



December 19, 2013

**Re: Implementation of the TRUST Act**

Dear Sheriff:

We are representatives of non-profit legal and policy organizations in California that conduct **or provide to support to** litigation and **offer** technical assistance in the areas of immigration law and civil rights. As you know, the TRUST Act (AB 4), which was signed into law on October 5, 2013, will go into effect on January 1, 2014.

The TRUST Act prohibits local law enforcement from responding to immigration hold requests (also known as “detainers”), except in limited circumstances. An immigration hold is a request from federal immigration officials to detain an individual for 48 hours excluding weekends and federal holidays after the criminal basis for detention has ended. *See* 8 C.F.R. § 287.7(d); Cal. Gov’t Code § 7282(c). Under the Act, local officials can only respond to immigration hold requests where one of the conditions listed in section 7282.5(a) of the TRUST Act is met. These conditions include convictions for specified offenses, charges for a narrower set of felonies for which a judge has found probable cause under section 872 of the Penal Code, inclusion on the California Sex and Arson Registry, and outstanding federal criminal arrest warrants. Where none of these conditions is met, section 7282.5(b) of the TRUST Act requires local officials to release detainees once they are “eligible for release from custody.” Eligibility for release occurs when charges are not filed, dropped, or dismissed, or when the individual is acquitted, completes a criminal sentence, posts bail, or meets any other release criteria under state law, local law, or local policy.

The TRUST Act applies to all immigration holds, regardless of the ICE program through which the hold is issued. The Act defines “immigration hold” to include all immigration hold requests flowing from 8 C.F.R. § 287.7, which is the regulatory authority for all ICE detainers. *See* Cal. Gov’t Code § 7282(c). The definition tracks the language of DHS Form I-247, which is the immigration detainer form used by all DHS immigration enforcement programs. As a result, the Act’s application is not limited to immigration holds that result from a database match through the Secure Communities program. The Act also applies to detainers issued under the Criminal Alien Program (CAP), 287(g) agreements, and any other program through which federal officials issue immigration holds. Therefore, any time a local official receives a detainer request—even if the request is made by an ICE officer interviewing detainees in the local jail—the Act’s prohibitions apply.

Regardless of what the ICE official represents on the I-247 form as the basis for issuing the immigration hold, the Act makes local officials ultimately responsible for determining whether an exception is met in a particular case. The Act does not contain any exceptions that reference ICE’s stated reason for lodging a particular immigration hold. It is the conditions listed in the Act—not rationales given by ICE officials—that trigger the exceptions. California law is not within the expertise of federal immigration officials, who are therefore not in a position to determine whether a hold can be responded to under the TRUST Act. As a result, local officials must independently determine whether one of the convictions, probable cause determinations, or other conditions listed in section 7282.5(a) exists.

Local responsibility for factual determinations is underscored by local liability for violations of the TRUST Act. In an action to enforce compliance with the mandatory duty established by section 7282.5(b) of the Act, or in a damages suit under section 815 of the California Government Code, the local agency would have no defense that an administrative notice misrepresented facts that were easily within the local official’s knowledge and expertise. *Cf.* Cal. Gov’t Code § 815.6 (“Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.”). It is therefore incumbent on local officials to make their own factual determinations regarding the TRUST Act’s exceptions.

It is also important to note that the TRUST Act leaves the optional nature of immigration holds in place even where the Act’s exceptions apply. For those requests, sheriffs merely “have *discretion* to cooperate with federal immigration officials,” Cal. Gov’t Code § 7282.5(a) (emphasis added), but can still choose whether or not to respond to particular immigration holds. In other words, the Act does not mandate compliance with immigration holds that fall within its exceptions. *See* TRUST Act, AB 4, § 1(e) (“[T]his 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.”). Cities and counties in California remain free to adopt and administer policies that further restrict compliance with ICE holds beyond the TRUST Act standard.<sup>1</sup>

In addition, we strongly encourage you to work with your local immigrant community to adopt a stronger local policy that further removes the burden of immigration enforcement from your county. Santa Clara and San Francisco Counties, as well as other jurisdictions throughout

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<sup>1</sup> Information Bulletin from Kamala Harris, Att’y Gen., Cal. Dep’t of Justice, to Executives of State and Local Law Enforcement Agencies, *Responsibilities of Local Law Enforcement Agencies Under Secure Communities*, at 3, No. 2012-DLE-01 (Dec. 4, 2012) (emphasis in original), available at <http://www.immigrationpolicy.org/sites/default/files/docs/Kamala-Harris-guidance-on-immigration-detainers.pdf>. Attorney General Harris explained that “immigration detainer requests are not mandatory and each agency may make its own decision about whether or not to honor an individual request.”

the country, have already chosen to implement ICE hold policies that create higher standards for responding to detainer requests. We urge you to consider this as well. The TRUST Act sets only a minimum standard. Concerns remain regarding due process, community safety, and the intersection of local law enforcement and federal immigration enforcement.

Attached to this letter please find a model policy for implementing the TRUST Act in your county. Our organizations are available to provide technical assistance as you implement policies and procedures to comply with this new law. Please feel free to contact us with questions or concerns.

Sincerely,

Kiran Savage-Sangwan, American Civil Liberties Union of Northern California

[ksavage@aclunc.org](mailto:ksavage@aclunc.org), (415) 293-6368

Angela Chan, Advancing Justice - Asian Law Caucus

[angelac@advancingjustice-alc.org](mailto:angelac@advancingjustice-alc.org), (415) 848-7719

Gabriela Villareal, California Immigrant Policy Center

[gvillareal@caimmigrant.org](mailto:gvillareal@caimmigrant.org), (510) 451-4882 ext. 303

Jessica Karp, National Day Labor Organizing Network

[jkarp@ndlon.org](mailto:jkarp@ndlon.org), (213) 380-2214