the youth sanctuary ordinance amendment to delay reporting youth to ICE until after they were found guilty of felonies aimed to deny the Executive Branch the authority to usurp that Judicial power, placing it back only partially in the hands of the Judicial Branch. Full restoration of that Judicial Authority wouldn't have occurred even if the youth sanctuary amendment would have been implemented because reporting undocumented youth after adjudication of felony cases would have still placed a requirement on the Juvenile Probation Department - the Executive Branch- to report youth despite Juvenile Court Judge dispositions at that point. For instance, had a Juvenile Court Judge ordered a disposition for a child found guilty of a felony to serve time at Log Cabin Ranch and then be released to his family, Juvenile Probation officers would have still been required under the sanctuary ordinance to defy that order and refer them to ICE after they had been found guilty and before they had served their sentence. Then JPD would have transferred custody of that youth to ICE after serving that sentence at Log Cabin Ranch rather than releasing the youth to their family.

This latter point calls attention to the real target of sanctuary-power. While most academics portray sanctuary policies and practice to be a regulation of immigrants and immigrant spaces, sustaining their deportability indefinitely, this author contends that the target of sanctuary-power and sanctuary policies is actually the government itself; that is, the practices and work culture of city employees. They are the object of regulation, discipline, reform initiatives, re-training, and thorough compliance investigations by sanctuary city watchdogs. These city employees and officials are the subjects and objects of sanctuary-power, enacting governmental sanctuary practices and policies and being acted upon and albeit minimally disciplined when they don't fall in line with the mandates of those policies. As was already mentioned, sanctuary-power, like liberalism, is a form of government of the government - a disciplining of the government itself. Sanctuary-power is a form of governmentality wherein immigrants and their advocates, as well as immigrant-supportive government officials, demand that the government work upon itself to improve itself so that it can serve a mixed-status city population better and work with the state and federal government better in the midst of and in cooperation with intensive federal immigration enforcement activities.



Nonetheless, the implementation of governmental sanctuary practice is not the exercise of totalitarian top-down control, nor does it succeed in achieving what the individual actors that implement it set out to do completely. Sanctuary city policies and protocols don't determine how city employees actually behave in San Francisco – many city employees ignore the policies, interpret them to mean something different than what the legislators or reformers intended them to enact, and as a result, city employees improvise in the moment as they engage with residents. Sanctuary policy and protocols are one tool of the government to manage their employees and work upon their behavior, but ultimately, managers and policies are not the only agents in producing behavioral outcomes. Nonetheless, policy and executive directives from bosses do have real force and defying those policies, protocols, and executive decrees can land employees in progressive discipline processes under their union contracts, can get department heads fired, and can cause massive national outcry incited by the media. That's to say that while policy and governmental strategic logic don't determine the manifold outcomes of the power struggles in the innumerable sites of the system, they exert a pretty compelling force which has a real affect on the direction of where the resources of the city are placed and what kinds of activities resources are used for.

Further, we can conclude that sanctuary-power does not dictate the form of resistance or policy advocacy undertaken by community coalitions such as the San Francisco Immigrant Rights Defense Committee. Though this coalition does couch their policy advocacy in terms of modifying city employee practices which are regulated by the sanctuary city ordinance and other related policies, the fount of their resistance to the federal government involving local employees in immigration enforcement activities comes from 1) their affective responses to daily experiences representing and serving immigrant families that have been destroyed by immigration enforcement 2) their experience interacting with city agencies which are rendered dysfunctional due to the agencies' involvement in immigration enforcement 3) their understanding of constitutional law, immigration law, and immigration enforcement procedures 4) their religious convictions and 5) their sense of ethics and desires for the realization of the "sanctuary city" and 6) their creativity in thinking up new modes and methods of activism, as well as new worlds imagined through communications strategies. Modifying the sanctuary ordinance then is just one of many strategies that the coalition uses to stop deportations and family separations. They also use media campaign tactics, public demonstration practices, popular education, and other forms of popular pressure especially when such legislation is ignored by the Executive Branch. Much of their resistance practices do not emanate from the municipal, state, or federal systems of government, however, they emanate from and contribute to the exercise of sanctuary-power. Nonetheless, accessing a repository of resistance practices and renewing them in a new context does not amount to governmentality *determining* how such resistance is enacted, nor does it reduce the resisters to mere cogs in a system replicating itself. While these systems do facilitate forms of resistance such as policy reform and litigation, it would not be correct to say that sanctuary-power determines their resistance. Rather, their resistance makes use of a variety of general community organizing practices as well as governmentality provided

resources. By governmentality provided resources, I refer to the methods, knowledge, tactics, identities, and modes of speaking employed historically by sanctuary city organizers that are passed down organizationally through the years to younger generations of organizers. Some immigrant community resistance methods operate according to policies codified in governmental systems – for example collecting signatures for ballot measures - however their resistance also generates new policy, which affects the exercise of sanctuary-power. This resistance modifies sanctuary-power’s aims, producing new practices and disciplining new sets of governmental actors in new governmental domains as can be seen during the *Sanctuary City Initiative* illustrated in Chapter 4. Said differently, the field of power and exercise of sanctuary-power - the way of governing underpinning this regime of governmental sanctuary practices – affects and is affected by the coalition’s resistance practices.

However, there is always a remainder or excess in resistance that policy advocacy can utilize to develop more policy and from which governmentality transforms as it comes to codify and thereby make legible this excess. However, such excess does not come from a space outside of governance, from an abject space, nor does sanctuary-power produce such spaces. As we see from the history of sanctuary, the resistance and excess which forced transformations to sanctuary-power and the regime of sanctuary practices came not only from SFIRDC, but from other governmental apparatuses – other highly regulated systems of control such as ICE and the California state Office of Criminal Justice Planning. These forms of resistance emulate from other governance apparatuses (for example, federal security apparatuses), linking them to sanctuary-power.

Resistance forms an integral part of the field of power, part of the way of governing, and part of the dynamics of sanctuary-power. The analytic sanctuary-power then does not deny agents of resistance the freedom to develop strategies that don’t emanate from the governmental projects or governmental logic that already exists. This is the very essence of government in motion – a way of governing which is constantly battling with forces, projects, and resources from outside of its grasp of control, attempting to incorporate those competing forces so as to use them and harness them for the governmental project’s growth, expansion, and dominance. In this sense, the exercise and growth of sanctuary-power and the domain it manages, needs the forces of resistance to confront it and impute it with new solutions to new problems aided by new technologies. Such a process whereby governmentality and regimes of practices encounter and utilize confounding forms of resistance and subversive knowledge, as well as other governmentalities and regimes – becomes legible and coherent through policy formation. Hence, within policy born of the battle between such forces remain the traces of these battles as well as the contradictory logics and practices reflective of the interests of these forces.

However, if resistance is successful, policy-formation is only one achievement. Policy implementation depends upon a political field of actors and resources that move with the inspiration policy provides. Without the constant vigilance, and non-codified, non-conventional pressure tactics, which are applied to get governments to enforce policies, policies remain ineffective state abstractions,

which can be forgotten. Policy therefore depends on power, on forces that cannot be entirely articulated, feelings which cannot entirely be analyzed or expressed in a systematic or coherent way in the present. This is not to insinuate that these forces and feelings remain in some categorically abject and forever ungoverned space or that they will not be codified and rendered intelligible or coherent later – that is the very work of expanding policy formation into new domains. However, prior to codification, these non-legislated forces too are regulated to a certain degree, just not by current abstract policy schematics. Policy therefore is more of a locus for action – something that inspires people as a reference point projecting them in a general direction rather than merely a punitive, disciplinary, or limiting epistemological horizon for imagining possible forms of conduct. When a multitude of actors interpret and enforce policy, they generate practices, visions, and ethics that exceed the abstract scenarios that policy legislates. Again, this excess created through implementing policy doesn't jut into or create an ungoverned space as much as it exists in a manner that has not yet been fully represented in abstract policy visions, discourse, and texts.

The study of sanctuary-power and the anthropology of sanctuary city policy is comparative work that has the potential also for contributing to the now extensive literature on the anthropology of the state, the anthropology of policy, and the anthropology of immigration enforcement by illuminating the manner in which local governments through sanctuary city policy in various locations further legitimize their authority in a globalizing world. The study of sanctuary cities provides anthropologists, historians, sociologists, geographers, and political scientists a window into how cities take on the transnational prerogatives of immigration control in a manner palatable to progressive constituencies, as well as a window into the power-dynamics of cities, states, and nations that attempt to govern transnationally.

What has yet to be thoroughly studied is how such a case study like San Francisco's compares to the struggles over sanctuary city policies in other localities in the United States and in other countries such as Canada where immigrant movements and the governmental actors they engage have struggled to create and implement their own sanctuary policies. Further, this study illuminates the multiple manners in which the state incorporates the practices and discourse of non-state actors and inverts them to achieve at times contradictory goals. A comparative study of the power struggles over sanctuary city policy will illuminate these various forms of liberal, progressive state co-optation.

Needless to say, sanctuary city in San Francisco is a forever-unfinished governmental project. Seeing that much of the power of governmental sanctuary is symbolic and unenforceable as we saw in Chapter 14, it serves as a beacon or guiding principle aimed at a moving target. The utopian vision of a sanctuary city where all residents regardless of immigration status trust the government without fear of deportation and who regularly access public services when they need them will not be fully achieved anytime soon. Nonetheless, this vision is important for city officials and sanctuary city activists as they make decisions with how to manage emergent scenarios and crises, attacks on immigrants, and on re-imagining the

administration of city government. As such, like citizenship, the battle over governmental sanctuary practice and municipal deportation practice – that is, the exercise of sanctuary-power – will be fought over as long as national borders and internal bordering practices exist.

## APPENDIX

### Methods, Data Analysis, and Overview of Research Sites

#### Methods

Research for this dissertation lasted for two years from July 2011 through July 2013. The methods I employed to understand how power functions in this sanctuary city were primarily historical, journalistic, and anthropological. I conducted archival research and semi-structured interviews on the history of the sanctuary movement and of governmental sanctuary in the 1980s and 1990s which led to the creation and implementation of San Francisco's sanctuary city legislation. I conducted semi-structured interviews on the legislation, implementation, and enforcement of sanctuary in the city government, and I collected documents and videos from city government agencies, non-government research organizations, and community based organizations focusing on sanctuary-related policies. Lastly, I conducted participant observation in a variety of government agencies, community based organizations, with the San Francisco Immigrant Rights Defense Committee, and in the undocumented Tzeltal-Maya immigrant community itself. Data was collected in hand-written notes taken on participant observation fieldwork and in interviews, notes typed on my laptop computer, and in audio recordings of semi-formal and formal interviews.

*Archival research and semi-structured interviews on the history of the sanctuary movement and governmental sanctuary in the 1980s and 1990s*

In the course of this fieldwork, I engaged in background research on the history of San Francisco's sanctuary city status and the sanctuary movement of the 1980s that worked with the city government to pass a variety of resolutions and ordinances creating sanctuary for undocumented refugees. This research aimed to identify the city departments that were involved in legislating sanctuary, enforcing sanctuary, and enacting sanctuary in the past so as to identify the departments that may continue to be most involved in implementing sanctuary in the present.

To begin this research, I identified five archival collections at the Graduate Theological Union Archives in Berkeley with source documents from the San Francisco Sanctuary Covenant, a central council composed of the leaders of the sanctuary churches and the Archdiocesan refugee resettlement committees organizing parishes to provide sanctuary to undocumented refugees coming to San Francisco in the 1980s and 1990s. I reviewed over 10,000 documents and photographed all that were relevant to piecing together the history of the San Francisco sanctuary movement, a movement that until a publication of this author (Mancina 2013) had not been written about. Additionally, I consulted the archives of the Catholic Archdiocese of San Francisco, the convent of the Dominican Sisters of San Rafael, and the Presentation Sisters of the Blessed Virgin Mary, the archives of now defunct Catholic Archdiocese's newspaper, *The Monitor*, at the University of San Francisco, and the Mission District Latino newspaper *El Tecolote*.

After I reviewed the sources that I had collected and identified the churches that were involved in the movement, I contacted all of the congregation offices of the congregations that were involved to request interviews with sanctuary organizers and to review archived documents from their sanctuary work. I received a positive response from St. Teresa's Parish, and was granted an interview with one of the religious sisters who organized the congregation to do sanctuary work. I interviewed her in her home in San Francisco about the history of the parish's sanctuary work and her involvement in organizing the sanctuary movement's City of Refuge city resolution campaign. This resolution was the first to make San Francisco a "sanctuary city" wherein city employees were forbidden from inquiring about immigration status in the course of city service provision. The sister then provided me the contact information for the main organizer of the sanctuary movement who organized all of the congregations and who coordinated the City of Refuge resolution campaign in San Francisco and in Berkeley. I then contacted this organizer to request an interview and met her in her home in San Francisco. This organizer provided me a history of the sanctuary movement as a whole in San Francisco, San Jose, and Berkeley, explained its roots, and allowed me to photograph her documents from the City of Refuge resolution (1985) campaign. She also advised me to interview three main city employees working in the offices of District Supervisors who had worked on introducing and passing the legislation. While she could not provide their contact information, I was able to obtain their information online, contact them, requested interviews, and interviewed them over the phone because they were no longer living in San Francisco. This main sanctuary organizer also passed my request for interviews along to three other sanctuary organizers who had become central figures in the movement (two who had worked with Catholic Charities to staff and organize the City of Refuge campaign and one who worked in the Catholic Parish St. John of God). I was granted a joint in-person interview in my home, and a follow-up phone interview with one of the organizers.

I then reviewed online archival documents of all of the meeting minutes of the San Francisco Board of Supervisors from January 1, 1980 through August 7, 1993, the period of time when the San Francisco Sanctuary Movement was actively working with the city government to provide sanctuary to undocumented refugees and immigrants. I did this by means of accessing the documents in HTML format and doing key word searches for a variety of terms that were used in the discourse surrounding refugees and sanctuary at the time. Keywords used were the following: sanctuary, refuge (also covering refugee and "city of refuge"), Salvador, Guatemala, migrant (also covering immigrant), migrat (covering migrate and immigration), Central America, undocumented, alien, Sammon (a sanctuary movement leader and city commissioner), Human Rights Commission, day labor, asylum, Purcell, catholic, Archdiocese, Teresa, church, Moriarty, Archbishop, Quinn, and Ambrogi.

I also consulted the archives of the San Francisco Human Rights Commission, a Mayoral advisory commission on which one leader of the sanctuary movement worked as a commissioner and who brought attention in the late 1980s to the rights of undocumented immigrants and violations of the 1985 sanctuary city resolution and the 1989 sanctuary ordinance. I collected all commission meeting minutes and commissioner packet materials that mentioned undocumented immigrants, the

sanctuary resolution and ordinance, and implementation of sanctuary in city departments.

With all of these documents, I constructed a timeline of the sanctuary movement and city government legislative action around undocumented refugee rights and sanctuary. This document includes excerpts from the source documents, major event dates, and organizations involved.

### *Document Collection*

I conducted a wide variety document collection activities in order to grasp the wide breadth of how thousands of government workers implement and enforce governmental sanctuary protocols in San Francisco and how undocumented immigrants experience accessing city services and engage in political activity in a sanctuary city.

I submitted via email and mail, public records requests under the city's "sunshine ordinance" for department policies and procedures, department general orders, and training materials relating to the Sanctuary Ordinance from all "Tier 1" organizations, departments and agencies in the city government that most directly interact with the public and who were specifically named in the city's Language Access Ordinance for their work with immigrant populations. This includes, the Public Defender's Office, the City Attorney, the Police and Fire departments, the Sheriff's Office, the department of Public Health, Juvenile and Adult Probation departments, the Human Services Agency (HSA), 311, Department of Emergency Communications, Department of Elections, Department of Parking and Traffic, the Rent Stabilization Board, and the Department of Public Transportation. I obtained in response, department policies and materials from the Fire, Police, and Juvenile Probation departments. After having established contact with one of the trainers of the Human Services Agency's child welfare department, I was able to obtain trainings given in 2008 on providing HSA services to undocumented families. The remaining city departments notified me that they had no such policies or training materials. However, through a contact in City Hall, I obtained department-specific sanctuary policies and training materials developed by the city departments in 2007 and 2008 for the Airport, 311, Department of Emergency Management, Human Services Agency, San Francisco General Hospital, San Francisco Unified School District, Sheriff's Department, and the Office of the Treasurer and Tax Collector. These were created as part of the Sanctuary City Initiative in response to Mayor Gavin Newsom's executive directive to all departments to create sanctuary city policies and to implement them through trainings. From a contact in the San Francisco Immigrant Rights Defense Committee, I also obtained over a thousand public documents that the coalition had requested through a sunshine ordinance public records request to the Mayor's Office and the Juvenile Probation Department for correspondence of department heads between themselves and with federal authorities regarding the Mayor's July 2008 JPD youth ICE referral policy change. I used these documents to reconstruct much of the political maneuvering that was occurring during that the summer of 2008 which was included in Chapter 5.

The meeting minutes of city commissions are posted online on the city's website and often so are the transcripts of the meetings. I collected from the San Francisco government website all Immigrant Rights Commission documents relevant to undocumented immigrants and sanctuary city issues, including meeting minutes and hearing scripts, a summary of recommendations to Congress for Comprehensive Immigration Reform, letters from the commission to city departments and other government entities, and all annual reports on the implementation of the Language Access Ordinance, a law which mandates all city agencies to provide translation services and translated forms for immigrants in certain circumstances.

I collected all San Francisco Human Rights Commission (HRC) sanctuary city related reports, letters, meeting minutes, and other documents posted on the commission website. I reviewed all meeting minutes of the HRC LGBTQ Advisory Committee (AC), and made a document of all LGBTQ immigrant issues and sanctuary issues that the AC has worked on over the past 10 years. Additionally, one HRC staff member who works on sanctuary issues, provided me documents (via email and in person) related to sanctuary-related HRC initiatives as they arise (i.e. pamphlets to be handed out to landlords and tenants advising them of the sanctuary ordinance and of California law that forbids discriminating against tenants based on their immigration status). I obtained via public records request, a recently HRC-adjudicated sanctuary violation complaint report regarding a Human Services Agency social worker who was found to have violated the sanctuary ordinance. After speaking with the former director of the Human Rights Commission who advised me to request a copy of his HRC sanctuary city binder from the HRC, I obtained a copy through public records request. This binder included the text of the laws, one additional sanctuary ordinance violation adjudication report, and documents regarding the sanctuary ordinance amendment regarding juveniles. Lastly, I obtained from HRC sanctuary staff attorney, all of the HRC complaint process staff protocol and intake documents.

I collected all documents on the City Attorney's website related to the legality of the sanctuary ordinance and the 2009 juvenile-related amendment to the ordinance. I also requested from the City Attorney's aide, a copy of the lawsuit filed against the city by Danielle Bologna, which blamed the sanctuary ordinance for the murders of her husband and two sons by an undocumented immigrant.

I downloaded all documents from the City Administrator's webpage regarding the sanctuary ordinance, including the sanctuary city informational pamphlets for immigrants in English and Spanish, the ordinance text, and former Mayor Gavin Newsom's 2007 executive directive to all city departments to create sanctuary policies.

I reviewed over 14,000 pages of San Francisco resident complaints against the Police Department from 1998-2012 posted on the Office of Citizen Complaints website and created a 50-page document of all complaints (alleged and sustained) of violations of the SFPD Department General Order (DGO) 5.15 regarding immigration enforcement and the sanctuary ordinance. In my review of HRC archived minutes, materials, and agendas, I collected SFPD "roll calls" or training



questions in use since the 1990s for training police officers in implementing DGO 5.15 in compliance with the sanctuary ordinance.

The San Francisco municipal government's online television programming SFGOVTV covers all major public meetings held in the legislative chambers and other rooms of city hall so that the public can witness the decisions of local government. The recordings of these meetings include word for word transcriptions, so I reviewed every Board of Supervisors full meeting and subcommittee meeting transcript from January 2006 through November 2012 using key words to identify conversations pertaining to undocumented immigrants and sanctuary city politics. This yielded over 800 pages of discourse on sanctuary city between the city's legislators, city department officials, and community leaders that attend their meetings. I conducted the same discourse review of meetings of the Police Commission, the civilian oversight body of the Police Department. These meetings include discussions of issues regarding police work citywide and often involve community-policing issues in immigrant communities. This review of meetings over the same six-year period yielded roughly 400 pages of discourse on immigrant related issues and sanctuary. Since the transcripts of hearings were often shorthand for what was really said, I then went back and watched the videos of all of the hearings that I found to be most important to the study of this dissertation and corrected the discourse in my transcript files.

I continued my review of online archival documents of the meeting minutes of all San Francisco Board of Supervisors full meetings<sup>3</sup> spanning the time period from September 1993 to November 2012. As in my previous search through the meeting minutes from 1980-1993, I did this by means of accessing the documents in HTML format and doing key word searches for a variety of terms that are used in the discourse surrounding sanctuary. Key words used in this search were the following: sanctuary, refuge (also covering refugee and "city of refuge"), migrant (also covering immigrant), migrat (also covering immigrate and immigration), undocumented, alien, day labor, asylum, customs (covering Immigration and Customs Enforcement), deport (also covering deportation), and raid.

I requested archived legislative files of the city's main sanctuary policies from the Clerk of the Board of Supervisors. This included the City of Refuge resolution (1985) and ordinance (1989), and each of the amendments to the ordinance (1992, 1993, and 2009). This also included files of the City of Refuge for South African refugees, (1986), for conscientious objectors (1991), and sexual minorities (1991). These files include not only the policy texts, but also all materials sent to the Board Members for their review by community members (including "constituent stances") and the Supervisor sponsoring the legislation under consideration. In some cases it included letters of opinion from city officials, and information on subcommittee hearings where the legislation was examined by Supervisors, immigrant rights leaders, immigrants, public officials, and legal experts.

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<sup>3</sup> As noted in the previous section, I reviewed all Board of Supervisor meeting minutes from January 1, 1980 through August 7, 1993 to study the period when the sanctuary movement was active.

I reviewed these hard-copy files at City Hall in the Clerk's office and took digital photographs of all important documents.

In order to more completely understand the political economic context in which a sanctuary city functions, I collected all of the San Francisco Controller's Office's monthly "Economic Barometer Reports" outlining the economic status of the city economy, and the "Economic Impact of Proposed Legislation" reports on immigrant-related policy. I also collected the Mayor's Annual Budget documents from 2009-2012 and projected budget plans through 2015. While these budget documents are not explicitly "sanctuary city" documents, the allocation of resources by the Mayor and approved by the Board of Supervisors is an important representation of sanctuary-practice in the city because it either provides or denies funds for the implementation of immigrant-friendly programs and education campaigns in city departments. From a key contact in City Hall, I also obtained a variety of budget proposals for city budget items related to the city's anti-deportation projects and for services to families of those detained in immigration raids. I also obtained a spread sheet of past city grants to immigrant-focused community based organizations.

To understand how San Francisco institutes sanctuary, I needed to focus more broadly on programs and legislation beyond the sanctuary ordinance. I collected the official Board of Supervisor's legislative packets for local legislation that participants he has interviewed have stated to make San Francisco a sanctuary city. This includes the sanctuary ordinance, a variety of resolutions in favor of undocumented immigrants that state "San Francisco is a sanctuary city" in the text, the Community Policing ordinance, the SFPD car impoundment policy, the minimum wage laws ordinance, the wage theft ordinance, the Language I collected department specific documents and forms that immigrants are provided by departments when accessing city services. I collected nearly all of the Human Services Agency forms for low-income and immigrant families, for food stamps (Cal-Fresh); Medi-Cal; the Public Health department's Healthy San Francisco program for uninsured city residents; and the San Francisco Police Department's language access card and car impoundment card in Spanish.

As San Francisco also implements state and federal laws and makes use of state and federal funds I also collected documents of bills, laws, and legal rulings that promote and diminish sanctuary. This includes California AB 10881, SB 1064, AB 1236, the "California Dream Act"; Arizona SB 1070; and Plyler vs. Doe. I also collected the documents of other municipalities who have declared themselves "sanctuary cities" or "Immigrant Welcoming Cities" from 2012-2013 with similar ordinances and programs promoting undocumented immigrant integration such as Dayton, Ohio, Chicago, Illinois, and Baltimore, Maryland. This allowed me to better understand the current political landscape with regard to municipal and state sanctuary so as to understand why and how San Francisco continues to defend the rights of immigrants under the rubric of "sanctuary." Further, I checked the searchable C-Span video library, which maintains meeting transcripts of debates surrounding sanctuary in Congress, as well as the Sunlight Foundation's "Capitol Words" Congress discourse search project ([capitolwords.org](http://capitolwords.org)).

To better understand the profile of undocumented immigrants in San Francisco as a whole, I consulted the document repositories of the main immigrant advocacy research and policy organizations involved in passing sanctuary city legislation in San Francisco. The two most-visited repositories were managed by the California Immigrant Policy Center (CIPC) and the American Civil Liberties Union (ACLU). I downloaded reports on immigrant demographics, voting trends, economic contributions to California, religion, entrepreneurship, tax contributions, costs on the social system, affect on wages, initiatives to gain rights, child immigration, and parental rights.

I also consulted the website of the anti-sanctuary city advocates Judicial Watch who have published online their sanctuary city related public records requests and who have provided sanctuary-related analysis. This includes documents from a lawsuit that Judicial Watch has assisted individuals with, suing the San Francisco city government over the sanctuary ordinance, and a second lawsuit against Cook County, Illinois.

In the course of participant observation, I was informed that while many undocumented immigrants work without a valid social security number, by purchasing a stolen social security number on the street, or by obtaining a legal Individual Tax Identification Number (ITIN), I collected all relevant ITIN documents, explaining how to apply and how and when to use it. Additionally, in the course of participant observation, I attended the coalition meetings of the San Francisco Immigrant Rights Defense Committee and collected documents given to me in coalition meetings and sent to me in emails from the coalition which included copies of the Sheriff's directives on responding to ICE detainers and city officials' support letters for ICE detainer policies that SFIRDC was advocating for, among many other sanctuary city policy-related documents.

I collected documents that would help me understand the extent to which San Francisco does participate in immigration enforcement regardless of its sanctuary city status. I collected documents online discussing the amount of federal funds that San Francisco obtains through the State Criminal Alien Assistance Program (SCAAP) from the U.S. Department of Justice for the detention of immigrant offenders for the purpose of immigration enforcement. I also obtained through public records request statistics from the Sheriff's Department regarding its response to Immigration and Customs Enforcement (ICE) detainers (requests for law enforcement to hold immigrants for interrogation, pick-up, and deportation) from June 1, 2008-May 2013. From these statistics, I compiled a spread sheet of deportations assisted by Sheriff's department month by month during that time period. I also downloaded information and documents published by ICE on their website regarding the local law enforcement-ICE fingerprint sharing program "Secure Communities" or "SCOMM" (abbreviated term used by immigrant advocates). These documents include background information on the program and implementation statistics in San Francisco.

I downloaded the texts and supporting documents for laws throughout the country that limit law enforcement response to ICE detainers, including the San Francisco Resolution and laws in Santa Clara County, California; Cook County,

Illinois; and Washington, D.C.. In some cases, I downloaded news articles from local newspapers about the policies as well.

Finally, to keep up to date with current events surrounding sanctuary and undocumented immigrants, I daily reviewed and downloaded news articles from the main local San Francisco newspaper, *The San Francisco Chronicle*. I also searched the *Chron's* online archive for all articles related to sanctuary using the following key words: "sanctuary city" and "city of refuge."

### *Video Collection*

The SFGOVTV broadcasting service makes all videos that are recorded in public meetings and other programs related to city government issues available for download on their website. I downloaded all videos of the main hearings of sanctuary city related policy since 2006. This included hearings on the City ID card program, the juvenile due process sanctuary ordinance amendment, the ICE detainer resolution, and the Language Access Ordinance hearings. I also downloaded two videos from the "Neighborhood Profiles" program on city districts 9 and 11 which encompass the Mission, Bernal Heights, and the Excelsior neighborhoods where the vast majority of Latino immigrants, including Tzeltal immigrants live. I also downloaded all of the "Know Your Supervisor" videos, which are one on one interviews with city district supervisors on their background and issues they find important. I downloaded video of former Mayor (now Lieutenant Governor) Gavin Newsom's 2008 sanctuary city publicity campaign press conference and one eight-hour Immigrant Rights Commission hearing on immigrant rights and San Francisco' sanctuary city status.

I have also downloaded videos that were published on YouTube.com of both pro- and anti-sanctuary city rallies held by the Safe SF Coalition, the Bay Area Minutemen, and San Francisco Immigrant Rights Defense Committee.

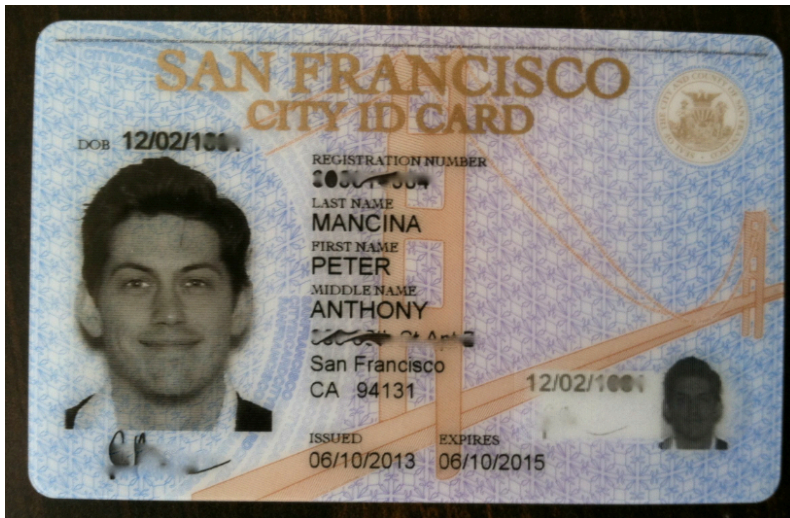
### *Participant Observation*

I did a wide variety of participant observation with undocumented Tzeltal-Maya immigrants, immigrant rights advocates, city officials, religious organizations, and city commissions involved in instituting sanctuary. This consisted of placing myself into the settings of social life with these groups. Rather than solely observing their lives and work as an outsider, journalist, or documentarian, I inserted myself in their worlds, adding myself to them and learning how to play a unique role in their collective projects and processes. I affected that world and that work intentionally and unintentionally, and observed the outcomes of the processes of which I found myself involved and acting upon. I watched the affects of the actions and decisions that we made together and became a real, contributing member of the groups that I was studying. I recorded the various aspects of interactions, events, techniques and tactics, opinions, strategies, objects of attention, problems, challenges, and associations that I found to be relevant to an understanding of sanctuary city governance. I recorded speech events that were either topically controlled by my informants as they speak with their comrades and co-workers about issues of

everyday life and sanctuary city related work, or those that I directed in these social settings towards topics I am interested in.

I spoke to them as a researcher, co-worker, friend, and fellow-progressive San Franciscan by means of ordinary comments, direct questions, strategizing, gossip, and practical language used for the purpose of accomplishing tasks. This work sought to identify the manner in which a system of city governance functions through interpersonal, inter-agency, and inter-group relations. The data obtained through this process of immersion have allowed me to account for the local experiences, interpretations, choices, and actions of individual actors that compose the functioning of macro-level forces behind legislative and administrative action.

To facilitate my entry into these communities and to build rapport with them, I rented an apartment with my family a few blocks away from the Outer Mission District near to where many immigrants and immigrant rights organizers work. This allowed me to easily get around the city to various events and to City Hall on short notice, to invite research participants to my home, and to be a “resident regardless of immigration status” that the city government aims to govern. Additionally, I applied for and received a City ID card, a card that all San Francisco residents regardless of immigration status can obtain. I have used this as my main form of identification seeking city services rather than using my state issued driver’s license, which is only available to legal residents.



**Figure 3: San Francisco City ID Card for use at all city agencies. Issued by San Francisco County Clerk’s Office.**

The first group that I worked with were roughly 50 Tzeltal-Maya immigrants who congregate on certain street corners in the Mission District waiting for employers to arrive in search of laborers to do common day labor work. I consulted the San Francisco Day Labor Program who knows a large portion of the workers who congregate in the Mission District hiring hubs and was advised where to find those who come from Chiapas. I then went to those sites and greeted the laborers in

Tzeltal-Maya, introduced myself and my project, obtained their consent to speak with them for my project, and began spending time with them and listening to their stories. For one month, I walked daily from hiring site to hiring site briefly speaking with laborers about their jobs, and letting them get to know me better. It took many months for them to trust me and to learn that I was not an immigration official or a police officer. Over the next year, I attended weekly basketball tournaments and soccer tournaments, spent time with them on the street corners after most of the employers had already come looking for workers, spent weekend days with them in their apartments, accompanied them to their favorite restaurants, spoke with them almost daily on the phone, visited popular tourist destinations throughout the city on Sundays when they were free to relax, to jewelry stores where they bought items on credit to send back to Chiapas, and to internet cafés where they made videoconference calls to their families, friends, and girlfriends.

Most importantly, I found that the best way to understand the experience of undocumented Tzeltal-Maya immigrants in a sanctuary city was to serve their community as someone who explained San Francisco laws, culture, manners for seeking non-profit help to win back unpaid wages, accessing city services, and obtaining the resources and technologies necessary for integrating into San Francisco society and maintaining international relationships. Through this work, I then documented their experiences by accompanying them as they sought medical services at San Francisco General Hospital (the main city public hospital), interacted with the county court system and community courts program, and were detained in the county jail. I assisted them with seeking legal services from a local workers' rights organization, filing wage theft claims with the state Office of the State Labor Commissioner in San Francisco, obtaining travel visas and passports at the Mexican Consulate to migrate back to Chiapas, and fixing their computer problems. In one case, I helped an immigrant who was in deportation proceedings find legal representation. I went with them and their family members to the San Francisco International Airport on route to returning to Chiapas, to local banks to open bank accounts, and to Amway meetings to see the business organizations they are becoming involved with. I made myself available to them for technical help and introductory training on their computers. I assisted them in investigating employers who had refused to pay them for work done and accompanied them to job sites to gather information used in wage-theft legal cases.

During the second year of fieldwork, rather than maintaining the high level of daily contact and interaction with the Tzeltal immigrants, I limited my participant observation with them to instances when they called me about a problem that they needed help with, and then I would help them solve their problem. This allowed me to focus my attention elsewhere. Most of the data obtained with immigrants was done so through informal conversation and participant observation rather than formal interviews, however on few occasions with more trusted participants, I interviewed them on the street while they waited for temporary work, in their apartments, or in my home.

The second population that I conducted participant observation with were immigrant rights advocates. Following eight structured interviews with key immigrant rights organizers at some of the most involved organizations defending

the sanctuary ordinance and working to extend greater rights to the city for undocumented immigrants, I learned that these individuals and their memberships had an intricate understanding of how power functions in a sanctuary city. I volunteered for the San Francisco Organizing Project (SFOP), a faith-based immigrant rights organization on their campaign to pass AB 1081, the "TRUST Act," a state-level sanctuary bill that limits the scenarios when it is permissible for local law enforcement to respond to ICE immigration detainers (requests to hold an person in local jails for ICE to take into custody). Most of my work was to help publicize an SFOP event that would bring together local San Francisco city officials, state officials, and religious leaders in support of the TRUST Act. I organized 35 people from a local church to attend the event, distributed fliers and posters in the Mission District, was interviewed on the event on a local radio station, organized members of the San Francisco Day Labor Program to go to the event, and served as a "bus captain" of one of the buses transporting event attendees to the event from one of the local churches.

I also attended immigrant rights protests and events with members of the San Francisco Day Labor Program (SFDLP). This work included attending pro-sanctuary city protests against the "Secure Communities" Program at the local ICE building and detention center, lobbying events in Sacramento at the state capitol building where undocumented immigrants spoke directly with state officials about the effect of the "Secure Communities" program on the immigrant community and the need for the TRUST Act.

Following this community work, with the support of various community organizers, from February 2012 to July 2013, I was allowed to attend weekly closed strategy meetings of the San Francisco Immigrant Rights Defense Committee, a coalition of leaders from many of the city's immigrant focused legal organizations and community based organizations. This group is focused on sanctuary city policy advocacy and is composed of Causa Justa/Just Cause, SFOP, the California Immigrant Policy Center, Asian Law Caucus, Community United Against Violence, Lawyer's Committee for Civil Rights, Dolores Street Community Services, National Lawyer's Guild, PODER, the Central American Resource Center, and Mujeres Unidas y Activas. In the meetings, I provided research and staffing support for the campaign to pass the TRUST Act (AB 4) in the state legislature and its local San Francisco counterpart, the "Due Process For All" ordinance. This included requesting public documents and city department data on ICE "detainers" and transfers of immigrants to ICE custody, analyzing the data, and presenting it to the coalition for strategy purposes. I shared information about the Board of Supervisors and the Human Rights Commission based on my discourse research for their strategizing, facilitated coalition meetings, wrote meeting notes, assisted with event planning and staffing, assisted with policy drafting for the Due Process for All Ordinance, and helped the coalition develop relationships with city officials I got to know in the course of my research. I also went to preparation meetings for lobby visits at City Hall, press events, marches, and community forums that they organized around sanctuary city related legislation. Lastly, I accompanied one SFIRDC member who also works with the San Francisco Immigrant Legal Education Network as an attorney who defends

immigrants in deportation proceedings. With him, I went to ICE's immigration court and witnessed a hearing with one of his clients.

A third group that I did participant observation with was with city government employees and officials. I did participant observation in the office of Supervisor David Campos in City Hall one day a week for 9 months. I was able to get this position because I was invited to speak at a monthly meeting of the San Francisco Interfaith Coalition for Immigration on the "theology of sanctuary" and one of Supervisor Campos' legislative aides was also invited to speak on a related topic. Following the meeting I asked her if I could work as a part of my research in their office as a volunteer. She and another legislative aide in David's office gave me a one-day training and I took a one-day training in using the 311 service request database and knowledge database for city service operators. I then worked in Supervisor Campos' office in "constituent services" which included helping all residents regardless of immigration status with whatever problems they had that the city government could help them solve. They called on the phone, emailed, and came to our office in person. I responded by referring them to the appropriate city department or if they already knew who to talk to and already tried to get their help, I followed up on their requests and put pressure on the department to act. I talked to constituents on the phone, met them in person in our office or in the Mission to better understand their problems and then brainstormed with our office staff how best to help them. This included helping an immigrant get a City ID card, helping another immigrant inquire about applying for a U-Visa, and helping a family fight their illegal eviction from their home. I also logged constituent stances on legislation being considered, wrote letters on behalf of Supervisor Campos in favor of prosecutorial discretion for immigrants in deportation proceedings, helped draft sanctuary city-related Board of Supervisors resolutions, and spoke on behalf of Supervisor Campos at the Mission Police Station. From this work, other city employees began to see me as a researcher who was a part of the "city family."

I also worked with a commissioner from the Human Rights Commission to pass an HRC resolution supporting the TRUST Act. I also researched the history of the LGBTQ Advisory Committee's (AC) work on immigration issues, and worked with organizers from Communities United Against Violence (CUAV) to write a "Purpose, Outcome, Process" (POP) proposal that was adopted by the AC to direct their quarterly work toward immigration detention and deportation. Lastly, I worked with an HRC staff person to develop updated Police Department "roll call" training materials used at the Police Academy to train new cadets in the Department's internal sanctuary policy, the Department General Order on Immigration Policing (DGO 5.15). I did two twelve-hour ride-alongs with police officers in the Mission District as well.

### *Semi-structured interviews*

I interviewed 42 former and current city employees and officials in their job sites who were or are involved in implementing sanctuary city policy. This included eight out of the eleven current District Supervisors; three former District Supervisors that sponsored the city's main sanctuary city policies; three current Board of Supervisors



legislative aides; the Chief of Police, one Police Commissioner, and a media representative of the Police Department; the Chief of Juvenile Probation; the Sheriff and the former Sheriff's Chief of Staff; Director of the Department of Public Health; Director of the Department of Emergency Management; Director of the 311 city services call center and one 311 operator; Director of the County Clerk's office; the Public Defender; the District Attorney (who is the former SFPD Chief); former Director of the Department of Social Services; Director of the Office of Civic Engagement and Immigrant Affairs; Director of the San Francisco Human Rights Commission (HRC), two former HRC Directors, an HRC Commissioner, the HRC staff attorney responsible for adjudicating sanctuary ordinance violation complaints, and a former HRC staff member who was responsible for working with city departments to draft sanctuary ordinance implementation plans in the early 1990s; a staff member of the San Francisco Rent Board; three staff investigators for the Office of Labor Standards Enforcement; and three grants managers in the Mayor's Office of Housing-Community Development Division.

In most cases, interviews were audio-recorded, followed a standardized list of questions for all officials, and the final questions of the interview were tailored specifically to the official to inquire about particular projects, programs, initiatives, legislation, events, or experience that they or their department had been a part of. Interviews lasted any amount of time from 15 minutes to over an hour. In four cases, the interview was conducted over the phone.

Obtaining these interviews was extremely difficult. Typically you can't get an interview with a city official unless you are known to them or are a contact of someone that is known to them, or are from a media outlet. If you are not known, their scheduler will usually deny your request saying that they are too busy. Before I actually worked as a city employee intern in Supervisor Campos' office, I was able to contact and secure an interview with the Director and staff of the Office of Civic Engagement and Immigrant Affairs through another researcher that had worked with the office on immigrant issues. The Director then graciously forwarded an email I had written requesting interviews to department heads that she had a good working relationship with. This included the Chief of Police, the Fire Chief, Director of Public Health, and Director of 311. I then followed up with multiple phone calls and emails to schedule interviews. Then after I had worked for Supervisor Campos, over a year later, I scheduled the remaining interviews with city officials. Having worked in Supervisor Campos' office allowed for these offices to identify me not only as a researcher, but someone who had already been vetted by city officials. In the case of the Board of Supervisors, I knew most of the schedulers from my time in Supervisor Campos' office already, but it still took a lot of persistence to get on their calendars. This took visiting their offices in person usually 2-3 times, emailing them once, and then calling them on average 4-5 times each before an interview was scheduled to remind their scheduler of my request. Then once the interview was scheduled, often the office rescheduled at least once.

I conducted eight semi-structured interviews with community organizers who have been involved with the San Francisco Immigrant Rights Defense Committee, a coalition of community based organizations and legal organizations that have been conceiving of and advocating for sanctuary city legislation at the

department level, city-wide level, and state level since 2008. This included interviews with individuals from the Central American Resource Center (CARECEN), the San Francisco Organizing Project (SFOP), Dolores Street Community Services (DSCS), Causa Justa/Just Cause (CJJC), California Immigrant Policy Center (CIPC), the San Francisco Day Labor Program (SFDLP), and La Colectiva de Mujeres (La Colectiva). Interviews were conducted in my home, in a restaurant, or in the organizer's office and lasted on average for about 45 minutes. These interviews were not audio-recorded, I took hand-written notes, and then wrote out narrative notes later in the evening after I returned home. I requested these interviews in person and by email.

### **Data analysis**

All interviews were reviewed and the most important interviews (and parts of interviews) were transcribed verbatim with the computer program Express Scribe. Discourse and behavioral data was reviewed and during the review process, I copied and pasted quotes, notes, and reflections from my field notes and other documents directly into dissertation chapter pre-writing documents that was chronologically categorized – essentially a highly detailed and extremely long timeline that included all relevant data to the study. This allowed me to analyze the emergence of practices that occurred in widely disparate locations of the city government that I would have never been able to identify as being connected had I organized my data thematically. Once a particular field notes document or other document was reviewed and portions extracted and pasted in chapter documents, I relocated the original document into “already reviewed” folders to indicate that I no longer needed to return to this document.

### **Research Sites**

Most of the archival research and participant observation was done in various governmental buildings throughout San Francisco's Civic Center, including City Hall, as well as in various locations throughout the predominantly-Latino immigrant neighborhood the Mission District. The Mission District is situated in between Hayes Valley to the south, Eureka Valley and Noe Valley to the east, Bernal Heights to the north, and Potrero Hill, the South of Market Area, and the Civic Center to the west. It is connected to the rest of the city by the Municipal transit bus system (“Muni”) and to the “South Bay” and “East Bay” by the Bay Area Rapid Transit (BART) subway system.

Originally a Spanish mission founded in 1776 as Mission San Francisco de Asis, the Mission District was urbanized in the 19<sup>th</sup> and 20<sup>th</sup> centuries by large numbers of Irish, German, Scandinavian, and Italian working class immigrants after the great 1906 earthquake that destroyed much of San Francisco, leaving many in the urban center's population displaced (Godfrey 1988). Businesses and residents resettled, intensifying in the Mission and making it a major commercial thoroughfare. During the Great Depression, the Mission became a low-income and dilapidated residential area, housing the city's poorest population. During the

1940s-1960s, large numbers of Latinos, primarily Mexicans, moved into the Mission from the South of Market Area as white people moved out, giving the Mission the reputation of being a Latin American slum (Cordova 1989). During World War II when San Francisco had obtained a large amount of government manufacturing contracts, Latino men were hired in the lowest non-union rungs of the economy and worked in small manufacturing shops, warehouses, and on the waterfront. Latin American women worked at the local cigarette packing plants and Levi-Strauss clothing factory. Latin American restaurants, grocery stores, and bakeries began to open first around 16<sup>th</sup> street and then later extended south.

After the war ended, government investment increasingly moved south to Los Angeles and by the 1960s, poverty in the Mission was on the rise. Latinos began to organize themselves in community councils and coalitions that sought to claim federal anti-poverty money through the “Model Cities” program for organizations that ran multi-lingual referral and orientation centers, and that conducted labor programs focused on counseling and job training (Miller 2009). With the onset of the civil rights movement, the Mission District also emerged as a site of pan-Latino and Chicano identities frequently expressed in public art and theater (Cordova 2006). However, in the 1970s, global processes of industrialization nearly eliminated San Francisco’s traditional manufacturing jobs and generated a wide variety of real estate and finance jobs; high-end corporate services jobs for a new population of degree-holding, middle-class, slow-growth oriented progressives; and low-paid, temporary service jobs for new waves of poor immigrants from Asia and Latin America (Walker 1990, 1996). By 1980, the Mission was nearly 60 per cent Latino and housed a growing population of Southeast Asian refugees, bohemians, homosexuals, Chinese investors, and young engineers, computer programmers, and entrepreneurs that flocked to the city during the Silicon Valley technology-boom (Menjivar 1991; Deleon 1990; Godfrey 2004). During the 1980s and 1990s, the Mexican population was joined by large numbers of immigrants and refugees fleeing civil wars in Central America, many of whom were Guatemalan Maya (Godfrey 1985).

In 2000, 60,202 registered people (8% of the population of San Francisco - 776,733) lived in the Mission (US Bureau of the Census 2000). This population was half Latino (30,145 total individuals, or 28% of the city’s total Latino population of 109,504) one-third White (33%), one tenth Asian (11%), 3% African American, and 3% other. While each neighborhood in the Mission is very ethnically mixed, Latinos are more concentrated in the southeast - the core - of the Mission District (composing around 60% or 21,860 people between 17<sup>th</sup> street and Cesar Chavez Boulevard and the 101 Freeway to Valencia Street). This research project will focus primarily on the Mission core area.

Just under half of the Mission population was foreign born (45% versus 37% city wide), and two-thirds (69%) of foreign-born individuals were from Central America and Mexico (versus 18% city wide). Of this population, 46% were Mexican, 28% El Salvadoran, 12% Nicaraguan, 10% Guatemalan, and 3% Honduran. Since around 1988, Yucatec-Maya have been populating the Mission District and by 2002, the Mexican consulate in San Francisco estimated around 10,000 Yucatec-Maya had taken up undocumented residence (Burke 2003). In the Mission, 45% of the

population spoke Spanish at home (compared to 13% citywide), 42% spoke English, 10% spoke an Asian language, and 5% spoke other languages. Just over a third (35%) of the mission's Spanish speaking households are linguistically isolated (all those above 14 years old speak only Spanish or very limited English), compared to 22 % in the city as a whole.

Renters occupy eight out of ten housing units (82% of the 22,025) in the Mission (compared to 65% citywide) – and 76% of businesses rent their place of business. With 9,788 housing units per square mile, the Mission is one of the city's most densely inhabited areas. The homeownership rate for Latinos in the Mission (27%) is higher than the rate for other groups, and about the same as that of Latinos in the city as a whole. In 2002, the median sale price for advertised homes reached \$410,000 (compared to \$538,000 citywide) and the median advertised rent for a two-bedroom apartment was \$1,956 (compared to \$2,144 citywide) (Godfrey 2004). Numerous Latino immigrants, often single males, share two or three bedroom apartments to reduce individual rent, and local housing advocacy groups have documented up to seventeen persons living in these apartments, with some residents even sleeping in closets (ibid).

The median household in the Mission has a lower annual income (\$48,227) and a larger household size (2.7 persons) than the median household in the city as a whole (\$55,509 household income and 2.31 persons). Mission Latino households are larger (3.82 persons), with larger income (\$44,512) than Asian households (\$42,490), but lower incomes than White households (\$51,595). Per capita incomes in the Mission were also on average lower (\$22,879) than those in the city as a whole (\$34,556). The per capita income of Whites citywide (\$48,393) was more than twice that of Latinos citywide (\$18,584) and three times that of Latinos residing in the Mission (\$13,951). Per capita income of Whites in the Mission (\$28,507) was one and a half times that of Asians (\$19,667) and more than twice that of Latinos.

Nearly 19,000 people work in the Mission, 6,500 employed in the production-distribution-repair (PDR) sector in apparel manufacturing, construction, auto repair, and utilities. This is 47% of all businesses, and 43% of jobs. More than 900 stores and restaurants line the main thoroughfares - featuring Latin American food - employing over 4,500 people. Mission Street and the more upscale and trendy Valencia Street resemble the typical Latin American urban street markets where goods, pedestrians, and vendors, can be found on the sidewalks in front of the stores themselves (Godfrey 2004). Retail accounts for 27% of the economy; wholesale 6%; manufacturing 6%; construction 5%; fire, insurance, and real estate 4%; transportation, communication, and public utilities 3%; agriculture 1%; and government 1%. Many immigrants from Latin America in the Mission today hold temporary or part-time, low-paying service jobs, and are working without immigration documents. Men are concentrated in restaurants as busboys or dish washers, in janitorial jobs, carpentry, construction, plumbing, yard work, roofing, and painting, whereas women work as housekeepers, baby-sitters, or as hotel maids. While no statistics are available to measure the number of undocumented day laborers or amount of wages earned through undocumented day labor, the Mission district also serves as the most well known undocumented hiring hub.

Of the nine parks in the Mission District, many Latino migrants play soccer and basketball on the weekends primarily at two parks in the core area. The Mission is host to 34 churches, St. Peter's being the largest Catholic church that caters to the Catholics and holds one mass in Spanish on Sundays. Other major churches are Evangelical, Episcopal, Baptist, Presbyterian, Russian orthodox, and Seventh-day Adventist. The mission has one pre-school, six elementary schools, two Catholic parish elementary schools, two bilingual Spanish-English elementary schools, one high school, and until 2009, one college (New College of California). There are 4 health clinics and two major hospitals, one being the public San Francisco General Hospital where most undocumented immigrants obtain health services, and the other private St. Luke's Hospital. There are two public libraries with significant holdings in Spanish, one police station, and one fire station. Of the sixteen major family service agencies in the Mission, five (Las Americas Children Center, Instituto Familiar de la Raza, La Raza Centro Legal/San Francisco Day Laborers Program, Arriba Juntos, Caminos Pathways Learning Center) cater specifically to the Latino community, and one (Instituto Mayab) caters to all Maya communities, offering legal services, job placement services, ESL courses, children's services, and vocational training. Of the seven cultural centers, four (Mission Cultural Center for Latino Arts, Galería de La Raza, La Raza Community Resource Center, Centro Latino de San Francisco) offer Latino art, dance, and cultural education courses, rentable community space, and public events that promote Latin American (including indigenous) cultures.

Participant observation was undertaken in the following venues of San Francisco where governmental sanctuary practices and undocumented daily life and political action occur: the San Francisco Police Department, Mission Station; San Francisco Juvenile Detention Center; San Francisco City Hall; Immigration and Customs Enforcement San Francisco office; San Francisco General Hospital; St. Teresa's Catholic Church; Instituto Familiar de la Raza; San Francisco Day Laborers Program hiring hall; La Raza Centro Legal; Central American Resource Center; Plaza Adelante - Causa Justa/Just Cause offices; the Federal Building; San Francisco Immigrant Legal & Education Network office; public places for migrant recreation, events, and political demonstrations; and migrant hiring sites, job sites, and homes.

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## NOTES

<sup>1</sup> Foucault 2004, p.6

<sup>2</sup> For further discussion of immigration governance ‘apparatuses’, see Mancina 2011 and Feldman 2011.

<sup>3</sup> The first churches to provide private sanctuary to undocumented Central American refugees were St. Peter’s Catholic Church, Mission Dolores, and Most Holy Redeemer Catholic Church in 1980. This decision was made unilaterally by the church’s new pastor, Father Cuchulain Moriarty who was a long-time champion of liberation theology and immigrant worker rights, and then Chair of the Archdiocesan Social Justice Commission.

<sup>4</sup> Unknown Author. “Sanctuary: A Justice Ministry.”

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> These were the Sisters of the Presentation, St. Teresa’s Catholic Parish, the Dominican Sisters of San Rafael, First Unitarian Church, the American Friends Meeting of San Francisco, and Noe Valley Ministry.

<sup>16</sup> In Northern California, the other Covenant Communities were organized in the ‘East Bay’ (coordinating Oakland, Berkeley, Albany, Hayward, and San Leandro); in Marin County (coordinating Marin City, Mill Valley, and Novato); in the ‘South Bay’ (coordinating Palo Alto and Los Altos); in Sonoma (coordinating Petaluma and Santa Rosa); in the San Joaquin Valley (coordinating Fresno and Visalia); and lastly, a Covenant to coordinate Sacramento and Davis.

<sup>17</sup> New members by 1985 were the 7<sup>th</sup> Avenue Presbyterian Church and the Franciscan Brothers and Fathers in San Francisco, Sisters of Mercy in Burlingame, and the Sisters of Notre Dame in Belmont.

<sup>18</sup> New members by 1986 were St. John of God Catholic Church, St. Francis Lutheran, and the Redemptorist Fathers.

<sup>19</sup> New members by 1989 were St. Boniface Catholic Church, Sisters of the Holy Name, and the Jewish Congregations Ahavat Shalom and Sha’ar Zahav. Additionally, the San Francisco Jewish Sanctuary Coalition joined as an affiliate organization.

<sup>20</sup> San Francisco Board of Supervisors 1985: 1-4.

<sup>21</sup> Ibid.

<sup>22</sup> Delventhal, B and Riddle R., 1985.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Rose, H. 1985: p. 2

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- <sup>26</sup> Carillo, C. 1985: p. 1.
- <sup>27</sup> Hennessey, M. 1985: p.1
- <sup>28</sup> Wiesel, E. 1985.
- <sup>29</sup> Feinstein, D. 1985: p.1-2.
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid.
- <sup>33</sup> Maloney, C. 1985.
- <sup>34</sup> Bodovitz, K. 1989.
- <sup>35</sup> U.S. Immigration and Naturalization Service and the San Francisco Police Department 1989.
- <sup>36</sup> Ibid.
- <sup>37</sup> San Francisco Board of Supervisors, 1989
- <sup>38</sup> Interview with Ignatius Bau, San Francisco, October 31, 2011.
- <sup>39</sup> Russionello 1989.
- <sup>40</sup> Interview with Ignatius Bau, San Francisco, October 31, 2011.
- <sup>41</sup> Rubin 1991.
- <sup>42</sup> San Francisco Sheriff's Office 1991.
- <sup>43</sup> Holding 1991.
- <sup>44</sup> Ibid.
- <sup>45</sup> These block grants came from the Edward M. Byrne Memorial State and Local Law Enforcement Assistance Formula Grants fund.
- <sup>46</sup> Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232 [306(a)(6), 105 Stat, 1751].
- <sup>47</sup> Johnson 1992.
- <sup>48</sup> Human Rights Commission Staff Member Handwritten notes. Available from the Human Rights Commission Archived Files. Box 96120422, "City of Refuge Ordinance: 1992 Amendments" folder.
- <sup>49</sup> San Francisco Board of Supervisors 1989.
- <sup>50</sup> Lilyquist and Lungren 1992: p.2-3.
- <sup>51</sup> Ibid.
- <sup>52</sup> Mitchels 1992.
- <sup>53</sup> An aggravated felony in this section included murder, rape, or sexual abuse of a minor; illicit trafficking in controlled substance including a drug trafficking crime; illicit trafficking in firearms or destructive devices or in explosive materials; an offense related to laundering of monetary instruments, or engaging in monetary or property transactions that derived from specific unlawful activities; a variety of firearm offenses and offenses related to explosive materials; crimes of violence for which the term of imprisonment is at least one year; a theft or burglary offense for which the term of imprisonment is at least one year; an offense relating to the receipt of ransom; an offense relating to child pornography; an offense of racketeering or gambling; a theft of owning, controlling, managing, or supervising a prostitution business; an offense related to transportation for the purpose of prostitution; offenses related to peonage, slavery, and involuntary servitude; disclosure of national defense information or classified information; disclosing the



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protected identity of undercover intelligence agents; fraud or deceit in which the loss to the victim exceeds \$10,000; offenses related to alien smuggling of people who are not one's spouse, child, or parent; document fraud such as falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument; failure to appear in court for an offense with a term of 5 years or more or to answer to or dispose of a charge of a felony; commercial bribery, counterfeiting, forgery, or trafficking in vehicles; obstruction of justice, perjury or subornation of perjury, or bribery of a witness; or an attempt or conspiracy to commit an offense described in this paragraph.

<sup>54</sup> San Francisco Board of Supervisors 1992.

<sup>55</sup> Jordan 1992.

<sup>56</sup> Rose 1992.

<sup>57</sup> Ibid.

<sup>58</sup> San Francisco Board of Supervisors 1992

<sup>59</sup> Consolacion, F. and Kai, K. 1992.

<sup>60</sup> San Francisco Board of Supervisors 1992

<sup>61</sup> Burton 1993.

<sup>62</sup> California State Senate 1993.

<sup>63</sup> San Francisco Board of Supervisors 1993

<sup>64</sup> Gordon 1993

<sup>65</sup> Coalition to Defend the Sanctuary Law 1993

<sup>66</sup> Delventhal et al 1994.

<sup>67</sup> San Francisco Human Rights Commission 1994.

<sup>68</sup> Ibid.

<sup>69</sup> See Board of Supervisors meeting of Monday, July 15, 1996 regarding "Federal Immigration Legislation".

<sup>70</sup> For more information on various raids during this period as discussed by the Board of Supervisors see Board of Supervisor meeting minutes Legislative File 013-95-030 from the Clerk of the Board of Supervisors of San Francisco.

<sup>71</sup> San Francisco Police Commission 1995.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Immigrant Rights Commission 1999

<sup>75</sup> San Francisco Board of Supervisors 2000a

<sup>76</sup> See Immigrant Rights Commission meeting minutes from April 6, 2000 for a full summary of the discussion.

<sup>77</sup> Newsom 2009

<sup>78</sup> Quality Housing and Work Responsibility Act of 1998 (QHWRA), Public Law 105-276, 42 U.S.C. 1436a.

<sup>79</sup> For more discussion on the issue of housing, sanctuary, and immigrant eligibility see Immigrant Rights Commission meeting minutes from August 2001.

<sup>80</sup> San Francisco Board of Supervisors 2000b

<sup>81</sup> See Immigrant Rights Commission meeting minutes from June 4, 2001.

<sup>82</sup> San Francisco Board of Supervisors 2001

<sup>83</sup> Bush 2001

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<sup>84</sup> It is worth placing the Immigrant Rights Commission resolution in its entirety here:

WHEREAS, The City and County of San Francisco values the dignity of all its residents, regardless of immigration status, and will make every affirmative effort to ensure that all San Franciscans live in safety and free from discrimination; and in 1989, the Board of Supervisors adopted Ordinance No. 375-89, declaring San Francisco to be a City and County of Refuge; and in 1999, the Board of Supervisors adopted Resolution No. 515-99 declaring the City an "I.N.S. Raid-Free Zone," and recognizing that the Immigration and Naturalization Service (I.N.S.) often violates civil and human rights during its raids, arrests and detentions, and that such I.N.S. raids threaten the public safety of all San Franciscans [...]; and in the post September 11 era in our history, the I.N.S. is the United States' biggest and fastest growing law enforcement agency, with the largest number of armed officers [...]; and in just the few years after the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IRRIRA), [...], the numbers of people incarcerated by the I.N.S. has more than tripled; and in two months after tragic events of September 11, 2001, the Washington Post reported that the Department of Justice has detained more than 1,100 immigrants, not one of whom has been charged with committing a terrorist act and only a handful of whom are being held as material witnesses to the September 11 hijackings [...]; and in a hasty response to the tragic events of September 11, 2001, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), [...] and the Enhanced Border Security and Visa Entry Reform Act of 2002, [...], which give to the I.N.S. greater unfettered discretion to incarcerate current and prospective immigrants without providing the necessary due process guaranteed by the United States Constitution or adequate judicial supervision; and the I.N.S. initiated a campaign of questioning more than 8,000 persons based solely on their national origin, immigration status, gender and age, and has tried to involve the San Francisco Police Department in this federal investigative campaign [...]; and the San Francisco Police Department has rightfully declined to participate in such campaign that is based not on individualized suspicion of criminal activities, but on racial profiling; and there is increasing pressure on the San Francisco Police Department to participate in programs such as the "Absconder Apprehension Initiative" which would force the City to expend its limited resources on activities in areas that belong solely to the federal government [...]; and it has been reported that the US Department of Justice is considering reversing its long standing policy that state and local polices do not have the authority to arrest immigrants for alleged civil violations of the provisions of federal immigration law except under certain limited circumstances as provided in the Immigration and Nationality Act [...]; and the I.N.S. is increasing its raids of homes and businesses through initiatives such as "Operation Tarmac,"

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which has already involved the arrest and detention of several hundred primarily Latino service workers throughout the country, at least 35 of whom are from the Bay Area [...]; and Between 1992-1998, the INS San Francisco District deported more than 72,000 persons [...]the I.N.S. has already detained, arrested, and fast-tracked the deportation of more than 60 persons of Filipino descent, including children, as part of their intensified operations [...]; and the I.N.S. is spearheading a detention campaign, arresting and incarcerating large unknown numbers of primarily South Asian and Middle Eastern non-citizens [...]; and the City and County of San Francisco recognizes that dragnet investigations and enforcement activities in immigrant communities are an inefficient use of public resources [...]; and the City and County of San Francisco opposes the discrimination and terror being experienced by its immigrant residents in the wake of the current escalated I.N.S. activities [...];

Now, therefore, be it RESOLVED, That the San Francisco Immigrant Rights Commission supports the continued adherence of the City Departments to the principles and requirements set forth in Ordinance No. 375-89 declaring San Francisco to be a City and County of Refuge; and, be it further resolved, that the San Francisco Immigrant Rights Commission urges the San Francisco Police Commission and the Chief of Police to issue a written directive to all local law enforcement officials reminding them of the requirements of Chapter 12H of the San Francisco Administrative Code; and, be it

FURTHER RESOLVED, That San Francisco Immigrant Rights Commission urge the Mayor and the Board of Supervisors to request and urge the I.N.S. to cease conducting raids, arrests and detentions within the City; and, be it

FURTHER RESOLVED, That the San Francisco Immigrant Rights Commission urges the Mayor and Board of Supervisors to immediately convene a meeting with the I.N.S. San Francisco District Director and representatives from the San Francisco Immigrant Rights Commission, San Francisco Human Rights Commission, and San Francisco's community-based immigrant organizations to address the concerns contained in this resolution.

<sup>85</sup> San Francisco Police Department 2002

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Arriela 2004: p.12

<sup>90</sup> San Francisco Board of Supervisors 2004

<sup>91</sup> Arriela 2004: p.12

<sup>92</sup> Immigrant Rights Commission 2004

<sup>93</sup> Human Rights Commission and Immigrant Rights Commission 2006

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> San Francisco Board of Supervisors 2006

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<sup>98</sup> Ibid.

<sup>99</sup> Internal Document obtained through Public Records Disclosure request to the San Francisco Police Commission.

<sup>100</sup> Many internal municipal documents reviewed in the process of writing this section and subsequent sections of this chapter were provided to the author for the purpose of writing this dissertation by various individuals involved in the Sanctuary City Initiative and subsequent departmental training initiatives on sanctuary city policy. All of these documents are public documents subject to public information request laws – in particular the city’s “Sunshine Ordinance” which is Chapter 67 of the San Francisco Administrative Code. None of these internal documents can be considered “classified” or “confidential” documents. Qualitative ethnographic interviews with research project participants allowed the author to fill in the gaps in the narrative on this Initiative and answer outstanding questions raised in the review of the internal documents.

<sup>101</sup> Office of the Inspector General 2007

<sup>102</sup> San Francisco Police Department press release of February 13, 2007 in possession of author.

<sup>103</sup> The Daily Journal Editorial Staff 2007

<sup>104</sup> Newsom 2007

<sup>105</sup> Vega 2008

<sup>106</sup> Available online at

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=11001-12000&file=11364-11376.5>

<sup>107</sup> See Court of Appeal, First District, Division 2, California decision of October 22, 2008, No. A120206 *Charles Fonseca, Plaintiff and Appellant, v. Heather J. Fong, as Chief, etc., et al, Defendants and Respondents; San Francisco Police Department, Real Party in Interest and Respondent*. Available online at <http://caselaw.findlaw.com/ca-court-of-appeal/1117162.html>, Accessed July 13, 2013.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> See San Francisco Immigrant Rights Commission meeting minutes from July 9, 2007.

<sup>112</sup> Copies of the “San Francisco: A Sanctuary City” brochure can be found at

[http://sf-hrc.org/sites/default/files/Documents/Sanctuary\\_City\\_Ordinance/sanctuary\\_brochure\\_english\\_final.pdf](http://sf-hrc.org/sites/default/files/Documents/Sanctuary_City_Ordinance/sanctuary_brochure_english_final.pdf).

<sup>113</sup> Ibid.

<sup>114</sup> Internal document obtained from project participants. See note 100. Document in author’s possession.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> See note 100.

<sup>119</sup> See note 100.

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- <sup>120</sup> See note 100.
- <sup>121</sup> See note 100.
- <sup>122</sup> See note 100.
- <sup>123</sup> See note 100.
- <sup>124</sup> See note 100.
- <sup>125</sup> See note 100.
- <sup>126</sup> San Francisco Board of Education 2007.
- <sup>127</sup> See note 100.
- <sup>128</sup> See Board of Supervisor full meeting transcript for the May 22, 2007 meeting available online at [http://sanfrancisco.granicus.com/TranscriptViewer.php?view\\_id=10&clip\\_id=3606](http://sanfrancisco.granicus.com/TranscriptViewer.php?view_id=10&clip_id=3606)
- <sup>129</sup> Interview with San Francisco Public Health Department Director Barbara Garcia, May 22, 2013.
- <sup>130</sup> Ibid.
- <sup>131</sup> See note 100
- <sup>132</sup> See note 100.
- <sup>133</sup> See note 100.
- <sup>134</sup> See note 100.
- <sup>135</sup> See note 100.
- <sup>136</sup> See note 100.
- <sup>137</sup> Interview with Former San Francisco Human Rights Commission Executive Director Larry Brinkin, September 3, 2011.
- <sup>138</sup> See note 100.
- <sup>139</sup> See note 100.
- <sup>140</sup> See note 100.
- <sup>141</sup> Newsom 2007
- <sup>142</sup> See note 100.
- <sup>143</sup> See note 100.
- <sup>144</sup> See note 100.
- <sup>145</sup> Ibid.
- <sup>146</sup> See note 100.
- <sup>147</sup> The author viewed video of Mayor’s Special Conference on Sanctuary City, April 2, 2008 on the [www.sfgovtv.org](http://www.sfgovtv.org) website and the author transcribed the referenced speech by Mayor Gavin Newsom and other public officials.
- <sup>148</sup> See note 147.
- <sup>149</sup> See note 147.
- <sup>150</sup> See note 147.
- <sup>151</sup> The internal municipal documents reviewed in the process of writing this chapter were provided to the author by members of the San Francisco Immigrant Rights Defense Committee (SFIRDC) for the purpose of writing this dissertation. All of the referred to documents (i.e. communications, emails, reports) are public documents that SFIRDC obtained from City and County of San Francisco departments in response to formal “Sunshine Ordinance” (Chapter 67 of the Administrative Code) public records disclosure requests. None of these internal documents and communications can be considered “classified” or “confidential”

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documents. City officials and employees, at the moment when they produce the documents and communications, know that the public may request them by San Francisco and California law. This particular quote came from an email from San Francisco Juvenile Probation Chief William Sifferman to San Francisco Juvenile Probation Assistant Chief Allan Nance on 8/24/2008 in the author's possession.

<sup>152</sup> Email document from Chief William Sifferman, May 19, 2008. See note 151.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Letter from Immigration and Customs Enforcement (ICE) Assistant Field Office Director Sylvia C. Arguello, December 17, 2007. See note 151.

<sup>159</sup> Ibid.

<sup>160</sup> Egelko 2008

<sup>161</sup> Juvenile Probation Commission Briefing Report, July 9, 2008, p.3. See note 151

<sup>162</sup> Hand written phone message for Chief William Sifferman from Kevin Ryan, April 2, 2008. See note 151.

<sup>163</sup> Juvenile Probation Commission Briefing Report, July 9, 2008, p.1. See note 151.

<sup>164</sup> See Juvenile Probation Department Agency and Operational Overview PowerPoint presentation of the Juvenile Probation Commission orientation binder, p.3. Available online at <http://sfgov.org/juvprobation/sites/default/files/JPD%20Agency%20%26%20Operational%20Overview.pdf> Accessed March 13, 2016.

<sup>165</sup> Ibid.

<sup>166</sup> Memorandum to Ed Flowers, Chief Probation Officer, San Francisco Probation Department from Eleazar Aramburo, Mission Community Coalition for Youth Services, August 12, 1996. Document obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

<sup>167</sup> "San Francisco Probation Department Policy and Protocol for Undocumented Minors," 1996. Obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Email from Eleazar (Eli) Aramburo to Mayoral Communications Director Nathan Ballard, August 20, 2008. See note 151.

<sup>177</sup> "San Francisco Probation Department Policy and Protocol for Undocumented Minors," 1996. Obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

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<sup>178</sup> San Francisco Juvenile Probation Department, Policy 8.12, “Intake” Chapter, Subject “Youth in Detention-Undocumented”, January 5, 2004. Obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Email from Mayoral Communications Director Nathan Ballard to a local journalist on September 15, 2008. See note 151.

<sup>185</sup> Email from Juvenile Probation Department Chief William Sifferman, May 16, 2008. See note 151.

<sup>186</sup> Email from Abby Abinanti to Chief Sifferman, May 16, 2008. See note 151.

<sup>187</sup> The author does not contend that the Juvenile Court maintained policies on dispositions, however, to agree to not issue certain dispositions is certainly an enacted, de facto policy even if not codified in formal law.

<sup>188</sup> Email from Chief Sifferman to court scheduler, May 19, 2008. See note 151.

<sup>189</sup> Email from Chief Sifferman to Mayor’s Staff Member Wade Crowfoot, Assistant Probation Chief Allen Nance, April 21, 2007. See note 151.

<sup>190</sup> Van Derbeken 2008a

<sup>191</sup> Adachi 2008

<sup>192</sup> Juvenile Probation Commission Briefing Report, July 9, 2008, p.3. See note 151.

<sup>193</sup> Mintz 2008

<sup>194</sup> Email from JPD Chief William Sifferman to Mayors Office of Criminal Justice Deputy Chief of Staff Kevin Ryan, September 11, 2008. See note 151.

<sup>195</sup> Email from Mayoral Communications Director Nathan Ballard to a local journalist on September 15, 2008. See note 151.

<sup>196</sup> Ibid.

<sup>197</sup> See Justice Commission description

<http://www.sfsuperiorcourt.org/divisions/ufc/justice-commission> Accessed April 3, 2016.

<sup>198</sup> Memorandum from JPD Chief William Sifferman to Eli Horn, Chair of the Juvenile Justice Commission, June 6, 2008. See note 151.

<sup>199</sup> Email from ICE Assistant Field Office Director Sylvia Arguello to JPD Chief William Sifferman, June 16, 2008. See note 151.

<sup>200</sup> Scheck 2011

<sup>201</sup> Van Derbeken 2008b

<sup>202</sup> Ho and Van Derbeken 2012

<sup>203</sup> Ibid.

<sup>204</sup> *San Francisco Chronical Staff* 2012

<sup>205</sup> Juvenile Probation Commission Briefing Report, July 9, 2008, p.1. See note 151.

<sup>206</sup> Kelly and LaGanga 2008

<sup>207</sup> Client-privileged confidentiality of this legal memo was subsequently waived by the client (the Mayor), made public when the Mayor gave it directly to the *San*

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*Francisco Chronicle*, published online by the *San Francisco Chronicle* in its entirety, and posted on the City Attorney website later. This memorandum was produced by Deputy City Attorneys Linda M. Ross and Molly Stump on July 1, 2008 titled “Undocumented Youth Detained In the Juvenile Justice System.” The web link to the document has subsequently been removed from the City Attorney’s webpage, however the document can be viewed from an archived version of the webpage online at

<https://web.archive.org/web/20110412191300/http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=483>.

<sup>208</sup> Ibid.

<sup>209</sup> Welfare and Institutions Code Sections 725 and 738 are available online at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=725-742>.

<sup>210</sup> Ibid.

<sup>211</sup> Welfare and Institutions Code Section 828 is available online at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=725-742> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=825-832>

<sup>212</sup> Ibid.

<sup>213</sup> 8 U.S. Code § 1373, “Communication between government agencies and the Immigration and Naturalization Service”. Available online at <https://www.law.cornell.edu/uscode/text/8/1373>.

<sup>214</sup> Immigration and Nationality Act, 8 CFR 287.7 – “Detainer provisions under section 287(d)(3) of the Act.” Available online at <https://www.law.cornell.edu/cfr/text/8/287.7>.

<sup>215</sup> 8 USC 1324(a)(1)(A)(ii) and (iii).

<sup>216</sup> Van Derbeken and Lagos 2008

<sup>217</sup> Ibid.

<sup>218</sup> Letter from Diana Hull, Ph.D., President of CAPS to Governor Arnold Schwarzenegger, July 1, 2008, titled “An Open Letter to Governor Schwarzenegger. Available online at <http://www.capsweb.org/>. Accessed March 3, 2016

<sup>219</sup> Vick 2008

<sup>220</sup> Mayoral Press Release sent in an email from Deputy Director of Communications, Giselle Barry, Mayor’s Office, July 2, 2008. See note 151.

<sup>221</sup> “Recommended Language for a Detention Hearing report” document. See note 151.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> The meeting was referenced in a July 17, 2008 letter from Chief William Sifferman to Sylvia Arguello, Assistant Field Office Director of Immigration and Customs Enforcement. See note 151.

<sup>225</sup> Letter dated July 11, 2008 Sylvia Arguello, Assistant Field Office Director of Immigration and Customs Enforcement to San Francisco Juvenile Probation Department Chief William Sifferman. See note 151



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<sup>226</sup> San Francisco Juvenile Probation Department Policy 8.12 “Undocumented Persons, Revision Date July 7, 2008.” See note 151.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> Email from Assistant Chief Probation Officer Allan Nance to Juvenile Court Judges and Commissioners Donna Hitchens, Lillian Sing, Newton Lam, and Abby Abinante, July 7, 2008. See note 151.

<sup>231</sup> Hand-written phone message from Sylvia Arguello to Allan Nance, July 10, 2008. See note 151.

<sup>232</sup> Ibid.

<sup>233</sup> Email From JPD Chief William Sifferman to City Administrator Edwin Lee, JPD Assistant Chief Parole Officer Allan Nance, and Mayoral Staff Director Philip Ginsburg, July 11, 2008. See note 151.

<sup>234</sup> Email from JPD Chief Sifferman to Mayor’s Communications Director Nathan Ballard, July 11, 2008. See note 151.

<sup>235</sup> Memorandum “Proposed Response to Reports of ICE Notifications by JPD” sent from JPD Chief William Sifferman to the Juvenile Probation Commission, July 12, 2008. See note 151.

<sup>236</sup> Email from JPD Chief William Sifferman to MOJC Deputy Chief of Staff Kevin Ryan, May 16, 2008. See note 151.

<sup>237</sup> Minutes of the April 8, 2008 meeting of the “Juvenile Probation Department Division Heads/Management Meeting”. See note 151.

<sup>238</sup> Email from William Sifferman to Kevin Ryan, May 14, 2008. See note 151.

<sup>239</sup> Email from Gregory Bonfilio to Delinquency Panel, Patricia Lee, and William Sifferman, May 16, 2008. See note 151.

<sup>240</sup> Juvenile Probation Department “ICE Referral Worksheet, Revision Date September 8, 2008”. See note 151.

<sup>241</sup> Email from Allen Nance to Juvenile Probation Officers email group, July 15, 2008. See note 151.

<sup>242</sup> Form letter to Immigration and Customs Enforcement, attachment to email from Allen Nance, September 8, 2008. See note 151.

<sup>243</sup> Email from Allen Nance to Kevin Ryan, and Mayoral Staff Adam Gomolin, Nathan Ballard, and Philip Ginsburg, August 8, 2008. See note 151.

<sup>244</sup> Letter from JPD Chief William Sifferman to ICE Assistant Field Office Director Sylvia Arguello, July 17, 2008. See note 151.

<sup>245</sup> Juvenile Probation Commission Briefing Report, July 9, 2008, p.3. See note 151.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Email from JPD Assistant Chief of Probation Allen Nance to Dennis Fuata, Ernestine Cadehill, and Garry Bieringer, July 11, 2008. See note 151.

<sup>249</sup> Form JV-740 available online at

<http://www.courts.ca.gov/documents/ItemA25.pdf> Accessed March 3, 2016.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

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<sup>252</sup> Ibid.

<sup>253</sup> “Jv740-for 778 Petitions Filable form – sample.pdf” attachment to email from JPD Assistant Chief of Probation Allen Nance to Dennis Fuata, Ernestine Cadehill, and Garry Bieringer, July 11, 2008. See note 151.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> Letter William Sifferman to the Juvenile Probation Commission, July 12, 2008. See note 151.

<sup>257</sup> Email from Mayor’s Communication Director Nathan Ballard to Kevin Ryan and Mayoral Staff Director Steve Kawa, August 20, 2008. See note 151.

<sup>258</sup> Email from MOCJ Deputy Chief of Staff Kevin Ryan to Nathan Ballard and Steve Kawa, August 20, 2008. See note 151.

<sup>259</sup> “A Just Society” by Eli Aramburo. Draft as published in *the San Francisco Chronicle*. Provided in public records disclosure. See note 151.

<sup>260</sup> Ibid.

<sup>261</sup> These groups included ACLU of Northern California, African Immigrant & Refugee Resource Center, Asian Law Caucus, Asian Pacific Island Legal Outreach, CARECEN, Chinese for Affirmative Action (CAA), Filipino Community Center, Immigrant Legal Resource Center, Instituto Familiar de la Raza, Inc., and La Raza Centro Legal, La Raza Community Resource Center in San Francisco, Lawyer’s Committee for Civil rights, Legal Services for Children, Mujeres Unidas y Activas, PODER, St. Peter’s Housing.

<sup>262</sup> See Police Commission meeting transcript from July 16, 2008. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> Van Derbeken 2008c

<sup>266</sup> Van Derbeken 2008d

<sup>267</sup> Video reviewed and transcribed by author on Fox News website.

<sup>268</sup> Member organizations were ACLU-NorCal, African Immigrant and Refugee Resource Center (AIRRC), Alianza Latinoamericana por los Derechese de los Inmigrantes, Arab Resource and Organizing Center, Asian Law Caucus, Asian Pacific Islander Legal Outreach, Asian and Pacific Islander Youth Advocacy Network (AYAN), Bay Area Immigrant Rights Coalition, Central American Resource Center (CARECEN), Chinese for Affirmative Action (CAA), Coleman Advocates, Dolores Street Community Services, Filipino Community Center, Immigrant Legal Resource Center, Instituto Familiar de la Raza, Inc., La Raza Centro Legal, Inc., La Raza Community Resource Center San Francisco, La Voz Latina, Legal Services for Children, Movement for Unconditional Amnesty, Mujeres Unidas y Activas, National Lawyers Guild San Francisco Bay Area Chapter, PODER, SFILen, SFOP, St. Peter’s Housing, Tenderloin Housing Clinic, LCCR.

<sup>269</sup> Document shared with the author by the San Francisco Immigrant Rights Defense Committee in the course of participant observation research.

<sup>270</sup> Transcript of Mayor’s Press Conference, July 30, 2008.

<sup>271</sup> Knight 2008

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272 Author transcription of televised news broadcast, Fox News.

273 Ibid.

274 Ibid.

275 See Court of Appeal, First District, Division 2, California decision of October 22, 2008, No. A120206 *Charles Fonseca, Plaintiff and Appellant, v. Heather J. Fong, as Chief, etc., et al, Defendants and Respondents; San Francisco Police Department, Real Party in Interest and Respondent*. Available online at <http://caselaw.findlaw.com/ca-court-of-appeal/1117162.html>, Accessed July 13, 2013.

276 Ibid.

277 Ibid.

278 Ibid.

279 Ibid.

280 Police Commission meeting, August 13, 2008. Transcript available online at [www.sfgovtv.org](http://www.sfgovtv.org).

281 Ibid.

282 Van Derbeken 2008e

283 Ibid.

284 Letter from Sylvia Arguello, Assistant Field Office Director, ICE to San Francisco Sheriff Michael Hennessey, July 1, 2008. See note 151.

285 Ibid.

286 Ibid.

287 Ibid.

288 Letter from San Francisco Sheriff Michael Hennessey to Sylvia Arguello, Assistant Field Office Director, ICE July 9, 2008. See note 151.

289 Letter from Julie Myers, Assistant Secretary, ICE to San Francisco Mayor Gavin Newsom, July 9, 2008. See note 151.

290 Ibid.

291 Letter from San Francisco Mayor Gavin Newsom to Julie Myers, Assistant Secretary, ICE, August 22, 2008. See note 151.

292 Ibid.

293 Data obtained online from the U.S. Department of Justice, Bureau of Justice Assistance website <https://www.bja.gov/> under the State Criminal Alien Assistance Program's "archive" tab. Accessed March 5, 2016.

294 Letter from San Francisco Mayor Gavin Newsom to Julie Myers, Assistant Secretary, ICE, August 22, 2008. See note 151.

295 Ibid.

296 San Francisco Juvenile Probation Department, Policy 8.12, "Intake" Chapter, Subject "Youth in Detention-Undocumented, Revision Date August 26, 2008." Obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

297 For explanation of Intake Unit work see <http://sfgov.org/juvprobation/probation-services>.

298 Ibid.

299 San Francisco Juvenile Probation Department, Policy 8.12, "Intake" Chapter, Subject "Youth in Detention-Undocumented, Revision Date August 26, 2008."

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Obtained from research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

<sup>300</sup> Ibid.

<sup>301</sup> Juvenile Probation Commission meeting minutes for the November 17<sup>th</sup>, 2008 meeting. See note 151.

<sup>302</sup> Handout provided to JPD staff at the August 26, 2008 briefing on the new undocumented youth policy. See note 151.

<sup>303</sup> "Training and Orientation regarding undocumented minors" Meeting Agenda, August 26, 2008. See note 151.

<sup>304</sup> Email from MOCJ Deputy Chief of Staff Kevin Ryan to JPD Chief William Sifferman, Assistant Chief Allen Nance, and Mayoral Management Steve Kawa and Nathan Ballard.

<sup>305</sup> Email from Chief William Sifferman to JPD's Toni Powell, Sara Schumann, and Allen Nance, September 11, 2008. See note 151.

<sup>306</sup> Email from Patrick Boyd, Chief Adult Probation Officer to MOCJ Deputy Chief of Staff Kevin Ryan, Mayoral Communications Director Nathan Ballard, and JPD Chief William Sifferman, September 12, 2008. See note 151.

<sup>307</sup> Email from MOCJ Deputy Chief of Staff Kevin Ryan to Mayor's Communications Director Nathan Ballard and Mayor's Office manager Steve Kawa, September 3, 2008. See note 151.

<sup>308</sup> Email from MOCJ Deputy Chief of Staff Kevin Ryan to Mayor's Office manager Steve Kawa and Communications Director Nathan Ballard, September 12, 2008. See note 151.

<sup>309</sup> Email from Timothy Aitkin of ICE to MOCJ Deputy Chief of Staff Kevin Ryan, September 13, 2008. See note 151.

<sup>310</sup> Email from Chief Adult Probation Officer Patrick Boyd to Kevin Ryan, Nathan Ballard, and William Sifferman, September 13, 2008. See note 151.

<sup>311</sup> Email from Patrick Boyd, Chief Adult Probation Officer to Kevin Ryan, Nathan Ballard, and William Sifferman, September 12, 2008. See note 151.

<sup>312</sup> "Problems with New Policy" document produced by SFIRDC member organizations. Provided by research participants working at Central American Resource Center-San Francisco (CARECEN-SF).

<sup>313</sup> Letter from JPD Chief William Sifferman to Colleen Stoner, Field Representative, Corrections Standards Authority, State of California-Department of Corrections and Rehabilitation, October 7, 2008. See note 151.

<sup>314</sup> "Country of origin: ICE Notifications" Pie Graph. See note 151.

<sup>315</sup> San Francisco Office of the Mayor. "Mayors Accountability Report, Thursday, September 11, 2008." Available online at

<http://sfmayor.org/ftp/archive/mayornewsom/wp-content/themes/atahualpa/Policy/2008AccountabilityMatrix.pdf>. Accessed April 4, 2012.

<sup>316</sup> Heredia 2008

<sup>317</sup> Transcript of the October 15, 2008 Police Commission meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

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<sup>318</sup> Member organizations included ACLU of Northern California, African Immigrant and Refugee Resource Center, Alianza Latinoamericana por los Derechos de los Inmigrantes, Arab Resource and Organizing Center, Asian Law Caucus, Asian Pacific Islander Legal Outreach, Asian and Pacific Islander Youth Advocacy Network, Bay Area Immigrant Rights Coalition, The Center on Juvenile and Criminal Justice, Canal Alliance, Central American Resource Center, Chinese for Affirmative Action, Coleman Advocates, Dolores Street Community Services, East Bay Alliance for a Sustainable Economy -EBASE, Homies Organizing in the Mission to Empower Youth -HOMEY, Filipino Community Center, Immigrant Legal Resource Center, Instituto Familiar de la Raza, Inc., Interfaith Coalition for Immigrant Rights, La Raza Centro Legal, Inc., La Raza Community Resource Center-SF, La Voz Latina, Lawyers Commission for Civil Rights, Legal Services for Children, Movement for Unconditional Amnesty, Mujeres Unidas y Activas, National Lawyers Guild San Francisco Bay Area Chapter, PODER, Pride at Work, San Francisco Immigrant Legal Education Network, San Francisco Labor Council, San Francisco Organizing Project, St. Peter's Housing, Sunset Youth Services, and the Tenderloin Housing Clinic.

<sup>319</sup> "Template Support Letter," SFIRDC. Provided to the author by members of SFIRDC member organization CARECEN.

<sup>320</sup> San Francisco Board of Supervisors Legislative Packet for the October 5, 2009 Full Board Meeting.

<sup>321</sup> San Francisco Police Department "Department Bulletin 10-298: Implementation of Health and Safety Code Section 11369, October 22, 2010". Obtained through public records request to the San Francisco Police Commission.

<sup>322</sup> Transcript for the March 18, 2009 Police Commission meeting available on [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>323</sup> Letter titled "City of Refuge Ordinance & Undocumented Youth" from SFIRDC members Philip Hwang (Lawyers Committee for Civil Rights), Angela Chan (Asian Law Caucus), Angie Junck (Immigrant Legal Resource Center), Julia Harumi Mass (American Civil Liberties Union-Northern California), Francisco Ugarte (San Francisco Immigrant Legal Education Network), and Shannon Wilbur (Legal Services for Children) to San Francisco City Attorney Dennis Herrera, February 19, 2009. San Francisco Human Rights Commission Archival Files, Former Executive Director Larry Brinkin "Sanctuary Ordinance" Binder. Obtained through public records request to the Human Rights Commission.

<sup>324</sup> Transcript for January 8, 2009 Board of Supervisors inauguration event. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>325</sup> Transcript for January 27, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>326</sup> Transcript for February 9, 2009 Board of Supervisors Public Safety Committee meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>327</sup> Transcript for February 18, 2009 Police Commission meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

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331 Lagos 2009a  
332 Lagos 2009b  
333 Transcript for March 3, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).  
334 Transcript for February 9, 2009 Board of Supervisors Public Safety Committee meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org).  
335 Transcript for March 3, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)  
336 Ibid.  
337 Ibid.  
338 Ibid.  
339 Ibid.  
340 Transcript for March 23, 2009 Board of Supervisors City Operations and Neighborhood Services meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)  
341 Ibid.  
342 Ibid.  
343 Knight 2009a  
344 Walker resolution draft provided to author by the San Francisco Immigrant Rights Defense Committee.  
345 Wiener resolution draft provided to author by the San Francisco Immigrant Rights Defense Committee.  
346 Thomas 2009  
347 Ibid.  
348 Ibid.  
349 Allday et all 2009  
350 Lagos 2009c  
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352 Transcript for March 31, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)  
353 Ibid.  
354 Ibid.  
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356 Ibid.  
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358 Ibid.  
359 Ibid.  
360 Ibid.  
361 San Francisco Immigrant Rights Defense Committee “Platform” document, March 27, 2009. Provided to the author by San Francisco Immigrant Rights Defense Committee.  
362 Ibid.  
363 Ibid.  
364 Internal Juvenile Probation Document, “ICE Referrals” provided to SFIRDC member organization Asian Law Caucus through public records request. Document provided to author by SFIRDC.

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<sup>365</sup> San Francisco Immigrant Rights Defense Committee “Platform” document, March 27, 2009. Provided to the author by San Francisco Immigrant Rights Defense Committee.

<sup>366</sup> Knight 2009a

<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

<sup>369</sup> *Danielle Bologna et al v. City and County of San Francisco, April 3, 2009*. Case files obtained through public records request from the Office of the City Attorney.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> 8 U.S. Code § 1373 - Communication between government agencies and the Immigration and Naturalization Service. Available online at <https://www.law.cornell.edu/uscode/text/8/1373>.

<sup>373</sup> *Danielle Bologna et al v. City and County of San Francisco, April 3, 2009*. Case files obtained through public records request from the Office of the City Attorney.

<sup>374</sup> Ibid.

<sup>375</sup> Ibid.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid.

<sup>379</sup> Ibid.

<sup>380</sup> Human Rights Commission/Immigrant Rights Commission hearing transcript included in April 13, 2009 hearing meeting minutes.

<sup>381</sup> Ibid.

<sup>382</sup> Ibid.

<sup>383</sup> Ibid.

<sup>384</sup> Ibid.

<sup>385</sup> Ibid.

<sup>386</sup> Ibid.

<sup>387</sup> Ibid.

<sup>388</sup> Transcript for February 9, 2009 Board of Supervisors Public Safety Committee meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

<sup>389</sup> Ibid.

<sup>390</sup> Ibid.

<sup>391</sup> Transcript for March 18, 2009 Police Commission meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

<sup>392</sup> Hightower 2009

<sup>393</sup> Letter from Marc Tizoc Gonzalez, May 1, 2009 to the San Francisco Board of Supervisors. Provided to the author by SFIRDC.

<sup>394</sup> Johansen 2011

<sup>395</sup> Van Derbeken 2009

<sup>396</sup> Transcript of the “2009 Katz Award Ceremony”, Center for Immigration Studies, June 5, 2009. Available at <http://cis.org/Video/2009KatzAward>.

<sup>397</sup> Jones 2009

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398 Transcript for June 23, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

399 Democratic County Central Committee, San Francisco, Resolution, May 14, 2009.

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401 Mesa, Arizona Police Department “FLD 441-Arrest-Undocumented Foreign Nationals” department policy. Document obtained through public records request to the Mesa Police Department, Chief’s Senior Legal Staff.

402 Ibid.

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405 Ibid.

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410 Gascón 2008

411 Stern 2008

412 Letter from Mesa Police Chief George Gascón to Julie Meyers, Assistant Secretary of ICE, March 13, 2008. Letter provided to author by Mesa Police Department Senior Legal Staff to the Chief in response to a public records request.

413 “Memorandum of Agreement” between Mesa Police Department and the U.S. Immigration and Customs Enforcement, approved November 2, 2009. Available online at [https://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r\\_287gmesapolicedept11192009.pdf](https://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287gmesapolicedept11192009.pdf).

414 Ibid.

415 Ibid.

416 Ibid.

417 Ibid.

418 Ibid.

419 Ibid.

420 Ibid.

421 George Gascón testimony in front of the *Senate Committee on the Judiciary, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, and the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law*, April 2009. Letter provided to author by Mesa Police Department Senior Legal Staff to the Chief in response to a public records request.

422 Ibid.

423 Transcript for June 17, 2009 Police Commission meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

424 Knight 2009b

425 Finnegan 2009

426 Ibid.



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427 Ibid.

428 Ibid.

429 Ibid.

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431 San Francisco Board of Supervisors full board meeting “Board Packet” for the August 18<sup>th</sup>, 2009 meeting. Available online through the Board of Supervisors Legislative Research Center at <http://www.sfbos.org/index.aspx?page=9681>.

432 Ibid.

433 Ibid.

434 SFIRDC Undocumented Youth policy “Messaging Sheet” provided to author by SFIRDC.

435 Transcript for August 18, 2009 Board of Supervisors full board meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

436 Ibid.

437 Hernandez 2009a

438 Ibid.

439 Ibid.

440 Ibid.

441 Ibid.

442 Ibid.

443 Transcript of news clip on KTVU television news, August 18, 2009. Viewed at <http://www.ktvu.com/news/news/sf-supervisor-proposes-changes-to-city-sanctuary-/nK3yG/>.

444 Ibid.

445 “Privileged and Confidential Memorandum: Legal Issues in Connection with Proposed Amendment to Sanctuary City Ordinance” provided to Mayor Gavin Newsom by Deputy City Attorneys Buck Delventhal, Miriam Morley, and Wayne Snodgrass, August 18, 2009. Client-privileged confidentiality of this legal memo was subsequently waived by the client (the Mayor), made public when the Mayor gave it directly to the *San Francisco Chronicle*, published online by the *San Francisco Chronicle* in its entirety, and posted on the City Attorney website later. The author obtained this document from a public records request to the Human Rights Commission.

446 Ibid.

447 4 Cal.3d 767, 775 (1971)

448 8USC article 1324(a)(1)(A)(ii) and (iii).

449 See note 445.

450 Knight and Van Derbeken 2009

451 Nevius 2009

452 “Disclosure of Attorney-Client Privileged Advice from the City Attorney’s Office.” Letter from San Francisco City Attorney Dennis Herrera to Mayor Gavin Newsom and Members of the Board of Supervisors, August 20, 2009.

453 Ibid.

454 Ibid.

455 Ibid.

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456 Ibid.

457 Ibid.

458 Knight 2009c

459 Transcript for October 5, 2009 Board of Supervisors Public Safety Committee meeting. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

460 These legal memos were provided to the author by SFIRDC.

461 *Gates v. Superior Court of Los Angeles County*, (193 Cal. App.3d 205, 218 (1987)), *Gonzales v. Peoria*, (722 F.2d 468, 474-76 (9th Cir. 1983)), *League of United Latin American Citizens v. Wilson*, (908 F. Supp. 755, 771 (C.D. Cal. 1995)); and *United States v. Brignoni-Ponce* (422 U.S. 873, 886-887).

462 CIV S-99-1695 WBS/DAD (E.D. Cal. filed Aug. 30, 1999)

463 Case No. CV-08-01327

464 Pub 101-649, article 507, 104

465 Knight and Lagos 2009

466 “Draft Statement of Possible Impact” Human Rights Commission document obtained through public records request to the Human Rights Commission. Contained in the “CCSF Docs” Section of Former HRC Executive Director Larry Brinkin’s “Sanctuary Ordinance” Binder. Larry Brinkin advised the author to request this binder through public records request to obtain the documents the author was looking for.

467 Ibid.

468 San Francisco Board of Education Resolution “Urging the City and County of San Francisco to Remember its status as a ‘City and County of Refuge’ as set forth in San Francisco Administrative Code Chapter 12H and Condemning the City for Reporting Undocumented SFUSD Students to Immigration and Customs Enforcement (ICE),” September 22, 2009.

469 *Plyler v. Doe* (457 U.S. 202, 1982)

470 See note 472.

471 Ibid.

472 Transcript for the September 22, 2009 meeting of the San Francisco Board of Education. Available online at [www.sfgovtv.org](http://www.sfgovtv.org)

473 Ibid.

474 Ibid.

475 Knight 2009d

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<sup>522</sup> “City and County of San Francisco Ordinance Amending its City of Refuge Ordinance Regarding Reporting of the Immigration Status of Juveniles”. Letter from San Francisco City Attorney Dennis Herrera to United States Attorney, Northern District of California Joseph P. Russoniello, November 10, 2009. Available through public records request to the Office of the San Francisco City Attorney.

<sup>523</sup> *Lockyer v. City & County of San Francisco*, 33 Cal. 4<sup>th</sup> 1055, 1100 (2004)

<sup>524</sup> Letter from San Francisco District Supervisor David Campos to City Attorney Dennis Herrera, December 10, 2009. Available through public records request to the Office of the San Francisco City Attorney.

<sup>525</sup> “Re: Implementation of Policy Restoring Due Process to Immigrant Youth.” Letter from San Francisco City Attorney Dennis Herrera to Community United Against Violence, November 24, 2009. Available through public records request to the Office of the San Francisco City Attorney.

<sup>526</sup> *Ibid.*

<sup>527</sup> *Ibid.*

<sup>528</sup> Knight 2009i

<sup>529</sup> Letter from U.S. Attorney Joseph P. Russoniello to San Francisco City Attorney Dennis Herrera, December 3, 2009. Available through public records request to the Available through public records request to the Office of the San Francisco City Attorney.

<sup>530</sup> *Ibid.*

<sup>531</sup> Meeting minutes of the San Francisco Board of Supervisors full board meeting, December 4, 2009. Available online at the Legislative Research Center, Clerk of the Board of Supervisors of San Francisco <http://www.sfbos.org/index.aspx?page=9681>.

<sup>532</sup> Transcript of the December 8, 2009 meeting of the San Francisco Board of Supervisors available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>533</sup> Transcript of the December 10, 2009 San Francisco Human Rights Commission meeting as provided in the meeting minutes. Available on the Human Rights Commission website <http://sf-hrc.org/commission-meetings>.

<sup>534</sup> *Ibid.*

<sup>535</sup> *Ibid.*

<sup>536</sup> Letter from San Francisco District Supervisor David Campos to City Attorney Dennis Herrera, December 10, 2009. Available through public records request to the Office of the San Francisco City Attorney.

<sup>537</sup> “Implementation of Amendments to the City of Refuge Ordinance Regarding the Confidentiality of the Immigration Status of Juveniles.” Letter from San Francisco City Attorney Dennis Herrera, Chief Deputy City Attorney Therese M. Steward, Chief Assistant City Attorney Jesse Capin Smith, and Deputy City Attorney Buck Delventhal. December 16, 2009. Available through public records request to the Office of the San Francisco City Attorney.

<sup>538</sup> *Ibid.*

<sup>539</sup> *Ibid.*

<sup>540</sup> *Ibid.*

<sup>541</sup> *Ibid.*

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<sup>542</sup> “Herrera Your Advice Sends Kids to ICE” Protest Handout, January 1, 2007. Available through public records request to the Office of the San Francisco City Attorney.

<sup>543</sup> Letter from the San Francisco Immigrant Rights Defense Committee to the American Constitution Society titled “Concerns about Master of Ceremonies for ACS Gala,” January 25, 2010. Available through public records request to the Office of the San Francisco City Attorney.

<sup>544</sup> This would include the African Immigrant and Refugee Resource Center, ALDI, Arab Resource and Organizing Center, Asian Law Caucus, Asian Youth Advocacy Network, Bay Area Immigrant Rights Coalition, Central American Resource Center, Chinese for Affirmative Action, Communities United Against Violence, Dolores Street Community Services, EBASE, Global Exchange, H.O.M.E.Y., Filipino Community Center, Immigrant Legal Resource Center, Instituto Familiar de la Raza, La Raza Centro Legal, La Voz Latina, Legal Services for Children, Mission Neighborhood Center, Mission Neighborhood Health Center, Movement for Unconditional Amnesty, Mujeres Unidas y Activas, PODER, POWER, Pride at Work, San Francisco Immigrant Legal & Education Network, San Francisco Labor Council, San Francisco Public Defender’s Office, SFOP, St. Peter’s Housing, Tenderloin Housing Clinic, Worker Immigrant Rights Coalition, and Young Workers United.

<sup>545</sup> Letter from the San Francisco City Attorney to the American Constitution Society Board of Directors titled “Addressing Misrepresentations Advanced in the San Francisco Immigrants Rights Defense Committee’s Letter of January 25, 2010,” January 29, 2010. Available through public records request to the Office of the San Francisco City Attorney.

<sup>546</sup> Ibid.

<sup>547</sup> Ibid.

<sup>548</sup> Ibid.

<sup>549</sup> Ibid.

<sup>550</sup> Campos made reference to the meeting, providing this explanation of the discussion at the subsequent Board of Supervisors meeting on February 9, 2010.

<sup>551</sup> Transcript for Board of Supervisors full board meeting of February 9, 2010 available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>552</sup> “Juvenile Probation Department’s Response to Ordinance No. 228-09” Memorandum from JPD Chief William Sifferman to All Juvenile Probation Department Personnel, February 10, 2010. Available through public records request to the Juvenile Probation Department.

<sup>553</sup> Ibid.

<sup>554</sup> Egelko 2010

<sup>555</sup> “Revised Open Letter to Mayor Newsom, City Attorney Herrera, and Chief Sifferman, Urging Immediate Implementation of Due Process Policy.” Letter from Community United Against Violence, Equality California, National Center for Lesbian Rights, San Francisco Pride at Work, and Transgender Law Center, February 24, 2009. Available through public records request to the Office of the City Attorney of San Francisco.

<sup>556</sup> Ibid.

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<sup>557</sup> Ibid.

<sup>558</sup> Ibid.

<sup>559</sup> “Response to open letter from LGBTQ organizations regarding the immediate implementation of amendments to the San Francisco Sanctuary Ordinance.” Letter from San Francisco City Attorney Dennis Herrera to Community United Against Violence, National Center for Lesbian Rights, Transgender Law Center, Equality California, and San Francisco Pride at Work, March 1, 2010. Available through public records request to the Office of the City Attorney of San Francisco.

<sup>560</sup> Ibid.

<sup>561</sup> All quotes included in this chapter originate from the transcript for the San Francisco Board of Supervisors Rules Committee meeting of March 3, 2010 available online at [www.sfgovtv.org](http://www.sfgovtv.org).

<sup>562</sup> See the “hearing packet” 030410 for San Francisco Board of Supervisors Rules Committee meeting of March 4, 2010, available online at the Legislative Research Center, Clerk of the Board of Supervisors of San Francisco <http://www.sfbos.org/index.aspx?page=9681>.

<sup>563</sup> Phelan 2010

<sup>564</sup> Summaries of all complaints to the Office of Citizen Complaints can be downloaded on the Office of Citizen Complaints “Openness Reports” website at <http://sfgov.org/occ/reports-statistics>

<sup>565</sup> For definitions of various types of OCC findings, see

<http://sfgov.org/occ/definitions-allegations-findings>.

<sup>566</sup> OCC Claim# 0342-02.

<sup>567</sup> Chief’s Decisions, April 2005 available online at

<http://sf-police.org/Modules/ShowDocument.aspx?documentid=22911>

<sup>568</sup> <http://www.sf-police.org/modules/ShowDocument.aspx?documentid=14813>

<sup>569</sup> Claim 0789-04, lodged on 12/29/04, available online at

<http://sf-police.org/Modules/ShowDocument.aspx?documentid=22887>

<sup>570</sup> San Francisco Administrative Code, Chapter 12H.4.

<sup>571</sup> Interview with Former San Francisco Human Rights Commission Executive Director Larry Brinkin, September 3, 2011.

<sup>572</sup> The HRC Sanctuary City Ordinance Complaint Process is described on the Human Rights Commission website at <http://sf-hrc.org/index.aspx?page=110>

<sup>573</sup> “Privileged and Confidential Memorandum: Legal Issues in Connection with Proposed Amendment to Sanctuary City Ordinance” provided to Mayor Gavin Newsom by Deputy City Attorneys Buck Delventhal, Miriam Morley, and Wayne Snodgrass, August 18, 2009. Client-privileged confidentiality of this legal memo was subsequently waived by the client (the Mayor), made public when the Mayor gave it directly to the *San Francisco Chronicle*, published online by the *San Francisco Chronicle* in its entirety, and posted on the City Attorney website later. The author obtained this document from a public records request to the Human Rights Commission.

<sup>574</sup> “Rules for Filing a Complaint Under Chapter 12H of the Administrative Code” Human Rights Commission (HRC) document. Provided to the author by HRC staff member research participant.

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<sup>575</sup> “Sanctuary City – Complaint Intake Form” Human Rights Commission (HRC) document. Provided to the author by HRC staff member research participant.

<sup>576</sup> “Rules for Filing a Complaint Under Chapter 12H of the Administrative Code” Human Rights Commission (HRC) document. Provided to the author by HRC staff member research participant.

<sup>577</sup> All documents pertaining to this complaint that are referenced in this chapter were provided to the author in response to a public records request to the San Francisco Human Rights Commission.

<sup>578</sup> Federal PIQ 99-01 guidelines.