

CALIFORNIA SENATE OFFICE OF RESEARCH

SEPTEMBER 15, 2015

Federal Update

IMMIGRATION REFORM: LOCAL JURISDICTIONS COMMUNITY POLICING AND DETENTION POLICIES

Three bills before the United States House of Representatives—H.R. 3002, H.R. 3009, and H.R. 3073—and one bill in the United States Senate, S. 1814, are aimed at penalizing or dismantling so-called “sanctuary cities.”

WHY IS THIS ISSUE IMPORTANT?

Local Jurisdictions Community Policing and Detention Policies. Certain local jurisdictions in California and across the country over the years have passed laws that limit the ability of law enforcement to detain an individual based solely on immigration status. The term “sanctuary cities” as used in the media actually is the combination of two separate policies relating to the detention of undocumented immigrants. Some jurisdictions have passed “sanctuary ordinances” that are decades old, while other local jurisdictions have passed laws in response to recent policy changes by Immigration and Customs Enforcement (ICE), which will be discussed in more detail below.

Specifically, the City and County of in San Francisco passed an ordinance in 1989 declaring the city and county as a place of refuge for immigrants and thereby prohibiting city personnel from expending any city and county resources “to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.” According to the City and County of San Francisco, “the Ordinance is rooted in the Sanctuary Movement of the 1980s, when churches across the country provided refuge to Central Americans fleeing civil wars in their countries. In providing such assistance, faith communities were responding to the difficulties immigrants faced in obtaining refugee status from the U.S. government. Municipalities across the country followed suit by adopting sanctuary ordinances” (San Francisco Administrative Code

Chapter 12H: Immigration Status). ICE Director Sarah Saldana has stated there are approximately 200 jurisdictions nationwide with similar laws.¹

Proponents of ordinances that provide this type of refuge for immigrants argue that these policies are necessary for undocumented immigrants to work with and trust law enforcement without fear of deportation. On the other hand, opponents argue these protections merely provide cover for undocumented immigrants who commit crimes.

As discussed below, federal action under consideration potentially could cause California to lose up to \$91 million in federal funds.

WHAT IS THE HISTORY?

Secure Communities Deportation Program (Secure Communities). The Secure Communities Deportation Program was implemented in 2008 by the U.S. Department of Homeland Security (DHS) and ICE. The purpose of the program was to identify undocumented immigrants who had come in contact with law enforcement agencies through an arrest to ICE and the Federal Bureau of Investigations (FBI) for possible detention and deportation. The process was touted as a simple information-sharing program, one in which the arrestees' fingerprints were taken and sent to the FBI to screen for fugitives and ex-convicts. As a result of the Secure Communities program, approximately 283,000 people were deported between 2008 and April 2014, according to ICE.² The goal of the Secure Communities program, as stated by DHS Secretary Jeh Johnson, was to "more effectively identify and facilitate removal of criminal aliens in the custody of state and local law enforcement agencies." In practice, however, the Secure Communities program resulted in the detention and/or deportation of individuals categorized as "non-criminals" or individuals with lesser offenses, including traffic violations. In California alone, 69 percent of the 90,000 people deported as a result of this program between 2008 and 2012 fell within this lesser classification of non-criminal or low-level offender.³

TRUST Act. Due to the adverse impacts of the Secure Communities program, the California Legislature passed, and Governor Brown signed, the TRUST Act (AB 4 (Ammiano), Chapter 570, Statutes of 2013), which prohibited a law enforcement official from detaining an individual on the basis of an ICE hold after that individual became eligible for release from custody unless certain specified conditions were met. According to the bill, a law enforcement official has discretion to cooperate with ICE when the individual in custody would be eligible for release if, among many other things, the individual previously had been convicted of a serious or violent felony, a

felony that resulted in imprisonment in state prison, sexual assault, child abuse, certain theft crimes, or a felony conviction of driving under the influence. Implementation of the TRUST Act brought immediate and significant results: according to the Associated Press, a review of data from 15 of the 23 counties responsible for most of the state's deportations found a 44 percent drop in the number of individuals turned over to ICE by local law enforcement in the first two months.⁴

Violation of the Fourth Amendment of the U.S. Constitution. In 2014, a federal court held that it is a violation of the Fourth Amendment for local law enforcement agencies to detain individuals based solely on the authority of an ICE detainer because there is no judicial finding of probable cause to justify detention (*Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340). In this specific case, the court found that continued detention of Ms. Miranda-Olivares after she was eligible for release on her criminal charges constituted a new arrest and thus required probable cause. Despite this finding, some law enforcement agencies may still be holding individuals based solely on ICE detainers. According to the California Immigrant Policy Center, "over 320 local governments nationally and over 50 counties in California have stopped responding to holds because they violate protections against unreasonable search and seizure in the Fourth Amendment."

Priority Enforcement Program. As a result of the states taking steps similar to the TRUST Act and the holding in the *Miranda-Olivares* case, on November 20, 2014, Secretary Johnson issued a memorandum directing ICE to discontinue the Secure Communities program. In its place, Secretary Johnson created a new program referred to as the "Priority Enforcement Program." Secretary Johnson instructed ICE to replace requests for detention with requests for notification, essentially shifting the responsibility to the law enforcement agency to let ICE know when it planned to release an undocumented immigrant. Secretary Johnson wrote that the new program would continue to rely on fingerprint data submitted during bookings, however, ICE should seek to transfer only individuals who fall within three priority groups, including: (1) threats to national security, border security, and public safety; (2) misdemeanants and new immigration violators; and (3) other immigration violations. The details of these categories were laid out in a separate memorandum issued on the same day that the termination of the Secure Communities program was announced.⁵

WHAT DO THE CURRENT HOUSE AND SENATE BILLS PROPOSE?

All of the pending House bills and the Senate bill seek to withhold certain funding from so-called “sanctuary cities,” which H.R. 3009 classifies as any state or political subdivision (i.e., city or county) that has any law meeting certain criteria, including laws that prohibit “state or local law enforcement officials from gathering information regarding the citizenship or immigration status . . . of any individual.”⁶ H.R. 3002 and H.R. 3073 do not specify what type of funding would be withheld. However, H.R. 3009 and S. 1814 both lay out specifically that any state or political subdivision will not be eligible to receive funds from the State Criminal Alien Assistance Program (SCAAP), the Office of Community Oriented Policing Services (COPS) grant funds, and the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program funding. Past attempts to limit or cut funding from these same sources for the same purpose have been put forward through the federal budget process; however, all have failed.

HOW DOES THIS IMPACT CALIFORNIA?

Under H.R. 3009 and S. 1814, the two bills that specifically lay out the federal funds that will be withheld, California and its cities and counties could lose up to \$91 million. In fiscal year (FY) 2014, California counties received nearly \$10.5 million from COPS funding, with the state also receiving nearly \$1 million, for a total of almost \$11.5 million.⁷ Additionally, California counties received nearly \$9 million in Byrne JAG grant funds, with the state claiming an additional \$19 million for a statewide total of more than \$28 million.⁸ Finally, California counties also received approximately \$10 million in SCAAP funds, while the state received more than \$41 million for FY 2014⁹. The total funds statewide (including all funding to cities, counties, and the state as a whole) potentially at risk are almost \$91 million (of nearly \$62 million are monies granted to the state). The counties that stand to lose the most are Alameda and Los Angeles. The City of Oakland alone received \$1.875 million in COPS funding, and the county received nearly \$900,000 in Byrne JAG and almost \$700,000 in SCAAP funds. Los Angeles County received nearly \$3.5 million in SCAAP funding in FY 2014, \$750,000 in COPS funding and more than \$3 million distributed among the cities of L.A. County in Byrne JAG monies.

WHAT'S NEXT?

The House and Senate convened on September 8, 2015, after having adjourned for summer recess. It is anticipated that the Senate Judiciary Committee will begin mock-ups on S. 1814 later this month. It's unclear when the entire Senate would actually take up this bill.

The House has not voted on H.R. 3002 and H.R. 3073, and these bills are not currently scheduled to be heard. However, the House already passed H.R. 3009, and the bill is now pending further action in the Senate. If H.R. 3009 reaches President Obama's desk, he has signaled he might veto the bill.

ENDNOTES

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- ¹ <http://www.cnn.com/2015/07/06/us/san-francisco-killing-sanctuary-cities/>.
 - ² <http://www.latimes.com/nation/la-na-secure-communities-20140525-story.html>.
 - ³ http://leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_4_cfa_20130905_152002_sen_floor.html.
 - ⁴ http://www.huffingtonpost.com/2014/04/24/secure-communities_n_5182876.html.
 - ⁵ http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf and http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
 - ⁶ <https://www.congress.gov/bill/114th-congress/house-bill/3009/text>.
 - ⁷ <http://www.cops.usdoj.gov/pdf/2014AwardDocs/CHP/CHP-2014-Announcement-9-24-14.pdf>.
 - ⁸ [http://grants.ojp.usdoj.gov:85/selector/title?solicitationTitle=BJA%20FY%202014%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20\(JAG\)%20Program:%20Local&po=BJA](http://grants.ojp.usdoj.gov:85/selector/title?solicitationTitle=BJA%20FY%202014%20Edward%20Byrne%20Memorial%20Justice%20Assistance%20Grant%20(JAG)%20Program:%20Local&po=BJA).
 - ⁹ https://www.bja.gov/ProgramDetails.aspx?Program_ID=86#horizontalTab8 (click 2014 SCAAP Award List).

Written by Elizabeth Dietzen Olsen. The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. The office was established by the Senate Rules Committee in 1969. For more information, please visit <http://sor.senate.ca.gov> or call (916) 651-1500.
