



Fighting back on immigration holds: How changes in law have limited cooperation with holds in CA

Compliance with Immigration Holds is not Mandatory, but Voluntary

An immigration hold is a *request* from federal immigration officials to detain an individual for 48 hours excluding weekends and federal holidays, after the criminal basis for detention has ended.¹ It is not issued by a neutral magistrate or with probable cause; it is not commensurate to a judicial warrant.

Complying with Immigration Holds Creates Potential Local Liability Because They Violate Constitutional Rights

In *Miranda-Olivares*,² a federal court found Clackamas County Sheriff's Department liable for unlawful detention when it held Ms. Miranda-Olivares pursuant to an immigration hold after she was otherwise eligible for release from state custody.

The court found that the immigration hold did not provide a lawful basis to arrest, and that detaining Ms. Miranda-Olivares on the hold violated her Fourth Amendment rights. A person's immigration status and criminal history, no matter how serious, do not change these concerns or insulate from liability.³

The majority of counties in California have since stopped responding to immigration holds.⁴

The TRUST Act, a statewide law that limits law enforcement's ability to hold certain immigrants on immigration holds and which was enacted prior to the *Miranda-Olivares* decision, does not shield local law enforcement officials from liability for holding immigrants on immigration holds.

In order to limit deportations and restore community trust in law enforcement, the TRUST Act prohibits detaining someone on an immigration hold, except in certain circumstances based on criminal history. The TRUST Act does not cure any legal defects with the issuance of immigration holds and therefore, does not insulate local officials from liability.

What does this all mean?

Step One: Local law enforcement should not respond to any immigration holds that do not meet Fourth Amendment constitutional standards.

Step Two: If immigration holds do meet such standards, local law enforcement must still abide by the California TRUST Act.

First and foremost, law enforcement should ensure that a hold complies with the Fourth Amendment. In particular, it must be accompanied by a judicial warrant. If the hold does not comply with the Fourth Amendment, it must not be honored and the inquiry stops. Even if an immigration hold complies with the Fourth Amendment, the hold must still comply with the TRUST Act. Only when these two steps are met, may law enforcement honor an ICE hold. Even then, law enforcement is always free to say no.

Law Enforcement remains free to largely restrict communication with ICE

While federal law states that a locality may not prohibit communication with ICE regarding *immigration status*⁵ alone, law enforcement is free to prohibit information with ICE regarding *non-immigration* matters. This includes restricting access to home addresses or other contact information, court date information, and access to inmates for interviews.

¹ Attorney General Kamala Harris, Attorney General, *Responsibilities of Local Law Enforcement Agencies under Secure Communities*, Information Bulletin, December 4, 2012; *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

² *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST (D. Or. April 11, 2014).

³ There is no "public safety" exception to the Fourth Amendment; nor does the TRUST Act have a public safety exception.

⁴ For an updated interactive map of ICE detainer policies in California and nationwide, see www.ilrc.org/enforcement

⁵ 8 U.S.C. § 1373. There is no independent duty to investigate immigration status and such investigation could be racial profiling.