
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 937 **Hearing Date:** July 13, 2021
Author: Carrillo
Version: April 21, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Immigration enforcement*

HISTORY

Source: Asian Americans Advancing Justice – Asian Law Caucus (AAAJ-ALC),

Prior Legislation: AB 2596 (Bonta) Not heard because of COVID-19
SB 54 (DeLeon) Chapter 495, Stats. 2017
AB 2792 (Bonta) Chapter 768, Stats. 2016
AB 4 (Ammiano) Chapter 570, Stats. 2013
AB 524 (Mullin) Chapter 572, Stats. 2013

Support: Alliance for Boys and Men of Color; Alliance of Californians for Community Empowerment (ACCE) Action; Alliance San Diego; American Friends Service Committee (AFSC); Api Equality-LA; Arts for Healing and Justice Network; California; Asian Pacific Islander Reentry Thru Inclusion, Support, & Empowerment; Asian Prisoner Support Committee; Berkeley Society of Friends; Buen Vecino; California Coalition for Women Prisoners; California Commission on Asian and Pacific Islander American Affairs; California Immigrant Policy Center; California Labor Federation, Afl-CIO; California Pan - Ethnic Health Network; California Peninsula-south Bay Chapter, Center for Common Ground; California Public Defenders Association; California- Stop Terrorism and Oppression by Police (STOP) Coalition; Center for Common Ground; Center for Empowering Refugees and Immigrants; Centro Legal De LA Raza; Clergy and Laity United for Economic Justice; Communities United for Restorative Youth Justice (CURYJ); Critical Resistance; Defy Ventures; Democratic Party of Contra Costa County; Democratic Woman's Club of San Diego County; Dolores Street Community Services; Drug Policy Alliance; Ella Baker Center for Human Rights; Eviction Defense Collaborative Union; Freedom for Immigrants; Grip Training Institute/insight-out; Having Our Say Coalition; Human Rights Watch; Ice Out of Marin; Immigrant Legal Resource Center; Inland Coalition for Immigrant Justice; Interfaith Movement for Human Integrity; John Burton Advocates for Youth; Kehilla Community Synagogue; Lakeshore Avenue Baptist Church; Law Enforcement Action Partnership; League of Women Voters of California; Legal Services for Prisoners With Children; Long Beach Immigrant Rights Coalition; Long Beach Southeast Asian Anti-deportation Collective; Los Angeles County District Attorney's Office; Mixteco Indigena Community Organizing Project (MICOP); Naral Pro-choice California; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; Nikkei Progressives; Oakland Privacy; Orange County Equality Coalition; Orange County Rapid Response Network; Re:store Justice; Resilience

Orange County; San Diego, County of; San Francisco Public Defender; Services, Immigrant Rights and Education Network; Silicon Valley De-bug; Success Stories Program; SURJ Contra Costa County CA; The Multicultural Center of Marin; The Transformative In-prison Workgroup; UCSF White Coats for Black Lives; University of California Student Association; Ventura County Clergy and Laity United for Economic Justice; Vietrise; Voices for Progress Education Fund; Women for American Values and Ethics (WAVE); Youth Justice Coalition

Opposition: California State Sheriffs' Association; California Police Chiefs Association; Peace Officers Research Association of California

Assembly Floor Vote: 42 - 21

PURPOSE

The purpose of this bill is to eliminate the existing ability under the Values Act for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate transfers and to prohibit all state and local agencies from assisting, in any manner, the detention, deportation, interrogation, of an individual by immigration enforcement.

Existing federal law provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. (8 CFR Section 287.7(a).)

Existing federal law states that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS. (8 CFR Section 287.7(d).)

Existing federal law authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. Section 1357(g).)

Existing federal law states that notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual. (8 U.S.C. 1373 (a).)

Existing federal law states that notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from

sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 U.S.C. 1644.)

Existing law defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified 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." (Government Code § 7282 (c).)

Existing law defines "Notification request" as 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. (Government Code § 7283 (f).)

Existing law defines "Transfer request" as 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. (Government Code § 7283 (f).)

Existing law prohibits law enforcement agencies (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. These provisions are commonly known as the Values Act. Restrictions include: Inquiring into an individual's immigration status;

- Detaining a person based on a hold request from ICE;
- Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public;
- Providing personal information, as specified, including, but not limited to, name, social security number, home or work addresses, unless that information is "available to the public;"
- Arresting a person based on a civil immigration warrant;
- Participating in border patrol activities, including warrantless searches;
- Performing the functions of an immigration agent whether through agreements known as 287(g) agreements, or any program that deputizes police as immigration agents;
- Using ICE agents as interpreters;
- Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or except as otherwise specified;
- Providing office space exclusively for immigration authorities in a city or county law enforcement facility; and,
- Entering into a contract, after June 15, 2017, with the federal government to house or detain adult or minor non-citizens in a locked detention facility for purposes of immigration custody. (Government Code § 7284.6(a).)

Existing law describes the circumstances under which a law enforcement agency has discretion to respond to transfer and notification requests from immigration authorities. These provisions are known as the TRUST Act. Law enforcement agencies cannot honor transfer and notification requests unless one of the following apply:

- The individual has been convicted of a serious or violent felony, as specified;
- The individual has been convicted of any felony which is punishable by imprisonment in state prison;

- The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable either as a felony or misdemeanor (a wobbler);
- The individual has been convicted within the past 15 years for any one of a list of specified felonies;
- The individual is a current registrant on the California Sex and Arson Registry;
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified in the federal Immigration and Nationality Act; or,
- The individual is identified by ICE as the subject of an outstanding federal felony arrest warrant for any federal crime; or,
- The individual is arrested on a charge involving a serious or violent felony, as specified, or a felony that is punishable by imprisonment in state prison, and a magistrate makes a finding of probable cause as to that charge. (Government Code § 7282.5.)

Existing law provides that law enforcement agencies are able to participate in joint taskforces with the federal government only if the primary purpose of the joint task force is not immigration enforcement. Participating agencies must annually report to the California Department of Justice (DOJ) if there were immigration arrests as a result of task force operations. (Government Code, § 7284.6 (b) & (c).)

Existing law allows law enforcement agencies to respond to a request from immigration authorities for information about a person's criminal history. (Government Code § 7284.6 (b)(2).)

Existing law allows law enforcement agencies to make inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa. (Government Code § 7284.6 (b)(4).)

Existing law allows law enforcement agencies to give immigration authorities access to interview an individual in agency custody if such access complies with the TRUTH Act. (Government Code, § 7284.6 (b)(5).)

This bill specifies that a state or local agency shall not arrest or assist with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purpose in any manner including, but not limited to, by notifying another agency or subcontractor thereof regarding the release date and time of an individual, releasing or transferring an individual into the custody of another agency or subcontractor thereof, or disclosing personal information, as specified, about an individual, including, but not limited to, an individual's date of birth, work address, home address, or parole or probation check in date and time to another agency or subcontractor thereof.

This bill states that the prohibition described above shall apply notwithstanding any contrary provisions in the California Values Act, as specified, which allowed law enforcement to cooperate with immigration authorities in limited circumstances.

This bill specifies that this bill does not prohibit compliance with a criminal judicial warrant.

This bill prohibits a state or local agency or court from using immigration status as a factor to deny or to recommend denial of probation or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine

custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

This bill defines the following terms for purposes of this bill:

- “Immigration enforcement” includes “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.”
- “State or local agency” includes, but is not limited to, “local and state law enforcement agencies, parole or probation agencies, the Department of Juvenile Justice, and the Department of Corrections and Rehabilitation.”
- “Transfer” includes “custodial transfers, informal transfers in which a person’s arrest is facilitated through the physical hand-off of that person in a nonpublic area of the state or local agency, or any coordination between the state or local agency and the receiving agency about an individual’s release to effectuate an arrest for immigration enforcement purposes upon or following their release from the state or local agency’s custody.”

This bill states that in addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a state or local agency or state or local official that violates the provisions of this bill.

This bill specifies that a state or local agency or official that violates the provisions of this bill is also liable for actual and general damages and reasonable attorney’s fees.

This bill repeals statutory provisions directing California Department of Corrections and Rehabilitation to implement and maintain procedures to identify inmates serving terms in state prison who are undocumented aliens subject to deportation.

This bill repeals statutory provisions directing CDCR and California Youth Authority to implement and maintain procedures to identify, within 90 days of assuming custody, inmates who are undocumented felons subject to deportation and refer them to the United States Immigration and Naturalization Service.

This bill repeals statutory provisions directing CDCR to cooperate with the United States Immigration and Naturalization Service by providing the use of prison facilities, transportation, and general support, as needed, for the purposes of conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented aliens who are incarcerated in state prison.

This bill repeals the statutory directive to include place of birth (state or country)-in state or local criminal offender record information systems.

This bill makes uncodified Legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

Existing law does not prohibit the California Department of Corrections and Rehabilitation or local law enforcement in many cases to transfer individuals to the custody of Immigration and Customs Enforcement after they have completed their sentence or have otherwise been deemed eligible for release if they lack lawful status in the United States or if immigration authorities have deemed that their legal status can be revoked as a result of their criminal history. This effectively serves as an additional punishment on top of the one that was handed down in the criminal justice system, and the immigration enforcement system can result in indefinite detention where individuals have no right to habeas corpus or legal representation. When an individual is transferred to the custody of immigration authorities, their record of rehabilitation, their stable reentry plans, and their network of community support are disregarded. Federal immigration detention centers have been documented to have a record of abuse and neglect of detainees, and these detention centers are beyond the oversight and accountability of the state of California.

2. California Values Act

The Values Act, which became effective on January 1, 2018, limits the involvement of state and local law enforcement agencies in federal immigration enforcement. It prohibits law enforcement agencies (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. It also places limitations on the ways in which law enforcement agencies can collaborate with federal task forces that involve elements of immigration enforcement. Under the Values Act, CDCR is not considered a law enforcement agency.

The Values Act was an expansion of prior state law, the TRUST Act which prohibited law enforcement from honoring federal immigration holds unless the detainee had a criminal history involving a serious or violent felony.

The Values Act contains some exceptions that allows law enforcement agencies to cooperate with immigration authorities. Under the Values Act law enforcement is allowed to engage with immigration authorities in the following circumstances:

- a) Provide a person's release date or personal information, as specified, if such information is available to the public;
- b) Respond to notification and transfer requests when the individual had been convicted of specified crimes which reflected a higher public safety danger and are on the serious end of the criminal spectrum. Specifically, those crimes included serious and violent felonies, as well as offenses requiring an individual to register as a sex offender;

- c) Make inquiries into information necessary to certify an individual for a visa for a victim of domestic violence and human trafficking;
- d) Respond to a request from immigration authorities for information about a person's criminal history;
- e) Participate with a joint law enforcement task force, as long as the primary purpose of the task force is not immigration enforcement; or,
- f) Give immigration authorities access to interview an individual in agency custody as long as the interview access complied with the requirements of the TRUTH Act.

This bill would eliminate those exceptions for law enforcement to the extent that such exceptions would constitute assistance in immigration enforcement, in any manner.

3. Voiding Inequality and Seeking Inclusion for Our Immigrant Neighbors Act

This bill prohibits any state or local agency, including law enforcement agencies, from engaging in conduct which assists, in any manner, the arrest, detention, interrogation, or deportation of an individual for immigration purposes. It states that this new provision shall apply notwithstanding contrary sections in the Government Code.

This bill further provides that a state or local agency or court shall not use immigration status as a factor to deny or to recommend denial of probation, or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

4. Civil Penalties

This bill provides that in addition to any other sanctions, penalties, or remedies provided by law, this bill would allow a person to bring an action for equitable or declaratory relief against a state or local agency.

This bill also provides that a state or local agency or official that violates its provision is liable for actual and general damages and reasonable attorneys' fees.

5. Severable

This bill provides that its provisions are severable, so that if any provision of this act is held invalid, that invalid shall not affect other provisions or application that can be given effect without the invalid provision or application.

6. Argument in Support

Asian American Advancing Justice, the co- sponsor of this bill, states:

California's punitive carceral system unjustly and disproportionately harms Black, Latinx, Indigenous, and Asian and Pacific Islander American communities. In

recent years, with the passing of SB 260, SB 261, SB 1437, AB 1812 (which amended Penal Code 1170(d)(1)), Proposition 47, the legislature and California voters have demonstrated a strong commitment to reforming our criminal justice system and ending mass incarceration. However, the state's role in funneling California residents to the custody of ICE undercuts our progress towards a more equitable society, and unfairly targets immigrants and refugees. Indeed, despite these reforms, when California's jails and prisons voluntarily and unnecessarily transfer immigrant and refugee community members eligible for release from state or local custody to ICE for immigration detention and deportation purposes, they subject these community members to double punishment and perpetual trauma. Community members can be incarcerated by ICE, often for prolonged periods and with no right to bail, and deported--permanently banishing them from the country, from their families, their homes, their livelihoods and "all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). The Supreme Court has repeatedly acknowledged that for many people deportation is a more severe penalty than any jail sentence. *See, e.g., Lee v. U.S.*, 137 S.Ct. 1958, 1968 (2017); *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010).

The VISION Act would ensure California's tax dollars will not be used to subject immigrants to double punishment, separate immigrant families, and violate constitutional rights. In particular, the VISION Act would:

- build on recent criminal justice reforms that were enacted to provide an avenue for release and relief from the draconian policies that led to the mass incarceration of people of color in California by prohibiting local and state agencies from conducting immigration arrests and from assisting or facilitating immigration arrests, which includes prohibiting ICE transfers.
- prohibit CDCR parole agents and county probation officers from collaborating with ICE to funnel individuals who are on parole into immigration detention.
- ensure that refugees and immigrants are treated equally by prohibiting state agencies, local agencies, and courts from using immigration status as a factor to deny or to recommend denial in a diversion program, rehabilitation program, placement in a credit earning programs or classes, or mental health program.

As the state with the largest immigrant community in the country, California has an ethical and moral obligation to step up our leadership and take action to protect the rights of all refugees and immigrants who call California home, including those eligible for release from our local jails and state prisons. California is home to an estimated 11 million immigrants—about a quarter of the immigrant population nationwide. Almost one in three Californians is an immigrant; and one in two children in California has at least one immigrant parent. Community members transferred to ICE are refugees, lawful permanent residents, people who entered the United States as children, parents, caretakers, essential workers, or are otherwise valued California residents. The devastating effects of ICE transfers have widespread consequences. If we fail to end the cruel practice of ICE transfers, California will continue to actively participate in the separation of immigrant and refugee families, and inflict irreparable harm to those who came here fleeing war and genocide or to simply build a better life for themselves and their children.

Additionally, we must pass the VISION Act because ICE transfers and incarceration are harmful to public health. Countless studies document negative health impacts of incarceration in jails, prisons, and ICE detention centers. People who have been incarcerated have worse health outcomes and, overall, have lower life expectancies. Given the racial inequities plaguing the state's carceral system, the significant health risks posed by incarceration and transfers weigh heavily on California's Black, Latinx, and Asian and Pacific Islander American communities. Ending ICE transfers is good for public health and health equity.

Moreover, state and local participation in federal immigration enforcement programs has raised constitutional concerns, including arrests and detentions that violate the Fourth Amendment to the United States Constitution, and that target immigrants on the basis of race or ethnicity in violation of the Equal Protection Clause.¹

Transferring California residents to ICE custody is costly. By ending voluntary ICE transfers, California stands to save state resources that can be invested in mental health, housing, youth development, and access to living wages-- all of which have been proven to reduce crime and stabilize communities.

In conclusion, California should not subject community members to double punishment, and disregard their record of rehabilitation, stable reentry plans, and community support, purely because they are refugees or immigrants. Ending ICE transfers in California is a necessary step in fulfilling the state's commitment to ending racial injustice and mass incarceration.

7. Argument in Opposition

PORAC opposes this bill stating:

AB 937 would prohibit any state or local agency from arresting or assisting with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purposes. The bill would additionally prohibit state or local agencies or courts from using immigration status as a factor to deny or to recommend denial of probation or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

Congress defined our nation's immigration laws in the Immigration and Nationality Act (INA), which contains both criminal and civil enforcement measures. PORAC cannot support a State bill that forces our States public safety officers to stand by while our federal counterparts are injured or killed in the performance of their duties. In addition, if the federal government requires our involvement, such as temporarily housing an undocumented arrestee, then it is our responsibility to adhere to the needs of the federal government. This proposed legislation puts local law enforcement in a no-win situation, having to choose between state and federal laws. PORAC opposes AB 937.

-- END --