

RESOLUTION 09-07-2018

DIGEST

Law Enforcement: Limitations on Immigration and Customs Enforcement

Adds Government Code section 7595.5 to prohibit Immigration, Customs and Enforcement agents from entering state-owned buildings, schools or community colleges without a warrant.

STATEMENT OF REASONS

The Problem: The California state Legislature has passed, and Gov. Jerry Brown has signed SB 54 which declares California to be a sanctuary state. The governor and legislature believe immigrants are crucial in contributing to the state's economy and culture and that state and local resources should not be used to detain and deport undocumented immigrants.

US Immigration & Customs Enforcement (ICE), an agency of the Department of Homeland Security, is responsible for enforcing immigration laws with the United States. In the past year, ICE has increased enforcement within California. That enforcement has included indiscriminate sweeps in which certain groups, based on race and ethnicity, are required to provide evidence of citizenship, contrary to the sanctuary state legislation. Some of those sweeps have occurred within public buildings.

The Solution: This proposed legislation would limit ICE enforcement within buildings owned and operated by the state of California to individuals for whom ICE has a specific warrant. ICE would be prohibited from initiating any enforcement action against other persons within those buildings for whom ICE did not have a warrant.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 7595.5 to read as follows:

- 1 § 7595.5
2 (a) Federal immigration enforcement agents, officers, or personnel shall not enter a
3 building owned and occupied, or leased and occupied, by the state, a public school, or a campus
4 of the California Community Colleges, Colleges, to perform surveillance, effectuate an arrest, or
5 question an individual therein, without a valid federal warrant.
6 (b) When in possession of a valid federal warrant, the activities of federal immigration
7 enforcement agents, officers, or personnel in a building owned and occupied, or leased and
8 occupied, by the state, a public school, or a campus of the California Community Colleges, shall
9 be limited to the individual who is the subject of the warrant.
10 (c) For purposes of this section:
11 (1) "Public school" means a public elementary or secondary school offering kindergarten
12 or any of grades 1 to 12, inclusive.
13 (2) "State" means a state agency, as defined pursuant to Section 11000, the Legislature,
14 superior court, court of appeal, the Supreme Court, the Judicial Council, or the Administrative
15 Office of the Courts, and each campus of the California State University and the University of
16 California.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

REFER TO CONFERENCE FOR DEBATE WITHOUT RECOMMENDATION

History:

No similar resolutions found.

Reasons:

This resolution adds Government Code section 7595.5 to prohibit Immigration, Customs and Enforcement agents from entering state-owned buildings, schools or community colleges without a warrant. This resolution is referred to the conference for debate without recommendation due to the meritorious arguments both for and against its approval.

California has already declared it public policy not to cooperate with Immigration, Customs and Enforcement (ICE) agents without their having obtained a valid federal warrant. Previously passed legislation prohibits businesses from permitting ICE agents to enter non-public premises without a warrant. (Gov. Code, § 7285.1, subd. (a).) The resolution applies to government owned property, prohibiting ICE agents from entering a state-owned or –operated building, school, or community college to perform surveillance, or question or arrest an individual thereon without a valid federal warrant. It further provides that when in possession of a valid federal warrant, ICE agents' activities on public property shall be limited to the individual named in the warrant.

The resolution continues California's efforts to provide a safe environment for immigrants to participate in the activities of living in society. A relationship of trust between California's immigrant community and state and local agencies is central to enforcing civil and criminal laws. This trust is threatened when employees of ICE conduct raids and make arrests at courthouses, or at schools where children are being picked up by their parents. Such actions make immigrants fear seeking earned benefits or reporting violations of state law such as wage and hour claims, workers' compensation benefits, or health and safety violations; hesitate appearing in California

courts pursuant to a subpoena or warrant, or to pay a fine; and avoid participating in school activities with their children, even just dropping them off or picking them up. The resolution would assure people they can take part in state sanctioned activities such as paying a fine, attending school, or getting a permit, without the concern of being harassed or arrested by ICE agents.

However, under the Supremacy Clause, this resolution may be preempted by federal law because it creates an obstacle to the accomplishment of congressional objectives by prohibiting ICE agents from accessing property otherwise open to the public, and by requiring a warrant even if they seek only to speak with their target. The Supremacy Clause provides a clear rule that federal law shall be the supreme law of the land, and that Congress has the power to preempt state law. However, the federal power to determine immigration policy is well settled. States are precluded from regulating conduct in a field that Congress has determined must be under its exclusive governance. Such intent may be inferred from a framework of regulation "so pervasive . . . that Congress left no room for the States to supplement it" or where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." (*Rice v. Santa Fe Elevator Corp.* (1947) 331 U.S. 218, 230.)

It is this preemption argument that is the basis for Attorney General Sessions suit against California's recently passed sanctuary laws. The resolution makes ICE enforcement more difficult on and within public property, even where that property is otherwise open to the public, potentially inhibiting enforcement of federal immigration law. For example, an ICE agent would never be able to obtain a warrant for the sole purpose of questioning the target of an investigation because warrants are not available for that purpose.

Yet, while the federal power to determine immigration policy is well settled, states have their own important interests to protect. In general, state law governs the use of state buildings, while both the federal and state constitutions provide the right of people to be secure in their persons and property against unreasonable searches.

The resolution is identical to language proposed in Sen. Bill 183 (Lara) as introduced. The bill was enacted with different content.