REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: March 29, 2017

TO: Honorable Members of the Ad Hoc Committee on Immigrant Affairs

FROM: Sharon M. Tso /S/
Chief Legislative Analyst

Council File No: 16-1320
Assignment No: 17-02-0142

The Term "Sanctuary Cities" and Immigration Laws

SUMMARY

On January 20, 2017, the Los Angeles City Council adopted a Motion (Cedillo-Huizar-Wesson/Harris-Dawson-O'Farrell-Price-Ryu) instructing our Office and the City Administrative Officer, with the assistance of the City Attorney and the Mayor's Office of Immigrant Affairs, to report to Council on several items related to immigrant affairs (C.F. 16-1320; Attachment A). This report focuses on the Council's request to report on the term "Sanctuary Cities,"[1] on how that term might apply to the City of Los Angeles, and the request to identify state laws applicable to immigration and relevant to the City of Los Angeles. This report will also address City practices with regard to enforcement of federal and state immigration laws.

In response to the Motion, our Office consulted with the Los Angeles Police Department and the City Attorney and we reviewed several documents, including: 1) reports by the Congressional Research Service (CRS); 2) memoranda issued by the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ); 3) documents issued by the California Department of Justice; 4) Supreme Court and other court rulings; 5) President Donald J. Trump's (President Trump) Executive Order No. 13,768 entitled "*Enhancing Public Safety in the Interior of the United States*" (Executive Order; Attachment B) relative to the withholding of federal funds from local jurisdictions that are designated as "Sanctuary Jurisdictions;" 6) H.R. 83 – the *Mobilizing Against Sanctuary Cities Act* (Attachment C); 7) the California TRUST Act (Attachment D) relative to prohibitions concerning the holding of certain individuals for immigration violations in local jails; 8) the California TRUTH Act relative to the rights of inmates with regard to compliance with the DHS Immigration and Customs Enforcement (ICE) interview requests (Attachment E); and, 9) other documents.

Sanctuary Cities

The terms "sanctuary cities" and "sanctuary jurisdictions" have not been defined by the federal government. However, the terms are directly associated with how federal immigration laws are enforced by local law enforcement agencies. Some jurisdictions declare themselves as a "sanctuary jurisdiction" while others may be viewed as a "sanctuary jurisdiction" based on the perception that such jurisdiction may not fully cooperate with federal authorities in the enforcement of federal immigration law. The level of cooperation can range from information exchanges by jurisdictions as it relates to individuals with criminal convictions who have been deported to formal agreements between ICE and local police agencies that deputize local police officers to assume the role of immigration officers.

"Sanctuary" policies are known to restrict or limit local resources with respect to the enforcement of federal immigration laws. However, the enactment of a "sanctuary" policy is not an indication of a violation of federal law. To date, San Francisco's "City and County of Refuge Ordinance,"

[1] The terms "sanctuary cities" and "sanctuary jurisdictions" are used interchangeably to describe localities that do not allow the use of local funds or resources for the enforcement of federal immigration laws.

known to be one of the most progressive "sanctuary" policies, has been found to be in compliance with federal and state law.[2] In a 2007 U.S. Department of Justice (DOJ), Office of the Inspector General (OIG) audit, OIG states that "ICE officials objected to San Francisco's policies but they did not raise any concerns about the flow of information to and from any of the other six sites where we performed field work."[3]

In a 2007 report by the U.S. Department of Justice[4] (DOJ), DOJ identified "sanctuary" policies for only two jurisdictions (City and County of San Francisco and the State of Oregon) that received federal funds for the costs of incarcerating certain criminal aliens who are in custody based on local charges. However, DOJ notes that in each instance the local policy either did not preclude cooperation with ICE or it included a statement that allowed the sharing of information with ICE, as required by law.

The Center for Immigration Studies[5] defines the term "sanctuary jurisdictions" as those that have enacted policies or laws that "obstruct immigration enforcement and shield criminals from ICE — either by refusing to or prohibiting agencies from complying with ICE detainers, imposing unreasonable conditions on detainer acceptance, denying ICE access to interview incarcerated aliens, or otherwise impeding communication or information exchanges between their personnel and federal immigration officers."

The Congressional Research Service (CRS), states that "sanctuary jurisdictions" can be those "states and municipalities [that] have adopted formal or informal policies which prohibit or substantially restrict police cooperation with federal immigration enforcement efforts. Entities that have adopted such policies are sometimes referred to as 'sanctuary' jurisdictions, though there is not necessarily a consensus as to the meaning of this term."[6]

Some jurisdictions declare themselves as "sanctuary cities," such as the Cities of Berkeley, Oakland and Malibu. On May 28, 2016, Berkeley adopted a resolution affirming "the City of Berkeley's commitment to providing sanctuary to refugees and migrants and affirming the City's support of organizations that provide sanctuary and assistance to refugees and migrants." On January 19, 2017, the Mayor of Oakland issued a letter stating that "as a 'sanctuary city,' we do not ask about, nor do we collect information about anyone's immigration status." On March 13, 2017, the Malibu City Council adopted a resolution stating that that no city funds or resources may be used to "assist in the enforcement of federal immigration law or to gather or disseminate

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[2] In December of 1985, San Francisco passed a resolution declaring itself a "City and County of Refuge." The resolution stated that "City departments shall not discriminate against Salvadoran and Guatemalan refugees because of their immigration status. By 1989, San Francisco became the first U.S. city to enact a law that prohibited its departments from using City funds or resources to assist in the enforcement of federal immigration law. The law also prohibited police officers from stopping or arresting individuals solely based on the individual's nationality or immigration status. In 1993, the law was amended to allow police to report people arrested for felonies to immigration authorities. In 2009, the San Francisco Board of Supervisors passed a bill to exempt juveniles, including those who had been arrested for felonies, from being reported to immigration authorities. In December of 2013, the Board passed a policy of not honoring ICE detainer requests. In October 2013, San Francisco adopted the "Due Process For all" ordinance which prohibited law enforcement from responding to any Immigration Detainers unless the person had been convicted of a violent felony in the last seven years and the person is in custody for another violent felony. In May 2014, in light of the court ruling in Miranda-Olivares v. Clackamas County, San Francisco Sheriff announced that the department would no longer honor Immigration Detainers unless supported by a judicial warrant.

[3] Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States. DOJ, OIG 2007.

[4] U.S. Department of Justice, Office of the Inspector General Audit Division "Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States" January 2007.

[5] A research organization that describes itself as "independent, non-partisan, non-profit research organization."

[6] Congressional Research Service *"State and Local 'Sanctuary' Policies Limiting Participation in Immigration Enforcement." 2015*

information regarding the immigration status of any individual unless such is required by federal or state statute, regulation, or court decision."[7]

Other jurisdictions such as San Francisco (already discussed), Los Angeles (discussed later in this report) and Pasadena have adopted policies that, unless required by federal or state law, restrict the use of local funds for the enforcement of federal immigration laws. These localities may be perceived as "sanctuary jurisdictions." The Pasadena Police Chief has stated that "with the exception of national security issues, the Pasadena Police Department does not check the immigration status of people with whom it comes in contact. It has not done so for over thirty years and that practice will not change." In 2013, the Pasadena City Council adopted a resolution "removing mandates on local governments to enforce federal immigration laws, particularly when resources necessary to enforce local laws are already stretched."

Additionally, irrespective of the type of policy enforced, municipalities may simply be viewed as "sanctuary jurisdictions" based on the fact that the jurisdiction is perceived to limit its cooperation with ICE even when such cooperation is not required.

While immigrant communities, advocates and opponents of sanctuary policies have historically viewed the City of Los Angeles as a "Sanctuary Jurisdiction," the City has not taken action to declare itself as such. On March 20, 2017, Mayor Eric Garcetti issued Executive Directive No. 20 (Attachment F) stating that the City of Los Angeles is a "City of Safety, Refuge and Opportunity for All." The Executive Directive indicates that the Los Angeles Police Department maintains the following policies, all of which are consistent with federal and state law:

1) Special Order 40 – Officers shall not initiate police action with the purpose of discovering immigration status.
2) LAPD will not honor ICE Detainer requests unless accompanied with a judicial warrant or there is a finding of "probable cause" by a judicial body.
3) LAPD will not enter into 287(g) Agreements with ICE to deputize local police officers as immigration officers.

In sum, there is no formal, legal, definitive or consistent definition of the terms "sanctuary cities" or "sanctuary jurisdictions." Many jurisdictions have enacted ordinances while others have adopted policies that prohibit the use of local resources in the enforcement of federal immigration laws. Some of these ordinances and/or policies do not use the term "sanctuary" but may be viewed as such based on their practices.

Federal and State Immigration Laws

There are federal and state laws that either allow, require or prohibit local law enforcement agencies to engage with federal immigration authorities. In addition, there are Supreme Court and lower court rulings and memoranda issued by all levels of government that have sought to clarify the level and type of discretion that is allowed for local law enforcement agencies with respect to the enforcement of federal immigration law.

The United States Supreme Court (Supreme Court), DOJ and ICE have acknowledged that enforcement of immigration law is a field occupied by the federal government and, therefore, local police agencies are preempted from enforcing such laws, with some exceptions. While there are

[7] City of Malibu Resolution adopted March 13, 2017.

federal provisions that solicit or request cooperation by local authorities, such cooperation is at the discretion of the local jurisdiction, may not be unilateral, and must always be under the supervision of ICE.

Below is a review of federal and state laws that govern the issue of immigration. Additionally, we discuss the role of municipalities including the ability to exchange immigration status information, cooperation with ICE and/or the ability to enter into 287 (g) Agreements and how the courts have ruled to clarify the role of local police agencies.

United States Code (U.S.C.)

8 U.S.C. 1325

This section provides that illegal entry into the United States is a civil violation subject to civil penalties ranging from $50 to $500.

8 U.S.C. 1326

This section provides that anyone who has been removed or deported from the United States and re-enters the United States illegally is subject to up to two years in prison. Individuals who are convicted of three or more misdemeanors or a felony and are subsequently deported, and then return to the United States illegally would be subject to a prison term of 10 years. Individuals who have been deported subsequent to a conviction of an aggravated felony and return illegally to the United States would be subject to up to 20 years in prison.

8 U.S.C. 1373 (Section 1373)

Section 1373 allows local law enforcement agencies to send, receive or exchange information from ICE relative to the immigration status of an individual who has been arrested. This law prohibits the enactment of any local laws that would prohibit or restrict communication between ICE and the local agency. However, this section makes no reference to any requirements to be imposed on local agencies with regard to the detention of individuals presumed to be undocumented or to inquire about a person's immigration status.

8 U.S.C. 1357 (g)/287(g) Agreement

This section allows local law enforcement agencies to enter into agreements (287 (g)) that authorize trained local police officers to assume the role of immigration officers. Entering into these types of contracts is at the discretion of the local police agency. However, those agencies that choose to enter into such contracts must receive training and be under the supervision of federal immigration authorities.

As of March 24, 2017, the DHS website indicates that there are currently 37 law enforcement agencies in 16 states that have 287 (g) Agreements. The only California agency listed at this time, is the Orange County Sheriff's Department. According to the website, ICE has trained and certified a total of 1,822 local police to enforce immigration law.[8]

[8] https://www.ice.gov/factsheets/287g

It is noted that on May 12, 2015, the Los Angeles County Board of Supervisors voted to terminate a 287(g) Agreement with ICE. With the termination of the Agreement, the County removed 14 ICE agents from County jails and removed the authority of five Sheriff deputies who had been deputized as immigration officers.[9] On the same date, the Board instructed the Sheriff's Department to continue to cooperate with DHS in the implementation of the Priority Enforcement Program (PEP) and to report back with clearly defined policies and procedures including ICE access to its jails. The Sheriff's Department responded to the Board's request in a letter dated September 22, 2015.[10]

Secure Communities Program and Priority Enforcement Program (Information-Sharing)

The Secure Communities Program was established in 2008 to allow for information-sharing between ICE and local law enforcement agencies with regard to undocumented immigrants held in local jails. Prior to 2008, local agencies were able to share such information with federal immigration authorities at the discretion of the local police agency; in 2008, it became automatic. As part of the booking process, local police submit to the Federal Bureau of Investigation (FBI) the fingerprints of every person arrested, irrespective of whether the person has been convicted of a crime. The FBI then forwards such information to ICE. Through this process, ICE is notified that another agency has custody of an individual that may be undocumented.

When ICE becomes aware that a person has been arrested, ICE may issue an Immigration Detainer pursuant to 8 Code of Federal Regulations (CFR) 287.7 (I-247).[11] Through this document, ICE requests that the local agency inform DHS of the person's anticipated release date and further requests the local agency to detain the individual for a maximum of 48 hours beyond the time that the individual would otherwise be released to allow ICE to take custody of the individual.

Because the Immigration Detainer only constitutes a request by ICE, local police agencies are not required to respond. Many jurisdictions opt not to respond unless the detainer is accompanied by a judicial warrant. The courts have ruled that absent a judicial warrant or a finding of "probable cause," local jurisdictions are not obligated to comply.

In 2014, President Barack Obama, replaced the Secure Communities Program with the Priority Enforcement Program. Under the Priority Enforcement Program, ICE only issued Immigration Detainers for individuals who had been convicted of a crime. The Executive Order issued by President Trump in January 2017 terminated the Priority Enforcement Program and reactivated the Secure Communities Program.

Case Law Relative to Immigration Detainers

In the case *Galarza v. Szalczyk*, the Third Circuit Court of Appeals for the Eastern District of Pennsylvania held that "...immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."[12] In a separate case, *Miranda-Olivares v. Clackamas County,* the U.S. District Court, Portland Division concluded that federal

[9] Testimony presented by the Los Angeles Sheriff's Department at the Board of Supervisors Meeting of May 12, 2015.
[10] http://portal.lacounty.gov/wps/portal/sop/?querytext=*&radio=radio1&date-from=5%2F12%2F2015&date-to=5%2F12%2F2015&Go=Begin+Search
[11] Congressional Research Service: An Immigration Detainer is a "document by which ICE advises other law enforcement agencies of its interest in individual aliens whom these agencies are detaining."
[12] *Galarza v. Szalczyk* – On Appeal from the United States District Court for the Eastern District of Pennsylvania. March 4, 2014.

law (8 C.F.R. 287.7) does not require local law enforcement agencies to hold suspected undocumented immigrants upon receipt of an Immigration Detainer.[13]

In 2012, the U.S. Supreme Court struck down a provision (Section 6) of Arizona Senate Bill 1070 (S.B. 1070) which proposed to provide local police with authority to "without a warrant, [may] arrest a person if the officer has probable cause to believe ... the person has committed any public offense that makes him removable from the United States."[14] Basically, the U.S. Supreme Court ruled that local police are not authorized to stop or arrest an individual based solely on the belief that the person may have entered the country illegally.

San Francisco City and County and Santa Clara County have filed a lawsuit against the United States for on the grounds that Executive Order 13,768 violates the U.S. Constitution.

California Laws and California Department of Justice Memoranda

California law enforcement agencies are further restricted by California law from responding to Immigration Detainers through the passage of the *Transparency and Responsibility Using State Tools* (TRUST) Act in 2014 and the *Transparent Reviews of Unjust Transfers and Holds* (TRUTH) Act in 2016.

TRUST Act

Under the TRUST Act, "a [California] law enforcement official shall have discretion to cooperate with federal immigration official by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody if the continued detention...does not violate any federal, state or any local policy" and only if the individual has been convicted of certain violent crimes."[15] Some of these violent crimes include violent felonies, certain misdemeanors, assault, battery, use of threats, sexual abuse, sexual exploitation or crimes endangering children, child abuse or endangerment, burglary, robbery, theft, driving under the influence and obstruction of justice.

TRUTH Act

Per the TRUTH Act, local law enforcement agencies are required to notify inmates for whom ICE has requested an interview that the request is voluntary and that the individual may decline to be interviewed. The TRUTH Act also requires law enforcement agencies to provide inmates with copies of any Immigration Detainers issued by ICE.[16]

California Department of Justice Memorandum (Attachment G)

In June 2014, the California Department of Justice issued a memorandum[17] clarifying that "federal immigration requests under the Secure Communities Program are not mandatory, but are merely requests enforceable at the discretion of the local law enforcement agency holding the individual arrestee."

The views and clarification provided by the California Department of Justice are supported by a letter issued by ICE to a member of the House of Representatives on February 25, 2014. The letter states that "while immigration detainers are an important part of ICE's

[13] Miranda-Olivares v. Clackamas County ruling by U.S. District Court on April 11, 2014.
[14] U.S. Supreme Court – Arizona v. United States. 2012.
[15] California Department of Justice. Information Bulletin. June 25, 2014.
[16] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2792
[17] California Department of Justice Information Bulletin No. 14-01. June 25, 2014.

effort to remove criminal aliens who are in federal, state, or local custody, they are not mandatory as a matter of law."[18] Recent court rulings have also confirmed that responding to ICE Immigration Detainers is not mandatory.

Proposed New Actions

Proposals to Withhold Federal Funding Based on Violation of 8 U.S.C. 1373

On January 3, 2017, H.R. 83 was introduced proposing to withhold federal funding from jurisdictions that do not comply with 8 U.S.C. 1373 (Section 1373) and are thereby designated as "sanctuary jurisdictions."[19] The bill was referred to the House Judiciary Subcommittee on Immigration and Border Security and the House Oversight and Government Reform Committee where it is currently pending. City Councilmembers Paul Krekorian and Gil Cedillo have introduced a Resolution to oppose the bill given the threat to defund jurisdictions that are deemed "sanctuary." Our Office is preparing a separate report on this matter.

Similarly, on January 25, 2017, President Trump issued an Executive Order 13,768 proposing to withhold federal funding from local governments as follows: Section 2(c) states that "it is the policy of the executive branch to ensure that jurisdictions that fail to comply with applicable federal law do not receive federal funds." Section 9 – Sanctuary Jurisdictions – provides that "it is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373." This may need further review by the courts to determine the legality of the Executive Order's provisions.

Preliminary analysis by the American Immigration Lawyers Association (AILA) notes that the Executive Order authorizes DHS to designate jurisdictions as "sanctuary jurisdictions," without providing any definition of the term. AILA further notes that nothing in federal law requires localities to enforce federal immigration laws. Section 1373 merely addresses the exchange of information regarding citizenship and immigration status among federal, state and local governments and DHS officials. According to AILA, "any federal effort to compel localities to engage in immigration enforcement will face strong legal challenges, including claims that mandatory compliance violates the Tenth Amendment of the United States Constitution."[20]

In a letter dated March 13, 2017, 292 law professors throughout the country state that "sanctuary policies that direct local law enforcement agencies to refrain from collecting immigration information or to decline detainers requesting prolonged detention requests do not violate Section 1373." Furthermore, the letter notes that pursuant to the Spending Clause, "the federal government may not impose conditions on grants to states and localities unless the conditions are 'unambiguously' stated 'so that states can knowingly decide whether or not to accept those funds."[21] The letter points out that any new conditions must be approved by Congress and such changes may not apply retroactively to grants that have already been disbursed. In the letter, the law professors note that "the federal government can no more command a 'sanctuary' jurisdiction to implement the executive's deportation policy than it can command a state legislature to enact a statute or a state executive official to conduct background checks on gun purchasers."

Pending California State Legislation

[18] Letter from ICE Acting Director relative to Immigration Detainers. February 25, 2014.
[19] H.R. 83 - the *Mobilizing Against Sanctuary Cities Act.*
[20] American Immigration Lawyers Association – Summary and Questions/Analysis of Executive Order…January 25, 2017
[21] *Pennhurst State School & Hospital v. Halderman.* 1981

Currently before the California legislature is Senate Bill 54 (de Leon) which would, among other things, prohibit local law enforcement agencies from using "agency or department moneys, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including, but not limited to, any of the following to inquire or collect information relative to immigration status, comply with ICE Immigration Detainers, or performing the functions of federal immigration officers."

The bill would not prohibit local law enforcement agencies from responding to federal immigration requests for information about a specific person's criminal history identified through the California Law Enforcement Telecommunications System or from participating in joint law enforcement task forces (as long as the purpose is not immigration enforcement). However, local agencies that choose to participate in joint task forces would be required to provide a report to the California Department of Justice every six months.

On January 27, 2017, the Los Angeles City Council introduced a Resolution (Cedillo-Huizar-Martinez-Price-Ryu; C.F. 17-0002-S12) to support SB 54. The Resolution and corresponding CLA report have been referred to the Ad Hoc Committee on Immigration Affairs. SB 54 is currently pending before the Senate Appropriations Committee.

Los Angeles Police Department (LAPD) Practices

Representatives from the LAPD report that as a matter of practice, LAPD officers will not make a stop or an arrest where the purpose is to discover the legal status of an individual. Additionally, LAPD representatives report that the City does not currently have a 287 (g) Agreement with ICE which would authorize police officers to assume the role of federal immigration officers.

LAPD reports that the fingerprints of every person arrested are submitted to the FBI database. The LAPD reports that the information entered into the database does not contain fields related to immigration status. If ICE discovers that an individual that has been arrested is in the custody of the LAPD, ICE may issue an Immigration Detainer requesting that LAPD hold the individual for a maximum of 48 hours beyond the time the individual would have otherwise been released. However, LAPD reports that the department, pursuant to federal and state law, and recent court rulings, does not respond to Immigration Detainer requests unless the request is accompanied by a judicial warrant or a finding of "probable cause" by a judicial body.

While it is not done as a matter of practice, if in responding to a local call, an officer encounters and identifies an individual that has been deported and has serious criminal convictions in his or her record, the LAPD may notify ICE that this person is in the United States and poses a threat to the community. The authority is provided to local agencies by 8 U.S.C. 1373.

Representatives from the LAPD report that the LAPD Manual (Manual) provides guidance for police interactions with federal immigration authorities. For example:

> Section 264.50 (Special Order 40) provides that "officers shall not initiate police action with the objective of discovering the alien status of a person."
>
> Section 390 provides that "undocumented status in itself is not a matter for police action."

Section 675.35 provides that "supplemental holds charging illegal entry against persons in the custody of this Department for an unrelated criminal offense shall only be authorized by officers of the United States Immigration Service. Arrestees against whom the INS has placed a hold shall be released to the custody of the INS within 24 hours after:

- All local charges are dismissed; or,
- Bail is deposited on the local charges; or,
- The arrestee is determined to be eligible for release on his/her own recognizance on the local charges.

LAPD reports that Section 675.35 is in the process being removed from the manual inasmuch as it is not the current practice to hold individuals beyond the time they would normally serve for any offense.

Lastly, LAPD reports that it participates in a number of task forces, some of which involve participation by ICE agents, through a Memorandum of Understanding. Some of these joint task forces include:

- Border Security Task Force
- Exchange of Intellectual Property Rights
- LAPD and Federal Protective Service Police
- LAPD and DHS
- National Security Task Force
- Internet Crimes Against Children
- Use of Storage Magazines
- Radio Access
- LA and Long Beach Maritime Anti-Smuggling Team

As part of LAPD practices, every LAPD officer that is part of an outside task force is required to sign a document stating, among other things, that:

> "I understand and agree that during my participation in this assignment, I must abide by Los Angeles Police Department Manual Section 4/264.50, which states, "Officers shall not initiate police action where the objective is to discover the alien status of a person. Officers shall neither arrest nor book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry)."

The document also requires LAPD officers to acknowledge the following statement:

> "I understand that under LAPD policy I may only participate with the task force in a law enforcement action if there is reasonable suspicion of criminal offense not relating to Title 8, Section 1325 of the United States Code."[22]

[22] Los Angeles Police Department Employee Acknowledgement for Working With Outside Agencies

RECOMMENDATIONS

That the City Council instruct:

1) The Los Angeles Police Department, with the assistance of the City Attorney, to review the LAPD Manual to ensure all sections are consistent with current practices.

2) The Office of the Chief Legislative Analyst, with the assistance of the Police Department and the City Attorney, to continue to monitor federal and state legislation and administrative action that may impact the City's practices relative to immigration.

Felipe Valladolid Chavez
Legislative Analyst

SMT:fvc

Attachments:
A) Motion (Cedillo-Huizar-Wesson/Harris-Dawson-O'Farrell-Price-Ryu)
B) President Trump Executive Order 13,768 – *Enhancing Public Safety in the Interior of the United States*
C) H.R. 83 – *Mobilizing Against Sanctuary Cities Act*
D) California TRUST Act
E) California TRUTH Act
F) Mayor Eric Garcetti Executive Directive No. 20
G) California Department of Justice Memorandum, June 25, 2014

ATTACHMENT A

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MOTION

In the aftermath of the election of Donald J. Trump as President of the United States, many residents throughout the City of Los Angeles and our region are deeply concerned about the uncertainty that change will bring with respect to immigration policies, funding, and law enforcement over the duration of a Trump presidency. These concerns should not be underestimated.

As one of the most diverse cities in the United States of America, the City of Los Angeles is a melting pot of ethnic groups, languages, religions, and a place called home by large immigrant and migrant populations coming here from all over the world. Not only do we have communities named Koreatown, Historic Filipinotown, Chinatown, Little Bangladesh, Thai Town, Little Ethiopia, Little Tokyo, and Little Armenia, the City of Los Angeles has one of the largest populations (and many times the largest) of various ethnic groups outside of their country of origin as well. Just a few examples include Mexicans, Salvadorans, Hondurans, Nicaraguans, Ethiopians, Lebanese, Iranians, Armenians, Israelis, Saudi Arabians, Bosnians, Puerto Ricans, Pacific Islanders, Burmese, Cambodians, Chinese, Filipinos, Indonesians, Koreans, Sri Lankans, and Thai. This does not even begin to take into account our religious diversity that has made the City of Los Angeles home to the fourth largest Muslim population in the United States, as well as the second largest Jewish population in the country.

According to the most recent statistics from the U.S. Census Bureau's 2014 American Community Survey, with a population of over 3.8 million people, approximately 38.6 percent (1.49 million) of the City of Los Angeles' residents are foreign-born, and 57.3 percent (853,721) of foreign born residents in the City are not currently citizens. This translates to the very real possibility that one out of every five Angelenos are likely to be affected by changes to immigration policies, funding, and enforcement at the federal level.

As members of the Los Angeles City Council, it is our responsibility to protect and enhance the quality of life for all of our residents regardless of national origin, religion, ethnic group, language, sexual orientation, gender, marital status or immigration status. It is imperative that as residents and leaders of the greatest city on the planet, we need to educate and prepare ourselves to defend our values, to defend our quality of life, to defend keeping students and families together, and to defend our neighborhoods from any attempts to change what makes our City so great … the people.

WE THEREFORE MOVE that the City Council INSTRUCT the Chief Legislative Analyst (CLA) and the City Administrative Officer (CAO), with the assistance of the City Attorney and the Mayor's Office of Immigrant Affairs, to report back by January 1, 2017 with regard to the following:

1. Identify the roles and responsibilities of an Immigrant Advocate to be appointed by the City Council and to work in conjunction with the Mayor's Office of Immigrant Affairs
2. Define the term "sanctuary city" and how that term might apply to the City of Los Angeles
3. Identify and categorize all federal grants, loans, and other funding that the City of Los Angeles currently receives
4. Identify all state laws applicable to immigration and relevant to the City of Los Angeles that may come into conflict with potential changes in federal law

5. Identify all federal laws applicable to immigration and relevant to the City of Los Angeles that are currently enacted and not being enforced

WE FURTHRE MOVE that the City Council INSTRUCT the CLA and the CAO to work with the Los Angeles Unified School District and Los Angeles Community College District, with the assistance of the Mayor's Office of Immigrant Affairs, to identify mutual areas of concern and coordinate strategies to protect students and keep families together, and provide updates to the City Council beginning January 1, 2017 on a quarterly basis.

WE FURTHER MOVE that the City Council INSTRUCT the CLA and the CAO, with the assistance of the Mayor's Office of Immigrant Affairs, to identify areas of potential collaboration with all levels of local government, including the County of Los Angeles, and the State of California, in order to develop comprehensive strategies that may result in legislative and/or legal action to protect our residents.

PRESENTED BY:

HERB J. WESSON, JR.
Councilmember, 10th District

GIL CEDILLO
Councilmember, 1st District

ORIGINAL

JOSE HUIZAR
Councilmember, 14th District

SECONDED BY:

NOV 2 2 2016

The White House
Office of the Press Secretary
For Immediate Release

January 25, 2017

Executive Order: Enhancing Public Safety in the Interior of the United States

EXECUTIVE ORDER

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ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies

to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and

be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against

any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.

ATTACHMENT C

I

115TH CONGRESS
1ST SESSION

H. R. 83

To prohibit the receipt of Federal financial assistance by sanctuary cities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mr. BARLETTA introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To prohibit the receipt of Federal financial assistance by sanctuary cities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mobilizing Against Sanctuary Cities Act".

SEC. 2. SANCTUARY CITIES INELIGIBLE FOR FEDERAL FINANCIAL ASSISTANCE.

Any State or local government that violates section 642 of the Illegal Immigration Reform and Immigrant Re-

sponsibility Act of 1996 (8 U.S.C. 1373) may not receive any Federal financial assistance (as such term is defined in section 7501(a)(5) of title 31, United States Code). The Attorney General shall determine annually which State or local jurisdictions are not in compliance with section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act and shall report such determinations to Congress on March 1 of each year. The Attorney General shall also issue a report concerning the compliance of any particular State or local jurisdiction at the request of any Member of Congress. Any jurisdiction that is found to be out of compliance shall be ineligible to receive Federal financial assistance for a minimum period of one year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

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ATTACHMENT D

Assembly Bill No. 4

CHAPTER 570

An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title 1 of the Government Code, relating to state government.

[Approved by Governor October 5, 2013. Filed with Secretary of State October 5, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 4, Ammiano. State government: federal immigration policy enforcement.

Existing federal law authorizes any authorized immigration officer to issue an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

This bill would prohibit a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States Immigration and Customs Enforcement's (ICE) Secure Communities program shifts the burden of federal civil immigration enforcement onto local law enforcement. To operate the Secure Communities program, ICE relies on voluntary requests, known as ICE holds or detainers, to local law enforcement to hold individuals in local jails for additional time beyond when they would be eligible for release in a criminal matter.

(b) State and local law enforcement agencies are not reimbursed by the federal government for the full cost of responding to a detainer, which can include, but is not limited to, extended detention time and the administrative costs of tracking and responding to detainers.

(c) Unlike criminal detainers, which are supported by a warrant and require probable cause, there is no requirement for a warrant and no established standard of proof, such as reasonable suspicion or probable

cause, for issuing an ICE detainer request. Immigration detainers have erroneously been placed on United States citizens, as well as immigrants who are not deportable.

(d) The Secure Communities program and immigration detainers harm community policing efforts because immigrant residents who are victims of or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement when any contact with law enforcement could result in deportation. The program can result in a person being held and transferred into immigration detention without regard to whether the arrest is the result of a mistake, or merely a routine practice of questioning individuals involved in a dispute without pressing charges. Victims or witnesses to crimes may otherwise have recourse to lawful status (such as U-visas or T-visas) that detention resulting from the Secure Communities program obstructs.

(e) It is the intent of the Legislature that this act shall not be construed as providing, expanding, or ratifying the legal authority for any state or local law enforcement agency to detain an individual on an immigration hold.

SEC. 2. Chapter 17.1 (commencing with Section 7282) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

7282. For purposes of this chapter, the following terms have the following meanings:

(a) "Conviction" shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.

(b) "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

(1) All criminal charges against the individual have been dropped or dismissed.

(2) The individual has been acquitted of all criminal charges filed against him or her.

(3) The individual has served all the time required for his or her sentence.

(4) The individual has posted a bond.

(5) The individual is otherwise eligible for release under state or local law, or local policy.

(c) "Immigration hold" means an immigration detainer issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual.

(d) "Law enforcement official" means any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of individuals in jails,

and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities.

(e) "Local agency" means any city, county, city and county, special district, or other political subdivision of the state.

(f) "Serious felony" means any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.

(g) "Violent felony" means any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

7282.5. (a) A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under any of the following circumstances:

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted at any time of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(R) Possession or use of a firearm in the commission of an offense.

(S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, a felony punishable by imprisonment in state prison, or any felony listed in paragraph (2) or (3) other than domestic violence, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code.

(6) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

(b) If none of the conditions listed in subdivision (a) is satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

O

Assembly Bill No. 2792

CHAPTER 768

An act to add Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, relating to local government.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2792, Bonta. Local law enforcement agencies: federal immigration policy enforcement: ICE access.

Existing federal law authorizes issuance of an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

Existing law, commonly known as the TRUST Act, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes. Existing law defines specified terms for purposes of these provisions.

This bill, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, would require a local law enforcement agency, prior to an interview between the United States Immigration and Customs Enforcement (ICE) and an individual in custody regarding civil immigration violations, to provide the individual a written consent form, as specified, that would explain, among other things, the purpose of the interview, that it is voluntary, and that the individual may decline to be interviewed. The bill would require the consent form to be available in specified languages. The bill would require a local law enforcement agency to provide copies of specified documentation received from ICE to the individual and to notify the individual regarding the intent of the agency to comply with ICE requests. The bill would require that the records related to ICE access be public records for purposes of the California Public Records Act. The bill, commencing January 1, 2018, would require the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year, to hold at

least one public community forum during the following year, as specified, to provide information to the public about ICE's access to individuals and to receive and consider public comment. By requiring these local agencies to comply with these requirements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Transparent Review of Unjust Transfers and Holds (TRUTH) Act.

SEC. 2. (a) Transparency and accountability are essential minimum requirements for any collaboration between state and federal agencies.

(b) Recent immigration enforcement programs sponsored by the United States Immigration and Customs Enforcement (ICE) agency have suffered from a lack of transparency and accountability.

(c) For example, a federal judge found that ICE "went out of [its] way to mislead the public about Secure Communities," a deportation program in which ICE collaborated with local law enforcement agencies to identify people for deportation.

(d) The Legislature further found that Secure Communities harmed community policing and shifted the burden of federal immigration enforcement onto local law enforcement agencies.

(e) Although ICE has terminated the Secure Communities program, it continues to promote a number of similar programs, including the Priority Enforcement Program, the 287(g) Program, and the Criminal Alien Program.

(f) The Priority Enforcement Program has many similarities to Secure Communities, including the checking of fingerprints for immigration purposes at the point of arrest; the continued use of immigration detainers, which have been found by the courts to pose constitutional concerns; and the reliance on local law enforcement to assist in immigration enforcement.

(g) Just as with Secure Communities, numerous questions have been raised about whether ICE has been transparent and accountable with respect to its current deportation programs.

(h) This bill seeks to address the lack of transparency and accountability by ensuring that all ICE deportation programs that depend on entanglement with local law enforcement agencies in California are subject to meaningful public oversight.

(i) This bill also seeks to promote public safety and preserve limited local resources because entanglement between local law enforcement and ICE undermines community policing strategies and drains local resources.

SEC. 3. Chapter 17.2 (commencing with Section 7283) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS

7283. For purposes of this chapter, the following terms have the following meanings:

(a) "Community forum" includes, but is not limited to, any regular meeting of the local governing body that is open to the public, where the public may provide comment, is in an accessible location, and is noticed at least 30 days in advance.

(b) "Hold request" means a federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D.

(c) "Governing body" with respect to a county, means the county board of supervisors.

(d) "ICE access" means, for the purposes of civil immigration enforcement, including when an individual is stopped with or without their consent, arrested, detained, or otherwise under the control of the local law enforcement agency, all of the following:

(1) Responding to an ICE hold, notification, or transfer request.

(2) Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or otherwise.

(3) Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs, or otherwise.

(4) Allowing ICE to interview an individual.

(5) Providing ICE information regarding dates and times of probation or parole check-ins.

(e) "Local law enforcement agency" means any agency of a city, county, city and county, special district, or other political subdivision of the state that is authorized to enforce criminal statutes, regulations, or local ordinances; or to operate jails or to maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals

in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

(f) "Notification request" means an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N.

(g) "Transfer request" means an Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X.

7283.1. (a) In advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The written consent form shall also be available in any additional languages that meet the county threshold as defined in subdivision (d) of Section 128552 of the Health and Safety Code if certified translations in those languages are made available to the local law enforcement agency at no cost.

(b) Upon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request. If a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.

(c) All records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. Records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

(d) Beginning January 1, 2018, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year shall hold at least one community forum during the following year, that is open to the public, in an accessible location, and with at least 30 days' notice to provide information to the public about ICE's access to individuals and to receive

and consider public comment. As part of this forum, the local law enforcement agency may provide the governing body with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.

7283.2. Nothing in this chapter shall be construed to provide, expand, or ratify the legal authority of any state or local law enforcement agency to detain an individual based upon an ICE hold request.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

By requiring public meetings relating to the manner in which local law enforcement entities cooperate with federal authorities in enforcing federal immigration laws and making related documents open to public inspection, this act furthers the purposes of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

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ATTACHMENT F

ERIC GARCETTI
MAYOR

EXECUTIVE DIRECTIVE NO. 20

Issue Date: March 21, 2017

Subject: Standing with Immigrants: A City of Safety, Refuge, and Opportunity for All

Since our City's founding, Los Angeles has always been a city of immigrants. The very first Angelenos—*Los Pobladores*—arrived here 236 years ago, a small band of settlers who traced their ancestry from all over the world, including to the native people of this region, and who saw opportunity where the mountains meet the sea. In the centuries since, we have grown into the most diverse city on the face of the earth—a city that champions inclusiveness and tolerance, and welcomes everyone who seeks to realize their dreams and build their families here, regardless of national origin or immigration status.

Today, more than 1.5 million residents of our city are foreign-born, and nearly two of every three Angelenos are either immigrants or children of immigrants. Our immigrants are the engine of the Los Angeles economy, representing 47 percent of the employed workforce in our city and more than half of the self-employed workforce—entrepreneurship that generated $3.5 billion in income in 2014 alone. Even more so, our immigrants have woven the social, cultural, and civic fabric of Los Angeles, from our educational institutions to our artistic stages, from the halls of government to community activism, from our vibrant culinary scene to our fields of play.

I have a longstanding commitment to immigrants in Los Angeles. As a City Councilmember, I proposed establishing an Office of Immigrant Affairs, prompting Mayor James K. Hahn's decision to create the Mayor's Office of Immigrant Affairs. Upon becoming Mayor, I immediately re-established this Office to advance the economic, cultural, social, and political well-being of our immigrant communities with initiatives that support immigrant integration through the coordination of City services, outreach, and advocacy. My vision is to ensure all Angelenos, regardless of immigration status, are

connected to community resources, have access to critical government services, are engaged in civic life, and are informed about critical immigration law and policy.

My most solemn responsibility as Mayor is to keep all of our city's people safe, and I strongly support the Police Department's longstanding policies with respect to immigration enforcement, which are rooted in the principle that all of Los Angeles is safer when the Police Department maintains a relationship of trust, respect, and cooperation with all city residents. When people feel confident that they can come forward as a victim of or witness to a crime, irrespective of immigration status, the Police Department's ability to protect and serve all is enhanced. The Police Department maintains the following policies, all of which are consistent with federal and state laws and court decisions:

- Special Order 40—Since 1979, when the Chief of Police issued Special Order 40, the Police Department has maintained a policy that prohibits police officers from initiating any action to determine a person's immigration status and from arresting anyone due to the person's civil immigration status.

- ICE detainer policy—Since 2014, in light of multiple court decisions finding compliance with certain United States Immigration and Customs Enforcement (ICE) detainer requests to be unconstitutional, the Police Department has not honored any ICE request to hold an individual otherwise eligible for release from custody absent a judicial determination of probable cause for that detainer or a valid warrant from a judicial officer.

- Policy against partnering with ICE to enforce civil immigration law—Because civil immigration enforcement is a federal responsibility and it is vital to public safety for the Police Department to build public trust in all communities in Los Angeles, the Police Department has never participated and will not participate in the voluntary program authorized by section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357 (2012), or any other similar program. Section 287(g) permits designated local law enforcement officers to perform civil immigration enforcement.

All residents of Los Angeles must feel safe and supported when accessing the vast array of City facilities, programs, and services available to them. The City will not assist or cooperate with any effort by federal immigration agents to use public facilities or resources for the purposes of enforcing federal civil immigration law.

Moreover, to ensure that they will avail themselves of City services, programs, and resources, all Angelenos must have confidence that doing so will not place themselves or their families in peril due to their immigration status being unnecessarily solicited or their personal data being left unprotected.

Accordingly, I hereby order the following:

Keeping immigrant Angelenos safe:

- The Chief of Police shall reaffirm and maintain the Police Department's existing policies and procedures with respect to immigration enforcement, including the policy that originated in Special Order 40, the ICE detainer policy, and the policy against partnering with ICE to perform civil immigration enforcement.

- The Fire Chief, the Chief of Airport Police, and the Chief of Port Police shall issue policies and procedures consistent with the Police Department's existing policies and procedures with respect to immigration enforcement, including the policy that originated in Special Order 40, the ICE detainer policy, and the policy against partnering with ICE to perform civil immigration enforcement.

- No person acting in his or her capacity as a City employee shall assist or cooperate with, or allow any City monies or resources to be used to assist or cooperate with, any federal agent or agency in any action where the primary purpose is federal civil immigration enforcement.

- No City employee shall grant any federal immigration agent access to any City facility not open to the general public unless such access is legally required.

- All General Managers, Heads of Departments/Offices, and Commissions of City Government shall report to my Chief of Immigrant Affairs and the Chief of Police any efforts by federal immigration enforcement officials from ICE, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services to enforce federal civil immigration laws with the cooperation, support, or use of City resources or facilities.

Providing equal access to City services to all Angelenos of any immigration status:

- All General Managers, Heads of Departments/Offices, and Commissions of City Government shall:
  - ensure equal access to facilities, services, and programs without regard to any person's citizenship or immigration status to the maximum extent that the law permits; and
  - foster a welcoming atmosphere for all regardless of immigration status.

Protecting the security of immigrant Angelenos' data and information:

- No City employee shall collect information from individuals that is not necessary to perform the employee's duties. In particular, no City employee shall collect information regarding a person's citizenship or immigration status unless legally required to do so or mandated by policy to protect victims and witnesses of crimes.

- I hereby deem any information in the City's possession that can be used to distinguish or trace an individual's citizenship or immigration status, either on its own or when combined with other information, to be Personally Identifiable Information (PII). All City employees shall treat PII as Confidential Information as allowed by law and shall handle, maintain, and secure such information according to the standards for Confidential Information that the Information Technology Policy Committee established in the Information Handling Guidelines, Policy No. IT-017, effective May 19, 2016, as updated, which are available from the Information Technology Agency.

Engaging and empowering immigrant Angelenos:

- All General Managers, Heads of Departments/Offices, and Commissions of City Government shall:
  - make available at public facilities printed copies of the Community Resource Guide for Immigrant Angelenos that my Office of Immigrant Affairs prepared;
  - ensure that all City websites link to the Community Resource Guide for Immigrant Angelenos from the websites' homepages;
  - inform their staffs of the policies and practices outlined in this Executive Directive and of the availability of the Community Resource Guide for Immigrant Angelenos, and encourage their staffs to share this information with their families and networks; and
  - encourage employees to take part in volunteer and civic engagement opportunities to protect our city's immigrant populations and to strengthen our status that are posted at https://www.lamayor.org/immigrants.

Coordinating City actions for immigrants:

- Each General Manager or Head of Department/Office shall designate an Immigrant Affairs Liaison for the Department/Office, notifying my Chief of Immigrant Affairs of that person's name and contact information (including when there is a subsequent personnel change or change to that person's contact information).

- The Immigrant Affairs Liaisons shall work closely with my Chief of Immigrant Affairs and her staff to ensure departmental support in advancing and advocating for the full and active civic, social, political, and economic participation of immigrant Angelenos of any status.

Executed this 21st day of March 2017.

ERIC GARCETTI
Mayor

Supersedes Executive Directive No. IC-2 (Hahn Series).

Kamala D. Harris, Attorney General

California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Larry Wallace, Director, Division of Law Enforcement	INFORMATION BULLETIN	
Subject: Responsibilities of Local Law Enforcement Agencies under Secure Communities and the TRUST Act	*No. 14-01* *Date:* *June 25, 2014*	*Contact for information:* Larry Wallace, Director, Division of Law Enforcement 916-319-8200

TO: Executives of State and Local Law Enforcement Agencies

The purpose of this bulletin is to update information provided in Information Bulletin No. 2012-DLE-01, dated December 4, 2012, titled "Responsibilities of Local Law Enforcement Agencies under Secure Communities." In that Bulletin, we outlined the responsibilities of state and local law enforcement agencies regarding custody of undocumented immigrants subject to federal detainer requests. We clarified that federal detainers issued under the Secure Communities program are not mandatory, but are merely requests enforceable *at the discretion of the local law enforcement agency* holding the individual arrestee.

Since then, effective January 1, 2014, the "Transparency and Responsibility Using State Tools Act" (TRUST Act) has been enacted into California law. (Gov. Code, §§ 7282, 7282.5; Stats. 2013, ch. 570.) The TRUST Act limits the discretion of law enforcement officials to detain an individual pursuant to a federal immigration detainer request unless certain conditions are met. Additionally, new federal case law has created legal risk for local jurisdictions that voluntarily comply with an Immigration and Customs Enforcement (ICE) request to detain an individual. In summary:

- Jurisdictions that choose to comply with ICE detainer requests may only do so in circumstances that meet the TRUST Act's enumerated conditions;
- The TRUST Act does not affect obligations under Health and Safety Code section 11369, which requires federal notification when an arrest is made for specified controlled substances offenses and there is reason to believe the individual may not be a citizen of the United States;
- New case law and the TRUST Act only limit discretion to *detain* individuals and do not affect local law enforcement agency discretion to provide information to or otherwise cooperate with federal immigration officials; and
- A federal court outside of California's jurisdiction has held a county liable for damages where it voluntarily complied with an ICE request to detain an individual, and the individual was otherwise eligible for release. If courts with jurisdiction affecting California follow the decision reached by this court, local law enforcement agencies may also be held liable for such conduct.

TRUST Act Conditions for Retaining Custody of Detained Individuals

The TRUST Act provides that continued detention pursuant to an ICE detainer request is authorized only if two conditions are met. First, the continued detention must "not violate any federal, state, or local law, or any local policy," and second, the detainee's criminal history must include one of the following:

- Has been convicted of a serious felony or violent felony identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code or has been convicted of an offense that was committed in another state which, if committed in California, would be punishable as a serious felony

or violent felony as defined by in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code;
- Has been convicted of a felony punishable by imprisonment in state prison;
- Has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony;
- Has been convicted at any time of a felony for any of the offenses listed in Government Code section 7282.5, subdivision (a)(3);
- Is a current registrant on the California Sex and Arson Registry;
- Is arrested and taken before a magistrate on a charge involving: (1) a serious or violent felony identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code; (2) a felony punishable by imprisonment in state prison, other than domestic violence; or (3) a felony for any of the offenses listed in Penal Code section 7282.5, subdivision (a)(3), other than domestic violence; and the magistrate makes a finding of probable cause as to that charge;
- Has been convicted of a federal crime that meets the definition of aggravated felony under the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(A)-(P); or
- Is identified by ICE as the subject of an outstanding federal felony arrest warrant.

(Gov. Code, § 7282.5, subd. (a).)

Only if both of these conditions are met, then local law enforcement may continue to detain the individual for up to 48 hours (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody. If one of these conditions is not satisfied, then an immigration detainer will not support the continued detention of an individual otherwise eligible for release, and under the TRUST Act, the individual shall not be detained on the basis of the detainer after the individual otherwise becomes eligible for release from custody.

The TRUST Act Does Not Affect Notification Obligations Under Health and Safety Code Section 11369

Health and Safety Code section 11369 provides that arresting agencies shall notify the appropriate federal agency (ICE) when there is reason to believe that a person arrested for violating a specified controlled substances offenses may not be a citizen of the United States. (See Health & Safety Code, § 11369.) The listed offenses are violations of sections 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550 of the Health and Safety Code. Compliance with section 11369 only requires notification to ICE; it does not permit continued detention solely on the basis of an arrest for one of the specified offenses above.

ICE and Federal Court Rulings Confirm That ICE Detainer Requests Are Not Mandatory

Again, satisfaction of the TRUST Act conditions for compliance with ICE immigration detainer requests does not mean that compliance is mandatory. As we explained in Bulletin No. 2012-DLE-01, law enforcement agencies in California are not required to fulfill an ICE immigration detainer. Recent court rulings and correspondence from ICE's Acting Director have further confirmed that ICE immigration detainers are not mandatory. In a February 25, 2014, letter to Representative Mike Thompson, Acting ICE Director Daniel H. Ragsdale stated that "[w]hile immigration detainers are an important part of ICE's effort to remove criminal aliens who are in federal, state, or local custody, they are not mandatory as a matter of law."

In a March 4, 2014, ruling, the Third Circuit Court of Appeals held that ICE detainers are voluntary requests. (*Galarza v. Szalczyk* (3rd Cir. 2014) 745 F.3d 634.) The court concluded that "immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal" and that the county in that case was "free to disregard the ICE detainer." (*Id.* at pp. 636, 645.) The court specified

that settled constitutional law clearly establishes that immigration detainers must be deemed requests, citing the Tenth Amendment concerns that were explained in Bulletin No. 2012-DLE-01. (*Id.* at pp. 643-645.)

A federal court in Oregon also recently held that ICE detainers are voluntary requests, relying on the reasoning in *Galarza* and on this office's December 4, 2012 Information Bulletin. (*Miranda-Olivares v. Clackamas Co.* (D.Or. April 11, 2014, No. 3:12-cv-02317-ST) [2014 WL 1414305].) Accordingly, subject to federal and state limitations described above, in circumstances where compliance with ICE immigration detainers is permitted, an agency may use its discretion whether to devote resources to holding a suspected undocumented immigrant on behalf of the federal government. California law enforcement agencies should consider the merits of each request carefully, consider whether the individual may be dangerous and pose a public safety risk, and take the course of action that best protects public safety.

Jurisdictions May Be Exposed to Liability If They Voluntarily Comply with ICE Detainer Requests

The *Miranda-Olivares* court held, consistent with Information Bulletin No. 2012-DLE-01, that local authorities can choose to comply with a request from ICE, but are not required to do so by law. The court also held that because compliance with an ICE detainer is voluntary rather than mandatory, a local agency could violate the Fourth Amendment by detaining an individual solely based on the request of ICE, without some other probable cause for arrest.

No state or federal court with California jurisdiction has yet ruled on whether detentions authorized under the TRUST Act, but solely based on the request of ICE, violate the Constitution. If a California court adopts the reasoning of the district court in *Miranda-Olivares*, local jurisdictions may be held liable for damages for such a detention.

Further, compliance with the TRUST Act may not immunize local jurisdictions from liability. As described above, the TRUST Act permits a law enforcement official to detain an individual on the basis of an immigration hold after that individual becomes otherwise eligible for release from custody only if the continued detention would "not violate any federal law . . . ." (Gov. Code, § 7282.5, subd. (a).) If continued detention is found to violate the Fourth Amendment, it would therefore likely be no defense for the local jurisdiction to argue that it was acting under the authority of the TRUST Act.

Federal Case Law and the TRUST Act Do Not Limit Other Cooperation with Immigration Officials

The *Miranda-Olivares* holding and the TRUST Act only affect discretion to *detain* individuals. They do not affect a law enforcement agency's discretion to otherwise cooperate with federal immigration officials. Specifically, law enforcement officials may provide information to ICE, including notification of the date that an individual will be released, as requested on an immigration detainer form. Federal law provides that state and local governments may not be prohibited from providing information to or receiving information from ICE. (8 U.S.C. §§ 1373, 1644; see also 75 Ops.Cal.Atty.Gen. 270, 277 (1992) [concluding that a city may not prohibit its officers and employees from cooperating in their official capacities with immigration officials].)

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