

TESTIMONY IN SUPPORT OF SB901 – Criminal Procedure – State and Local Government - Participation in Federal Immigration Enforcement

My name is Joanna Silver and I live in Silver Spring, Maryland. I am testifying in support of Senate Bill 901 from a variety of perspectives:

First, I am a parent of a school-aged child whose schools in Montgomery County have had significant populations of immigrant families. My child is fortunate to learn alongside children from diverse backgrounds with diverse experiences. The success of my child's school, and thus my child's own educational experience, depends on the safety, security, and well-being of *all* of the children in his community. Children cannot be successful if their families do not feel safe and secure. For this reason, I urge you to support SB901.

Second, I am a member of the Community Social Action Council of Temple Emanuel in Kensington, Maryland and a member of Jews United for Justice. A cornerstone of my religious observance is *Tikkun Olam*, the idea that Jews have an obligation to repair the world. Jewish tradition is also rooted in the commandment that we welcome the stranger, for we were strangers in the land of Egypt. These core principles animate my fervent belief that our State has an obligation to welcome the stranger and to refuse to be complicit in the enforcement of policies based on fear, hatred, and distrust. For this reason, I urge you to support SB901.

Third, I am a member of the Takoma Park Mobilization Equal Justice Committee. Our 1800+ members live throughout Montgomery County and we advocate for the safety and well-being of our immigrant neighbors throughout the county. We know that our immigrant neighbors live in fear and that this fear hampers their ability to access services to which they are entitled and to assist law enforcement in making our entire community safe. We also know that immigration enforcement at the state and local level diverts essential resources from the public safety needs of our community. And, we know that jurisdictions around the country that refuse to cooperate with ICE have lower crime rates and stronger economies than jurisdictions that assist ICE in its civil immigration enforcement activities. Trust between law enforcement and the community makes everyone safer. For this reason, I urge you to support SB901.

Fourth, while I offer my testimony in my personal capacity, I have spent the past 16 years working as an Assistant Federal Public Defender in the District of Maryland and I specialize in the intersections between criminal and immigration law. From this experience I can share a few relevant observations regarding the part of SB901 that limits cooperation between corrections agencies/officers and ICE.

The most populous jurisdictions in Maryland have already enacted policies prohibiting correctional facilities from detaining someone beyond their state court release date without a judicial warrant. Despite this, my office's caseload for the offense of illegal reentry into the United States – a criminal offense investigated by ICE -- has increased significantly over the past three years. This increase is not due to an increase in the number of illegal reentries into the United States, but rather to the fact that ICE has prioritized its own resources to identify, investigate, and detain individuals who are here unlawfully. The majority of my illegal reentry clients are found by ICE at their homes, on their way to work, or in some cases, while dutifully reporting to their probation officers if they have had a new criminal conviction. ICE does not need the assistance of our correctional facilities to do its job.

If ICE learns that a person of interest is in a local detention facility (which it does automatically via the NCIC), ICE can easily obtain a judicial warrant if there is probable cause to believe the person has also committed a criminal immigration offense. ICE can alert the United States Attorney's Office (USAO) and the USAO and the ICE agent can present a criminal complaint to a Federal Magistrate who can in turn issue a warrant; there is a "duty" Assistant United States Attorney and a "duty" Magistrate judge on call at both federal courthouses in Maryland every day. Similarly, the USAO can convene a grand jury to obtain an indictment, which can also be the basis of a judicial warrant. At present, ICE tends to wait until it has someone in its custody before referring the case to the United States Attorney for prosecution; there is no reason why it cannot make that referral while the person is still in a local detention center.

My work as a federal public defender, and as a state public defender in Montgomery County before that, has granted me a close look at the non-citizens in our state who have been involved with our criminal justice system. This exposure strengthens my support for SB901 and my concern with the notification requirement currently in the bill. My non-citizen clients, documented and undocumented, are incredibly hard workers; I honestly cannot remember a non-citizen client who was not working at the time of his arrest. In addition, almost all of my non-citizen clients provide financial support for other people in our community and/or in their home countries, and many have had US Citizen children and even grandchildren.

My non-citizen and undocumented clients become involved in the criminal justice system for the same reasons as my citizen clients: mental health disabilities, poverty, addiction, childhood trauma, and the over policing of Black and Brown communities (rates of Black immigrants deported based on criminal justice involvement far outpace their actual representation in the immigrant community). For example, I recently represented a gentleman who had prior convictions for crimes of violence, but he also had an intellectual disability and was abandoned by his parents when he was 7 years-old and left to fend for himself amid poverty and violence in Honduras.

Some of the people I represent who have convictions for crimes of violence have convictions that are very old, and their current criminal justice involvement is minor and nonviolent. Non-citizens age out of violent behavior in the same way that citizens do (the parole reform legislation that this Committee is considering recognizes this fact). Finally, the offensive trope that non-citizens are child molesters and rapists (something I hear often from the anti-immigrant constituents who testify in front of this Committee), is not born out by my personal experience. To the contrary, the overwhelming majority of my sex offender clients are White, male, United States citizens.

There is simply nothing I have seen in my non-citizen client base that leads me to believe our State is justified in treating them any differently than we treat anyone else who has completed their time in state custody. The data supports this conclusion: immigrants, including undocumented immigrants, commit crimes at lower rates than US citizens. There is no reason for our State to be complicit with ICE by helping it detain our community members, regardless of their criminal justice involvement.

As a parent, as a member of the Jewish community, as an activist, and as someone with years of experience representing individuals targeted by ICE, I urge you to support SB901.