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Understanding SB54: When can the Ventura Sheriff cooperate with ICE?

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APRIL 2022

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WHY SHOULD YOU CARE?

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Failure to Inform Client - Basis for Vacatur

- ▶ Failure to advise client about the specific consequences of a charge prior to plea, **including SB54 consequences**, can be sufficient for vacatur based on attorney's failure to fulfill **constitutional "responsibility"**
- ▶ (*People v. Zendejas Lopez* (2021 4th Dist) G059146 at p. 23 (citing Pen. Code sec. 1016.3(a)).)
- ▶ Defense attorney advised they could not know whether ICE would arrest client [incorrect since 1.1.2018!]

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WHY WAS THE VALUES ACT NECESSARY?

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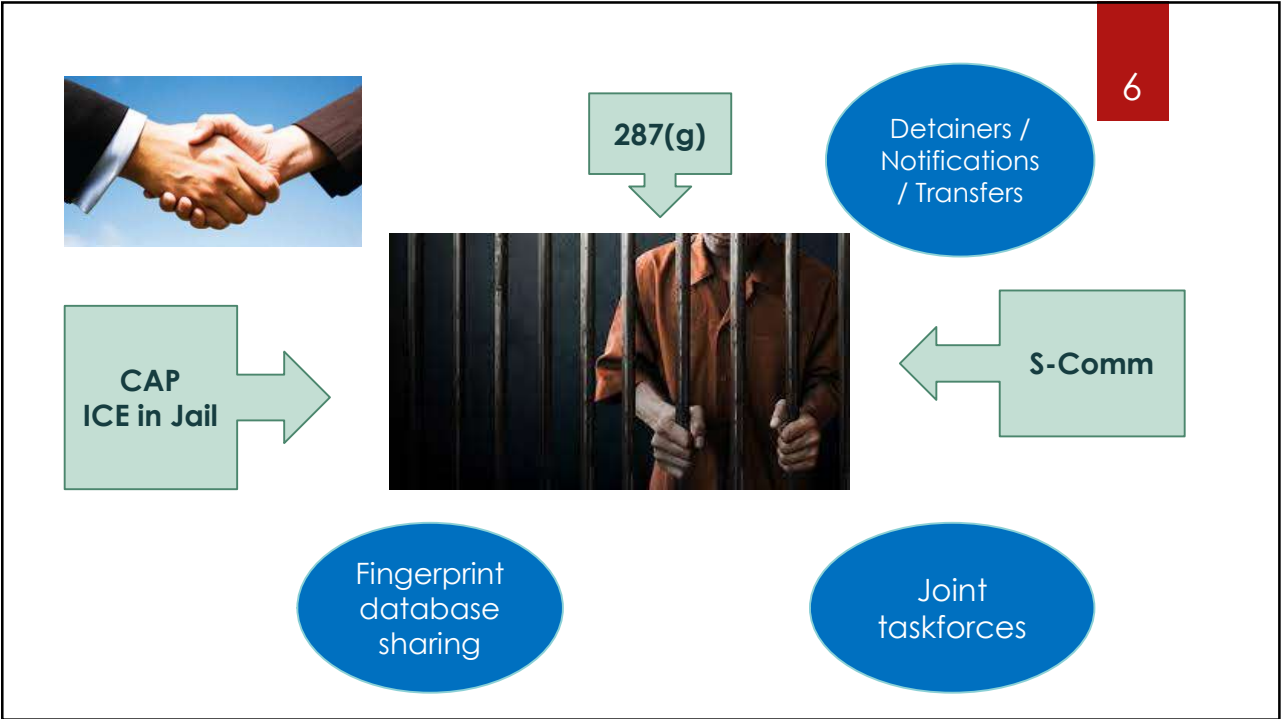
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ICE CUSTODY

- ▶ Possible transfer out-of-state
- ▶ No provided counsel; 85% are unrepresented
- ▶ Outbreaks - COVID, chicken pox, measles
- ▶ Wait for deportation can be months or even years, if appealed
- ▶ Many are told they can be deported and come back without permission sooner than if they fight so they sign away their rights
- ▶ Federal "Illegal reentry" charges
 - ▶ 20 year maximum sentence
 - ▶ #1 prosecuted federal felony



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OVERVIEW OF STATUTES

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- ▶ **California Values Act** (Govt C. 7284): Cooperation between ICE and LEA / other public agencies is restricted (SB54, 1.1.18)
- ▶ **TRUST Act** (Govt C 7282, 7282.5): Restricts when LEA can cooperate with ICE requests for notification / transfers but contains many exceptions (SB54 amended, 1.18.18)
- ▶ **TRUTH Act** (Govt C 7283): before ICE interview, LEA must provide person with written consent form (1.1.17)

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WHAT DOES THE VALUES ACT DO?

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- ▶ Act is a floor, not a ceiling
- ▶ Local efforts to limit cooperation further in Ventura County

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VALUES ACT:
LIMITATIONS ON
LEA

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- ▶ Cannot share personal info (addresses, etc.) unless publicly available
- ▶ Cannot make arrests on immigration warrants or for federal criminal offense of “illegal reentry”
- ▶ Cannot provide exclusive office space in jails
- ▶ Cannot honor ICE holds (voluntary requests to detain person beyond criminal custody)

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TRUTH Act
Protections

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- ▶ LEA must provide copy of ICE request to person
- ▶ If LEA provides ICE with release dates, they must provide notice to person AND their attorney (or designee)

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VALUES ACT – WHAT CAN LEA DO?

NOTIFICATION

- ▶ Voluntary request from ICE asking for release date so ICE can arrest them upon release from jail

TRANSFER

- ▶ Voluntary request from ICE for LEA to facilitate the transfer of an individual to ICE/CBP custody

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How does someone know if ICE has asked for their information?

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ICE Form I-247

Jail Form

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[illegible]

VENTURA COUNTY SHERIFF'S OFFICE
Detention Services Division
ICE Information Request Form - AS 2982 Truth Act

☐ Solicito recibir este formulario en español / I request to receive this form in Spanish.
☐ Tôi cần bản dịch của tài liệu này sang tiếng Việt / I request to receive this form in Chinese.
☐ Tôi cần bản dịch của tài liệu này sang tiếng Việt / I request to receive this form in Vietnamese.
☐ 我需要越南语或英语的副本 请勾选 / I request to receive this form in Korean.

Date: 5/15/21
Name: [REDACTED] Location: D-2-8

The purpose of this letter is to inform you that Immigration and Customs Enforcement ("ICE") has requested that we:

☐ Hold you for up to 48 hours after your release from criminal custody to allow ICE time to take you into immigration detention. (0-247 or a release) ☒ Notify ICE of your release date, so that ICE may detain you. (0-247N)
☐ Transfer you into immigration detention. (0-247X or other request)

Under the Transparency Review of Unlinked Transfers and Holds (TRUTH) Act, we are required to provide you with a copy of ICE's request and inform you whether we intend to comply with the request. A copy of the request is attached.

We ☒ DO NOT intend to comply with ICE's request.
(check box)

You will promptly receive a separate letter if we notify ICE of your release date.

We are required to notify both you and your attorney OR another person that you choose if we notify ICE of your release. Please provide contact information, including phone number and email, for your attorney OR another person that you choose and return to CIR.

Are you represented by a private attorney? ☐ YES ☐ NO **JAIL STAFF - if No, and if notify ICE then an email must be sent to TRUTH@ice.dhs.gov** with the inmate's name and booking number.

Name of Attorney AS Designee (choose one):
Email or Phone Number for Attorney or Designee: _____

Do not put "N/A" unless we are not intending to notify ICE at release. If the inmate refuses, then note "Refuse".
FOR SIGNATURE PURPOSES ONLY

Signed by: [Signature] ID #: 3540 Date: 05/15/21

*****Return completed form to CIR for placement into Inmate Jacket*****

Distribution: Original - ICE JCR Yellow - Local Unit Risk - Imma

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VENTURA COUNTY SHERIFF'S OFFICE
Detention Services Division

ICE Information Request Form - AB 2792 Truth Act

- ☐ Solicito recibir este formulario en español. // request to receive this form in Spanish.
- ☐ 請求表中文表格。// request to receive this form in Chinese.
- ☐ Nais ko pong makiusap na matanggap ang forma na ito sa Tagalog. // request to receive this form in Tagalog.
- ☐ Tôi yêu cầu để nhận mẫu đơn này trong tiếng Việt. // request to receive this form in Vietnamese.
- ☐ 저는 이서류를 한국어로 번역해 갖고 싶습니다. // request to receive this form in Korean.

Date: 5/15/21
Inmate Name: [REDACTED] Booking #: [REDACTED] Locator: D-2-8

The purpose of this letter is to inform you that Immigration and Customs Enforcement ("ICE") has requested that we:

- ☐ Hold you for up to 48 hours after your release from criminal custody to allow ICE time to take you into immigration detention. (I-247 or I-247D)
- ☒ Notify ICE of your release date, so that ICE may detain you. (I-247N)
- ☐ Transfer you into immigration detention. (I-247X or other request)

Under the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, we are required to provide you with a copy of ICE's request and inform you whether we intend to comply with the request. A copy of the request is attached.

We ~~DO~~ / DO NOT intend to comply with ICE's request.
(check one)

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Ask for it in a language they read
Ask for it to be sent to you

What does ICE want the jail to do?

What is the jail going to do?

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You will promptly receive a separate letter if we notify ICE of your release date.

We are required to notify both you and your attorney OR another person that you choose if we notify ICE of your release. Please provide contact information, including phone number and/or email, for your attorney OR another person that you choose and return to CIR.

Are you represented by a private attorney? ☐ YES ☐ NO **JAIL STAFF** - If No, and we intend to notify ICE, then an email must be sent to TruthAct@ventura.org with the inmate's name and booking number.

Name of Attorney OR Designee (choose one): _____

Email or Phone Number for Attorney or Designee: _____

Do not put "N/A" unless we are not intending to notify ICE at release. If the inmate refuses, then note "Refused".

FOR LAW ENFORCEMENT PERSONNEL:

Served by: [Signature] ID #: 5546 Date: 05/15/21

****Return completed form to CIR for placement into Inmate Jacket****

Distribution: Original - Inmate Jacket Yellow - Legal Unit Pink - Inmate

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DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

REQUEST FOR ADVANCE NOTIFICATION OF RELEASE

FBI/ FA27PXCP4
SID/ CA39559989

Subject ID: 369861317 BK# 2120883 File No: _____
Event #: WSM2102001375 Date: February 11, 2021

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
VENTURA COUNTY JAIL
800 SOUTH VICTORIA AVE.
VENTURA, CA 93009

FROM: (Department of Homeland Security Office Address)
ERO - Westminster, CA Sub office
ICE
ERO PERC LAGUNA NIGUEL
24000 AVILA RD RM# 1552
LAGUNA NIGUEL, CA 92677

IMPORTANT!

Name of Subject: [Redacted] **Name & A #**

Date of Birth: 12/16/1999 Suspected Citizenship: MEXICO Sex: M

DHS SUSPECTS THAT THE SUBJECT IS A REMOVABLE ALIEN AND SEEKS AN OPPORTUNITY TO DETERMINE WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT THE SUBJECT IS A REMOVABLE ALIEN.
SID #: CA39559989

Silence may be best defense

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IT IS THEREFORE REQUESTED THAT YOU:

• Notify DHS as early as practicable (at least 48 hours, if possible) before the subject is released from your custody to allow DHS an opportunity to determine whether there is probable cause to conclude that he or she is a removable alien. Please notify DHS by calling

☒ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at (805) 432-8856

If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at (802) 872-6020.

This request for notification **does not** request or authorize that you detain the subject beyond the time he or she is currently scheduled for release from your custody.

This request should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.

• Relay this request to any other law enforcement agency to which you transfer custody of the subject.

• Notify this office in the event of the subject's death, hospitalization or transfer to another institution.

☐ If checked: Please cancel the detainer related to this alien previously submitted to you on _____ (date).

9015 JONG J - DO

(Name and title of Immigration Officer)

Date:
2021.02.11
04:57:59
-0800



(Signature of Immigration Officer)

Notice: If the subject may be the victim of a crime or you want the subject 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 questions or concerns about this matter.

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Temporary Settlement:
Gonzalez v. ICE

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▶ Settlement Period: Feb. 17 – August 17, 2022

▶ ICE will not issue detainers based on database checks from ICE LA Field Office or PERC

▶ ICE can issue I-247G to Field Office (likely Camarillo for us)

▶ Field Office will only issue I-247 if they can first establish probable cause

▶ May result in more attempted interviews so **WARN CLIENTS TO DECLINE INTERVIEW AT ARRAIGNMENT**

▶ Case No. CV 13-04416 AB (Hon. Birotte Jr.)

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LOCAL VENTURA POLICY &
PRACTICE

VC Jail Bookings	29, 203	33,611	31,921	20,164	15,986
	2017	2018	2019	2020	2021 (thru 9.30.21)
I-247 received	752	872	636	587	145
Jail notified/cooperated	737	151	142	123	41
ICE Pick Ups	512	79	67	13	5
I-247 involving felonies	648	810	Not provided	Not provided	Not provided
I-247 involving misdos	1,468	1,661	Not provided	Not provided	Not provided

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Clients have a RIGHT to
understand the consequences
BEFORE going to preliminary
hearings, pleading guilty, or going
to trial

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When is SB54 triggered?

Pre-conviction

▶ Federal judicial warrant

▶ If client is **held to answer** for a **state prison** felony

▶ Exception: if client is **found NOT guilty** or you negotiate a **plea to a non-SB54 offense**

▶ **BUT YOU MUST CONTACT SHERIFF PRIOR TO COMPLETION OF CASE**

Post-conviction

▶ **Permanently**: state prison conviction

▶ **15 years**: enumerated felony wobbler

▶ **5 years**: enumerated misdemeanor wobbler

▶ If client is current registrant on sex or arson registry

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Which statutes are included?

Wobblers that are...

▶ **Crimes against people** (such as PC 245, 243.4, 422, 288, 187, 191.5, 181, 210.5, 236, 290, 203, 368, 219, 646.9, 207, 209)

▶ **Crimes against property** (such as PC 211, 459, 470, 594.7, 219, 404)

▶ **Crimes against public justice** (such as PC 69, 92, 93, 95, 136.1, 4530, 4536)

▶ **Firearms and other weapons** (such as PC 12021.5, 12022, 28750, 26100(d), possession of weapon under PC, Part 6)

▶ **Felony drug offenses**

▶ **Felony DUI of alcohol or drugs**

▶ **Gang-related offenses** (such as 186.22, 186.26, 186.28)

▶ **Inchoate offenses** (if attempt, conspiracy, or solicitation to commit another SB54 exception)

▶ **Criminal profiteering** (such as PC 186.2, 186.9, 186.10)

▶ **Offense on Bail** (such as PC 12022.1)

▶ **Vehicle Code** (VC 20001c, felony DUI)

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JUVENILE ADJUDICATIONS

- ▶ Generally, juvenile adjudications are not convictions and thus, are not included
- ▶ However, under PC 667(d)(3), a “conviction” includes a juvenile adjudication if the person was 16 or older at the time of commission and the adjudication is listed in WIC 707(b) (30 subsections!)
 - ▶ (Attempted) Murder; voluntary manslaughter; arson; robbery, rape w/ force/violence/threat of GBI; sodomy; 288(b); oral cop; 289(a); kidnapping for ransom, purposes of robbery or w/ GBI; Assault with firearm or likely to produce GBI; use of weapon; PC 136.1 or 137; escape; carjacking; aggravated mayhem; torture; PC 26100(c); PC 18745; violent felony

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BEWARE!

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STRAIGHT MISDEMEANORS

► **Straight misdemeanors are included**

► Language is clear – individual must have been convicted “for a crime punishable as either a misdemeanor or a felony”

Offense	Penal Code	TRUST Act (Govt C §7282.5) subsection
Assault	§240	(a)(3)(A)
Battery	§242	(a)(3)(B)
Annoying or molesting a child	§647.6(a)(1)-(2)	(a)(3)(D)
Child endangerment	§273a(b)	(a)(3)(E)
Petty theft during an emergency	§463(c)	(a)(3)(F)
Accepting bribe for appointment to public office	§74	(a)(3)(I)
Brandishing deadly weapon	§§417(a), (d)	(a)(3)(K)
Knowingly permitting another to carry a firearm in a vehicle	§26100(a)	(a)(3)(K)
Incitement to riot	§404.6	(a)(3)(W)
Elder abuse	§368(c)	(a)(3)(X)
Supervising or aiding prostitution-related offense	§653.23	(a)(3)(AA)

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BEWARE!

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PROP 47 & 64 MISDOS

▶ PROP 47 Offenses were also erroneously included

▶ **PRO TIP:** Use Prop 47/64 to reduce prior convictions, like HS 11377

Offense	Code	Trust Act (Govt C §7282.5) Category
Shoplifting under 950\$	Pen C §459.5	(a)(3)(F)
Forgery for < \$950	Pen C §473(b)	(a)(3)(F)
Insufficient Funds where underlying amount is < \$950	Pen C §476a(b)	(a)(3)(F)
Receiving stolen property of < \$950 value	Pen C §496(a)	(a)(3)(F)

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UNLISTED
WOBBLERS /
FELONIES

▶ Accessory, PC 32

▶ Perjury, PC 118

▶ False personation, PC 529

▶ Vandalism (no priors), PC 594

▶ Unauthorized computer system access, PC 502(c)(1), (2), (4), (5)

▶ Illegal, or reckless with injury, disposal of hazardous waste, HS 25189.5, 25189.6(b)

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Let's practice: Juan

Juan pleads guilty and will be sentenced to 30 days on a **felony PC 273.5**
Can lose green card / be ineligible to apply

▶ 1. Will the jail cooperate with ICE?

a. Depends on whether ICE has sent a request

b. Yes

c. No

d. We can't know

e. A & B

▶ 2. How long can the jail cooperate with ICE?

a. Only upon release

b. Up to 5 years

c. Up to 15 years

d. Permanently

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Let's practice

Juan pleads guilty and is sentenced to 30 days on a felony PC 273.5
Can lose green card / be ineligible to apply

▶ Are there any workarounds?

▶ Remand pre-conviction (preferable pre-plea)

▶ If LPR, ICE might miss it

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Let's practice: Maria

You represent Maria on a felony VC 10851. She has a prior misdemeanor PC 496 from 2018.

▶ 3. Can the jail cooperate with ICE?

a. Yes

b. Maybe – we need more info

c. No

d. This is too hard!

▶ 4. Assuming it is an SB54 exception, how long can the jail cooperate with ICE?

a. Only upon release

b. Up to 5 years

c. Up to 15 years

d. Permanently

If Maria is not in Sheriff custody until 2023, her conviction should no longer qualify.

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Frank

Frank was arrested & detained for **felony possession of drugs with intent to sell**. He is HTA. Frank's family pays his bail.

5. Can the jail notify ICE upon Frank's release?

a. No – not an exception

b. Yes, they can notify upon his release

c. No, they can only notify if he is convicted

d. They can notify ICE for up to 5 years

e. They can notify ICE for up to 15 years

f. They can notify ICE permanently

g. C & E

h. C & F

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Sometimes clients face a tough decision...

- ▶ Jay is arrested for stealing items from misdemeanor Home Depot (burglary, PC 460, and theft, PC 484)
- ▶ **DILEMMA**: He must decide between a charge that triggers removability (**theft - CIMT**) and a charge that is immigration neutral but allows the jail to cooperate with ICE, making an ICE arrest likely (**burglary**)

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**VISION
ACT**

Would eliminate
decision between
immigration
eligibility and ICE
arrest

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TAKEAWAYS

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- ▶ Determine client's priorities - Most people will choose preserving path to immigration status over additional time or risk of ICE arrest
 - ▶ **EXCEPTION:** When someone has no immediate relief and wants to avoid ICE at any cost
- ▶ If there is a valid notification / transfer request, weigh risks of posting bail or O.R.

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KNOW YOUR RIGHTS

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- ▶ Provide client with Know Your Rights against ICE
 - ▶ ILRC has multilingual materials (<https://www.ilrc.org/know-your-rights-and-what-immigrant-families-should-do-now>)
- ▶ Report errors to Jail Legal / County Counsel to avoid notification
- ▶ Report violations to CA Attorney General & SB54 Legal Team
 - ▶ www.iceoutofca.org/report-cases.html

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I do not wish to speak with you, answer your questions, or sign or hand you any documents based on my 5th Amendment rights under the United States Constitution.

I do not give you permission to enter my home based on my 4th Amendment rights under the United States Constitution unless you have a warrant to enter, signed by a judge or magistrate with my name on it that you slide under the door. I do not give you permission to search any of my belongings based on my 4th Amendment rights. I choose to exercise my constitutional rights.

Usted tiene derechos constitucionales.

NO ABRA LA PUERTA SI UN AGENTE DEL SERVICIO DE INMIGRACION ESTA TOCANDO A LA PUERTA.

NO CONTESTE NINGUNA PREGUNTA DEL AGENTE DEL SERVICIO DE INMIGRACION SI EL TRATA DE HABLAR CON USTED. Usted tiene derecho a mantenerse callado. No tiene que dar su nombre al agente. Si está en el trabajo, pregunte al agente si está libre para salir y si el agente dice que sí, váyase. Usted tiene derecho de hablar con un abogado.

ENTREGUE ESTA TARJETA AL AGENTE. NO ABRA LA PUERTA.

This information is available to citizens and noncitizens alike.

Add KYR
on your
business
card

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ILRC. (2018, February 20). Practice Advisory - SB54 and the California Values Act: A guide for criminal defenders.

https://www.ilrc.org/sites/default/files/resources/sb54_advisory-gr-20180208.pdf

Email: Onyx.Starrett@ventura.org

RESOURCES

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