



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

**San Diego and
Imperial Counties**

July 25, 2019

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Sheriff-Coroner
Don Barnes
Orange County Sheriff's Department
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Undersheriff Bob Peterson
Orange County Sheriff's Department
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Via Email

Re: Use of Orange County Jails for Immigration Enforcement in Violation of the California Values Act

Dear County Counsel Page, Sheriff-Coroner Barnes, and Undersheriff Peterson:

We write with serious concerns about the Orange County Sheriff's Department's practice of jailing individuals charged in federal court with illegal entry (8 U.S.C. § 1325) and/or illegal reentry (8 U.S.C. § 1326) in violation of the California Values Act (SB 54), which took effect on January 4, 2018. Cal. Gov't Code §§ 7282 *et seq.* The California Values Act protects the safety and well-being of all Californians by ensuring state and local resources are not used for immigration enforcement. In signing the Values Act into law, the California State Legislature acknowledged what community groups have been declaring for decades: immigrants are valuable and essential members of the state's community; a relationship of trust between the immigrant community and state and local law enforcement agencies is central to public safety for all Californians; and entanglement between federal immigration agencies and state and local law enforcement agencies threatens community trust,

diverts limited resources, blurs accountability, and raises constitutional concerns. Cal. Gov't Code § 7284.2.

In December 2017, the ACLU of California, Advancing Justice - Asian Law Caucus, California Immigrant Policy Center, Immigrant Legal Resource Center, and National Day Labor Organizing Network sent you a letter providing a detailed analysis about the new state law and the obligations it imposes on local law enforcement agencies within your county in anticipation of its January 4, 2018 effective date. As we emphasized in that letter, local law enforcement agencies are liable for violations of the California Values Act.

The Values Act places prohibitions, limitations, and responsibilities on state and local law enforcement agencies with respect to cooperation with federal immigration authorities. In pertinent part, the Values Act forbids state and local law enforcement agencies from using “agency or department moneys or personnel to investigate, interrogate, *detain*, detect, or *arrest* persons for immigration enforcement purposes...” Cal. Gov’t Code § 7284.6(a)(1) (emphasis added). The Act defines “immigration enforcement” as including “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to *investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law* that penalizes a person’s *presence in, entry, or reentry to, or employment in, the United States.*” Cal. Gov’t Code § 7284.4(f) (emphasis added).

We have identified cases of individuals held in criminal custody at Orange County jails, including the Men’s Central Jail, Theo Lacy, and Musick, on federal charges of violating 8 U.S.C. § 1325 or § 1326 in violation of the Values Act. Because sections 1325 and 1326 criminalize unlawful entry and unlawful reentry, respectively, prosecution under those statutes falls within the definition of immigration enforcement under the Values Act. Accordingly, because incarcerating individuals charged with these crimes in Orange County jails necessarily uses agency “personnel” to “detain” them for “immigration enforcement purposes,” doing so violates the Values Act. The Values Act contains one very narrow exception for individuals suspected of illegal reentry under 8 U.S.C. § 1326 who “may be subject to an enhancement” under subsection (b)(2) based on an unrelated prior conviction for an aggravated felony. Cal. Gov’t Code § 7284.6(b)(1). We have confirmed that the Sheriff’s Department’s practice of detaining individuals charged under section 1326 is not limited to individuals subject to the (b)(2) enhancement. No other exceptions to the protections of the Values Act permit the use of local agency resources to enforce 8 U.S.C. §§ 1325 or 1326. *See* Cal. Gov’t Code §§ 7282 *et seq.*

According to data obtained by The Million Dollar Hoods Project, nearly 4,000 people charged only with 8 U.S.C. § 1325, a federal misdemeanor, were booked into the custody of the Orange County Sheriff’s Department between January 1, 2018 and December 31, 2018.¹ Each of these cases necessarily violated the California Values Act’s prohibition against using department resources for immigration enforcement purposes. The time period also coincides with the federal government’s enactment of its controversial “Zero Tolerance” policy for prosecuting all suspected unauthorized border crossings, no matter how minor, as criminal cases. In effect, the Sheriff’s Department’s

¹ Eric Lee, Isaac Bryan and Kelly Lytle Hernandez, *Immigration Enforcement and the Orange County Jail*, THE MILLION DOLLAR HOODS PROJECT (2019), http://milliondollarhoods.org/wp-content/uploads/2019/07/OC_Jail_2018_Final.pdf (last visited July 23, 2019).

disregard for the Values Act has directly facilitated one of the federal government's most nefarious and poorly executed immigration enforcement policies.² This is unacceptable.

In one particularly egregious example, Roberto Lara³ was charged with a violation of section 1326 and locked up in the Orange County Sheriff's Department's custody at Musick and Theo Lacy while his case was pending, in clear violation of the Values Act. He pled guilty and completed his sentence of 90 days on February 3, 2019. His release was required on that date. Instead, he spent an additional 32 days in the Orange County Sheriff's Department's custody without justification or explanation. At best, it appears the federal government lost track of him, likely due to its inability to process the unprecedented volume of illegal entry and reentry prosecutions it has insisted on pursuing. Worse yet, Orange County Sheriff's Department officials, lacking information about the procedural posture of his federal criminal case, were unable to facilitate Mr. Lara's timely release upon his completion of his sentence. He only won his release with the intervention of outside individuals. Mr. Lara's incarceration in Orange County Sheriff's Department custody on a charge of illegal reentry violated the Values Act regardless of the time he spent jailed beyond his release date. But his overstay in the Orange County Sheriff's Department's custody is an example of the myriad of serious problems that arise when local law enforcement agencies participate in federal immigration enforcement. The federal government's bungling of this case and others like it underscores the critical need for SB 54 and illustrates why local participation in federal immigration enforcement contradicts California values.

We are aware of the Orange County Sheriff's Department's decision to terminate its contract with Immigration and Customs Enforcement (ICE) to hold civil immigration detainees on March 27, 2019. It must also end its practice of detaining individuals charged with criminal immigration violations, as detailed above, based on its contract with the United States Marshal's Service. The federal government has consistently proven that it is not equipped to properly or fairly handle the volume of immigration enforcement actions it has insisted on pursuing, particularly in the border region. The Orange County Sheriff's Department is forbidden from facilitating the federal government's prosecutions of individuals for low-level immigration-related crimes. Indeed, the California Legislature unequivocally declared and codified its intent to prohibit local law enforcement agencies from engaging in any such immigration enforcement when it passed the California Values Act.

The Orange County Sheriff's Department must stop its practice of jailing individuals charged with illegal entry and/or illegal reentry in its locally operated jails in violation of the California Values Act. Please contact Monika Y. Langarica at mlangarica@aclusandiego.org within 30 days of the date

² Examples of the government's botched immigration prosecutions are plentiful. See Maya Srikrishnan, *The Surge in Border Crossing Prosecutions Is Causing Chaos and Confusion in Federal Court*, Voice of San Diego, May 23, 2018, <https://www.voiceofsandiego.org/topics/news/the-surge-in-border-crossing-prosecutions-is-causing-chaos-and-confusion-in-federal-court/>; Maya Srikrishnan, *Overwhelmed With Zero Tolerance Cases, Prosecutors Have Accidentally Brought Juveniles to Adult Court*, Voice of San Diego, July 12, 2018, <https://www.voiceofsandiego.org/topics/government/overwhelmed-with-zero-tolerance-cases-prosecutors-have-accidentally-brought-juveniles-to-adult-court/>.

³ Name has been changed to protect the individual's privacy.

of this letter to confirm the Orange County Sheriff's Department's plans to stop engaging in such unlawful practices.

Sincerely,



Monika Y. Langarica

Immigrants' Rights Staff Attorney

ACLU Foundation of San Diego & Imperial Counties



Erik Garcia

Community Engagement and Policy Advocate

ACLU of Southern California