
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 183 **Hearing Date:** January 9, 2018
Author: Lara
Version: September 8, 2017
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *State Buildings: Federal Immigration Agents*

HISTORY

Source: California Applicants' Attorneys Association
Coalition for Humane Immigrant Rights

Prior Legislation: SB 54 (De León) Chapter 495, Stats. 2017
AB 450 (Chiu) Chapter 492, Stats. 2017
AB 699 (O'Donnell) Chapter 493, Stats. 2017

Support: American Civil Liberties Union of California; California Employment Lawyers Association; California Public Defenders Association; California Teachers Association; Common Sense Kids Action; Friends Committee on Legislation of California

Opposition: None known

PURPOSE

The purpose of this bill is to prohibit federal immigration enforcement agents from entering buildings owned by the state or a public school or campus of a California Community College without a valid federal warrant.

Existing law, in general, governs the use of state buildings and prohibits specified conduct inside state buildings. (See for example: Government Code §§ 431 (displaying flags) 4452 (handicapped access); 7595 (public office hours); 7596 (no smoking); 8878.90 (seismic safety); 14685 (maintenance).)

Existing law includes in the definition of "state building" any building or structure owned by a state agency, which is identified pursuant to Section 8878.60, except for vehicular bridges, roadways, highways, or any facilities or buildings owned by the University of California or the California State University. (Government Code § 8878.52 (h))

The US Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." (4th Amendment of the U.S. Constitution.)

The California Constitution provides that “the right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.” (Article I, Section 13 of the California Constitution.)

Existing law sets forth the requirements for an arrest warrant under California law. (Penal Code § 813)

Existing law sets forth the requirements for an arrest warrant under Federal law. (Federal Rules of Criminal Procedure Rule 4)

Existing law limits the authority of an employee of the Immigration and Customs Enforcement Agency to arrest a person without a warrant. (8 U.S. Code §1357)

This bill provides that federal immigration enforcement agents, officers or personnel shall not enter a building owned and occupied or leased and occupied, by the state, a public school, or a campus of the California Community Colleges, to perform surveillance, effectuate and arrest or question and individual therein, without a valid federal warrant.

This bill defines “public school” as a public elementary or secondary school offering kindergarten or any of grades 1 to 12, inclusive.

This bill defines “state” as a state agency, the Legislature, superior court, court of appeal, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts, and each campus of the California State University and the University of California.

COMMENTS

1. Need for This Bill

According to the author:

Although current law does not ban ICE agents’ access to public buildings in California, the bills listed above have limited the ability of ICE agents to enter various public facilities or work with local law enforcement. SB 54 (de León) limits the involvement of state and local law enforcement agencies in federal immigration enforcement. AB 21 (Kalra) requires higher education segments to establish policies that safeguard against immigration enforcement activities on campuses. AB 699 (O’Donnell) requires the Attorney General to create model policies limiting assistance with immigration enforcement at K-12 public schools. AB 450 (Chiu) prohibits an employer from providing access to federal immigration agents to any non-public areas of a place of labor if the agent does not have a warrant.

The intent of SB 183 is to limit ICE agents' access to public buildings in California. Under the bill, federal immigration enforcement agents would not be able to enter a building owned and occupied, or leased and occupied by the state or public schools to perform surveillance, effectuate an arrest, or question an individual unless they had a valid federal warrant to do so.

Immigrants are valuable members of the California community. They are essential to the unique multi-cultural fabric of California. A relationship of trust between California's immigrant community and state and local agencies is essential for enforcement of civil laws. This trust is threatened when federal immigration enforcement agents are present in California's courts, state agencies, and educational facilities to target undocumented individuals.

Chief Justice Tani Cantil-Sakauye recently asked the federal government to cease "stalking" undocumented California residents near courts, and said that the presence of ICE agents has a chilling effect on documented and undocumented immigrants alike. Labor Commissioner Julie Su issued guidelines to her staff to ban ICE agents from her offices because their presence "could disrupt enforcement of labor laws by discouraging immigrant workers from reporting" violations.

By requiring ICE agents to possess a valid federal warrant before entering a state building or school, this bill will protect the relationship between immigrants, non-immigrants, and law enforcement and help build a supportive environment where individuals can go to work at various administrative agencies, report for court dates, parents can pick up their children from school, and students can attend classes without the fear of being targeted by federal agents based on their immigration status.

2. ICE Agents Will Need a Warrant

This bill will prohibit ICE agents from entering state buildings without a valid federal warrant.

There have been a number of examples of arrests of people by ICE agents at courthouses throughout the country. (see for example: Bain and Saul, *New York Post* "ICE Agents 'pounced' on immigrant in Brooklyn courthouse: Attorney" November 28, 2017; Rhodan, *Time* "Plainclothes Officers Arrested Immigrants at Courthouse. Can they do that?" September 18, 2017; Garcia Hernandez, *NY Times* "ICE's Courthouse Arrests Undercut Democracy" November 26, 2017) There have also been reports of arrests at or near schools. (see for example: Mays, *Fresno Bee* "After Arrests Near Schools, Valley Groups Skeptical of ICE Policies." April 8, 2017; *New York Post* "NYC School Turns Away Immigration Agent Looking for Fourth Grader." May 14, 2017)

This bill is intended to give everyone the assurance that they can take part in state sanctioned activities or perform other things required by law, such as paying a fine, attending school or getting a permit, without the concern of being harassed or arrested by ICE agents. If ICE agents need to arrest a specific person, is it unreasonable that they first get a warrant?

3. Argument in Support

The California Applicant's Attorneys Association, the sponsor of this bill states in part:

In essence, SB 183 attempts to protect and vindicate rights and benefits that are granted by the State of California. As a result, pursuant to the 10th Amendment of the Constitution, California is wholly within its right to craft legislation to facilitate the execution of these rights and benefits for all California residents. This is a fundamental premise of this country's federal form of governance.

The United State Supreme Court recently described federalism, and its relationship with state sovereignty as follows: "Federalism is more than an exercise in setting the boundary between different institutions of government for their own integrity. State sovereignty is not just an end to itself: Rather federalism secures to citizen the liberties that derive from the diffusion of sovereign power... **It allows States to respond, through enactment of positive law. To the initiative of those who seek a voice in shaping the destiny of their own times... By denying any one government complete jurisdiction over all concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of tis lawful powers, that liberty is at state.**" (Emphasis added.)
Bond v. United States, 564 U.S. 9-10 (2011)

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