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DATE: January 30, 2018

TO: California Community Colleges

FROM: Marc LeForestier
General Counsel

SUBJECT: **Advisory 18-01: "Sanctuary" Jurisdiction Legislation
Senate Bill 54 (2017) and Assembly Bill 21 (2017)**

This advisory provides information regarding recent California "sanctuary" jurisdiction legislation that prohibits state and local agencies from using resources to further certain federal immigration enforcement efforts. This legislation is contained in Senate Bill 54 (2017)¹ and Assembly Bill 21 (2017).² These new laws went into effect on January 1, 2018.

The Trump Administration contends that sanctuary jurisdiction laws conflict with 8 U.S.C. § 1373, which prohibits local jurisdictions from restricting their employees' communications with immigration and customs enforcement personnel regarding a person's immigration status. On January 25, 2017, President Trump issued Executive Order 13768 which, among other things, grants discretion to the Secretary of Homeland Security and the Attorney General to bar sanctuary jurisdictions from receiving federal funding. (See Executive Order: Enhancing Public Safety in the Interior of the United States Administration, Jan. 25, 2017, § 9.)³ However, a federal court has permanently enjoined enforcement of Executive Order 13768, a ruling that is being appealed. (*County of Santa Clara v. Trump*, 250 F.Supp.3d 497 (N.D. Cal, 2017).) Notwithstanding the injunction, on November 15, 2017, Attorney General Sessions sent letters to 29 "sanctuary cities" threatening to claw back FY 2016 federal funds from the Byrne/JAG account that principally supports local enforcement agencies.⁴ Of

¹ http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54 (accessed Dec. 28, 2017).

² http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB21 (accessed Dec. 28, 2017).

³ Available at <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/> (accessed Dec. 28, 2017).

⁴ A Department of Justice press release describing the letters can be found at the following URL: <https://www.justice.gov/opa/pr/justice-department-sends-letters-29-jurisdictions-regarding-their-compliance-8-usc-1373> (accessed Dec. 28, 2017). California jurisdictions that received these letters included Berkeley, Contra Costa County,

potential significance to educational institutions is that the federal government argued in the *Santa Clara* litigation that section 9(a) of Executive Order 13768 does not extend to all federal funding (as its broad language indicates), but implicates only three sources of federal funding in the Departments of Homeland Security and the Department of Justice. (*County of Santa Clara, supra*, 250 F.Supp.3d at p. 508.) California community colleges may wish to determine whether their police departments receive funding from these sources.

A. Senate Bill 54 and Community College Police

The Education Code authorizes the governing board of a community college district to establish a community college police department under the supervision of a community college chief of police. (Ed. Code, § 72330, subd (a).) Community college police are sworn peace officers. (Ed. Code, § 72330, subd (c); Penal Code, § 830 et seq.)

Senate Bill 54 reflects the view that California’s public policy interests are best served “by a relationship of trust between California’s immigrant community and state and local agencies” (Govt. Code, § 7284.2), and that this interest would be undermined, resources would be misallocated, and constitutional concerns would arise, if state and local law enforcement agencies cooperate with federal immigration enforcement officials. Accordingly, Senate Bill 54 eliminates state and local law enforcement discretion to use money and personnel to investigate, interrogate, detain, detect, or arrest persons, or to conduct other activities for immigration enforcement purposes. (Govt. Code, § 7284.6.) Exceptions exist related to individuals who have committed serious crimes. (Govt. Code, § 7282.5, subd (a).) The legislation applies expressly to community college police. (Govt. Code, § 7284.4, subds (a) and (k).)

The California Attorney General’s Office is required to publish model policies to explain these requirements by October 1, 2018. (Govt. Code, § 7284.8.) The purpose of these policies is to explain how to limit assistance with federal immigration enforcement “to the fullest extent possible.” They will be designed for adoption by all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses. (Ibid.) The legislation also states that police agencies must comply with any more stringent policies adopted by local jurisdictions. (See Govt. Code, § 7284.6, subds. (a)(1)(C), (b).)

1. Cooperation with immigration enforcement that is prohibited

Senate Bill 54 identifies six categories of cooperation with federal immigration enforcement efforts that are expressly prohibited, effective January 1, 2018. These provisions’ effects upon community college police are described below.

- ❖ *Use of state and local funds.* The use personnel or funds to investigate, interrogate, detain, detect, or arrest persons is prohibited. This prohibition could be violated by engaging in any of the following conduct: inquiring into an individual’s immigration status, detaining an individual on the basis of an Immigration and Customs Enforcement hold request; providing information regarding a person’s release date from custody, or providing other related non-public information; providing personal information about an individual, including non-public contact information; making or intentionally participating in arrests based on civil immigration warrants; assisting immigration authorities in the activities not authorized by a judicial warrant (see 8 U.S.C. § 1357(a)(3)); or performing the functions of an immigration officer. (Govt Code, § 7284.6, subd. (a)(1).)

- ❖ *Federal supervision.* Community college police may not be under the supervision of federal agencies or be deputized as special federal officers or special federal deputies for purposes of immigration enforcement. California peace officers remain subject to California law governing the conduct of peace officers and the policies of the employing agency. (Govt Code, § 7284.6, subd. (a)(2).)
- ❖ *Immigration authorities as interpreters.* Community college police shall not use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody. (Govt Code, § 7284.6, subd. (a)(3).)
- ❖ *Transfers to immigration authorities.* Community college police shall not transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or if the person has convicted a serious crime listed in Government Code section 7282.5. (Govt Code, § 7284.6, subd. (a)(4).)
- ❖ *Provision of office space.* Law enforcement agencies shall not provide office space exclusively dedicated for immigration authorities within a city or county facility. (Govt Code, § 7284.6, subd. (a)(5).)
- ❖ *Facilities contracts.* Community college police shall not contract with the federal government to allow local facilities to house individuals as federal detainees, except to conclude an existing contract, or to house unaccompanied minors. , as authorized by the Government Code. (Govt Code, § 7284.6, subd. (a)(6) citing Govt. Code §§ 7310, 7311].)

2. Cooperation with immigration enforcement that is permitted under Senate Bill 54

Senate Bill 54 also identifies categories of state and local police cooperation with federal immigration enforcement that remain permitted after January 1, 2018, provided they are also authorized by local policy.

- ❖ *Re-entry following deportation.* If in the course of an unrelated law enforcement activity a community college police agency detects a violation of the federal prohibition against re-entry following deportation (8 U.S.C. § 1326), that agency may investigate, enforce, detain, or arrest, under applicable standards. (Govt Code, § 7284.6, subd. (b)(1).)
- ❖ *Specific criminal history inquiries.* Community college police may respond to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law. (Govt Code, § 7284.6, subd. (b)(2).)
- ❖ *Task force participation.* Community college police may conduct enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, subject to a number of specified conditions, including that the task force's primary purpose is not immigration enforcement. (Govt Code, § 7284.6, subd. (b)(3).)
- ❖ *Crime victim information.* Community college police may inquire into information necessary to certify that an individual who has been identified as a potential crime or trafficking victim is eligible for a specified visa program. (Govt Code, § 7284.6, subd. (b)(4).)

- ❖ *Custodial interviews.* Immigration authorities may be provided access to custodial interviews of an individual in agency or department custody, provided the access is in compliance with the TRUTH Act. (Govt Code, § 7284.6, subd. (b)(5) [citing Govt. Code, § 7283].)

B. Assembly Bill 21

Assembly Bill 21 places a number of affirmative obligations on community college districts to prevent student, staff, and faculty from participation in federal immigration enforcement efforts “to the fullest extent consistent with state and federal law.” The bill is intended to protect the state’s students, faculty, staff, and the public, by ensuring that everyone in California has an opportunity to pursue an education free from intimidation, and without fear or undue risk. (Ed. Code, § 66093, subd. (a).) Effective January 1, 2018, Assembly Bill 21 imposes the following obligations:

- ❖ *Protection of Personal Information.* College districts must refrain from disclosing personal information about students, faculty, and staff. There are five exceptions to this rule: (1) there is proper consent; (2) state and federal privacy laws permit the disclosure; (3) to implement the program for which the information was obtained; (4) as part of a directory that does not include residence addresses or individual persons’ course schedules and that the person has not elected to opt out of; or (5) in response to a *judicial* warrant, court order, or subpoena. (Ed. Code, § 66093.3, subd. (a).)
- ❖ *Notice of Immigration Enforcement Activity.* College districts must advise all students, faculty, and staff to notify the office of the college district chancellor or president immediately if an immigration officer is expected to enter, will enter, or has entered the campus to execute a federal immigration order. (Ed. Code, § 66093.3, subd. (b).)
- ❖ *Notification of Emergency Contact.* If there is reason to suspect that a student, faculty, or staff person has been taken into custody in an immigration enforcement action, the college district shall immediately notify the person’s emergency contact. (Ed. Code, § 66093.3, subd. (c).)
- ❖ *Compliance with Judicial Warrants and Subpoenas.* An immigration officer may only be allowed access to nonpublic areas of the campus upon presentation of a judicial warrant. This subdivision shall not apply to nonenforcement activities, including an immigration officer’s request for access or information related to the operation of international student, staff, or faculty programs, or employment verification efforts. (Ed. Code, § 66093.3, subd. (d).)
- ❖ *Response to On-Campus Immigration Enforcement.* The college district shall advise all students, faculty, and staff having contact with an immigration officer executing a federal immigration order to refer the entity or individual to the office of the district chancellor or president, to verify the legality of the warrant, court order, or subpoena.⁵ (Ed. Code, § 66093.3, subd. (e).)
- ❖ *Single Point of Contact.* College districts shall designate a staff person to serve as a point of contact for any student, faculty, or staff person who could be subject to an immigration order or inquiry on campus. Unless the disclosure is permitted by state and federal education privacy law, faculty and staff persons shall be prohibited from discussing the personal information, including immigration status information,

⁵ Exemplars of administrative warrants and subpoenas and judicial warrants and subpoenas are attached to illustrate what administrative and judicial warrants and subpoenas look like. Colleges and districts should seek legal advice regarding how to respond upon receipt of such documents.

of any student, faculty, or staff person with anyone, or revealing that personal information to anyone. (Ed. Code, § 66093.3, subd. (f).)

- ❖ *Legal Services.* College districts shall maintain and provide free of charge to students a contact list of immigration legal services providers upon request. (Ed. Code, § 66093.3, subd. (g).)
- ❖ *Attorney General's Office Model Policy.* College districts shall adopt and implement, by March 1, 2019, the model policy developed by the Attorney General's Office (or an equivalent policy) that limits assistance with immigration enforcement to the fullest extent possible consistent with federal and state law. (Ed. Code, § 66093.3, subd. (h).)
- ❖ *Internet Resources.* College districts must also post and maintain current information prominently displayed on their Internet sites including, the Attorney General's Office model policy, relevant guidance regarding their rights under state and federal immigration laws. (Ed. Code, § 66093.3, subd. (i).)
- ❖ *Hold Undocumented Students Harmless.* In the event that an undocumented student is detained, deported, or is unable to attend to his or her academic requirements due to an immigration enforcement action, the college district shall make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits he or she has been awarded or received, and permit the student to be reenrolled if and when the student is able to return to the college. Staff should be available to assist undocumented students, and other students, faculty, and staff whose education or employment is at risk because of federal immigration actions. (Ed. Code, § 66093.3, subd. (j).)

C. Attached Documents

1. Exemplars of Administrative and Judicial Subpoenas and Warrants

Chancellor's Office Contact

Legal: Marc LeForestier, General Counsel
mleforestier@cccco.edu 916.445-6272

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

)
)
)
)
)
)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)

☐ for _____ days (not to exceed 30) ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____

Judge's signature

City and state: _____

Printed name and title

U.S. DEPARTMENT OF HOMELAND SECURITY

Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)
on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)
notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

UNITED STATES DISTRICT COURT

for the

Plaintiff

v.

Defendant

)
)
) Civil Action No.
)
)
)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

☐ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

1. To (Name, Address, City, State, Zip Code) [REDACTED] [REDACTED] [REDACTED]	<p>DEPARTMENT OF HOMELAND SECURITY</p> <p>IMMIGRATION ENFORCEMENT SUBPOENA</p> <p>to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4</p>
Subpoena Number [REDACTED]	
2. In Reference To [REDACTED] <div style="display: flex; justify-content: space-between;">(Title of Proceeding)(File Number, if Applicable)</div>	

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) ☐ **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B) ☒ **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear Name: [REDACTED] Title: [REDACTED] Address: [REDACTED] Telephone Number: [REDACTED]	(B) Date: [REDACTED] (C) Time: [REDACTED] <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
4. Records required to be produced for inspection [REDACTED]	



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official [REDACTED]
(Signature) [REDACTED]
(Printed Name) [REDACTED]
(Title) [REDACTED]
(Date) [REDACTED]