



September 12, 2012

The Honorable Jerry Brown
Governor of the State of California
c/o State Capitol, Suite 1173
Sacramento, CA 95814

VIA FACSIMILE: (916) 558-3160

RE: The TRUST Act (AB 1081-Ammiano)

Dear Governor Brown:

The American Immigration Lawyers Association (AILA) and its four California chapters offer the following views in support of the Transparency and Responsibility in Using State Tools Act (TRUST Act, AB 1081, Ammiano), a bill intended to reform California's participation in the federal Secure Communities Program. We write to share our legal analysis of the TRUST Act, specifically regarding the voluntary nature of federal immigration detainers and questions arising from the enforcement of detainers by state and local law enforcement.

Federal statute and regulatory authority demonstrate that immigration detainers are voluntary in nature, but there appears to be continuing controversy about this issue. The Immigration and Nationality Act (INA), 8 U.S.C. § 1357(d), describes the issuance of a detainer as a "request[]" from a state or local law enforcement official that federal government officials issue a detainer. Nowhere in the INA is there indication that immigration detainers are mandatory. Similarly, federal agency regulations describe state and local compliance with detainers in voluntary terms. In 1990 and 1994, the Immigration Naturalization Service (INS), the predecessor to the Department of Homeland Security (DHS), published notices in the Federal Register describing detainers as "merely a notice to an alien's custodian that the Service is interested in assuming custody of the alien," 55 Fed. Reg. 43326 (Oct. 29, 1990), and as a "mechanism by which the Service requests that the detaining agency notify the Service of the date, time, or place of release of the alien." 59 Fed. Reg. 42407 (Aug. 17, 1994). The statute and regulations should lay to rest any questions as to the voluntariness of immigration detainers.

Furthermore, if detainers were mandatory, they would run afoul of the Constitution's prohibition against the federal government commandeering state or local resources to effectuate a federal policy or program. See *Printz v. United States*, 521 U.S. 898 (1997). *Printz* held that the federal government "may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Id.* at 935, 925. A federal mandate that local law enforcement comply with detainers would directly offend the

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Constitution's structure of dual sovereignty. State and local law enforcement are not compensated for the resources expended to detain an individual subject to a detainer, to conduct background checks on the person, or otherwise to administer immigration detainees.

Finally, as a matter of policy, AILA supports the enactment of the California TRUST Act because it would prevent the involvement of state and local authorities in the enforcement of immigration law in ways that undermine community trust in local police and that foster racial profiling and questionable law enforcement practices. Last year, AILA issued a report based on a survey of our membership describing 127 cases in which DHS responded to immigration enforcement requests from state and local authorities. Entitled "Immigration Enforcement Off Target: Minor Offenses with Major Consequences,"¹ the report concluded:

When DHS programs and practices encourage local authorities to become integrally involved in immigration enforcement, the distinctions between police, ICE [Immigration and Customs Enforcement], and CBP [Customs and Border Protection] are blurred and create confusion in the community about who plays what role. Police are perceived as no longer just protecting public safety and enforcing criminal law but also, or even primarily, as enforcing civil immigration law. Law enforcement leaders have described how this merging of immigration enforcement with criminal law enforcement erodes immigrant communities' trust in the police and local government, and ultimately undermines public safety ... The overall message to the community is that any contact with local police, no matter how innocent or random, can result in deportation.

AILA is gravely concerned that the local officials described in the report were not investigating crimes but instead were questioning accident victims or others engaged in innocent behavior about their immigration status and turning them over to ICE or CBP. In many of the cases in the AILA report, local officials stopped individuals without a reason and asked for identification papers. In others, local officials listed fabricated or trivial charges, like a broken brakelight, as the reason for the arrest, or listed no criminal charges at all giving rise to concerns that the prime motivation for the stop was to assess immigration status. AILA's report also cited cases where there were explicit comments indicating that the stop or arrest was the direct result of racial or ethnic animus.

Federal programs that involve local law enforcement in immigration enforcement tend to undermine community trust in the police and even increase the likelihood of racial profiling by police. The California TRUST Act would go a long way toward preventing such impermissible law enforcement practices, and even help restore trust between immigrant communities and law enforcement.

For decades California has paved the way for smart law enforcement policy and sensible state and local responses in the area of immigration. The TRUST Act is smart policy, and by AILA's assessment, fully consistent with federal immigration law and the Constitution. Recognizing that compliance with detainers is voluntary, AILA recommends that California adopt the protections against blanket enforcement of immigration detainees that are set forth in the TRUST Act.

¹ Go to www.aila.org/offtarget.

Thank you for your attention to this important matter. If you have questions or concerns, feel free to contact Gregory Chen, AILA's Director of Advocacy, gchen@aila.org, 202/507-7615.

Sincerely,

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