

Immigration: The “California Values Act” – An Exercise Of Tenth Amendment Power

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Values Act, Legislative Findings, Gov. Code 7284.2

- “Almost one in three Californians are foreign born and one in two children in California has at least one immigrant parent.”
- “A relationship of trust between California’s immigrant community and state and local agencies is central to the public safety of the people of California.”
- “This trust is threatened when state and local agencies are entangled with federal immigration enforcement.” Immigrant community members fear:
 - Approaching police when crime victims or witnesses
 - Seeking basic health services, attending school
- Constitutional concerns:
 - Detained in violation of 4th amendment (immigration “holds”)
 - Targeted based on race or ethnicity, denied equal access to education



Background, Federal vs. State Law

- There is no federal law that requires states to assist in the enforcement of federal immigration laws.
- The Tenth Amendment to the U.S. constitution prohibits the federal government from “conscripting” the states to enforce federal regulatory programs.
- Federal law says only that state and local governments may not “prohibit or in any way restrict any governmental entity or official from sending to, or receiving from” the INS “information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” (8 U.S.C secs.1373, 1644)
- The application and legality of section 1373 is being litigated.



State Law – The Way It Is Now

State Law – The Way It Was

- DRUG Arrests: “When there is reason to believe that any person arrested for a violation of law of [any of 14 specified drug offenses] may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.” (Cal. Health & Safety Code 11369) (Eliminated)
- TRUST Act: Prohibited law enforcement from honoring federal immigration holds unless detainee has history of serious or violent felony. (Gov. Code 7282-7282.5) (Expanded)
- TRUTH Act: Requires notice to immigrants in custody about their rights to not cooperate with ICE, of any ICE holds, and whether ICE informed of release date. (Gov. Code 7283.1) (Expanded)



New - California Values Act, Gov. Code 7284

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- *January 1, 2018*, Values Act effective for law enforcement agencies.
- By *October 1, 2018*, AG to publish model policies “limiting assistance with immigration enforcement” – for public schools, libraries, health facilities, courthouses, state labor enforcement agencies, shelters. (Gov. Code 7284.8(a).) Some agencies required, others encouraged to comply.
- By *October 1, 2018*, AG to publish guidance for databases “operated by state and local law enforcement agencies” to limit use the “for the purpose of immigration enforcement.” (Gov. Code 7284.8(b).) Agencies encouraged, not required.



Values Act - Who Must Comply?

Who Must Comply with Values Act (Gov. Code 7284.4(a).)

- “California law enforcement agencies” including “state or local law enforcement agencies,” e.g.
 - Local police, Bart police, Park police
 - Sheriffs Departments
 - Highway Patrol
- “School police or security departments”
- Excluding state prisons (Department of Corrections and Rehabilitation) – except where specifically included



Values Act – What Is Prohibited

Drug Arrests – *Repealed*



- “Section 11369 of the Health and Safety Code is repealed.”
- No longer any requirement to inform federal immigration authorities when arrest an individual who “may not be a citizen of the United States” for various drug offenses.

Immigration Enforcement – *Prohibited Activities*



- Law enforcement agencies shall not “use agency or department moneys or personnel to *investigate, interrogate, detain, detect, or arrest* persons for immigration enforcement purposes,” (Gov. Code 7284.6 (a)(1).)

Immigration Enforcement – *Prohibited Activities*



- Inquiring into immigration status
- Providing personal information, such as home address or work address, unless publicly available, to federal immigration authorities
- Detaining an individual on the basis of a “hold” request
- Providing information on release date (except certain crimes, see section 7282.5)
- Transferring an individual to immigration authorities unless authorized by a federal *judicial warrant* or *judicial probable cause determination* (except certain crimes, see section 7282.5.)

Immigration Enforcement – *Prohibited* (cont.)



- Making or participating in arrests based on civil immigration warrants.
- Assisting in federal immigration enforcement under 8 U.S.C. 1357(g), known as 287(g) agreements.
- Placing “peace officers under the supervision of federal agencies” for purposes of immigration enforcement.” (Gov. Code 7284.6 9(a)(2).)
- Using immigration authorities as interpreters. (Gov. Code 7284.6(a)(3).)

Immigration Enforcement – *Prohibited* (cont.)



- Providing office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility. (Gov. Code 7284.6(a)(5).)
- Contracting “with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8, commencing with Section 7310.” (Gov. Code 7284.6(a)(6).)
- Under Gov. Code 7310, new contracts are prohibited and existing contracts cannot be expanded to add more beds.

Honoring Immigration Holds – *Prohibited*



- Immigration “hold” is a *request* by ICE or Customs and Border Protection that a local law enforcement agency maintain custody “beyond the time” an individual “would otherwise be eligible for release in order to facilitate transfer to ICE.” (Gov. Code 7283(b).)
- Courts have found “holds” to be in violation of 4th amendment because without legal authority.
- Values Act: Law enforcement “shall not” detain an individual on the basis of a hold request. (Gov. Code 7284.6(a)(1)(B).)

Providing Information On Release Date – *Limited To Certain Crimes*

- Prohibition on “providing information regarding a person’s release date” or other information unless:
 - that information is available to the public,
 - or is in response to a notification request from immigration authorities *in accordance with Section 7282.5.*” (Gov. Code 7284.6(a).)
- Section 7282.5 provides a list of serious/violent crimes.

Transfers – Limited to Warrants, Certain Crimes



- No transfer of an individual “to immigration authorities unless authorized by a federal *judicial warrant* or *judicial probable cause determination*, or in accordance with Section 7282.5.”
- Again, Section 7282.5 provides a list of serious/violent crimes.

Section 7282.5: List of Serious/Violent Crimes

- Section 7282.5: Providing information or transfer to immigration authorities “shall only occur under the following circumstances:”
- Caveat – the “discretion” to provide information on release date or transfer exists:
 - Only “if doing so would *not* violate any federal, state, or local law, or local policy.

Section 7282.5: List of Serious/Violent Crimes



- Convictions. Permitted only when person has been:
 - Convicted of a serious or violent felony
 - Convicted of a felony punishable by state prison
 - Convicted in past 5 years of misdemeanor or a felony, or convicted in last 15 years of a felony, for:
 - assault, battery, threats, sexual abuse, child abuse, burglary, felony DUI, unlawful possession of weapon, felony possession/sale of controlled substances, gang related offenses, crime resulting in death or infliction of great bodily injury, use of firearm in an offense, human trafficking, money laundering, elder abuse, hate crime, stalking, rape, kidnapping, among others.

Section 7282.5: List of Serious/Violent Crimes (cont.)

- Arrests. Permitted only when a person has been “arrested and taken before a magistrate” for:
 - Serious or violent felony
 - Felony punishable by state prison
 - And magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code.

Providing Information On Release Date/Making Transfer –(cont.)



- Reports – Must make annual reports to DOJ on numbers of individuals transferred to ICE. (Gov. Code 7284.6(c)(2).)



Values Act – Permitted Activities

Permitted Activities Under Values Act (Gov. Code 7284.6(b).)



- The following activities are permitted *unless they violate any local or agency law or policy*:
 - Criminal Unlawful reentry. If detected during *unrelated law enforcement activity*, may arrest someone for unlawful re-entry following a deportation that was based on an aggravated felony, 8 U.S.C 1326(b)(2).

But transfers are permitted to federal immigration authorities *only in accordance* with 7284.6(a)(4). (Gov. Code 7284.6(b)(1).)
 - Criminal History Information. Responding to a request from immigration authorities for information through CLETS, where otherwise permitted by state law. (Gov. Code 7284.6(b)(2).)
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Permitted Activities, cont. (Gov. Code 7284.6(b), (c).)



- Joint Task Force. “Conducting *enforcement or investigative duties* associated with a joint law enforcement task force, including the sharing of confidential information,” so long as
 - Primary purpose is not immigration enforcement.
 - The enforcement or investigative duties are “primary related to a violation of state or federal law unrelated to immigration enforcement.”
 - Participation does not violate any local law or policy.
 - Must submit annual reports to DOJ on task force participation

Permitted Activities, cont. (Gov. Code 7284.6(b).)



- Certifications for T or U Visa. Making inquiries in order to certify an individual for a visa who has been identified as a potential crime or trafficking victim. (Gov. Code 7284.6(b)(4).)
- Access for interviews. Giving immigration authorities access to interview individuals in custody, but must comply with TRUTH Act. (Gov. Code 7284.6(b)(5).)

Permitted Activities – under federal law (Gov. Code 7284.6 (e).)



- The Values Act recognizes federal law, which prohibits restrictions on communications with ICE regarding “citizenship or immigration status.” (8 U.S.C. 1373, 1644.)
- “This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, or any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to *Sections 1373 and 1644* of Title 8 of the United States Code.”



Thank you