

Immigration Enforcement and California



IMMIGRANT LEGAL RESOURCE CENTER

1458 Howard Street | San Francisco, CA 94103

INFO@ILRC.ORG

Agenda

- Introduction to Immigration Enforcement
- Overview of Relevant CA Laws
- What other counties do

Introduction to Enforcement

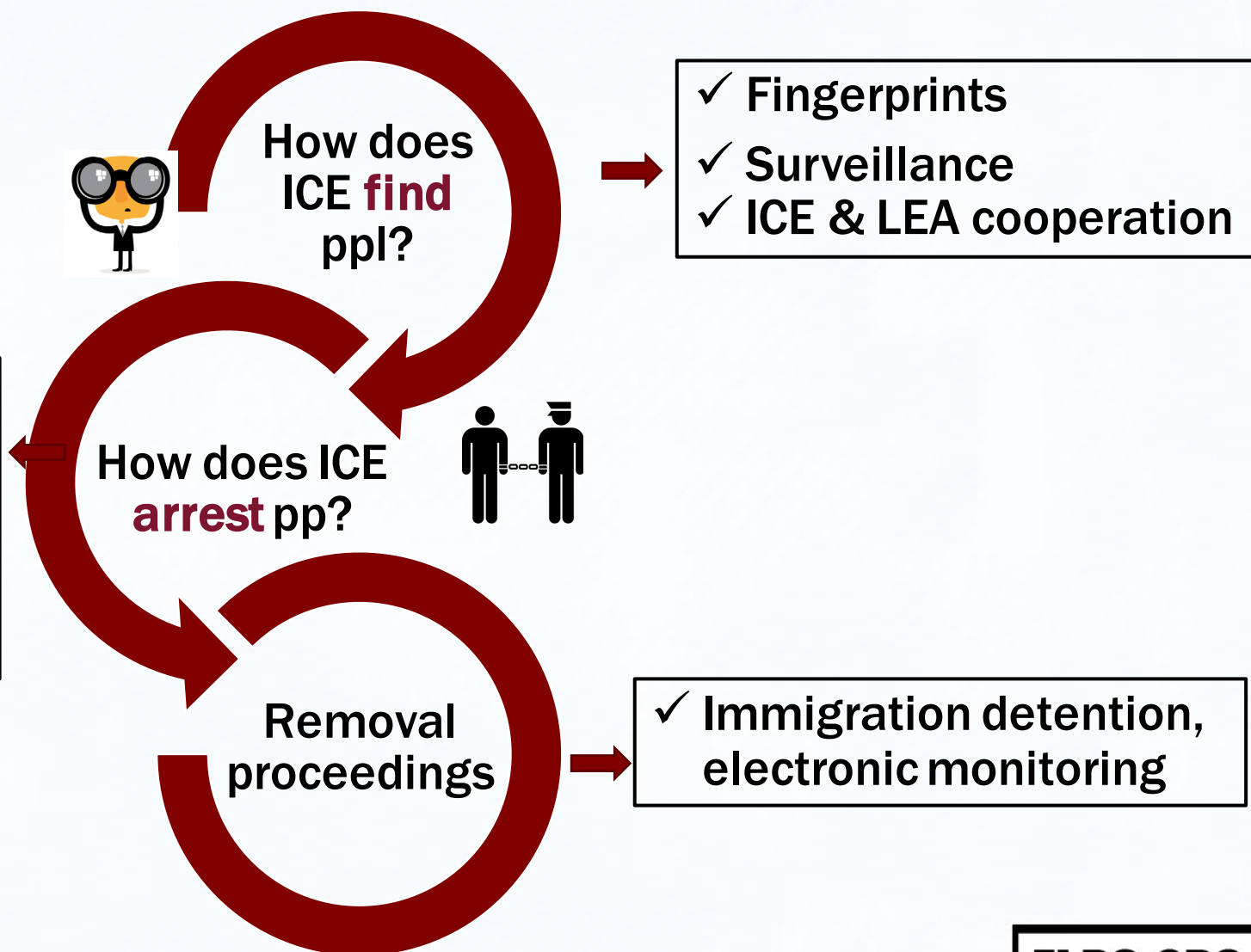
How ICE Finds and Arrests People

What is immigration enforcement?

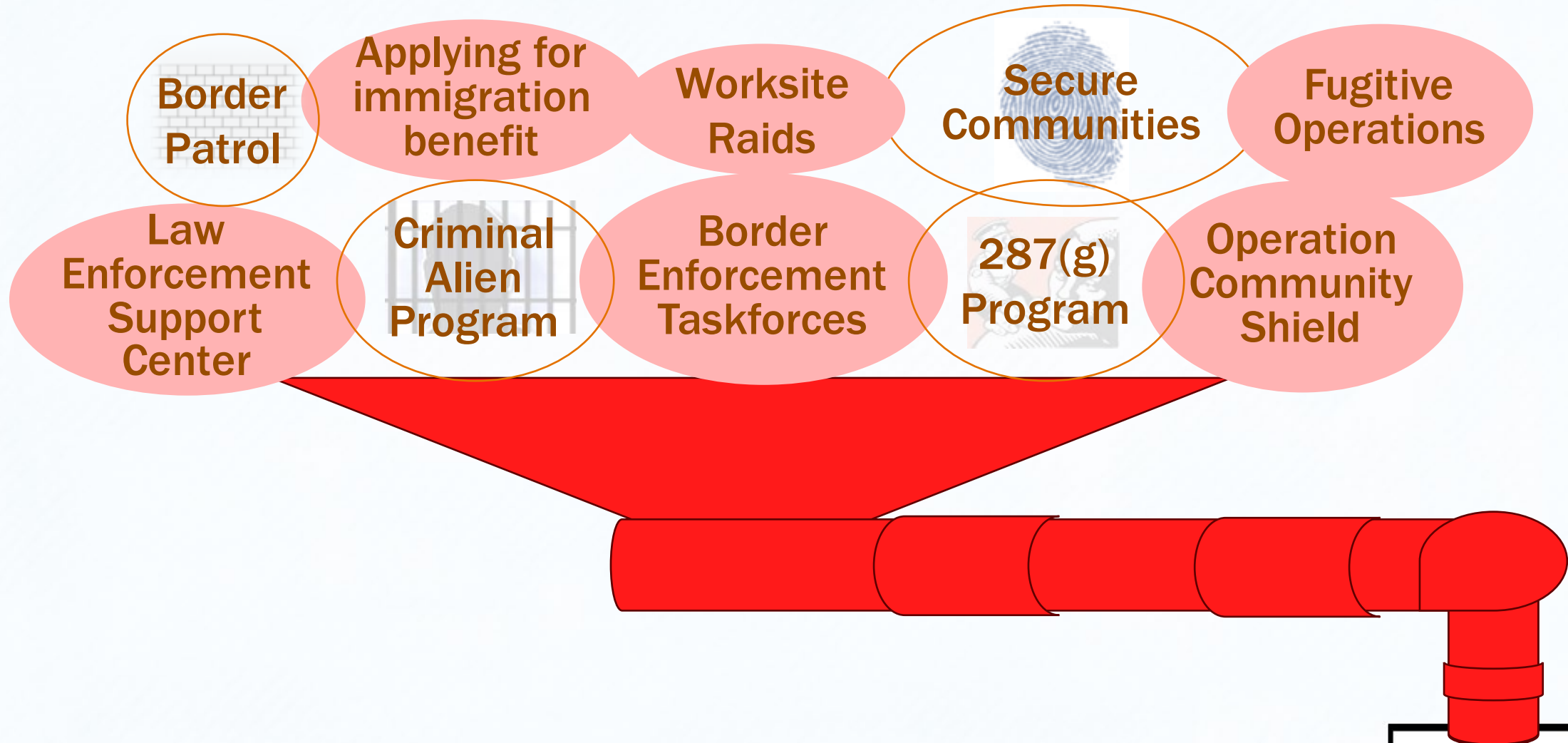
What is enforcement?

In practice - the manner in which immigration officials identify, detain and deport immigrants

- ✓ In jails/prisons: I-247 Holds, Notification, Transfer Requests
- ✓ In community: home raids, work raids, etc.



How ICE finds people: Deportation Funnel



ICE's Enforcement Program

- **Secure Communities (“S-Comm”)**: program that relies on fingerprint data at the time of a person’s booking into a local jail to identify noncitizens who may be deportable
 - Potentially deportable → ICE sends detainer request to local jail



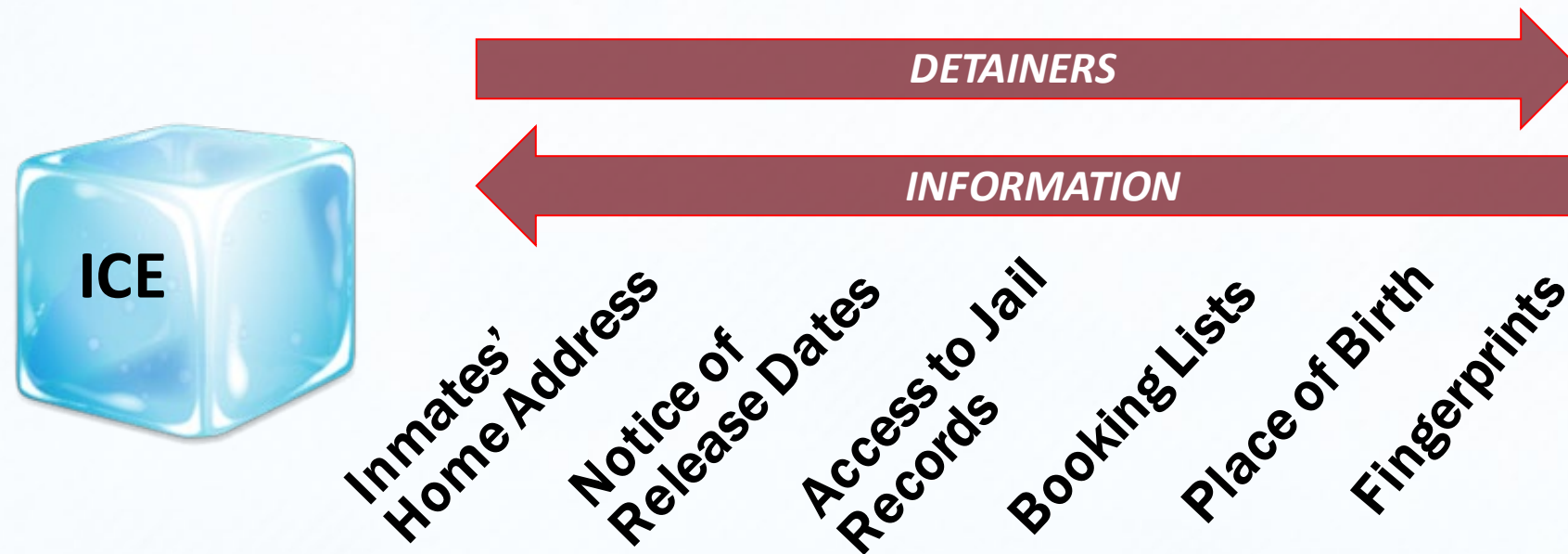
How S-Comm Works



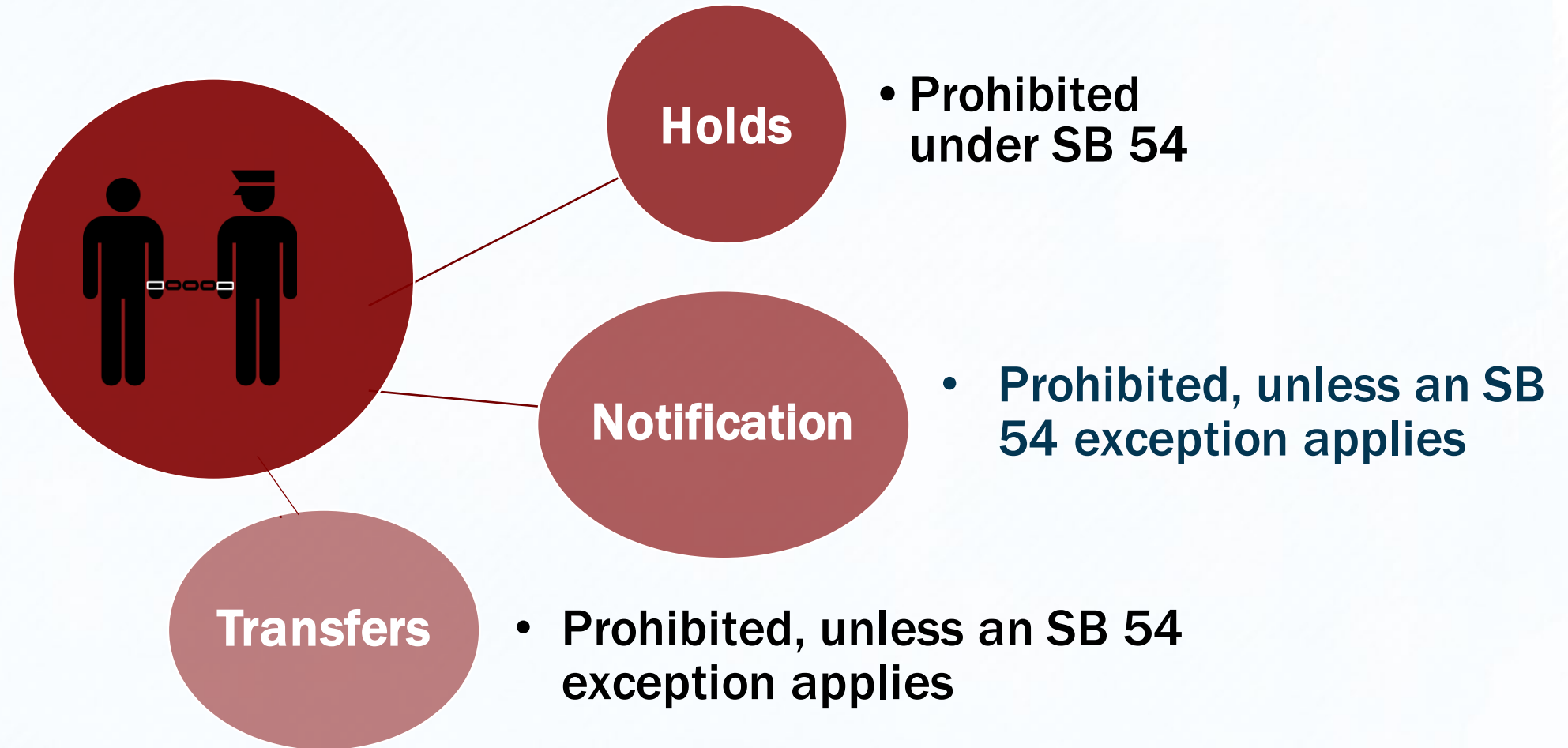
How ICE finds people: CAP

The Criminal Alien Program includes all kinds of partnerships to **share information** and apprehend immigrants from state, local, and federal jails.

- ICE desk in the jail [prohibited by SB54]
- Coordinated transfers [limited by SB54]
- ICE interrogations while in local custody [limited by Truth Act]



How does ICE **arrest** people in the criminal system?



ICE Detainers

Requests from ICE to local law enforcement

**PURPOSE =
Facilitate ICE
arrest**

• How?

- NOTIFY of Release
- HOLD beyond crim custody (illegal in CA)
- HANDOFF within secure part of jail

**How do I
know if my
client has
an I247?
TRUTH Act**

ANNOTATED IMMIGRATION DETAINER (I-247A)

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____ File No: _____
Event #: _____ Date: _____

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency) FROM: (Department of Homeland Security Office Address)

Name of Alien: _____
Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2):

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2):

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____ if you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- Maintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

(Name and Title of Immigration Officer) _____ (Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other question or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

- In person by inmate mail delivery other (please specify): _____

(Name and Title of Officer) _____ (Signature of Officer) (Sign in ink)

DHS Form I-247A (3/17) Page 1 of 3

The third box says that ICE is relying on database information to justify the detainer. This practice has been challenged in ongoing litigation because the databases are unreliable.

When the fourth box is checked, ICE is alleging that your client admitted something at some point about their legal status to an immigration official.

The ICE detainer form includes two primary requests: 1) notice of release, and 2) hold for an extra 48 hours.

An ICE detainer does not provide legal authority to make an arrest or detain someone, because it is up to state law to define the arrest and detention powers of state and local law enforcement.

The fact that ICE has checked one of these boxes does not necessarily meet the requirements for a legal arrest under the Fourth Amendment.

Foreign birth plus a lack of any other information in immigration databases is not sufficient probable cause to issue a detainer.

48 hours is the maximum time ICE requests a person be held on a detainer. In contrast to prior policy, the 48 hours includes nights and weekends.

The form says it must be served on the immigrant for it to take effect.

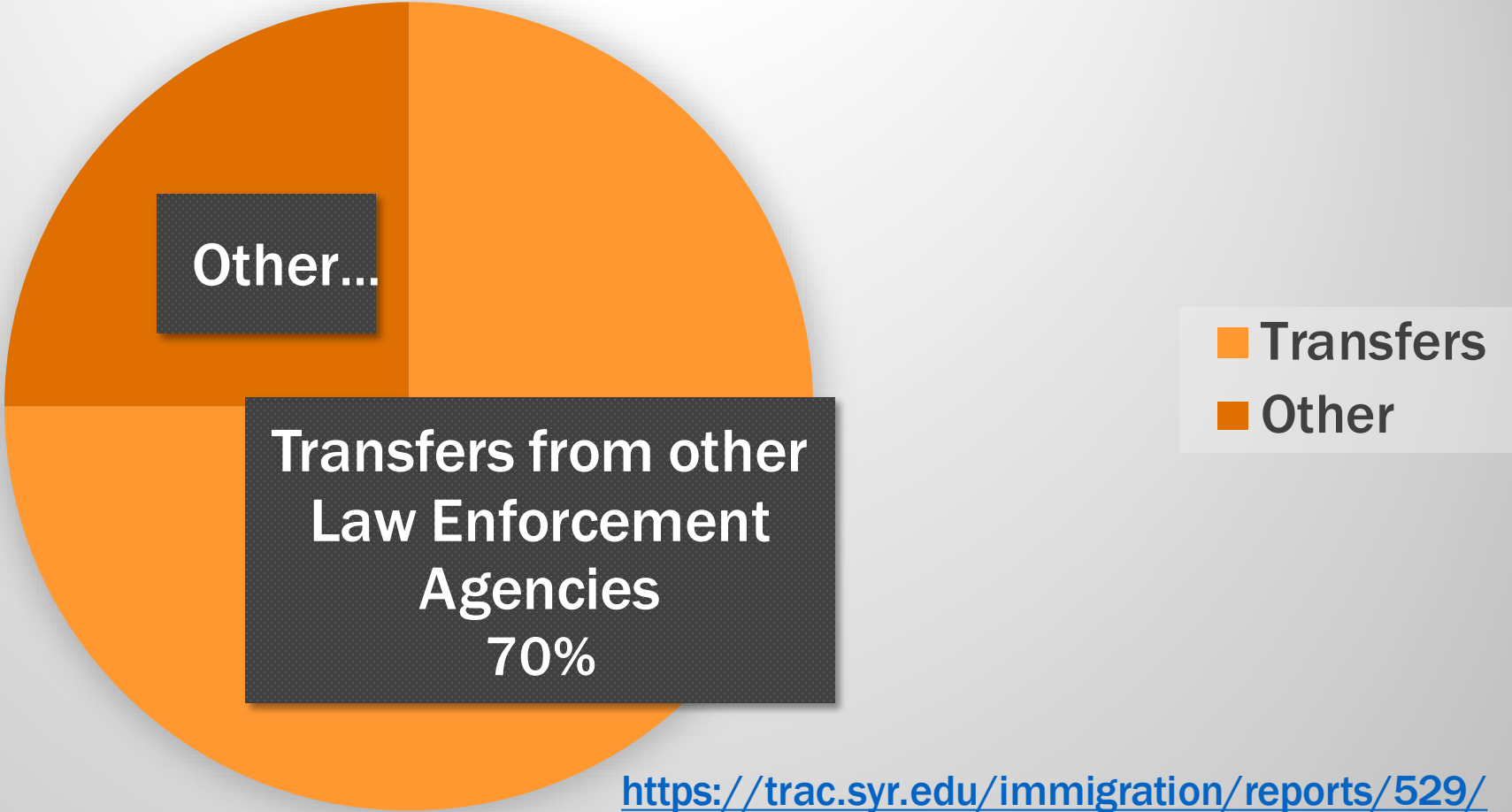
ICE says this form should not affect bail or other custody decisions. In practice, however, courts and jails often use detainers against people.

There is no process for the immigrant to contest the information or allegations made on the form.

ICE requests the local agency to sign that the detainer was served on the detainee. It is not clear what, if anything, ICE will do if this is not complied with.

Why the focus on law enforcement \leftrightarrow ICE?

ICE Arrests



<https://trac.syr.edu/immigration/reports/529/>

Overview of Relevant CA Laws

The Statutes

- **California Values Act** – Govt C 7284. Restricts many forms of cooperation between LEA and ICE, and other public agencies and ICE. (SB 54, 1.1.18)
- **TRUST Act** – Govt C 7282, 7282.5. Restricts when LEA can cooperate with ICE requests for notification or transfer, but contains many exceptions based on criminal record. (SB 54 amended, 1.1.18)
 - Previously focused on detainers/holds (now unlawful under Values Act)
- **TRUTH Act**– Govt C 7283. Before ICE can interview a detained person, LEA must provide person with written consent form. (1.1.17)

ICE Interviews:



- Before ICE can interview someone, LEA must provide person a written consent form which allows person to:
 - Decline the interview
 - Proceed with the interview, but only with an atty present; OR
 - Proceed with the interview (w/out an atty)
- *If Sheriff provides ICE with notification that an individual is being, or will be, released on a certain date, Sheriff has to promptly provide the same notification in writing to the attorney (Cal Gov't Code 7283.1(c))

Values Act: Notification and Transfer

Limits ICE's ability to *arrest* people in criminal custody by →



LEA prohibited from responding to ICE notification requests or ICE transfer requests, unless certain exceptions apply









What's notification? Voluntary request from immigration asking for the individual's release date so that ICE can arrest the individual at release from criminal custody



What's a transfer request? A request from immigration asking LEA to facilitate the transfer of an individual in its custody to ICE or CBP






POLICE-ICE TACTIC

UNDER SB 54

| | |
|--|--|
| <p>Immigration Holds</p>  | <p>Prohibited.</p> |
| <p>Making arrests on civil immigration warrants</p>  | <p>Prohibited.</p> |
| <p>287g</p>  | <p>Prohibited.</p> |
| <p>Asking about immigration status or using immigration agents as interpreters.</p>  | <p>Prohibited.</p> |
| <p>Sharing personal info with ICE (e.g., work, home addresses)</p>  | <p>Prohibited unless publicly available.</p> |
| <p>Notifying ICE of release dates</p>  | <p>Prohibited unless:</p> <ul style="list-style-type: none"> Revised TRUST Act exception applies, including: <ul style="list-style-type: none"> Conviction for a felony punishable by imprisonment in state prison at any time Conviction within past 15 years for any other specified felony. The 15-year "wash" is an improvement on the old TRUST Act standard. Conviction within the past 5 years for a misdemeanor for a specified wobbler offense. Charges for a crime that is serious, violent, or punishable by a term in state prison if finding of probable cause has been made by a magistrate pursuant to PC 872. If release dates/times are already publicly available, can be shared |

POLICE-ICE TACTIC

UNDER SB 54

| | |
|--|---|
| <p>Transfers to ICE</p>  | <p>Prohibited unless:</p> <ul style="list-style-type: none"> Revised TRUST Act exception applies (see above under notifications) Warrant or probable cause determination from a judge that someone has violated federal criminal immigration law. <p>Local law enforcement required to report number of transfers and basis for transfer to Attorney General's Office.</p> |
| <p>Local arrests for "criminal" violations of immigration law</p>  | <p>Prohibited except local law enforcement may arrest someone for unlawful re-entry following deportation <i>if</i></p> <ul style="list-style-type: none"> The re-entry is detected during an unrelated law enforcement activity, and The person has a prior "aggravated felony" conviction <p>Any person arrested for unlawful reentry may be transferred to ICE only if a revised TRUST exception applies.</p> |
| <p>ICE interviews in jail and prison</p>  | <p>TRUTH Act protections essentially expanded to prisons (can't be interviewed by ICE unless sign consent form prior to interview). Prohibition on providing office space exclusively dedicated to ICE in local jails.</p> |
| <p>Joint Task forces</p>  | <p>Some limitations and reporting requirements imposed.</p> <ul style="list-style-type: none"> Primary purpose of task force must be unrelated to immigration enforcement, and Participation does not violate any local law or policy. Local law enforcement required to report information about joint taskforce operations to CA Attorney General and information is available as a public record. |
| <p>Databases</p>  | <p>Attorney General will draft advisory guidelines to ensure that databases are not used for immigration enforcement. State and local law enforcement agencies are encouraged but not required, to adopt guidelines.</p> |

Criminal Exceptions

| Offense | Conditions |
|---|---|
| Serious or violent or state prison felony | -Conviction -Being <i>held to answer</i> is enough, even without a conviction (for notification) |
| Designated Felonies: | Conviction within the last 15 years |
| Designated wobblers: Misdemeanor | Conviction within the last 5 years |
| felony committed while on release | Conviction |
| Sex, arson registrant | Current |
| Federal offenses | Outstanding felony warrant, or conviction of federal offense that is aggravated felony |

Other Counties and ICE

California counties which limit with ICE in some capacity

1. Santa Clara no cooperation
2. San Joaquin County
3. Humboldt County
4. San Mateo
5. Alameda
6. Contra Costa
7. Marin
8. Los Angeles
9. San Francisco

These counties generally do not transfer anyone to ICE ... talk to ILRC or others about details on these policies!



KARL MONDON — STAFF PHOTOGRAPHER

The Santa Clara County Board of Supervisors chamber is packed Tuesday for a hearing about the county's sanctuary policy.

What If State Law Was Violated?

- Timely File County Claim (May lead to litigation)
- Certain SB 54 Violations May Give Rise To Suppression Defenses in Immigration Court
 - Argue SB 54 Violation (i.e.: illegally holding someone) constituted an illegal seizure in violation of the Fourth Amendment.
- Raise violations with *local organizers and advocacy groups!*

Questions