



October 9, 2014

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to the detainment and deportation of California residents (A.G. File No. 14-0010).

Background

Federal law (1) specifies the conditions under which foreign nationals may be admitted to and remain in the U.S.; (2) establishes a registration system to monitor their entry and movement in the country; and (3) authorizes the arrest, detention, and deportation of individuals who are illegally present in the U.S.

Federal government agencies are responsible for enforcing immigration laws. However, state and local authorities often cooperate with the federal government in its enforcement of these laws. For example, the U.S. Immigration and Customs Enforcement (ICE) agency can issue an “immigration detainer” for an individual in the custody of a state or local law enforcement agency, which is a request that the agency notify ICE when the individual will be released so that ICE can take over custody. Under such circumstances, the state or local agency may detain the individual for up to two additional days (excluding weekends and holidays) beyond the time they would have otherwise been released. The federal government reimburses state and local agencies for a small portion of the costs to detain these individuals for the additional days.

Under current California law, state and local agencies can choose to comply with federal immigration detainer requests only if the offender is in custody for certain eligible crimes, such as any prison-eligible felony. The list of eligible crimes excludes most minor offenses, such as traffic infractions. Currently, some law enforcement agencies in California do not comply with any immigration detainer requests, regardless of the circumstances. In view of the above, only a very small fraction of undocumented offenders are detained at any given time past their scheduled release date due to an immigration detainer request.

In addition, state and some local law enforcement agencies currently have various contracts with ICE to assist with other federal immigration enforcement activities. For example, ICE contracts with some local jails to hold individuals who are already in federal custody pending deportation. State and local law enforcement agencies are typically reimbursed for the costs of these other activities.

Proposal

This measure amends the State Constitution to specify the following: “No state, county, or city funds or resources may be used to detain and deport a resident of California.”

Fiscal Effects

The fiscal impact of this measure would depend on such factors as court decisions interpreting the measure and on how state, local, and federal law enforcement responded to its provisions.

Minor Fiscal Effect on State and Local Law Enforcement. We estimate that this measure would create some minor state and local government savings as it would reduce the participation of law enforcement agencies in California in federal immigration enforcement activities. Primarily, the measure would prevent state prisons and county jails from using their resources to detain individuals for immigration purposes past the time that they would have otherwise been released. In addition, state and local governments who contract with ICE could be affected by the measure.

Potential Minor Increase in Costs Related to Undocumented Immigrants. To the extent that the measure results in decreased deportations, participation in certain state and local programs could increase. For example, county costs to provide safety net health services to low-income individuals who do not have private coverage and who are not eligible for state or federal programs could increase. State costs for Medi-Cal (California’s state-federal Medicaid Program) could also increase as a result of this measure. However, these increased costs for counties and the state are likely to be minor.

Summary of Fiscal Effects. We estimate the measure would have the following fiscal effect on state and local governments:

- Minor net fiscal effect on state and local governments resulting from reduced participation in federal immigration enforcement activities.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance