



Judicial Watch

Because no one is above the law!

October 19, 2006

VIA FACSIMILE (312) 603-4678 AND U.S. MAIL

Mr. Joseph Mario Moreno, President Pro Tem
Cook County Board of Commissioners
County Building
118 North Clark Street, 5th Floor, Room 567
Chicago, Illinois, 60602-1304

Dear Mr. Moreno:

Judicial Watch, Inc. is a non-profit, public interest organization that seeks to promote integrity, transparency, and accountability in government, and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch, Inc. initiates and prosecutes lawsuits seeking to enforce compliance with federal immigration laws. Through its public interest litigation, Judicial Watch, Inc. has developed substantial expertise in the area of immigration law.

Judicial Watch, Inc. recently became aware of a "Resolution" (hereafter the "Maldonado Resolution") sponsored by Cook County Commissioners Roberto Maldonado and Joseph Mario Moreno and co-sponsored by Commissioners Forrest Claypool, Joan Patricia Murphy, Mike Quigley, and Larry Suffredin.¹ The Maldonado Resolution purports to make Cook County Illinois "A Sanctuary County." Specifically, the Maldonado Resolution states:

...

Be it further resolved, that the County of Cook stands in solidarity with local governments across the nation who have declared themselves 'Sanctuaries' upholding the basic human rights of immigrants, including the cities of San

¹ A copy of the Maldonado Resolution is attached hereto as Exhibit 1. *See also*, Josh Noel, "Immigration Resolution Passes Early Test," Chicago Tribune, October 2, 2006, attached hereto as Exhibit 2.

Francisco, Maywood, Huntington Park and Coachella in California and the City of Cambridge in Massachusetts; and

Be it further resolved, that the County of Cook joins several major cities, including Chicago, Los Angeles, San Francisco, Seattle, Minneapolis, Saint Paul, and others who have official policies prohibiting their municipal agencies from inquiring about immigration status and unilaterally enforcing immigration law provisions, and, accordingly, hereby requires, except when otherwise required by law, that no Cook County bureau, office, department, or employee shall condition the provision of County of Cook services on matters related to citizenship or immigrant status. Except when otherwise required by law, when presentation of an Illinois Driver's License or Identification Card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document) shall also be accepted; and

Be it further resolved, that in accordance with the Chicago Police Superintendent's General Order stating that 'the enforcement of immigration law rests with the Immigration and Naturalization Service and not with the state and local police,' as well as the City of Chicago's Executive Order and subsequent City Council Ordinance which codified this policy, it shall also be the policy of the Cook County Sheriff's Office to prohibit the investigation or assistance in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is otherwise required by law. As a matter of public safety, this policy will engender trust and cooperation between law enforcement officials and immigrant communities to aid in crime prevention and solving, and will discourage the threat of immigrant and minority profiling and harassment... .

According to the Chicago Tribune, the Maldonado Resolution was passed by the Law Enforcement and Corrections Committee of the Cook County Board on Monday, October 2, 2006. *See Exhibit 2.* The Resolution is expected to be presented to the full Board sometime in the near future.

Judicial Watch, Inc., respectfully submits that, to the extent the Maldonado Resolution prohibits communication, cooperation and the sharing of information between municipal agencies and their employees and federal officials regarding the citizenship or immigration status of any individual, immigrant or otherwise, it may conflict with several provisions of U.S. immigration law. For example, 8 U.S.C. § 1373(a) states:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government or 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.
Section 1373(b) of Title 8 states that:

Notwithstanding any other provision of Federal State, of local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service;
- (2) Maintaining such information;
- (3) Exchanging such information with any other Federal, State, or local government entity.

Similarly, 8 U.S.C. § 1644 states:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

If enacted, the Maldonado Resolution would frustrate the obvious goal of these federal statutes, which is to encourage the free flow of information between federal state and local agencies and to help enforce federal immigration laws. By limiting this free flow of information, local governments that enact “sanctuary policies” like the Maldonado Resolution not only make it more difficult for federal immigration officials to fulfill their important law enforcement duties, they also undermine federal law.

If enacted, the Maldonado Resolution also may conflict with 8 U.S.C. § 1621, which makes certain aliens ineligible for State and local benefits, unless the provision of those benefits to the otherwise ineligible aliens is specifically authorized by the state legislature. Section 1621(a) of Title 8 states that an alien who is not a qualified alien or nonimmigrant, or an alien who has been paroled into the United States for less than a year, is not eligible for any State or local public benefit. Section 1621(c)(1) of Title 8 defines such benefits as:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
- (B) any retirement, welfare, health, disability, public or assisted housing,

postsecondary education, food assistance, unemployment benefit, or any other similar benefit, for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

If Cook County refuses to require proof of citizenship or immigration status in providing county benefits, then it is likely that persons who are not eligible for such benefits under 8 U.S.C. §1621 will receive them. Cook County's provision of benefits to such individuals would thus violate federal law.

Judicial Watch, Inc., respectfully submits that, before this matter is brought to a vote before the full Board, all Board members should consider carefully these straightforward provisions of federal law and the clear conflict with those provisions likely to result from the Maldonado Resolution.

Sincerely,

JUDICIAL WATCH, INC.



Jason Aldrich
Attorney



Paul J. Orfanedes
Director of Litigation

10/03/2006 16:31 3126033331 PAGE 02/04

RESOLUTION

Sponsored by

**THE HONORABLE ROBERTO MALDONADO AND
JOSEPH MARIO MORENO,
COOK COUNTY COMMISSIONERS**

Co-Sponsored by

**THE HONORABLE FORREST CLAYPOOL, JOAN PATRICIA MURPHY,
MIKE QUIGLEY AND LARRY SUFFREDIN,
COOK COUNTY COMMISSIONERS**

WHEREAS, the County of Cook is a home rule unit of local government pursuant to Article VII, Section 6(a) of the 1970 Illinois Constitution; and

WHEREAS, pursuant to its home rule power, the County of Cook may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, to this end, the County of Cook is dedicated to providing all of its residents with equal access to the services, opportunities, and protection county government has been established to administer; and

WHEREAS, there are now approximately 12 million undocumented immigrants in the United States, including half a million in Illinois and more than 300,000 in Cook County, who have been systematically denied the opportunity enjoyed by past generations of immigrants to become legal permanent residents or citizens of this country; and

WHEREAS, conditioning the provision of services, opportunities, and protection on citizenship or immigrant status or inquiring about such status in the course of such provision directly contravenes the County's commitment to ensuring equal access for all of its residents; and

WHEREAS, current U.S. immigration policy does not reflect our democratic values of what is just, humane and moral and as the current debate on comprehensive immigration reform comes to a halt, the urgency to find real, workable solutions to modernize our archaic immigration laws becomes desperately apparent; and

WHEREAS, according to a recent study on undocumented immigrants conducted by the University of Illinois at Chicago's Center for Urban Economic Development, undocumented workers contribute much more to the U.S. economy than they receive: the majority work full-time; 70% pay taxes; the majority don't collect tax refunds they have earned; 220,000 currently employed in Chicago contribute \$5.35 billion annually to the

area economy as a result of their local consumer spending; they make far less use of available social services than any other group; and

WHEREAS, Douglas S. Massey, a Princeton University professor and author of "Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration," further supports these statistics, stating that in 2004 alone, undocumented workers contributed \$7 billion to Social Security and \$1.5 billion to Medicare with the knowledge that they would have no claim to future collection; and

WHEREAS, recognizing the validity of these statistics and the plight of many families facing separation, Cook County is a leader in the support of comprehensive immigration reform and the Cook County Board has officially urged Congress to pass fair and humane laws that will reform our broken immigration system.

NOW, THEREFORE, BE IT RESOLVED, that the County of Cook be symbolically declared "A Sanctuary County," a county that emblematically defends the basic human rights and dignity of undocumented immigrants and our democratic principles of life, liberty, and justice, and all those who, as Emma Lazarus wrote in her famous sonnet that now is engraved on a plaque at the Statue of Liberty, are "tired...poor...[and]...yearn to breathe free..." and recognizes that much of the historical and moral tradition of our nation is rooted in the provision of sanctuary to those seeking a safe haven from oppression; and

BE IT FURTHER RESOLVED, that the County of Cook stands in solidarity with local governments across the nation who have declared themselves "Sanctuaries" upholding the basic human rights of immigrants, including the cities of San Francisco, Maywood, Huntington Park and Coachella in California and the City of Cambridge in Massachusetts; and

BE IT FURTHER RESOLVED, that the County of Cook joins several major cities, including Chicago, Los Angeles, San Francisco, Seattle, Minneapolis, Saint Paul, and others who have official policies prohibiting their municipal agencies from inquiring about immigration status and unilaterally enforcing immigration law provisions, and, accordingly, hereby requires, except when otherwise required by law, that no Cook County bureau, office, department, or employee shall condition the provision of County of Cook services or benefits on matters related to citizenship or immigrant status. Except when otherwise required by law, when presentation of an Illinois Driver's License or Identification Card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document) shall also be accepted; and

BE IT FURTHER RESOLVED, that in accordance with the Chicago Police Superintendent's General Order stating that "the enforcement of immigration law rests with the Immigration and Naturalization Service and not with the state and local police," as well as the City of Chicago's Executive Order and subsequent City Council Ordinance which codified this policy, it shall also be the policy of the Cook County Sheriff's Office

to prohibit the investigation or assistance in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is otherwise required by law. As a matter of public safety, this policy will engender trust and cooperation between law enforcement officials and immigrant communities to aid in crime prevention and solving, and will discourage the threat of immigrant and minority profiling and harassment; and

BE IT FURTHER RESOLVED, that this Resolution does not create or form the basis for liability on the part of the County, its agents, or agencies. The exclusive remedy for violation of this Resolution shall be through the County's disciplinary procedures for officers and employees under regulations including, but not limited to, County personnel rules, union contracts, civil service commission rules, or any other agency rules and/or regulations. A person alleging a violation of this chapter shall forward a complaint to the Office of the Inspector General ("Inspector General") who shall process it in accordance with the complaint-processing procedures established in the Cook County Code (Vol. I, Ch. 2, Art. IV, Div. 5, Sec. 2-285) except that if the complaint is against any member of the County Board or any employee or staff person of any County Board committee, the Inspector General shall promptly transmit said complaint to the Chair of the Cook County Committee on Rules for processing or such successor committee having jurisdiction over said matters and if the complaint is against any member of the Cook County Sheriff's Office, the Inspector General shall transmit it to the Cook County Sheriff's Office for processing.

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Immigration resolution passes early test

By Josh Noel

Tribune staff reporter

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Despite a dissenting vote from Tony Peraica, the Republican candidate for Cook County Board president, a resolution passed a subcommittee Monday that could make the county a sanctuary for undocumented immigrants.

Modeled on legislation adopted by several large cities, including Chicago, the resolution will go before the full board after passing 3-2. It would forbid county agencies from asking about immigration status when providing services.

The co-sponsor of the resolution, Commissioner Roberto Maldonado (D-Chicago), said the measure offers symbolic support for undocumented immigrants as well as protection from real abuses.

During a brief hearing of the Law Enforcement and Corrections Committee, Maldonado cited two examples of such abuse. One was an allegation made last month that a Stroger Hospital police officer roughed up Agustin Sotomayor, 77, during an arrest and asked whether the man was in the United States legally.

The other, he said, came from the owner of Los Dos Compadres restaurant in unincorporated Franklin Park, who reported that a Cook County sheriff's police officer checked identification of would-be patrons late last month and turned away anyone without proof of being in the United States legally.

"We are sending a moral message through our government to the undocumented that we are in support of their struggle to achieve social justice," Maldonado said. "As we await comprehensive immigration reform, we stand with them."

Cook County sheriff's office spokesperson Sally Daly said the agency was

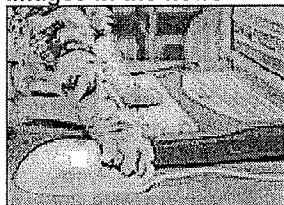
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unaware of the allegation against its officer until Monday. Neither Maldonado nor any citizen made a complaint, she said.

"Certainly it is concerning, but why Commissioner Maldonado would wait this long to mention it is unclear to us," Daly said. "If it's true, we take it seriously, and we will conduct an investigation."

Joining Maldonado in support of the resolution were Commissioners Joseph Mario Moreno (D-Chicago), a co-sponsor, and Mike Quigley (D-Chicago).

In a long preface to his dissent, Peraica criticized the resolution as a "feel-good piece of legislation" that violated the Constitution because county government cannot make immigration law.

"The proper channel for this is the United States Congress and the United States Senate," he said. "We would be setting a dangerous precedent if we embarked down that road."

Peraica had previously said that Sotomayor's arrest was a reflection of the poor training of county employees, but he said on Monday that the officer's behavior, if true, can't be legislated away.

"What happened to Mr. Sotomayor is absolutely wrong and was done as the result of an ill-trained employee acting in an ignorant manner," he said. "No resolution can change that."

He called for more training for county law-enforcement officials to make clear the limits of their power regarding immigration.

Commissioner Jerry Butler (D-Chicago) joined the dissent, saying that anyone seeking services at a county health facility should be required to answer basic questions about where they live or have lived.

Maldonado said the issue will go before the full board sometime after Wednesday's scheduled meeting.

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