

THE TRUTH ACT AND OTHER RELATED LAWS

Presented by:

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I. Overview of the Contra Costa Immigrant Rights Alliance

History

- The Contra Costa Immigrant Rights Alliance (CCIRA) was established in 2017 by legal and community-based organizations aiming to advance immigrant rights and promote resources for all Contra Costa residents regardless of immigration status.
- CCIRA was formed after an article was published in the East Bay Express about the Probation Department and the Custody Alternative Facility turning people over to ICE during appointments.



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Ambushed: Contra Costa County Law Enforcement Sets Up Surprise Stings To Help Federal Immigration Agents Arrest and Deport Immigrants

Chris Kim said his arrest and detention by ICE, with assistance from the Contra Costa Sheriff's Office, cost him his jobs, car, and apartment.

Image credit: Bert Johnson

From:
Story: [Ambushed: Contra Costa County Law Enforcement Sets Up Surprise Stings To Help Federal Immigration Agents Arrest and Deport Immigrants \(January 10, 2017\)](#)

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Credit: Bert Johnson / East Bay Express

Activities and Accomplishments



- In 2017, CCIRA successfully secured funding through a foundation-county partnership to establish Stand Together Contra Costa, a county rapid response system to respond to increasing immigration enforcement. In March 2018, Stand Together officially launched with a 24-hour hotline, two attorneys, and a coordinator.
- In 2017, CCIRA advocated for the passage of the CA Values Act (SB 54), which was signed into law on October 5, 2017.

Activities and Accomplishments



- Beginning in October 2017, CCIRA worked with the Probation Department to draft an SB 54-compliant policy that prevented officers from informing ICE about a probationer's appointment. The policy was finalized in December 2017.
- Throughout 2017 and 2018, CCIRA has been at the forefront of advocating for immigrant rights in Contra Costa, including pushing back against the Sheriff's publicizing of release dates, denouncing the proposed immigration jail at the Concord Naval Weapons Station, and pushing for disentangling both the Sheriff's Office and Probation Department from ICE.



TRUTH Act & Other Related Laws

ICE's Enforcement Programs

- **Secure Communities** (“S-Comm”): program that relies on fingerprint data at the time of a person’s booking into a local jail to identify noncitizens who may be deportable
 - Potentially deportable → ICE sends detainer request to local jail



How S-Comm Works



ICE's Enforcement Programs

- An ICE detainer request is a **voluntary request** that Immigration and Customs Enforcement (“ICE”) sends to local law enforcement.
 - ▣ The request can ask that local law enforcement **hold** a person for up to 48 hours past his/her release date so that ICE can pick up the person and take him/her into immigration custody. *Under SB 54, local law enforcement is prohibited from holding anyone for extra time for ICE.*
 - ▣ The request can ask that local law enforcement **notify** ICE about the person's **date and time of release** so that ICE can pick up the person upon release and take him/her into immigration custody.

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

Name of Alien: _____
 Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law, and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____ If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
 - **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
 - Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
 - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

 (Name and title of Immigration Officer) (Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

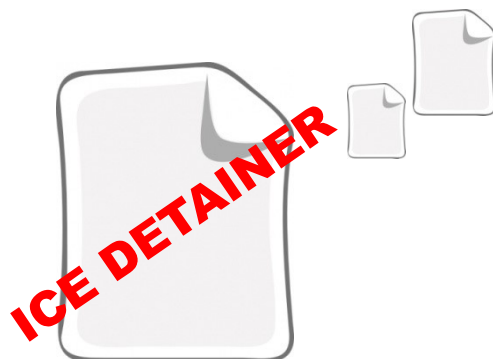
Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

in person by inmate mail delivery other (please specify): _____

 (Name and title of Officer) (Signature of Officer) (Sign in ink)



Concerns about ICE Entanglement with Local Law Enforcement

□ 10th Amendment

- *Printz v. US* (S.Ct. 1997): 10th Amendment prohibits Federal government from commandeering local resources to carry out the Federal government's duties.

□ 4th Amendment

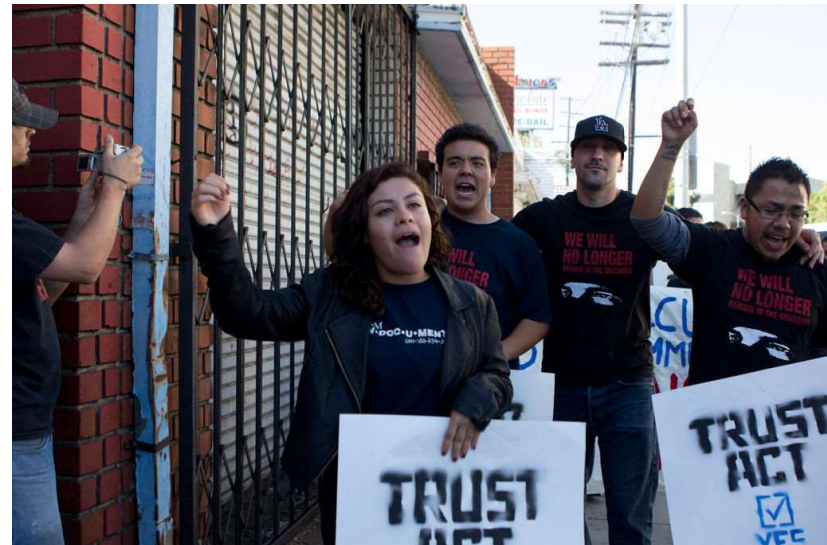
- *Galarza v. Szalczyk* (3d Cir. 2014): **ICE holds are voluntary, not mandatory**, and counties cannot avoid liability for holding an individual who is not deportable for ICE by arguing that detainers are mandatory.
- *Miranda-Olivares v. Clackamas County* (D. Or. 2014): **ICE holds violate Fourth Amendment protections against unreasonable search and seizure because they are not based on a probable cause finding.**

Concerns about ICE Entanglement with Local Law Enforcement

- Fosters further distrust between immigrant communities and local law enforcement
 - ▣ Makes immigrant communities view local law enforcement and ICE as the same entity
 - ▣ Makes immigrants afraid to report when they are the victim of or a witness to a crime
- Separates local families
- Opens local law enforcement up to liability

CA TRUST Act (AB 4)

- Effective as of January 1, 2014 (Gov't Code §§ 7282 *et seq.*)
- Prohibited local law enforcement from detaining individuals in response to **ICE hold requests** for most misdemeanor offenses.
- Set statewide floor, not a ceiling.
- Soon after the TRUST Act's passage, several federal courts found that ICE holds are **unconstitutional** under the Fourth Amendment's protections against unreasonable search and seizure because they are not based on a probable cause finding.



Credit: Anibal Ortiz / KPCC

CA TRUTH Act (AB 2792)

- Effective as of January 1, 2017 (Gov't Code §§ 7283 *et seq.*).
- Requires a person in jail to sign a consent form before an ICE interview that explains the purpose of the interview, that that interview is voluntary, and that the person may decline to be interviewed or interview only with their attorney present.
- Requires local law enforcement agency to inform individual upon receipt of ICE detainer request.
- Requires local law enforcement agency to inform individual and his/her attorney or designee notice if agency agrees to notify ICE of person's release date.

CA TRUTH Act (AB 2792)

- Requires that all records related to ICE access be public records for purposes of the Public Records Act.
 - ▣ ICE access is defined as responding to an ICE request; providing notification to ICE about a person's date and time of release; providing non-public personal information to ICE; allowing ICE to interview a person; or providing ICE information about probation/parole check-ins.
- Beginning in 2018, requires that the local governing body where a local law enforcement agency has provided ICE access in the previous year hold a community forum to provide information about ICE's access and allow public comment.

CA Values Act (SB 54)







- The CA Values Act, which was signed into law by Gov. Brown on October 5, 2017, is a state law that limits state and local resources from being used to carry out deportations.



Credit: Irfan Khan / Los Angeles Times

POLICE-ICE TACTIC






UNDER SB 54

<p>Immigration Holds</p> 	<p>Prohibited.</p>
<p>Making arrests on civil immigration warrants</p> 	<p>Prohibited.</p>
<p>287g</p> 	<p>Prohibited.</p>
<p>Asking about immigration status or using immigration agents as interpreters.</p> 	<p>Prohibited.</p>
<p>Sharing personal info with ICE (e.g., work, home addresses)</p> 	<p>Prohibited unless publicly available.</p>
<p>Notifying ICE of release dates</p> 	<p>Prohibited unless:</p> <ul style="list-style-type: none"> • Revised TRUST Act exception applies, including: <ul style="list-style-type: none"> • Conviction for a felony punishable by imprisonment in state prison at any time • Conviction within past 15 years for any other specified felony. The 15-year "wash" is an improvement on the old TRUST Act standard. • Conviction within the past 5 years for a misdemeanor for a specified wobbler offense. • Charges for a crime that is serious, violent, or punishable by a term in state prison if finding of probable cause has been made by a magistrate pursuant to PC 872. • If release dates/times are already publicly available, can be shared

Source: ICE Out of California Coalition

POLICE-ICE TACTIC

UNDER SB 54

<p>Transfers to ICE</p> 	<p>Prohibited unless:</p> <ul style="list-style-type: none">• Revised TRUST Act exception applies (see above under notifications)• Warrant or probable cause determination from a judge that someone has violated federal criminal immigration law. <p>Local law enforcement required to report number of transfers and basis for transfer to Attorney General's Office.</p>
<p>Local arrests for "criminal" violations of immigration law</p> 	<p>Prohibited except local law enforcement may arrest someone for unlawful re-entry following deportation <i>if</i></p> <ul style="list-style-type: none">• The re-entry is detected during an unrelated law enforcement activity, and• The person has a prior "aggravated felony" conviction <p>Any person arrested for unlawful reentry may be transferred to ICE only if a revised TRUST exception applies.</p>
<p>ICE interviews in jail and prison</p> 	<p>TRUTH Act protections essentially expanded to prisons (can't be interviewed by ICE unless sign consent form prior to interview). Prohibition on providing office space exclusively dedicated to ICE in local jails.</p>
<p>Joint Task forces</p> 	<p>Some limitations and reporting requirements imposed.</p> <ul style="list-style-type: none">• Primary purpose of task force must be unrelated to immigration enforcement, and• Participation does not violate any local law or policy.• Local law enforcement required to report information about joint taskforce operations to CA Attorney General and information is available as a public record.
<p>Databases</p> 	<p>Attorney General will draft advisory guidelines to ensure that databases are not used for immigration enforcement. State and local law enforcement agencies are encouraged but not required, to adopt guidelines.</p>

Source: ICE Out of California Coalition



Contra Costa County & ICE

Sheriff's Office and ICE

- In January 2017, the East Bay Express reported that several staff members from the Custody Alternative Facility had been involved in setting up arrests with ICE during check-ins.
- The Sheriff's Office's policy revised on May 9, 2017 allowed notifying ICE about a person's release date from custody if the person was excepted from the TRUST Act.

Probation Department and ICE



- In January 2017, the East Bay Express reported that it had obtained emails from the Probation Department that showed probation officers setting up arrests with ICE during probation appointments.
- In December 2017, after consulting with community-based organizations, the Probation Department issued an updated policy prohibiting probation officers from setting up arrests with ICE during probation appointments.

Questions?



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