



# ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL AUTHORITY

(SERVING ALBEMARLE, CHARLOTTESVILLE, NELSON)

160 Peregory Lane  
Charlottesville, Virginia 22902

Phone: (434) 977-6981 Fax: (434) 951-1339 Col. Martin Kumer, Superintendent (ext. 230)  
Web: <http://www.acrj.org> Mrs. Marce B. Anderson, Clerk (ext. 229)

## Board Business Meeting / Work Session

Thursday, August 23, 2018 (12:30 – 2 p.m.)

Muster Room • Albemarle-Charlottesville Regional Jail, 160 Peregory Lane, Charlottesville, VA

### AGENDA

(Action/Information)

#### **I. ACRJ Board Meeting – Call to Order**

Adopt Meeting Agenda

Action Item

#### **II. Consent Agenda**

##### Informational

- 1) Draft Minutes of the July 12, 2018 ACRJ Authority Board Bi-Monthly Business Meeting
- 2) Attachment A – Letter to Jail Board presented at the July Board Meeting
- 3) Attachment B – Petition to end ICE Notification (2800+ signatures) presented at the July Board Meeting
- 4) Attachment C - Letter from Joseph Platania, City of Charlottesville Commonwealth's Attorney
- 5) Attachment D – ICE Data

#### **III. Closed Session – (if needed)**

#### **IV. Adjournment**

Action Item

**NEXT MEETING: September 13, 2018**

#### Authority Board

Doug Walker (Albemarle)  
Sheriff J.E. "Chip" Harding (Albemarle)  
Cyndra Van Clief (Albemarle)  
Diantha McKeel (Albemarle) - Chair

Sheriff James E. Brown, III (Charlottesville)  
Kathy Johnson Harris (Charlottesville)  
Wes Bellamy (Charlottesville)  
Michael Murphy (Charlottesville) – Vice Chair

W. Lawton Tufts (Joint- Alb / Cville)  
Sheriff David Hill (Nelson)  
Stephen Carter (Nelson)

Bi Monthly Board July 12, 2018

## **DRAFT**

### **Summary Minutes of the Albemarle Charlottesville Regional Jail Authority Board Meeting July 12, 2018**

#### **Jail Board Members Present:**

Mrs. Cyndra Van Clief  
Sheriff David Hill  
Mr. Mike Murphy  
Mr. W. Lawton Tufts  
Sheriff “Chip” Harding  
Mr. Steve Carter  
Mr. Doug Walker

#### **Jail Board Members Absent:**

Ms. Diantha McKeel  
Sheriff James Brown  
Dr. Wes Bellamy  
Mrs. Kathy Johnson Harris

#### **Others Present:**

Colonel Martin Kumer  
Lt. Colonel Todd Rowland  
Mrs. Gequetta Murray-Key  
Mrs. Marce B. Anderson  
Ms. Felicia Morris  
Mr. Jeff Gore

The meeting was called to order at 12:34 pm by Vice-Chair Mike Murphy. Mr. Murphy asked if the board if they were prepared to adopt the agenda or if there were any additions or changes. Mr. Tufts made a motion to adopt the agenda as presented. Sheriff Harding seconded the motion. The motion carried unanimously. Mr. Murphy asked if everyone had a chance to review the consent agenda and was acceptable to everyone. Mr. Walker made a motion to adopt the consent agenda as presented. Sheriff Harding seconded the motion. The motion carried unanimously.

**Matters from the public:**

**Matthew Christiansen** stated that he was a former corrections officer at a regional jail and is currently a social worker. Mr. Christiansen stated that he is aware that ICE pays more than most agencies to house inmates and that can be a money maker. He believes that voluntary ICE notification needs to end, and that it should be put back on the agenda. Mr. Christiansen stated that ICE commits a number of human rights violations. The job of the board is to represent the community not a federal agency. The systematic oppression of people of color should not be continuing by this agency. The community has stated that this practice needs to end and you should listen to the community and follow the will of the people and end it.

**Kat Maybury** represents Indivisible Charlottesville. Ms. Maybury would like this board to consider voting on the issue of voluntary ICE notifications again in September. Ms. Maybury spoke about lobbying for undocumented individuals to be able to get drivers licenses. She met a man who was undocumented and stated that he did drive on occasion even though he didn't have a driver's license. He did so occasionally because he worked on one side of town as a day laborer, and his son was accepted into an advanced placement program that was on the other side of town. His son wanted to grow up to be an astrophysicist. He state that if he got caught driving without a license, he could be one of the individuals in jail and taken into the custody of ICE. Most people in this community do not want you referring these non-violent offenders to this organization that has gone rogue. Please consider bringing this up in September.

**Jillian Dankel** would like voluntary notification of ICE to be placed back on the agenda in September to get ICE out of the jail. ICE tears families and puts people in danger. ICE also deports individuals to violent areas that they are fleeing from. Most individuals that are undocumented, are here for non-violent offences and there is no need to put them in the hands of ICE. Please put this issue back on the agenda for the September meeting.

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**Donna Shaunesey** is here to echo the statements of the previous speakers. It is critical to put this issue back on the agenda for the September meeting. Ms. Shaunesey stated that the majority of the individuals are in the jail for non-violent offences, and there is no need to contact ICE. We as a community should shelter these individuals rather than sending them somewhere that they may lose their lives. I would urge you to consider weighing the gravity of someone driving without a license or sending them to a country where they may be killed. Please put this issue back on the agenda for the September meeting.

**David Silver** is an Albemarle County resident and a retired psychiatrist. He stated that he is simply here for the same reason as all the other speakers have been here. He does not think that the current policy is consistent with the values of this community. Mr. Silver asked that all the individuals think back to their ancestors and he is reasonably confident that none of our ancestors were here forever. Some were forced here but the vast majority came here to make a better life. I would ask the jail board to change the policy and bring it up in the September meeting.

**Marion Dembling** a City of Charlottesville resident. Ms. Dembling stated that she is here to represent 6 generations in her family who in one way or another based on religion, race, politics, gender, have been members of oppressed and vulnerable populations. There are organizations in this community that are working to help undocumented individuals become more stable and valuable, and productive members of the community. Ms. Dembling would like this issue of ICE notification to be on the agenda for the September meeting.

**Andrea Negrete** a Charlottesville resident. She entered into the record the petition and signatures of over 2800 individuals against the current ICE policy. Ms. Negrete read the petition – **Attachment B**.

**Mark Heisey** is a resident of Albemarle County. Mr. Heisey demanded that the board put the issue of ICE notifications on the agenda for September and vote to end the policy of voluntary ICE notifications. Mr. Heisey began reading a letter addressed to Ms. McKeel and Colonel Kumer – **Attachment A**.

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**Claire Konizeski** a Charlottesville resident finished the letter started by Mr. Heisey – **Attachment A**.

**Samyuktha Mahadevan** is an Albemarle County resident and a student at William and Mary. Ms. Mahadevan said that in the January meeting ICE agent Hott stated that the ACRJ Boards decision to notify ICE is in the interest of public safety. Ms. Mahadevan stated when local law enforcement engages with ICE to enforce federal immigration laws, public safety and community trust decrease significantly. Studies show that when undocumented Mexican immigrants were informed that local law enforcement was working with ICE, they were 61% less likely to report crimes they witnessed and 43% less like to report being victims of a crime. This policy was originally designed to target undocumented immigrants that were accused of violent crimes such as human smuggling, gang crimes, and sexual offences, but the majority of criminals who are put in this jail and ICE is notified are accused of minor offenses that are not worthy of being sent to ICE. Ms. Mahadevan requested that voluntary ICE notifications be placed on the agenda for the September board meeting.

**Sally Thomas** thanked the board for allowing her to speak today. Ms. Thomas wanted to ensure that she was able to convey to the board that she would like to see the issue of voluntary ICE notification on the agenda for the September meeting and a vote to end the current policy. When you have a petition that 2800 people have signed, the issue is not likely to go away. Ms. Thomas stated that if someone as moderate as she is, has been motivated to attend and speak at a jail board meeting, it is a small indication of a much larger issue that is going to become larger and larger. This is a policy that is within your control. I urge you to be leaders in Virginia. This is a proud community and I encourage you to be leaders.

**Eric Martin** stated that in high school he wanted to be an officer. His father was a police officer and he talked Mr. Martin out of being an officer, telling him that he would have to be cruel and evil to people. He instead became a 1<sup>st</sup> grade teacher. He worked in a migrant community and had many students with parents in jail and family members that had been deported and the suffering they go through. If you send people to ICE, people will be killed. Mr. Martin stated that he is no longer a

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teacher. He is now a theologian. The most consistent command in the Bible is to welcome the stranger, welcome the alien, and welcome the foreigner.

Mr. Murphy asked that Colonel Kumer address one particular comment from a member of the public regarding payments being received from ICE. Mr. Murphy stated that he had never heard that before and wanted to ensure that it was addressed. Colonel Kumer stated that he would address it.

### **Matters from Jeff Gore, ACRJA Board Attorney:**

There were no matters from the attorney.

### **Matters from the ACRJA Board Members:**

Mr. Tufts advised the board that he noticed a few individuals seated outside and there were seats available inside if they wanted to come in. Colonel Kumer stated that he asked those individuals if they wanted to come inside and they declined.

### **Matters from Business Manager, Jeff Brill:**

There were no matters.

### **Matters from Colonel Martin Kumer, Superintendent:**

Colonel Kumer advised the board that the jail is not paid by ICE. There is no contract with ICE, and we receive no money whatsoever from ICE. There is a program that facilities can sign up for and can house ICE inmates beyond their release date. We are not one of those facilities, and we do not hold past an inmates release date. If ICE is not here by the time an inmate is released, they are released to the community.

There was a statement made that we are legally required to participate in the voluntary notification of ICE. Colonel Kumer stated that is inaccurate and he does not believe that has ever been expressed by this board or its representation. We are

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aware that we are not legally required to notify ICE of release dates. Mr. Walker stated that we are required to document undocumented individuals coming into the facility, so ICE is notified that they are here. Colonel Kumer said yes, but we are not required to do the voluntary notification. We are required by the State of Virginia if someone is foreign born.

Mr. Murphy was advised that there was another individual outside that wanted to speak. **Barbara Mallie** came forward to speak. She stated that September seems too long to vote on this issue. She serves on a board, and advised when there is an urgent matter, they schedule an urgent meeting. She urges the board not to wait until September, maybe schedule a meeting in August.

Colonel Kumer directed everyone's attention to the board packet. Within it are the statistics for all individuals picked up by ICE over the last 12 months that we made voluntary notification of. ICE can pick up individuals once they leave here on these detainers. There may be others picked up by ICE in this area, but not from this facility. The information presented only captures the individuals picked up from this jail. The list includes country of origin, their charges, whether or not they were bonded on those charges, what their final convictions were, and the time they were released from this facility which also coincides with the time they were taken into ICE custody. We did this in order to be as transparent as possible with the public so everyone can see exactly what the charges are of the people who left here. Colonel Kumer advised that ICE has made it clear that they place no relevance on the local charges. Their policy now is a zero tolerance policy. If the person is in the country illegally, they want to take custody of that individual regardless of their local charges. There are people here who may have been charged with drunk in public and ICE may have been at the facility to pick up someone else, when they are notified through the fingerprint process at headquarters that there is another individual here that they may have interest in and they take custody of that individual because they are here. There are times that individuals are bonded and not fully sentenced, and ICE will take custody of those individuals as well. When we get the bond information and paperwork from the courts, we notify ICE that this person has received a bond and they will be released shortly. We will not hold them for ICE, and we do not drag our feet on the paperwork. We process the paperwork as quickly as we would with anyone else.

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There are felony charges, violent felony charges, come civil offenses and everything in between. We do not make the decision on when to call ICE based on the charge. We notify ICE of release dates when they have interest in someone that is in our facility. Mr. Murphy stated that he notices 5 individuals that had not gone through the entire court process. Colonel Kumer advised that it may have been a situation that the individual received a bond, the paperwork came back from court, and we notified ICE that the individual will be released shortly. It is possible that they were in the area, or were dispatched quickly and were able to get here before the paperwork was completed for release. Sheriff Harding asked Colonel Kumer if ICE was going to make an attempt to pick up everyone that is here undocumented. Colonel Kumer advised that if it is logistically possible, they will. Mr. Walker asked Colonel Kumer if the list of individuals on the document were all transferred to ICE custody. Colonel Kumer advised that they were all picked up. Mr. Walker asked for clarification on the second list. Colonel Kumer advised that it contained individuals that ICE stated that they wanted to take custody of, placed a detainer on them, but for whatever reason, they did not pick them up, and they were released to the community. If ICE picked them up at a later time in the community, or were arrested in another jurisdiction, we would have no knowledge of that. Some of these individuals may have gone to the department of corrections, and the detainer will follow them. They may have charges in other states, we transferred them to the other state, and ICE picked them up there. There are many reasons ICE may not take custody of someone. Mr. Murphy asked for the larger number beyond the 25 or 44 on the lists presented of people who were undocumented and released whether ICE was there or not, or whether ICE requested a detainer or not. Colonel Kumer advised that the board that we do not keep readily available stats on that information. Because we don't hold for ICE, we don't keep stats saying we called ICE and they never showed up. Mr. Murphy requested the full pool of people for the same timeframe who identified as a different country of origin and were undocumented and in the facility. Mr. Tufts stated that the zero tolerance policy is a substantive change from the previous information given by ICE stating that they are basing their decision on the level of danger to the community. Mr. Walker stated that he doesn't believe that is a new policy. Mr. Tufts advised that he agrees that it is not new, but ICE made it seem as though they were making decision based on information we didn't know. Mr. Tufts stated that both Commonwealth's



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Attorneys arguments were that we don't have all of the information ICE has to make these decisions but that is irrelevant at this point if they are picking up everyone. Mr. Walker asked Colonel Kumer to clarify the process by which the detainer is issued. He stated that his understanding that those undocumented individuals are interviewed by ICE. Does that happen in all cases or most cases? Colonel Kumer advised that it does happen in most cases but not all. The process is that a person is brought in and fingerprinted. If their fingerprints are in ICE's database that says that they are wanted for being in the country illegally or some other reason and ICE has interest in them, they will notify us that they have an interest in them. They will come to the facility, interview that individual, and if they decide to do so, they will issue a detainer at that time. There are times that after the interview process, they leave and say they do not have an interest in the individual for whatever reason. Mr. Tufts stated that this is still a change since the last vote. At the previous meeting, the debate was whether or not we should be making a decision on the level of danger to the community that ICE has and others do not. But now they want everyone regardless of the level of danger to the community only if they are here illegally. That is a substantive change since the last vote. The community has a right, especially with elected officials, if they are still voting to notify ICE despite knowing that this has nothing to do with the safety of the community that is a substantive difference. Mr. Carter stated that there are only 2 elected officials on the board. Mr. Murphy stated that there are 5 elected officials on the board. Mr. Walker stated that there was a representation at the board meeting with ICE that there was information that ICE had that we would not have on the local level, and the commonwealth's attorneys gave that reason for concern. Reconciling that concern with what their clear message is what would be important in understanding whether something has changed or not. Colonel Kumer advised that with some of these individuals, ICE does have information that we do not have that is paramount to community safety. Mr. Murphy stated that the federal government has committed \$60,000,000 over 5 years in Caroline county to detain up to 224 people a day. Mr. Murphy questioned if the policy is a "have to", or a "like to". It is a request. If the board were to decide to revisit this policy September or otherwise, those issues are of substance. Mr. Murphy stated that the executive committee met to discuss this agenda and felt there would be members of the public here on this matter. They were inclined to discuss with the board whether this issue should be revisited and if so, sooner than September

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would be better in special meeting or work session type of meeting rather than a regular business meeting. Mr. Murphy asked for the boards thoughts on this issue. Mr. Carter asked for the basis of the executive committee. Mr. Carter stated that he was unaware of any Nelson County representative on the executive committee and no mention of an executive committee in the bylaws. Mr. Murphy changed the language to the agenda creating committee, who projects what should be on the agenda. Mr. Walker stated that we are missing quite a few members of the board. Mr. Walker stated that there should be others present at the work session such as ICE as well as the Commonwealth's Attorneys. Mr. Walker stated that he has no problem with meeting sooner than September. Mr. Murphy asked Mr. Gore what needs to be done in order to call a special meeting. Mr. Gore stated that several members of the board can request a special meeting as long as the 3 day notice has been given to the public. Mr. Murphy stated that he will communicate with Ms. McKeel and we will get availability dates from the members.

Mr. Carter stated that he believes evaluation of Colonel Kumer should wait until more of the board members are present. Mr. Murphy stated that evaluation of the Superintende would be deferred until September.

Sheriff Harding made a motion to adjourn. Mr. Tufts seconded the motion. The motion carried unanimously. The meeting adjourned at 1:40 pm.

**DRAFT**

To:

Diantha McKeel  
Albemarle County Board of Supervisors

Martin Kumer  
Albemarle-Charlottesville Regional Jail Superintendent

Copied:

Stephen Carter  
Albemarle County Executive

David Hill  
Sheriff, Nelson County

Cyndra Van Clief  
Resident, Albemarle County

Kathy Johnson Harris  
Resident, Charlottesville

Doug Walker  
Albemarle County Executive

Chip Harding  
Sheriff, Albemarle County

Mike Murphy  
Charlottesville Assistant City Manager

W. Lawton Tufts  
Resident, Charlottesville and Albemarle County

Wes Bellamy  
Charlottesville City Councilor

July 12, 2018

Dear Ms. McKeel and Col. Kumer,

Thank you for the response to the petition, emails, and phone calls that members of the community have made to you regarding the Albemarle County Jail Board (ACRJ) decision to continue voluntary notifications to ICE about the release dates of detained community members. We'd like to respond to your letter to clarify our position and explain why, despite your explanation, we adamantly believe this harmful policy must be terminated immediately.

While we understand that this policy is not new and is widely practiced in Virginia, that in no way makes it justifiable. Just because a practice is pervasive does not mean that it is moral. There are many examples throughout history of evil practices, including ones that are technically legal, becoming commonplace. In fact, the more pervasive an immoral practice is, the more likely it is to be codified into law, and the more urgent it becomes to oppose it. If no other jurisdiction has taken a stance against voluntary ICE notifications, then the ACRJ ought to have the courage to be the first to do so.

Additionally, as representatives of our counties, you are accountable to us, your constituents, and not the jail boards or people of other localities. If we request a change in the policy of our own jail board in our own community, our elected officials have an obligation to prioritize our interests and demands.

By making notifications to ICE, ACRJ is effectively facilitating extrajudicial incarcerations based on citizenship status. If a judge has decided to release someone on bond, or if someone has already served their sentence, that indicates that a judge has decided that the person is no longer a “danger” to the community. By calling ICE to incarcerate someone for civil immigration infractions, ACRJ is subjecting undocumented community members to additional incarceration based solely on their legal status and not on the crime they have been accused of committing.

You have justified your position by claiming that you have no way of determining which undocumented inmates “pose a risk to the community,” and that therefore you must notify ICE in all cases and trust them to make that determination. We agree that notifications should not be determined on a case by case basis. Rather than notify ICE in all cases, we call on you to end ICE notifications altogether. The notion that ICE is competent to determine who puts our community at risk is absurd. ICE is an organization that incarcerates and deports infants and toddlers without regard for their well-being or safety. Numerous incidents of children being abused and neglected while in ICE custody have surfaced in the last few weeks alone. Furthermore, there is a long-standing notion in our justice system that it is better that 10 guilty people go free than for one person to be wrongly convicted. We implore you to adopt that line of thinking and abandon the argument that trusting ICE to keep “dangerous” people out of our community while tearing families apart and subjecting people to inhumane detention and deportation is just or in any way keeps us safe.

You’ve repeatedly claimed that “we do not know what we do not know regarding each individual with an immigration detainer.” Subjecting all undocumented inmates at the ACRJ to ICE’s cruelty on the pure speculation that they may present a danger that only ICE is aware of is reprehensible. Furthermore, while you may not know everything about undocumented inmates at the ACRJ, we do know a lot about ICE. We know they imprison people in the most inhumane for-profit prisons in the country. We know they separate families and lose children. We know people have died in their custody. We know they are constructing internment camps on US military bases. We know they sexually assault people in their custody. And, with more troubling information coming out almost daily in the mainstream media about ICE, we know that we don’t know what we don’t know about the full extent of ICE’s human rights violations in this country. And we don’t know what we don’t know about the specific human rights violations suffered by individuals who are picked up by ICE upon being released from the ACRJ.

Even if your position is that voluntarily collaborating to place undocumented ACRJ inmates in ICE custody does not violate those inmates’ human rights, it is undeniable that ICE is an organization that systematically violates human rights. ICE must face consequences for their human rights violations, and we call for an end to ICE notifications at the ACRJ as one of those consequences. By doing so, the ACRJ can send a message to the rest of Virginia and the country that ICE’s human rights violations will have repercussions in jail boards’ willingness to collaborate with them.

We demand once more, for the sake of the most vulnerable members of our communities, and for the strength of our communities as a whole, end ICE notifications now.

Sincerely,

Restoration Village Arts  
Charlottesville Democratic Socialists of America  
DREAMers on Grounds  
Charlottesville Gathers  
(A)narchist People of Color Collective  
Together Cville  
Black Lives Matter - Charlottesville  
Showing up for Racial Justice, Charlottesville

Charlottesville-area Immigrant Resource and Advocacy Coalition (CIRAC)  
Charis Community, Charlottesville  
Sin Barreras-Without Barriers, Inc.  
Casa Alma, Charlottesville's Catholic Worker Community  
Indivisible Charlottesville  
Thomas Jefferson Memorial Church-Unitarian Universalist  
Congregate Charlottesville  
UVA Graduate Student Coalition for Liberation  
Hate-Free Schools Coalition of Albemarle County

To the members of the Albemarle-Charlottesville Regional Jail board,

On January 25th, the Jail Board considered a motion to end the jail's policy of giving advance notice to Immigration and Customs Enforcement (ICE) anytime someone with an immigration detainer is about to be released from the ACRJ. As you know, this policy is completely voluntary, and the ACRJ is under no legal obligation whatsoever to continue this practice, yet the board voted 7-3 to continue the policy.

To those of you who voted to end the policy, thank you. We urge you to put this critical issue back on the agenda of every jail board meeting until the board votes to end the practice.

To those of you who voted to continue the policy, we urge you to change your vote. ICE routinely targets black and brown communities to funnel their members into detention and deportation. This is true regardless of people's immigration status and citizenship, as we've seen in many cases. Cases of human rights abuses and violations of human dignity are rampant within ICE detention centers. No matter a person's alleged crime, it is immoral for the ACRJ to voluntarily collude with ICE to turn them over to ICE custody. ICE systematically violates the human rights of people in their custody. To continue the current policy at the ACRJ regarding ICE is to voluntarily cooperate with a law enforcement body that routinely disregards the human dignity of those in their custody.

We call on all members of the ACRJ board vote to end the practice of giving voluntary notice to ICE when someone with an immigration detainer is about to be released. You have an obligation to protect the rights of the residents of your communities. Undocumented immigrants are not a danger to communities. ICE is. Stop colluding with ICE. Stop inviting them into our community.

Sincerely,



OFFICE OF THE  
COMMONWEALTH'S ATTORNEY

CITY OF CHARLOTTESVILLE • CITY HALL BUILDING • 605 EAST MAIN STREET • P.O. BOX 911 • CHARLOTTESVILLE, VIRGINIA 22902 • (434) 970-3176 • FAX (434) 971-8202

JOSEPH D. PLATANIA  
COMMONWEALTH'S ATTORNEY

August 10, 2018

Albemarle-Charlottesville Regional Jail Board  
Martin Kumer, Superintendent, Albemarle-Charlottesville Regional Jail  
160 Peregrory Lane  
Charlottesville VA, 22902

Jail Board Members and Superintendent Kumer:

I am submitting this letter in advance of your August 23<sup>rd</sup> meeting because I have court obligations that afternoon and am unable to attend. I have no objection to my written comments being attached to your agenda and made public.

Recently, numerous citizens from the City of Charlottesville have contacted the Commonwealth Attorney's Office asking for clarification and information on the Albemarle-Charlottesville Regional Jail's (ACRJ) recent policy vote to continue to voluntarily notify federal ICE agents in advance of the release of incarcerated individuals who are undocumented. This decision has generated significant local media coverage and has left many members of the Charlottesville community legitimately feeling angry, scared, and isolated.

As a threshold matter, the enforcement of federal immigration laws falls well outside of the purview of state prosecutors in the Commonwealth of Virginia. I write this letter to the Board in order to address, in a formal way, the ACRJ's policy from the perspective of the Charlottesville Commonwealth Attorney's Office and how it may impact us as we attempt to balance community safety with the fair treatment of offenders. I am hopeful that some of my observations and questions will help the Board as it decides whether or not it will reconsider its earlier decision on this extremely important issue.

I have had the opportunity to review jail data from July 1, 2017 to June 27, 2018. I thank Superintendent Kumer for collecting and providing it, and being available to answer questions I have posed to him. During that time period, ICE filed detainers on and requested notification of release from custody dates for 44 undocumented individuals. The ACRJ voluntarily notified ICE of release dates in all 44 cases. Although the data does not indicate why, ICE did not go before a

federal judge and obtain a judicially issued criminal complaint supported by probable cause (which almost certainly would have resulted in a non-discretionary hold and mandatory ICE notification) in any of the 44 cases.

In 25 of those cases, ICE took the individual into physical custody upon either their release on bond or the completion of their state sentence. Some individuals taken into ICE custody upon their release were charged with serious state felonies while others were charged with minor state offenses like driving without a license and public intoxication. Eight of the twenty five cases originated within the City of Charlottesville. According to the provided data (and of significant concern), two of the eight individuals were removed/deported after a judge had ordered their release on bond and prior to their trials. They are currently considered fugitives from justice. One individual was charged with DUI and one was charged with domestic assault and battery. One problem presented by this scenario is that individuals who may not be guilty of the crime they have been charged with have no ability to assert their innocence and stand trial. A second problem is, if these individuals were in fact guilty and had been tried and convicted prior to removal, they would have been held accountable for their actions and our office (and any other prosecutor's office for that matter) would have been able to use those prior convictions as enhancements in the event of second or subsequent offenses.

In 19 of the 44 cases, there is no record of ICE taking the individual into physical custody upon their release from the jail. Individuals not taken into ICE custody were charged with domestic assault, strangulation, DUI, robbery, and kidnapping as well as non-violent misdemeanors. None of those 19 cases were from the City of Charlottesville. The data does not indicate why some individuals were taken into ICE custody while others were not.

I was also able to review a form letter addressed to "concerned citizen[s]" written by ACRJ Superintendent Martin Kumer and Jail Board Chairperson Diantha McKeel. The letter explicitly stated that the Board Authority did "not believe that undocumented immigrants pose an inherent danger to this community."

Regrettably, I was unable to attend the January 25, 2018 Board meeting where a vote was taken on continuing the voluntary notification policy, but the minutes mention me by name and state that I was in favor of notification in felony cases but unsure about misdemeanors. As stated above, the purpose of this letter is to address, in a formal way, the ACRJ's voluntary notification policy from the perspective of the Charlottesville Commonwealth Attorney's Office.

Procedurally, when an undocumented individual is arrested and charged with a crime in the City of Charlottesville, and held without bond, our office uses a validated risk assessment tool to determine if the individual presents a flight risk, a danger to themselves, or a danger to the community. This is an evidence based decision making process and is considered a best practice in this field. If we as prosecutors do not believe that probable cause exists to establish any of those factors, we recommend release back into the community with terms and conditions. If we feel that the individual is a flight risk or a danger to themselves or the community, we ask a judge that they be held until their trial. I concur wholeheartedly with Superintendent Kumer, Ms. McKeel, and the Board Authority that undocumented immigrants do not pose an inherent danger to this community based solely upon their citizenship status. I am unaware of any evidence to



suggest that this is a legitimate risk factor, standing alone. If the Board agrees with the letter it wrote, it may be useful to have ICE articulate with specificity how the voluntary notification policy furthers legitimate local public safety needs.

It is also important to note that at time of arrest, the ACRJ is required by law to notify ICE of each and every undocumented individual that enters their facility. This not only presents ICE with an opportunity to prioritize cases involving a threat to public safety and obtain a criminal complaint issued by a federal judge, but would be an ideal time for them to notify the prosecutor handling the state case of any relevant law enforcement sensitive information implicating public safety that may be in ICE's possession.

After a state court judge makes a decision about whether the individual should be released back into our community prior to their trial, the state criminal case then proceeds and the individual is either acquitted or convicted and sentenced. In Charlottesville, we as prosecutors take the view that when any individual is released on bond or completes their lawfully imposed state sentence, absent exceptional circumstances, they are appropriate candidates to rejoin our community.

I understand that the Jail Board has several jurisdictions to consider and must consider multiple viewpoints while sorting through this controversial issue. After examining the data for City cases, however, I am unable to see the positive impact the current policy has on family stability or public safety in the City of Charlottesville. In some cases, primary caretakers or breadwinners are removed and are no longer able to care for their children, who are oftentimes citizens. I am also concerned about witnesses and victims looking at voluntary notification as a reason to be uncooperative with local law enforcement and not report crimes or participate with prosecutions because they fear the deportation of charged individuals. If community safety is one of our guiding principles, and it must be, it seems unwise to have a policy that perhaps unintentionally (albeit foreseeably) undermines it. Many citizens in Charlottesville have observed that the current policy reinforces public perception that local authorities and local law enforcement agencies are facilitating the removal by a federal agency of individuals that pose no demonstrable risk to the community after their release. As Justice Scalia stated for the United States Supreme Court in *Printz v. U.S.*, "[t]he Framers experience under the Articles of Confederation had persuaded them that using the States as the instruments of federal governance was both ineffectual and provocative of federal-state conflict."

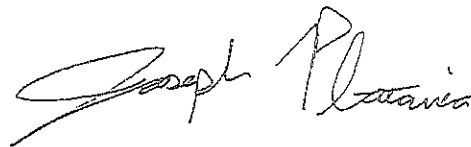
It is possible that I have incomplete information or am making incorrect assumptions based upon my observations and analysis. Therefore, I would urge each and every member of this Board to ask themselves whether ICE has a zero tolerance policy or a consistent and reasoned policy related to risk posed to the Charlottesville community that voluntary notification furthers. What risk assessment tool, if any, does ICE utilize when determining who they identify for removal? Is ICE willing to share it with the Board? How is the tool administered? How often do ICE agents seek a criminal complaint from a federal judge (almost certainly removing the necessity for voluntary notification) as opposed to the agents signing their own administrative warrants? What role do limited resources and the availability of ICE agents play in who is, and who is not, taken into federal custody upon release on bond or the completion of their state sentence? Why are some individuals taken into ICE custody or removed prior to their state trials? Are state prosecutors even notified when this happens? What was the policy and practice under the prior

Presidential Administration? How many individuals were removed two, four, and six years ago? What were the underlying criminal charges and convictions?

Each and every day the ACRJ releases individuals back into our community after they have completed their sentences for serious and significant offenses. Superintendent Kumer and his staff, along with partner agencies, do a wonderful job in assisting with the reentry process. The current policy deprives some undocumented individuals of that opportunity, seemingly based solely upon citizenship status. For example, of the eight individuals picked up by ICE because of City prosecutions, three were charged with DUI. One individual was removed before his trial and the other two individuals were convicted and sentenced. There is no question that individuals convicted of DUI present a threat to public safety. But from July 1, 2017 to June 27, 2018, 115 other individuals were arrested for DUI in the City of Charlottesville in addition to the three undocumented individuals referenced above. The local criminal justice system saw fit to release all 115 of those individuals back into our community after their cases were resolved and/or their sentences were served.

I am hopeful that the Jail Board will re-examine its existing policy and ensure that thorough and complete answers are provided to these extremely important questions. This is a policy decision with significant and long-term consequences. I would also like to note that every prosecutor in the Charlottesville office has the ability to affirmatively reach out to ICE and request assistance in cases where we feel removal is in the best interests of the victim and the community. We have done that in the past and will continue to do so if we feel that it promotes and furthers public safety.

I would like to thank Superintendent Kumer and his staff for the excellent work that they do. I would also like to thank each member of the Board for your public service. I am available at any time to discuss the contents of this letter or answer any questions that you may have.

A handwritten signature in black ink, appearing to read "Joseph Platania". The signature is fluid and cursive, with the first name "Joseph" written in a larger, more prominent script than the last name "Platania".

Joseph Platania  
Commonwealth's Attorney  
City of Charlottesville

# Attachment D

Country of Origin	Charge	Bonded	Convicted	Release date	ICE Pick-up
1 Mexico	Probation Violation	Yes		10/10/2017	Yes
2 Unknown	Drive w/ License Revoked		Guilty	11/17/2017	Yes
3 Mexico	Profane Swearing Intoxication	Yes		8/11/2017	Yes
4 Mexico	Unauthorized Use of Veh, Driving W out Lic, DUI	Unauthorized Use of Veh	Driving W/O (Fined), DUI (Fined)	6/22/2018	Yes
5 Mexico	Driving without License		Guilty	8/17/2017	Yes
6 El Salvador	Malicious Wounding X3, Abduction		Mal Wounding X2 (Nolle Prosequi ) Malicious Wounding, Abduction ( Guilty)	7/14/2017	Yes
7 Mexico	DUI, Law Enforcement Command Disregard and Endanger, Poss Controlled Sub, Drive W out Lic		Poss Con Sub, Drive W/O (Nolle Prosequi) LEO Disregard, DUI (Guilty)	11/2/2017	Yes
8 Honduras	Fail to Appear x2, Forgery, Contempt Of Court	Forgery Counterfeit	Fail to Appear X2, Contempt of Court (Guilty)	10/26/2017	Yes
9 Mexico	Assault and Battery, B & E, Destruction of Property, Phone obstruct/Tamper	Yes		8/11/2017	Yes
10 Mexico	DUI	Yes		6/19/2017	Yes
11 Honduras	Carnal Knowledge of Child between 13 and 15 Years of age		Guilty	6/29/2017	Yes
12 Unknown	DUI		Guilty	4/19/2018	Yes
13 Mexico	DWI 3rd Offense, Driving after Forfeiture of Lic	Yes		10/23/2017	Yes
14 Mexico	DUI		Mandatory Length	7/18/2017	Yes

Country of Origin	Charge	Bonded	Convicted	Release date	ICE Pick-up
			B & E ( Guilty) Stalking ( Susp Sentence) Monument Intentional Damage, Tresspass (Nolle Prosequi)		
16 El Salvador	Burglary, Monument Intentional Damage, Stalking, Trespass,			3/1/2018	Yes
17	DWI 1st Off		Mandatory Length	6/11/2018	Yes
			Domestic Assault (Guilty) Strangulation (Nolle Prosequi)		
18	Domestic Assault, Strangulation Resulting in wounding or bodily injury			6/11/2018	Yes
			B & E, Sexual Battery ( Guilty) Sexual Battery, Peeping ( Nolle Prosequi)		
19 Mexico	Sexual Battery x2, Burglary, Peeping into occupied dwelling			7/20/2017	Yes
20 Mexico	Malicious Wounding		Dismissed	10/19/2017	Yes
			Fail to Appear, Reck Driving, Accident Not Reported ( Guilty) Drive W/O Lic (Susp Sentence)		
21 Mexico	Fail to Appear, Reckless Driving, Drive without License, Accident not reported			2/19/2018	Yes
			Contempt ( Guilty) Domestic Assault ( Susp Sentence)		
22 Honduras	Domestic Assault, Contempt of Court			12/11/2017	Yes
			Strangulation (Guilty) Simple Assault ( Nolle Prosequi)		
23 Mexico	Strangulation, Simple Assault			7/7/2017	Yes
			Report, DWI, Prob Viol ( Guilty) VASAP		
24 Mexico	DWI, Probation Violation, Hit & Run fail to Report, Non Compliance with VASAP			6/16/2017	Yes
25 Mexico	Public Swearing or Intoxication	Yes	Non Compliance (	8/11/2017	Yes