

# KINGSTON, MARTINEZ & HOGAN, LLP

ABBE ALLEN KINGSTON\*  
www.kmhimmigration.com  
kingston@kmhimmigration.com

HELENE M. GRADOW  
gradow@kmhimmigration.com

TANYA A. AHLMAN  
tanya@kmhimmigration.com

ANDREA M. ANAYA  
andrea@kmhimmigration.com

ATTORNEYS AT LAW

1300 SANTA BARBARA STREET  
SANTA BARBARA, CALIFORNIA 93101  
(805) 963-9585  
FAX (805) 963-2774

BRUCE W. HOGAN  
bhogan@101freeway.com  
www.santabarbaracollectionlaw.net  
JOSEPH A. MARTINEZ, (1945-2011)

\* CERTIFIED SPECIALIST IMMIGRATION LAW  
THE STATE BAR OF CALIFORNIA  
BOARD OF LEGAL SPECIALIZATION

## Local Immigration Enforcement and Detention

*May 4, 2017*

Increased focus has been placed on local enforcement of federal immigration law. Our own community has seen a rise in the number of individuals detained by Immigration and Customs Enforcement (ICE) for minor offenses.

On February 20, 2017, the Department of Homeland Security (DHS) released the memo *“Implementing the President's Border Security and Immigration Enforcement Improvements Policies”* which sets forth the plan to implement the executive order on *“Border Security and Immigration Enforcement Improvements”*.

The DHS memo calls for a massive expansion in detention, directing DHS personnel to arrest, apprehend, and initiate enforcement actions against *“any alien whom an immigration officer has probable cause to believe”* has violated the immigration laws.

State and local law enforcement agencies are directed to help federal immigration officer's detention efforts through the expansion of the 287(g) program, continued cooperation in the Criminal Alien Program, and the reinstatement of the Secure Communities Program.

### Section 287(g) Program

Section 287(g) of the Immigration and Nationality Act authorizes DHS to enter into agreements with local law enforcement agencies to deputize local law enforcement officers with the authority to perform the functions of federal immigration officers.

Santa Barbara County currently has not entered into a 287(g) agreement. Currently, the Orange County Sheriff's Office is the only local law enforcement agency in California to have a 287(g) agreement with the DHS. As of January 2017, Santa Barbara County Sheriff Bill Brown stated that entering into a 287(g) agreement is *“not on the horizon with the Santa Barbara County Sheriff's Office.”*<sup>1</sup>

---

<sup>1</sup> Scott Hennessee, [Santa Barbara County Sheriff speaks on immigration issues](http://www.keyt.com/news/safety/sheriff-bill-brown-on-law-enforcement-and-immigration/302895351), KCOY, (February 1, 2017), <http://www.keyt.com/news/safety/sheriff-bill-brown-on-law-enforcement-and-immigration/302895351>

Although Santa Barbara does not have a 287(g) agreement, this by no means is the only way that Santa Barbara County law enforcement can collaborate with federal immigration officers to enforce immigration laws.

### Criminal Alien Program

The Criminal Alien Program (CAP) is one of ICE's longstanding programs, which predates the newest executive orders on immigration enforcement. CAP allows ICE agents to enter jails and prisons to review booking information, records, and interrogate inmates. ICE can then issue immigration detainers or transfer custody of inmates.

Unlike the Secure Communities Program, discussed below, CAP is not a mandatory program. Participation in CAP is voluntary. It is in the discretion of state and local law enforcement agencies how much, if any, access they choose to give ICE agents to their facilities.

Santa Barbara County Jail grants ICE authorization to enter their facility and make determinations on inmates' immigration status. During an interview with KCOY Channel 12, Sherriff Brown confirmed that, "They [ICE] also come into our jail and they [ICE] also make determinations as to who is and who is not documented."<sup>2</sup>

### Secure Communities Program

The Secure Communities Program was reinstated by the new administration on January 25, 2017. Under this program, information of every individual taken into custody by local law enforcement is automatically sent to ICE. ICE then uses that information to determine whether that individual may be removable from the United States. If ICE believes that an individual may be removable they can issue an immigration detainer. Under current directive, ICE is authorized to issue an immigration detainer for any individual in custody in jails or prisons, even if the arrest of the individual does not result in a criminal conviction.

The immigration detainer is a request to local law enforcement agencies to notify ICE when the law enforcement agency is set to release the individual from custody (e.g. sentence served, charges dropped). The detainer requests that the law enforcement agency hold that person for up to 48 business hours, after their planned release, so ICE can take custody.

Authored by: Abbe Allen Kingston, Esquire\* & Andrea Anaya, Esquire  
*\*California State Bar Immigration & Nationality Specialist*  
Kingston, Martinez & Hogan LLP

---

<sup>2</sup> Scott Hennessee, supra.