Testimony of Adam Schwartz
of the ACLU of Illinois

Before the Legislation and Intergovernmental Relations Committee
of the Board of Commissioners of Cook County
on February 9, 2012

In opposition to the proposed amendments to
the Cook County Ordinance on responding to ICE detainers

Good morning. My name is Adam Schwartz. I am a staff lawyer at the ACLU of Illinois. On behalf of our more than 20,000 members and supporters here in Cook County, thank you for allowing me to testify this morning.

ICE detainers invade the civil liberties of the thousands of people subjected to continued detention. Accordingly, the ACLU opposes the proposed amendments to the current Cook County ordinance. These amendments would cause the wrongful detention of many people in Cook County pursuant to ICE detainers.[1]

First, many ICE detainers invade our Fourth Amendment right to be free from unreasonable seizures. According to the ICE detainer form, a detainer may rest upon the mere "initiation of an investigation" by an ICE agent.[2] This is not a warrant from an independent judge. It's not even an ICE agent's finding of probable cause. Instead, it's a nebulous standard requiring an unknown amount of evidence. Much more should be required before ICE detains someone for 48 hours – or for five days, if the detainer falls over a holiday weekend.

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[1] *See* Cook County Ordinances § 46-37 (adopted Sept. 7, 2011); proposal #316283 (Schneider-Gorman-Goslin); proposal #316311 (Silvestri-Daley).

[2] *See* DHS/ICE, Form I-247 regarding "Immigration detainer" (June 2011).

Second, ICE detainers invade our Fifth Amendment right to a hearing before being deprived of our liberty. While the ICE detainer form invites detainees who have a complaint to call an ICE office, ICE has not provided a method for detainees to be heard by an independent judge. Moreover, ICE has failed to notify detainees of their right to hire private counsel, of their right to remain silent, and of the availability of local free private counsel.

A critical purpose of the Fourth and Fifth Amendments is to protect people from wrongful detention. Unfortunately, many people subjected to ICE detainers in fact are U.S. citizens who never should have been deprived of their liberty. These aren't flukes. For example, one basis of ICE detainers is a hit from ICE's controversial Secure Communities program. But that program has resulted in ICE wrongfully arresting thousands of U.S. citizens, according to a recent study of ICE's own data.[3]

Accordingly, the ACLU opposes the proposal to empower any future sheriff in his sole discretion to honor any future ICE detainer.

The ACLU also opposes the proposal to allow the Sheriff to honor detainers regarding persons merely charged with certain violent and drug felonies. There is no time limit, so this proposal would subject to ICE detainers people accused of a violent felony, acquitted, and then arrested years later for a nonviolent misdemeanor. Moreover, the minimum threshold for any state or local government unit to participate in the problematic ICE detainer system should be a felony conviction – and not just an unproven charge.

Finally, the ACLU also supports the provisions of the current Cook County ordinance that limit when county personnel may allow ICE into county facilities, and respond to ICE queries about incarceration status and release dates. These provisions should not be amended.

Again, thank you for allowing the ACLU to testify today. I would be happy to answer any questions.

[3] *See* Aarti Kohli, "Secure Communities by the numbers" (Oct. 2011) at pp. 2, 4, available at: http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.