

January 13, 2012

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

Attention: Ms. Dawn McFarland  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to immigration and transnational gangs (A.G. File No. 11-0094).

## **Background**

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

Federal government agencies are responsible for enforcing immigration laws. Under agreements with the federal government, however, state or local government agencies may assist the federal government in its enforcement of those laws. An agreement with the federal government defines the scope of the state or local government agencies' enforcement duties and activities. Currently, four local law enforcement agencies in California have such agreements with the federal government.

Officers from the participating state and local law enforcement agencies are trained by the U.S. Immigration and Customs Enforcement (ICE) agency, which pays for some of the cost associated with the training. The ICE also pays for most of the technology required to support state and local immigration investigations, subject to the availability of funds.

***Immigration Detainers.*** Under current federal law, the U.S. Department of Homeland Security (DHS) can issue an immigration detainer for an individual in state or local custody. An immigration detainer is a request that a state or local law enforcement agency notify ICE so that it can take over custody before that individual is released. State and local law enforcement agencies are not generally required under federal or state law to verify with DHS whether an immigration detainer should be issued for an arrested individual. Nor are state and local agencies generally required under federal or state law to transfer individuals for whom detainers have been issued to federal authorities.

***Transnational Gangs.*** While no formal definition exists, transnational gangs are generally understood to be gangs that operate in multiple countries. In California, federal, state, and local law enforcement agencies work cooperatively to investigate transnational gang activity and arrest suspected gang members. Local and federal law enforcement agencies take primary responsibility for prosecuting arrested individuals. The Division of Law Enforcement within the California Department of Justice (DOJ), which is administered by the Attorney General, helps coordinate these activities and provides investigative expertise and assistance as needed.

***California Driver's Licenses and Identification Cards.*** Under current law, the California Department of Motor Vehicles (DMV) may not issue a driver's license or identification (ID) card to an individual who does not submit satisfactory proof of being lawfully present in the United States. Current law also requires the DMV to adopt regulations to carry out this process, including procedures for verifying whether an individual is authorized under federal law to be in the country.

According to the department's current regulations, every individual seeking an original driver's license or ID card in California—including those surrendering a valid license or ID card from another state—must prove their legal presence in the U.S. by presenting (1) a valid social security number, if eligible under federal law, and (2) an original or certified copy of an approved federal document that verifies the applicant's date of birth and legal presence (such as a U.S. birth certificate or a "green card" issued to immigrants who are granted permanent residence in our country). A driver's license or ID card will not be issued unless the DMV can verify both documents with the issuing federal agencies. In the event that an individual has only limited-term legal presence in the country, the driver's license or ID card will not be valid beyond the expiration date listed on the submitted temporary legal presence document.

## **Proposal**

***Immigration Detainers.*** This measure requires that an arresting agency, upon notification that an arrested individual is unlawfully present in the country, immediately verify with U.S. DHS whether an immigration detainer should be issued for that individual. A state or local law enforcement agency that has such an individual with a detainer in their custody would be prohibited from releasing that individual and would have to transfer him or her into federal custody, unless otherwise directed by a court.

***Federal Agreements With State and Local Law Enforcement Officers.*** The measure requires the state DOJ to negotiate an agreement with the U.S. DOJ or the U.S. DHS to designate certain law enforcement officers to perform certain duties of federal immigration officers within California, such as serving warrants of arrest for immigration violations or issuing immigration detainers. Within 90 days of finalizing this agreement, the state DOJ must identify the 20 counties in the state with the highest impact of crimes committed by "unauthorized alien transnational gangs." Under the measure, the sheriffs in these particular counties must designate at least one peace officer to receive training in immigration enforcement duties, subject to the availability of funding for this purpose. Other state and local law enforcement agencies may also choose to designate peace officers to receive such training. In addition, the measure instructs the

state Attorney General to request federal funding for the above training of law enforcement officers.

***Policies Limiting Enforcement of Federal Immigration Laws.*** The measure makes it illegal for state and local government agencies and officials to prohibit or restrict in any way (1) inquiries by peace officers into the citizenship or immigration status of persons or (2) further efforts by peace officers to verify the citizenship or immigration status of individuals.

***Requirements for California Driver's Licenses and ID Cards.*** The measure amends state law to include certain existing DMV regulations regarding the issuance of driver's licenses and ID cards. Specifically, the measure (1) prohibits the acceptance of an out-of-state driver's license or ID card as proof of legal presence in the United States if the issuing state does not verify lawful presence as part of its application process, (2) requires the verification of an applicant's submitted legal presence document if their social security number cannot be verified, and (3) limits the validity of a California driver's license or ID card issued to an applicant legally admitted into the United States on a temporary basis to the same time period as their legal presence document.

## **Fiscal Effects**

***Increased State and Local Law Enforcement Costs.*** The measure could increase state and local law enforcement costs. In particular, the provisions of this measure could increase local jail-related costs to the extent that law enforcement officials are more likely to detain individuals suspected of being unlawfully present in the U.S., as permitted by this measure. In addition, state and local law enforcement agencies could incur additional costs to comply with the agreement required by this measure between the state DOJ and the federal government. The actual costs of these activities would depend on the terms specified in the agreement, such as the scope of approved law enforcement duties and training requirements. Collectively, the above law enforcement costs are unknown but could reach several millions of dollars annually, depending on how law enforcement agencies chose to implement certain provisions of the measure.

***Potential State and Local Law Enforcement Savings.*** To the extent that deportation prevents unlawfully present criminals from reentering the criminal justice system, this measure could result in savings to state and local law enforcement agencies. The magnitude of these potential savings is unknown.

***Summary of Fiscal Effects.*** We estimate that this measure could have the following major fiscal effect on state and local governments:

- Increased state and local law enforcement costs, potentially reaching several millions of dollars annually, for detaining persons suspected of being unlawfully present in the U.S. and for complying with an agreement required by this measure between the state and the federal government.

- Potential unknown savings to state and local governments to the extent that the deportation of unlawfully present criminals prevents them from reentering the criminal justice system.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance