

DOES YOUR JAIL COOPERATE WITH ICE?





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SUMMARY

The California Values Act (SB 54) went into effect in January 2018. The law limits local and state law enforcement entanglement with federal immigration enforcement. **The overall impact of SB54 and other sanctuary laws has been positive and the number of people arrested by ICE at local jails across California has decreased.**

In Marin County, the Sheriff maintains entanglement with ICE through information sharing practices and by allowing ICE to access the county jail to arrest non-citizens. The Sheriff's Office recently modified its policy, which resulted in significantly fewer people being arrested by ICE in 2019.

As part of our advocacy efforts, **Canal Alliance** partnered with the **Immigrant Legal Resource Center (ILRC)** to develop this report, which features an in-depth analysis of what's happening at the Marin County jail, and provides detailed information about the impact that the Sheriff's new policy has had in Marin County.

In these pages, the immigrant community and advocates alike will find important Know Your Rights information and key insights to help advance local advocacy efforts.

I. INTRODUCTION

The purpose of this report is to serve as a resource regarding the level of entanglement between the Marin County's Sheriff's Office (MCSO) and Immigration and Customs Enforcement (ICE). It also provides a **Know Your Rights** guide for immigrants relevant to Marin County jail policies and serves as a source of information for advocates and the community at large.

Each year across the country, thousands of immigrants are transferred to ICE from local jails.¹ Therefore, local policies in regard to cooperation with ICE have a significant effect on our communities. Marin County is no different: in recent years, ICE's entanglement with MCSO has resulted in many arrests happening at the jail and subsequent deportations of non-citizens.

Canal Alliance and the Immigrant Legal Resource Center (ILRC) published a report in February 2018 examining the level of cooperation between the Marin County Sheriff's Office and ICE.² The findings presented at that time emerged from a California Public Records Act (PRA) request filed in July 2017 by Canal Alliance and the ILRC, and inquiries made to public officials, including MCSO.

Since publication of this first report, several new developments have prompted this update:

- 1) implementation of the California Values Act,³ also known by its legislative bill number SB 54,
- 2) two TRUTH Act Community Forums⁴ hosted by the Board of Supervisors (on December 6, 2018 and July 9, 2019⁵), and
- 3) MCSO updated its policy regulating its level of cooperation with ICE in November 2018.⁶

The Sheriff's updated policy has resulted in a significant decrease in the number of immigrants turned over to immigration officials from the Marin County Jail. Nonetheless, Canal Alliance and ILRC will continue to closely monitor the implementation of the California Values Act in Marin County, and provide future updates to this report if necessary.

It should be noted that **other law enforcement agencies in Marin may also engage in information-sharing practices and other types of cooperation** under certain circumstances. However, this report is limited to jail policies developed and carried out by the MCSO within the context of California state law.

II. CALIFORNIA VALUES ACT: SB 54

ICE relies heavily on local law enforcement agencies (LEAs) to find and deport immigrants. As a result, contact with law enforcement is the main pipeline through which immigrants are arrested by ICE, and county jails make up a significant part of the system that enables deportation in the United States.⁶ In response to this trend, a series of California laws has been implemented to protect immigrants, which has reduced the level of entanglement between LEAs and ICE.

In effect since January 2018, SB 54 restricts LEAs from using resources to assist ICE in deportation efforts. Specifically, SB54 prohibits LEAs from assisting in the identification, detention, arrest, and transfer of immigrants to ICE, with the exception of certain criminal history and charges. Furthermore, SB 54 prohibits LEAs from looking into an individual's immigration status, using immigration agents as interpreters, and providing immigration agents with exclusive office space. While SB 54 creates a new state standard, it is import-

ant to understand that nearly all ICE cooperation is voluntary and stronger policies may be adopted at the discretion of LEAs, including the Marin County Sheriff.⁸

Since the implementation of SB 54, there has been a significant decrease in the number of community members arrested by ICE at local jails statewide. During the first five months of implementation – from January through May 2018 – ICE arrests at local jails decreased 41% compared with the five months prior to implementation.¹⁰ However, some 40% of LEAs statewide are not in compliance with SB 54, underscoring the need for more protections for the community.

The local policy analysis in this report aims to ensure that Marin County is, at a minimum, in full compliance with state law. Canal Alliance and ILRC urge MCSO to implement stronger policies as permitted and encouraged by SB 54 and to consider total separation with ICE.

III. LOCAL ENTANGLEMENT WITH ICE

How does ICE find people in local jails?

Before describing some commonly used practices that facilitate deportations, it is important to understand how ICE finds people in local jails. When someone is booked at a local jail, fingerprints are sent to a national database, which is used by multiple government agencies,⁹ including the FBI and the Department of Homeland Security (DHS).¹¹ Prior contact with ICE or Customs and Border Patrol (CBP) can result in a “*flag*,” which is viewable by ICE. After an individual is “*flagged*,” ICE may send a request to the local jail to be notified of the inmate’s release date and time. ICE can then use this information to arrest a person at the jail or immediately after they are released.

COMMON ENTANGLEMENT TACTICS BETWEEN LOCAL POLICE AND ICE

1) ICE Interviews

ICE agents enter jails to interview immigrants in order to arrest them and place them in deportation proceedings. They might also pressure them into signing a stipulated removal order and agree to their own deportation.

The Law:

Law enforcement is not required to facilitate these interviews and people detained can refuse to be interviewed by ICE agents. When LEAs allow these interviews to occur in jail, the TRUTH Act requires the Sheriff to provide a written consent form to any person that ICE has requested to interview. Within the consent form, individuals are allowed to refuse the interview, to agree to the interview only if an attorney is present, or to agree to the interview without an attorney.

What's Happening in Marin:

In 2018, ICE submitted requests to interview 27 people detained at the County Jail and seven of those detainees agreed to an interview. Of those seven, none ended up being interviewed because ICE officials did not show up.

So far in 2019, ICE has not conducted any interviews at the jail. The Sheriff continues to permit ICE to conduct interviews at the jail, but is following the law with regard to providing consent forms prior to any ICE interviews. This mandatory consent, combined with community advocacy efforts around Know Your Rights, has caused almost all ICE interviews to be turned down by people in the Marin County Jail.

2) ICE Notifications

If ICE receives a “flag” on any person through their database (as described above) this person becomes of interest to the agency as potentially deportable.¹² ICE may then request that the Sheriff's Office provide notice of that person's release date from jail.¹³ This voluntary advance notification provides ICE with the opportunity to arrest the person upon release from jail.

The Law:

Under California Law, the Sheriff is required to give a copy of the ICE request to the detainee and inform them whether they intend to comply with the request.

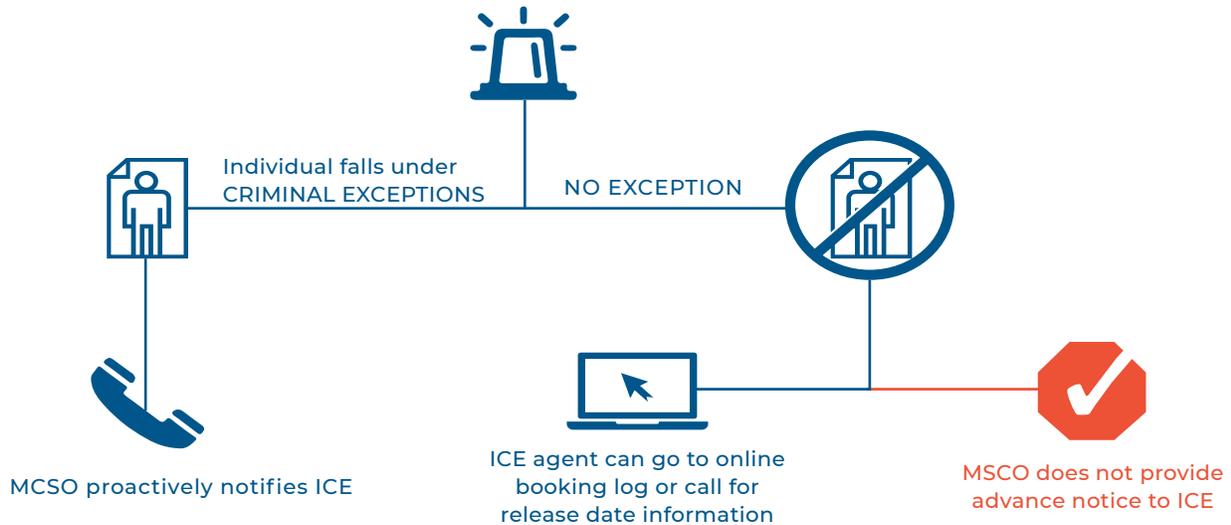
Additionally, if the Sheriff decides to cooperate with ICE and discloses the release date, the Sheriff must also inform the individual and another person of their choosing (i.e. their attorney or relative) that they have provided the release date to ICE.

SB 54 restricts LEAs from responding to notification requests from ICE, with two key exceptions: under SB 54, information that is **publicly available** can be shared with ICE, and the other is based on certain **criminal exceptions**.¹⁴

What's Happening in Marin:

Although not legally required to provide ICE with this information, the MCSO routinely complied with nearly all notification requests in the past. In Sheriff Doyle's own words at the second TRUTH Act Forum, “before the change in December, we were notifying ICE of everybody they were interested in that was going to be released.” Before SB 54 went into effect, ICE made an average of 133 notification requests per year at the Marin County Jail, 92% of which pertained to Latinos.¹⁵

NOTIFICATION REQUEST (I-247)



In 2018 (prior to the change of policy by the Sheriff), MCSO received 188 notification requests from ICE. Based on SB 54's publicly available information exception, the jail routinely responded to all requests for release dates regardless of what crime a person was charged with, and would directly contact ICE with the requested information.

Under the Sheriff's new policy, announced in November 2018, jail personnel will only proactively notify ICE if an individual was arrested or convicted of certain criminal offenses described in his new policy.¹⁶ This means that the jail could honor a notification request by ICE, based solely on charges made by law enforcement, even if these charges are later dismissed or the individual is charged with a less serious offense.

Under the updated policy, between January and August 2019, MCSO complied with approximately 22 of 138 ICE requests for release dates.

It should be noted that shortly after SB 54 went into effect, MCSO made booking and release information available through the online booking log (information which was, and continues to be, available by phone). When SB 54 first went into effect in January 2018, the MCSO directly communicated with the ICE agent focused on Marin to notify him that they would make inmate information available through

the booking log website.¹⁷ Since the implementation of SB 54, many California Sheriff's Departments made a similar decision to publish an online booking log, taking advantage of the publicly available information exception.¹⁸

Information posted by MCSO includes release dates for individuals in their custody, list of charges, as well as personal information of detainees (such as race and city of residence).¹⁹ However, their policy does not permit sharing country of origin.²⁰

For many people charged with misdemeanors, ICE will no longer be directly contacted by the MCSO. For example, the booking for petty theft or DUI of someone with no previous criminal record should not trigger an advance notice to ICE. However, an ICE agent can still access the online booking log or call the jail to obtain release information for anyone in MCSO's custody.

Unfortunately, ICE has called the jail directly to obtain release dates for people who have been subsequently picked up by ICE even though MCSO has not proactively shared release dates. MCSO does not analyze an individual's criminal history and instead relies on SB54's exception for publicly available information to provide this information to ICE. And as previously mentioned, ICE can also obtain release date information from the MCSO website.

3) ICE Transfers

The Law:

In the context of immigration enforcement, "a transfer request is a request from immigration authorities asking that a state or local law enforcement agency facilitate the transfer of an individual in its custody to ICE or CBP". Cal. Gov't Code §§ 7283(g), 7284.4(e)."²¹

State law prohibits LEAs from facilitating transfers to immigration enforcement with the exception of certain criminal categories. It is important to note that the publicly available information exception **does not apply to transfers**. This means that transfers of individuals who do not fall into SB 54 criminal exceptions are against state law.

4) Other Cooperation

The Sheriff has indicated that their office does not participate in joint projects ("joint task forces") with immigration officials nor does it assist in "immigration raids." It is important to note that the MCSO and all local police departments in California cannot arrest anyone on the basis of their immigration status.

Suspected SB-54 violations may be reported to the **ACLU of Northern California** at

(415) 621-2488.

What's Happening in Marin:

If ICE is at the jail in Marin County, jail personnel will bring the detained person to a non-public area (booking area) to facilitate an ICE arrest. It should be noted that between "release" and ICE arrest, the person is not free to go at any time. In contrast, individuals not picked up by ICE at the jail are released through the main lobby area of the jail (a different exit), and not through the booking area.

*As of the date of this publication, the MCSO allows ICE officials to pick up individuals in non-public areas of the jail, **regardless of the nature of the crime committed**. MCSO has confirmed that jail staff conducts no additional checks or screening for criminal exceptions before facilitating the custody transfer. : Between January and August 2019, ICE picked up 22 people at the Marin County jail.*

*It is our opinion that a transfer occurs when the jail allows ICE to arrest someone before they are out of custody as the individual is not permitted to leave and is still detained at that point. **To comply with state law, the Marin County Sheriff's department should not allow a transfer to ICE unless a criminal exception applies to that individual.***

IV. SURVIVORS OF CRIMES

Immigrants in Marin should know that they can call the police if they need help or are the victims of crimes. It is against state law for local law enforcement to ask about immigration status or act as immigration enforcement officers. The MCSO has routinely clarified that they do not carry out immigration enforcement actions or ask about immigration status.

In fact, there are certain types of immigration relief available to survivors of serious crimes who support local police with the investigation:

- A crime victim in the United States may be eligible for a U visa if they have suffered mental or physical abuse and are helpful to law enforcement.
- A victim of human trafficking could apply for a T Visa.
- Under the Violence Against Women Act (VAWA), the spouses, children, and parents of U.S. citizens or permanent residents who have suffered domestic violence may apply for permanent residency.

If this applies to you, please visit Canal Alliance or call **(415) 306-0437** for information on how to access our immigration legal services.

* If you would like to make a police report and for any reason do not feel comfortable doing it alone, a member of the **Canal Alliance social services team** can accompany you in the process.

Please call (415) 454-2640 to make an appointment.

What Are Your Rights in Jail?

-  You have the right to say “no” to an interview with Immigration and Customs Enforcement (ICE).
-  ICE can only interview you in jail if you sign a consent form beforehand and agree to the interview. This means that you have the right to refuse the interview and the right to remain silent.
-  If for any reason ICE tries to interview you, you can exercise your right to remain silent. You can also request to have your attorney present. If you do not have an immigration attorney, you can find one at your own expense or, in some places, from a local non-profit organization.
-  You have the right to know if ICE agents are looking for you in jail.
-  Police and sheriffs have to give you a copy of any ICE notification requests (requests by ICE for the date and time you will be released from jail).
-  The police or sheriff also need to inform you – and your attorney, or a person that you choose – in writing if they are going to tell ICE when you will be released from the jail. This gives you more time to prepare to fight your case. In Marin, the Sheriff will notify ICE of your release date under certain criminal exceptions.

- ✓ Police and sheriffs have to give you a copy of any ICE holds (requests by ICE to the jail to hold you for extra time, which in most cases may be against the law in California).
- ✓ When you are charged for a criminal offense, you have the right to an attorney paid for by the government, also known as your public defender. If you are an immigrant, make sure that your defense attorney is aware of your status. Your attorney is required to tell you how your criminal case might affect your immigration status. They can also advise you whether or not it is likely ICE will pick you up at the jail, given the nature of your criminal history.
- ✓ When talking to or in front of law enforcement, anything you say can and will be used against you—don't talk about your immigration status, citizenship, when or how you came to the U.S., or where you're from.
- ✓ You have the right to not sign any documents. Never sign any document from ICE without first speaking to an attorney.
- ✓ Memorize the contact information of your friends, family, and criminal defense attorney. Give copies of your criminal and other important documents to trusted family or friends for use in your immigration case.

Before posting bail, find out whether you will be transferred to ICE. A family member or someone else can call the jail (415) 499-6655 to ask if you have an ICE notification request on file since **you may be picked up by ICE after release.** Consider seeking legal advice or contacting the **Public Defender's Office (415) 473-6321** before paying bail.

What Are Your Rights If ICE Picks You Up?

-  If ICE picks you up from the jail, you will likely be transferred to an immigration detention facility. Family members can locate you by checking www.locator.ice.gov. You or your loved one can also call the **Marin Rapid Response Hotline** at **(415) 991-4545** to connect you with an emergency legal consultation.
-  Even if ICE detains you in immigration jail, you may be able to get out on an immigration bond.
-  Make sure to never open your door if ICE comes to your home. Instead, call **Marin's Rapid Response Number: (415) 991-4545**.
-  Many people will have the right to fight their case in front of an immigration judge.
-  You have the right to remain silent and not sign any documents. This includes the right to not sign a "voluntary departure" which surrenders your ability to fight your deportation case.²³
-  For local referrals for an attorney able to represent someone in deportation proceedings, contact Canal Alliance.²⁴

VI. CONCLUSION

Advocacy at the state level has produced a legal framework that effectively reduces ICE's ability to rely on local law enforcement to conduct mass deportations in California. Some key changes are:

- 1) the prohibition to hold people beyond their release time to facilitate an ICE arrest,
- 2) limitations on police-ICE tactics, and
- 3) general prohibition to use local resources to assist ICE.

However, some discretion remains with local law enforcement in some circumstances.

Advocacy at the local level remains crucial to reduce entanglement with an inherently biased system that violates human rights, and arrests U.S. citizens.²⁵

Marin County Sheriff Doyle stated that his decision to update aspects of his policy related to cooperation with ICE resulted from our advocacy efforts and in response to the anti-immigrant policies of the current administration. **We recognize and welcome MCSO's recent policy change, which so far has had a positive impact.**

Since its implementation at the end of November 2018, significantly fewer individuals have been picked up at the Marin County Jail. According to information provided by MCSO, as of August 31st 2019, 22 individuals have been transferred to ICE from the Marin County Jail, which is over a 60% decrease compared to 2018.

We remain concerned about the level of entanglement between local law enforcement and ICE, especially under the current administration.

We have first-hand knowledge of the trauma inflicted on families and children when deportations occur. Even the fear of immigration enforcement has negative impacts on the well-being of our immigrant community.

We urge MCSO to fully disentangle from ICE. In particular, we are concerned that MCSO proactively shares release information to ICE based solely on the crime someone is arrested for (not convictions) and allows transfers regardless of crime exceptions established in SB54. The Sheriff's cooperation with ICE is largely discretionary. It is lawful for the Sheriff to end nearly all cooperation with ICE as some of our neighboring counties have done.

Trust between our community and local law enforcement institutions encourages people to report crimes, act as witnesses, and come forward as victims. Mutual trust prevents emotional and negative financial impact on immigrants and their families. Local resources should not be utilized to carry out mass deportations and inflict pain on our community. **A relationship based on trust increases safety for everyone.**

NOTES

- ¹ The Criminal Alien Program (CAP) allows ICE to identify, arrest, and remove individuals incarcerated within federal, state, and local prisons and jails. See U.S. Immigration and Customs Enforcement, “Criminal Alien Program” <https://www.ice.gov/criminal-alien-program>.
- ² The PRA request was submitted in July of 2017. Canal Alliance received documents from the Sheriff dating from January 2015 to July 2017, which were then reviewed by Canal Alliance and the ILRC.
- ³ Govt C §§7284-7284.10.
- ⁴ The Transparent Review of Unjust Transfers and Holds (TRUTH) Act AB 2792, is a state law that increases transparency regarding the level of entanglement between local law enforcement and federal immigration enforcement. It requires a local legislative body to hold a community forum annually if local law enforcement allows ICE access to any individual. Additionally, this bill ensures that records related to ICE access are subject to the public records act.
- ⁵ The full recording of each forum can be accessed at <https://www.marincounty.org/depts/bs/meeting-archive>.
- ⁶ Marin County Sheriff’s Office General Order GO-05-28 Date: 11-27-18 <https://www.marinsheriff.org/assets/downloads/pdf/GO-05-28.pdf>
- ⁷ It should be noted that ICE also arrests individuals at state jails. For example, in Marin County, ICE also picks up individuals at San Quentin State Prison.
- ⁸ For best practices and model policies see Angela Chan, et al, “RE: Implementation of the California Values Act (SB 54),” December 19, 2017 http://www.iceoutofca.org/uploads/2/5/4/6/25464410/letter_re_implementation_of_ca_values_act_-_sheriff_final.pdf, 4.
- ⁹ To read more about how SB 54 has been implemented across the state: Asian Americans Advancing Justice, et al, “Turning the Golden State into a Sanctuary State: A Report on the Impact and Implementation of the California Values Act (SB 54),” March 2019 https://www.advancingjustice-alc.org/wp-content/uploads/2019/03/SB54-Report_FINAL.pdf
- ¹⁰ To learn more about information-sharing practices between local law enforcement and ICE, see generally <https://www.ilrc.org/immigration-enforcement>; and the National Immigration Law Center (NILC)’s report “Untangling the Immigration Enforcement Web” <https://www.nilc.org/issues/immigration-enforcement/untangling-immigration-enforcement-web/>
- ¹¹ DHS is broken into multiple branches, two of which are tasked with immigration enforcement. Customs and Border Patrol (CBP) is responsible for border enforcement, while Immigration and Customs Enforcement (ICE) does interior enforcement.
- ¹² Simply being undocumented is sufficient basis to be deported.
- ¹³ Release dates are generally provided in response to the form I-247 which ICE uses to request notice of an individual’s release date.
- ¹⁴ This is a complex area of the law and the exceptions are broad. Local law enforcement agencies are permitted to notify immigration authorities of release dates or to facilitate transfers of individuals to immigration authorities, only when the individual comes within an exception. See Govt C §7282.5(a) (1)-(5),(b).
- ¹⁵ The 133 average is calculated by the mean number of I-247 forms sent by ICE to MCSO between 2015 and 2017
- ¹⁶ During the July 9, 2019 TRUTH ACT Forum, Sheriff Doyle announced that MCSO added an additional exception to their notification policy. Under “extraordinary circumstances”, and on a case-by case basis, the jail commander can approve advance notice to ICE, regardless of whether the crime the person was arrested for was serious or violent. The example given by the Sheriff was a recent case in which the jail complied with the notification request because the person was on the National Security Watchlist.
- ¹⁷ See “Turning the Golden State into a Sanctuary State.”
- ¹⁸ 41% of all Sheriff’s Departments in California now share inmate information via online booking logs. See “Turning the Golden State into a Sanctuary State”
- ¹⁹ Marin County Booking Log, available at <https://apps.marincounty.org/BookingLog/>
- ²⁰ See MCSO Public Information Plan, January 11, 2018: <https://www.marinsheriff.org/assets/downloads/pdf/CUS-1-3.pdf>
- ²¹ Angela Chan, et al, “RE: Implementation of the California Values Act (SB 54),” December 19, 2017, Page 2: http://www.iceoutofca.org/uploads/2/5/4/6/25464410/letter_re_implementation_of_ca_values_act_-_sheriff_final.pdf.
- ²² See the TRUTH Act Resources, ICE Out of California: <http://www.iceoutofca.org/truth-act-ab-2792.html>
- ²³ For a complete list of your rights in the criminal justice system and deportation proceedings, see “Know Your Rights: A Guide for Immigrants in the California Justice System”: www.ilrc.org/enforcement.
- ²⁴ Phone Number: 415.306.0437; website: www.canalalliance.org
- ²⁵ United States Citizens have been detained by CBP and ICE, including children and teenagers. See <https://www.aclufl.org/en/publications/citizens-hold-look-ices-flawed-detainer-system-miami-dade-county>, <https://www.nytimes.com/2019/03/22/us/julia-isabel-amparo-medina.html>, <https://www.buzzfeednews.com/article/claudiakoerner/us-citizen-teen-held-immigration-detention-texas>.

