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RESTORING TRUST, RESTORING DIGNITY

Frequently Asked Questions About The Improving and Maintaining Protections, Accountability, and Community Trust (IMPACT) Act

Q. SB-90 has been repealed- why is IMPACT needed?

A. Repealing SB-90 was an important step in building trust between immigrant communities and local law enforcement agencies. Sheriffs across the state have already taken steps towards implementing policies similar to IMPACT. Codifying these important protections will help to reduce confusion over the roles of federal immigration enforcement and local law enforcement agencies in immigrant communities and augment relationships between local law enforcement agencies and immigrant communities.

Q. What types of communication are required of local law enforcement agencies to federal immigration enforcement agencies?

A. Under the changes to federal immigration enforcement programs announced in November 2014, the federal government will continue to utilize the fingerprints taken at the time of booking at a local jail in their enforcement practices. The program known as “Secure Communities” or “S-COMM” has been rebranded as “PEP” or “Priority Enforcement Program” and functions in a nearly identical way. That biometric information is shared from local jails to the FBI database where the Department of Homeland Security’s IDENT database picks up the information and reviews it. This manner of immigration enforcement has been a source of controversy, leading in part to the re-branding of the program. Any other form of communication from ICE to and from local public safety agencies is only a request or courtesy- not obligatory. The only obligatory communications are those that come with properly executed, judicially approved warrants.

Q. Why shouldn’t local law enforcement agencies do what they can to support federal immigration enforcement?

A. We have seen the impact of federal interference in community policing practices across Colorado. The specter of immigration consequences resulting from contact with local law enforcement agencies has had a chilling effect on community trust. Programs that blur the line between federal responsibilities and local law enforcement cause damage to the community trust that is a cornerstone of effective community policing. The federal government funds immigration enforcement at rates higher than all other federal law enforcement agencies combined, yet the costs and lost community trust are borne by local agencies. In passing the Community and Law Enforcement Trust Act of 2013, Colorado asserted that local resources are best directed at keeping communities safe through increased trust- not underwriting unfunded federal requests.

Q. Don't federal guidelines ensure that only dangerous people are picked up and deported by ICE?

A. In November 2014, the Department of Homeland Security provided new guidance around the priority tiers of individuals in which ICE is encouraged to focus their efforts. Part of the new frame of priorities includes provisions that open the door to anyone that ICE may deem deportable even if they do not meet the requirements for the priority tiers. Much of the decision around whom to deport comes from the local level and is inconsistent- including targeting people that ICE memos have suggested should not be priorities for removal. While the new federal program is supposed to target people with convictions, it could create situations where people who have prior convictions and have complied with the judicial requirements imposed upon them could be targeted for an additional punishment, deportation, many years after having served their sentence.

Q. What process do detainees go through if they are arrested and reported to federal immigration?

A. Under PEP, as under S-COMM, at the time an individual is booked into a local jail their fingerprints are sent to the Department of Homeland Security through the FBI database, where they are crosschecked to investigate their immigration status. This process does not assure that a person is actually deportable (or sometimes, even undocumented at all). If ICE determines to pursue an individual, they will issue a request for notification in order to transfer custody once that person is eligible for release. They may also request detention of individuals in certain situations.

Q. Won't local law enforcement agencies still have to hold folks for ICE under PEP?

A. Immigration holds under PEP are meant to only apply in certain situations. Though, without a valid warrant, those detainer requests are still simply requests and not obligatory. Honoring one of these detainer requests without a judicially approved warrant could still create the same situations of liability for local law enforcement agencies that has resulted in costly lawsuits around the country, the same as under S-COMM. Many jurisdictions across the country have crafted policies and laws limiting or prohibiting honoring ICE detainer requests and have not been found to be in violation of federal statute.

Q. What's the problem with current bond practices?

A. Under current Colorado statute, when a bond is being posted for a person who has received an immigration detainer request the poster of bond is to be notified that the bond may be forfeit if ICE detains the individual. This has a cooling effect on the ability of people to bond out of local jails despite a judge having decided that bond or bail is appropriate. This raises costs for local law enforcement agencies as a person remains in custody rather than returning home while their case is pending. In 2012, the Colorado Fiscal Institute found that people with a suspected immigration violation spent an average of 22 days longer in county jails than others who were not the subjects of detainer requests. Additionally, it provides inequitable treatment in cases where immigration enforcement intervenes after bond is posted- bonding agents are entitled to recovery of the bond while families and individuals are not.

For more information regarding the IMPACT Act, please contact:

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