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# THE STATE OF ORANGE COUNTY

An Analysis of Orange County's Policies  
on Immigration and a Blueprint for an  
Immigrant Inclusive Future



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## **About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) is a national nonprofit that works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training & technical assistance, and policy development & advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities. To learn more about our work, visit: [www.ilrc.org](http://www.ilrc.org).

## **About Resilience Orange County**

The mission of Resilience Orange County is to promote resilient youth leaders that engage in the critical work of building youth-oriented institutions in Orange County. We are a youth oriented institution that works towards social-systemic transformation while promoting healing, trauma-informed and culturally relevant practices that are inclusive of all members of the community. To learn more, visit: [www.resilienceoc.org/](http://www.resilienceoc.org/).

## **About the UC Irvine School of Law Immigrant Rights Clinic**

The University of California, Irvine School of Law Immigrant Rights Clinic is a law school clinic that comprises part of UCI Law's visionary experiential learning program. Clinic students, working under close faculty supervision, provide direct representation to immigrants on matters ranging from detention and deportation defense to workplace exploitation and protection of civil and constitutional rights of immigrants. The clinic also provides legal support to grassroots organizations working on critical issues affecting low-income immigrants in the region. For more information, visit: [www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html](http://www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html).

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## **Part 1: Introduction**

Orange County has been in the news recently for its controversial immigration stances. As the rest of California has moved in the direction of embracing its immigrant residents over the past several years, offering them protection from draconian federal immigration enforcement policies, officials in Orange County have sought to double down on their collusion with U.S. Immigration and Customs Enforcement (ICE).

In maintaining their entanglement with ICE, elected officials in Orange County are listening to a vocal minority. While Orange County was once a conservative stronghold, home to ideas like Proposition 187 and the founders of nativist organizations like the Minutemen Project, today 83% of the county's residents want to find a solution that would allow undocumented immigrants to stay in the United States permanently. The politics of the county are shifting dramatically. In fact, as our Report shows, they have been shifting for quite some time.

Nowhere has the fight on local immigration policies been more divisive than on the issue of local law enforcement entanglement with federal immigration enforcement efforts. In 2017, California passed the VALUES Act, the nation's strongest state-level sanctuary law to date, which seeks to further establish a bright line of separation between local police and sheriffs and the federal detention and deportation system. Officials in Orange County, including the Sheriff, however, adamantly opposed the VALUES Act and in certain ways tried to circumvent it, expressing their opposition through court filings, publishing inmate release dates online for immigration authorities, and passing city ordinances and resolutions. The Board of Supervisors has shown little leadership on this issue, and has all but abdicated its responsibility to govern.

Orange County officials resist protections for immigrants at their own political peril. The county is at a critical turning point and elected officials have a choice to make. Will county leaders continue to live in the past or will they embrace a more immigrant inclusive future that reflects the diverse and changing landscape?

In this Report, the Immigrant Legal Resource Center, Resilience Orange County and the UC Irvine School of Law Immigrant Rights Clinic provide a window into the state of Orange County's immigration policies, their impact on local residents and the considerations and values that ought to guide a vision for a new Orange County. The Report offers a first look at data obtained through Public Records Act requests from the Orange County Sheriff's Department (OCSD) and ICE. It concludes with 20 questions that ought to inform any discussion going forward about immigration policy in the sixth most populous county in the nation.

## **Part 2: Orange County's Anti-Immigrant Legacy**

Orange County is home to almost 3.2 million residents. It is the sixth most populous county in the United States and the third most populous county in California. Today, nearly one third of Orange County's residents are immigrants and the county's foreign-

born population is the fourth largest in the country. 56% of residents are people of color. However, just a few decades ago, white residents still made up the majority in the county. The county also had a reputation for being one of the most anti-immigrant regions in the United States.

For example, Anaheim, Orange County's largest city, was once known as "Klanaheim" because it elected at least three members of the Ku Klux Klan to its city council. In the 1990s, Anaheim became the first city in California to have federal immigration officers stationed permanently inside their city jail. The county was also known for having segregated public pools and tennis courts, and for segregating children of Mexican descent from white children. Indeed, before *Brown v. Board of Education*, there was *Mendez v. Westminster*, a federal challenge to racial segregation in Orange County's education system.

In 1994, anti-immigrant sentiment in the county helped fuel the popularity of Proposition 187. Ron Prince, an Orange County resident, helped co-author the proposition. Although a federal court later barred California from enforcing Proposition 187, Orange County residents continued to find other ways to express their anti-immigrant views.

In 2004, Jim Gilchrist, another vehemently anti-immigrant resident of Orange County, co-founded the Minuteman Project, a nativist vigilante organization that patrolled the U.S.-Mexico border to fend off migrants seeking to enter the United States.<sup>1</sup>

Anti-immigrant sentiment was also directed internally at day laborers. In 2006 and in 2008, the cities of Costa Mesa and Lake Forest, respectively, attempted to ban day laborers from seeking employment on public property. In response, advocates sued both cities as well as the county, which resulted in court judgments declaring that such action by the cities and county violated the First Amendment rights of day laborers.<sup>2</sup>

Government-sponsored discrimination like the attacks on day laborers had ripple effects in the community, encouraging private residents to lash out against the county's immigrants. Worker centers, for example, became the target of numerous protests by

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*"Parents were afraid to walk their children to school, people are afraid to call on police for any other need they have because of their fear of being targeted by their immigration status." – Community Member*

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anti-immigrant activists. In one instance, two individuals were arrested after they intentionally ran down day laborers at a worker site while shouting racist slurs.<sup>3</sup>

## **Orange County and California Part Ways**

Like Orange County, California has its own dark history of xenophobia and racism.<sup>4</sup> In the 1980s and 1990s, California pioneered a collection of laws that would have devastating effects on the state's immigrant population. In 1986, voters declared English the state's official language with Proposition 63. In 1993, California became one of the first states in the nation to restrict access to drivers' licenses on the basis of

immigration status. The next year, voters passed the infamous California Proposition 187, which attempted to exclude undocumented immigrants from receiving a wide range of services, such as public education and non-emergency health care, and established a state-run system for reporting undocumented immigrants to federal immigration officials.<sup>5</sup> In 1996, California ended affirmative action through Proposition 209. In 1998, California also enacted a ban on bilingual education through Proposition 227.

However, since the 1990s, when a majority of these anti-immigrant measures were passed, California has undergone a historic shift. Today, many immigrants see California as a beacon of hope and inclusion. The state is home to more than 10 million immigrants—more than any other state in the country. Specifically, 28.2% of California's population is foreign-born, double the national average. 49% of California's immigrants are naturalized U.S. citizens, 26% have legal permanent residency or visas, and approximately 24% are undocumented.<sup>6</sup> Though they often work for the lowest wages, undocumented immigrants alone contribute more than \$180 billion a year to the state's economy.

Thanks to advocacy efforts by immigrants' rights groups and other allies, California lawmakers began to see that anti-immigrant measures were not benefitting, but rather harming, the state. California's legislative environment eventually became one of the most pro-immigrant in the nation.<sup>7</sup> The state now allows immigrant students to have access to higher education, makes driver's licenses and professional licenses available regardless of immigration status, and restricts state and local participation in federal immigration enforcement.

With respect to measures seeking to disentangle the work of state and local law enforcement officers from federal immigration enforcement in particular, California led the way in 2013 with passage of one of the first state-level sanctuary laws in the country, the TRUST Act (AB 4).<sup>8</sup> The TRUST Act recognized that shifts in technological practices and policies at the federal level had turned California state and local law enforcement officials into an arm of the federal immigration enforcement apparatus, pushing immigrants deeper into the shadows and thus making them more vulnerable. In the legislative findings section of the TRUST Act, lawmakers wrote that these practices “harm[ed] community policing efforts because immigrant residents who are victims of or witnesses to a crime, including domestic violence, [were] less likely to report crime or cooperate with law enforcement when any contact with law enforcement could result in deportation.”<sup>9</sup> Accordingly, the TRUST Act limited the circumstances under which local officials could detain immigrants for additional time in order to allow ICE to take them into custody.<sup>10</sup> The TRUST Act went into effect on January 1, 2014.

Several years later, problems with local law enforcement entanglement with federal immigration enforcement persisted. Although fewer California residents were being detained by state and local authorities pursuant to ICE requests known as immigration detainers, nearly 10,000 residents were still being transferred to ICE custody a year because of information sharing between state and local officials and federal immigration officials.<sup>11</sup> California therefore enacted the Transparent Review of Unjust Transfers and Holds, or TRUTH, Act (AB 2792), which did several things.<sup>12</sup> First, whenever



ICE sought to interview a person in custody, it required California officials to provide notice to the person and an opportunity to decline such interview.<sup>13</sup> Second, it required California officials, upon receipt of any request from ICE to hold, notify or transfer a person in their custody, to provide a copy of the request to the person and inform the person if California officials intended to comply with the request.<sup>14</sup> And third, it mandated that all California jurisdictions that work with ICE be transparent with the public about its activities, and hold at least one community forum a year starting in 2018 during which jurisdictions would provide information to the public about ICE access to inmates and consider public comment.<sup>15</sup> The TRUTH Act went into effect on January 1, 2017.



But the fight did not end there. Between the passage of the TRUTH Act and its effective date, Donald J. Trump was elected as President. Trump promised to deport 2 to 3 million immigrants and intended to rely heavily on the work of state and local officials to carry out his plans.<sup>16</sup> Seeking to further distance itself from the inflammatory anti-immigrant platform of the Trump administration, California set to work on several additional legislative bills. Significantly, in 2017, California enacted the VALUES Act (SB 54)—the strongest state law to disentangle local law enforcement involvement with ICE to date.<sup>17</sup> The law “provide[s] essential safeguards to ensure that police, schools, health facilities, courts, and the California Division of Labor Standards Enforcement remain accessible to Californians from all walks of life and that California’s limited resources are directed to matters of greatest concern to state and local governments.”<sup>18</sup> It prohibits local law enforcement from asking about an individual’s immigration status, detaining a

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“Deportation must not be extra punishment, immigration is not a crime, and regardless, no human being is illegal, or less deserving of dignified treatment and equality under the law.”  
– Salvador Sarmiento, *National Day Laborer Organizing Network*.

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person under any circumstances to give ICE time to pick the person up, notifying ICE of the release date or otherwise facilitating the transfer of a person in custody to ICE except under limited circumstances, or having a 287(g) agreement with ICE, among other activities.<sup>19</sup> SB 54 went into effect on January 1, 2018.

As the rest of the state moved toward inclusivity, however, the political elite in Orange County by and large continued to embrace an “us” versus “them” mentality. By 2017, Orange County was the only county in the state that still had a 287(g) agreement with ICE, as described in Part 3. Instead of reconsidering its stance when Trump was elected president, in early 2017, Orange County Sheriff Sandra Hutchins doubled down on her relationship with the federal government by asking the Trump administration for help on

a legal directive to allow her to detain more immigrants.<sup>20</sup>

Orange County officials were also among the most vehement opponents of SB 54. In an op-ed dated June 16, 2017, Sheriff Hutchins flashed a list of seven recent cases where men of various nationalities arrested or booked on ominous charges had been turned over to ICE, suggesting, without any reference to data, that SB 54 would undermine public safety.<sup>21</sup> After the VALUES Act

passed the legislature and was signed into law, Orange County officials joined then-Attorney General Jeff Sessions in opposing SB 54 in the courts. They filed an unsuccessful request to intervene in the lawsuit challenging SB 54 and two other California laws: the Immigrant Worker Protection Act (AB 450), which granted immigrant workers certain

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*"Among our clients—they are the most vulnerable. They are the working class, they are the poor. They are children who have been abused and abandoned or neglected by parents. They are young women who have been trafficked into the United States for domestic or sex slavery. . . . But there is a problem because in these communities, because of this county's refusal to stand up to anti-immigrant rhetoric and agendas, there's a perception by these communities that their local law enforcement is not there for them, is not there to protect them" – Monica Glickin, Director Attorney, Immigration Program, Public Law Center.*

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*"Immigrant worshippers are less likely to come and participate in church services because of their fear that Los Alamitos and its law enforcement officials are helping deport members of our community." – Rev. Samuel Pullen of Community Congregational United Church of Christ, Los Alamitos.*

*"We sued Los Alamitos to strike down its harmful ordinance and ensure that immigrants feel safe in our communities." – Sameer Ahmed, ACLU of Southern California.*

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protections against immigration raids in the workplace, and AB 103, which put a halt to the expansion of immigration detention facilities in the state and gave the Attorney General power to monitor conditions in the facilities.<sup>22</sup>

The rhetoric supporting the Trump administration and opposing the VALUES Act at the county level had a trickle-down effect. Bolstered by the stances of their county-level counterparts, officials in various Orange County cities began to express opposition, or in some cases

outright defiance, towards the state law. In April 2018, the small city of Los Alamitos passed an ordinance permitting city residents and officials to disregard the California's VALUES Act.<sup>23</sup> Though the city was sued almost immediately after the ordinance received final approval, Fountain Valley, Aliso Viejo, Yorba Linda, Mission Viejo, Costa Mesa, Orange, Newport Beach and Westminster





eventually followed suit with their own resolutions or commitments to file amicus briefs to side with the Trump administration. The city of Huntington Beach went even farther than the others, taking California to court by filing its own lawsuit against the VALUES Act.<sup>24</sup>

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*"In neighborhoods made up of primarily people of color, like mine, there is already a very fragile relationship between residents and law enforcement. The distrust can be very dangerous. The implications of our administration and rhetoric coming out of Orange County only perpetuates a deeply flawed system." – Bethany A., Fullerton.*

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The actions opposing the VALUES Act by cities in Orange County came at the urging of the D.C.-based hate group Federation for American Immigration Reform (FAIR), which has ties to white supremacist groups.<sup>25</sup> E-mail correspondence obtained from Public Records Act requests

revealed that local officials placed the issue on city council agendas following outreach by Susan Tully, the national field director of FAIR. The actions stirred up an anti-immigrant frenzy at city council meetings throughout the county in the spring, with racist and anti-semitic remarks being frequently heard.<sup>26</sup>

In July 2018, the U.S. District Court for the Eastern District of California denied the Trump administration's request for a preliminary injunction against the VALUES Act and dismissed the federal

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*"Let's be very clear. Opposition to California being a Sanctuary State is not about public safety, nor has it ever been. It's about pushing a political agenda that endorses hate." – Erik Garcia, Orange County Immigrant Youth United.*

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government's claim against the Act, finding that the Act was indeed lawful and constitutional. But the damage in Orange County had already been done.

### **Part 3: Orange County's Collusion with Federal Immigration Officials**

It should come as no surprise that Orange County officials' public statements opposing sanctuary policies have come with historically high levels of collusion between county-level law enforcement agencies and ICE, resulting in the arrest and deportation of numerous residents. In 2013, for example, the Orange County Probation Department was exposed for its role in detaining and turning over to federal immigration officials 43% of the total youth subjected to ICE holds in the state.<sup>27</sup> In this Part, we detail the multiple ways in which Orange County officials are working with ICE. The coordination does not appear to have slowed as a result of the VALUES Act despite discontinuation of the county's 287(g) agreement with ICE; in fact, it appears to have intensified since Trump took office.

## A Bird's Eye View of the Numbers

Orange County falls within the Los Angeles ICE Enforcement and Removal Operations (ERO) Field Office area of responsibility. Over the past five years, Orange County has accounted for a steady share of the arrests of the Los Angeles ICE ERO Field Office. In FY2017<sup>28</sup>, for example, ICE made 1,211 total arrests in Orange County, comprising a total of 14% of arrests for the Los Angeles Field Office. Figure 1 shows available data on arrests from FY2013 through FY2018.

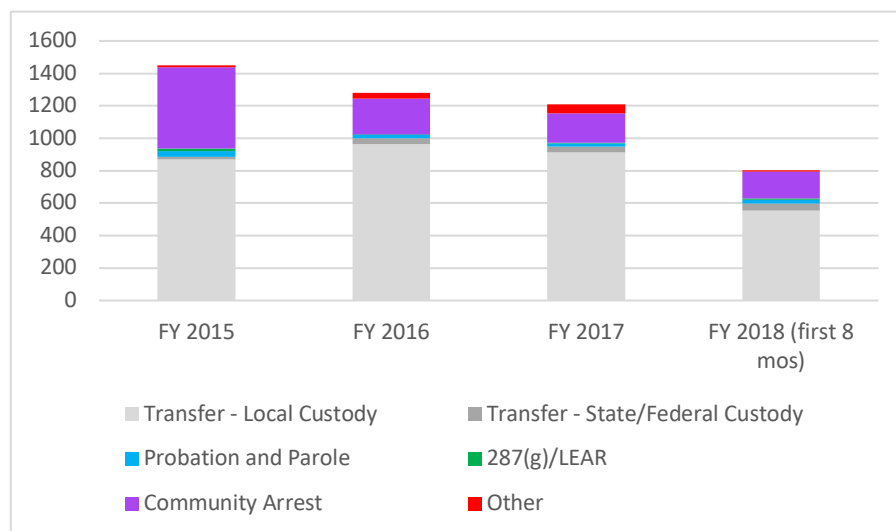
**Figure 1. ICE ERO Arrests FY2013-FY2017**

ICE Arrests	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018 (first 8 mos)
Orange County			1,449	1,279	1,211	802
Total - LA Field Office	20,198	18,984	8,739	7,717	8,419	

Source: Migration Policy Institute, Revving Up the Deportation Machinery: Enforcement and Pushback under Trump 28 (May 2018); Transactional Access Records Clearinghouse (TRAC) Immigration and Customs Enforcement Arrests Web Query Tool, <http://trac.syr.edu/phptools/immigration/apprehend/>.

Of the arrests made by ICE in Orange County, a significant percentage have been the result of transfer from local custody. In FY2017, transfers from local custody comprised 912, or 75%, of ICE arrests in Orange County. Figure 2 provides an overview of arrests from the period from FY2015 to FY2018 broken down by the method of apprehension.

**Figure 2. Orange County ICE ERO Arrests – Method of Apprehension**



Source: Transactional Access Records Clearinghouse (TRAC) Immigration and Customs Enforcement Arrests Web Query Tool, <http://trac.syr.edu/phptools/immigration/apprehend/>.

## Orange County's 287(g) Program and Detainer Policies

In 2017, when the VALUES Act was passed, Orange County was the only county in California that still had a 287(g) agreement with ICE. The agreement had been in place since 2006, when Michael Carona, who was eventually indicted and convicted on corruption charges, was still the sheriff. While he had sought a broader agreement, ICE ultimately decided to limit the agreement to apply only to a certain number of officers in the county jails.

After Sheriff Carona resigned, Sandra Hutchens was appointed Sheriff by the Orange County Board of Supervisors. She then won an election for sheriff in 2010 and again in 2014. Like Sheriff Carona, Sheriff Hutchens' time in office was plagued with controversy. She also kept the 287(g) agreement in place, using it for many years to systematically discriminate against

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**287(g) agreements** with the federal government—also known as “287(g) contracts” or “287(g) programs”—allow state and local law enforcement officers to be deputized to perform certain civil immigration enforcement functions at local taxpayer expense.

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The **Secure Communities** program (“S-Comm”) was first rolled out in 2008 and involved the automatic sharing of biometric fingerprint data of all persons booked into a jail or prison to be run against a federal immigration database. It was shuttered at the end of the Obama administration but has since been revived by the Trump Administration.

The **Criminal Alien Program** (“CAP”) is an umbrella program that has been around since the 1980s encompassing numerous strategies for encountering noncitizens subject to deportation in local, state and federal jails and correctional facilities. Methods can range from having ICE agents permanently stationed inside a jail to accessing a local jail databases to screen inmates.

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inmates booked at the Intake Release Center of the county jail who were perceived to be foreign-born and screening them for potential immigration violations.

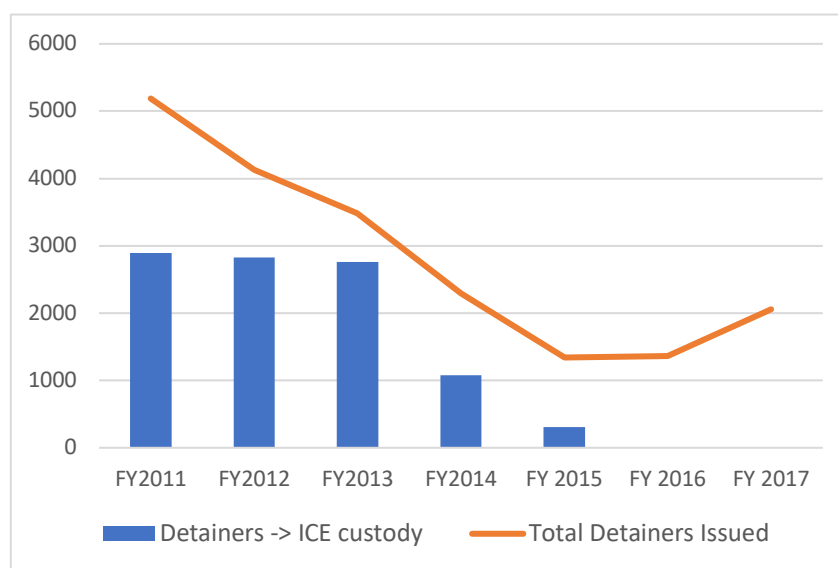
Meanwhile, controversy brewed at the national level about the Obama-era program called Secure Communities. In response to concerns raised by advocates, localities began attempting to “opt out” of the program in 2010. But the Department of Homeland Security (DHS) eventually had to admit that there was no way to “opt out” of the fingerprint-sharing aspect of the program. As a result, localities began declining to comply with immigration “detainers,” pieces of paper sent by federal immigration officials about a person requesting that ICE be notified of the person's release date and that the person be held for up to an extra 48 hours (excluding Saturdays, Sundays and federal holidays) to facilitate transfer to ICE custody.

By 2014, California had enacted the first of its state-level sanctuary laws, the TRUST Act, which limited the circumstances under which

a state or local law enforcement agency could honor an immigration detainer to those cases where an individual had been convicted or held to answer for an enumerated list

of more serious criminal offenses.<sup>29</sup> Then, in April 2014, a federal judge in Oregon found that a local jurisdiction could be liable for violations of the Fourth Amendment guarantee against unreasonable searches and seizures for holding a person for additional time solely on the basis of an ICE immigration detainer.<sup>30</sup> These developments forced the Orange County Sheriff's Department to change its policies to a degree. By the end of 2014, OCSD had ceased holding inmates for any extra days on the basis of an ICE detainer.<sup>31</sup> Individuals whom its officers determined fell outside of the TRUST Act's protections based on criminal history were transferred to ICE upon the conclusion of their local custody, if possible, and everyone else was processed for release.<sup>32</sup> Figure 3 shows the drop in detainers honored by OCSD between FY2011 and FY2015.

**Figure 3. Detainers Issued and Complied with in Orange County**



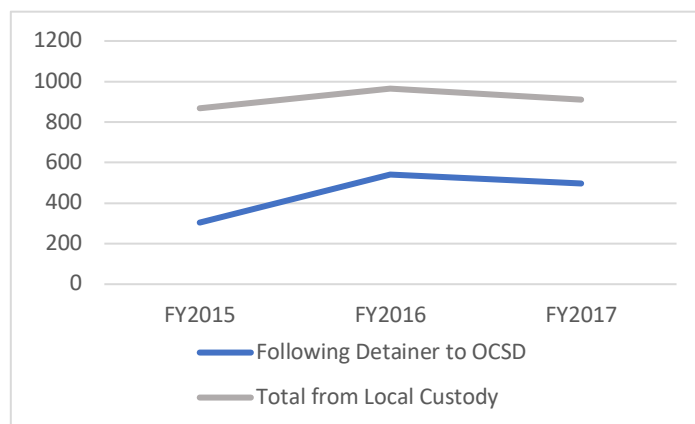
Source: Transactional Access Records Clearinghouse (TRAC) Immigration and Customs Enforcement Detainers Web Query Tools, <http://trac.syr.edu/phptools/immigration/detainhistory/> and <http://trac.syr.edu/phptools/immigration/detain/>.

Since FY2015, however, the number of detainers honored by OCSD (now through notification of release date and transfer of inmates to ICE) seems to be on the rise. Data obtained from OCSD in response to a Public Records Act indicates that in calendar year 2016, 536 people were transferred to ICE following issuance of an ICE detainer. In calendar year 2017, that number was 580.

The data also suggests that OCSD response to detainer requests is not the only way that Orange County residents are ending up transferred to ICE custody. In FY2015, for example, though ICE data shows that OCSD complied with detainer requests in 304 cases, a total of 868 arrests in Orange County came from transferred from local custody. Two years later, in FY2017, OCSD reported turning over 498 people to ICE following issuance of an ICE detainer, but ICE numbers show that many more arrests than that, a total of 912, were the result of transfers from local custody in Orange

County. Figure 4 is a visual representation of the discrepancy between OCSD detainer transfers and the total transfers from local custody in Orange County during this time period.<sup>33</sup> It seems that local officials are finding ways to turn residents over to ICE outside of the OCSD detainer process. It's possible a substantial portion of that activity is occurring at the city or town level. (See pages 15-16.)

**Figure 4. Transfers to ICE from Orange County, FY2015-FY2017**

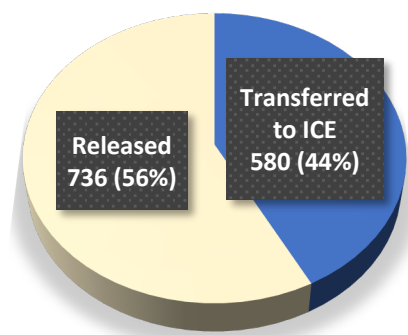


Source: Transactional Access Records Clearinghouse (TRAC) Immigration and Customs Enforcement Detainers Web Query Tools, <http://trac.syr.edu/phptools/immigration/detainhistory/> and Immigration and Customs Enforcement Arrests Web Query Tool, <http://trac.syr.edu/phptools/immigration/apprehend/>.

Nevertheless, OCSD's transfer of individuals subject to ICE detainers continues to be one major way that local residents are being deported. We have therefore taken a deeper dive into that data for 2017 in the hopes of shedding additional light on who Sheriff's Department officials are transferring to ICE.

In calendar year 2017, a total of 1,316 inmates with ICE detainers were screened by OCSD personnel to determine if they fell within the criminal history exceptions to the TRUST Act and therefore could be transferred to ICE. As noted above, OCSD ultimately turned over 580 (44%) of these individuals to ICE. 736 (56%) were released. See Figure 5.

**Figure 5. OCSD TRUST Act Screening Results, 2017**



Source: OCSD summary data obtained via Public Records Act request



Compared to 2016, where OCSD screened a total of 834 inmates, turned over 538 (64%), and released 298 (36%), OCSD ended up turning over a lower percentage of inmates upon being screened in 2017. This is likely due to the fact that federal officials were more indiscriminate when issuing ICE detainers starting in 2017 when Trump took office, issuing many detainers for immigrants who did not have sufficient criminal history to exempt them from protection under the TRUST Act.<sup>34</sup> The rate of transfers and releases from 2017 appears to be holding steady for the months in 2018 for which data is available.<sup>35</sup>

The community members that OCSD determined were eligible to be transferred to ICE in 2017 hailed from 35 different countries ranging from Canada to Vietnam. The top 9 countries of origin are listed below.<sup>36</sup>

**Figure 6. Orange County Inmates Excluded from Protection, Top Countries of Origin, 2017**

Country	Total
Mexico	436
Vietnam	87
Guatemala	11
El Salvador	11
Philippines	7
Cuba	7
Honduras	4
Iran	4
Romania	4
Other	39

Source: OCSD 0500 and AB4 Checks Worksheets obtained via Public Records Act request.

Even though the TRUST Act (and now the VALUES Act) usually require residents to have been convicted or held to answer for more serious offenses in order to be turned over to ICE,<sup>37</sup> the 2017 data confirms that many residents handed over were back in criminal

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“As a Vietnamese, I can never forget my immigrant identity. The elected officials who represent the voices of the Viet people in OC also need to be reminded that they too are ‘immigrants’. Never forget that identity and never betray it.” – Tung Nguyen, Asian and Pacific Islanders Re-Entry of Orange County.

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custody for something much more minor, such as driving without a license, petty theft, loitering or simple misdemeanor drug possession. In other words, the more serious criminal convictions that exempted residents from state law protection were those that residents had already served their time for and deemed by the criminal system to be safe for release. Residents were then transferred to ICE following subsequent police contact for a minor, nonviolent offense.

2017 was also the first year that Orange County residents had the right to notice and an opportunity to decline interviews with immigration agents in the jails under the TRUTH Act. According to OCSD records, from January 2017 through April 2018, OCSD received 26 requests to interview inmates.<sup>38</sup> About half of that number did not end up needing notification of their rights and a consent form because the inmate was released or transferred to another facility before the interview or ICE did not show up to conduct the interview. Of those that did receive the consent form, 1 inmate declined to be interviewed and 12 agreed to be, and were, interviewed.

A copy of the OCSD's current policy on ICE access and responding to immigration detainees is attached as Appendix A to this Report.

### **Publicizing Release Dates**

Part of the VALUES Act prohibits law enforcement from directly notifying ICE of the release date of an inmate unless the inmate is someone who local officials may transfer to ICE custody on account of his or her criminal history. Unhappy with the balance that the VALUES Act struck, Sheriff Hutchens announced in March 2018 that she intended to make the release dates of all inmates publicly available so that the information could also be made available to ICE.<sup>39</sup> In her zeal to find a way around the VALUES Act and facilitate a higher number of deportations, Sheriff Hutchens decided to publicize all scheduled release dates on its website, regardless of the safety risk to inmates.

There are many reasons why it can be dangerous for the public to know when an inmate is scheduled to be released from jail. Individuals seeking retribution or wanting to

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"I see the common occurrence of abuse survivors being criminalized and arrested and incarcerated themselves when they are seeking help. This is something we are not talking about enough." – Jane Stoeber, Clinical Professor of Law and Director, UCI Initiative to End Family Violence.

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do a person harm are more easily able to do so. Indeed, the ACLU learned of one such case after the new policy went into effect in which a trafficking survivor who had been detained in the county jail was released only to be met by her trafficker.<sup>40</sup> It is believed that the woman again became a victim of human trafficking as a result.

Notably, the individuals whose release dates OCSD was so keen to notify ICE about are residents who do not fall within the VALUES Act's exceptions. In other words, OCSD took this action to ensure that even inmates who are crime victims, DACA students and others whose criminal history is too minor to trigger any VALUES Act exemption or who are exonerated of their charges could be arrested by ICE. The action was announced and defended in various news outlets by Undersheriff Don Barnes, who is now the incoming sheriff of Orange County.

### **Orange County's "Beds for Feds" Program**

Since 2010, the Orange County Sheriff's Department has had an Intergovernmental Service Agreement, known also as the "Beds for Feds" contract, to house immigrants for

ICE in local jails while their deportation cases are pending. The initial contract provided for up to 838 detainees to be housed in the Theo Lacy and James A. Musick Facilities.<sup>41</sup> In May 2017, over opposition of community groups who cited reports of abuses at the Theo Lacy Facility, the Orange County Board of Supervisors voted to increase the number of beds in its IGSA

agreement with ICE by 120 beds, for a total of 958 beds.

Immigration detention is inherently inhumane. All persons in the custody of the county under the “Beds for Feds” program are “administrative detainees.” They are not charged with any criminal law violations; the purpose of their custody is to purportedly assure their presence for any immigration court process.

Nevertheless, individuals detained by OCSD under the contract are held in extremely punitive conditions.

Detainees at the Theo Lacy Facility receive only one or two hours of time outside their cells a day. They are regularly forced to endure “shakedowns” or searches of their cells, during which important personal and legal documents may get lost. Medical and

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*“The food inside the facility is not cooked thoroughly and can be raw or dirty. The portions are small and I am always hungry.” – Jose L.*

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mental health services are meager and there are reports of poor sanitation, including mildewed shower stalls and refuse in cells.<sup>42</sup>

Gay and transgender immigrant detainees have also been subject

to abuse and neglect in Orange County jails. Theo Lacy guards repeatedly called Alexis—a transgender woman—an anti-gay epithet and singled her out for public searches in which they forced her to remove her clothing and mocked her exposed breasts.<sup>43</sup>

The community members affected by Orange County's practice of holding people in immigration detention include immigrants from many countries around the world. See Figure 7 for a list of detainees' top countries of origin. Of the total of 850 people detained on a typical day last June, a significant percentage had lived in the United States for at least 5 years. 42% had no criminal history.

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**An Intergovernmental Service Agreement (“IGSA”)** is a contract in which a local jail might rent out detention bed spaces to ICE to house immigrants who are in deportation proceedings. ICE has daily detention bed quota and not enough space, and therefore needs IGSA contracts to meet its quota. Individuals are often held in immigration detention for months without any guarantee of a lawyer or other basic rights.

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**Figure 7. ICE Detainees Held in Orange County Facilities, Top Countries of Origin, Snapshot from June 30, 2018**

Country	Total
Mexico	322
El Salvador	101
India	98
Guatemala	60
China	35
Honduras	30
Vietnam	20
Eritrea	10
Cambodia	9
Other	165

Source: Transactional Access Records Clearinghouse (TRAC) Immigration and Customs Enforcement Detainees Query Tool, <http://trac.syr.edu/phptools/immigration/detention/>.

Under Orange County's IGSA agreement with ICE, OCSD is responsible for providing housing and all services to the detainees. (As discussed above, it does not appear to be doing even an adequate job at that.) Although the agreement is said to provide

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"The LGBT Center OC has been getting many, many calls from gay men and transgender women who are being detained by ICE and who are being criminalized because they were escaping violence and probable death in their countries of origin. How can one abide making a profit from their suffering? Sheriff-elect Barnes has opportunity to rebrand the OC Sheriff's Department from one of secrecy and corruption to one that reflects a changing landscape." – Laura Kantor, LGBT Center of OC.

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revenue to the County in the range of \$22-\$27 million, in reality the agreement is a fixed-rate agreement, not a cost reimbursable agreement, meaning that ICE pays the county a fixed daily rate per bed of \$118 per detainee regardless of the county's actual costs of housing that detainee.<sup>44</sup> Of the \$118 per day, only \$94.15 is allocated to OCSD for security and housing services while \$23.85 is allocated to the Orange County Health Care Agency for medical and mental

health services.<sup>45</sup> The actual cost of incarcerating an individual in the county jail costs roughly \$140 per day.<sup>46</sup> In other words, it is costing Orange County taxpayers more money than ICE pays the county to house immigration detainees. Meanwhile, OCSD is padding its budget with revenue from both ICE and from Orange County taxpayers to house immigration detainees, generating substantial human pain in the process.

## Informal Collaborations and Racial Profiling

Apart from the entanglement with ICE in the OCSD jails and the "Beds for Feds" program, it appears that local officials are working with ICE in more informal ways in

Orange County as well, raising significant concerns about racial profiling and other civil rights violations.

In the Supplemental Agenda Staff Report filed with the Orange County Board of Supervisors in anticipation of the TRUTH Act Forum discussed on page 18, Orange County officials claimed that the Probation Department did not “allow[] ICE access to an[y] adult in Probation’s custody or under Probation’s supervision in 2017.”<sup>47</sup> However, ICE data shows that between FY2015 and FY2018, a number of arrests originated from probation or parole, including 21 arrests in FY2017. Some subset of these were likely referrals by the Orange County Probation Department. The agency known by advocates to tip off ICE agents.

**Figure 8. Orange County ICE ERO Arrests – Probation or Parole**

ICE Arrests	FY2015	FY2016	FY2017	FY2018 (first 8 mos)
Probation and Parole	39	21	21	25
Total	1,449	1,279	1,211	802

Source: Transactional Access Records Clearinghouse (TRAC)  
Immigration and Customs Enforcement Arrests Web Query Tool,  
<http://trac.syr.edu/phptools/immigration/apprehend/>.

A handful of arrests during this period were also likely attributable to incidents of local law enforcement informally contacting ICE after an encounter with a community member. There is a history of this in Orange County. In the mid-2000s, Orange Police Department officers posed as prospective contractors and picked up day laborers outside a home improvement store under the guise of wanting to hire workers for a job. Instead of arresting workers for violating the city’s ordinance prohibiting work solicitation, officers drove day laborers directly to San Clemente checkpoint and handed them over to immigration officials.

More recently, in 2017, a resident was referred to ICE by the Orange Police Department after he attempted to report a crime. People had broken into his car and tried to take his things. Officers who responded to the scene asked him if he was Mexican and asked to see his ID. They then asked if he would go with them to identify someone who may have been an assailant, and after he went with them, proceeded to put him in handcuffs and turn him over to ICE.

Several years ago, federal immigration agents took Edgar Vargas, a Santa Ana resident, into custody as he was driving to court to defend himself against charges associated with an altercation with Santa Ana Police Department officers.<sup>48</sup> Two months earlier, Mr. Vargas had been severely beaten by officers, even after he had surrendered and was lying on the ground. Although officials denied coordinating with ICE, Mr. Vargas’ beating was captured on video and advocates suspect Mr. Vargas’ referral to ICE could have been a way to minimize exposure to police for excessive force. The FBI later launched a federal civil rights violation investigation that resulted in



a finding that Mr. Vargas was a victim of excessive force at the hands of police and the District Attorney eventually dropped four of the five charges initially filed against Mr. Vargas.<sup>49</sup>

The disproportionate scrutiny placed on young men of color by law enforcement in Orange County is likely to also affect students in public schools.<sup>50</sup> To the extent that school resource officers (SROs) are present in schools and subject to department policies that permit cooperation with ICE, they may be contributing to a school-to-deportation pipeline.

Finally, last year, a DACA recipient and LGBT Center of Orange County volunteer, Edgar Torres, was held by the Laguna Beach Police Department in response to an ICE detainer after he was arrested on a DUI charge. He was transferred to ICE custody, in apparent violation of SB 54, and taken to Los Angeles where he was held for hours. While ICE ultimately did not initiate deportation proceedings against Mr. Torres, the incident left him feeling betrayed and fearful.

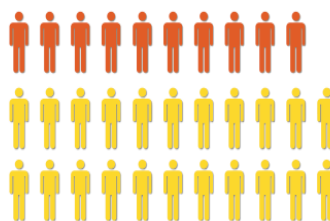
Some police departments within Orange County, such as Laguna Beach and Buena Park, have their own short-term holding facilities or jails. Accordingly, they are bound by the provisions of SB 54. As discussed above at page 10, they may be responsible for a significant number of transfers of local residents to ICE. However, they have so far not made that information publicly available.

## Part 4: Vision for a New Orange County

Political elites in Orange County peddling anti-immigrant policies do so at their own peril. Orange County today is a different place than it was only several decades ago. Whereas 64% of the county was white in 1990, today white residents constitute 44% of



ORANGE COUNTY HAS A POPULATION  
OF 3.2 MILLION WITH NEARLY  
1/3 BEING FOREIGN BORN



the population. Between 2002 and 2010, the county saw a 62% increase in the registration of Latinx voters. By 2020, 50% to 59% of the county's voter base is expected to be Latinx or Asian.

Once known to have the highest percentage of

registered Republicans in the state of California, Orange County politics have experienced a dramatic shift. Since 1990, the Republican registration gain over Democrats has been steadily falling. In 2016, a majority of residents voted for Democratic presidential candidate Hillary Clinton over Donald Trump, a first since 1936. More recently, Orange County made headlines when it voted in all Democratic representatives in the House of Representatives in the mid-term election, a result that

has been attributed to demographic change.<sup>51</sup> Some have said that the “old Orange County” is dead.<sup>52</sup>

According to a 2018 poll conducted by Chapman University, today 83% of Orange County’s residents want to find a solution to the immigration issue that would allow their undocumented neighbors to stay.<sup>53</sup> In this Part, we set forth a vision for a more inclusive future in Orange County and discuss the benefits of a policy platform that would more fully embrace the county’s diverse immigrant population.

## Overcoming the Past

The beginnings of an immigrant inclusive future have already begun to take root in Orange County. One need look no further than the county seat, Santa Ana, where residents in the majority-Latinx city persuaded elected officials to pass a bold sanctuary ordinance to sever its ties with ICE within months after the election of Donald Trump as president.<sup>54</sup> When city leaders were asked why they supported the policy, one leader replied, “[we] want to tell [immigrants] they are going to be protected. If they are going to come for them, they have to come through us first.”<sup>55</sup>

Santa Ana’s sanctuary policy was not the only change that advocates were able to secure in the city. Earlier in 2016, Santa Ana, which had a jail contract with ICE, agreed to begin phasing out the contract and limit the number of beds made available to ICE under its “Beds for Feds” agreement.<sup>56</sup> In February 2017, ICE itself decided to end the contract because the smaller number of beds were no longer serving their needs.<sup>57</sup> Additionally, in July



2017, the city voted to set aside funds for a partnership with the Vera Institute of Justice to provide lawyers for indigent city residents arrested and detained by ICE.<sup>58</sup>

In stark contrast to the cities in Orange County that voted to join the side of the federal government in the Trump administration’s lawsuit against the state of California challenging the VALUES Act, Santa Ana joined an amicus brief supporting California’s

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*“Despite the cruel attacks that have taken place in our immigrant communities here in Orange County, we will continue to defend the values of equity and justice for all, to actively protect our friends and neighbors from federal abuses of power to ensure everyone who calls Orange County home can feel safe.” – Janet Bucio, Coalition for Humane Immigrant Rights.*

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laws.<sup>59</sup> Fullerton also went in a different direction. While it initially expressed interest in supporting the federal government, city leaders ultimately voted not to file anything.<sup>60</sup> These efforts were important because they showed that resistance to the VALUES Act in Orange County was not universal.

## A Blueprint for the Future

There are many reasons for county officials to adopt more immigrant protective policies. The VALUES Act sets a floor, not a ceiling, for these policies. Though the Trump administration has painted a false narrative that jurisdictions that decline to aid the federal government in its immigration enforcement efforts are harboring criminals and making communities less safe, studies show that precisely the opposite is true and that there are many benefits to local communities that come from adopting immigrant-inclusive policies. In this section we discuss the policy considerations and values that should inform Orange County's blueprint for immigration policy going forward.

### ***Transparency and Honest Engagement***

At a minimum, officials should begin being more transparent and honest with community members about the nature of its involvement in immigration enforcement. Nothing requires that local officials work with ICE to facilitate the transfer of residents for arrest and deportation. There is no evidence that doing so serves the public safety. If officials make a policy decision to participate in the efforts of the Trump administration to deport local residents, then they should accept responsibility for that policy and not try to wash their hands clean from its harms.



As discussed in Part 2, the TRUTH Act requires jurisdictions that cooperate with ICE to hold at least one community forum annually to provide information about ICE access in the prior year and consider public comment. Despite multiple requests to hold a forum earlier, the Orange County Board of Supervisors didn't hold a forum in 2018 until December, almost a year after the incidents of ICE access that were the subject of the forum. The forum the Board of Supervisors did hold was a sham. No information about ICE access was provided. (Instead, some data was buried among 639 pages of supplemental agenda materials and "filed" during the forum with no further explanation.) Supervisors said nothing in response to the many comments offered by community members expressing concern about OCSD's relationship with ICE. And Sheriff-elect Barnes was prepared to address the crowd, but was not invited to do

so.<sup>61</sup> Instead of embracing the occasion as an opportunity to engage more meaningfully with the public on these issues, Orange County officials held a forum in name only. It is arguable whether they even complied with the minimum requirements under the law.<sup>62</sup>

## Public Safety and Community Trust

Outgoing Sheriff Hutchens and incoming Sheriff Barnes have often justified their collaboration with ICE in terms of public safety. Like President Trump, they frequently conjure up images of “dangerous” foreigners who seek to do harm to local residents as the targets of its immigration enforcement efforts in the jails. By facilitating their deportation, Hutchens and Barnes reason, the community will be more safe.

The problem with this reasoning is that it is based on “us” versus “them” rhetoric. Instead of treating immigrants and their families as part of our community and therefore our responsibility, it treats them as discardable. It fails to recognize the role they play and the contributions they make in our community. Hutchens’ and Barnes’ reasoning also rests on unfounded assumptions. There is no evidence that shows removing a community member who has committed a criminal offense and the destabilization that can cause is on the whole better for public safety than investing in the rehabilitation and reintegration of that individual. In fact, a recent study shows that jurisdictions with sanctuary policies experience a lower crime rate than those that have chosen to collaborate with ICE.<sup>63</sup>

Sanctuary policies help to ensure that all community members feel safe reporting crimes as victims or witnesses.<sup>64</sup> An advocate with Laura’s House, an organization in Orange County that assists hundreds of survivors of domestic violence annually,

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*“A couple of months ago, there was a drive by shooting in my neighborhood in Fullerton. One young man, a resident of our neighborhood, was grazed in the leg by a bullet. Although a handful of neighbors called the police, including myself, almost all of the neighbors immediately went inside of their homes because they were afraid to interact directly with law enforcement. The shooting victim did not immediately seek medical treatment for fear of putting his immigrant family at risk.” – Bethany A., Fullerton*

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reported in 2017 that she saw a dramatic fall in the numbers of undocumented survivors that sought help in the early months of the Trump administration due to fears about deportation, from nearly half of the more than 70 new cases that the organization received each month to less than one per week.<sup>65</sup> Victims and witnesses may be among those who are arrested by local police and booked into the local jail,<sup>66</sup> and under OCSD’s current policies, they would be vulnerable to arrest by ICE as a result. But it is not only victims and witnesses that need to be able to trust local law

enforcement. For our justice system to work, those who are arrested and not victims themselves must also be willing to cooperate with jail officials’ requests for information, turn themselves in to serve a sentence, report regularly to probation, and comply with other terms, without fear of deportation.

Other initiatives that jurisdictions have explored to build trust with immigrant communities have included bolstering law enforcement agencies' U-visa protocols<sup>67</sup> and empowering local prosecutors to consider the immigration consequences of criminal convictions in the effort to reach a fair and just resolution in criminal cases.<sup>68</sup>

Recent data from the Center on Juvenile and Criminal Justice shows that Orange County's crime rates have been lower than the state average during the entire period when it has had to comply with state sanctuary laws.<sup>69</sup> In June 2018, the OCSD issued a press release announcing that 414 inmates had been released back into the community following their time in

county custody due to the Values Act.<sup>70</sup> 45 of them had been re-arrested.<sup>71</sup> But instead of engaging in fear mongering by highlighting the immigration status of these individuals when status is irrelevant to public safety,<sup>72</sup> county officials should have focused on evidence-based approaches to re-entry such as restorative justice initiatives that can reduce the risk of re-arrest.<sup>73</sup> By transferring community members to ICE, OCSD concedes that they have failed at their primary job function—to rehabilitate individuals. It is not surprising that officials would prefer to scapegoat immigrants than to confront their own failures and scandals. But the deportation of Orange County residents after they have served their time acts as unnecessary double punishment for immigrants and their families.

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"My clients are generally not seeking criminalization and deportation of their partners . . . They more often want a person to get help . . . [and] to have peace and a stable place to live."

– Jane Stoeber, Clinical Professor of Law and Director, UCI Initiative to End Family Violence.

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### ***Fiscal Responsibility and Future Prosperity***

For many years, Orange County was using local taxpayer dollars to pay the salaries of 287(g) officers who were performing federal immigration functions in the county jail. Today, it continues to rely on taxpayer dollars to subsidize its "Beds for Feds" program. As noted above in Part 3, OCSD's contract with ICE is a fixed-rate agreement resulting in about a \$22 deficit per bed per day. OCSD has received a growing share of the county's budget over time. In FY2010-2011, OCSD received a little more than \$453 million, and in FY2017-2018, OCSD received more than \$684—a 50% increase over 7 years.<sup>74</sup>

The county should be more transparent with the public about the actual cost of its partnership with ICE and the degree to which it is being subsidized by local taxpayers. Locking up immigrants for a rogue agency like ICE when the county already has an oversized budget does not make our community healthier or stronger as investing in education, jobs and services can.



Importantly, studies show that jurisdictions with sanctuary policies do better across a range of social and economic indicators. The poverty rate and unemployment are generally lower and the median income generally higher in sanctuary jurisdictions.<sup>75</sup> Residents are also more likely to seek out medical services, including preventative care, leading to overall better health outcomes.<sup>76</sup>

## Part 5: Remaining Questions for Policymakers

This report has highlighted the shifts in Orange County's demographics and residents' political leanings that suggest it is on the cusp of embracing a more immigrant inclusive future. Instead of policy recommendations, we have included in this final part of the report questions that community stakeholders may wish to pose to county leaders in order to begin a dialogue about the future of local immigration policy and practice in Orange County.



### ***Regarding Leadership by the Board of Directors and Incoming Sheriff***

The Orange County Board of Supervisors is comprised of five members, each elected to four-year terms. Supervisors have significant powers, including the ability to enter and terminate contracts with the federal government (e.g. Orange County's "Bed's for Feds" program) and overseeing the budget. Similarly, the Orange County Sheriff is an elected official that also serves four-year terms. The Sheriff has the power to set policy for the OCSD to limit cooperation with the federal government on its agenda of mass deportations.

1. What steps are Orange County officials willing to take to facilitate greater transparency when it comes to county agencies' relationship with ICE?
2. How much taxpayer money is going towards subsidizing county agencies' partnership with ICE annually?
3. Why aren't Orange County leaders doing more to meaningfully investigate the cost and impact of county agencies' ongoing relationship with ICE?
4. Will Orange County leaders denounce the hate speech and agendas of white supremacist groups that have sought to use the immigration issue to drive a wedge between local residents and push immigrants further into the shadows?
5. What mechanisms will Orange County officials set up to ensure that the input of immigrant community members is gathered and taken into account in local policymaking?
6. Will Orange County leaders commit to learning more about federal immigration law and policy so they can better understand who their federal partners are and what families face after community members are turned over to ICE?

7. Why aren't Orange County officials willing to consider available studies and evidence on the benefits of immigrant protective policies?

### **Regarding Orange County's Entanglement with ICE**

To truly protect the safety and well-being of all Californians and ensure that local taxpayer dollars are not going toward separating families and destabilizing immigrant communities, Orange County officials should draw a bright line between the functions of local government officers and ICE.



8. If our criminal system has determined that persons are safe for release once they have served their time and completed the necessary requirements in their case, why does the OCSD insist on punishing immigrants a second time by turning them over to ICE for deportation?
9. What data supports the claim that it makes the public more safe to remove a class of community members entirely, leaving their broken families behind, rather than to invest in their successful re-integration?
10. What effort is the OCSD making to ensure that it is meeting its primary function of rehabilitating community members who pass through its jails?
11. What efforts has the OCSD made to measure the impact of its policies in terms of unreported crimes or uncooperative witnesses or defendants?
12. What training and accountability measures are in place to ensure that OCSD personnel are aware of their obligations under the VALUES Act and TRUTH Act?
13. What information does OCSD share with ICE about inmates, directly and indirectly, and how does ICE use that information?
14. Are there any other Orange County agencies that are sharing information with ICE, such as the Probation Department? If so, under what circumstances is that information shared with ICE?
15. What is OCSD's protocol for releasing a person from custody (whether the release is scheduled or unscheduled) and how does that differ if a person is subject to an ICE detainer?
16. Why do you Orange County officials continue to claim that working with ICE makes the public more safe when studies show local law enforcement entanglement with ICE is correlated with higher crime rates and more victimization?
17. Will sheriff-elect Barnes continue the policy of his predecessor of publicizing the release dates of immigrants who do not have any serious criminal history in order

to get around the VALUES Act, even though it may endanger the safety of those being released?

***Regarding the “Beds for Feds” Program***

Although Santa Ana ended its “Beds for Feds” contract with ICE, Orange County's contract is still operational. As explained above, the costs to detain persons for ICE imposes a burden on local taxpayers and conditions inside the jails are deplorable.

18. How much taxpayer money is going towards subsidizing the detention of immigration detainees for ICE?
19. What steps are Orange County officials taking to monitor and improve conditions inside the county jails?
20. Other jurisdictions in California have recognized that the detention of immigrants is morally wrong and are phasing out their IGSA contracts with ICE. What will be the future of Orange County's contract with ICE?

## Endnotes

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34 At the end of the Obama administration, federal officials attempted to prioritize enforcement efforts and narrow the instances under which an ICE detainer would be issued through the Priority Enforcement Program ("PEP"). <https://www.ice.gov/pep>. PEP was not without problems, but represented a far less haphazard approach than that taken by the current administration in its interior enforcement policies. See, e.g., Exec. Order No. 13768, 82 Fed. Reg. 8799 § 5 (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/> (listing as enforcement priorities seven stunningly broad categories of people and conduct).

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## APPENDIX A

### Orange County Sheriff's Department's Policy on ICE Access

#### 1206– Immigration

Although enforcing immigration law is a federal government responsibility and not shared by members of OCSD, OCSD may allow members of Immigration and Customs Enforcement (ICE) into our custodial facilities for the purpose of interviewing inmates for immigration violations, provided the requirements of Government Code section 7283, et seq (the “Truth Act”) are met. Members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or that individual has been convicted of the crimes, or otherwise has met the criteria set forth in Government Code sections 7282 and 7282.5 (the “Trust Act” as amended by Senate Bill 54 (the “California Values Act”)).

#### 1206.1 – Definitions

- a) **Hold Request** means a federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D.
- b) **Notification Request** means an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N.
- c) **Transfer Request** means an Immigration and Customs Enforcement 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.
- d) **Judicial Probable Cause Determination** means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.
- e) **Judicial Warrant means** a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

#### 1206.2 – Immigration Interview Procedure

- a) The Facility Watch Commander shall be notified of an ICE Agent’s arrival and request to interview inmates for immigration violations.
- b) Prior to being interviewed, a Classification Deputy will provide the inmate with a written consent form (Truth Act Interview Consent Form) which is available in one of eight languages as follows:
  - 1. English
  - 2. Chinese
  - 3. Farsi
  - 4. Korean
  - 5. Spanish
  - 6. Tagalog
  - 7. Vietnamese
  - 8. Arabic
- c) The form will explain the purpose of the interview, the voluntary nature of the interview, and that the inmate may decline to be interviewed or may choose to be interviewed only with his or her attorney present.
- d) If the inmate chooses to have his or her attorney present, the interview will be postponed until the attorney can be present.
- e) Upon completion of the written consent form, the inmate will be provided with a duplicate copy and the original will be placed in the inmate’s record jacket.

- f) If the inmate agrees to be interviewed, a Classification Deputy will be assigned to escort the inmate to the ICE Agent's location.

#### 1206.3 –Receiving a Notification/Transfer Request

- a) Upon receiving a Notification/Transfer Request, Inmate Records shall provide a copy of the Notification/Transfer Request for the referenced inmate to Classification.
  - 1. This includes a Notification/Transfer Request placed by persons outside of OCSD, or already lodged on an inmate prior to their intake or after intake when the OCSD becomes aware of such Notification/Transfer Requests.
- b) The on-duty Classification Sergeant, or in his or her absence, the on-duty Operations Sergeant will designate an on-duty Classification deputy or other deputy to provide a copy of the Notification/Transfer Request to the inmate and inform the inmate whether OCSD intends to comply with the Notification/Transfer Request in accordance with Government Code section 7282, et seq.(the "Trust Act", as amended by Senate Bill 54 (the "California Values Act"))).
- c) The on-duty Classification Sergeant, or in his or her absence, the on-duty Operations Sergeant will designate an on-duty Classification deputy or other deputy to provide the Truth Act Notification form to the inmate to complete the name and address of the inmate's attorney or other person whom the inmate may designate for the purpose of OCSD providing notice to that attorney or other person if ICE is notified of the inmate's release date.
- d) Upon completion of the top portion of the Truth Act Notification form, the Classification deputy or other deputy will return the form to Inmate Records and the form will be placed in the inmate's Inmate Record Jacket.

#### 1206.4 – Screening Inmates in Accordance with the Trust Act and the California Values Act

- a) All inmates who have a Notification/Transfer Request will be evaluated in accordance with Government Code sections 7282 and 7282.5, which criteria are set forth in CCOM 1206.6. The evaluation will be conducted by an on-duty Classification Deputy designated by the on duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant.
- b) OCSD will comply with Notification/Transfer Requests by notifying ICE and releasing the inmate to ICE custody when the referenced inmate qualifies in accordance with Government Code sections 7282 and 7282.5.
  - 1. Inmates who qualify under Government Code sections 7282 and 7282.5 may be processed for release at Sentence Ending Date (SE Date) or Pre-trial release and released in-custody to ICE.
    - a. These inmates will not be held past their release date.
    - b. No inmate will be detained or held on the basis of an ICE Hold Request.
  - 2. ICE will be notified in a timely manner for all inmates who qualify under Government Code sections 7282 and 7282.5 to afford ICE the opportunity to pick up the inmate. ICE will not be notified if the inmate does not qualify under Government Code sections 7282 and 7282.5.

#### 1206.5 – Release of Inmates with a Notification/Transfer Request

- a) Records Supervisors will notify the on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant when an inmate with a Notification/Transfer Request is preparing for release.
- b) The on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification deputy to screen the inmate per section 1206.4 above.
- c) When ICE is notified that an inmate is being, or will be released, on a certain date, the on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification Deputy to promptly complete the bottom portion of the Truth Act Notification form and provide a copy of the original to the inmate, mail a copy of the original to the inmate's attorney or other person designated by the inmate and return the original to the inmate's Inmate Record Jacket.

- d) Members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or that individual has been convicted of the crimes or otherwise has met the criteria set forth in Government Code sections 7282 and 7282.5 (see CCOM 1206.6).

#### 1206.6– Criteria for Responding to a Notification/Transfer Request

- a) OCSD personnel may provide information in response to a Notification Request, or may transfer an inmate to immigration authorities only under the following circumstances, as permitted by Government Code sections 7282 and 7282.5:
  - 1. The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code. (See below for list of serious felonies and violent felonies)
  - 2. The individual has been convicted of a felony punishable by imprisonment in the state prison.
  - 3. The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:
    - a) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.
    - b) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.
    - c) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.
    - d) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.
    - e) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.
    - f) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.
    - g) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.
    - h) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.
    - i) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.
    - j) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.
    - k) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.
    - l) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).
    - m) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.
    - n) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.
    - o) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

- p) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.
  - q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.
  - r) Possession or use of a firearm in the commission of an offense.
  - s) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.
  - t) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.
  - u) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.
  - v) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.
  - w) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.
  - x) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.
  - y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.
  - z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.
  - aa) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.
  - bb) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.
  - cc) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.
  - dd) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.
  - ee) A violation of subdivision (c) of Section 20001 of the Vehicle Code.
4. The individual is a current registrant on the California Sex and Arson Registry.
  5. The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.
  6. In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.
  7. In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall additionally have discretion to cooperate with immigration officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6.
- b) Serious Felonies identified in Penal Code section 1192.7(c)
1. Murder or voluntary manslaughter;
  2. Mayhem;
  3. Rape;



4. Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
5. Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
6. Lewd or lascivious act on a child under 14 years of age;
7. Any felony punishable by death or imprisonment in the state prison for life;
8. Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
9. Attempted murder;
10. Assault with intent to commit rape or robbery;
11. Assault with a deadly weapon or instrument on a peace officer;
12. Assault by a life prisoner on a non inmate;
13. Assault with a deadly weapon by an inmate;
14. Arson;
15. Exploding a destructive device or any explosive with intent to injure;
16. Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
17. Exploding a destructive device or any explosive with intent to murder;
18. Any burglary of the first degree;
19. Robbery or bank robbery;
20. Kidnapping;
21. Holding of a hostage by a person confined in a state prison;
22. Attempt to commit a felony punishable by death or imprisonment in the state prison for life;
23. Any felony in which the defendant personally used a dangerous or deadly weapon;
24. Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
25. Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
26. Grand theft involving a firearm;
27. Carjacking;
28. Any felony offense, which would also constitute a felony violation of Section 186.22;
29. Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
30. Throwing acid or flammable substances, in violation of Section 244;
31. Assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;
32. Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5;
33. Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
34. Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
35. Continuous sexual abuse of a child, in violation of Section 288.5;
36. Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100;
37. Intimidation of victims or witnesses, in violation of Section 136.1;
38. Criminal threats, in violation of Section 422;
39. Any attempt to commit a crime listed in this subdivision other than an assault;

40. Any violation of Section 12022.53;
  41. A violation of subdivision (b) or (c) of Section 11418; and
  42. Any conspiracy to commit an offense described in subdivision (c) of Section 1192.7.
- c) Violent Felonies identified in Penal Code Section 667.5(c)
1. Murder or voluntary manslaughter.
  2. Mayhem.
  3. Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
  4. Sodomy as defined in subdivision (c) or (d) of Section 286.
  5. Oral copulation as defined in subdivision (c) or (d) of Section 288a.
  6. Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
  7. Any felony punishable by death or imprisonment in the state prison for life.
  8. Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
  9. Any robbery.
  10. Arson, in violation of subdivision (a) or (b) of Section 451.
  11. Sexual penetration as defined in subdivision (a) or (j) of Section 289.
  12. Attempted murder.
  13. A violation of Section 18745, 18750, or 18755.
  14. Kidnapping.
  15. Assault with the intent to commit a specified felony, in violation of Section 220.
  16. Continuous sexual abuse of a child, in violation of Section 288.5.
  17. Carjacking, as defined in subdivision (a) of Section 215.
  18. Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
  19. Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.
  20. Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.
  21. Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
  22. Any violation of Section 12022.53.
  23. A violation of subdivision (b) or (c) of Section 11418.

#### 1206.7 – Public Access to Records

Upon receiving any request pursuant to the California Public Records Act, GOVT. CODE §§ 6250 – 6276.48 for information related to ICE’s access to individuals, responsive records shall be produced consistent with the Act’s requirements.

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The community members we serve have been suffering from the xenophobic, Islamophobic, racist and anti-immigrant policies passed by [the Trump] administration and also previous administrations . . . National security, public safety, crime prevention. These are the buzz words that law enforcement and public officials like to throw around, when they are taking things from our people. This is the narrative that we must change.

**ASMAA AHMED**

**COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS, GREATER LOS ANGELES AREA**

