



ADVANCING
JUSTICE

ASIAN LAW CAUCUS

PREPARED FOR:

Federalism and Immigration

Presented by:

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About us

Advancing Justice - Asian Law Caucus

San Francisco, CA

Founded in 1972, Asian Americans Advancing Justice - Asian Law Caucus is the nation's first public interest law office representing the civil and human rights of Asian American and Pacific Islander communities.



The Problem:

Deportation Crisis

At the federal level - enforcement only approach to immigration policy:

- Obama deported **2.4 million people**.
- Trump has threatened to deport **3 million people** during the beginning of his term.



Immigration Enforcement: who is responsible for enforcement?

The Supreme Court in *Arizona v. United States* (2012):

“The **Government of the United States** has broad, undoubted power over the subject of immigration and the status of aliens. ... This authority rests, in part, on the National Government’s constitutional power to “**establish an uniform Rule of Naturalization**,” U. S. Const., Art. I, §8, cl. 4, and its inherent **power as sovereign to control and conduct relations with foreign nations....**”

The Problem:

How does ICE deport millions of immigrants?

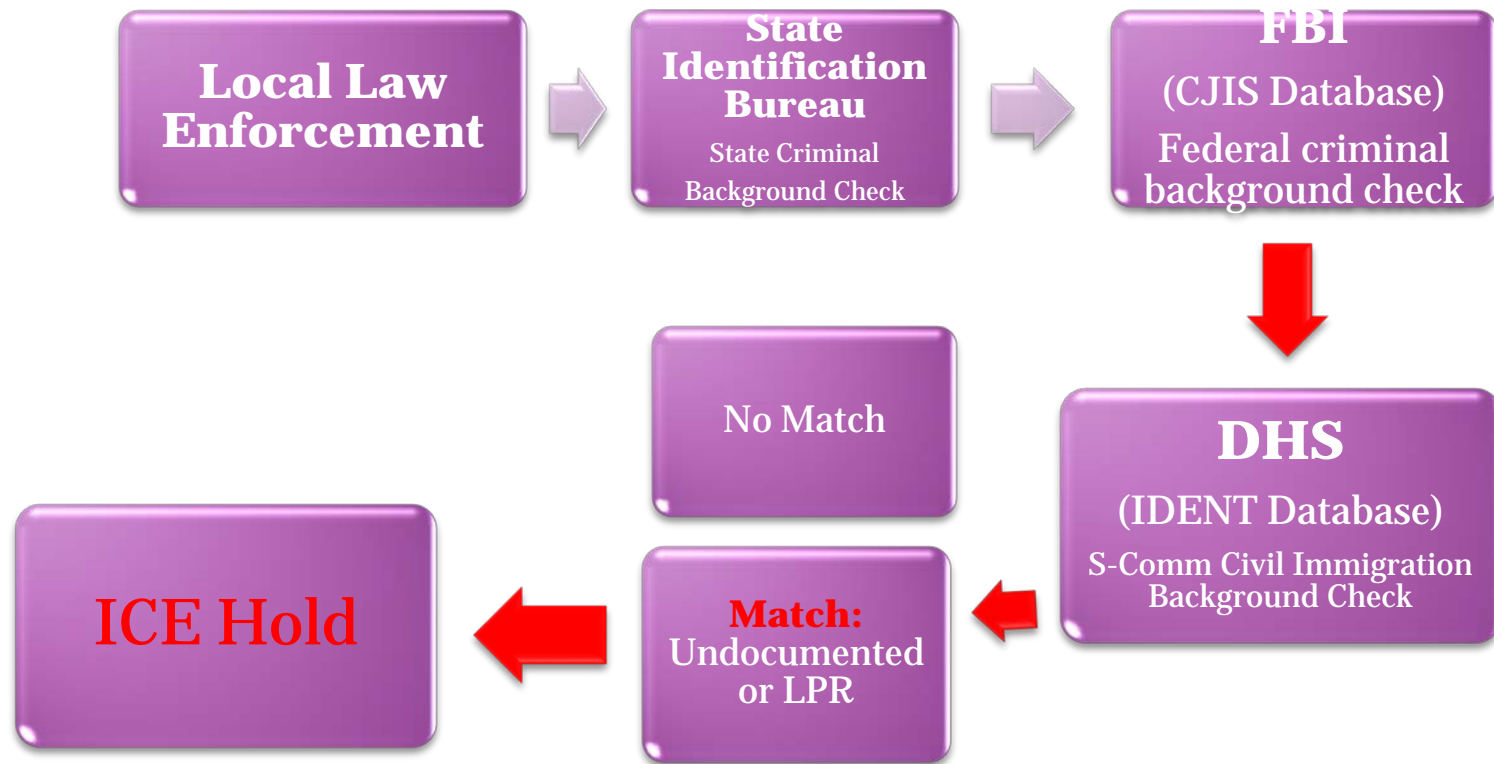
Commandeering of local police as force-multipliers
expanding ICE's presence in jails and on the streets:

ICE Access Programs

- 287(g) program (*deputizing local law enforcement for immigration enforcement*)
- Criminal Alien Program (*ICE access to jails*)
- Secure Communities Program (*fingerprints taken by local law enforcement checked by ICE + ICE detainers*)



S-Comm Process



Nationally, ICE issued almost **1 million** ICE hold requests from 2008 to 2012.

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)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION
RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

- ☐ Initiated an investigation to determine whether this person is subject to removal from the United States.
- ☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ .
(Date)
- ☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ .
(Date)
- ☐ Obtained an order of deportation or removal from the United States for this person. (Date)

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- ☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- ☐ Provide a copy to the subject of this detainer.
- ☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- ☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- ☐ Consider this request for a detainer operative only upon the subject's conviction.
- ☐ Cancel the detainer previously placed by this Office on _____ .
(Date)

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF
THIS NOTICE:**

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)



THE CRIMINAL JUSTICE PROCESS





START: POLICE STOP/ARREST


BOOKING INTO JAIL AFTER ARREST


ARRESTEE IN JAIL (Pre/Post Bail Hearing)


BAIL/CUSTODY HEARING


CRIMINAL CHARGES & DISPOSITION (plea/trial/dismissal/sentence)

  
POST-CONVICTION (appeal, completion of sentence, release from criminal custody, probation)

ICE HOLD or
ICE Notification

ICE Hold Requests

1. Voluntary
2. Undermines trust
3. Financial burden on local and state resources
4. Constitutional concerns:
Not a warrant signed by a judge



Stronger Local ICE hold Reform: New Case Law

Galarza v. Szalczyk (March 4, 2014)

The U.S. Court of Appeals for the Third Circuit held that ICE holds are voluntary, not mandatory. Therefore, Lehigh County, PA cannot avoid liability for holding an individual who is not deportable for ICE by arguing that detainees are mandatory.

Maria Miranda-Olivares v. Clackamas County (April 11, 2014)

The federal district court in Portland, Oregon found that ICE holds violate Fourth Amendment protections against unreasonable search and seizure because they are not based on a probable cause finding.



The CA TRUST Act



The Solution:

Local and State Coalition Building

- Beginning in 2010, regional meetings throughout CA on S-Comm.
- Formation of state coalition in 2011:
 - Immigrant rights, faith, domestic violence service providers, labor
 - Weekly calls with statewide coalition
 - Report back on regional work and statewide coordination
 - Coalition consulted before decisions made on TRUST Act



CA TRUST Act (AB 4)

- ❑ Prohibits local law enforcement from detaining individuals in response to ICE hold requests unless felony conviction or some wobbler convictions.
- ❑ If exception applies, local law enforcement *may* respond to hold (but not required).
- ❑ Sets statewide floor, not a ceiling (local counties can do more).

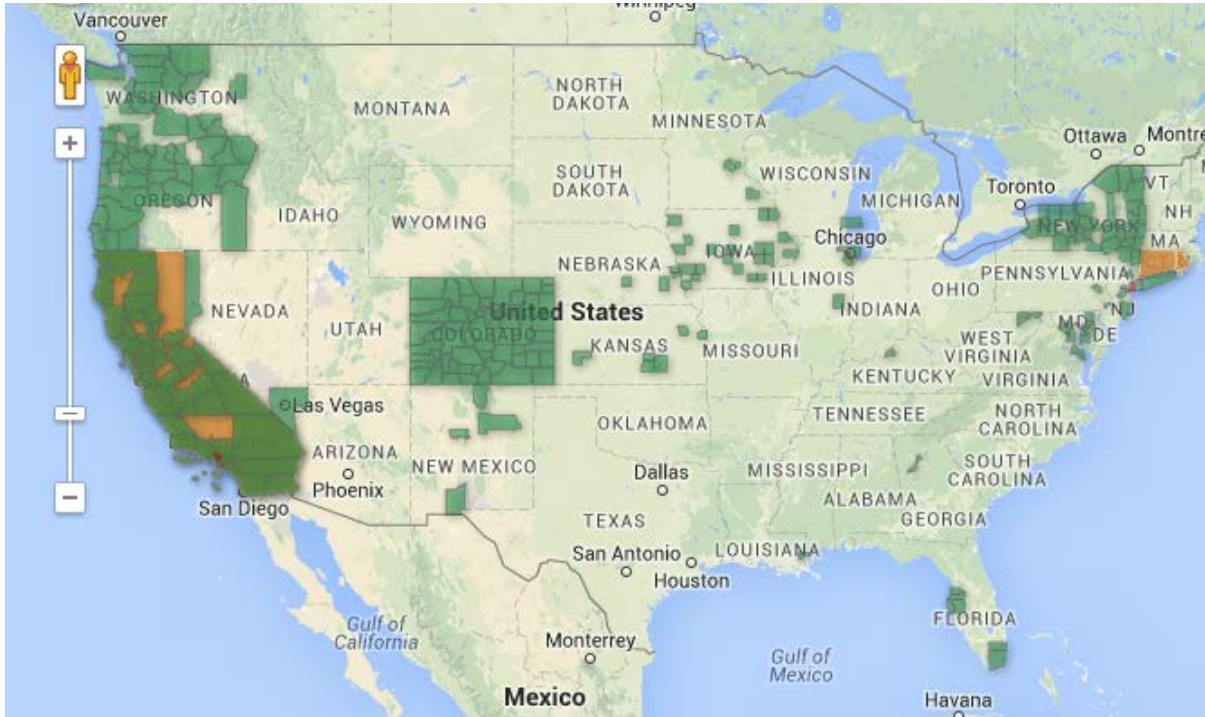


CA TRUST Act (AB 4)

- ❑ Three year statewide campaign (2011 to 2013)
- ❑ Signed by Gov. Brown on Oct. 5, 2013
- ❑ Effective on Jan. 1, 2014.



National Impact



Source for Map:
Immigrant Legal Resource Center,
<http://www.ilrc.org/enforcement>

Over 350 jurisdictions nationally adopted policies limiting ICE holds.

- Includes three states (CA, CT, and RI), city and county ordinances or resolutions, and large number of recent announcements from Sheriffs.
- **Over 100** of these jurisdictions do not respond to any ICE holds.







SB 54 – CA Values Act



CA Values Act (SB 54-Deleon)










OVERVIEW OF CA VALUES ACT (SB 54)

POLICE-ICE TACTIC	UNDER SB 54
Immigration Holds 	Prohibited.
Making arrests on civil immigration warrants 	Prohibited.
287g 	Prohibited.
Asking about immigration status or using immigration agents as interpreters. 	Prohibited.

CA Values Act (SB 54-Deleon)



POLICE-ICE TACTIC	UNDER SB 54
Sharing personal info with ICE (e.g., work, home addresses) 	Prohibited unless publicly available.
Notifying ICE of release dates 	Prohibited unless: <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
Transfers to ICE 	Prohibited unless: <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. Local law enforcement required to report number of transfers and basis for transfer to Attorney General's Office.
Local arrests for "criminal" violations of immigration law 	Prohibited except local law enforcement may arrest someone for unlawful re-entry following deportation <i>if</i> <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 Any person arrested for unlawful reentry may be transferred to ICE only if a revised TRUST exception applies.
ICE interviews in jail and prison 	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.
Joint Task forces 	Some limitations and reporting requirements imposed. <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.
Databases 	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.



CA Values Act (SB 54-Deleon



Safe spaces: CA Attorney General's Office required to develop model policies that limit assistance with ICE/CBP to the fullest extent under federal and state law.

These agencies must adopt these policies.

- **Public schools**
- **Health facilities**
- **Courthouses**

These agencies are encouraged to adopt the policies.

- Libraries
- Division of Labor Standards Enforcement facilities
- Agricultural Labor Relations Board
- Division of Workers Compensation
- Shelters

STATUS OF CA Values Act: SB54

Gov. Brown signed SB 54 into law and most provisions go into effect on Jan. 1, 2018.



Next Steps

Implementation

- Educate local law enforcement
- Inform the community about their rights
- Provide technical assistance to practitioners



ICE Out of California Resources

Campaign Materials

[ICE Out OF California Fact Sheet](#)

[ICE fuera de California Guía de Implementación- Español](#)



Questions?

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For resources: www.iceoutofca.org.