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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 1282                      **Hearing Date:** June 25, 2019  
**Author:** Kalra  
**Version:** June 17, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Immigration Enforcement: Private Transportation*

### HISTORY

**Source:** Asian Americans Advancing Justice – California  
Asian Prisoner Support Committee  
Freedom for Immigrants  
Legal Services for Prisoners with Children  
Youth Justice Coalition

**Prior Legislation:** SB 54 (De Leon), Ch. 495, Stats. 2017  
SB 29 (Lara), Ch. 494, Stats. 2017  
AB 2792 (Bonta), Ch. 768, Stats. 2016  
AB 4 (Ammiano), Ch. 570, Stats. 2013

**Support:** ACLU of California; California Healthy Nail Salon Collaborative; California Immigrant Policy Center; California Immigrant Youth Justice Alliance; California Public Defenders Association; Courage Campaign, California; Dolores Street Community Services; Empowering Pacific Islander Communities; Food Empowerment Project; Fools Mission; Human Impact Partners; Interfaith Movement for Human Integrity; Korean Community Center for the East Bay; National Lawyers Guild Los Angeles; NextGen California; Oakland Privacy; Orange County Equality Coalition; PODER; Public Health Justice Collective; Re:Store Justice; Riverside Sheriffs' Association; Riverside Temple Beth El; Root & Rebound; Rubicon Programs; San Diego Immigrants Rights Consortium; San Francisco Peninsula People Power; SEIU California; Silicon Valley De-Bug; Southeast Asia Resource Action Center; Women For: Orange County

**Opposition:** None known

**Assembly Floor Vote:** 59 - 15

### PURPOSE

*The purpose of this bill is to prohibit an officer, employee, contractor, or employee of a contractor of the California Department of Corrections and Rehabilitation (CDCR) from: 1) facilitating or allowing entry to the department's premises, or otherwise authorizing an employee or contractor of a private security company to arrest, detain, or take into custody, an*

*individual in the department's custody for immigration enforcement purposes; 2) detaining a person beyond a the person's scheduled release date for immigration enforcement purposes; 3) coordinating with an employee or contractor of a private security company to interrogate parolees for immigration enforcement purposes; and 4) transferring an inmate to another state prison within 90 days of the person's release date.*

*Existing federal law* grants an officer or employee of the Immigration and Naturalization Service (INS) of the Department of Justice the authority of an immigration officer: to interrogate, arrest, and conduct warrantless searches, as specified, of a person believed to be an alien of the United States. (8 U.S.C. § 1357(a)-(c).)

*Existing federal law* permits the Attorney General of the United States to enter into a written agreement with a state, in which an officer or employee of the state is permitted to perform the functions of an immigration officer. (8 U.S.C. § 1357(g).)

*Existing federal law* provides that the term "immigration officer" means any employee or class of employees of the INS or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title. (8 U.S.C. § 1101(a)(18).)

*Existing law* provides that whenever a person has entered upon a term of imprisonment in a penal or correctional institution, and whenever during the continuance of the term of imprisonment there is a detainer lodged against the prisoner by a law enforcement or prosecutorial agency of the state or its subdivisions, CDCR may do either of the following:

- Release the inmate to the agency lodging the detainer, within five days, or five court days if the law enforcement agency lodging the detainer is more than 400 miles from the county in which the institution is located, prior to the scheduled release date provided the inmate is kept in custody until the scheduled release date.
- Retain the inmate in custody up to five days, or five court days if the law enforcement agency lodging the detainer is more than 400 miles from the county in which the institution is located, after the scheduled release date to facilitate pickup by the agency lodging the detainer. (Pen. Code, § 4755.)

*Existing law* defines "hold request" to mean a federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D. (Gov. Code, § 7283, subd. (b).)

*Existing law* defines "immigration authority" to mean any federal, state, or local officer, employee, or person performing immigration enforcement functions. (Gov. Code, § 7284.4, subd. (c).)

*Existing law* provides that the terms "hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in Section 7283. Provides that hold, notification, and transfer requests include requests issued by ICE or United States Customs and Border Protection as well as any other immigration authorities. (Gov. Code, § 7284.4, subd. (e).)

*Existing law* provides that “immigration enforcement” includes 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. (Gov. Code, § 7284.4, subd. (f).)

*Existing law* prohibits California law enforcement agencies from using agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including detaining an individual on the basis of a hold request. (Gov. Code, § 7284.6, subd. (a)(1).)

*Existing law* defines “California law enforcement agency” to mean a state or local law enforcement agency, including school police or security departments. Provides that “California law enforcement agency” does not include CDCR. (Gov. Code, § 7284.4, subd. (a).)

*Existing law* requires CDCR, in advance of any interview between ICE and an individual in department custody regarding civil immigration violations, provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. (Gov. Code, § 7284.10, subd. (a)(1).)

*Existing law* requires CDCR, upon receiving any ICE hold, notification, or transfer request, to provide a copy of the request to the individual and inform him or her whether the department intends to comply with the request. (Gov. Code, § 7284.10, subd. (a)(2).)

*Existing law* prohibits CDCR from restricting access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual. (Gov. Code, § 7284.10, subd. (b)(1).)

*Existing law* prohibits CDCR from considering citizenship and immigration status as a factor in determining a person’s custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual. (Gov. Code, § 7284.10, subd. (b)(2).)

*This bill* prohibits an officer, employee, contractor, or employee of a contractor of CDCR from doing any of the following:

- Facilitating or allowing entry to CDCR’s premises, or otherwise authorizing an employee or contractor of a private security company to arrest, detain, interrogate, transport, or take into custody, and individual in CDCR’s custody or an individual on CDCR’s premises for immigration enforcement purposes.
- Detaining an individual beyond the time period the individual would otherwise be eligible for release under state law for immigration enforcement purposes or on the basis of a hold or detainer request issued by an immigration authority, which includes, but is not limited to, U.S. department of Homeland Security Form I-247 and I-247A.

- Coordinating with an employee or contractor of a private security company to interrogate parolees for immigration enforcement purposes.
- Transferring an individual in CDCR's custody to another state prison within 90 days of the individual's release date, except in an emergency for special housing.

*This bill* provides the following definitions:

- "Arrest" means taking a person into custody in a manner authorized by law.
- "Immigration authority" means and federal, state, or local officer, employee, or person performing immigration enforcement functions.
- "Immigration enforcement purposes" includes 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 into, or employment in the U.S.
- "Private security company" means a privately owned business that provides armed or unarmed security services, including providing transportation, guard, and patrol services.

*This bill* includes various legislative findings and declarations regarding ICE's use of private contractors and the practice of holding a person beyond the person's sentence on an ICE hold or detainer request.

## COMMENTS

### 1. Need for This Bill

According to the author:

In recent years, Immigration and Customs Enforcement (ICE) has increasingly relied on private contractors to carry out its extensive enforcement operations in the state of California, including in prisons. As a result, many of these arrests for immigration enforcement purposes in state prisons are conducted not by ICE officers, but by employees of private security corporations.

In particular, ICE contracts with G4S Wackenhut to transport immigration detainees. G4S is the largest private security company in the world, with over half a million employees in 125 countries. In 2017, the company's annual revenue was \$9.8 billion. G4S is involved in managing prison and detention facilities around the world, transporting immigrants for ICE, and electronic tagging and monitoring. G4S is the subject of numerous complaints of physical abuse, excessive force, and sexual abuse against immigrants, youth, and other detainees.

In California state prisons, G4S employees often conduct arrests on their own. ICE officers are completely absent when immigrants leave state custody and are handcuffed by G4S employees. The immigrants are then transported by G4S employees to an ICE field office, often hours away, where ICE officers enter the picture for the first time.

ICE's use of private contractors to execute immigration arrest warrants in prisons violates the federal Immigration and Nationality Act (INA) and its implementing regulations because private contractors clearly do not have authority to conduct immigration arrests.

The INA outlines the specific powers of immigration officers, including execution of immigration orders, warrants, subpoenas, summons and other processes issued under that authority. See 8 U.S.C. § 1357; 8 C.F.R. § 287.5. The implementing regulations, Section 287.5 of Title 8 of the Code of Federal Regulations, provide authority to specific federally classified law enforcement officers to execute arrest warrants for immigration violations. Only immigration officers are authorized to arrest or detain persons alleged to have violated federal immigration law. Federal or state law does not permit privately employed or contracted security guards to enforce federal immigration law, including detaining, taking into custody or arresting an undocumented immigrant. It also should be noted that no federal law requires CDCR to allow or facilitate ICE or private security companies to conduct immigration arrests.

The practice of G4S private security guards arresting individuals in state prisons for immigration enforcement purposes has been particularly harmful to Southeast Asian refugees. Decades ago, Southeast Asian refugees fled war and genocide in Cambodia, Laos, and Vietnam, and were resettled in the U.S. in low-income neighborhoods. After serving decades in state prison, a number of Southeast Asian refugees have earned their release through a grant of parole by the Board of Parole Hearings (BPH), which was affirmed by the Governor, or through a commutation recommended BPH and granted by the Governor. However, rather than being allowed to reunite with their families and communities, G4S private security guards have showed up in state prisons to arrest them and transport them to immigration detention in violation of federal law and regulations.

## **2. Use of Private Contractors by ICE**

Following the terrorist attacks on September 11, 2001, several executive agencies related to national security were reorganized, renamed, and consolidated into a single Cabinet agency, the newly created Department of Homeland Security (DHS). Immigrations and Customs Enforcement (ICE) was established within DHS and assumed the duties previously within the jurisdiction of the U.S. Customs Service and the Immigration and Naturalization Service. ICE now has more than 20,000 law enforcement and support personnel in more than 400 offices in the U.S. and around the world. (<https://www.ice.gov/about>.) One of ICE's primary directives is to conduct "enforcement and removal operations." That includes identifying and arresting undocumented individuals in the custody of CDCR, and then transporting them to detention centers to await deportation proceedings.

G4S Wackenhut or G4S Security Solutions is a private security company based in the U.S. that offers a variety of services, including "security personnel." ICE utilizes G4S's services to transport individuals identified as removable aliens from prisons to detention facilities where those individuals are held pending deportation proceedings. The relationship between ICE and G4S has come under scrutiny from civil liberty groups such as the ACLU. According to a press release from July 2018, G4S caused nine women to spend more than 24 hours being moved from

the West County Detention Facility in Richmond to the Mesa Verde Detention Facility in Bakersfield, even though the two cities are less than five hours apart. (ACLU, *ACLU Files Abuse Claims, Seeks Information on ICE Transport Contracts*, Jul. 10, 2018 <<https://www.aclunc.org/news/aclu-files-abuse-claims-seeks-information-ice-transport-contracts>> [as of Jun. 19, 2019].) According to that report, the women’s feet, waists, and hands were shackled for much of the journey and they were denied adequate food and water. During one segment of the trip the women were shoved in the back of a windowless van with no air, which resulted in several of the women not being able to breathe, some vomited and fainted. (*Id.*)

This bill would prohibit CDCR officers, employees, and contractors from facilitating or allowing private security company personnel to enter a facility, or otherwise authorizing private security company personnel to arrest, detain, interrogate, transport, or take into custody, a person in CDCR’s custody or a person on CDCR’s premises for immigration enforcement purposes. The sponsor of the bill cites to federal laws which specify what duties immigration officers have, and to whom they can delegate those duties.

This bill also prohibits CDCR officers, employees, and contractors from coordinating with private security company personnel to interrogate parolees for immigration enforcement purposes.

### 3. SB 54

SB 54 (De Leon), Chapter 495, Statutes of 2017, enacted a number of provisions of law designed to protect immigrants. Among its many provisions, SB 54 prohibits California law enforcement agencies from using agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including detaining an individual on the basis of a hold request. (Gov. Code, § 7284.6, subd. (a)(1).) Notably, Government Code section 7284.4 defines “California law enforcement agency” to mean a state or local law enforcement agency, including school police or security departments, and explicitly excludes CDCR from the definition.

### 4. CDCR Policy on Immigration Detainers

On May 15, 2018, CDCR’s Director of the Division of Adult Institutions issued a memo regarding a change in the department’s policy on releasing inmates with respect to immigration detainers. The memo provides, in part:

This memorandum supersedes any previous written direction which allowed the California Department of Corrections and Rehabilitation (CDCR) to hold inmate with United States Immigration and Customs Enforcement (ICE) detainers for two business days (48 hours) past their parole/discharge date to facilitate pick-up by ICE.

Effective June 18, 2018, CDCR will no longer retain an inmate past his/her parole/discharge date to facilitate pick-up by ICE. Utilizing the intent of Penal Code (PC) Section 4755, CDCR may release the inmate/parolee to ICE officials within five business days prior to the scheduled release date. For inmates paroling

on an ICE detainer, *ICE Form 247(a)*, Case Records staff will make pick-up arrangement with ICE 10-14 days prior to the inmate's parole/discharge date.

The provision of this bill prohibiting CDCR from detaining a person beyond the time that the person would otherwise be eligible for release is consistent with CDCR's policy.

**5. Transfer Provision**

This bill prohibits CDCR officers, employees, and contractors from transferring an individual in CDCR's custody to another state prison within 90 days of the individual's release date, except in an emergency for special housing.

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