

Date of Hearing: April 11, 2023

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1306 (Wendy Carrillo) – As Amended March 16, 2023

SUMMARY: Prohibits the California Department of Corrections and Rehabilitation (CDCR) from cooperating with the United States Department of Homeland Security, as specified. Specifically, **this bill:**

- 1) Prohibits, notwithstanding other laws, CDCR from cooperating with the Department of Homeland Security in the following manner when specified persons are being released:
 - a) Detaining a person on the basis of an immigration hold request;
 - b) Providing an immigration authority with release date information;
 - c) Responding to a notification request; and,
 - d) Transferring a person to an immigration authority, or facilitating or assisting with a transfer.
- 2) Provides that these prohibitions apply to persons being released pursuant to a youth offender parole hearing, elderly parole, medical parole, compassionate release recall and resentencing, vacatur of a felony murder conviction and resentencing, vacatur of a conviction because the person was a victim of human trafficking or intimate partner violence, resentencing based on childhood trauma, being a youthful offender or a victim of human trafficking or intimate partner violence, resentencing pursuant to the California Racial Justice Act, or a grant of clemency.
- 3) Contains legislative findings and declarations.

EXISTING STATE LAW:

- 1) Requires CDCR and the Department of Youth and Community Restoration (DYCR) to refer the name and location of any incarcerated person or ward who may be an undocumented immigrant and who may be subject to deportation to the Department of Homeland Security for a determination of whether the person is undocumented and subject to deportation. (Pen. Code, § 5025, subd. (a).)
- 2) Requires CDCR and DYCR to make case files available to the Department of Homeland Security for purposes of investigation. (Pen. Code, § 5025, subd. (a).)

- 3) Requires CDCR and DYCR to cooperate with the Department of Homeland Security by providing the use of prison facilities, transportation, and general support, as needed, for the purpose of conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented immigrants who are incarcerated in state prison. (Pen. Code, § 5026, subd. (a).)
- 4) Prohibits law enforcement agencies (LEAs) (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:
 - a) Inquiring into an individual's immigration status;
 - b) Detaining a person based on a hold request from ICE;
 - c) 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;
 - d) 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;
 - e) Arresting a person based on a civil immigration warrant;
 - f) Participating in border patrol activities, including warrantless searches;
 - g) Performing the functions of an immigration agent whether through agreements known as 287(g) agreements, or any program that deputizes police as immigration agents;
 - h) Using ICE agents as interpreters;
 - i) Transferring an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or except as otherwise specified;
 - j) Providing office space exclusively for immigration authorities in a city or county law enforcement facility; and,
 - k) Entering into a contract with the federal government to house or detain adult or minor non-citizens in a locked detention facility for purposes of immigration custody. (Gov. Code, § 7284.6, subd. (a).)
- 5) Describes the circumstances under which a LEA has discretion to respond to transfer and notification requests from immigration authorities. These provisions are known as the TRUST Act. LEAs cannot honor transfer and notification requests unless one of the following apply:
 - a) The individual has been convicted of a serious or violent felony, as specified;

- b) The individual has been convicted of any felony which is punishable by imprisonment in state prison;
 - c) 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);
 - d) The individual has been convicted within the past 15 years for any one of a list of specified felonies;
 - e) The individual is a current registrant on the California Sex and Arson Registry;
 - f) 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,
 - g) The individual is identified by ICE as the subject of an outstanding federal felony arrest warrant for any federal crime; or,
 - h) 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. (Gov. Code, § 7282.5, subd. (a).)
- 6) Requires local law enforcement agencies, to provide an individual in custody a written consent form as well as copies of specified documentation prior to an interview between ICE and the individual, and to notify the individual regarding the intent of the agency to comply with ICE requests. These provisions are known as the TRUTH Act. (Gov. Code, § 7283.)
- 7) Defines "hold request" as "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 they would otherwise be eligible for release in order to facilitate transfer to ICE" and includes, but is not limited to DHS Form I-247D." (Gov. Code, §§ 7283, subd. (b) & 7284.4, subd. (e).)
- 8) Defines "notification request" as an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time of an individual in its custody in advance of informing the public and includes, but is not limited to, DHS Form I-247N. (Gov. Code, §§ 7283, subd. (f) & 7284.4, subd. (e).)
- 9) 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. (Gov. Code, §§ 7283, subd. (g) & 7284.4, subd. (e).)

EXISTING FEDERAL LAW:

- 1) Prohibits the federal government from "conscripting" the states to enforce federal regulatory programs. (U.S. Const. Tenth Amend.)
- 2) 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 § 287.7(a).)

- 3) 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 § 287.7(d).)
- 4) Authorizes the Secretary of DHS 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. § 1357(g).)
- 5) Provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” (U.S. Const. Fourteenth Amend.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “AB 1306, ‘The HOME Act’ is a more narrow approach to end transfers between the Department of Corrections and Rehabilitation (CDCR) and Immigration Customs Enforcement (ICE) for individuals who have served their time and been paroled. The bill focuses on previous restorative justice legislation that has been signed into law and ensures individuals under those policies are able to return home and restart their lives regardless of their citizenship status.”
- 2) **Cooperation with Immigration Authorities:** 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.

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 include 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.

CDCR is not considered a law enforcement agency under the Values Act or under the TRUST. In fact, there are provisions in the Penal Code which specifically require CDCR to cooperate with ICE. (See Pen. Code, §§ 5025 & 5026.)

This bill does not repeal those provisions. Rather, this bill would prohibit CDCR from cooperating with ICE but only as it pertains to some undocumented individuals, depending on the reason for their release. This bill would prohibit CDCR from providing information or assistance to ICE if the subject is being released on: elderly parole; medical parole; compassionate release; pursuant to a youth offender parole hearing; due to the vacatur of a felony murder conviction and resentencing; the vacatur of a conviction because the subject was a victim of human trafficking or intimate partner violence; resentencing based on childhood trauma; being a youthful offender or a victim of human trafficking or intimate partner violence; resentencing pursuant to the California Racial Justice Act; or because of a grant of clemency.

- 3) **Equal Protection Issues:** The Fourteenth Amendment's Equal Protection Clause has been described as mandating that all persons in similar situations should be treated alike under the law. (*City of Cleburne v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 439.) At its core, the principal of equal protection ensures that the government does not treat a group of people unequally without some justification. (*People v. Chatman* (2018) 4 Cal.5th 277, 288.) "[E]qual protection safeguards against the arbitrary denial of benefits to a certain defined class of individuals." (*People v. McKee* (2010) 47 Cal.4th 1172, 1207.)

A person claiming that the state has created a classification that affects two or more similarly situated groups must show that the classification treats them in an unequal manner. The extent of justification required to survive equal protection scrutiny in a specific context depends on the nature or effect of the classification at issue. (*People v. Chatman, supra* 4 Cal.5th at p. 288.) If the classification draws a distinction based on a suspect classification, such as race, or affects a fundamental right, it will be given the most exacting scrutiny. In those cases, "the state has the burden of establishing it has a compelling interest that justifies the law and that the distinctions, or disparate treatment, made by that law are necessary to further its purpose. (*Ibid.*)

On the other end of the spectrum, where a challenged law does not draw a distinction based on suspect classification nor burden fundamental rights, a denial of equal protection will only be found if there is no rational relationship between a disparity in treatment and some legitimate government purpose. (*People v. Chatman*, *supra* 4 Cal.5th at pp. 288-289.) “A classification in a statute is presumed rational until the challenger shows that no rational basis for the unequal treatment is reasonably conceivable.” (*Id.* at p. 289.) A rational basis inquiry asks two questions. First, did the state adopted a classification affecting two or more groups that are similarly situated in an unequal manner? If so, does the challenged classification ultimately bear a rational relationship to a legitimate state purpose? (*Ibid.*) “A classification in a statute is presumed rational until the challenger shows that no rational basis for the unequal treatment is reasonably conceivable.” (*People v. Ngo* (2023) 2023 Cal.App. Lexis 182 [March 10, 2023, E078723].)

Applying even the lowest level of scrutiny, this bill potentially denies similarly situated undocumented immigrants being released from prison equal treatment under the law. Two people with the same exact criminal conviction could be treated differently simply due to the reason for their release. A similarly situated immigrant who has paid their debt to society in full could be transferred to ICE simply because they did not receive the benefit of an enumerated type of early release or legislative change in the law. Similarly, a person convicted of a less serious crime could be transferred to ICE while a person committing a much more serious crime could not because the former did not benefit from a form of early parole or a specified legislative criminal justice reform while the latter did. For example, what about an inmate firefighter who risks their life battling California wildfires but does not receive a pardon from the Governor? ([Former inmate firefighter released from ICE custody, returns home to California \(ktvu.com\)](#).) What about an individual who is resentenced because of the dismissal of a gun enhancement or repeal of another sentencing enhancement, such as a drug enhancement? What about an individual who is resentenced because of a referral from a district attorney or pursuant to CDCR’s exceptional conduct referral process under Penal Code section 1172.1?

In order to avoid potential equal protection challenges, should CDCR’s cooperation with ICE be prohibited altogether, or alternatively, be limited to those instances in which a local law enforcement entity would be allowed to cooperate with ICE, such as when the individual has committed a violent or serious offense, or one requiring sex offender registration (See Gov. Code, § 7282.5)? Additionally, should existing Penal Code provisions which direct CDCR to cooperate with ICE be repealed?

- 4) **Argument in Support:** According to the *California Coalition for Women Prisoners*, a co-sponsor of this bill, “In recent years, the Legislature, California voters, and Governors have demonstrated a strong commitment to reforming our criminal legal system and addressing systemic racism and mass incarceration by enacting landmark reforms. Tragically, solely because of their place of birth, immigrants and refugees who would otherwise benefit from these reforms approved by the legislature are instead released to ICE and subjected to the double punishment of ICE detention and deportation. Once in immigration detention, immigrants face dire consequences including lack of due process, no appointed legal counsel, no right to bail, and an arbitrary second detention never handed down in a criminal court in facilities beyond state oversight where abuses are well documented. Moreover, this unjust practice perpetuates a criminal legal system that treats individuals unequally simply because

of where they were born. The state's role in voluntarily sending California residents to the custody of ICE undercuts our progress towards a more equitable society, and unfairly targets immigrants and refugees.

“When California’s prisons voluntarily and unnecessarily transfer immigrant and refugee community members eligible for release from state custody to ICE for immigration detention and deportation purposes, they also subject these community members to permanent separation from the country, their families, homes, and livelihoods. California should not be actively participating 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.

“In addition, state collaboration 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.

“Finally, transferring California residents to ICE custody is costly. By passing AB 1306 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.

“As the state with the largest immigrant community, California has an ethical and moral obligation to be a national leader that ensures the steps the state has already taken towards reforming our criminal legal system includes our immigrants and refugee communities. California should not subject community members to double punishment, nor disregard otherwise applicable laws that would enable their return home purely because they are refugees or immigrants. Harmonizing broadly-supported reforms to ensure equal application to immigrants and refugees will reunite families, strengthen communities, and fulfill the state’s commitment to addressing racial injustice and upholding our values of fairness and equality.”

- 5) **Related Legislation:** AB 617 (Jones-Sawyer) would remove the prohibition on providing immigration-related legal services to an individual who has been convicted of, or who is currently appealing a conviction for, a violent or serious felony. AB 617 is pending in the Assembly Judiciary Committee.
- 6) **Prior Legislation:**
 - a) AB 937 (Carrillo), of the 2021-2022 Legislative Session, would have, among other things, repealed statutory provisions directing CDCR to implement and maintain procedures to identify, within 90 days of assuming custody, incarcerated persons who are undocumented felons subject to deportation and refer them to ICE. AB 937 was refused passage in the Senate.
 - b) AB 2596 (Bonta), of the 2019-2020 Legislative Session, would have eliminated the existing ability for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate

transfers. AB 2596 was never heard in this committee due to Covid 19.

- c) AB 2948 (Allen), of the 2017-2018 Legislative Session, would have repealed the California Values Act. AB 2948 failed passage in this committee.
- d) AB 2931 (Patterson), of the 2017-2018 Legislative Session, would have expanded the list of qualifying criminal convictions which permit law enforcement to cooperate with federal immigration authorities. AB 2931 failed passage in this committee.
- e) AB 298 (Gallagher), of the 2017-2018 Legislative Session, would have repealed the TRUST Act and required law enforcement to cooperate with federal immigration by detaining an individual convicted of a felony for up to 48 hours on an immigration hold, as specified, after the person became eligible for release from custody. AB 298 failed passage in this committee.
- f) AB 1252 (Allen), of the 2017-2018 Legislative Session, would have repealed the TRUST Act and prohibited state grants to county and local “sanctuary jurisdictions.” AB 1252 failed passage in this committee.
- g) SB 54 (De Leon), Chapter 495, Statutes of 2017, limited the involvement of state and local law enforcement agencies in federal immigration enforcement.
- h) AB 2792 (Bonta), Chapter 768, Statutes of 2016, requires local law enforcement agencies to provide copies of specified documentation received from ICE to the individual in custody and to notify the individual regarding the intent of the agency to comply with ICE requests.
- i) AB 4 (Ammiano), Chapter 570, Statutes of 2013, prohibits a law enforcement official from detaining an individual on the basis of an ICE 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Boys and Men of Color (Co-Sponsor)
Asian Americans Advancing Justice - Asian Law Caucus (Co-Sponsor)
Asian Americans Advancing Justice-southern California (Co-Sponsor)
Asian Prisoner Support Committee (Co-Sponsor)
Buen Vecino (Co-Sponsor)
California Coalition for Women Prisoners (Co-Sponsor)
California Immigrant Policy Center (Co-Sponsor)
Communities United for Restorative Youth Justice (Co-Sponsor)
Freedom for Immigrants (Co-Sponsor)
Harbor Institute for Immigrant and Economic Justice (Co-Sponsor)
Ice Out of Marin (Co-Sponsor)

Indivisible Sausalito (Co-Sponsor)
Interfaith Movement for Human Integrity (Co-Sponsor)
National Day Laborer Organizing Network (Co-Sponsor)
Orange County Rapid Response Network (Co-Sponsor)
San Diego Immigrant Rights Consortium (Co-Sponsor)
San Francisco Public Defender (Co-Sponsor)
Siren: Services Immigrant Rights and Education Network (Co-Sponsor)
Tsuru for Solidarity (Co-Sponsor)
Vietrise (Co-Sponsor)
18 Million Rising
ACLU California Action
Alliance San Diego
Amnesty International USA
Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment
Bend the Arc: Jewish Action, Southern California
California Attorneys for Criminal Justice
California Collaborative for Immigrant Justice
California Public Defenders Association
Chinese Progressive Association
Contra Costa Immigrant Rights Alliance
Council on American-islamic Relations, California
Courage California
Cure California
Dolores Huerta Foundation
Drop Lwop Coalition
Felony Murder Elimination Project
Homerise San Francisco
Human Impact Partners
Immigrant Defense Advocates
Immigrant Legal Resource Center
Indivisible CA Statestrong
Indivisible Sacramento
Indivisible San Francisco
Initiate Justice
Long Beach Immigrant Rights Coalition
Mujeres Unidas Y Activas
Norcal Resist
Orange County Equality Coalition
People's Budget Orange County
Santa Cruz Barrios Unidos INC.
Smart Justice California
Southeast Asia Resource Action Center
The Transformative In-prison Workgroup

Opposition

None on file.

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