

## **MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (MOA) constitutes an agreement between U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Orange County Sheriff's Department (OCSD), pursuant to which ICE delegates to nominated, trained, certified, and authorized OCSD personnel the authority to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the OCSD to identify and process for removal, under ICE supervision, aliens in OCSD jail/correctional facilities who fall within ICE's civil immigration enforcement priorities. The OCSD and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

### **I. PURPOSE**

The purpose of this collaboration is to enhance the safety and security of communities by focusing resources on identifying and processing for removal, aliens who fall into ICE's civil immigration enforcement priorities. This MOA sets forth the terms and conditions pursuant to which selected OCSD personnel (participating OCSD personnel) will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the OCSD's jail/correctional facilities. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating OCSD personnel as members of the OCSD. However, the exercise of the immigration enforcement authority delegated under this MOA to participating OCSD personnel shall occur only as provided in this MOA.

### **II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of DHS to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. Such authority has been delegated by the Secretary to ICE, and this MOA constitutes such a written agreement.

### **III. POLICY**

This MOA sets forth the following: 1) the functions of an immigration officer that DHS is authorizing the participating OCSD personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating OCSD personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the OCSD is required to collect as part of the operation of the program. For the purposes of this MOA, ICE officers will provide supervision for participating OCSD personnel only as to immigration enforcement functions as authorized in this MOA. The OCSD retains supervision of all other aspects of the employment and performance of duties by participating OCSD personnel.

ICE retains sole discretion in determining how it will manage its detention resources and advance its mission. ICE will prioritize the detention of aliens in conformity with its civil immigration enforcement priorities. ICE reserves the right to detain aliens to the extent provided by law.

The OCSD is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the OCSD has jurisdiction. Subject to its civil immigration enforcement priorities, ICE will assume custody of an alien for purposes of removal, only after said individual has been released from OCSD custody. The OCSD agrees to use its 287(g) authority in a manner consistent with ICE's civil immigration enforcement priorities.

#### **IV. DESIGNATION OF AUTHORIZED FUNCTIONS**

Approved participating OCSD personnel will be authorized to perform only those immigration officer functions that are set forth in the Standard Operating Procedures (SOP) in Appendix D to this MOA.

#### **V. OPTIONAL INTER-GOVERNMENTAL SERVICE AGREEMENTS**

ICE and the OCSD may enter into an Inter-Governmental Service Agreement (IGSA) pursuant to which the OCSD will continue to detain, for a reimbursable fee, aliens for immigration purposes, if ICE so requests, following completion of the alien's criminal incarceration. If ICE and the OCSD enter into an IGSA, the OCSD must meet applicable detention standards.

In addition to detention services, ICE and the OCSD may enter into an IGSA to provide for transportation services relating to incarcerated aliens. Under a transportation IGSA, the OCSD will transport incarcerated aliens who have completed their criminal sentences to a facility or location designated by ICE, if ICE makes such a request. Reimbursement to the OCSD will occur only when the OCSD obtained prior ICE approval for the transportation. ICE will not reimburse if the OCSD did not obtain prior approval from ICE.

The parties understand that the OCSD will not continue to detain an alien after that alien is eligible for release from the OCSD's custody in accordance with applicable law and OCSD policy, absent an IGSA in place as described above.

#### **VI. NOMINATION OF PERSONNEL**

The OCSD will nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens. All OCSD candidates shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions. All OCSD candidates shall have experience supervising inmates, have been trained on maintaining the security of OCSD facilities, and have enforced rules and regulations governing inmate accountability and conduct. Candidates must also show an ability to meet and deal with people of differing backgrounds and behaviors.

The OCSD is responsible for conducting a criminal background check covering the last five years for all nominated candidates. Upon request, the OCSD will provide all related information



and materials it collected, referenced, or considered during the criminal background check for nominated candidates to ICE.

In addition to the OCSD background check, ICE will conduct an independent background check for each candidate. This background check requires all candidates to complete a background questionnaire. The questionnaire requires, but is not limited to, the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history (including allegations of excessive force or discriminatory action). ICE reserves the right to query any and all national and international law enforcement databases to evaluate a candidate's suitability to exercise immigration enforcement functions under this MOA. Upon request by ICE, the OCSD will provide continuous access to disciplinary records of all candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records.

The OCSD agrees to use due diligence to screen individuals nominated for training and agrees that individuals who successfully complete the training under this MOA will perform immigration officer functions authorized under section 287(g) of the INA for a minimum of two years. OCSD agrees that the designated officers will remain in their position for a minimum of two years. This two-year requirement may be waived solely at the discretion of ICE for good cause in situations that involve, among other things, imminent promotion, officer career development, and disciplinary actions. Failure by the OCSD to fulfill this commitment could jeopardize the terms of this MOA.

All OCSD candidates must be approved by ICE and must be able to qualify for access to the appropriate DHS and ICE databases/systems and associated applications. Should a candidate not be approved, a qualified substitute candidate may be submitted. Any future expansion in the number of participating OCSD personnel or scheduling of additional training classes is subject to all the requirements of this MOA and the accompanying SOP.

## **VII. TRAINING OF PERSONNEL**

Before participating OCSD personnel receive authorization to perform immigration officer functions under this MOA, they must successfully complete the Immigration Authority Delegation Program (IADP) training provided by ICE. IADP training will be taught by ICE instructors and tailored to the immigration enforcement functions to be performed. Each OCSD nominee must pass each IADP examination with a minimum score of 70 percent to receive certification. If an OCSD nominee fails to attain a 70-percent rating on an examination, the OCSD nominee will have 1 opportunity to review the testing material and re-take a similar examination. During the entirety of the IADP, the OCSD nominee will be offered a maximum of 1 remedial examination. Failure to achieve a 70-percent rating on any 2 examinations (inclusive of any remedial examination), will result in the disqualification of the OCSD nominee and discharge of the nominee from the IADP.

Training will include, among other topics: (i) discussion of the terms and limitations of this MOA; (ii) the scope of delegated immigration officer authority; (iii) relevant immigration laws; (iv) ICE's civil immigration enforcement priorities, including prosecutorial discretion; (v); civil rights laws; (vi) the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014, and related DHS guidance; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) obligations related to consular notification concerning the arrest or detention of foreign nationals.

Participating OCSD personnel will also be required to complete refresher training, Immigration Authority Delegation Refresher Program (IADRP), every two years, and any additional training required by ICE on relevant administrative, legal, and operational issues related to the performance of immigration officer functions.

ICE will review the training requirements annually and reserves the right to amend them.

Trained OCSD personnel will receive a DHS email account and access to the necessary DHS systems and associated applications. The use of the information technology (IT) infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE's Chief Information Security Officer (CISO) and the OCSD's Designated Accreditation Authority (DAA). The OCSD agrees that each of its sites using an ICE-provided network access or equipment will sign the ISA, which defines the IT policies and rules of behavior for each user granted access to the DHS network and applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

## **VIII. CERTIFICATION AND AUTHORIZATION**

Upon successful completion of IADP training, OCSD personnel shall be deemed "certified" under this MOA.

On a yearly basis, ICE will certify in writing the names of those OCSD personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Field Office Director (FOD) in Los Angeles District will provide the participating OCSD personnel a signed authorization letter allowing the named OCSD personnel to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization letter to the OCSD. Only those certified OCSD personnel who receive authorization letters issued by ICE and whose immigration enforcement efforts are overseen by an ICE supervisor may conduct immigration officer functions described in this MOA.

Along with the authorization letter, ICE will issue the certified OCSD personnel official immigration officer credentials. Upon receipt of the credentials, OCSD personnel will provide ICE a signed receipt of the credentials on the ICE Record of Receipt – Property Issued to Employee (Form G-570). Participating OCSD personnel shall carry their ICE-issued credentials while performing immigration officer functions under this MOA. Such credentials provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this

agreement, when a participating OCSD employee ceases his/her participation, or when deemed necessary by the ICE FOD in Los Angeles District.

Authorization of participating OCSD personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to whom the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the OCSD. The OCSD and the ICE FOD in Los Angeles District will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

The OCSD will notify ICE within 48 hours, when participating OCSD personnel cease their participation in the 287(g) program, so that appropriate action can be taken in accordance with ICE policies, including inventorying and retrieval of credentials and termination of user account access to the appropriate DHS and ICE databases/systems and associated applications.

## **IX. COSTS AND EXPENDITURES**

The OCSD is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. The OCSD is responsible for the salaries and benefits, including overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating OCSD personnel while they are receiving training. The OCSD will cover the costs of all OCSD personnel's travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The OCSD remains responsible for paying salaries and benefits of the selected personnel.

ICE will provide instructors and training materials.

Subject to the availability of funds, ICE will be responsible for the purchase, installation, and maintenance of technology (computer/Integrated Automated Fingerprint Identification System/Photo and similar hardware/software) necessary to support the immigration enforcement functions of participating OCSD personnel at each OCSD facility with an active 287(g) program. Only participating OCSD personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating OCSD personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE FOD in Los Angeles District.

The OCSD is responsible for covering all expenses at the OCSD facility regarding cabling and power upgrades. If the connectivity solution for the OCSD is determined to include use of the

OCSD's own communication lines - (phone, DSL, site owned T-1/T-3, etc.), the OCSD will be responsible for covering any installation and recurring costs associated with the OCSD line. The OCSD is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations. The OCSD is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints and flexi cuffs, etc.

Also, if requested by ICE, the OCSD will provide at no cost to ICE, an office within participating OCSD facilities from which ICE supervisory employees can work.

## **X. ICE SUPERVISION**

Immigration enforcement activities conducted by the participating OCSD personnel will be supervised and directed by ICE supervisory officers. Participating OCSD personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. Additional supervisory and administrative responsibilities are specified in the SOP in Appendix D.

The actions of participating OCSD personnel will be reviewed by ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for individual training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating OCSD personnel only as to immigration enforcement functions conducted in conjunction to this authority. The OCSD retains supervision of all other aspects of the employment of and performance of duties by participating OCSD personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating OCSD personnel in exercising these delegated authorities under this MOA shall be DHS and ICE policies and procedures. ICE is responsible for providing the OCSD with the applicable DHS and ICE policies.

However, when engaged in immigration enforcement activities, no participating OCSD personnel will be expected or required to violate or otherwise fail to maintain the OCSD's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE supervisory officer or a DHS or ICE policy and the OCSD's rules, standards, or policies, the conflict shall be promptly reported to the points of contact listed in Appendix A who shall attempt to resolve the conflict.

## **XI. REPORTING REQUIREMENTS**

The OCSD will provide statistical or aggregated arrest data to ICE, as requested by ICE. The OCSD will also provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular arrest upon request. ICE may use this data to compare and verify ICE's own data, and to fulfill ICE's statistical reporting requirements, or to assess the progress and success of the OCSD's 287(g) program.

## **XII. LIABILITY AND RESPONSIBILITY**

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the OCSD will be responsible and bear the costs of participating OCSD personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating OCSD personnel will be treated as Federal employees only for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1), 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. In addition, it is the understanding of the parties to this MOA that participating OCSD personnel will enjoy the same defenses and immunities from personal liability for their in-scope acts that are available to ICE officers based on actions conducted in compliance with this MOA. *See* 8 U.S.C. § 1357(g)(8).

Participating OCSD personnel named as defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. *See* 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. OCSD personnel who wish to submit a request for representation shall notify the local ICE Office of the Chief Counsel at 606 South Olive Street, 8<sup>th</sup> floor, Los Angeles, CA 90014. The Office of the Chief Counsel in turn will notify the ICE Headquarters Office of the Principal Legal Advisor (OPLA), which will assist OCSD personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g); and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. Subject to DHS Policy, ICE may defend or indemnify acts of intentional misconduct on the part of the participating OCSD personnel only to the extent authorized by law.

The OCSD agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents. Failure to do so may result in the termination of this MOA. Failure of any participating OCSD employee to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The OCSD agrees to cooperate with Federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that information provided by any OCSD personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967), and its progeny.

As the activities of participating OCSD personnel under this MOA are undertaken under Federal authority, the participating OCSD personnel will comply with Federal standards and guidelines relating to the Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150 (1972), and its

progeny, which govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The OCSD and ICE are each responsible for compliance with the Privacy Act of 1974, 5 U.S.C. §552a, DHS Privacy Act regulations, 6 C.F.R. §§ 5.20-5.36, as applicable, and related system of records notices with regard to data collection and use of information under this MOA.

### **XIII. COMPLAINT PROCEDURES**

The complaint reporting procedure for allegations of misconduct by participating OCSD personnel, including activities undertaken under the authority of this MOA, is included in Appendix B.

### **XIV. CIVIL RIGHTS STANDARDS**

Participating OCSD personnel are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity,” dated December 2014,” and Title VI of the Civil Rights Act of 1964, as amended, 42. U.S.C. 2000 et seq., which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance.

### **XV. INTERPRETATION SERVICES**

Participating OCSD personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the OCSD, as needed.

The OCSD will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter, which may include OCSD personnel, means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.

### **XVI. COMMUNICATION**

The ICE FOD in Los Angeles District, and the OCSD shall meet at least annually, and as needed, to review and assess the immigration enforcement activities conducted by the participating OCSD personnel, and to ensure compliance with the terms of this MOA. When necessary, ICE and the OCSD may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet in Los Angeles District at locations to be agreed upon by the parties, or via teleconference. The participants will be supplied with specific information on case reviews, individual participants’ evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on immigration enforcement activity in Los Angeles District.

An initial review meeting will be held no later than nine months after certification of the initial class of participating OCSD personnel under Section VII, above.

## **XVII. COMMUNITY OUTREACH**

The OCSD will, as necessary, engage in Steering Committee meetings and may engage in other community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the OCSD's request. Nothing in this MOA shall limit ICE's own community outreach efforts.

## **XVIII. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES**

The OCSD may, at its discretion, communicate the substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the OCSD is authorized to do the same.

The OCSD hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA. For releases of information to the media, the OCSD must coordinate in advance of release with the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval prior to any release. The points of contact for ICE and the OCSD for this purpose are identified in Appendix C. For releases of information to all other parties, the OCSD must coordinate in advance of release with the applicable ICE Field Office.

Information obtained or developed as a result of this MOA, including any documents created by the OCSD that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the OCSD has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE supervisor prior to releases to all other parties.

OCSD questions regarding the applicability of this section to requests for the release of information shall be directed to an ICE supervisor.

Appendix B to this MOA describes the complaint procedures available to members of the public regarding actions taken by participating OCSD personnel pursuant to this agreement.

## **XIX. MODIFICATIONS TO THIS MOA**

Modifications to this MOA must be proposed in writing and approved and signed by both parties. Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP.

## **XX. POINTS OF CONTACT**


ICE and the OCSD points of contact for purposes of this MOA are identified in Appendix A. Points of contact (POC) can be updated at any time by providing a revised Appendix A to the other party to this MOA.

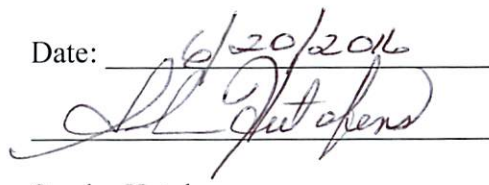
## XXI. DURATION AND TERMINATION OF THIS MOA

This MOA will remain in effect from the date of signing to June 30, 2019 unless terminated earlier by either party. Prior to the expiration of the effective period, ICE and the OCSD shall review the MOA for consideration whether to modify, extend, or permit the MOA to lapse. During the MOA's effective period, either party, upon written notice to the other party, may terminate or suspend the MOA at any time. A termination or suspension notice by ICE shall be delivered personally or by certified or registered mail to the OCSD and termination or suspension shall take effect immediately upon receipt of such notice. Notice of termination or suspension by the OCSD shall be given to the ICE FOD in Los Angeles District and termination or suspension shall take effect immediately upon receipt of such notice. Upon a subsequent demonstration of need, all costs to reinstate access to such authorities and/or program services will be incurred by the OCSD.

This MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA, accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

JUN 23 2016  
Date: \_\_\_\_\_  
  
Thomas D. Homan  
Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security

Date: 6/20/2016  
  
Sandra Hutchens  
Sheriff  
Orange County Sheriff's Office



**APPENDIX A**  
**POINTS OF CONTACT**

The ICE and OCSD points of contact for purposes of implementation of this MOA are:

For the OCSD:

Sheriff Sandra Hutchens  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703  
714.647.1800  
[shutchens@ocsd.org](mailto:shutchens@ocsd.org)

Assistant Sheriff Steve Kea  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703  
714.647.1839  
[skea@ocsd.org](mailto:skea@ocsd.org)

Commander Jon Briggs  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703  
714.647.1839  
[jbriggs@ocsd.org](mailto:jbriggs@ocsd.org)

For ICE Enforcement and Removal Operations (ERO):

Vacant  
Field Office Director  
300 N. Los Angeles Street, Suite 7631  
Los Angeles, CA 90012  
213.830.5931

Frances Jackson  
Deputy Field Office Director  
300 N. Los Angeles Street, Suite 7631  
Los Angeles, CA 90012  
213.830.5931  
[Frances.M.Jackson@ice.dhs.gov](mailto:Frances.M.Jackson@ice.dhs.gov)

## **APPENDIX B**

### **COMPLAINT PROCEDURE**

This Memorandum of Agreement (MOA) is between the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) and the Orange County Sheriff's Department (OCSD), pursuant to which selected OCSD personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating OCSD personnel pursuant to the MOA, as well as the protections for U.S. citizens' and aliens' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

The MOA sets forth the process for designation, training, certification, and authorization of certain OCSD personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the OCSD and be handled in accordance with the OCSD's applicable rules, policies, and procedures.

If any participating OCSD personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA or a complaint or allegation of any sort that may result in that individual receiving professional discipline or becoming the subject of a criminal investigation or civil lawsuit, the OCSD shall, to the extent allowed by State law, notify ICE within 48 hours of the existence and nature of the complaint or allegation. The results of any internal investigation or inquiry connected to the complaint or allegation and the resolution of the complaint shall also be promptly reported to ICE. The ICE notifications must be made locally to the ICE FOD in Los Angeles District and to the ICE Office of Professional Responsibility (OPR) via the Joint Intake Center (JIC) at [JointIntake@cbp.dhs.gov](mailto:JointIntake@cbp.dhs.gov). Complaints regarding the exercise of immigration enforcement authority by participating OCSD personnel shall be handled as described below.

The OCSD will also handle complaints filed against OCSD personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Further, any such complaints regarding non-designated OCSD personnel must be forwarded to the JIC.

In order to simplify the process for the public, complaints against participating OCSD personnel relating to their immigration enforcement can be made according to the procedures outlined below.

#### **1. Complaint and Allegation Reporting Procedures**

Complaint reporting procedures shall be disseminated by the OCSD within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that all individuals are aware of the availability of such procedures. Such material must include up-to-date contact information necessary to file the complaint.

Complaints will be accepted from any source (e.g., ICE, OCSD, participating OCSD personnel, inmates, and the public). ICE will immediately forward a copy of the complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL).

Complaints can be reported to Federal authorities as follows:

- A. Telephonically to the DHS Office of the Inspector General (DHS OIG) at the toll free number 1-800-323-8603, or
- B. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C., at the toll-free number 1-877-246-8253, email [JointIntake@cbp.dhs.gov](mailto:JointIntake@cbp.dhs.gov), or
- C. Via mail as follows:
  - Department of Homeland Security
  - U.S. Immigration and Customs Enforcement
  - Office of Professional Responsibility
  - P.O. Box 14475
  - Pennsylvania Avenue NW
  - Washington D.C. 20044

## **2. Review of Complaints**

All complaints or allegations (written or oral) reported to the OCSD directly that involve OCSD personnel with ICE delegated authority will be reported to ICE OPR via the JIC. ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Headquarters. Complaints received by any ICE entity will be reported directly to ICE OPR as per existing ICE policies and procedures.

ICE OPR, as appropriate, will make an initial determination regarding ICE investigative jurisdiction and refer the complaint to the appropriate ICE office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to ICE OPR will be shared with the OCSD's Internal Investigations Unit when the complaint involves OCSD personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

## **3. Complaint and Allegations Resolution Procedures**

Upon receipt of any complaint or allegation, ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, ICE OPR will adhere to the reporting requirements as stated above and as they relate to the DHS OIG and CRCL and/or the DOJ Civil Rights Division. Complaints will be resolved using the existing procedures, supplemented as follows:

- A. Referral of Complaints or Allegations to the OCSD's Internal Investigations Unit.



The ICE OPR will refer complaints, as appropriate, involving OCSD personnel to the OCSD's Internal Investigations Unit for resolution. The facility commander will inform ICE OPR of the disposition and resolution of any complaints or allegations against OCSD's participating officers.

**B. Interim Action Pending Complaint Resolution**

When participating OCSD personnel are under investigation for any reason that could lead to disciplinary action, demotion, or dismissal, or are alleged to have violated the terms of this MOA, ICE may suspend or revoke an individual's immigration enforcement authority and have that individual removed from participation in the activities covered under the MOA.

**C. Time Parameters for Resolution of Complaints or Allegations**

It is expected that any complaint received will be resolved within 90 days of receipt. However, this will depend upon the nature and complexity of the substance of the complaint itself.

**D. Notification of Resolution of a Complaint or Allegation**

ICE OPR will coordinate with the OCSD's Internal Investigations Unit to ensure notification as appropriate to the JIC, the subject(s) of a complaint, and the person filing the complaint regarding the resolution of the complaint.

These Complaint Reporting and Allegation Procedures are ICE's internal policy and may be supplemented or modified by ICE unilaterally. ICE will provide OCSD with written copies of any such supplements or modifications. These Complaint Reporting and Allegation Procedures apply to ICE and do not restrict or apply to other investigative organizations within the federal government.

## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate appropriate release of information to the media, provided the release has been previously approved by the ICE Privacy Officer, regarding actions taken under this MOA before any information is released. The points of contact for coordinating such activities are:

For the OCSD:

Lieutenant Mark Stichter  
Public Information Officer  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703  
714.647.7042  
[mstichter@ocsd.org](mailto:mstichter@ocsd.org)

For ICE:

Public Affairs Office  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Washington, DC 20536  
202.732.4242

## **APPENDIX D**

### **STANDARD OPERATING PROCEDURE (SOP)**

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the 287(g) delegation of authority program within the FOD area of responsibility. This appendix can be modified only in writing and by mutual acceptance of ICE and the OCSD.

Pursuant to this MOA, the OCSD has been delegated authorities under the Jail Enforcement Officer (JEO) model as outlined below. A 287(g) JEO model is designed to identify and process aliens amenable for removal within the OCSD's jail/correctional facilities pursuant to ICE's civil immigration enforcement priorities

#### **Prioritization:**

ICE retains sole discretion in determining how it will manage its limited resources and meet its mission requirements. To ensure resources are managed effectively, ICE requires the OCSD to also manage its resources dedicated to 287(g) authority under the MOA. To that end, the OCSD shall follow ICE's civil immigration enforcement priorities.

#### **Authorized Functions:**

Participating OCSD personnel performing immigration-related functions pursuant to this MOA will be OCSD officers assigned to detention operations supported by ICE. Those participating OCSD personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to OCSD jail/correctional facilities. Participating OCSD personnel will identify and process for removal aliens in OCSD jail/correctional facilities who fall within ICE's civil immigration enforcement priorities .

Participating OCSD personnel are delegated only those authorities listed below:

- The power and authority to interrogate any person detained in the participating law enforcement OCSD's detention center who the officer believes to be an alien about his or her right to be or remain in the United States, 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1), and to process for immigration violations any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve warrants of arrest for immigration violations pursuant to 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3);
- The power and authority to administer oaths and to take and consider evidence, 8 U.S.C § 1357(b) and 8 C.F.R. § 287.5(a)(2), to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;

- The power and authority to prepare charging documents, 8 U.S.C. §§ 1225(b)(1), 1228, 1229, and 1231(a)(5); 8 C.F.R. §§ 235.3, 238.1, 239.1, and 241.8, including the preparation of a Notice to Appear (NTA) or other charging document, as appropriate, for the signature of an ICE officer;
- The power and authority to issue Forms I-247N, Request for Voluntary Notification of Release of Suspected Priority Alien, I-247D, Immigration Detainer – Request for Voluntary Action, and I-247X, Request for Voluntary Transfer, 8 U.S.C. §§ 1226 and 1357, and 8 C.F.R. § 287.7, and I-213, Record of Deportable/Inadmissible Alien, for processing aliens; and
- The power and authority to detain and transport, 8 U.S.C. § 1357(g)(1) and 8 C.F.R. § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities.

As previously noted in this Appendix, ICE requires the OCSD to follow ICE's civil immigration enforcement priorities.

#### **Additional Supervisory and Administrative Responsibilities:**

Immigration enforcement activities conducted by the participating OCSD personnel will be supervised and directed by ICE supervisory officers. Participating OCSD personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. Additional supervisory and administrative responsibilities for each entity include, but are not limited to:

The OCSD shall provide notification to the ICE supervisor of any Form I-247N, Request for Voluntary Notification of Release of Suspected Priority Alien, Form I-247D, Immigration Detainer – Request for Voluntary Action, and Form I-247X, Request for Voluntary Transfer lodged under the authority conferred by the MOA within 24 hours.

The OCSD shall coordinate transportation of detainees processed under the authority conferred by the MOA in a timely manner, in accordance with the MOA and/or IGSA.

All alien processing in applicable ICE databases/systems and associated applications must be completed in accordance with established ICE policies and guidance.

The OCSD is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and ensuring that the alien is served with the appropriate charging documents.

The OCSD must report all encounters with asserted or suspected claims of U.S. citizenship to the ICE FOD in Los Angeles District through their chain of command within one hour of the claim. The FOD shall make the appropriate notification to ERO headquarters.

On a regular basis, the ICE supervisors are responsible for conducting an audit of the processing entries and records made by the OCSD's officers. Upon review and auditing of the entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner

to the responsible official for the OCSD and ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.

Administrative files (A-files) are Federal records, subject to the Federal Records Act and applicable Federal confidentiality statutes. It follows that the utilization and handling of the A-files must be consistent with applicable laws and DHS and ICE policy. The ICE supervisor is responsible for requesting A-files and reviewing them for completeness. A-files can be maintained at an OCSD facility as long as there are ICE personnel assigned to that facility and the personnel have a work area where documents can be adequately secured and stored by ICE personnel. Representatives from DHS must be permitted access to the facility where ICE records are maintained.



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the Los Angeles County (California) Board of Supervisors to create a project pursuant to which U.S. Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified personnel of the Los Angeles County Sheriff's Department (LASD) to perform certain immigration enforcement functions as specified herein. The LASD represents Los Angeles County in the implementation and administration of this MOU. It is the intent of the parties that this project will result in enhanced capacity to deal with immigration violators in Los Angeles County jail facilities.

### I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for this project to authorize selected LASD personnel (participating LASD personnel) to perform certain functions of an immigration officer within Los Angeles County jail facilities, and how those participating LASD personnel will be nominated, trained, authorized, and supervised in performing the specified immigration enforcement functions.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by participating LASD personnel as members of the LASD. Nothing herein shall otherwise limit the ability of participating LASD personnel to provide, as provided by or allowed by law, such assistance in any enforcement action unrelated to immigration enforcement as may be lawfully requested by a law enforcement officer having jurisdiction over any such incident, crime or matter under consideration. ~~The exercise of immigration enforcement authority, however, by participating LASD personnel shall occur only as provided in this MOU and shall be limited to activities at Los Angeles County jail facilities.~~

### II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

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### III. POLICY

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the participating LASD personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating LASD personnel be subject to ICE supervision while performing immigration-related duties pursuant to this MOU. For the purposes of this MOU, ICE officers will provide supervision for participating LASD personnel only as to immigration enforcement functions. LASD retains supervision of all other aspects of the employment of and performance of duties by participating LASD personnel.

Before participating LASD personnel will be authorized to perform immigration officer functions, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this project.

As part of its commitment to the communities it serves, LASD may, at its discretion, communicate the intent, focus, and purpose of this project to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by participating LASD personnel pursuant to this agreement.

Only participating LASD personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

The ICE and LASD points of contact for purposes of this MOU are identified in Appendix A.

### IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by participating LASD personnel are indicated below with their associated authorities:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"><li>The power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(1) and 8 C.F.R. 287.5(a)(1).</li></ul>	<ul style="list-style-type: none"><li>Interrogate in order to determine probable cause for an immigration violation</li></ul>

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AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> <li>• The power and authority to administer oaths and to take and consider evidence. INA § 287(b) and 8 C.F.R. 287.5(a)(2).</li> <li>• The power to issue detainers. 8 C.F.R. 287.7.</li> <li>• Transportation of aliens. INA § 236.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, for ICE supervisor review</li> <li>• Prepare immigration detainers for aliens in categories established by ICE supervisors</li> <li>• Prepare affidavits and take sworn statements</li> <li>• Prepare a Notice To Appear (NTA) application for signature of ICE officer for aliens in categories established by ICE supervisors</li> </ul>

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LASD personnel in exercising these authorities shall be DHS policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating LASD personnel will be expected or required to violate or otherwise fail to maintain LASD standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or LASD rules, standards, or policies.

The parties understand that LASD will not continue to detain an alien after that alien is eligible for release from LASD custody in accordance with applicable law and LASD policy, except for a period of up to 48 hours, excluding Saturday, Sunday and any holiday, pursuant to a DHS detainer issued in accordance with 8 C.F.R. § 287.7.

#### V. NOMINATION OF PERSONNEL

The Sheriff of Los Angeles County will nominate to ICE candidates for initial training and certification under this MOU. For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the project. All candidates must be United States citizens. All candidates will have at least two years correctional work experience for LASD. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of participating LASD personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

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## VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated LASD personnel tailored to the designated immigration functions and types of cases typically encountered by LASD correctional personnel at a mutually designated site in Los Angeles County, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this project, elements of this MOU, scope of immigration officer authority, cross-cultural issues, the ICE Use of Force Policy, civil rights law, the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability and other relevant issues. ICE will provide all training materials. LASD is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. LASD will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this project.

All nominated personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating LASD personnel are trained and certified, ICE will provide certified personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, unless either party terminates this MOU pursuant to Section XVII, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors.

## VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Los Angeles the names of those LASD personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special Agent in Charge will provide to the participating LASD personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to LASD. The activities of all personnel certified under this MOU will be evaluated by the ICE supervisory officer as addressed in Section IX, below.

Authorization of any participating LASD personnel to act pursuant to this MOU may be revoked at any time by ICE or LASD. Such revocation will require immediate notification of the other party to this MOU. The Los Angeles County Sheriff and the ICE Special Agent in Charge in Los Angeles will be responsible for notification of the appropriate personnel in their respective agencies. If any participating LASD personnel becomes the subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation, LASD shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of the complaint shall be promptly reported to ICE.

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Complaints regarding exercise of immigration enforcement authority by any participating personnel shall be handled in accordance with Section XII, below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

#### VIII. COSTS AND EXPENDITURES

Participating LASD personnel will carry out designated functions at LASD expense, including salaries and benefits, local transportation, and official issue material. ICE will provide training personnel, training materials and supervision.

#### IX. ICE SUPERVISION

Immigration enforcement activities of the participating LASD personnel will be supervised and directed by ICE supervisory officers in Los Angeles. Participating LASD personnel cannot perform any immigration officer functions pursuant to the LASD authorities herein except when working under the supervision of an ICE officer. Participating LASD personnel shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate to facilitate ICE action prior to any release from LA County custody. The actions of participating LASD personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOU, ICE officers will provide supervision of participating LASD personnel only as to immigration enforcement functions. LASD retains supervision of all other aspects of the employment of and performance of duties by participating LASD personnel.

~~If a conflict arises between an order or direction provided by the ICE supervisory officer and LASD rules, standards, or policies, the conflict shall be promptly reported to the Special Agent in Charge or designee and the Los Angeles County Sheriff or designee when circumstances safely allow the concern to be raised. The Special Agent in Charge and the Los Angeles County Sheriff shall attempt to resolve the conflict.~~

#### X. LIABILITY AND RESPONSIBILITY

ICE and LASD understand and agree that except as otherwise noted in this MOU or allowed by federal law, they will be responsible for their own liability and bear their own costs with regard to their property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating LASD personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. ~ 267 1-2680, and worker's compensation claims, 5 U.S.C. § 8101 *et seq.*, when performing a function as authorized by this MOU. 8

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U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating LASD personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU. 8 U.S.C. § 1357(g)(8). ICE will not be responsible for any intentional misconduct on the part of any participating LASD personnel.

Participating LASD personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the ICE Special Agent in Charge in Los Angeles. The Special Agent in Charge will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the views of ICE with respect to whether such representation would be in the interest of the United States to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

LASD agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by any LASD personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The Giglio decision (405 U.S. 150 (1972)) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. As the activities of participating LASD personnel under this MOU are undertaken under federal authority, the participating personnel will comply with federal standards and guidelines relating to such cases.

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#### **XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES**

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Pursuant to this MOU, participating LASD personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating LASD personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LASD as needed.

#### **XII. COMPLAINT PROCEDURES**

The complaint reporting and resolution procedure for allegations of misconduct by

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participating LASD personnel designated, or activities undertaken, under the authority of this MOU is included at Appendix B.

### **XIII. REQUIRED REVIEW OF ACTIVITIES**

The ICE Assistant Secretary and the Los Angeles County Sheriff shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in Los Angeles County at locations to be agreed upon by the parties. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Los Angeles County. An initial review meeting will be held no later than nine months after certification of the initial class of participating LASD personnel under Section VII, above.

### **XIV. COMMUNITY OUTREACH**

LASD will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE will participate in such outreach upon LASD request.

### **XV. RELATIONS WITH THE NEWS MEDIA**

LASD hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for ICE and LASD for this purpose can be found at Appendix G.

### **XVI. MODIFICATION OF THIS MOU**

Any modifications to this MOU must be proposed in writing and approved by the signatories.

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## XVII. DURATION AND TERMINATION OF THIS MOU


This MOU will be in effect from the date of signing until terminated by either party.


Either party, upon written notice to the other party may terminate it at any time. Should the State Criminal Alien Assistance Program funding fall below levels acceptable to the LASD or be terminated in its entirety, the County of Los Angeles, in its sole discretion, may terminate this MOU. Termination notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

Either party may, upon written or oral notice to the other party, temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Los Angeles County Sheriff. Notice of termination or suspension by LASD shall be given to the ICE Special Agent in Charge in Los Angeles.


Except for the rights of participating LASD personnel as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOU, each party represents it is fully authorized to enter into this agreement, and accepts the terms, responsibilities, obligations and limitations of this Agreement, and agrees to be bound thereto to the fullest extent allowed by law.

  
Asa Hutchinson  
Under Secretary  
Border and Transportation Security  
Department of Homeland Security

  
Gloria Molina  
Chair  
Los Angeles County Board of Supervisors

Date

  
Michael J. Garcia  
Assistant Secretary  
U.S. Immigration and Customs Enforcement

Date

ATTEST: VIOLET VARONA-LUKENS  
EXECUTIVE OFFICER -  
CLERK OF THE BOARD OF SUPERVISORS

  
Deputy

Leroy D. Baca  
Sheriff  
Los Angeles County



Date

Date

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## APPENDIX A

As called for in Section III of the MOU, the ICE and LASD points of contact for purposes of implementation of this MOU are:

For LASD: (b)(6), (b)(7)c  
Correctional Services Division  
450 Bauchet Street  
Los Angeles, CA 90012  
(213) 893- (b)(2)Low

For ICE: (b)(6), (b)(7)c  
501 W. Ocean Blvd., Suite 7200  
Long Beach, CA 90802  
(562) 624- (b)(2)Low

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## APPENDIX B

### COMPLAINT PROCEDURE

#### Appendix B: Complaint Procedure

This project is a joint effort between DHS/ICE and the Los Angeles County (California) Board of Supervisors, in which selected LASD personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating LASD personnel pursuant to the MOU, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of certain LASD personnel to perform certain immigration enforcement functions. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the LASD and be handled in accordance with LASD Manual of Policy and Procedures. The LASD will also handle complaints filed against personnel who may execute immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

In order to simplify the process for the public, complaints against participating LASD personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the LASD Inmate Reception Center will coordinate complaint receipt and investigation. The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRT).

The ICE OPR will coordinate complaints related to participating personnel with the LASD Inmate Reception Center as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRT, this will not preclude the DHS OIG, DOJ CRT or ICE OPR from conducting the investigation in coordination with LASD Internal Affairs Bureau, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the LASD Internal Affairs Bureau will follow applicable LASD policies and procedures, personnel rules, California statutes, and collective bargaining agreements.

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## **I. Complaint Reporting Procedures**

### **A. Dissemination of Complaint Reporting Procedures**

Complaint reporting procedures shall be disseminated as appropriate by the LASD within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

### **B. Acceptance of Complaints**

Complaints will be accepted from any source (e.g., ICE, LASD, personnel operating under the authority of this MOU, and the public).

### **C. Reporting Mechanisms**

Complaints can be reported to federal authorities as follows:

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253, or
2. Telephonically to the Resident Agent in Charge of the ICE OPR office in Long Beach, CA at (562) 980-3170, or
3. Via mail as follows:

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I St., NW  
Room 3260  
Washington, D.C. 20536

Complaints can also be referred to and accepted by any of the following LASD entities:

1. The applicable LASD Inmate Reception Bureau Commander;
2. The supervisor of any participating LASD personnel; or
3. LASD Internal Affairs bureau Unit as follows:

Operations Lieutenant  
4900 Eastern Avenue  
Commerce, Ca. 90040

### **D. Review of Complaints**

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1. All complaints (written or oral) reported to LASD directly, which involve activities connected to immigration enforcement activities, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOU with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Los Angeles.

2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

For both of the above, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

3. Complaints reported directly to the ICE OPR will be shared with the Inmate Reception Center when the complaint involves LASD personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

## **II. Complaint Resolution Procedures**

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

### **A. Referral of Complaints to LASD Inmate Reception Center**

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The ICE OIA will refer complaints, as appropriate, involving LASD personnel to the LASD Inmate Reception Center for resolution. Inmate Reception Center will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

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### **B. Interim Action Pending Complaint Resolution**

Whenever any participating LASD personnel are under investigation and subject to interrogation by LASD for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of LASD Manual of Policy and Procedures shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

### **C. Time Parameters for Resolution of Complaints**

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

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**E. Notification of Resolution of a Complaint**

**ICE OPR will coordinate with the Inmate Reception Center to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.**

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## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

**For LASD:**

Margarito Robles, Lieutenant  
Inmate Reception Center-Classification Unit  
450 Bauchet Street  
Los Angeles, CA 90012  
(213) 893-5340

**For ICE:**

Public Affairs Officer  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
425 I Street, NW Room 7232  
Washington, DC 20536  
(202) 514-2648

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## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the Riverside County (California) Board of Supervisors under which U.S. Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified personnel of the Riverside County Sheriff's Department (RSD) to perform certain immigration enforcement functions as specified herein. The RSD represents Riverside County in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in Riverside County jail facilities.

### **I. PURPOSE**

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected RSD personnel (participating RSD personnel) to perform certain functions of an immigration officer within Riverside County jail facilities, and how those participating RSD personnel will be nominated, trained, authorized, and supervised in performing the immigration enforcement functions specified under this MOU.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by participating RSD personnel as members of the RSD. However, the exercise of the immigration enforcement authority granted under this MOU to participating RSD personnel shall occur only as provided in this MOU and shall be limited to activities at Riverside County jail facilities.

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This MOU is entered into by RSD as a cooperative effort with ICE to fulfill the purpose stated herein to the extent permitted by law or court order and, as determined by the Department, its resources and capabilities.

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### **II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

### **III. POLICY**

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the participating RSD personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating RSD personnel be subject to ICE supervision while



performing immigration-related duties pursuant to this MOU. For the purposes of this MOU, ICE officers will provide supervision for participating RSD personnel only as to immigration enforcement functions. RSD retains supervision of all other aspects of the employment of and performance of duties by participating RSD personnel.

Participating RSD personnel will initially be assigned to the Robert Presley Detention Center with the expectation that participating RSD personnel will be assigned to other RSD jail facilities as determined by RSD.

Before participating RSD personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this agreement.

Only participating RSD personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

RSD may, at its discretion, communicate the intent, focus, and purpose of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by participating RSD personnel pursuant to this agreement.

The ICE and RSD points of contact for purposes of this MOU are identified in Appendix A.

#### IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by participating RSD personnel are indicated below with their associated authorities:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"><li>The power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1).</li></ul>	<ul style="list-style-type: none"><li>Interrogation in order to determine probable cause for an immigration violation.</li></ul>
<ul style="list-style-type: none"><li>The power and authority to administer oaths and to take and consider evidence. INA § 287(b) and 8 C.F.R. § 287.5(a)(2).</li></ul>	<ul style="list-style-type: none"><li>Completion of required criminal alien processing, to include fingerprinting, photographing, and interviewing, as well as preparation of affidavits and the taking of sworn statements for</li></ul>



<ul style="list-style-type: none"> <li>• The authority to prepare charging documents. INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3</li> <li>• The power to issue detainers. 8 C.F.R. § 287.7.</li> <li>• Transportation of aliens. 8 C.F.R. § 287.5(c)(6)</li> </ul>	<p>ICE supervisor review.</p> <ul style="list-style-type: none"> <li>• Preparation of a Notice to Appear (NTA) application for signature of ICE officer for aliens in categories established by ICE supervisors.</li> <li>• Prepare immigration detainers and I-213, Record of Deportable/Inadmissible Alien for aliens in categories established by ICE supervisors.</li> <li>• Transport Aliens.</li> </ul>
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In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating RSD personnel in exercising these authorities shall be DHS policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating RSD personnel will be expected or required to violate or otherwise fail to maintain RSD standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or RSD rules, standards, or policies.

~~The parties understand that RSD will not continue to detain an alien after that alien is~~  
 eligible for release from RSD custody in accordance with applicable law and RSD policy, except for a period of up to 48-hours, excluding Saturday, Sunday and any holiday, pursuant to a DHS detainer issued in accordance with 8 C.F.R. § 287.7.

## V. NOMINATION OF PERSONNEL

The Sheriff of Riverside County will nominate to ICE candidates for initial training and certification under this MOU. For each candidate, ICE may request any information necessary for a background check and evaluation for suitability to participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates will have at least two years correctional work experience for RSD. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of participating RSD personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

## **VI. TRAINING OF PERSONNEL**

ICE will provide appropriate training of nominated RSD personnel tailored to the designated immigration functions and types of cases typically encountered by RSD correctional personnel at a mutually designated site in Riverside County, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this agreement, elements of this MOU, scope of immigration officer authority, cross-cultural issues, the ICE Use of Force Policy, civil rights law, the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability and other relevant issues. ICE will provide the instructors and training materials. RSD is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. RSD will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating RSD personnel are trained and certified, ICE may provide certified personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, unless either party terminates this MOU pursuant to Section XVII, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or designated team leader.

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## **VII. CERTIFICATION AND AUTHORIZATION**

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Los Angeles the names of those RSD personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special Agent in Charge will provide to the participating RSD personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to RSD. The activities of all personnel certified under this MOU will be evaluated by the ICE supervisory officer or designated team leader as addressed in Section IX, below.

Authorization of any participating RSD personnel to act pursuant to this MOU may be revoked at any time by ICE or RSD. Such revocation will require immediate notification of the other party to this MOU. The Riverside County Sheriff and the ICE Special Agent in Charge in Los Angeles will be responsible for notification of the appropriate personnel in their respective agencies. If any participating RSD personnel are the subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation, RSD shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of



the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any participating personnel shall be handled in accordance with Section XII, below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

#### VIII. COSTS AND EXPENDITURES

Participating RSD personnel will carry out designated functions at RSD expense, including salaries and benefits, local transportation, and official issue material. ICE will provide training personnel, training materials and supervision.

RSD agrees to be responsible for the purchase, installation, and maintenance of technology (computer/AFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating RSD personnel at each RSD corrections facility with an active 287(g) program (initially Indio Jail, SWDC, and RPDC).

ICE agrees to provide the necessary technological support and software updates of those systems tied directly into ICE or other Federal databases used by ICE to accomplish complete investigations.

#### IX. ICE SUPERVISION

Immigration enforcement activities of the participating RSD personnel will be supervised and directed by ICE supervisory officers or designated team leader in Riverside. Participating RSD personnel cannot perform any immigration officer functions pursuant to the RSD authorities herein except when working under the supervision of an ICE officer. Participating RSD personnel shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes an ICE arrest or detainer is appropriate to facilitate ICE action prior to any release from RSD custody. The actions of participating RSD personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOU, ICE officers will provide supervision of participating RSD personnel only as to immigration enforcement functions. RSD retains supervision of all other aspects of the employment of and performance of duties by participating RSD personnel.

If a conflict arises between an order or direction provided by the ICE supervisory officer and RSD rules, standards, or policies, the conflict shall be promptly reported to the Special Agent in Charge or designee and the Riverside County Sheriff or designee when circumstances safely allow the concern to be raised. The Special Agent in Charge and the Riverside County Sheriff shall attempt to resolve the conflict.

## **X. LIABILITY AND RESPONSIBILITY**

ICE and RSD understand and agree that except as otherwise noted in this MOU or allowed by federal law, they will be responsible for their own liability and bear their own costs with regard to their property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating RSD personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 *et seq.*, when performing a function as authorized by this MOU, 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating RSD personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU, 8 U.S.C. § 1357(g)(8). ICE will not be responsible for any intentional misconduct on the part of any participating RSD personnel.

Participating RSD personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the ICE Special Agent in Charge in Los Angeles. The Special Agent in Charge will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the views of ICE with respect to whether such representation would be in the interest of the United States to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

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RSD agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by any RSD personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The Giglio decision (405 U.S. 150 (1972)) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. As the activities of participating RSD personnel under this MOU are undertaken under federal authority, the participating personnel will comply with federal standards and guidelines relating to such cases.

## **XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES**

Pursuant to this MOU, participating RSD personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by all federal civil rights statutes and regulations, including the U.S. Department



of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating RSD personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the RSD as needed.

## **XII. COMPLAINT PROCEDURES**

The complaint reporting and resolution procedure for allegations of misconduct by participating RSD personnel designated, or activities undertaken, under the authority of this MOU is included at Appendix B.

## **XIII. REQUIRED REVIEW OF ACTIVITIES**

The ICE Assistant Secretary and the Riverside County Sheriff shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in Riverside County at locations to be agreed upon by the parties or by teleconference. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Riverside County. An initial review meeting will be held no later than nine months after certification of the initial class of participating RSD personnel under Section VII, above.

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## **XIV. COMMUNITY OUTREACH**

RSD will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon RSD request.

## **XV. RELATIONS WITH THE NEWS MEDIA**

RSD hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for ICE and RSD for this purpose can be found at Appendix C.

## **XVI. MODIFICATION OF THIS MOU**

Any modifications to this MOU must be proposed in writing and approved by the signatories.

**XVII. DURATION AND TERMINATION OF THIS MOU**

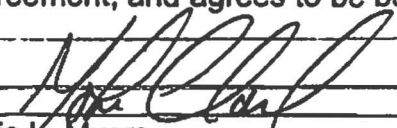
This MOU will be in effect from the date of signing until terminated by either party.

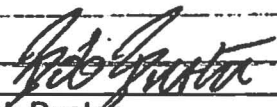
Either party, upon written notice to the other party may terminate it at any time. Should the State Criminal Alien Assistance Program funding fall below levels acceptable to the RSD or be terminated in its entirety, the County of Riverside, in its sole discretion, may terminate this MOU. Termination notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

Either party may, upon written or oral notice to the other party, temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Riverside County Sheriff. Notice of termination or suspension by RSD shall be given to the ICE Special Agent in Charge in Los Angeles.

Except for the rights of participating RSD personnel as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

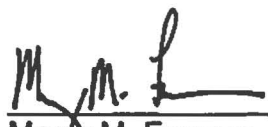
By signing this MOU, each party represents it is fully authorized to enter into this agreement, and accepts the terms, responsibilities, obligations and limitations of this Agreement, and agrees to be bound thereto to the fullest extent allowed by law.


  
\_\_\_\_\_  
Julie L. Myers  
Assistant Secretary  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security

  
\_\_\_\_\_  
Bob Buster  
Chairman  
Riverside County  
Board of Supervisors

Date: 4-28-06

Date: 4-11-06

  
\_\_\_\_\_  
Marcy M. Forman  
Director Of Investigations  
U.S. Immigration and Customs Enforcement

  
\_\_\_\_\_  
Robert G. Doyle  
Sheriff  
Riverside County

Date: 4/28/06

Date: 4-11-06

## APPENDIX A

As called for in Section III of the MOU, the ICE and RSD points of contact for purposes of implementation of this MOU are:

For RSD:       b6,b7c     Chief Deputy  
Corrections Division  
4095 Lemon St. 2<sup>nd</sup>. Floor  
Riverside, CA 92501  
b2Low

For ICE:       b6,b7c  
Acting Assistant Special Agent in Charge  
3403 Tenth Street, Suite 600  
Riverside CA 92501  
b2Low



## **APPENDIX B**

### **COMPLAINT PROCEDURE**

#### **Appendix B: Complaint Procedure**

This MOU is an agreement between DHS/ICE and the Riverside County (California) Board of Supervisors, in which selected RSD personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating RSD personnel pursuant to the MOU, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of certain RSD personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the RSD and be handled in accordance with RSD Manual of Policy and Procedures. The RSD will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

In order to simplify the process for the public, complaints against participating RSD personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the RSD Administrative Investigations Unit will coordinate complaint receipt and investigation. The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRT).

The ICE OPR will coordinate complaints related to participating personnel with the RSD Administrative Investigations Unit as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRT, this will not preclude the DHS OIG, DOJ CRT or ICE OPR from conducting the investigation in coordination with RSD Administrative Investigations Unit, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the RSD Administrative Investigations Unit will follow applicable RSD policies and procedures, personnel rules, California statutes, and collective bargaining agreements.

## **I. Complaint Reporting Procedures**

### **A. Dissemination of Complaint Reporting Procedures**

Complaint reporting procedures shall be disseminated as appropriate by the RSD within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

### **B. Acceptance of Complaints**

Complaints will be accepted from any source (e.g.: ICE, RSD, personnel operating under the authority of this MOU, and the public).

### **C. Reporting Mechanisms**

Complaints can be reported to federal authorities as follows:

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253, or
2. Telephonically to the Resident Agent in Charge of the ICE OPR office in Long Beach, CA at (562) 980-3170, or
3. Via mail as follows:

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U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D.C. 20536

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Complaints can also be referred to and accepted by any of the following RSD entities:

1. The RSD Administrative Investigations Unit
2. The supervisor of any participating RSD personnel; or
3. RSD Administrative Investigations Unit as follows:  
Lieutenant  
Administrative Investigations Unit  
Riverside County Sheriff's Department  
4095 Lemon St.  
Riverside, CA 92501

#### D. Review of Complaints

1. All complaints (written or oral) reported to RSD directly, which involve activities connected to immigration enforcement activities authorized under this MOU, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOU with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Los Angeles.
2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

For both of the above, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

3. Complaints reported directly to the ICE OPR will be shared with the RSD Administrative Investigations Unit when the complaint involves RSD personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

#### II. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

##### A. Referral of Complaints to RSD Administrative Investigations Unit.

The ICE OIA will refer complaints, as appropriate, involving RSD personnel to the RSD Administrative Investigations Unit for resolution. The facility commander will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

##### B. Interim Action Pending Complaint Resolution

Whenever any participating RSD personnel are under investigation and subject to interrogation by RSD for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of the General Orders Manual of the Riverside County Sheriff's Department shall be honored. If



appropriate, an individual may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

**C. Time Parameters for Resolution of Complaints**

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

**D. Notification of Resolution of a Complaint**

ICE OPR will coordinate with the RSD Administrative Investigations Unit to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

For RSD:

Tom Freeman  
Riverside County Sheriff's Department  
Media Information Bureau  
4095 Lemon St.  
Riverside, CA 92501 (951) 955-2438

For ICE:

Public Affairs Officer  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
425 I Street, N.W. Room 7232  
Washington, D.C. 20536  
(202) 514-2648

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## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the San Bernardino County (California) Board of Supervisors under which U.S. Immigration and Customs Enforcement (ICE) authorizes nominated, trained and certified personnel of the San Bernardino County Sheriff's Department (SBSD) to perform certain immigration enforcement functions as specified herein. The SBSD represents San Bernardino County in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in San Bernardino County jail facilities.

### **I. PURPOSE**

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected SBSD personnel (participating SBSD personnel) to perform certain functions of an immigration officer within San Bernardino County jail facilities, and how those participating SBSD personnel will be nominated, trained, authorized, and supervised in performing the immigration enforcement functions specified under this MOU.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by participating SBSD personnel as members of the SBSD. However, the exercise of the immigration enforcement authority granted under this MOU to participating SBSD personnel shall occur only as provided in this MOU and shall be limited to activities at San Bernardino County jail facilities.

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### **II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

### **III. POLICY**

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the participating SBSD personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating SBSD personnel be subject to ICE supervision while performing immigration-related duties pursuant to this MOU. For the purposes of this MOU, ICE officers will provide supervision for participating SBSD personnel only as to

**immigration enforcement functions. SBSD retains supervision of all other aspects of the employment of and performance of duties by participating SBSD personnel.**

Before participating SBSD personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this agreement. Only participating SBSD personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

**SBSD may, at its discretion, communicate the intent, focus, and purpose of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU. This MOU also describes the complaint procedures available to members of the public regarding actions taken by participating SBSD personnel pursuant to this agreement.**

#### IV. DESIGNATION OF FUNCTIONS

**For the purposes of this MOU, the functions that may be performed by participating SBSD personnel are indicated below with their associated authorities:**

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> <li>The power to Interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1).</li> </ul>	<ul style="list-style-type: none"> <li>Interrogation in order to determine probable cause for an immigration violation.</li> </ul>
<ul style="list-style-type: none"> <li>The power and authority to administer oaths and to take and consider evidence. INA § 287(b) and 8 C.F.R. § 287.5(a)(2).</li> </ul>	<ul style="list-style-type: none"> <li>Completion of required criminal alien processing, to include fingerprinting, photographing, and interviewing, as well as preparation of affidavits and the taking of sworn statements for ICE supervisor review</li> </ul>
	<p>Preparation of a Notice to Appear (NTA) application for signature of ICE officer for aliens in categories established by ICE supervisors.</p>



<ul style="list-style-type: none"> <li>• The power to issue detainers. 8 C.F.R. § 287.7.</li> <li>• Transportation of allens. 8 C.F.R. § 387.5(c)(6)</li> </ul>	<ul style="list-style-type: none"> <li>• Preparation of immigration detainers for aliens in categories established by ICE supervisors.</li> </ul>
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In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating SBSD personnel in exercising these authorities shall be DHS policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating SBSD personnel will be expected or required to violate or otherwise fail to maintain SBSD standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or SBSD rules, standards, or policies.

The parties understand that SBSD will not continue to detain an alien after that alien is eligible for release from SBSD custody in accordance with applicable law and SBSD policy, except for a period of up to 48-hours, excluding Saturday, Sunday and any holiday, pursuant to a DHS detainer issued in accordance with 8 C.F.R. § 287.7.

#### V. NOMINATION OF PERSONNEL

~~The Sheriff of San Bernardino County will nominate to ICE candidates for initial training and certification under this MOU. For each candidate, ICE may request any information necessary for a background check and evaluation for suitability to~~  
 participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates will have at least two years correctional work experience for SBSD. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of participating SBSD personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

#### VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated SBSD personnel tailored to the designated immigration functions and types of cases typically encountered by SBSD correctional personnel at a mutually designated site in San Bernardino County, utilizing ICE-designed curriculum and competency testing. Training will include presentations on this agreement, elements of this MOU, scope of immigration officer authority, cross-cultural issues, the ICE Use of Force Policy, civil rights law, the U.S. Department of

Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability and other relevant issues. ICE will provide the instructors and training materials. SBSD is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOU. SBSD will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating SBSD personnel are trained and certified, ICE may provide certified personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, unless either party terminates this MOU pursuant to Section XVII, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or designated team leader.

## VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Los Angeles the names of those SBSD personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special Agent in Charge will provide to the participating SBSD personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to SBSD. The activities of all personnel certified under this MOU will be evaluated by the ICE supervisory officer or designated team leader as addressed in Section IX, below.

Authorization of any participating SBSD personnel to act pursuant to this MOU may be revoked at any time by ICE or SBSD. Such revocation will require immediate notification of the other party to this MOU. The San Bernardino County Sheriff and the ICE Special Agent in Charge in Los Angeles will be responsible for notification of the appropriate personnel in their respective agencies. If any participating SBSD personnel are the subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation, SBSD shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any participating personnel shall be handled in accordance with Section XII, below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.



## VIII. COSTS AND EXPENDITURES

Participating SBSD personnel will carry out designated functions at SBSD expense, including salaries and benefits, local transportation, and official issue material. ICE will provide training personnel, training materials and supervision.

## IX. ICE SUPERVISION

Immigration enforcement activities of the participating SBSD personnel will be supervised and directed by ICE supervisory officers or designated team leader in San Bernardino. Participating SBSD personnel cannot perform any immigration officer functions pursuant to the SBSD authorities herein except when working under the supervision of an ICE officer. Participating SBSD personnel shall give timely notice to the ICE supervisory officer of any alien for whom the individual believes ICE arrest or detainer is appropriate to facilitate ICE action prior to any release from SBSD custody. The actions of participating SBSD personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOU, ICE officers will provide supervision of participating SBSD personnel only as to immigration enforcement functions. SBSD retains supervision of all other aspects of the employment of and performance of duties by participating SBSD personnel.

~~If a conflict arises between an order or direction provided by the ICE supervisory officer and SBSD rules, standards, or policies, the conflict shall be promptly reported to the Special Agent in Charge or designee and the San Bernardino County Sheriff or designee when circumstances safely allow the concern to be raised. The Special Agent in Charge and the San Bernardino County Sheriff shall attempt to resolve the conflict.~~

## X. LIABILITY AND RESPONSIBILITY

ICE and SBSD understand and agree that except as otherwise noted in this MOU or allowed by federal law, they will be responsible for their own liability and bear their own costs with regard to their property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating SBSD personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 *et seq.*, when performing a function as authorized by this MOU. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating SBSD personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU. 8 U.S.C. § 1357(g)(8). ICE will not be

responsible for any intentional misconduct on the part of any participating SBSD personnel.

Participating SBSD personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the ICE Special Agent in Charge in Los Angeles. The Special Agent in Charge will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the views of ICE with respect to whether such representation would be in the interest of the United States to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

SBSD agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by any SBSD personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The *Giglio* decision (405 U.S. 150 (1972)) relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. As the activities of participating SBSD personnel under this MOU are undertaken under federal authority, the participating personnel will comply with federal standards and guidelines relating to such cases.

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**XI. ~~CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES~~**

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Pursuant to this MOU, participating SBSD personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating SBSD personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the SBSD as needed.

**XII. COMPLAINT PROCEDURES**

The complaint reporting and resolution procedure for allegations of misconduct by participating SBSD personnel designated, or activities undertaken, under the authority of this MOU is included at Appendix B.



### **XIII. REQUIRED REVIEW OF ACTIVITIES**

The ICE Assistant Secretary and the San Bernardino County Sheriff shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in San Bernardino County at locations to be agreed upon by the parties or by teleconference. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in San Bernardino County. An initial review meeting will be held no later than nine months after certification of the initial class of participating SBSD personnel under Section VII, above.

### **XIV. COMMUNITY OUTREACH**

SBSD will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon SBSD request.

### **XV. RELATIONS WITH THE NEWS MEDIA**

SBSD hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for ICE and SBSD for this purpose can be found at Appendix C.

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### **XVI. MODIFICATION OF THIS MOU**

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Any modifications to this MOU must be proposed in writing and approved by the signatories.

### **XVII. DURATION AND TERMINATION OF THIS MOU**

This MOU will be in effect from the date of signing until terminated by either party.

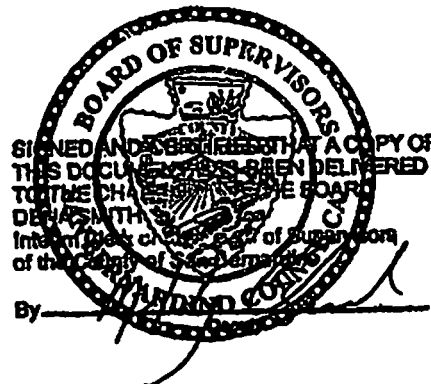
Either party, upon written notice to the other party may terminate it at any time. Should the State Criminal Alien Assistance Program funding fall below levels acceptable to the SBSD or be terminated in its entirety, the County of San Bernardino, in its sole discretion, may terminate this MOU. Termination notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

Either party may, upon written or oral notice to the other party, temporarily suspend activities under this MOU when resource constraints or competing priorities

necessitate. Notice of termination or suspension by ICE shall be given to the San Bernardino County Sheriff. Notice of termination or suspension by SBSD shall be given to the ICE Special Agent in Charge in Los Angeles.

Except for the rights of participating SBSD personnel as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOU, each party represents it is fully authorized to enter into this agreement, and accepts the terms, responsibilities, obligations and limitations of this Agreement, and agrees to be bound thereto to the fullest extent allowed by law.



Date: 10/17/05

Randy Beardsworth  
Under Secretary (Acting)  
Border and Transportation Security  
Department of Homeland Security

Date: SEP 20 2005

~~Chairman~~ PAUL BIENE, VICE-CHAIRMAN  
~~Chair~~  
San Bernardino County  
Board of Supervisors

Date: 10-11-05

John P. Clark  
Assistant Secretary (Acting)  
U.S. Immigration and Customs Enforcement

Date: SEP 12 2005

Gary S. Perrod  
Sheriff  
San Bernardino County

As called for in Section III of the MOU, the ICE and SBSD points of contact for purposes of implementation of this MOU are:

For SBSD: **b6,b7c** Deputy Chief  
Bureau of Detention and Corrections  
655 E. Third Street  
San Bernardino, CA 92415  
**b2Low**

For ICE: **b6,b7c**  
Assistant Special Agent in Charge  
3403 Tenth Street, Suite 600  
Riverside CA 92501  
**b2Low**



## APPENDIX B

### COMPLAINT PROCEDURE

#### Appendix B: Complaint Procedure

This MOU is an agreement between DHS/ICE and the San Bernardino County (California) Board of Supervisors, in which selected SBSD personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating SBSD personnel pursuant to the MOU, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of certain SBSD personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the SBSD and be handled in accordance with SBSD Manual of Policy and Procedures. The SBSD will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

In order to simplify the process for the public, complaints against participating SBSD personnel relating to their immigration enforcement can be reported in a number of ways. ~~The ICE Headquarters Office of Professional Responsibility (OPR) and the SBSD West Valley Detention Center will coordinate complaint receipt and investigation.~~ The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRT).

The ICE OPR will coordinate complaints related to participating personnel with the SBSD West Valley Detention Center as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRT, this will not preclude the DHS OIG, DOJ CRT or ICE OPR from conducting the investigation in coordination with SBSD Internal Affairs Bureau, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the SBSD Internal Affairs Bureau will follow applicable SBSD policies and procedures, personnel rules, California statutes, and collective bargaining agreements.

## I. Complaint Reporting Procedures

### A. Dissemination of Complaint Reporting Procedures

**Complaint reporting procedures shall be disseminated as appropriate by the SBSD within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.**

## B. Acceptance of Complaints

**Complaints will be accepted from any source (e.g.: ICE, SBSD, personnel operating under the authority of this MOU, and the public).**

### C. Reporting Mechanisms

**Complaints can be reported to federal authorities as follows:**

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253, or
2. Telephonically to the Resident Agent in Charge of the ICE OPR office in Long Beach, CA at (562) 980-3170, or
3. Via mail as follows:

**U.S. Department of Homeland Security**  
**~~U.S. Immigration and Customs Enforcement~~**  
**~~Office of Professional Responsibility~~**  
**425 I Street, NW**  
**Room 3260**  
**Washington, D.C. 20536**

**Complaints can also be referred to and accepted by any of the following SBSD entities:**

- 1. The applicable SBSD West Valley Detention Center Commander**
- 2. The supervisor of any participating SBSD personnel; or**

**3. SBSD Internal Affairs Bureau Unit as follows:**

Lieutenant  
Internal Affairs  
San Bernardino County Sheriff's Department  
655 E. Third Street  
San Bernardino, CA 92415

**D. Review of Complaints**

1. All complaints (written or oral) reported to SBSD directly, which involve activities connected to immigration enforcement activities authorized under this MOU, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOU with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Los Angeles.

2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

For both of the above, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

- ~~3. Complaints reported directly to the ICE OPR will be shared with the West Valley Detention Center when the complaint involves SBSD personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).~~

**II. Complaint Resolution Procedures**

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

- A. Referral of Complaints to SBSD West Valley Detention Center Facility Commander.

The ICE OIA will refer complaints, as appropriate, involving SBSD personnel to the SBSD West Valley Detention Center Facility Commander for resolution.



The facility commander will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

**B. Interim Action Pending Complaint Resolution**

Whenever any participating SBSD personnel are under investigation and subject to interrogation by SBSD for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of the Manual of the San Bernardino County Sheriff's Department shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

**C. Time Parameters for Resolution of Complaints**

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

**D. Notification of Resolution of a Complaint**

ICE OPR will coordinate with the SBSD West Valley Detention Center Facility Commander to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

For SBSD:

Mike Stancell, Lieutenant  
San Bernardino County Sheriff's Department  
Public Affairs Division  
655 E. Third Street  
San Bernardino, CA 92415  
(909) 387-3700

For ICE:

Public Affairs Officer  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
425 I Street, N.W. Room 7232  
Washington, D.C. 20536  
(202) 514-2648



## ORANGE COUNTY SHERIFF'S DEPARTMENT

550 N. FLOWER STREET  
SANTA ANA, CA 92703  
714-647-7000  
WWW.OCSO.ORG

SHERIFF-CORONER  
SANDRA HUTCHENS

### NEWS

FOR IMMEDIATE RELEASE

Contact Public Affairs:  
W: 714-647-7042  
C: 714-904-7042

### OC Sheriff Sandra Hutchens' Statement on SB 54

**SANTA ANA, Ca. (Oct. 5, 2017)** – Orange County Sheriff Sandra Hutchens released the following statement reference the signing of SB54:

"Approval of SB 54 presents California law enforcement with a significant challenge. Restrictions on our ability to communicate with federal authorities will hinder current collaborative efforts to remove serious offenders from our community. This law is inconsistent with widely accepted best practices of open communication amongst all levels of law enforcement.

Unfortunately, as Sheriff I must comply with the State's new law. Based on case law and direction from legal counsel, a Sheriff is responsible for following all State statutes unless they are formally ruled unconstitutional by a court. Until a statute is ruled against, it is presumed to be constitutional and thus law enforcement is obliged to follow the provision. While I strongly disagree with the law and believe it to be poor public policy, I am compelled to abide by the decision of our legislature and Governor.

The new law prohibits certain communications, but not all cooperation is restricted. The Orange County Sheriff's Department remains committed to cooperating fully with federal authorities in all areas where the Sheriff has discretion. The department's objective is to work with federal authorities to remove serious offenders from our community. My goal is to ensure a tragedy like the Kate Stienle murder does not occur in Orange County.

To that end, OCSO will be developing new protocols that will maintain operational continuity and communication in a manner consistent with SB 54 and public safety needs. Currently OCSO provides ICE with notification of the pending release of such offenders through our participation in the Department of Homeland Security's 287(g) program and in compliance with the State's TRUTH and TRUST acts. SB 54 will prevent us from continuing to formally participate in 287(g). SB 54 becomes law on January 1st. Between now and the first of the year we will be working with federal authorities to develop protocols that are both SB 54 compliant and successful in providing federal law enforcement with the access they need to keep serious offenders off our streets. SB 54's provisions make success challenging as it requires bureaucratic processes that are not ideal, but we will work through these political hurdles in order to keep our community safe."

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# ORANGE COUNTY SHERIFF'S DEPARTMENT

550 N. FLOWER STREET  
SANTA ANA, CA 92703  
714-647-7000  
WWW.OCS.D.ORG

SHERIFF-CORONER  
SANDRA HUTCHENS

## NEWS

FOR IMMEDIATE RELEASE

Contact Carrie Braun,  
Public Information Manager  
W: 714-647-7042  
C: 714-904-7042

### **SB 54 prompts Sheriff's Department to publicly post inmate release dates**

**SANTA ANA, Ca. (Mar. 26, 2018)** – Beginning today, the Orange County Sheriff's Department will make publicly available inmate release dates through the existing "Who's in Jail" online database. This action will enhance communication between the Sheriff's Department and our law enforcement partners to remove dangerous offenders from our community.

Senate Bill 54, which took effect on January 1, 2018, placed restrictions on collaboration between local custody operations and federal law enforcement authorities. The legislation specifically prohibited local law enforcement's communication with Immigration and Customs Enforcement (ICE) on the release of certain undocumented offenders. This provision of the law increases the likelihood of dangerous offenders being released back into the community. The law, however, does not limit information that is available to the public.

SB 54 provides sheriffs with the discretion to respond to ICE's requests for notification of the pending release of specified serious offenders under the TRUST Act. Sheriff Hutchens directed staff to respond to requests from ICE for any criminal who meets the specifications. From Jan. 1 to March 19, 168 inmates who fall within this provision have been released to ICE custody.

Sheriff Hutchens joined law enforcement leaders across the state in opposing SB 54 when the legislation was first proposed in December 2016, as provisions in the bill hindered collaborative efforts to remove serious offenders from the community. Additionally, the law is inconsistent with widely accepted best practices of open communication amongst all levels of law enforcement. Both Sheriff Hutchens and Undersheriff Don Barnes actively engaged with legislators to encourage defeat of the bill. While these efforts resulted in the removal of some harmful sections of the bill, the final version limited communication in a way that puts the public at risk.

"SB 54 makes local law enforcement's job more difficult and requires bureaucratic processes that could allow dangerous individuals to fall through the cracks of our justice system," said Sheriff Sandra Hutchens. "My department, however, remains committed to cooperating fully with federal authorities in all areas where I have discretion to remove serious criminals from our community."

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# ORANGE COUNTY SHERIFF'S DEPARTMENT

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SHERIFF-CORONER  
SANDRA HUTCHENS

## OC Sheriff Sandra Hutchens' Response to SB54 Amendments

**SANTA ANA, Ca. (Sept. 12, 2017)** – Orange County Sheriff Sandra Hutchens released the following statement reference recent amendments to SB54:

"I remain opposed to SB 54. Even with the amendments, the bill continues to restrict the ability of local law enforcement to communicate with federal law enforcement authorities.

Specifically, the bill does not allow for notification to federal authorities, at their request, of the pending release of certain wanted, undocumented criminals – including, but not limited to, repeat drunken drivers, misdemeanor hit and run drivers, those who assault peace officers, serial thieves, animal abusers, chronic



## ORANGE COUNTY SHERIFF'S DEPARTMENT

# NEWS RELEASE

SHERIFF-CORONER DON BARNES

FOR IMMEDIATE RELEASE

Public Information Manager Carrie Braun  
W: 714-647-7042 | C: 714-904-7042

### **OC Sheriff transfers 717 inmates to ICE during first year of SB 54**

**SANTA ANA, Ca. (April 3, 2019)** – In the first full year of implementation of California Senate Bill 54 (SB 54), a state law that limits which offenders local law enforcement can notify Immigration and Customs Enforcement (ICE) about, the Orange County Sheriff's Department (OCSD) transferred 717 inmates to ICE upon completion of their local sentence from Jan. 1 to Dec. 31, 2018.

In 2018, a total of 1,823 inmates in Orange County Jail had ICE detainers, meaning ICE requested that OCSD notify them when the inmates were being released. Despite being arrested for criminal violations of law, SB 54 restricted OCSD from notifying ICE of the release of 1,106 inmates who had ICE detainers.

Of the 1,106 inmates with ICE detainers who were released back into the community, 173 have been rearrested in Orange County for 58 different types of crimes committed including attempted murder, assault and battery, child molestation, and robbery. This does not include individuals who may have been arrested in surrounding jurisdictions, or re-arrested after Jan. 1, 2019.

"Open communication among law enforcement partners is a best practice for public safety agencies," said Sheriff Barnes. "SB 54 hinders this communication and puts the community at risk. I will continue to exercise my full authority as Sheriff and notify ICE when allowed by law."

While SB 54 prohibits communication on certain offenses, the law does allow information to be shared with federal authorities if it is publicly available. To that end, in March 2018, OCSD began publicly posting all inmate release dates enabling law enforcement authorities to know when individuals will be released from custody. Sheriff Barnes supported this policy as Undersheriff, and will continue this practice as Sheriff.

In addition to being legally prohibited from notifying, transferring and communicating with federal immigration authorities regarding certain offenders, SB 54 also required the elimination of OCSD's 287(g) program. Under the 287(g) program, OCSD was able to place detainers on undocumented individuals booked into custody. Ending this program eliminated proactive communication that resulted in identifying potential offenders who could have been transferred to federal custody following the conclusion of their local sentence.

Sheriff Barnes strongly opposed SB 54, lobbied against it in Sacramento, and will continue to advocate for its repeal.

"Public policy rooted in short-term political goals makes us less safe," said Sheriff Barnes. "Lawmakers must repeal laws that limit law enforcements' ability to collaborate on shared threats. Let's move beyond politics and let law enforcement operate under the best practices that have proven to provide a more secure community."

OCSD does not enforce immigration law or ask immigration status as we patrol our community and respond to calls for service. This is not part of our mission and is a federal government responsibility. Cooperating with ICE in a custody setting, however, makes possible the removal of criminals who pose a threat to all members of the community.

"The outcome of SB 54 has resulted in the release of criminals back into the community," said Sheriff Barnes. "We have an obligation to protect all members of the communities we serve, and that includes preventing those who have committed crimes from returning to the neighborhoods they prey upon."

[www.ocsd.org](http://www.ocsd.org)

Integrity without compromise | Service above self | Professionalism in the performance of duty | Vigilance in safeguarding our community



# ORANGE COUNTY SHERIFF'S DEPARTMENT

# NEWS RELEASE

SHERIFF-CORONER DON BARNES

**173 individuals have been rearrested in Orange County for 58 different types of crimes committed:**

Attempt Murder	4
Assault w/ Deadly Weapon	7
Child Molestation	2
Lewd Acts	1
Spousal Rape	1
Unlawful Sexual Intercourse	1
Kidnap	2
Child Abduction	1
Child Endangerment / Cruelty to Children	3
Weapons	15
Robbery	6
Robbery 2 <sup>nd</sup> Degree	4
Attempt Robbery	1
Assault Causing Great Bodily Injury	1
Arson	2
Felony Domestic Violence	5
False Imprisonment	1
Misdemeanor Domestic Violence	8
Violation of Court Order / DV Order	22
Attempt Escape – Jail	1
Assault & Battery	5
Witness Intimidation	1
Criminal Threat	6
Destroy Evidence	1
Felony Resisting Officer	6
Misdemeanor Resisting Officer	12
Gang Enhancement	2
Transportation of Drugs for Sales	2
Possession of Drugs for Sales	1

Possession of Drugs	26
Under the Influence (Drugs)	6
Possession Drug Paraphernalia	32
Conspiracy	4
Hit & Run	1
DUI	7
Drunk in Public	9
Possession of Stolen Vehicle	1
Vehicle Theft	2
AB109/ Probation Violation	11
Warrants	82
Identity Theft	3
Fraud	4
Forgery	2
Receiving Stolen Property	8
Burglary – 1 <sup>st</sup> Degree	11
Burglary – 2 <sup>nd</sup> Degree	8
Grand Theft	6
Theft	4
Misappropriation of Property	6
Municipal Code Violation	5
Trespassing	7
Burglary Tools	5
Vandalism	10
Vehicle Tampering	1
False ID	5
Suspended License	3
Driving w/o a License	5
Vehicle Code	1



ORANGE COUNTY  
SHERIFF'S DEPARTMENT

# NEWS RELEASE

SHERIFF-CORONER DON BARNES

###

## 1206 – Immigration

Although enforcing immigration law is a federal government responsibility and not shared by members of OCSD, OCSD may allow members of Immigration and Customs Enforcement (ICE) into our custodial facilities for the purpose of interviewing inmates for immigration violations, provided the requirements of Government Code section 7283, et seq (the “Truth Act”) are met.

### 1206.1 – Immigration Interview Procedure

- a) The Facility Watch Commander shall be notified of an ICE Agent’s arrival and request to interview inmates for immigration violations.
- b) Prior to being interviewed, a Classification Deputy will provide the inmate with a written consent form (Truth Act Interview Consent Form) which is available in one of seven languages.
- c) The form will explain the purpose of the interview, the voluntary nature of the interview, and that the inmate may decline to be interviewed or may choose to be interviewed only with his or her attorney present.
- d) If the inmate chooses to have his or her attorney present, the interview will be postponed until the attorney can be present.
- e) Upon completion of the written consent form, the inmate will be provided with a duplicate copy and the original will be placed in the inmate’s record jacket.
- f) If the inmate agrees to be interviewed, a Classification Deputy will be assigned to escort the inmate to the ICE Agent’s location.

### 1206.2 –Receiving an Immigration Detainer

- a) Upon receiving an Immigration Detainer, Inmate Records shall provide a copy of the Immigration Detainer for the referenced inmate to Classification.
  1. This includes an Immigration Detainer placed by persons outside of OCSD, or already lodged on an inmate prior to their intake or after intake when the OCSD becomes aware of such Immigration Detainer.
- b) The on-duty Classification Sergeant, or in his or her absence, the on-duty Operations Sergeant will designate an on-duty Classification deputy or other deputy to provide a copy of the Immigration Detainer to the inmate and inform the inmate whether OCSD intends to comply with the Immigration Detainer in accordance with Government Code section 7282, et seq. (hereinafter the “Trust Act”).
- c) The on-duty Classification Sergeant, or in his or her absence, the on-duty Operations Sergeant will designate an on-duty Classification deputy or other deputy to provide the TRUTH Act Notification form (Rev 12/15/16) to the inmate to complete the name and address of the inmate’s attorney or other person whom the inmate may designate for the purpose of OCSD providing notice to that attorney or other person if ICE is notified of the inmate’s release date.
- d) Upon completion of the top portion of the Truth Act Notification form, the Classification deputy or other deputy will return the form to Inmate Records and the form will be placed in the inmate’s Inmate Record Jacket.

### 1206.3 – Screening Inmates in Accordance with the Trust Act

- a) All inmates who have an Immigration Detainer will be evaluated in accordance with the Trust Act. The evaluation will be conducted by an on-duty Classification Deputy designated by the on duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant.
- b) OCSD will comply with Immigration Detainers by notifying ICE and releasing the inmate to ICE custody when the referenced inmate qualifies in accordance with the Trust Act.
  1. Inmates who qualify under the Trust Act may be processed for release at Sentence Ending Date (SE Date) or Pre-trial release and released in-custody to ICE.
    - a. These inmates will not be held past their release date.



2. ICE will be notified in a timely manner for all inmates who qualify under the Trust Act to afford ICE the opportunity to pick up the inmate. ICE will not be notified if the inmate does not qualify under the Trust Act.

#### 1206.4 – Release of Inmates with an Immigration Detainer

- a) Records Supervisors will notify the on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant when an inmate with an Immigration Detainer is preparing for release.
- b) The on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification deputy to screen the inmate per section 1206.3 above.
- c) When ICE is notified that an inmate is being, or will be released, on a certain date, the on-duty Intake Release Center Classification Sergeant, or in his or her absence, the on-duty Intake Release Center Operations Sergeant will designate an on-duty Classification Deputy to promptly complete the bottom portion of the Truth Act Notification form and provide a copy of the original to the inmate, mail a copy of the original to the inmate's attorney or other person designated by the inmate and return the original to the inmate's Inmate Record Jacket.

#### 1206.5 – Public Access to Records

Upon receiving any request pursuant to the California Public Records Act, GOVT. CODE §§ 6250 – 6276.48 for information related to ICE's access to individuals, responsive records shall be produced consistent with the Act's requirements.

# Office of the City Council



March 22, 2017

Honorable Kevin de Leon  
California State Senate  
California State Capitol  
Sacramento, CA 95814

**RE: Senate Bill 54 (Oppose as amended 3/6/17)**

Senate President Pro Tempore de Leon:

The City of Tustin regrets to inform you of our opposition to Senate Bill (SB) 54, which would limit California law enforcement from using agency or department moneys, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes. Although immigration enforcement is not the duty of state or local law enforcement, these restrictions will have negative consequences and threaten to create safety concerns within our communities.

Public safety is the primary concern of local law enforcement, not immigration. Legally, California's law enforcement agencies lack the authority and jurisdiction to enforce federal immigration law. Beyond the legal limitations, any attempt by local law enforcement to target non-criminals for immigration violations would only erode public trust and curtail the ability of our departments to carry out their primary mission. Because community relationships are so important, the California Police Chiefs Association has a track record of standing behind California's large immigrant community, which includes supporting legislation to allow undocumented immigrants to obtain a driver license, and shield victims of human trafficking from deportation. However, there are instances when providing public safety entails partnering with federal law enforcement agencies, including immigration enforcement.

Consistent with existing state laws and current department procedures, we strongly believe that undocumented immigrants who commit violent and serious offenses against members of our community should be subject to the immigration laws of this country. By doing so, we prevent dangerous individuals from creating more victims – including within our own immigrant communities. As such, our departments routinely engage with federal law enforcement agencies – including Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI) – for the purpose of eliminating drugs, violence, and crime from our streets.

Currently, local law enforcement agencies have the discretion to partner with ICE or HSI, and do so through targeted operations to apprehend identified criminals. For example, ICE may request tactical support from a local police department during an operation to arrest members of a gang or drug cartel for civil or criminal immigration violations. Additionally, local law enforcement also engages in federal joint task forces with various federal law enforcement agencies, including ICE and HSI. These task forces all focus on organized crime, human trafficking and national security; however, immigration enforcement often plays a role in carrying out those missions. For instance, if during a joint investigation into a drug trafficking operation, HSI or ICE identifies one of the suspects as an individual with an immigration violation, the task force may use that violation to apprehend that suspect. In those such instances, it is typical for local law enforcement to supply information, resources, or even manpower to physically assist in making the arrest. In every case, these are fluid and dynamic partnerships that require constant communication.

SB 54 creates roadblocks, hurdles, and ambiguity when it comes to local law enforcement's participation in any of the examples above. Under the proposed Government Code Section 7284.6(b)(2), SB 54 does appear to exempt local law enforcement agencies who are "(p)articipating in a joint law enforcement task force, so long as the purpose of the joint law enforcement task force is not immigration enforcement." However, what this section does not clearly elucidate what "the purpose" of the task force would be considered.

The intent of SB 54 is to prevent local law enforcement from ANY immigration enforcement, so it is unclear whether 7284.6(b)(2) distinguishes the overall purpose of the federal-state collaboration from the incidental operations that may be utilized to achieve that purpose. In the task force example from above, it is unclear whether "the purpose" would be considered reducing drug trafficking (the overall mission), or immigration enforcement (the operation). If the latter, it is also unclear what reduced role local law enforcement would have to take in the task force - would we be forced to simply recuse ourselves from making the physical arrest, or would we be forced to sever all ties with the operation at that point, including blocking any information sharing? Moreover, during a collaboration with ICE to serve a criminal warrant, local police should not be liable if ICE makes any additional detentions after the discovery of an immigration violation. Again, in this example, it would be unclear how local law enforcement should limit their participation. In total, the task force exemption does not adequately protect our ability to maintain these partnerships, even when the focus is on major crimes.

An equal, if not greater concern, is the unintended consequence SB 54 will have by preventing ICE from conducting immigration enforcement operations in our jail facilities. Currently, jails in California may allow ICE access to specified inmates, but the state agency overseeing the jail must provide those inmates with a notification of their rights. Under SB 54, ICE will no longer be allowed access to our jails for immigration enforcement purposes. As a result, ICE will be forced to carry out more field operations in our communities. Even during targeted

immigration operations, this will result in more collateral detentions – where undocumented individuals at the scene of an arrest and were not the initial targets are detained by ICE. These collateral detentions often cause the most confusion and fear amongst our immigrant communities, and any increase is likely to cause additional problems. Furthermore, forcing ICE to make public arrests does not actually prevent detentions, but instead only increases the likelihood of escalated situations that may lead to dangerous encounters in our neighborhoods. Although SB 54 does allow state prisons and jails to notify the Federal Bureau of Investigations of the release date of violent felons, or those in custody with violent felony priors, that does not include those who may have multiple significant misdemeanors – such as spousal abuse or child endangerment – and it still limits our ability to make the transfer in a safe custodial setting. Clearly, the cost of removing

ICE from our jails, where they can focus solely on convicted criminals, does not outweigh any perceived benefits to our immigrant communities.

California law enforcement agencies have no intention, or desire, to become the primary enforcers of federal immigration law. Even under ongoing federal changes, local police will keep doing what local police do best – partnering with our community members to ensure everyone is protected. The City of Tustin does recognize that there is a balance that needs to be struck on immigration enforcement – one that takes the focus away from those not posing a threat, and allows law enforcement to expend resources protecting our communities from those with ill-intent. Unfortunately, SB 54 will make it more difficult to work with our federal law enforcement partners in apprehending dangerous criminals, and threatens to create more fear in our communities by forcing federal immigration operations out of our jails and into our communities. For those reasons, The City of Tustin must oppose SB 54.

Thank you for your consideration.

Thank you,



Dr. Allan Bernstein

Mayor

City of Tustin



**San Diego and  
Imperial Counties**

July 25, 2019

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Via Email

Re: Use of Orange County Jails for Immigration Enforcement in Violation of the California Values Act

Dear County Counsel Page, Sheriff-Coroner Barnes, and Undersheriff Peterson:

We write with serious concerns about the Orange County Sheriff's Department's practice of jailing individuals charged in federal court with illegal entry (8 U.S.C. § 1325) and/or illegal reentry (8 U.S.C. § 1326) in violation of the California Values Act (SB 54), which took effect on January 4, 2018. Cal. Gov't Code §§ 7282 *et seq.* The California Values Act protects the safety and well-being of all Californians by ensuring state and local resources are not used for immigration enforcement. In signing the Values Act into law, the California State Legislature acknowledged what community groups have been declaring for decades: immigrants are valuable and essential members of the state's community; a relationship of trust between the immigrant community and state and local law enforcement agencies is central to public safety for all Californians; and entanglement between federal immigration agencies and state and local law enforcement agencies threatens community trust,



diverts limited resources, blurs accountability, and raises constitutional concerns. Cal. Gov't Code § 7284.2.

In December 2017, the ACLU of California, Advancing Justice - Asian Law Caucus, California Immigrant Policy Center, Immigrant Legal Resource Center, and National Day Labor Organizing Network sent you a letter providing a detailed analysis about the new state law and the obligations it imposes on local law enforcement agencies within your county in anticipation of its January 4, 2018 effective date. As we emphasized in that letter, local law enforcement agencies are liable for violations of the California Values Act.

The Values Act places prohibitions, limitations, and responsibilities on state and local law enforcement agencies with respect to cooperation with federal immigration authorities. In pertinent part, the Values Act forbids state and local law enforcement agencies from using “agency or department moneys or personnel to investigate, interrogate, *detain*, detect, or *arrest* persons for immigration enforcement purposes...” Cal. Gov't Code § 7284.6(a)(1) (emphasis added). The Act defines “immigration enforcement” as including “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to *investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law* that penalizes a person’s *presence in, entry, or reentry* to, or employment in, the United States.” Cal. Gov't Code § 7284.4(f) (emphasis added).

We have identified cases of individuals held in criminal custody at Orange County jails, including the Men’s Central Jail, Theo Lacy, and Musick, on federal charges of violating 8 U.S.C. § 1325 or § 1326 in violation of the Values Act. Because sections 1325 and 1326 criminalize unlawful entry and unlawful reentry, respectively, prosecution under those statutes falls within the definition of immigration enforcement under the Values Act. Accordingly, because incarcerating individuals charged with these crimes in Orange County jails necessarily uses agency “personnel” to “detain” them for “immigration enforcement purposes,” doing so violates the Values Act. The Values Act contains one very narrow exception for individuals suspected of illegal reentry under 8 U.S.C. § 1326 who “may be subject to an enhancement” under subsection (b)(2) based on an unrelated prior conviction for an aggravated felony. Cal. Gov't Code § 7284.6(b)(1). We have confirmed that the Sheriff’s Department’s practice of detaining individuals charged under section 1326 is not limited to individuals subject to the (b)(2) enhancement. No other exceptions to the protections of the Values Act permit the use of local agency resources to enforce 8 U.S.C. §§ 1325 or 1326. *See* Cal. Gov't Code §§ 7282 *et seq.*

According to data obtained by The Million Dollar Hoods Project, nearly 4,000 people charged only with 8 U.S.C. § 1325, a federal misdemeanor, were booked into the custody of the Orange County Sheriff’s Department between January 1, 2018 and December 31, 2018.<sup>1</sup> Each of these cases necessarily violated the California Values Act’s prohibition against using department resources for immigration enforcement purposes. The time period also coincides with the federal government’s enactment of its controversial “Zero Tolerance” policy for prosecuting all suspected unauthorized border crossings, no matter how minor, as criminal cases. In effect, the Sheriff’s Department’s

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<sup>1</sup> Eric Lee, Isaac Bryan and Kelly Lytle Hernandez, *Immigration Enforcement and the Orange County Jail*, THE MILLION DOLLAR HOODS PROJECT (2019), [http://milliondollarhoods.org/wp-content/uploads/2019/07/OC\\_Jail\\_2018\\_Final.pdf](http://milliondollarhoods.org/wp-content/uploads/2019/07/OC_Jail_2018_Final.pdf) (last visited July 23, 2019).

disregard for the Values Act has directly facilitated one of the federal government's most nefarious and poorly executed immigration enforcement policies.<sup>2</sup> This is unacceptable.

In one particularly egregious example, Roberto Lara<sup>3</sup> was charged with a violation of section 1326 and locked up in the Orange County Sheriff's Department's custody at Musick and Theo Lacy while his case was pending, in clear violation of the Values Act. He pled guilty and completed his sentence of 90 days on February 3, 2019. His release was required on that date. Instead, he spent an additional 32 days in the Orange County Sheriff's Department's custody without justification or explanation. At best, it appears the federal government lost track of him, likely due to its inability to process the unprecedented volume of illegal entry and reentry prosecutions it has insisted on pursuing. Worse yet, Orange County Sheriff's Department officials, lacking information about the procedural posture of his federal criminal case, were unable to facilitate Mr. Lara's timely release upon his completion of his sentence. He only won his release with the intervention of outside individuals. Mr. Lara's incarceration in Orange County Sheriff's Department custody on a charge of illegal reentry violated the Values Act regardless of the time he spent jailed beyond his release date. But his overstay in the Orange County Sheriff's Department's custody is an example of the myriad of serious problems that arise when local law enforcement agencies participate in federal immigration enforcement. The federal government's bungling of this case and others like it underscores the critical need for SB 54 and illustrates why local participation in federal immigration enforcement contradicts California values.

We are aware of the Orange County Sheriff's Department's decision to terminate its contract with Immigration and Customs Enforcement (ICE) to hold civil immigration detainees on March 27, 2019. It must also end its practice of detaining individuals charged with criminal immigration violations, as detailed above, based on its contract with the United States Marshal's Service. The federal government has consistently proven that it is not equipped to properly or fairly handle the volume of immigration enforcement actions it has insisted on pursuing, particularly in the border region. The Orange County Sheriff's Department is forbidden from facilitating the federal government's prosecutions of individuals for low-level immigration-related crimes. Indeed, the California Legislature unequivocally declared and codified its intent to prohibit local law enforcement agencies from engaging in any such immigration enforcement when it passed the California Values Act.

The Orange County Sheriff's Department must stop its practice of jailing individuals charged with illegal entry and/or illegal reentry in its locally operated jails in violation of the California Values Act. Please contact Monika Y. Langerica at [mlangerica@aclusandiego.org](mailto:mlangerica@aclusandiego.org) within 30 days of the date

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<sup>2</sup> Examples of the government's botched immigration prosecutions are plentiful. See Maya Srikrishnan, *The Surge in Border Crossing Prosecutions Is Causing Chaos and Confusion in Federal Court*, Voice of San Diego, May 23, 2018, <https://www.voiceofsandiego.org/topics/news/the-surge-in-border-crossing-prosecutions-is-causing-chaos-and-confusion-in-federal-court/>; Maya Srikrishnan, *Overwhelmed With Zero Tolerance Cases, Prosecutors Have Accidentally Brought Juveniles to Adult Court*, Voice of San Diego, July 12, 2018, <https://www.voiceofsandiego.org/topics/government/overwhelmed-with-zero-tolerance-cases-prosecutors-have-accidentally-brought-juveniles-to-adult-court/>.

<sup>3</sup> Name has been changed to protect the individual's privacy.

of this letter to confirm the Orange County Sheriff's Department's plans to stop engaging in such unlawful practices.

Sincerely,



Monika Y. Langerica

Immigrants' Rights Staff Attorney

ACLU Foundation of San Diego & Imperial Counties



Erik Garcia

Community Engagement and Policy Advocate

ACLU of Southern California

# Automated Regional Justice Information System (ARJIS) Acceptable Use Policy for the Regional License Plate Reader System





# San Diego County Sheriff's Department

## Compliance with Senate Bill 54: The California Values Act

The San Diego County Sheriff's Department embraces the rich diversity of the communities we serve. We prioritize community relationships and want all residents to feel safe when reporting crime.

### Law Enforcement Services Bureau

- Sheriff's deputies do not investigate or enforce immigration law.
- Sheriff's deputies will not ask individuals their immigration status.
- The Sheriff's Department does not contract with the federal government to detain individuals for immigration violations.
- The Sheriff's Department does not hold individuals based on federal detainer warrants.
- The use of department resources for purposes of immigration enforcement is prohibited.
- Sheriff's deputies do not use immigration officers for translation services.
- The Sheriff's Department does not share personal identifying information for immigration enforcement.

### Task Force Participation

- Sheriff's personnel assigned to regional task forces do not enforce immigration law.
- Sheriff's personnel assigned who participate in regional task forces enforce state and federal law related to narcotics, transnational criminal activity, human trafficking, weapons, terrorism and other violent criminal acts.

### License Plate Readers

- The Sheriff's Department does not permit license plate reader data to be shared with Department of Homeland Security or Immigration and Customs Enforcement (ICE) agents.

### Jails

- The Sheriff's Department will not transfer an individual to immigration authorities unless authorized by a judicial warrant or based upon a qualifying conviction as per state law.
- The Sheriff's Department will not provide information regarding an individual's release date or respond to requests for notification by providing release dates or other information unless that information is available to the public or is a qualifying conviction as stated above.
- Outside law enforcement agencies, including Immigration and Customs Enforcement (ICE) agents, do not have free access to any Sheriff's facilities or jails. They are required to check in at the facility's primary entrance point and follow professional visitor guidelines.
- The Sheriff's Department does not provide dedicated office space for immigration authorities.
- A consent form (available in multiple languages) must be completed and sent to an incarcerated person in county jail for all requested interviews by ICE agents. This form advises the individual that ICE requests to interview them. The incarcerated person has the option to be interviewed in the presence of an attorney, without an attorney or to decline the interview. Translation services are provided, and no pressure is placed on the incarcerated person regarding any of their choices.

### Transparency

- Reports, past presentations, and data related to the TRUST, TRUTH, and/or Values Act are available at [www.sdsheriff.gov](http://www.sdsheriff.gov) under Resources- Open Data section.

<b>DATE:</b>	DECEMBER 28, 2017
<b>NUMBER:</b>	Q.4
<b>SUBJECT:</b>	VERIFICATION OF LEGAL STATUS CONFORMANCE TO IMMIGRATION LAWS
<b>RELATED SECTIONS:</b>	California Penal Code 834(b); Assembly Bill 2792

**PURPOSE:**

To establish guidelines for the verification of legal status and conformance to immigration laws of persons arrested and booked into Sheriff's custody, pursuant to California Penal Code Section 834(b).

**POLICY:**

Agents from the U.S. Immigration and Customs Enforcement Office of Detention and Removal (ICE/DRO) may be allowed access to Sheriff's booking facilities for the purpose of conducting screenings and interviews of those suspected of violating federal immigration laws. ICE/DRO agents may not conduct interviews of persons booked into Sheriff's custody unless the person consents to be interviewed. Persons of interest must be given a Consent Form for Immigration and Customs Enforcement Interview of Inmate (J-330 form) which explains the purpose of the interview; that it is voluntary; and that they may decline to be interviewed. Persons must provide written consent prior to facility staff arranging the interview with an agent from ICE.

**PROCEDURE:**

**I. FACILITY ASSIGNMENT/ORIENTATION**

- A. Facility sworn administrative staff (booking facilities) responsibilities.
  - 1. Provide ICE/DRO agents with an orientation to include the physical layout of the facility and familiarization of applicable rules and regulations. ICE/DRO agents are expected to conform to all applicable rules and regulations of the facility.
  - 2. Obtain contact information for each ICE/DRO agent allowed access into their respective facility as well as maintain an active ICE/DRO roster.
  - 3. Provide ICE/DRO agents access to the facility.

**II. INTERVIEW OF INMATE**

- A. An ICE/DRO agent, interested in interviewing an inmate, will fill out the top portion of the J-330 form and deliver it to the on duty classification deputy. During the classification interview, the classification deputy will present the J-330 form to the inmate. The classification deputy will explain the purpose of the consent form and options available to the inmate.

- B. Once the inmate has made a selection and signed the J-330 form or opted not to complete the form, the classification deputy will do the following:
  - 1. Complete the bottom portion of the form.
  - 2. Disseminate the copies per the distribution.
- C. Inmate Processing Division (IPD) staff will complete the 'Received by' section of the form and file the original in the inmate's custody record.

### III. DETAINERS AND NOTIFICATIONS

- A. If an individual is determined to be in the United States illegally, or pending prosecution, ICE/DRO will furnish an Immigration Detainer-Notice of Action (I-247A) form to Jail Population Management Unit (JPMU) staff.
- B. The I-247A form has two crucial functions:
  - 1. Notifies the Law Enforcement Agency (in this case the Sheriff's Department) (LEA) that once an inmate of interest is no longer subject to the LEA's detention, ICE/DRO intends to assume custody.
  - 2. Requests the LEA to notify ICE/DRO as early as practicable (at least 48 hours, if possible) before the inmate is released from custody.
- C. Upon receiving the I-247A form, JPMU staff will review the inmate's criminal history and current charges to ensure compliance with notification request from ICE/DRO are in accordance with Senate Bill 54, Section 7285.5. A JPMU staff member will complete the Notice to Inmate of Immigration and Customs Enforcement Request and Intent to Notify (J-340 form) and check the appropriate box indicating that the I-247A form "meets criteria/approved" or "does not meet criteria/rejected." in either event, the I-247A form and J-340 form will be forwarded to IPD for processing and serving.

JPMU staff will make a Jail Information Management System (JIMS) log entry in the inmate's history using the "247A (approved) or 247R (rejected)" drop down; to reflect the selection made on the J-340 form.

### IV. INTENT TO NOTIFY

- A. Upon IPD receiving an I-247A form and J-340 form, the Sheriff's Department must inform the inmate of their intent. Notification will be accomplished via the following forms: Notice to Inmate of Immigration and Customs Enforcement Request and Intent to Notify (J-340 form), Notice of Intent to Comply with Immigration and Customs Enforcement Request (J-335 form).
- B. If the inmate's release date is not known at the time of the request from ICE, IPD staff will utilize the J-340 form and attach a copy of the I-247A form. Sworn staff will assist IPD with the following:
  - 1. Present the J-340 form and attachment to the inmate.

### Q.4 VERIFICATION OF LEGAL STATUS AND CONFORMANCE TO IMMIGRATION LAWS

2. Remove the attachment and give it to the inmate.
  3. Explain the purpose of the form and request signature from the inmate. Staff may check the "Inmate chose not to sign box," for those inmates that refuse to sign.
  4. Collect the J-340 form from the inmate and complete the bottom portion of the form.
  5. Provide a copy to the inmate (per the distribution) and return the original to IPD.
- C. If the inmate's release date is known at the time of the request from ICE, or once an inmate's release date is known, IPD will provide that information to ICE. IPD staff will fill out the J-335 form and attach a copy of the I-247A form. Sworn staff will assist IPD with the following:
1. Present the J-335 form and attachment to the inmate.
  2. Remove the attachment and give it to the inmate.
  3. Explain the purpose of the form, options available, and allow a few minutes to complete the form.
  4. Collect the form from the inmate and complete the bottom portion of the form.
  5. Provide a copy to the inmate (per the distribution) and return the remaining copy and original to IPD.
- D. If the inmate is a participant of County Parole and Alternative Custody (CPAC), an IPD staff member at a facility will work closely with IPD staff assigned to CPAC to ensure all forms are processed accordingly.
- E. The IPD staff member, receiving completed forms, will fill out the 'Received by' section of the form. If the inmate requested a notification be sent, per the J-335 form, the IPD staff member will prepare the documents to be mailed out. All original forms will be filed in the inmate's custody record.

## V. RELEASE OF INMATE

In no event shall an inmate be held past their scheduled date of release or be delayed during the release process due to the issuance of an I-247A form.



## POLICY 15: California Senate Bill 54 - California Values Act

- A. California Senate Bill 54, also known as the California Values Act, was recently enacted and amended California Government Code Sections 7282 through 7282.5, and added sections 7284 through 7284.12. These laws regulate how the Sheriff's Department can share data with federal agencies responsible for immigration enforcement.
- B. Under California law, the primary function of a sheriff's deputy is to enforce the laws of the State of California. In general, California state law leaves the direct enforcement of immigration laws entirely with federal agencies and officials.
- C. California Government Code Section 7284.6 (a) (1) states, in part, that California law enforcement agencies shall not use agency resources or personnel to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes, including any of the following:
  - a. Inquiring into someone's immigration status,
  - b. Detaining an individual on the basis of a hold request from an immigration agency,
  - c. Providing information to immigration authorities regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5 which includes serious and violent felonies among other crimes,
  - d. Providing personal information to immigration officials, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to the individual's home address, work address, and other identifying information unless that information is available to the public (the full list is identified in the code section),
  - e. Making or intentionally participating in arrests based on civil immigration warrants,
  - f. Assisting immigration authorities with the enforcement of immigration law,
  - g. Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.
- D. SB 54 also expressly prohibits a California law enforcement agency from:

- a. Using immigration authorities as interpreters for law enforcement matters relating to individuals in department custody,
- b. Providing office space exclusively dedicated for immigration authorities for use within a county law enforcement facility.

**Automated Regional Justice Information System (ARJIS)  
Acceptable Use Policy for the Regional License Plate Reader System**

## **A. STATEMENT OF PURPOSE**

The purpose of this document is to outline the responsibilities of the Automated Regional Justice Information System (ARJIS) in its role as a law enforcement information technology provider for the Regional License Plate Reader (LPR) data storage system (LPR system). ARJIS, in cooperation with local, state, and federal law enforcement agencies, maintains a regional server as a LPR data repository in support of law enforcement efforts to improve public safety.

ARJIS provides the secure network infrastructure, technical standards, security protocols, controlled access, and database administration for the LPR system. Included in the support of the secure infrastructure are ongoing system updates, maintenance, disaster recovery, and security monitoring of the circuits, hubs, routers, firewalls, databases, and other components that comprise the ARJIS Enterprise, ensuring the priority, integrity, and availability of service to authorized law enforcement users. This Acceptable Use Policy sets forth rules restricting how the LPR system may be accessed by authorized user agencies (agencies) and defines how the LPR system is maintained by ARJIS.

The Regional LPR Operational Protocol under development by the County Chiefs' and Sheriff's Association outlines LPR best practices and standard operating procedures for those agencies that utilize LPR in the field.

## **B. LPR OVERVIEW**

LPR data is collected by agencies utilizing specially-designed cameras to randomly capture an image of a vehicle license plate and convert the plate characters into a text file using optical character recognition technology. The text file can then be sent to a computer and compared against pre-existing data files, such as databases containing records of stolen or wanted vehicles as well as vehicles associated with AMBER alerts, missing children, wanted subjects, or other criteria. If a match is found, the LPR user (law enforcement officer or agency) is notified by an audible alert and an associated notation on the user's computer screen.

LPR cameras can be mobile (mounted on vehicles) or fixed (mounted to a structure) as determined by the agency that owns the cameras.

Mobile LPR systems scan plates, notify the user of a vehicle alert, and store the plate scan data for upload or transfer to an agency LPR server or the regional LPR server. LPRs in fixed positions link to an LPR server at the agency owning the fixed camera for updates, transmission of scanned plate data in real-time or near-real time, and alert notifications. The LPR data from agency LPR servers is replicated (copied) to the regional server in near real time. The alerting functionality resides with the agencies, not with ARJIS.

The alert lists against which license plate reads are checked may include (but are not limited to) the Stolen Vehicle System and Felony Warrants System, provided by the California Department of Justice (Cal DOJ); and downloaded four times a day. LPR users are required to take into account the potential for lag time between the last update and an alert provided by the LPR system on a stolen or wanted vehicle. Any alert provided by an LPR system is to be considered informational and advisory in nature only and any subsequent action in the field will be based on a law enforcement



agency's standard operating procedures.

## **1. Specification of Use**

Recognizing the public safety benefits that could be achieved by the effective sharing of LPR data, ARJIS established a regional server accessible to authorized agencies capable of receiving and storing LPR data as well as providing query and alerting functions. The data is transferred to the regional server via wireless or hard-wired encrypted communications. Some of the agencies send their scanned plates directly to the regional server, while most of the larger agencies send their LPR scans to their agency-specific server first. The data is then uploaded to the regional server, in near-real time.

The plates scanned by the LPR systems are stored in a stand-alone regional server. The regional server is designed to meet Federal Bureau of Investigation Criminal Justice Information System (FBI CJIS) and Cal DOJ requirements, policies, and procedures, and is not connected to any other server.

The LPR system is restricted to legitimate criminal justice uses for the purpose of furthering law enforcement goals and enhancing public safety. There are two primary objectives of LPR data use in the region. The first is to identify stolen or lost vehicles and license plates, and wanted or missing persons, by matching the LPR data to the alert lists downloaded by Cal DOJ. The second objective is the ability to query LPR data to assist officers with ongoing criminal investigations, crime prevention and detection, and aid in the prosecution of crimes involving vehicles. LPR data is queried only if there is a reasonable suspicion that a vehicle is involved in criminal activity and the requestor has a legitimate need to know.

## **2. Privacy and Data Quality**

### **2a. Privacy**

In October 2008, prior to the implementation of the LPR system, ARJIS participated in a Privacy Impact Assessment (PIA) effort led by the International Association of Chiefs of Police. This effort involved the review of existing local, state, and federal laws, and American Civil Liberties Union privacy concerns. The resulting PIA, published in 2009, provided background for the development of this Policy.

Access to and use of LPR data is for official law enforcement purposes only. Accessing and/or releasing data from the LPR system for non-law enforcement purposes is prohibited. LPR data access and use is governed by the Cal DOJ California Law Enforcement Telecommunications System (CLETS) Policies, Practices and Procedures (PPP) (current rev. 09/2014), via CalMaster Control Agreement between the San Diego County Sheriff's Department (Sheriff) and ARJIS. The CLETS PPP further references the FBI CJIS Security Policy (current rev. 5.3, 8/4/2014).

The data records stored on the regional LPR server include photographs of the vehicle (close-up of the license plate and context photo of the rear of the vehicle)

and accompanying license plate number, date, time, and location in the field, and do not directly identify a particular person.

## **2b. Source Data**

Each agency contributing data retains control and ownership as the official custodian of its records. Prior to sending any data to the regional LPR database, an agency must comply with the following:

- Be an ARJIS Public Safety member agency.
- Be a CLETS-certified agency.
- Be the owner, operator, manager, or controller of the LPR equipment that captures the contributed data.
- Maintain compliance with applicable FBI CJIS security policies regarding law enforcement data.
- Provide only LPR data that is in a format consistent with the National Information Exchange Model (NIEM) standard, or data that is readily capable of conversion to a NIEM-compliant format.
- Provide LPR data that includes, at a minimum, the time, date, and location of capture as well as a unique identifier of the equipment used to capture the information.
- Ensure that LPR equipment utilized by the agency is in full compliance with any requirements or standards established by the United States Department of Justice in regard to LPR systems.
- It is recommended that agencies that do not operate their own LPR server will implement a real time or near-real time data transfer to the regional server, via encrypted communication infrastructure, approved by Cal DOJ. This ensures the timeliness and effectiveness of the alert lists and provides maximum public safety benefit.

## **3. Data Limitation**

The regional LPR server is not to be accessed for the purpose of monitoring individual activities protected by the First Amendment to the United States Constitution. The regional server does not contain alert lists for any of the following activities: insurance issues, parking scofflaws, deadbeat parents, and/or vehicle impounds.

The LPR system exists for the sole purpose of assisting law enforcement officers with ongoing criminal investigations and only for authorized public safety purposes.

#### **4. Performance Evaluation**

In addition to audit reports, ARJIS staff regularly monitors the LPR system for performance, reliability, and functionality. Staff also provides system-generated management reports for the participating agencies that highlight agency use, the number of license plate reads on file, and any technical issues identified during the reporting period. Other system-generated reports are produced on an as-needed basis.

#### **5. Transparency and Notice**

ARJIS is a Joint Powers Agency governed by the San Diego Association of Governments (SANDAG) Public Safety Committee, which includes elected officials representing the sub-regions of San Diego County and public safety officials.

LPR systems managed and hosted by individual law enforcement agencies existed within San Diego County prior to implementation of the LPR system. A PIA and Regional LPR Guidelines were completed prior to implementation of the LPR system.

This Acceptable Use Policy, the associated PIA, and other governing documents are currently posted on the ARJIS website at [ARJIS.org](https://arjis.org).

#### **6. Security**

Regional LPR data is stored in a segregated server located in a secured law enforcement facility with multiple layers of physical security and 24/7 security protections. Physical access is limited to law enforcement staff and select ARJIS technical staff who have completed background investigations and completed the relevant FBI CJIS state and federal training.

Authorized ARJIS technical staff shall have the responsibility for managing the LPR system and associated infrastructure. ARJIS utilizes strong multi-factor authentication, encrypted communications, firewalls, and other system auditing, physical, administrative, and security measures to minimize the risks of unauthorized access to the system.

#### **7. Retention, Access, and Use of LPR Data**

##### **7a. Retention**

LPR data sent to ARJIS and stored on the regional server will be retained for a period of twelve months. The retention policy is consistent with the policies of the majority of agencies in California that have implemented LPR systems as of January 2015. Once the retention period has expired, the record will be purged from the active database. If an agency determines select LPR data is relevant to a criminal investigation, it is the responsibility of that agency to document and retain those records on its own server in accordance with the agency's policies regarding records retention. In the event California passes pending LPR legislation, this provision will automatically incorporate the retention period mandated in the legislation and will

supersede the 12-month period set forth above.

#### **7b. Requirements for All Users Accessing Regional LPR data**

Various measures are taken by ARJIS to limit access to the regional LPR server to prevent unauthorized access. Only those authorized personnel who have met the minimum training, certification, and background checks required for access to criminal justice data may access the regional LPR server. These requirements concerning the security and confidentiality of all 'justice data' are set forth in the FBI CJIS Security Policy and the CLETS PPP.

Authorized users must have an active account in the ARJIS Security Center, are mandated to follow the procedures for establishing complex passwords that must be changed every 90 days, and must enter a reason for access to LPR data prior to executing a query. These requirements are all built into the LPR system and are enforced using data entry fields that users must populate in order to access the regional LPR server. All queries for LPR data are subject to audit and kept in audit logs in accordance with the procedures outlined in the audit section below.

#### **7c. Use of LPR data**

LPR data is for official law enforcement purposes only. Participating law enforcement agencies will not share LPR data with commercial or private entities or individuals. However, participating law enforcement agencies may disseminate LPR data to governmental entities with an authorized law enforcement or public safety purpose for access to such data, in accordance with existing FBI and Cal DOJ policies, and their agency's standard operating procedures. ARJIS assumes no responsibility or liability for the acts or omissions of such agencies in disseminating or making use of the LPR data.

### **8. Auditing and Accountability**

ARJIS has developed preset queries to the regional LPR server for auditing and other tracking functions. Included are audit capabilities for individual user activity, management reports of interface functionality and reliability, reports from session logs, and other key system metrics.

Access to, and use of, LPR data is logged for audit purposes. Audit logs are maintained for a minimum of three years. Audit reports are structured in a format that is understandable and useful and will contain, at a minimum:

- The name and agency of the user
- The date and time of access
- The specific data queried

- The justification for the query including a relevant case number if available at the time.

ARJIS will provide specific information regarding individual access and queries upon request from any agency. Identifying and addressing intentional misconduct is the responsibility of the individual agency. Notwithstanding the participating agency's responsibility with regard to misconduct, ARJIS reserves the right to enforce this Policy as described below.

## **9. Enforcement of Policy**

Violation of this Policy by an ARJIS member agency or its staff may lead to suspension or termination of an agency or particular agency staff person's access to the regional LPR system. In the event a member agency discovers suspected or actual misuse of the regional LPR system, it will immediately inform the Director of ARJIS, who will in turn immediately notify the SANDAG Director of Technical Services and SANDAG Executive Director. In the event ARJIS discovers suspected or actual misuse of the regional LPR system, the Director of ARJIS will immediately notify the SANDAG Director of Technical Services, the SANDAG Executive Director, and the agency. The Technical Services Director, in consultation with the Director of ARJIS, or their designees, will determine whether to suspend or terminate access and if so for whom the suspension or termination will apply and will notify the affected agency. The affected agency will be notified of the decision by SANDAG and then will have 10 calendar days to appeal the decision to the SANDAG Executive Director. The Executive Director shall have final decision-making authority.

## **10. Policy Revisions**

The Acceptable Use Policy for the Regional LPR System will be brought to the SANDAG Public Safety Committee and the SANDAG Board of Directors at least once per year for review and determination regarding the need for amendments.

Updates regarding the LPR system will be provided to the SANDAG Public Safety and Chiefs'/Sheriff's Management Committees annually or upon request.

## **11. Indemnification**

Each user of the Regional LPR system (User) agrees to indemnify and hold SANDAG and ARJIS, and each of their personnel, harmless from any claim or demand, including reasonable attorneys' fees, made by any third-party in connection with or arising out of User's use of the Regional LPR system, User's violation of any terms or conditions of this Policy, User's violation of applicable laws, regulations or other policies, or User's violation of any rights of another person or entity. The term "Users" is defined to include each agency accessing the LPR system, as well as each individual person with access to the LPR system.



<p style="text-align: center;"><b>ALAMEDA COUNTY</b></p> <p style="text-align: center;"><b>SHERIFF'S OFFICE</b></p> <p style="text-align: center;"><b>GENERAL ORDER</b></p>	<p><b>NUMBER:</b> 1.24</p> <hr/> <p><b>RELATED ORDERS:</b>  ACA 4-ALDF-2A-21  General Order 1.22  D&amp;C 11.02, 11.09, 11.40  CA Gov. Code 7282, 7282.5, 7284, 7284.2, 7282.4  7282.6</p> <hr/> <p><b>ISSUE DATE:</b> January 1, 2014</p> <hr/> <p><b>REVISION DATE:</b> <i>February 9, 2018</i></p>
<p><b>CHAPTER:</b> Law Enforcement Role, Responsibilities, and Relationships</p>	<p><b>SUBJECT:</b> Communication with Immigration Authorities</p>

- I. PURPOSE:** The purpose of this order is to provide deputies with guidelines on their duties and responsibilities associated with immigration law, enforcement, arrests, detentions/detainers, and Requests for Notification.
- II. POLICY:** The Alameda County Sheriff's Office (ACSO) will equally enforce laws and serve the public without consideration of immigration status. The ACSO does not accept nor honor immigration detainers from Immigration and Customs Enforcement (ICE). The immigration status of a person, and the lack of immigration documentation, alone, shall have no bearing on the manner in which staff executes their duties. Please note there is a difference between an arrest warrant signed by a Judge (which ACSO does honor), and an immigration detainer signed by an ICE agent.

**Under no circumstances shall a person be detained or arrested by Sheriff's Office members based solely on his or her immigration status whether known or unknown.**

### **III. DEFINITIONS**

- A. IMMIGRATION ENFORCEMENT JURISDICTION:** The U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) has primary responsibility to investigate and enforce federal immigration laws.
- B. DHS Form I-247A (Immigration Detainer-Notice of Action),** requests the following of the receiving law enforcement agency:
1. Requests ACSO notify ICE, as early as practical, of the release date of an inmate prior to his/her release.
  2. Requests ACSO maintain custody of an inmate for a period not to exceed 48 hours beyond his/her scheduled release.
  3. Requests ACSO relay the detainer request to any other law enforcement agency to which the inmate is transferred.
  4. Requests ACSO notify ICE in the event of the inmate's death, hospitalization, or transfer to another institution.

- C. DHS Form I-200 (Warrant for Arrest of Alien), directs 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.
- D. DHS Form I-205 (Warrant of Removal/Deportation), directs any immigration officer of the United States Department of Homeland Security to remove/deport the specified inmate.
- E. ICE Access: The Truth Act, defines “ICE Access” for the purposes of civil immigration enforcement, to include when an individual is stopped with or without their consent, arrested, detained, or otherwise under the control of the local law enforcement agency, all of the following:
  - 1. Responding to an ICE hold, notification, or transfer request.
  - 2. Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or otherwise.
  - 3. Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs or otherwise.
  - 4. Allowing ICE to Interview an individual.
  - 5. Providing ICE information regarding dates and times of probation or parole check-ins.
- F. TRUST ACT: Provides that a person may not be held in custody solely on the basis of a request for notification and/or detainer if he or she is otherwise eligible to be released from custody. “Eligible for release from custody” means that the individual may be released from custody because one of the following conditions has occurred:
  - 1. All criminal charges against the individual have been dropped or dismissed.
  - 2. The individual has been acquitted of all criminal charges.
  - 3. The individual has served all the time required for their sentence.
  - 4. The individual has posted a bond.
  - 5. The individual is otherwise eligible for release under state or local law.
- G. California Values Act, Senate Bill 54 (SB 54), enacted October 5, 2017, amends provisions of Government Code 7282 et seq., barring immigration enforcement activities and setting specific threshold criteria for responding to ICE requests. SB 54 does not release the Agency of its duties as defined by The Truth Act.
- H. Transfer of Custody: The custody exchange of an inmate within the secure area of the facility not accessible to the public, from ACSO’s custody to the custody of another law enforcement agency.

- I. Joint Law Enforcement Task Force: At least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

#### IV. ORDER

##### A. ENFORCEMENT OF FEDERAL IMMIGRATION LAW

1. When ACSO personnel encounter suspected immigration law violations, members shall be guided by the options set forth in this order, which is in compliance with state law. Citizen contacts, detentions, and arrests shall be based on reasonable suspicion or probable cause in a manner prescribed by law. A deputy shall not initiate law enforcement action based solely on observations related to a subject's immigration status.

ACSO personnel shall not respond to formal and/or informal requests for information by ICE regarding persons detained, arrested, or in the custody of the Sheriff's Office outside what is directed in this order. This includes, but is not limited to, telephone and email communication.

All requests for information by immigration authorities should be forwarded to the Detention and Corrections Division to ensure full compliance with California law and this order.

**ACSO staff shall not initiate contact with ICE for the purposes of providing information regarding an individual in ACSO's custody who is suspected of violating federal immigration laws.**

2. ACSO will not use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:
  - a. Make or intentionally participate in arrests based on civil immigration warrants (Gov. Code section 7284.6 (a)(1)(E)).
  - b. Assist immigration authorities in border patrol activities described in Section 1357(a)(3) of Title 8 of the United States Code (Gov. Code Section 7284.6 (a)(1)(F)).
  - c. Perform the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal (Gov. Code Section 7284.6 (a)(1)(G)).
  - d. ACSO shall not place deputies under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All deputies remain subject to California law governing conduct of peace officers and the policies of ACSO (Gov. Code Section 7284.6 (a)(2)).

- e. ACSO shall not provide office space exclusively dedicated for immigration authorities to use within a city or county law enforcement facility (Gov. Code Section 7284.6 (a)(5).
- f. ACSO shall not contract with the federal government for use of ACSO law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8 (commencing with section 7310) (Gov. Code Section 7284.6 (a)(6).

#### B. IMMIGRATION STATUS

- 1. A deputy's suspicion about any person's immigration status shall not be used as a basis to initiate contact, detain, or arrest that person unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring, and terrorism.
- 2. ACSO will not inquire about a person's immigration status during the arrest procedure (Gov. Code Section 7284.6(a)(1)(A)), unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring, and terrorism.
- 3. Staff will not participate in ICE organized sweeps to locate and detain undocumented residents. This does not preclude staff from assisting ICE during critical incidents or emergency requests for assistance. Each level of assistance will be evaluated by the on scene supervisor to ensure the ACSO's level of participation remains consistent with this order and California law while protecting human life and property.

#### C. ESTABLISHING IDENTITY

- 1. Deputies should make all attempts to identify any person they detain, arrest, or who come into the custody of the Sheriff's Office.
- 2. Any person who would be cited and released, but who is unable to present satisfactory evidence of his or her identity, will be detained for the purpose of establishing his or her identity, consistent with the treatment of all individuals.

#### D. ICE IMMIGRATION DETAINERS AND REQUESTS FOR NOTIFICATION

- 1. ACSO will accept and receive DHS Form I-247A (Immigration Detainer Notice of Action) from ICE.
- 2. ACSO will not honor DHS Form I-200, Warrant for arrest of Alien, or DHS Form I-205, Warrant of Removal/Deportation, **unless they are accompanied by an arrest warrant signed by a Judge.**
- 3. If ICE requests information about an individual which is publicly available information, the Sheriff's Office may share this information with ICE as required under the California Public Records Act.

4. The Sheriff's Office shall not extend the detention of an inmate so that ICE may detain the individual. The Sheriff's Office may only provide ICE with timely notification of release. Upon receipt of a Request for Notification, if Sheriff's Office staff has any questions and/or concerns, the on-duty Watch Commander/Sergeant should be contacted before acting upon such a request.
- E. The TRUTH ACT & SB 54, establish a transparent process for law enforcement cooperation with ICE, incorporating community engagement and state monitoring. SB 54 further sets forth specific criteria under Gov. Code Section 7282.5 governing law enforcement's responses to ICE notification request forms. Under section 7282.5, deputies may respond to an ICE request for notification form for an individual that meets one or more of the following criteria:
1. The individual has been convicted of a serious or violent felony identified in 1192.7(c) or 667.5(c) of the Penal Code.
  2. The individual has been convicted of a felony punishable by imprisonment in the state prison.
  3. The individual is a current registrant on the California Sex and Arson Registry.
  4. ***The individual is arrested for a serious or violent felony, as identified in Penal Code sections 1192.7(c) or 667.5(c), or a felony that is punishable by imprisonment in state prison; and after appearing before a magistrate for a preliminary hearing, the magistrate has determined under Penal Code section 872 that there is probable cause to hold the individual to answer for the crime. A pre-trial conference related minute order or probable cause declaration signed by a judge is not sufficient. Felonies sentenced under Penal Code section 1170(h)(1) or (h)(2) do not qualify under this provision.***
  5. The individual has been convicted within the past 5 years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony ("wobbler") for, any of the offense categories listed in Gov. Code Section 7282.5(a)(3).

The examples of specific crimes listed under the categories set forth in section 7282.5(a)(3) is extensive, and includes some straight misdemeanor crimes (i.e. 242 P.C.) amongst the wobbler offenses. Deputies shall verify a crime is in fact a wobbler offense prior to responding to an ICE notification request form. A straight misdemeanor conviction should not be considered qualifying criteria under section 7282.5(a)(3).

In no case shall cooperation occur pursuant to section 7282.5 for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or previously crimes punishable as either misdemeanors or felonies prior to the passage of the Safe Neighborhoods and Schools Act of 2014.

F. DETENTION AND CORRECTIONS DIVISION

1. When receiving a DHS Form I247-A, ACSO staff will conduct a review of the subject inmate's criminal history via local and state law enforcement databases (CRIMS, CII, etc.) to determine if they meet the criteria established in Gov. Code Section 7282.5. Findings made pursuant to this review will be recorded.



- a. Requests for interview by ICE do not require the specified inmate meet the criteria in accordance with Gov. Code Section 7282.5 in order for the interview to take place. The criteria for interview requests will be met in accordance with The Truth Act.
2. If the criteria has been met, ITR Staff will complete the bottom portion of the DHS Form I-247A including the release date if one is known, and return to ICE. ACSO staff will indicate, the qualifying criteria in accordance with Gov. Code Section 7282.5 and the associated date in JMS. ACSO staff will proceed with the inmate notification process in accordance with The Truth Act.
3. If the criteria has not been met, ACSO will not complete the bottom portion of the DHS Form I-247A and will not respond to ICE. ACSO staff will indicate in JMS, the inmate has not met the criteria in accordance with Gov. Code Section 7282.5. ACSO staff will proceed with the proper notification process in accordance with The Truth Act.
4. When a release date is known, ACSO staff will conduct a second records check to determine if the inmate's criminal history meets the criteria in accordance with Gov. Code section 7282.5, to determine if the inmates qualifying status had changed from the initial records check. If it is determined the inmate has now met the criteria, refer to the process as described above. If the inmate still does not meet the criteria, they will be released without ICE notification.
5. ACSO must advise the inmate of the ICE request and provide him/her with a copy of the DHS Form I-247A. (Refer to "ICE Access" definition).
6. ACSO must provide written notification of the ICE request to the inmate. This notification is provided via agency notification forms, entitled the, "Notification of I-247A" and the "Notification of ICE Interview" forms. The forms will be completed within JMS and copies provided to the inmate, explaining the following:
  - a. The ACSO "Notification of I-247A" form, advises the inmate of the ICE request and of whether the Sheriff's Office will comply with the request. The form also contains space for the inmate to provide contact information of the inmate's attorney and designated third party, if available.
  - b. The ACSO "Notification of ICE Interview" form, advises the inmate of an ICE request for interview and indicates whether the inmate voluntarily consents or declines the ICE request for an interview. The "Notification of ICE Interview" will be provided to the inmate in advance of any interview between ICE and the individual.
  - c. The "Notification of I-247A" and "Notification of ICE Interview" forms are available in several languages, in accordance with The Truth Act. The forms are available in English, Spanish, Cantonese, Mandarin, Tagalog, Vietnamese and Korean.
    - 1) An annual review of section 128552 (d) of the Health and Safety Code will be conducted to ensure compliance with The Truth Act.

7. Once the inmate has been served with the notification forms, the inmate will retain the original copy of the form. The second copy will be scanned into JMS to maintain permanent electronic record of proof of service. Upon confirmed upload into JMS, the hard copy will be filed appropriately.
  - a. Each time ICE wishes to conduct an interview with an inmate in ACSO's custody for civil immigration violations, the ICE interview notification form must be served on the inmate, regardless if the inmate had been served with a prior request.
8. ATTORNEY / DESIGNEE NOTIFICATION FORM: Whenever ACSO receives any ICE requests on an inmate in ACSO custody, via the DHS Form I-247A, a copy of the form shall also be provided to the specified inmate(s) and their attorney of record, upon the attorney's request.
9. Upon notification to ICE that an individual is being, or will be, released on a certain date, ACSO shall promptly provide the same notification in writing to the individual, to his or her attorney and/or to one additional person who the individual shall be permitted to designate.
  - a. The ACSO form titled, "Attorney/Designee Notification" will be used to make written notification to the attorney of record and the third party designee of the inmates choosing. The form will be completed and mailed to each party as designated on the form.
10. If ACSO has been served with a DHS Form I-247A and the inmate meets the criteria in accordance with Gov. Code Section 7282.5, the inmate will be released into ICE custody, if ICE is present at the time of the inmate's release.
11. If ACSO has been served with a DHS Form I-247A but the inmate does not meet the criteria in accordance with Gov. Code Section 7282.5, the inmate will be released from ACSO custody without transfer to ICE.
12. Should a person return to ACSO custody on a subsequent incarceration and upon the receipt of DHS Form I-247A for that individual, the entire process will be repeated to determine if the person's criminal history meets the criteria in accordance with Gov. Code Section 7282.5.
13. In accordance with the California Values Act, ACSO will maintain records sufficient to report the number of transfers to ICE and the qualifying offense that permitted the transfer annually to the California Department of Justice (DOJ).

**G. ACSO PARTICIPATION IN JOINT LAW ENFORCEMENT TASK FORCES**

1. In situations when ACSO participates in a joint law enforcement task force, members of the task force may conduct enforcement or investigative duties, including the sharing of confidential information with other law enforcement agencies, for the purposes of task force investigations. The primary purpose of any joint law enforcement task force ACSO is involved with shall not be immigration enforcement. The enforcement or investigative duties shall primarily be related to violations of state law or federal law unrelated to immigration enforcement.

2. ACSO, or a mutually agreed upon participating California law enforcement agency, shall submit an annual report to DOJ outlining the purpose of the task force, specific agencies involved, total number of arrests made during the evaluation period, and number of people arrested for immigration enforcement purposes.

H. ADDITIONAL SB 54 GUIDELINES FOR ALL STAFF:

1. ACSO staff are prohibited from using immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
2. ACSO staff may respond to a request from immigration authorities for information about a specific person's criminal history, including criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS) Database.
3. ACSO staff may make inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.
4. All records relating to ICE access provided by and to ACSO, including all non-exempt and non-privileged communication involving ICE, shall be public records for purposes of the California Public Records Act (CPRA). As permitted under the CPRA, personal identifying information and other exempt information may be redacted prior to public disclosure. SB 54 does not otherwise preempt or overrule ACSO's obligations under the CPRA, including the information required to be released under Gov. Code. Section 6254(f)(1). Records relating to ICE access may include, but are not limited to:
  - a. Data maintained by ACSO regarding the number and demographic characteristics of individuals to whom ACSO has provided ICE access;
  - b. The date ICE access was provided;
  - c. Whether the ICE access was provided through a notification request, transfer, or through other means, to the extent the ACSO maintains such records; and
  - d. Non-exempt records to and/or from ICE and ACSO, including, but not limited to ICE notification or transfer requests.
  - e. These records shall be maintained in ATIMS JMS.
5. Beginning January 1, 2018, if ACSO has provided ICE access to an individual during the last year, the County Board of Supervisors shall hold at least one community forum during the following year that is open to the public, in an accessible location, and with at least 30 days' notice to provide information to the public about ICE's access to individuals and to receive and consider public comment.

As part of this forum, ACSO may provide the Board of Supervisors with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided and whether the ICE access was provided through a notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.

**Attachments:**

1. Sample Request For DHS Form I-247A, Immigration Detainer-Notice of Action
2. Sample ACSO Agency "Notification of I-247A" and "Notification of ICE Interview" forms (available in multiple languages)
3. Sample ACSO Agency, "Attorney/Designee Notification" form.
4. Gov. Code Section 7282.5 criteria Reference Sheet.

## Alameda County Sheriff's Office SB 54 Criteria Reference Sheet

*Deputies can only respond to an I-247A Notification Form request from ICE regarding an individual, if one or more of the following criteria apply:*

1. *The individual has a felony conviction that is punishable by imprisonment in state prison / local state prison*

***\*\* In no case shall cooperation with ICE occur for individuals arrested, detained, or convicted of misdemeanors that were previously felonies or wobblers, prior to the Safe Neighborhoods and Schools Act of 2014 (Prop. 47). This includes the following:***

- *473(a) PC - Forgery and Counterfeiting*
- *476a(b) PC - Fraudulent/Bad Checks less than \$950*
- *496(a) PC - Receiving Stolen Property less than \$950*
- *484/666 PC - Petty Theft with a Prior Conviction*
- *11350 H&S - Possession of a Controlled Substance/Narcotic drug*
- *11357 H&S - Possession of Concentrated Cannabis*
- *11377 H&S - Possession of Controlled Substance/Non-narcotic drug*

2. *The individual has been arrested for a felony and after appearing before a magistrate during a preliminary hearing (pursuant to Penal Code 872), the magistrate determines the individual should be held to answer for the crime. A probable cause declaration signed by a judge is not sufficient.*

3. *The individual is a current registrant on the California Sex and Arson Registry.*

4. *The individual has been convicted within the past 5 years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for any of the following categorized offenses.*

***\*\*NOTE: Refer to the California Penal Code to ensure a crime fitting one of the below categories is a wobbler and not a straight misdemeanor.***

***\*\*Some specific offenses listed in 7284.5(a)(3) GC are inaccurately listed as wobblers and are considered straight misdemeanors. ICE notification shall not be made for individuals convicted of straight misdemeanor crimes.***

- *Assault*
- *Battery*
- *Use of threats*
- *Sexual Abuse, sexual exploitation, or crimes endangering children*
- *Child Abuse or Endangerment*
- *Burglary, Robbery, Theft, Fraud, Forgery, or Embezzlement*
- *Felony conviction of DUI*
- *Obstruction of Justice*
- *Bribery*
- *Escape*
- *Unlawful Possession of a Weapon*
- *Felony possession, sale, distribution, manufacture, or trafficking of controlled substances.*
- *Vandalism with prior convictions*



- *False Imprisonment, Slavery, or Human Trafficking*
- *Criminal profiting and money laundering*
- *Torture and mayhem*
- *Elder and dependent adult abuse*
- *Hate crime*
- *Stalking*
- *Rape, sodomy, oral copulation, or sexual penetration*
- *Kidnapping*
- *Felony hit and run*
- *Soliciting the commission of a crime*
- *A crime threatening the public safety*
- *Gang related offenses*
- *Crime involving death or infliction of great bodily injury*
- *Possession or use of a firearm in the commission of an offense*
- *An offense that would require the individual to register as a sex offender*
- *An offense committed while on bail or release on his/her own recognizance*
- *An attempt or conspiracy of any of the above crimes*

**ALAMEDA COUNTY SHERIFF'S OFFICE**  
**SHERIFF GREGORY J. AHERN**

"Striving For Excellence Through Public Safety Education"

Alameda County Sheriff's Office  
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Phone: (510) 272-6878

## **TRAINING BULLETIN**

### **"LEGAL UPDATE 2018"** **NUMBER 18-01**

**DATE: January 4, 2018**

#### **I. OVERVIEW:**

A number of legislative changes affect Law Enforcement for 2018. Below are the summaries of selected legislative items effective as of January 1, 2018. The full text of the statutes should be consulted prior to application.

This update information was obtained from the California Peace Officers' Association (CPOA) publication "California Legislative Update Digest 2018," the Los Angeles Attorney's Office "One Minute Brief," and the State of California legislative information website.

#### **II. LEGAL UPDATES:**

The following updates include a brief analysis of some of the new or revised laws for 2018 which are likely to impact Law Enforcement. The intent of this legal update training bulletin is to familiarize agency members with some of the important legislative changes taking place. The applicable statutes should be reviewed in full before making arrests or taking any action.

#### **IMMIGRATION:**

- **Law Enforcement: Sharing Data (SB 54 / GC 7282, 7282.5, 7284, 7284.4, 7284.6)**

This law significantly limits the involvement and communications of state and local law enforcement agencies with federal immigration authorities, and sets mandates for joint law enforcement task force operations and reporting to DOJ.

Law enforcement agencies shall not do any of the following:

- Use agency or department money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes including:

- Inquiring into an individual's immigration status.
  - Detaining an individual on the basis of a hold request.
  - Providing information regarding a person's release date unless that information is available to the public, or is in response to a notification request from immigration authorities and accordance with Gov. Code 7282.5. Responses are never required, but are permitted provided they do not violate any local law or policy.
  - Providing personal information about an individual.
  - Making or intentionally participating in arrests based on civil immigration warrants.
  - Assisting immigration authorities in the specified activities under federal immigration law.
  - Performing the functions of an immigration officer, whether formal or informal.
- Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers for purposes of immigration enforcement.
  - Use immigration authorities as interpreters for law enforcement matters related to individuals in agency custody.
  - Transfer an individual to immigration authorities unless specified criteria is met pursuant to GC 7282.5 (See page 3).
  - Provide office space exclusively dedicated for immigration authorities.
  - Contract with the federal government to house federal detainees, except as specified by existing law.

This bill does not prevent any California law enforcement agency from doing any of the following that does not otherwise violate any local law or policy of the jurisdiction in which the agency operates.

- Respond to a request from federal immigration authorities for information about specific person's criminal history, including previous criminal arrests, convictions, and similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.
- Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa, as specified, or to comply with specified federal laws regarding sale of firearms to non-citizens.

- Giving immigration authorities access to interview an individual in law enforcement custody. All interview access shall comply with requirements of The Truth Act.

### ***Joint Law Enforcement Task Forces***

A law enforcement Agency may participate in a joint law enforcement task force, so long as the primary purpose of the task force is not immigration enforcement and such participation does not violate local law or policy which applies to the law enforcement agency.

Law Enforcement agencies that choose to participate in a joint law enforcement task force with one or more federal officers, are required to submit a report annually to the Department of Justice containing the purpose of the task force, agencies involved, total number of arrests made during the reporting period, and the number of people arrested for immigration enforcement purposes.

### ***Law Enforcement has discretion to cooperate with immigration authorities regarding individuals who meet any of the following criteria:***

- Have a felony conviction punishable by state prison.
- Have a felony arrest when a magistrate makes a determination during a preliminary hearing that the individual should be held to answer for the crime. A probable cause declaration signed by a judge is not sufficient.
- Are required to register as a California Sex and Arson Registrant.
- Have a conviction within the last 5 years of a specified crime that can be charged as either a felony or a misdemeanor.

***\*\*Staff should review General Order 1.24 for Agency policy regarding the communication with federal immigration authorities.***

- **Law Enforcement: Immigration (SB 29 / Civil Code 1670.9)**

Prohibits a city, county, city and county, or local law enforcement agency from entering into a contract with the federal government or any federal agency or private corporation, to house or detain in a locked detention facility, noncitizens for the purposes of civil immigration custody if that local government or local law enforcement agency does not have an existing contract to do so as of January 1, 2018.

- **Victim / Witness Immigration Violation (AB 493 / PC 679.015):**

679.015 PC was added to prohibit law enforcement from detaining a victim(s) or witness(es) of any crime, solely for an actual or suspected immigration violation or to turn the individual over to federal immigration authorities absent a judicial warrant.

## **FIREARMS:**

- **Firearms: Possession in a School Zone (AB 424 / PC 626.9)**

Existing law prohibits the possession of a firearm in a school zone unless it is with the permission of the school district superintendent, his or her designee, or equivalent school authority.

***Amendment:** This law removes the authority of a school district superintendent, his or her designee, or equivalent school authority to provide written permission for a person to possess a firearm within a school zone.*

- **Firearms: Peace Officer's Unattended Vehicle (SB 497 / PC 25140)**

Existing law requires when a person leaves a handgun in an unattended vehicle, they must secure it in the vehicle's trunk, in a locked container out of plain sight, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

***Amendment:** This law states a peace officer, when leaving a handgun in an unattended vehicle not equipped with a trunk, may, if unable to comply with the above, lock the handgun out of plain view within the center utility console of the motor vehicle with a padlock, key lock, combination lock, or other similar locking device.*

*The amendment also clarifies the following definitions.*

***Trunk** – fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger compartment. **A trunk does not include** the rear of a hatchback, station wagon or sport utility vehicle, any compartment which has a window, or a toolbox or utility box attached to the bed of a pickup truck.*

***Plain view** – any area of the vehicle that is visible by peering through the windows of the vehicle, including windows that are tinted, with or without illumination.*

- **Firearms: Possession of a Firearm by Convicted Persons (AB 785 / PC 29805)**

Existing law places a 10 year ban on possessing a firearm for individuals convicted of a misdemeanor specified in PC 29805.

***Amendment:** This law adds the following misdemeanors to the list resulting in a 10 year ban on possessing a firearm:*



1. **422.6(a) PC:** *By force or threat of force, interfere with another person's free exercise of any constitutional right or privilege because of the other person's actual or perceived race, religion, national origin, disability, gender, or sexual orientation.*

2. **422.6(b) PC:** *Knowingly deface, damage, or destroy the property of another person, for the purpose of intimidation or interfering with the exercise of any of those constitutional rights because of those specified characteristics.*

- **Firearms: Open Carry (AB 7 / PC 26400)**

Existing law prohibits, with certain exceptions, openly carrying an unloaded handgun outside a vehicle while in or upon a public place or public street of an incorporated city, or city and county, or while in or upon a public place or public street within a prohibited area (area in which it is unlawful to discharge a firearm). The same is true for an unloaded firearm that is not a handgun, such as a shotgun or rifle, but does not prohibit the carrying of an unloaded firearm, that is not a handgun, in unincorporated areas of a county.

***Amendment:*** *This law makes an addition to the current law. It prohibits the possession of an unloaded firearms that is not a handgun, while in or upon a public place or a public street within a prohibited area located within the unincorporated area of the county.*

## **DOMESTIC VIOLENCE:**

- **Domestic Violence (SB 40 / PC 13701 and PC 13730)**

Requires deputies provide written notice to victims at the scene of a domestic violence incident informing them that strangulation may cause internal injuries and encourage the victim to seek medical attention. ***\*An updated Domestic Violence pamphlet will be provided to staff and will be made available through PowerDMS.***

Requires deputies to include in their domestic violence reports a notation as to whether there were indications that the incident involved strangulation or suffocation. This includes whether a victim/witness reported any incident of strangulation or suffocation, whether any victim reported symptoms of strangulation or suffocation, or whether the officer observed any signs of strangulation or suffocation.

Requires each law enforcement agency to include the number of domestic violence calls involving strangulation or suffocation in its monthly report to the Attorney General.

- **Protective Orders: Personal Information of Minors (AB 953 / Civil Proc. Code 527.6)**

Existing law authorizes a judicial officer to issue a protective order after notice and a hearing for the purpose of preventing acts of domestic violence, abuse, sexual abuse and ensuring a period of separation of the persons involved in the domestic violence.

*Amendment: This law allows a minor or a minor's legal guardian to petition the court to make information about a minor contained in a civil harassment or domestic violence protective order confidential.*

- **Confidential Communications: Domestic Violence (AB 413 / PC 633.5, PC 633.6)**

Existing law makes it a crime, subject to specified exemptions, for a person to intentionally eavesdrop upon or record a confidential communication without the consent of all parties to the communication. An exception to this law allows for one party to a confidential communication to record the communication for the purpose of obtaining evidence, reasonably believed to relate to the commission of a specified crime, by another party to the communication.

*Amendment: This law adds the crime of domestic violence to the list of specified crimes (633.5 PC).*

*A victim of domestic violence who is seeking a domestic violence restraining order from a court, and who reasonably believes that a confidential communication made to him or her by the perpetrator may contain evidence germane to the restraining order, may record that communication for the exclusive purpose of providing that evidence to the court (633.6 PC).*

- **Canadian Domestic Violence Restraining Order (SB 204 / Family Code 6450)**

Requires deputies to enforce Canadian Domestic Violence Restraining Orders (DVRO) upon determining that there is probable cause to believe a valid protective order exists and has been violated. Deputies shall enforce the terms of a Canadian DVRO as if it were an order of a court within the state of California. A certified copy of a Canadian DVRO is not required for enforcement.

If it is determined the Canadian DVRO cannot be enforced due to the respondent not being notified or served, deputies shall notify the protected person and inform them deputies will make a reasonable effort to contact the respondent. After notice to the protected individual and consistent with the safety of the individual, the deputy shall make every reasonable effort to

inform the respondent of the terms of the order and provide a record of the order. Verbal notice of the terms of the order is sufficient.

## **CRIMES/CRIMINAL PROCEDURES:**

- **Violent Felonies: Video Recording (AB 1542 / PC 667.95):**

667.95 PC was added to allow the court to consider during sentencing, as a factor in aggravation, that the defendant willfully recorded a video of the commission of the violent felony with the intent to encourage or facilitate the offense.

- **Arrests and Evidence (SB 238 / PC 849, PC 851.6 and PC 1417.7)**

This bill authorizes deputies to release an arrested person from custody without taking him/her before a magistrate if the person is delivered, after arrest, to a hospital or urgent care facility for the purpose of mental health evaluation and treatment, and no further criminal proceedings are desirable. A person arrested and released pursuant to this provision shall be issued a certificate describing the action as a detention (PC 849(b)).

- **Search Warrant (AB 539 / PC 1524)**

Existing law allows a search warrant to be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also specifies the grounds upon which a search warrant may be issued, including when the property or things to be seized constitute evidence showing that a felony has been committed.

***Amendment:** This law expands the grounds for issuance of a search warrant to include evidence of a misdemeanor violation of disorderly conduct as specified in 647(j) P.C.*

***647(j) PC - (1)** A person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision does not apply to those areas of a private business used to count currency or other negotiable instruments.*

***(2)** A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of,*

*or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.*

*(3) (A) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.*

## **JUVENILES:**

- **Juvenile Custodial Interrogation (SB 395 / W&I 625.6)**

This law requires deputies have juveniles, 15 years of age or younger, consult with legal counsel prior to a custodial interrogation and before waiving their Miranda rights. A consultation with legal counsel ***cannot be waived*** by the juvenile. The juvenile can consult with their legal counsel in person, via telephone, or through video conference.

The court will be required to consider the effect of the deputy's failure to comply with the above specified requirement in adjudicating the admissibility of statements made during or after custodial interrogation.

These provisions do not apply to the admissibility of statements if ***both of the following*** criteria are met:

1. The deputy who questioned the suspect reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat; and
2. The deputy's questioning was limited to those questions that were reasonably necessary to obtain that information.

- **Juvenile Restraints (AB 878 / WI 210.6)**

Mechanical restraints (i.e., handcuffs, chains) may be used on a juvenile detained in or committed to a local secure juvenile facility during transportation outside of the facility only upon a determination made by the probation department, in consultation with the transporting agency, that the mechanical

restraints are necessary to prevent physical harm to the juvenile or another person, or due to a substantial risk of flight.

If a determination is made that mechanical restraints are necessary, the least restrictive form shall be used consistent with the legitimate security needs of the juvenile.

Mechanical restraints may only be used during a juvenile court proceeding if the court determines the juvenile's behavior in custody or in court causes reason to believe restraints are necessary to prevent physical harm to the juvenile or another person, or due to a substantial risk of flight.

## **PUBLIC RECORDS:**

- **VIDEO OR AUDIO RECORDINGS: CRIME (AB 459 / GC 6254.4.5)**

Restricts the public disclosure of video and audio recordings held by law enforcement that were created during the commission or investigation of sexual assaults, domestic violence, and child abuse incidents.

The victim who is a subject of a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, shall be permitted to inspect and obtain a copy of the recording.

## **CORRECTIONS:**

- **Prisons and County Jails: Inmate Name and Gender Changes (SB 310, Civ. Procedure Code 1279.5)**

*Effective September 1, 2018*, incarcerated persons may petition the court for a name and/or gender change which shall be noticed by CDCR and the county jails. The inmate's new name shall be used and all prior names shall be listed as an alias.

Individuals required to register as a sex offender are prohibited unless the court determines it is in the best interest of justice to grant the petition.

- **Prisoner Support Services (AB 683)**

This law authorizes seven California Counties, including Alameda County, to implement pilot programs to provide reentry services and support for inmates during or after their incarceration in a county jail. The law provides specific components that should be a part of the pilot program. Counties that elect to implement a pilot program shall conduct a study by January 1, 2023, which evaluates the effectiveness of the program.

## MISCELLANEOUS:

- **Criminal Justice Information (AB 1518 / GC 12525.5 & GC 13012)**

Existing law requires all California law enforcement agencies to report specific data on peace officer stops to the Attorney General.

***Amendment:** This law delays the implementation of the regulations related to the Racial Identity Profiling Act (RIPA) for one year.*

- *Agency size 1000+ shall begin collecting data on or before July 1, 2018. Data shall be reported to the Department of Justice (DOJ) by April 1, 2019.*
- *Agency size 667-999 shall begin collecting data on or before January 1, 2019. Data shall be reported to DOJ by April 1, 2020.*
- *Agency size 334-666 shall begin collecting data on or before January 1, 2021. Data shall be reported to DOJ by April 1, 2022.*
- *Agency size 1-333 shall begin collecting data on or before January 1, 2022. Data shall be reported to DOJ by April 1, 2023.*

- **DNA Evidence (AB 41 / PC 680.3)**

This law states each law enforcement agency that has investigated a case involving the collection of sexual assault kit evidence shall, within 120 days of collection, create an information profile for the kit on the Department of Justice's SAFE-T database and report the following:

- If biological evidence samples from the kit were submitted to a DNA laboratory for analysis.
- If the kit generated a probative DNA profile.
- If evidence was not submitted to a DNA laboratory for processing, the reason or reasons for not submitting evidence from the kit to be processed.

If after 120 days following the submission of rape kit biological evidence for processing, if a DNA laboratory has not conducted DNA testing, the laboratory shall provide the reasons for the status in the appropriate SAFE-T data field. The SAFE-T database shall not contain any identifying information about the victim or suspect, shall not contain any DNA profiles, and shall not contain any information that would impair a pending criminal investigation.

***These requirements are to be imposed on kits collected on or after January 1, 2018.***



- **Protective Orders (AB 264 / PC 136.2)**

Existing law allows for the court to consider issuing a protective order for up to 10 years in domestic violence and specified sexual assault cases.

*Amendment: This bill requires the court to consider issuing a protective order for up to 10 years in gang cases and expands the court's authority to issue post-conviction restraining orders to cover witnesses to the qualified crimes if it can be established that the witness has been harassed.*

- **Conviction Expungement (AB 1115 / PC 1203.42)**

This law makes convictions of realigned felony offenses, which were committed prior to the enactment of Realignment (AB 109 in 2011), eligible for expungement. The relief available may be granted only after the lapse of two years following the defendant's completion of the sentence, the defendant is not under supervised release or probation, and the defendant is not charged with any offense.

- **Sexual Assault Victims Rights (AB 1312)**

This law requires law enforcement and medical providers provide sexual assault victims with a card developed by every local law enforcement agency. The card shall explain all the rights of sexual assault victims in clear language and be made available in all major languages of the state. This card shall be provided upon initial interaction with the victim. ***\*\*A pamphlet is being created and will be provided to staff for dissemination.***

## TRAFFIC:

- **PEDESTRIAN CROSSING SIGNALS (AB 390 / VC 21456)**

Authorizes pedestrians to enter a crosswalk when the pedestrian countdown signal is displayed provided the crossing is completed before the countdown ends.

- **AUTOMATED TRAFFIC ENFORCEMENT SYSTEMS (AB 1094 / VC 21455)**

The proper vehicle code section that a law enforcement officer should use when citing a driver of a vehicle that fails to stop at a red traffic signal erected at a freeway or highway on-ramp is VC 21455. This does not pose the same risk to public safety as the failure to stop at a red light at an intersection (VC 21453).

- **ELECTRONIC WIRELESS COMMUNICATION DEVICES (AB 1222 / VC 23123.5)**

Removes “specialized mobile radio device” (citizen band radios, amateur radios) and “two way messaging device” (walkie talkie) as examples of electronic communications devices that are prohibited from being used while driving pursuant to VC 23123.5.

- **WINDOW TINTING (AB 1303 / VC 26708)**

Authorizes a clear, colorless, and transparent material to be installed, affixed, or applied to the windshield, side, or rear window of a vehicle if the driver has within his or her possession documentation from a dermatologist regarding the need for protection against ultraviolet rays. The material should have a minimum visible light transmittance of 88 percent.

- **MARIJUANA SMOKING / INGESTION (SB 65 / VC 23220, VC 23221)**

Existing law makes it an infraction for a driver or passenger to drink any alcoholic beverage while a motor vehicle is being driven upon a highway.

*Amendment: The revisions made to this law prohibit the driver or passenger from smoking or ingesting marijuana or any marijuana product while the vehicle is being driven upon a highway. Violation of this law is an infraction.*

- **Passenger for Hire: Driving Under the Influence (AB 2687 / VC 23152, VC 23153)**

*Effective July 1, 2018*, it is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is in his or her vehicle at the time of the offense.

- **Cannabis: Medicinal and Adult Use (SB 94 / VC 23222)**

23222(a) VC makes it an infraction for a person to possess, while driving a motor vehicle upon a highway, any receptacle containing any cannabis or cannabis products, which has been opened or have a seal broken, or loose cannabis flower not in a container. A violation of this vehicle code section is an infraction. This does not apply if the cannabis is in the trunk of the vehicle.

This law does not apply to a qualified patient or person with an identification card, if (1) the person is carrying a current identification card or a physician’s recommendation, and (2) the cannabis or cannabis product is contained in a container or receptacle that is either sealed, resealed, or closed.

Identification card is defined as a document issued by the State Department of Public Health that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any.

- **High-Occupancy Vehicle Lanes: Exception (SB 406 / VC 21655.5)**

Blood Transport Vehicles, regardless of the number of occupants, are permitted to use the HOV lanes.

*A blood transport vehicle* is defined as a vehicle owned and operated by the American Red Cross or a blood bank that is transporting blood between collection points and hospital or storage centers.

- **Emergency Vehicles: Blue Warning Lights for Probation (SB 587 / VC 25258)**

This bill authorizes probation officers to display a blue warning light from their emergency vehicles.

<b>ALAMEDA COUNTY</b>  <b>SHERIFF'S OFFICE</b>  <b>GENERAL ORDER</b>	<b>NUMBER:</b> 9.14
	<b>RELATED ORDERS:</b> CALEA 42.2.4  <i>Replaces LES P&amp;P 11.07</i>
	<b>ISSUED DATE:</b> <i>November 6, 2017</i>
	<b>REVISION DATE:</b> <i>February 20, 2018</i>
<b>CHAPTER:</b> Law Enforcement Investigations	<b>SUBJECT:</b> Investigative Task Forces

I. **PURPOSE:** To establish specific guidelines governing criminal investigative task forces.

II. **POLICY:** The Alameda County Sheriff's Office policy is to periodically create or participate in investigative task forces to suppress a specific criminal activity. Such task forces will operate within the parameters set by Federal, State, and local authorities, as well as directives set forth by the Sheriff.

III. **DEFINITIONS:**

***JOINT LAW ENFORCEMENT TASK FORCE*** – *At least one California Law Enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes (GC 7284.4(g)).*

IV. **PROCEDURE:**

A. As needed, or when appropriate, specialized enforcement units may be organized on a local, regional, or state-wide level. The purpose of these units is to enforce specific laws pertaining to identified problems affecting one or multiple jurisdictions. The Commanding Officer or Law Enforcement Services Division Commander shall determine to what extent personnel are assigned to these specialized units. The affected Commanding Officer may enter into agreements with other agencies regarding assignment of personnel to such units. The activities of the specialized units shall have written directives governing their activities, to include:

1. Identifying the purpose (i.e., kinds of offenses)
2. Defining authority, responsibilities, and written agreements
3. Establishing accountability
4. Identifying available resources
5. Evaluating results and the task force's continued necessity

- B. Task force operations which involve multiple jurisdictions or other agencies shall be documented and agreed upon by all involved agencies. The documentation in the form of a Memorandum of Understanding (MOU) should minimally include:

1. The personnel commitment from each agency
2. The associated fiscal responsibility of each agency
3. The command structure for the task force
4. The designated person responsible for oversight of the project
5. An order for Asset Forfeiture distribution

**C. *TASK FORCES WITH FEDERAL OFFICERS***

1. *ACSO may participate in a joint law enforcement task force as defined in this order, so long as the primary purpose of the joint law enforcement task force is not immigration enforcement and the enforcement or investigative duties are primarily related to violations of state or federal law unrelated to immigration enforcement.*
2. *If the Agency participates in a joint law enforcement task force, the task force must report the following data annually to the Department of Justice (7284.4(c)(1) of the California Government Code).*
  - a. *The purpose of the task force*
  - b. *The federal, state, and local law enforcement agencies involved*
  - c. *The total number of arrests made during the reporting period*
  - d. *The number of people arrested for immigration enforcement purposes*
3. *If multiple California law enforcement agencies are participating in a joint law enforcement task force, the task force shall designate one agency to be responsible for reporting the data to DOJ. The task force supervisor shall ensure an agency is identified to ensure compliance with this order and California state law. ACSO will report the data to DOJ in any situation when a reporting agency is not identified.*
4. *No Agency member shall assist immigration authorities with immigration enforcement activities as described in Section 1357(g) of Title 8 of the United States Code.*
5. *Refer to General Order 1.24 regarding Communication with Immigration Authorities.*

**ALAMEDA COUNTY SHERIFF'S OFFICE**  
**SHERIFF GREGORY J. AHERN**

"Striving For Excellence Through Public Safety Education"

Alameda County Sheriff's Office  
1401 Lakeside Drive, 12th Floor, Oakland, CA 94612  
Phone: (510) 272-6878

## **TRAINING BULLETIN**

### **TRUTH ACT: ASSEMBLY BILL 2792** **NUMBER 16-36**

**DATE: December 29, 2016**

**I. Purpose:**

The purpose of this Training Bulletin is to inform members of our Agency about the passage of Assembly Bill 2792 (Truth Act) and how it affects our Agency's policies and procedures.

**II. Overview:**

The U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) has the primary responsibility to investigate and enforce federal immigration laws.

The Truth Act was created to ensure ICE and law enforcement agencies were not unfairly limiting the rights and due process of undocumented inmates in custody at our facilities.

**III. Summary:**

The Truth Act (Transparent Review of Unjust Transfers and Holds Act) takes effect January 1, 2017. Our Agency will act in accordance with the Truth Act and will afford inmates the following procedural rights:

- Upon receipt of an ICE Notification, our Agency will provide a copy to the inmate.
- Upon notification to ICE of an inmate's release date, ACSO shall promptly provide the same notification in writing to the inmate, their attorney and/or to one additional person who the inmate designates.
- Written consent forms will be provided to inmate(s) prior to any ICE interview (available in different languages).
- All records relating to ICE notifications and interviews provided by and to ACSO, shall be considered public record for purposes of the California Public Records Act.

**IV. Impact on the Agency:**

Our Agency periodically receives notifications from ICE (I-247N notification form) requesting an inmate's release date from within our custody. In accordance with the Trust



Act (AB 4, 2013) the Sheriff's Office shall not extend the detention of an inmate so that ICE may detain the individual; rather, the Sheriff's Office shall only provide ICE with timely notification of release.

For more information, refer to General Order 1.24 (Ice Notifications and Transfers), which can be located on PowerDMS.

**DISTRIBUTION "C"**  
**PLEASE POST FOR THE ATTENTION OF ALL PERSONNEL**

OFFICE OF THE CHIEF OF POLICE

NOTICE  
1.14

December 29, 2017

**TO:** All Department Personnel

**FROM:** Chief of Police

**SUBJECT:** IMMIGRATION ENFORCEMENT PROCEDURES

**PURPOSE**

The purpose of this Notice is to set forth Department procedures to comply with the California Values Act (CVA, or SB 54), effective January 1, 2018, and additional procedural requirements

San Mateo County Sheriff's Office  <b>Corrections Division</b> Policy and Procedures Manual Applicable to all facilities	Section:	Number of Pages:
	<b>4.09</b>	4
	Related Standards: AB 4 (TRUST ACT), GOV'T. CODE 7282, 7282.5 8 CFR 287.7 PPM 04.01.-04.09. TRUTH ACT AB 2792	
Chapter:	Issue Date: 05-22-2014	Revision Date:
	Releases	01-02-2018
Subject:		
ICE Holds, Requests for Notification, and ICE Interviews		

## **I. PURPOSE:**

- A. To provide direction to Correctional Division staff regarding the response to Department of Homeland Security (DHS) Form I-247A (Immigration Detainer – Notice of Action), Form I-200 (Warrant for Arrest of Alien), and/or Form I-205 (Warrant of Removal).
- B. To provide direction regarding inmate interviews with immigration officials (e.g., DHS officers, Immigrations and Customs Enforcement (ICE) officers, and Customs and Border Protection (CBP) officers).

## **II. POLICY:**

- A. The Sheriff's Office will provide immigration officials with the anticipated release date of an inmate, allow immigration officials to interview an inmate, and/or transfer an inmate to the custody of an ICE official inside a correctional facility only if the inmate has been convicted of a serious felony or violent felony identified in subdivision (c) of section 1192.7 or of subdivision (c) of section 667.5 of the California Penal Code.
- B. The release date for an inmate with a qualifying felony conviction will only be provided in response to an official inquiry via a Form I-247A and in compliance with the requirements of the Truth Act.
- C. Immigration officials will only be allowed to interview an inmate pursuant to the process required by the Truth Act (AB 2792) and as described in the procedures below.
- D. Release information will not be provided for inmates released on bail or their own recognizance (OR).
- E. The Sheriff's Office will comply with a warrant or court order signed by a State or Federal judge or magistrate.

## **III. PROCEDURES:**

### **Background**

On April 2, 2017, DHS retired Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien, and Form I-247X (Request for Voluntary Transfer). These forms were replaced with a consolidated form, I-247A (Immigration Detainer: Notice of Action).

The Form I-247A requests that local law enforcement provide advance notification of an inmate's release date/time and detain the inmate up to 48 hours after their scheduled release date to enable immigration officials to take custody of the inmate. The federal courts have held on multiple occasions that an immigration detainer, like the I-247A, does **not** provide local law enforcement sufficient legal authority to hold an inmate past their scheduled release date.

The Form I-247A submitted to law enforcement may be accompanied by the following documents signed by an immigration officer: (1) Form-I-200 (Warrant for Arrest of Alien); and/or (2) Form I-205 (Warrant of Removal). The Forms I-200 and I-205, though called "warrants," are not signed by a judge or magistrate. As a result, the prevailing legal analysis, based on federal court precedent, is that these forms also do **not** provide independent legal authority to hold an inmate past their scheduled release date.

**A. Inmate Notification of Request to Detain, Transfer, and/or Notify.**

Upon receipt of an I-247A, or other Form issued by an immigration official requesting detention of an inmate, notification regarding an inmate's release date/time, and/or request to transfer an inmate to the custody of an immigration official, a copy of the document will be given to the Intake Sergeant (or Security Sergeant if the inmate is housed at MSCC) who will take the steps below before the end of the current shift.

- (1) The individual shall promptly be given a copy of the request sent by immigration officials.
- (2) The individual shall be given a copy of the form, titled ***Immigration and Customs Enforcement Request***, indicating whether or not the Sheriff's Office intends to comply with the request. Any decision to comply shall be made in conformance with policy and the California Trust Act, Gov. Code §§ 7282-7282.5. If a decision has not yet been made regarding compliance with the request, the individual will be informed that a decision is pending, a timeline for an expected decision, and the criteria that will be used in making the decision.
- (3) If the Sheriff's Office intends to comply with a request, or has not yet made a decision about compliance, the individual shall be given the opportunity to provide contact information for his or her attorney or any other individual the inmate chooses to designate. The information will be recorded on the bottom of the ***Immigration and Customs Enforcement Request*** form.
- (4) If the Sheriff's Office notifies immigration officials that an individual is being, or will be, released on a certain date and time, the Intake Sergeant shall promptly provide the same notice, using the form titled ***Immigration and Customs Enforcement Notified of Your Release***, to the individual. The Intake Sergeant shall also notify the individual's attorney or other designee, using the contact information provided by the individual. If notification to the attorney or designee is provided by phone, the Intake Sergeant shall subsequently provide, by email, the attorney or designee with a written copy of the notice given to the individual.
- (5) Copies of all documents will be provided to the court desk for filing in the inmate's jacket. A second copy of all documents will be maintained in the ICE Truth Act file located in the Intake Sergeant's Office at the Maguire Correctional Facility.

**B. Response to Requests from Immigration Officials**

During the intake classification process, the Intake Classification Officers will review each inmate's criminal history to determine if the inmate has a prior serious or violent felony conviction as defined in identified in subdivision (c) of section 1192.7 or of subdivision (c) of section 667.5 of the California Penal Code. If the inmate has a qualifying conviction, the

inmate's file will be marked SB54. Responses to requests from Immigration Officials regarding a particular inmate will only be provided if the inmate has a prior serious or violent felony conviction.

When the San Mateo County Sheriff's Office receives a Form I-247A, the on-duty Intake Sergeant will review the inmate's file to determine if the inmate has a serious or violent felony conviction. If the inmate has a qualifying conviction, the Intake Sergeant will complete the bottom section of the form to indicate the inmate's assigned release date.

In the event a Form I-247A is received for an inmate with a qualifying felony conviction that has not yet been sentenced, the form will be marked "inmate un-sentenced".

If the inmate was released prior to the receipt of the I-247A, the form will be marked "inmate released prior to receipt".

If the inmate does not have a qualifying felony conviction, the form will be marked "unable to provide release date".

All completed I-247A forms will be promptly returned to ICE via fax. A copy of the completed form will be placed in the inmate's jacket. If the inmate is no longer in custody, the original I-247A form will be sent to Sheriff Records and added to the inmate's jacket. A copy of all completed I-247A forms will also be sent via fax (363-4873) to attention of the Assistant District Attorney.

All I-247A forms received by the Sheriff's Office will be recorded on the I-247A log. It is the responsibility of the Legal Office Specialist assigned to booking, to record when the form is received. It is the responsibility of the Intake Sergeant to record when the form was returned to ICE and it is the Release Officer's responsibility to record the release information for the inmate on the same I-247A log. This log shall be kept and maintained at the Booking LOS desk.

### **C. Inmate Release**

Upon the inmate's release date, an inmate with the qualifying felony conviction will be prepared for release in the morning with other inmates that are scheduled to be released to outside agencies. If an ICE agent is present inside the facility, an inmate with a qualifying felony conviction may be released into the agent's custody at the agent's demand. If an ICE agent is not present in the facility, absent circumstances beyond the control of the Sheriff's Office, the release staff will release the inmate no later than noon, which represents the time by which regularly scheduled outside agency releases are normally completed.

In the event an I-247A form has been submitted for an inmate with a qualifying felony conviction that was previously un-sentenced and has now been ordered released by the court, the Court Desk staff will notify ICE via telephone of the pending release and anticipated release time (1800 hours for morning courts and 2100 hours for afternoon courts). Absent circumstances beyond the control of the Sheriff's Office, the release staff will release the inmate no later than 1800 hours, for an inmate that made a morning court appearance and no later than 2100 hours, for an inmate that made an afternoon court appearance. These times represent the latest time an inmate returning from court would normally be released in the regular course of business.

**The presence of an ICE request for notification shall not delay an inmate's release.**

The Sheriff's Office does not honor immigration detainers or transfer requests from immigration officials, but does provide accurate and timely information regarding the anticipated release date/time of an identified inmate. Please note there is a difference between an arrest warrant signed by a judge or magistrate and an immigration detainer and administrative warrant signed by an immigration official. We will continue to honor all judicially issued lawfully valid arrest warrants no matter the state or federal charges. The Sheriff's Office will not arrest or detain an individual solely on the basis of an immigration detainer or other ICE documents without a judicial warrant or court order.

When a previously un-sentenced inmate with a prior qualifying felony conviction receives a sentence and an I-247A form is present in the inmate's jacket, Court Desk personnel will update the I-247A with the assigned release date and provide the form to the Intake Sergeant. The Intake Sergeant is responsible for sending the form ICE.

**D. Immigration Official Inmate Interviews**

ICE will continue to have access to our jails. They will receive the same treatment and courtesy extended toward law enforcement officers conducting official business with us. However, except for individuals with a prior qualifying conviction, Sheriff's staff shall not provide personal information about an individual in custody, including that individual's home address or work address. In the event an immigration official requests to interview an inmate, and before an individual in custody is made available for an interview (whether in person or by phone, and including by being located in an area of the jail where ICE has the ability to approach the individual for questioning), the staff member assigned to the inmate's housing unit will take the steps listed below.

1. The individual must be given a copy of the attached written consent form (***Consent Form for Immigration and Customs Enforcement Interview***), which explains that the purpose of the interview is to investigate potential immigration violations, that the interview is voluntary, and that he or she may decline to be interviewed and/or may choose to be interviewed only with his or her attorney present.
  - a. The consent form shall be provided in the individual's preferred language, as indicated by the individual. If the form is not available in the individual's preferred language, staff shall use the language line to have the form translated for the individual.
  - b. The staff member must sign and date the form, indicating that it has been provided to the individual in his or her preferred language and when this occurred.
2. The individual may indicate whether he or she consents to the interview by marking the form. If the individual does not affirmatively consent to the interview by signing the form, the individual shall not be made available for an ICE interview. If the individual indicates that he or she is only willing to speak to ICE with an attorney present, the individual shall not be made available for an interview until ICE has scheduled a meeting with the individual's attorney, and the attorney is present.

**E. Public Access to Records**

Upon receiving any request pursuant to the California Public Records Act, GOVT. CODE §§ 6250 – 6276.48 for information related to ICE's access to individuals, responsive records shall be produced consistent with the Act's requirements.



## OFFICE OF THE CHIEF OF POLICE

### **NOTICE**

1.14

December 29, 2017

**TO:** All Department Personnel

**FROM:** Chief of Police

**SUBJECT:** IMMIGRATION ENFORCEMENT PROCEDURES

### **PURPOSE**

The purpose of this Notice is to set forth Department procedures to comply with the California Values Act (CVA or SB 54), effective January 1, 2018, and additional procedural requirements to protect the public through community partnerships and adherence to the law regarding immigration enforcement.

### **PRINCIPLES**

The Los Angeles Police Department is committed to protecting the public from crime and other harms through collaborative partnerships and constitutional policing principles including the fair and impartial enforcement of the law regardless of a person's race, ethnicity, national origin, or civil immigration status.

### **DEPARTMENT OBLIGATIONS AND CIVIL IMMIGRATION ENFORCEMENT**

The LAPD as a local law enforcement agency is responsible for enforcing state and local criminal laws. It is neither authorized nor responsible for the enforcement of civil immigration laws or regulations.

The Congress of the United States has vested United States Immigration and Customs Enforcement (US-ICE) and United States Customs and Border Protection (US-CBP) with the legal authority and responsibility for enforcing civil immigration laws including status violations and removal proceedings. Therefore, Department personnel must abide by the limitations in legal authority and responsibility for enforcing federal civil immigration laws.

The CVA, other state laws, and existing Department policies and practices provide procedural protections to ensure that Department personnel do not go beyond existing legal authorities or contradict the Department's steadfast commitment to community and constitutional policing principles.

## PROCEDURES

Set forth below are procedures regarding immigration enforcement that reflect existing Department policies and practices, new provisions of state law, and additional requirements during field, custodial, task force, and non-task force operations.

## FIELD OPERATIONS

### Detentions, Arrests, Interviews, and Victim Assistance

Federal and state law prohibit a police officer from detaining an individual based on the person's civil immigration status or, with limited exceptions, making a misdemeanor criminal arrest for an offense that did not occur in the officer's presence.

The provisions codified in Department Manual Section 4/264.50 by Special Order No. 40, 1979, continue to remain in effect. Accordingly, Department personnel shall not:

- Initiate police action with the objective of discovering the civil immigration status of any person; or,
- Arrest an individual for the federal misdemeanor offense of 8 U.S.C. § 1325, Improper Entry.

The CVA expands the restrictions set forth in Special Order No. 40, 1979, but reflects the Department's existing practice of not interrogating individuals regarding their civil immigration status (Cal. Gov. Code § 7284, et seq.). Therefore, Department personnel shall not:

- Investigate, interrogate, detain, or arrest a person for civil immigration purposes; or,
- Inquire into an individual's civil immigration status.

**Exceptions: Crime or Trafficking Victim - Visa Applications (U and T Visas).** State law does not prohibit inquiring into information necessary to certify an individual who may be a crime or trafficking victim and potentially eligible for a U or T Visa under federal immigration laws (Cal. Gov. Code § 7284.6(b)(4)). It is not necessary, however, to record the immigration status of the individual on the certification form or in Department records.

Accordingly, Department personnel shall not inquire about, or record, a person's civil immigration status unless, under the particular circumstances, it is necessary to:

- Provide victim services such as T or U Visa information or certifications;
- Investigate a criminal offense (e.g., sexual exploitation, trafficking, involuntary servitude, extortion, etc.); or,
- Otherwise required by law.

### **Criminal Immigration Offenses**

**Federal Criminal Arrest Warrants.** Department personnel shall continue to honor arrest warrants issued by federal district court or magistrate judges for criminal offenses including arrest warrants for federal immigration crimes.

**Temporary Detentions for Illegal Reentry Criminal Offenses.** Officers may detain for investigation, based on reasonable suspicion, a person suspected of violating 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony, a felony immigration offense, under the following circumstances:

- The person was initially contacted by Department personnel for reasons unrelated to immigration enforcement;
- The person is reasonably suspected of having a prior conviction for an “aggravated felony” under federal law;<sup>1</sup>
- The purpose of the detention is to determine if the prior conviction for an aggravated felony is also classified as a “serious or violent felony” as defined in California Penal Code §§ 1192.7(c) and 667.5(c);<sup>2</sup> and,
- The person is not a victim of, or a witness to, a crime or can otherwise provide evidence in a criminal investigation.

**Release Requirement.** Department personnel shall release the person if, during the detention, it is determined that the prior felony conviction is neither a serious nor violent felony under California law and the person is not otherwise subject to arrest or detention based on a non-immigration local, state or federal offense.

**Approval Required Prior to Arrest or Transfer.** Prior to conducting a probable cause arrest for a violation of 8 U.S.C. § 1326(a), (b)(2), or transferring a suspect to federal authorities such as US-ICE or US-CBP based on a probable cause arrest for 8 U.S.C. § 1326(a), (b)(2), Department personnel shall obtain approval from the Department’s Immigration Liaison Officer appointed by the Chief of Police.

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<sup>1</sup> Aggravated felonies are defined under federal law and a prior conviction for an aggravated felony is typically noted on a National Crime Information Center notice regarding a suspect.

<sup>2</sup> See Appendix for a list of serious and violent felonies under California law.

## **Place of Birth Inquiries**

Some members of the public may misperceive the purpose of inquiring about a person's birthplace when questioned during a law enforcement contact, especially when contacting the police as a victim or witness. To minimize the potential misperception and possible degradation of public trust, the following procedures shall take effect:

- **Victims, Witnesses and Temporarily-Detained Suspects.** Officers shall not ask a victim, witness, or temporarily-detained individual for his or her place of birth unless necessary under the particular circumstances to investigate a criminal offense.
- **Arrestees.** Department personnel may ask and record an arrestee's place of birth when it is:
  - \* Necessary to book or process the arrestee for a criminal offense;
  - \* Necessary to comply with consular notification obligations,
  - \* Necessary to investigate a criminal offense; or,
  - \* Otherwise required by law.
- **Field Interview Cards.** Department personnel shall no longer record a victim, witness or temporarily detained individual's place of birth on Field Interview Cards, Form 15.43.00, unless an exception set forth above applies.
  - \* **Reprinting of Field Interview Cards** - Policies and Procedures Division is directed to, as soon as reasonably practicable, remove and replace the existing stock of Field Interview Cards with a redesigned form that no longer includes the birthplace field.
  - \* Department personnel, however, may continue to record an arrestee's place of birth on Field Interview Cards, in the "Additional Info" field, subject to the conditions set forth above.

## **CUSTODIAL OPERATIONS**

### **Consular Notifications**

Department personnel shall continue following the procedures set forth in Special Order No. 21, 2013, to comply with federal law and the Vienna Convention on Consular Relations obligations.

### **Civil Immigration Detainer Requests**

Department personnel shall not detain an individual based on a US-ICE Detainer Request without a judicial probable cause determination or judicial warrant that authorizes a law enforcement officer to arrest and take into custody the individual for a federal criminal immigration offense or other crime.

### **ICE Notification of Release and Information Requests**

**Public Information.** Department personnel shall provide arrestee information to US-ICE or US-CBP only as required under:

- The California Public Records Act (CPRA); and,
- Federal law under 8 U.S.C. § 1373, which prohibits any Department policy that restricts Department personnel from sending information regarding citizenship or immigration status, lawful or unlawful, of any individual to the U.S. Department of Homeland Security or US-ICE.

Custody Services Division, in coordination with Policies and Procedures Division, shall issue a Divisional Order specifying the information subject to release under the CPRA and federal law.

**Non-Public Information.** Department personnel shall not disclose non-public information regarding an arrestee, including an arrestee's home or work address, except as required by federal law under 8 U.S.C. § 1373.

**ICE Access to Jails for Custodial Transfers.** Department personnel shall not permit US-ICE agents access to Department jail facilities to transfer arrestees except:

- To transfer custody pursuant to a judicial warrant or judicial probable cause determination for a criminal offense that authorizes a law enforcement officer to arrest and take into custody the individual for a federal criminal immigration offense; or,
- To transfer custody of an arrestee for violating 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony, where the prior conviction is classified as a serious or violent felony, as defined in California Penal Code §§ 1192.7(c) and 667.5(c).

As set forth above, the Department's Immigration Liaison Officer must approve any transfer of an arrestee to federal authorities for a criminal immigration offense that does not involve a judicial probable cause determination or judicially issued criminal arrest warrant.

**ICE Access to Jails for Interviews of Arrestees.** Custody Services Division personnel shall continue to comply with Custody Services Division Order No. 1 – Revised, April 3, 2017, and allow US-ICE agents access to Department jail facilities to interview an arrestee if the individual consents to the interview after full advisement of his or her rights, including the arrestee's right to an attorney, in writing, and in accordance with the California TRUTH Act.

## **JOINT TASK FORCE PARTICIPATION AND OPERATIONS**

### **Restricted Purpose**

Department personnel shall not participate in a joint law enforcement task force where the primary or direct purpose is to enforce civil immigration laws or when participation in the task force violates local law or policy. Department personnel may participate in joint task forces with US-ICE or US-CBP membership where the purpose of the task force is to investigate violations of local, state or federal criminal laws unrelated to immigration enforcement.

### **Requirements to Comply with LAPD Policies and Procedures**

**Memoranda of Understanding for Joint Task Forces.** All memoranda of understanding (MOUs) entered into after issuance of this Notice for joint law enforcement task forces involving US-ICE or US-CBP shall include a provision indicating that LAPD participants must comply with LAPD policies and procedures regarding immigration enforcement during their participation in any task force activity.

All MOUs entered into after the issuance of this Notice for joint task forces involving US-ICE or US-CBP shall include provisions that Department personnel will not participate in, or assist with, civil immigration enforcement and, if deputized as a federal task force officer, Department personnel will not accept any legal authority to enforce civil immigration offenses.

Joint task force MOUs shall be reviewed and approved by the Director, Office of Constitutional Policing and Policy.

**Task Force Officer Acknowledgment Requirement.** All Department personnel shall sign an acknowledgment of LAPD policies and procedures regarding immigration enforcement prior to participation as a task force officer.

**Task Force Operations.** Department personnel may participate in joint task force operations, such as execution of criminal search or arrest warrants, interviewing witnesses, or other criminal investigative activities, involving US-ICE or US-CBP when execution of the operation will not involve civil immigration enforcement by any participant.

**Non-Task Force Joint Operations.** Department personnel may participate in non-task force joint operations, such as execution of criminal search or arrest warrants, interviewing witnesses, or other criminal investigative activities, involving US-ICE or US-CBP when:

- Execution of the operation will not involve civil immigration enforcement by any participant;
- A tactical or operational plan identifies all agencies to be involved in the execution of the joint operation; and,
- The joint operation is approved by the corresponding Director for the Office of Operations or Office of Special Operations.



## REPORTING REQUIREMENTS

### Task Force Reporting Requirements

The Office of Operations and Office of Special Operations shall prepare and submit reports to the Board of Police Commissioners and the California Department of Justice as required in Cal. Gov. Code § 7284.6(c) regarding joint task force operations. For each task force in which Department personnel participate, the report shall include:

- The purpose of each task force;
- The federal, state and local law enforcement agencies involved;
- The number and type of arrests made during the reporting period; and,
- The number of people arrested for immigration enforcement purposes.

### Additional Reports Regarding Immigration Enforcement and Department Operations

The Office of Operations and Office of Special Operations shall submit semi-annual reports to the Chief of Police and the Board of Police Commissioners regarding Department involvement in immigration-related activities with US-ICE and US-CBP with the following information:

- **Non-Task Force Joint Operations:** The purpose of each joint operation; the number of arrests made during the reporting period and the number of people arrested for immigration enforcement purposes.
- **Criminal Immigration Enforcement Actions:** The number of people arrested by Department personnel for criminal immigration enforcement purposes pursuant to a judicial warrant or judicial probable cause determination and the number of people arrested for violation of 8 U.S.C. § 1326(a), (b)(2), Illegal Reentry after Conviction of an Aggravated Felony.
- **US-ICE Transfers:** The number of transfers to US-ICE and the offense that allowed for the transfer.
- **US-ICE Detainer Requests:** The number of US-ICE Detainer Requests received and the number of US-ICE Detainer Requests honored.
- **US-ICE Interview Requests:** The number of US-ICE Interview Requests received and the number of US-ICE Interview Requests honored.
- **US-ICE Release Notification Requests:** The number of US-ICE Release Notification Requests received and the number of US-ICE Release Notification Requests honored.

## OBLIGATIONS UNDER FEDERAL LAW - (8 U.S.C. § 1373)

Nothing in this Notice, nor any other Department policy or procedure, shall prohibit or in any way restrict the LAPD and Department personnel from sending to, or receiving from, the U.S. Department of Homeland Security or US-ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Therefore, Department personnel are not restricted from (1) sending the immigration status, lawful or unlawful, of any individual to, or requesting or receiving such information from, the U.S. Department of Homeland Security or US-ICE; (2) maintaining the immigration status, lawful or unlawful, of any individual; or, (3) exchanging the immigration status, lawful or unlawful, of any individual with any other Federal, State, or local government entity.

**NOTE:** As set forth above, Department personnel shall not inquire into an individual's citizenship or civil immigration status, nor record an individual's citizenship or immigration status, except as permitted by this Notice.

#### **FURTHER IMPLEMENTATION**

Department commands shall incorporate these procedures into divisional manuals and other procedural instructions as needed.

Should you have any questions regarding this Notice, please contact the Office of Constitutional Policing and Policy at (213) 486-8730.

A handwritten signature in black ink, appearing to read 'C Beck', with a stylized flourish at the end.

CHARLIE BECK  
Chief of Police

Attachment

DISTRIBUTION "D"

## APPENDIX

### Serious Felonies (Cal. Penal Code § 1192.7(c))

Murder or voluntary manslaughter
Mayhem
Rape
Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
Lewd or lascivious act on a child under 14 years of age
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm
Attempted murder
Assault with intent to commit rape or robbery
Assault with a deadly weapon or instrument on a peace officer
Assault by a life prisoner on a non-inmate
Assault with a deadly weapon by an inmate
Arson
Exploding a destructive device or any explosive with intent to injure
Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem
Exploding a destructive device or any explosive with intent to murder
Any burglary of the first degree
Robbery or bank robbery
Kidnapping
Holding of a hostage by a person confined in a state prison
Attempt to commit a felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant personally used a dangerous or deadly weapon

Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code
Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person
Grand theft involving a firearm
Carjacking
Any felony offense, which would also constitute a felony violation of Section 186.22
Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220
Throwing acid or flammable substances, in violation of Section 244
Assault with a deadly weapon, firearm, machine gun, assault weapon, or semi-automatic firearm or assault on a peace officer or firefighter, in violation of Section 245
Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5
Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246
Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1
Continuous sexual abuse of a child, in violation of Section 288.5
Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100
Intimidation of victims or witnesses, in violation of Section 136.1
Criminal threats, in violation of Section 422
Any attempt to commit a crime listed in this subdivision other than an assault
Any violation of Section 12022.53
A violation of subdivision (b) or (c) of Section 11418
Any conspiracy to commit an offense described in this subdivision.



**Violent Felonies (Cal. Penal Code § 667.5(c))**

Murder or voluntary manslaughter
Mayhem
Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262
Sodomy as defined in subdivision (c) or (d) of Section 286
Oral copulation as defined in subdivision (c) or (d) of Section 288a
Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288
Any felony punishable by death or imprisonment in the state prison for life
Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55
Any robbery
Arson, in violation of subdivision (a) or (b) of Section 451
Sexual penetration as defined in subdivision (a) or (j) of Section 289
Attempted murder
A violation of Section 18745, 18750, or 18755
Kidnapping
Assault with the intent to commit a specified felony, in violation of Section 220
Continuous sexual abuse of a child, in violation of Section 288.5
Carjacking, as defined in subdivision (a) of Section 215
Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1
Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22
Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22
Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary
Any violation of Section 12022.53
A violation of subdivision (b) or (c) of Section 11418

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**CHAPTER 12H:  
IMMIGRATION STATUS**

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- Sec. 12H.1. City and County of Refuge.
- Sec. 12H.2. Use of City Funds Prohibited.
- Sec. 12H.3. Clerk of Board to Transmit Copies of this Chapter;  
Informing City Employees.
- Sec. 12H.4. Enforcement.
- Sec. 12H.5. City Undertaking Limited to Promotion of General  
Welfare.
- Sec. 12H.6. Severability.

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**SEC. 12H.1. CITY AND COUNTY OF REFUGE.**

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It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

(Added by Ord. 375-89, App. 10/24/89)

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**SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.**

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No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision. The prohibition set forth in this Chapter 12H shall include, but shall not be limited to:

- (a) Assisting or cooperating, in one's official capacity, with any investigation, detention, or arrest procedures, public or clandestine, conducted by the Federal agency charged with enforcement of the Federal immigration law and relating to alleged violations of the civil provisions of the Federal immigration law, except as permitted under Administrative Code Section 12I.3.
- (b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws.
- (c) Requesting information about, or disseminating information, in one's official capacity, regarding the release status of any individual or any other such personal information as defined in Chapter 12I, except as permitted under Administrative Code Section 12I.3, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by Federal or State statute or regulation, City and County public assistance criteria, or court decision.
- (d) Including on any application, questionnaire, or interview form used in relation to benefits, services, or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by Federal or State statute, regulation, or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

(Added by Ord. 375-89, App. 10/24/89; amended by Ord. 228-09, File No. 091032, App. 10-28-2009; Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

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**SEC. 12H.2-1. [REPEALED.]**

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(Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93; Ord. 228-09, File No. 091032, App. 10-28-2009; repealed by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

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**SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY**

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## **EMPLOYEES.**

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the Federal agency charged with enforcement of the Federal immigration law, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each City and County employee shall be given a written directive with instructions for implementing the provisions of this Chapter.

(Added by Ord. 375-89, App. 10/24/89; Ord. 228-09, File No. 091032, App. 10-28-2009)

### **SEC. 12H.4. ENFORCEMENT.**

The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged.

(Added by Ord. 375-89, App. 10/24/89)

### **SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

(Added by Ord. 375-89, App. 10/24/89)

### **SEC. 12H.6. SEVERABILITY.**

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

(Added by Ord. 375-89, App. 10/24/89)

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## **CHAPTER 12I: CIVIL IMMIGRATION DETAINERS**

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- Sec. 12I.1. Findings.
- Sec. 12I.2. Definitions.
- Sec. 12I.3. Restrictions on Law Enforcement Officials.
- Sec. 12I.4. Purpose of this Chapter.
- Sec. 12I.5. Semiannual Report.
- Sec. 12I.6. Severability.
- Sec. 12I.7. Undertaking for the General Welfare.

### **SEC. 12I.1. FINDINGS.**

The City and County of San Francisco (the "City") is home to persons of diverse racial, ethnic, and national backgrounds, including a large immigrant population. The City respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status. Fostering a relationship of trust, respect, and open communication between City employees and City

residents is essential to the City's core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants. The purpose of this Chapter 12I, as well as of Administrative Code Chapter 12H, is to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents and City officials, including especially law enforcement and public health officers and employees, and to ensure community security, and due process for all.

The United States Immigration and Customs Enforcement ("ICE") is responsible for enforcing the civil immigration laws. ICE's programs, including Secure Communities and its replacement, the Priority Enforcement Program ("PEP"), seek to enlist local law enforcement's voluntary cooperation and assistance in its enforcement efforts. In its description of PEP, ICE explains that all requests under PEP are for voluntary action and that any request is not an authorization to detain persons at the expense of the federal government. The federal government should not shift the financial burden of federal civil immigration enforcement, including personnel time and costs relating to notification and detention, onto local law enforcement by requesting that local law enforcement agencies continue detaining persons based on non-mandatory civil immigration detainers or cooperating and assisting with requests to notify ICE that a person will be released from local custody. It is not a wise and effective use of valuable City resources at a time when vital services are being cut.

ICE's Secure Communities program (also known as "S-Comm") shifted the burden of federal civil immigration enforcement onto local law enforcement. S-Comm came into operation after the state sent fingerprints that state and local law enforcement agencies had transmitted to the California Department of Justice ("Cal DOJ") to positively identify the arrestees and to check their criminal history. The FBI would forward the fingerprints to the Department of Homeland Security ("DHS") to be checked against immigration and other databases. To give itself time to take a detainee into immigration custody, ICE would send an Immigration Detainer - Notice of Action (DHS Form I-247) to the local law enforcement official requesting that the local law enforcement official hold the individual for up to 48 hours after that individual would otherwise be released ("civil immigration detainers"). Civil Immigration detainers may be issued without evidentiary support or probable cause by border patrol agents, aircraft pilots, special agents, deportation officers, immigration inspectors, and immigration adjudication officers.

Given that civil immigration detainers are issued by immigration officers without judicial oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal warrants, which must be supported by probable cause and issued by a neutral magistrate, there are no such requirements for the issuance of a civil immigration detainer. Several federal courts have ruled that because civil immigration detainers and other ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold an individual in custody. (*Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST \*17 (D.Or. April 11, 2014) (finding that detention pursuant to an immigration detainer is a seizure that must comport with the Fourth Amendment). *See also Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I 2014); *Villars v. Kubiowski*, No. 12-cv-4586 \*10-12 (N.D. Ill. filed May 5, 2014).)

On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that S-Comm did not require state or local law enforcement officials to determine an individual's immigration status or to enforce federal immigration laws. The Attorney General also clarified that civil immigration detainers are voluntary requests to local law enforcement agencies that do not mandate compliance. California local law enforcement agencies may determine on their own whether to comply with non-mandatory civil immigration detainers. In a June 25, 2014, bulletin, the Attorney General warned that a federal court outside of California had held a county liable for damages where it voluntarily complied with an ICE request to detain an individual, and the individual was otherwise eligible for release and that local law enforcement agencies may also be held liable for such conduct. Over 350 jurisdictions, including Washington, D.C., Cook County, Illinois, and many of California's 58 counties, have already acknowledged the discretionary nature of civil immigration detainers and are declining to hold people in their jails for the additional 48 hours as requested by ICE. Local law enforcement agencies' responsibilities, duties, and powers are regulated by state law. However, complying with non-mandatory civil immigration detainers frequently raises due process concerns.

According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not reimbursed by the federal government for the costs associated with civil immigration detainers alone. The full cost of responding to a civil immigration detainer can include, but is not limited to, extended detention time, the administrative costs of tracking and responding to detainers, and the legal liability for erroneously holding an individual who is not subject to a civil immigration detainer. Compliance with civil immigration detainers and involvement in civil immigration enforcement diverts limited local resources from programs that are beneficial to the City.

The City seeks to protect public safety, which is founded on trust and cooperation of community residents and local law enforcement. However, civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies. A 2013 study by the University of Illinois, entitled "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," found that at least 40% of Latinos surveyed are less likely to provide information to police because they fear exposing

themselves, family, or friends to a risk of deportation. Indeed, civil immigration detainers have resulted in the transfer of victims of crime, including domestic violence victims, to ICE.

The City has enacted numerous laws and policies to strengthen communities and to build trust between communities and local law enforcement. Local cooperation and assistance with civil immigration enforcement undermines community policing strategies.

In 2014, DHS ended the Secure Communities program and replaced it with PEP. PEP and S-Comm share many similarities. Just as with S-Comm, PEP uses state and federal databases to check an individual's fingerprints against immigration and other databases. PEP employs a number of tactics to facilitate transfers of individuals from local jails to immigration custody.

First, PEP uses a new form (known as DHS Form I-247N), which requests notification from local jails about an individual's release date prior to his or her release from local custody. As with civil immigration detainers, these notification requests are issued by immigration officers without judicial oversight, thus raising questions about local law enforcement's liability for constitutional violations if any person is overdetained when immigration agents are unable to be present at the time of the person's release from local custody.

Second, under PEP, ICE will continue to issue civil immigration detainer requests where local law enforcement officials are willing to respond to the requests, and in instances of "special circumstances," a term that has yet to be defined by DHS. Despite federal courts finding civil immigration detainers do not meet Fourth Amendment requirements, local jurisdictions are often unable to confirm whether or not a detention request is supported by probable cause or has been reviewed by a neutral magistrate.

The increase in information-sharing between local law enforcement and immigration officials raises serious concerns about privacy rights. Across the country, including in the California Central Valley, there has been an increase of ICE agents stationed in jails, who often have unrestricted access to jail databases, booking logs, and other documents that contain personal information of all jail inmates.

The City has an interest in ensuring that confidential information collected in the course of carrying out its municipal functions, including but not limited to public health programs and criminal investigations, is not used for unintended purposes that could hamper collection of information vital to those functions. To carry out public health programs, the City must be able to reliably collect confidential information from all residents. To solve crimes and protect the public, local law enforcement depends on the cooperation of all City residents. Information gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody.

In late 2015, Pedro Figueroa, an immigrant father of an 8-year-old U.S. citizen, sought the San Francisco Police Department's help in locating his stolen vehicle. When Mr. Figueroa went to the police station to retrieve his car, which police had located, he was detained for some time by police officers before being released, and an ICE agent was waiting to take him into immigration custody immediately as he left the police station. It was later reported that both the Police Department and the San Francisco Sheriff's Department had contact with ICE officials while Mr. Figueroa was at the police station. He spent over two months in an immigration detention facility and remains in deportation proceedings. Mr. Figueroa's case has raised major concerns about local law enforcement's relationship with immigration authorities, and has weakened the immigrant community's confidence in policing practices. Community cooperation with local law enforcement is critical to investigating and prosecuting crimes. Without the cooperation of crime victims - like Mr. Figueroa - and witnesses, local law enforcement's ability to investigate and prosecute crime, particularly in communities with large immigrant populations, will be seriously compromised.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.1 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

## **SEC. 12I.2. DEFINITIONS.**

"Administrative warrant" means a document issued by the federal agency charged with the enforcement of the Federal immigration law that is used as a non-criminal, civil warrant for immigration purposes.

"Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- (a) All criminal charges against the individual have been dropped or dismissed.
- (b) The individual has been acquitted of all criminal charges filed against him or her.
- (c) The individual has served all the time required for his or her sentence.

(d) The individual has posted a bond, or has been released on his or her own recognizance.

(e) The individual has been referred to pre-trial diversion services.

(f) The individual is otherwise eligible for release under state or local law.

"Civil immigration detainer" means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law enforcement official to maintain custody of an individual for a period not to exceed 48 hours and advise the authorized federal immigration officer prior to the release of that individual.

"Convicted" means the state of having been proved guilty in a judicial proceeding, unless the convictions have been expunged or vacated pursuant to applicable law. The date that an individual is Convicted starts from the date of release.

"Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion as defined in Penal Code Section 16520.

"Law enforcement official" means any City Department or officer or employee of a City Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

"Notification request" means a non-mandatory request issued by an authorized federal immigration officer to a local law enforcement official asking for notification to the authorized immigration officer of an individual's release from local custody prior to the release of an individual from local custody. Notification requests may also include informal requests for release information by the Federal agency charged with enforcement of the Federal immigration law.

"Personal information" means any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information.

"Serious Felony" means all serious felonies listed under Penal Code Section 1192.7(c) that also are defined as violent felonies under Penal Code Section 667.5(c); rape as defined in Penal Code Sections 261, and 262; exploding a destructive device with intent to injure as defined in Penal Code Section 18740; assault on a person with caustic chemicals or flammable substances as defined in Penal Code Section 244; shooting from a vehicle at a person outside the vehicle or with great bodily injury as defined in Penal Code Sections 26100(c) and (d).

"Violent Felony" means any crime listed in Penal Code Section 667.5(c); human trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon, machine gun, or .50 BMG rifle, while committing or attempting to commit a felony that is charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and 12022.5.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.2 added by Ord. 391-90, App. 12/6/90; amended by Ord. 278-96, App. 7/3/96; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

### **SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

(a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.

(b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if the continued detention is consistent with state and federal law, and the individual meets both of the following criteria:

(1) The individual has been Convicted of a Violent Felony in the seven years immediately prior to the date of the civil immigration detainer; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a Violent Felony and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to continue to detain an individual based solely on a civil immigration detainer as permitted in this subsection (b), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to: the individual's

ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

This subsection (b) shall expire by operation of law on October 1, 2016, or upon a resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the federal government has enacted comprehensive immigration reform that diminishes the need for this subsection (b), whichever comes first.

(c) Except as provided in subsection (d), a law enforcement official shall not respond to a federal immigration officer's notification request.

(d) Law Enforcement officials may respond to a federal immigration officer's notification request if the individual meets both of the following criteria:

(1) The individual either:

(A) has been Convicted of a Violent Felony in the seven years immediately prior to the date of the notification request; or

(B) has been Convicted of a Serious Felony in the five years immediately prior to the date of the notification request; or

(C) has been Convicted of three felonies identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, arising out of three separate incidents in the five years immediately prior to the date of the notification request; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a felony identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to respond to a notification request as permitted by this subsection (d), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to, the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

(e) Law enforcement officials shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, on the basis of an administrative warrant, prior deportation order, or other civil immigration document based solely on alleged violations of the civil provisions of immigration laws.

(f) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual, after that individual becomes eligible for release, in response each civil immigration detainer.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.3 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

#### **SEC. 12I.4. PURPOSE OF THIS CHAPTER.**

The intent of this Chapter 12I is to address requests for non-mandatory civil immigration detainers, voluntary notification of release of individuals, transmission of personal information, and civil immigration documents based solely on alleged violations of the civil provisions of immigration laws. Nothing in this Chapter shall be construed to apply to matters other than those relating to federal civil immigration detainers, notification of release of individuals, transmission of personal information, or civil immigration documents, based solely on alleged violations of the civil provisions of immigration laws. In all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations that are permitted under local policy or applicable city or state law.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.4 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

#### **SEC. 12I.5. SEMIANNUAL REPORT.**

By no later than July 1, 2014, the Sheriff and Juvenile Probation Officer shall each provide to the Board of Supervisors and the Mayor a written report stating the number of detentions that were solely based on civil immigration detainers during the first six months following the effective date of this Chapter, and detailing the rationale behind each of those civil immigration detainers. Thereafter, the Sheriff and Juvenile Probation Officer shall each submit a written report to the Board of Supervisors and the Mayor, by January 1st and July 1st of each year, addressing the following issues for the time period covered by the report:

(a) a description of all communications received from the Federal agency charged with enforcement of the Federal immigration law, including but not limited to the number of civil immigration detainers, notification requests, or other types of communications.

(b) a description of any communications the Department made to the Federal agency charged with enforcement of the Federal immigration law, including but not limited to any Department's responses to inquiries as described in subsection 12I.5 and the Department's determination of the applicability of subsections 12I.3(b), 12I.3(d) and 12I.3(e).

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.5 added by Ord. 391-90, App. 12/6/90; amended by Ord. 304-92, App. 9/29/92; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

## **SEC. 12I.6. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I or its<sup>1</sup> application, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently declared invalid or unconstitutional.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.6 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

### **CODIFICATION NOTE**

1. So in Ord. [204-13](#).

## **SEC. 12I.7. UNDERTAKING FOR THE GENERAL WELFARE.**

In enacting and implementing this Chapter 12I the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.7 added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

## **SEC. 12I.8.**

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

## **SEC. 12I.10.**

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

## **SEC. 12I.11.**



(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)