TRUTH Act Forum

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Clients should not have to choose between preserving their access to lawful status and being turned over to ICE.

We have a Constitutional duty to provide effective assistance of counsel.

- We may have to advise our clients to plead to an offense that is immigration neutral (preserves client's Green Card or other lawful immigration status), but result in the person being turned over to Immigration and Customs Enforcement (ICE) because it's allowed by SB 54.

- A client may "plead up" to a higher offense that protects their immigration status, then have that higher plea used against them as a qualifying offense for ICE transfer under SB 54 when the lesser plea would not have qualified for ICE transfer.

- A serious or violent charge or conviction by itself can never tell the full story.

ICE Cooperation Imposes a Burden on the PDP and the County

- **Assessment of whether a particular plea will put a client at risk of an ICE transfer upon release from jail consumes significant resources.**
  - Requires a defense attorney to develop a deep understanding of SB 54.
  - Determination is enormously time-consuming.
  - Those billable hours could be redirected to the merits of defense or returned to the county.

- **ICE cooperation limits plea choices and skews negotiating strength between the District Attorney's office and PDP.**

ICE Cooperation Imposes a Burden on the PDP and the County

- It’s not a sensible use of resources for the County on one hand to offer people like our PDP clients legal assistance through removal defense funds, and on the other hand, turn those same people over to ICE.

ICE Cooperation Imposes a Burden on the PDP and the County

- The Sheriff's Office is prohibited by law from collecting information about immigration status. When they transfer a person to ICE, they rely solely on ICE's assertion about immigration status. Numerous analyses have shown it is not uncommon for ICE to issue notification requests against U.S. citizens, and to wrongfully detain and deport citizens.

- One academic study estimates that in 2010 alone, over 4,000 U.S. citizens were detained or deported. California counties have been held liable for detaining U.S. citizens based on faulty information provided by ICE.

Tchekmedyian, Alene. "U.S. citizen held by immigration agenda wins $55,000 settlement." Los Angeles Times. October 26, 2018. https://www.latimes.com/local/lanow/la-me-ln-ice-settlement-20181026-story.html
Domonoske, Camila. "U.S. Citizen who was held by ICE for 3 years denied compensation by appeals court." National Public Radio. August 1, 2017. https://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmlstory.html

ICE Cooperation Imposes a Burden on the PDP and the County

- The Santa Clara County Public Defender recently opined, and we agree, that determining whether a conviction qualifies a person for ICE notification under SB 54 "can be a highly complex question." An accurate inquiry requires a detailed review of trial court records including charging documents, minute orders, and change-of-plea hearing transcripts.
- Whether a conviction qualifies could be vigorously argued by prosecutors and defense attorneys.
- It is not simply a matter of reviewing a rap sheet, which could contain inaccuracies and does not give all information needed to assess whether an offense qualifies.
- Failure to conduct such a detailed analysis dramatically increases the risk that a person who does not qualify will be transferred to ICE in error.

Recommendations

- ICE's notification requests (I-247) or "administrative warrants" are just requests from ICE. They are *NOT* reviewed or signed by a federal judge, and therefore cannot prove a probable cause for arrest.

- The PDP recommends that the Sheriff's office update its policy so that:
  - **The only notification or facilitation of a transfer of an adult individual to ICE occurs when an ICE agent presents a valid judicial warrant (as defined in Gov. Code § 7284.4(i)) or otherwise required by federal or state law.**
  - This prevents agencies from abusing their power, and follows the traditionally required checks-and-balances of our criminal legal system.