



# TRUST ACT TOOLKIT

## TRUST ACT IMPLEMENTATION and LOCAL IMMIGRATION ENFORCEMENT

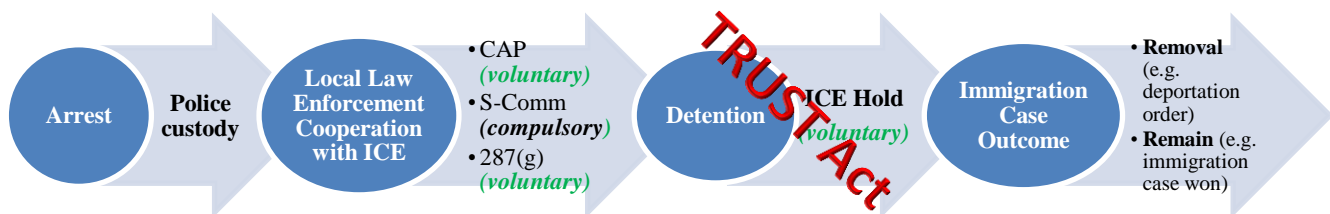
The Trust Act is a historic achievement for California that should protect many immigrants from deportation. This guide provides advice for advocates to ensure that the Trust Act is implemented as effectively as possible, and to use the Act's momentum to stop more deportations.

To ensure the Trust Act's maximum impact, advocates must have an understanding of ICE's many programs for collaborating with local law enforcement. For example, ICE agents also visit California jails directly, obtain inmate information from databases or from jail staff, and contract with local jails for immigration enforcement and detention assistance. This guide will discuss how immigration enforcement programs operate, how the Trust Act will limit their effects, and how local advocacy can further restrict the deportation machine. By understanding this fully, communities can demand policies to fully implement the Trust Act and prevent as many deportations as possible.

### How does the Trust Act work with other immigration enforcement programs?

ICE's main enforcement programs that interact with local jails are the Criminal Alien Program (CAP), Secure Communities (S-Comm), and the 287(g) program. These are part of ICE's overall strategy to enlist local police and sheriffs in federal immigration enforcement. CAP and S-Comm are *information sharing* programs that allow ICE to find out about noncitizens in local custody. 287(g) trains local officers to screen people for deportation, turning deputies into assistant immigration agents. All three of these programs generally result in the issuance of an ICE hold, asking local law enforcement to hold the person so that ICE can come get them. The Trust Act does not stop the issuance of ICE holds through these programs. Rather, it limits the circumstances in which many ICE holds<sup>1</sup> may be responded to, thus restricting ICE's ability to take custody of these people.

The Trust Act affects the third stage in this graphic below: the transition from local criminal custody to ICE custody. The ICE hold is important because although CAP, S-Comm, and 287(g) facilitate the *identification* of an individual, the ICE hold gives ICE extra time to come take *custody* of the person, thus making detention much easier.



The Trust Act limits when local jails may continue to detain someone based on an ICE hold. However, although an ICE hold is the primary mechanism for ICE to apprehend someone from the criminal justice system, it is not the only way. This guide will discuss the other ways that ICE collaborates with local police and sheriffs to apprehend and deport immigrants, and how communities can limit these measures to strengthen the impact of the Trust Act.

<sup>1</sup> The Trust Act applies equally to ICE holds issued by any of these programs, as well as holds issued by Customs and Border Protection.

## **Secure Communities**

**What is Secure Communities (S-Comm)?** S-Comm is a federal program under which fingerprints taken by local law enforcement are checked against federal immigration databases. The results of that check are sent to ICE, which may issue a hold against the person in custody. The forced imposition of S-Comm on California lead to an outcry from communities, advocates, and law enforcement officials concerned about immigrant rights and trust in law enforcement. As a result of their efforts, California passed the Trust Act.

**How will S-Comm interact with the Trust Act?** The Trust Act does not stop the sharing of fingerprints between local police and ICE through the S-Comm Program. ICE may continue to issue immigration holds based on S-Comm fingerprint information. However, the Trust Act prevents California police and sheriffs from holding many individuals after they should be released on the basis of those holds.

**What can advocates do?** At the local level, communities can supplement the Trust Act's protections by limiting the other ways that ICE has access – both information access and physical access – to the jails. See the discussion of the Criminal Alien Program below. Also, reducing reasons for arrests will help protect many immigrants from being swept into the system. For example, ask local law enforcement to accept alternative IDs and issue citations rather than arresting unlicensed drivers. More broadly, advocates may want to seek more information about the FBI's Next Generation Identification program.<sup>2</sup>

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## **The Criminal Alien Program (CAP)**

**What is CAP?** The Criminal Alien Program ("CAP"), the largest ICE enforcement program, has existed under various names since 1986. CAP is the overall name for ICE's work in local jails, state prisons, and federal prisons where they search for immigrants to deport. Currently, CAP is a major portion of operations at all ICE field offices and is active to some degree in many California jails.

CAP has an extensive infrastructure that monitors more than 4,300 facilities across the country, with the help of Secure Communities and 287(g). The primary purpose of the CAP program is to collect information on everyone who comes into criminal custody and follow up with investigations and holds on any potentially deportable non-citizen. Under CAP, ICE builds informal and formal relationships with local jails so that they will provide ICE information on and access to detainees in the jail on a regular basis.

CAP officers get information in several ways beyond S-Comm fingerprint checks. For example, ICE offices regularly receive booking lists from jails alerting them to all foreign-born inmates. ICE agents may have direct access to jail databases, or even a desk at the jail. ICE may go to the jails to find immigrants to put in deportation proceedings. Often Sheriff deputies will call the local ICE office whenever they have an immigrant in custody. In some areas of California, probation departments also report people to ICE.

Once ICE agents have found a non-citizen in criminal custody, they can issue a hold and/or come take that person to immigration detention. CAP officers may begin, and sometimes finish, removal proceedings while the person is still in criminal custody, so that ICE can deport them right after their criminal sentence, if any. For example, CAP officers encourage inmates to sign a stipulated removal order, which waives their right to see an immigration judge, and means that they will be deported immediately after their criminal case is done.

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<sup>2</sup> Next Generation Identification (NGI) is the larger data and identification system for which Secure Communities was a first step. See more about NGI at <http://my.firedoglake.com/sunitapatel/tag/ngi/>; <http://epic.org/foia/fbi/ngi/>.

## TRUST Act Toolkit: How the TRUST Act Interacts with Immigration Enforcement Programs Including CAP, 287(g) and IGSA

**How will CAP interact with the Trust Act?** To ensure successful implementation of the Trust Act, local advocates must closely scrutinize ICE's close relationships and agreements with local jails discussed above. Where ICE agents are regularly present in a jail or in regular communication with local law enforcement, ICE may be able to take custody of people without use of an immigration hold. Of additional concern, some local jails permit ICE to take people even while their criminal case is still pending.

If individuals who should be protected by the Trust Act are still apprehended by ICE directly in local jails or even after they are released, contact attorneys monitoring the Trust Act by emailing [catrustact@gmail.com](mailto:catrustact@gmail.com) or filling out an online intake here: <http://www.catrustact.org/report-cases.html>.

In addition, ICE's information access to local jails may enable them to pick up people the moment they are released or even after they are released. A 48-hour hold may be unnecessary if ICE has access to jail or other criminal justice databases, or is otherwise notified whenever a non-citizen is due for release. If ICE is willing to commit the resources, agents can just apprehend the person as they leave the jail. Similarly, ICE agents have been known to visit courthouses to question and arrest people.

**What can advocates do?** Find out how CAP is presently functioning in your local jail and how the Trust Act will affect future CAP operations. Push for policies which limit CAP and instead follow the spirit of the Trust Act. Even better, push for a policy which does not allow any ICE agents in your local jail and stops sharing criminal custody information (e.g. booking lists, release dates) with ICE. Santa Clara, Cook County, and Washington, DC have passed policies to this effect.<sup>3</sup> Consider asking the following questions in meetings with law enforcement:

- a. How often are ICE agents at the jail?
- b. When does jail staff communicate with ICE? What does this communication entail?
- c. What information are ICE agents given access to? E.g. booking information or databases?
- d. Are ICE agents allowed to interview individuals? Does the jail have any limitations on who ICE can interview, or how and when these interviews take place?
- e. (If applicable) Will ICE agents continue to receive access to jail information (e.g. booking info) and/or inmates for interviews, after the Trust Act, or are you changing these practices?
- f. Are ICE agents allowed to take an individual while their criminal case is still pending?
- g. Is ICE notified when someone is going to be released?
- h. What training for Trust Act compliance will you be doing?
- i. Since the Trust Act has gone into effect, what kinds of interactions has ICE had with people detained in the jail?

Additionally, if any members of your local community are arrested by ICE outside the jail or by the courthouse, in violation of the goals of the Trust Act, advocates should aggressively challenge that practice. Tactics may include public actions, petitions urging ICE to exercise prosecutorial discretion and release those detained, and advocacy with Members of Congress to urge ICE to cease this practice.

For more discussion of CAP and how to combat CAP in your community, see the *CAP Advocacy Guide* available at <http://www.ilrc.org/policy-advocacy/immigration-enforcement>.

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<sup>3</sup> These are available in Appendix 6 to the All in One Guide to Defeating ICE Hold requests: [http://ilrc.org/files/documents/all\\_in\\_one\\_guide\\_appendix\\_6.pdf](http://ilrc.org/files/documents/all_in_one_guide_appendix_6.pdf).



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### 287(g)

**What is 287(g)?** The 287(g) program permits ICE to deputize local law enforcement agents to enforce immigration law. This program is active in the following counties in California: **Los Angeles County, Orange County, and San Bernardino County.**<sup>4</sup>

Ordinarily, local or state police do not have authority to stop or arrest individuals for immigration violations, or otherwise enforce immigration law. But under the 287(g) program, ICE briefly trains local officers to perform certain immigration officer functions in local jails. Officers are trained for only four weeks on immigration enforcement work, such as accessing immigration databases, questioning individuals about their immigration status or history, and issuing immigration holds. ICE then takes over the deportation proceedings. In order to engage in the 287(g) program jurisdictions must enter into a written “Memorandum of Agreement” with ICE, which is entirely voluntary.

**How will 287(g) intersect with the Trust Act?** Under 287(g), officers in the jails screen inmates about their immigration status, and have authority to issue immigration holds. However, the Trust Act will still govern whether the counties comply with those holds. 287(g) officers may be more likely to tell ICE exactly when an individual is being released, because they work regularly with ICE. However, 287(g) officers in California do not have authority to arrest a person on ICE’s behalf.<sup>5</sup> Like CAP officers, 287(g) officers can prepare deportation orders that may be finalized before the person has even completed their criminal case, without any hearing in immigration court.<sup>6</sup> Furthermore, 287(g) officers are trained to question inmates, prepare affidavits, and enter information into ICE databases. Thus they can gain immigration or criminal history information from inmates and feed that information to ICE, which could prompt ICE to issue a detainer or affect the detainee’s rights in immigration proceedings.

**What can advocates do?** First, continue to push for the complete removal of 287(g). The program has shrunk under the Obama Administration, as S-Comm has replaced much of its work. Between S-Comm and CAP, ICE does not need 287(g) to help find or deport immigrants. However, 287(g) provides free labor for ICE, which may explain why the program still remains in more than 30 jails around the country. Nonetheless, 287(g) may be a cost to the county. Although 287(g) officers do ICE’s work, ICE does not reimburse the county for their time. In addition, ICE is not liable for the immigration enforcement activities of 287(g) agents, even if ICE is supposed to be supervising.

In San Bernardino, following strong advocacy from local community groups, the county has modified its 287(g) agreement to ensure compliance with the Trust Act. The County will only detain individuals on immigration holds if the person falls within one of the specific exceptions in the Trust Act. Unfortunately, the amended agreement promises to hold all of those inmates who do not fall within the Act’s protections, even though the Sheriff has discretion not to do so. Communities in 287(g) jurisdictions can still demand a local law or policy that will protect more people than the Trust Act.

<sup>4</sup> Riverside County’s 287(g) agreement expired in 2013, but is likely to renew its program in the near future. Orange County’s contract is written to last three years, and was signed in April, 2010. However, ICE lists it among the current 287(g) programs.

<sup>5</sup> In both Los Angeles and Orange County’s Memoranda of Understanding (MOU) with ICE, the Sheriff may seek an agreement for reimbursement from ICE for transporting detainees to ICE detention at the end of their sentence. This may allow the counties to get more money for transferring inmates to ICE for deportation. This incentive to work with ICE and increase the number of custody transfers is directly at odds with the Trust Act’s goal of limiting those transfers. Therefore, strong community pressure may be needed to push Sheriffs to change the practice.

<sup>6</sup> According to the standard 287(g) MOU, 287(g) officers can prepare stipulated removal orders, reinstatement of removal, administrative removal, and expedited removal orders.



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### Inter-governmental Service Agreement (IGSA)

**What is an IGSA?** Intergovernmental Service Agreements (IGSAs) are contracts or Memoranda of Understanding between ICE and local or state entities. The IGSA is a contract between ICE and a local jail for immigration detention, to hold immigrants in the county jail while they are in deportation proceedings. The immigration case is separate from the criminal case: although the immigrant is physically in a criminal jail, they are legally in ICE custody. ICE pays the county for immigration detention bed space in the jail, but IGSAs may also include contracts for transportation of detainees or other detention-related services. ICE has more than two hundred of these agreements across the country, and for most sheriffs, IGSAs are a profitable enterprise. Some IGSA contracts are limited to holding ICE detainees for only a few days before they are transferred, while others may hold ICE detainees throughout their deportation proceedings.

Currently, the following California jails have IGSAs with ICE that allow for immigration detention:

- Adelanto Correctional Facility, San Diego Contract Detention Facility, Theo Lacy Facility, James Musick Facility, California City Correctional Center, Yuba County Jail, Santa Ana City Jail, Contra Costa County Jail West, and Sacramento County Jail.

These additional jails have IGSAs that provide for them to hold ICE detainees for up to 72 hours:

- Pasadena City Jail, Pomona City Jail, Orange County Intake Release Facility, Alhambra City Jail, Glendale Police Department, San Bernardino County Jail, and Ventura County Jail.

**How will an IGSA intersect with the Trust Act?** Counties that have large detention contracts with ICE often depend on ICE's money to run their jails. As a result, they may be generally reluctant to limit their assistance on immigration enforcement, lest they jeopardize the contract or reduce the number of beds rented. While the Trust Act is California state law and sheriffs are required to comply, Sheriffs who contract directly with ICE for detention beds may be particularly unwilling to limit ICE's other access to the jail.

**What can advocates do?** Find out whether the sheriff has any IGSAs with ICE, and if you can get a copy of the contract(s). In many cases, that should not require a public records request. Ask exactly how ICE takes custody of someone from the county, and how the county will ensure that the IGSA relationship respects the Trust Act's implementation.

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### CONCLUSION

The Trust Act's implementation offers a critically important opportunity to win additional protections to combat Immigration and Custom Enforcement's (ICE) deportation machine. The bill has already stopped deportations and sparked additional positive policy changes at the local level. There is more for communities to do to combat the deportation machine. Restricting or abolishing ICE's other access to local jails will help further protect immigrant communities and realize the full goals of the Trust Act. Most important is to end ICE's unfettered access to jails and inmates, who are particularly vulnerable while in criminal custody. Understanding your county's connections to the detention and deportation system will enable our communities to prevent deportations and be ready for new developments.