

Congress of the United States
Washington, DC 20515

September 13, 2012

Governor Edmund G. Brown, Jr.
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Re: The TRUST Act, AB 1081 (Ammiano)

Dear Governor Brown,

As Members of the California Democratic Congressional Delegation, we write to offer our strong support for the Transparency and Responsibility in Using State Tools Act (“TRUST Act”) AB 1081 (Ammiano). The bill sets clear and uniform standards for the detention of persons by local law enforcement solely on the basis of federal immigration detainer requests. The measure is designed to enhance public safety and protect civil liberties, while also promoting fiscal responsibility at the state and local levels.

The TRUST Act was introduced in response to the Immigration and Customs Enforcement (ICE) agency’s Secure Communities initiative. Secure Communities was ostensibly created at the request of Congress that ICE “identify and prioritize for removal criminal aliens convicted of violent crimes.” Consolidated Appropriations Act, 2008, Pub. L. No. 110-161. As ICE’s own records demonstrate, however, the majority of people who have been detained and deported as a result of Secure Communities have never been convicted of any crime or have been convicted only of minor offenses, including traffic violations.

Law enforcement personnel and civic leaders from California and from around the country have forcefully argued that Secure Communities currently erodes trust between local communities and law enforcement. They report that the initiative already has reduced the willingness of immigrant and non-immigrant crime victims and witnesses to cooperate with law enforcement and has consequently diminished public safety.

The TRUST Act is intended to restore the public’s trust in local law enforcement and to encourage community policing efforts that depend on such trust. Moreover, because it authorizes law enforcement personnel to honor immigration detainer requests lodged against persons convicted of, or charged with, a serious or violent felony, the bill is fully consistent with President Obama’s efforts to prioritize the removal of serious criminals and the original, stated purpose of Secure Communities itself.

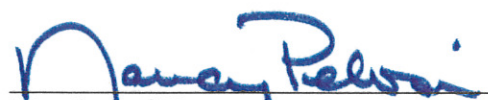
There should be no doubt that California has the legal authority to enact the TRUST Act and set sensible limits on the manner in which local law enforcement officials respond to immigration detainers. By their own terms, immigration detainers are merely requests that a law enforcement agency continue to detain a person who should otherwise be released from custody. The discretionary nature of these requests is clear not only from the statutory and regulatory authority for immigration detainers and the caselaw that has developed in this area, but it is the unambiguous position of ICE itself. When asked by the Santa Clara County Counsel whether localities are “required to comply with detainers,” ICE replied in the enclosed letter that “ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who would otherwise be released. . . .” Letter from David

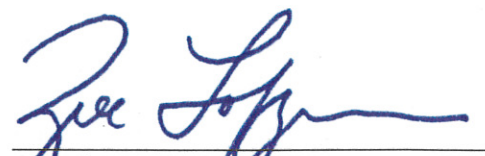
Enturella, Assistant Director, U.S. Immigration and Customs Enforcement, to Miguel Marquez, County Counsel, County of Santa Clara (undated).


By providing standards to guide local law enforcement's treatment of detainer requests that already may be ignored, the TRUST Act merely ensures that when it comes to such requests, all persons will be treated in a uniform and consistent manner throughout the state of California. It is both wise and appropriate to establish a statewide policy in this area that will reduce uncertainty and help to alleviate the appearance of abuse by individual jurisdictions.

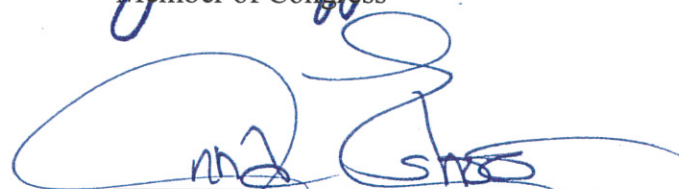
Today we join countless law enforcement leaders, mayors, and legal scholars who already have lent their support to the TRUST Act. We encourage you to sign the bill that has been presented to you by the legislature and to continue California's proud tradition of being a leader on smart and sensible policy solutions.

Sincerely,

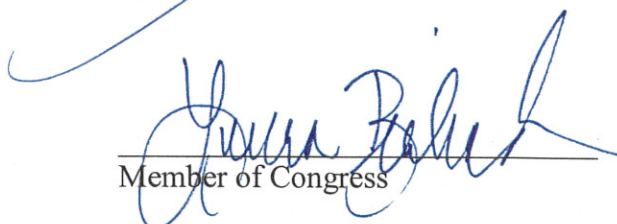

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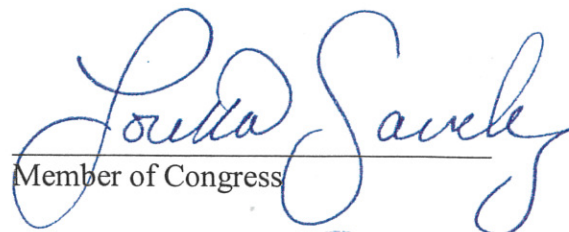

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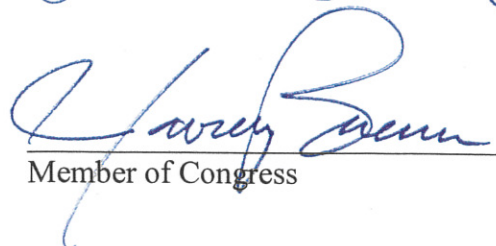

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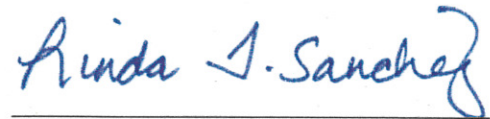

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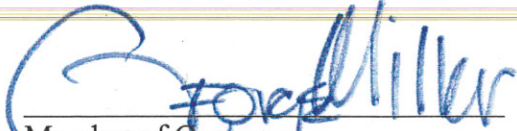

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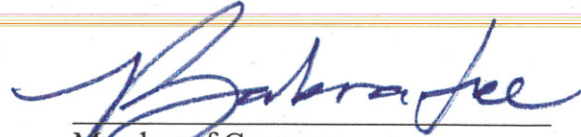

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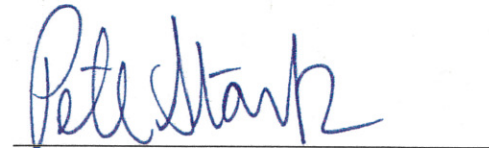

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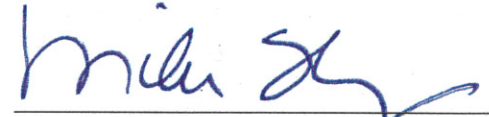

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U.S. Immigration
and Customs
Enforcement

Mr. Miguel Márquez
County Counsel
County of Santa Clara
70 West Hedding Street, Ninth Floor
San Jose, CA 95110-1770

Dear Mr. Márquez:

Thank you for your August 16, 2010, letter regarding U.S. Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I appreciate the opportunity to discuss ICE's immigration enforcement policies with you and to respond to your questions.

As an overview, Secure Communities is ICE's comprehensive strategy to improve and modernize the identification and removal of criminal aliens from the United States. As part of the strategy, ICE uses a federal biometric information sharing capability to more quickly and accurately identify aliens when they are booked into local law enforcement custody. ICE uses a risk-based approach that prioritizes immigration enforcement actions against criminal aliens based on the severity of their crimes, focusing first on criminal aliens convicted of serious crimes like murder, rape, drug trafficking, national security crimes, and other "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act (INA). Under this strategy, ICE maintains the authority to enforce immigration law. The activation of biometric information-sharing capability in new jurisdictions enables ICE to identify criminal aliens before they are released from law enforcement custody into our communities, which strengthens public safety. ICE works with state identification bureaus to develop deployment plans for activating the biometric information sharing capability in their jurisdictions. Your specific questions about Secure Communities are answered below.

1. Is there a mechanism by which localities can opt out?

As part of the Secure Communities activation process, ICE conducts outreach to local jurisdictions, which includes providing information about the biometric information sharing capability, explaining the benefits of this capability, explaining when the jurisdiction is scheduled for activation, and addressing any concerns the jurisdiction may have. If a jurisdiction does not wish to activate on the scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing by email, letter, or facsimile. Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date or removing the jurisdiction from the deployment plan.

a) Can you provide information on the Statement of Intent referenced in the cover letter accompanying the 2009 MOA?

ICE does not require local jurisdictions to sign Statements of Intent or any other document to participate in Secure Communities. The reference to the Statement of Intent in the cover letter to the MOA was an oversight. The MOA signed by the state of California makes no mention of a Statement of Intent, and ICE has advised the California Department of Justice that it will not be utilizing Statements of Intent.

b) Do you view the State of California as having the ability to exempt certain counties from the program under the 2009 MOA signed by ICE and the California Department of Justice?

ICE recognizes the California Department of Justice as the agency having the responsibility for the management and administration of the state's criminal data repositories, which includes development of and adherence to policies and procedures that govern their use and how information is shared with other state and federal agencies. Therefore, ICE defers to the California State Attorney General on how state, county, and local law enforcement agencies within the state of California will share biometric data under the MOA.

c) Have you allowed other localities of law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

The Washington, D.C. Metropolitan Police Department is the only jurisdiction to date that has terminated its signed Memorandum of Agreement. As referenced by your letter, activated jurisdictions do not have to receive the "match responses" and Secure Communities, in coordination with the state identification bureaus and the FBI's Criminal Justice Information Services (CJIS) Division, has accommodated jurisdictions that requested not to receive that information.

d) What is the purpose of receiving the "match messages"? Do they require or authorize counties to take action with respect to arrested individuals?

The purpose of local law enforcement receiving a 'match message' is to provide any additional identity information about the subject, including aliases, from the DHS biometric database storing over 100 million records that may not have been available based only on a criminal history check. Additional identity information may further a law enforcement officer's open investigations and lead to improved officer safety. Receiving a 'match message' does not authorize or require any action by local law enforcement.

2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and identification?

a) Is it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?

ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released for up to 48 hours (excluding Saturdays, Sundays, and holidays). This provides ICE time to assume custody of the alien.

b) Who bears the costs related to detaining individuals at ICE's request?

Pursuant to 8 C.F.R. § 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodged until "actual assumption of custody." The exception provided in section 287.7(e) stating that ICE shall not incur "fiscal obligation...except as provided in paragraph (d) of this section" only serves to authorize payment but does not require it. To the extent a payment is considered, it should only be made pursuant to a written agreement because, under INA § 103(a)(11), ICE pays detention costs when aliens are in its custody pursuant to "an agreement with a State or political subdivision of a State."

c) Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Will ICE indemnify localities for any liability incurred because of that detention?

ICE does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual. Further, ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.

3. Is it ICE's position that localities where Secure Communities is deployed are legally required to:

i. Inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer? If so, what is the legal basis for such a requirement?

The notification to ICE of inmate transfer or release within thirty days is pursuant to ICE's request for that information. It is not a statutory requirement.

- ii. Allow ICE agents and officers access to detainees to conduct interviews and serve documents? If so, what is the legal basis for such a requirement?**

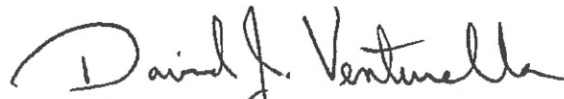
INA § 238, 8 U.S.C. 1228, provides for the availability of special removal proceedings at federal, state, and local correctional facilities for aliens convicted of certain criminal offenses. Such programs require ICE officers to conduct inmate interviews to determine alienage and any possibilities for relief or protection from removal. The statute does not require state or local jurisdictions to participate in such programs.

- iii. Assist ICE in acquiring information about detainees? If so, what is the legal basis for such a requirement?**

Assisting ICE in acquiring detainee information is not a legal requirement.

Thank you again for your letter. If you have any additional questions, please feel free to contact me at (202) 732-3900.

Sincerely yours,

A handwritten signature in cursive script that reads "David J. Venturella". The signature is written in black ink and is positioned above the typed name and title.

David Venturella
Assistant Director

List of Signers (In Alphabetical Order)

Nancy Pelosi

Joe Baca

Karen Bass

~~Xavier Becerra~~

Judy Chu

Anna Eshoo

Sam Farr

Bob Filner

Mike Honda

Barbara Lee

Zoe Lofgren

Doris Matsui

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