
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1306 **Hearing Date:** June 27, 2023
Author: Wendy Carrillo
Version: April 13, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *State government: immigration enforcement*

HISTORY

Source: Alliance for Boys and Men of Color; Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice-Southern California; Asian Prisoner Support Committee; Buen Vecino; California Coalition for Women Prisoners; California Immigrant Policy Center; Communities United for Restorative Youth Justice; Freedom for Immigrants; Harbor Institute for Immigrant and Economic Justice; ICE Out of Marin; Indivisible Sausalito; Interfaith Movement for Human Integrity; National Day Laborer Organizing Network; Orange County Rapid Response Network; San Diego Immigrant Rights Consortium; San Francisco Public Defender; Siren: Services Immigrant Rights and Education Network; Tsuru for Solidarity; VietRISE

Prior Legislation: AB 937 (Carrillo), failed on the Senate Floor in 2022
AB 2596 (Bonta), not heard in 2020 due to COVID-19
SB 54 (DeLeon), Ch. 495, Stats. 2017
AB 2792 (Bonta), Ch. 768, Stats. 2016
AB 4 (Ammiano), Ch. 570, Stats. 2013

Support: 18 Million Rising; AAPIs for Civic Empowerment Education Fund; ACLU California Action; Alianza; Alliance of Californians for Community Empowerment Action; Amnesty International Sacramento Group; Amnesty International USA; Amnesty International USA Group 30 San Francisco; API Equality-LA; Armenian National Committee of America - Western Region; Bend the Arc; Jewish Action, Southern California; Buen Vecino; California Attorneys for Criminal Justice; California Commission on Asian and Pacific Islander American Affairs; California Public Defenders Association; Center for Empowering Refugees and Immigrants; Chinese for Affirmative Action; Chinese Progressive Association; Coalition for Humane Immigrant Rights; County of Los Angeles Board of Supervisors; Courage California; Dolores Huerta Foundation; Ella Baker Center for Human Rights; Empowering Marginalized Asian Communities; Empowering Pacific Islander Communities; Episcopal Diocese of San Joaquin; Estela Bravo Soperanes; Felony Murder Elimination Project; Florin Japanese American Citizens League - Sacramento Valley; Represent Justice; Friends Committee on Legislation of California; GRIP Training Institute; Homerise San Francisco; Human Impact Partners; Immigrant Legal Resource Center; Indivisible CA Statestrong; Indivisible Sacramento; Indivisible San Francisco; Initiate Justice; Inland Coalition for Immigrant Justice; Japanese

American Citizens League, Northern California Western Nevada; Long Beach Immigrant Rights Coalition; Pacific District District Youth Board; Kehilla Community Synagogue Immigration Committee; Knox Immigration Team, From Knox Presbyterian Church; Lakeshore Avenue Baptist Church; Legal Services for Prisoners With Children; MILPA; Nikkei Progressives; Oakland Privacy; Orange County Congregation Community Organization; Orange County Equality Coalition; People's Budget Orange County; Pomona Economic Opportunity Center; Represent Justice; San Diego North County Amnesty International Chapter; San Francisco Peninsula People Power; San Jose Nikkei Resisters; San Mateo County Democracy for America; Santa Cruz Barrios Unidos; Silicon Valley De-Bug; Sister Warriors Freedom Coalition; Smart Justice California; South Asian Network; South Bay People Power; Southeast Asia Resource Action Center; Starting Over; Transforming Justice Orange County; UnCommon Law; Urban Strategies Council; Venture County Community Healing Collaborative; Youth Leadership Institute

Opposition: None known

Assembly Floor Vote: 54 - 18

PURPOSE

The purpose of this bill is to prohibit the California Department of Corrections and Rehabilitation (CDCR) from cooperating with the U.S. Department of Homeland Security (DHS), as specified, and repeals provisions of law requiring CDCR to cooperate with DHS.

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. Provides that a detainer serves to advise another law enforcement agency that DHS seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Provides that 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).)

Existing federal law provides 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).)

Existing federal law authorizes the Secretary of DHS to enter into agreements that delegate immigration powers to local police. Provides that the negotiated agreements between federal Immigration and Customs Enforcement (ICE) and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. § 1357(g).)

Existing federal law provides 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 provides 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 requires CDCR to refer to the name and location of any incarcerated person who may be an undocumented immigrant and who may be subject to deportation to DHS for a determination of whether the person is undocumented and subject to deportation. (Pen. Code, § 5025, subd. (a).)

Existing law requires CDCR to make case files available to DHS for purposes of investigation. (Pen. Code, § 5025, subd. (a).)

Existing law requires CDCR to cooperate with DHS 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).)

Existing law, the Values Act, prohibits law enforcement agencies (LEAs) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes, including:

- 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;
- Transferring 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 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).)

Existing law defines "California law enforcement agency" as a state or local law enforcement agency, including school police or security departments. Specifies that California law enforcement agency does not include CDCR. (Gov. Code, § 7284.4, subd. (a).)

Existing law, the TRUST Act, describes the circumstances under which a LEA has discretion to respond to transfer and notification requests from immigration authorities. Provides that LEAs 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;
- 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.
(Gov. Code, § 7282.5, subs. (a) & (b).)

Existing law, the TRUTH Act, 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. (Gov. Code, § 7283.1.)

Existing law defines “hold request” as an 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).)

Existing law defines “notification request” as an ICE 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).)

Existing law defines “transfer request” as an ICE 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).)

This bill prohibits CDCR from cooperating with DHS in the following manner when specified persons are being released:

- Detaining a person on the basis of an immigration hold request;
- Providing an immigration authority with release date information;
- Responding to a notification request; and,
- Transferring a person to an immigration authority, or facilitating or assisting with a transfer.

This bill provides that these prohibitions apply to individuals 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.

This bill repeals provisions of law requiring CDCR to cooperate with DHS.

This bill contains uncodified legislative findings and declarations.

COMMENTS

1. Need For This Bill

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. California Values Act

The Values Act, which went into effect 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:

- Provide a person’s release date or personal information, as specified, if such information is available to the public;
- 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 such as serious and violent felonies and offenses requiring an individual to register as a sex offender;
- Make inquiries into information necessary to certify an individual for a visa for a victim of domestic violence and human trafficking;

- Respond to a request from immigration authorities for information about a person's criminal history;
- Participate with a joint law enforcement task force, as long as the primary purpose of the task force is not immigration enforcement; or,
- 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 California law enforcement agency under the Values Act or under the TRUST Act. In fact, current law specifically requires CDCR to cooperate with ICE. (Pen. Code, §§ 5025 & 5026.)

This bill prohibits CDCR from cooperating with ICE but only as it pertains to some undocumented individuals. Specifically, this bill prohibits CDCR from providing information or assistance to ICE if the person 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 due to a grant of clemency.

This bill also repeals provisions of law that require CDCR to cooperate with DHS.

3. Argument in Support

The Asian Prisoner Support Committee, one of the bill's co-sponsors write:

[T]he HOME Act...would prevent CDCR from transferring any individual to immigration authorities who is eligible for release pursuant to specified provisions, including, youth offender, elderly, and medical parole releases. Those provisions also include clemency actions by the Governor, as well as re-sentencing or vacatur of one's conviction under SB 1437 (Skinner, 2018), AB 256 (Kalra, 2021), or AB 124 (Kamlager, 2021).

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, exiting 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.

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