

<p>ALAMEDA COUNTY</p> <p>SHERIFF'S OFFICE</p> <p>GENERAL ORDER</p>	<p>NUMBER: 1.24</p> <hr/> <p>RELATED ORDERS: ACA 4-ALDF-2A-21 General Order 1.22, 9.14 D&C 11.02, 11.09, 11.40 CA Gov. Code 7282, 7282.5, 7284, 7284.2, 7282.4 7282.6</p> <hr/> <p>ISSUE DATE: January 1, 2014</p> <hr/> <p>REVISION DATE: <i>May 14, 2020</i></p>
<p>CHAPTER: Law Enforcement Role, Responsibilities, and Relationships</p>	<p>SUBJECT: 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.

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 (DHS) 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. **Contacts *with members of the public***, 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.

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 monies 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)).

3. Staff will not participate in organized sweeps to locate and detain undocumented residents. This does not preclude staff from responding to 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.

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. Immigration status may, however, be reasonably relevant to the investigation of certain crimes 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.

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 the warrant is signed by a Federal Judge or Federal Magistrate.
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 (CPRA).
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 has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony ("wobbler") or has been convicted within the last 15 years of a felony 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.

5. Where an individual has been 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, communications with ICE is also permitted. 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. This subsection does not authorize transfers to ICE. A protocol for notifying an individual's attorney is explained further under Section F. 12 of this order.

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. ***ACSO staff will not consider out of state conviction information as a qualifying charge or conviction for the purpose of notifications or transfers to ICE***

pursuant to SB 54, unless the inmate is deemed a public safety threat based on pending charge(s) and the Detention and Corrections (D&C) Commander provided written approval. The attorney notification protocol in Section F. 12 will be followed in such situations.

- b. 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 the ATIMS Jail Management System (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. If the inmate declines, the interview will not be authorized.
 - 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 the 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 *of record, designated attorney, and/or last known attorney*, and/or to one additional person who the individual shall be permitted to designate. ***ACSO shall document the date and time ICE is notified of a potential release date of an individual.***
 - a. The ACSO form titled, "Attorney/Designee Notification" will be used to make written notification to the attorney of record, *designated attorney, and/or last known attorney* and the third-party designee of the inmates choosing. The form will be completed and mailed to each party as designated on the form. ***The Attorney/Designee Notification form shall include the following information:***
 1. ***Date and time stamp that discloses the date and time ACSO notified ICE of the individual's potential release date.***
 2. ***The date and/or time of release that was given to ICE.***
 - b. ACSO staff will make reasonable efforts to obtain an email address associated with the inmate's attorney of record, *designated attorney, and/or last known attorney*. If an email address is located, ACSO staff will provide a completed "Attorney/Designee Notification" form to the email address located, in conjunction with sending the form via U.S. mail.
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(a), 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(a), the inmate will be released from ACSO custody without transfer to ICE.
12. If ACSO has received a DHS Form I-247A and at any time during that custody event it is determined the inmate meets the criteria under Gov. Code Section 7282.5(a), ACSO will respond in accordance with Section E above.
 - a. ***ACSO staff will provide notification to ICE under Government Code Section 7282.5(b) if ALL of the following conditions are met:***
 1. ***The individual meets the SB 54 criteria under Government Code Section 7282.5(b), AND***
 2. ***The individual is deemed a public safety threat based on pending charges, AND***
 3. ***The D&C Commander provides written approval.***
 - b. ***ACSO staff shall promptly email the written approval signed by the D&C Commander to the individual's attorney of record, designated attorney, and/or last known attorney when an individual is deemed a public safety threat and ACSO provides notification to ICE.***
 - c. ***ACSO staff shall email copies of written approvals signed by the D&C Commander for all individuals who meet the criteria for release under Gov. Code Section 7282.5(b) and deemed a public safety threat to the Asian American Advancing Justice Asian Law Caucus every six months for the duration of four years beginning May 1, 2020.***
 - d. ***The written approval shall:***
 1. ***Redact the individual's name.***
 2. ***Include the pending charge(s).***
 3. ***Date, if any, a magistrate judge made a finding of probable cause as to the pending charge(s) pursuant to Section 872 of the Penal Code.***
 4. ***An explanation of the public safety concern.***
 5. ***Date, time, and name of the Commander who signed the written approval.***
13. 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.

14. 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 that provides the following information: (1) the purpose of the task force; (2) the federal, state, and local agencies involved in the task force; (3) total number of arrests made by the task force during the reporting period; and (4) the total number of arrests made by the task force for immigration enforcement purposes. This report is required anytime a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, i.e., more than one interaction with any agency on the task force to discuss task force operations. Refer to General Order 9.14 (Investigative Task Forces).

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 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 the 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.

6. Beginning January 1, 2018, ACSO is also required to report statistics on all individuals transferred to immigration authorities under the Values Act, Gov. Code Section 7284.6(a)(4). The report must include the following information:
- a. The date the reporting form was submitted.
 - b. Submitting agency ORI and name.
 - c. Number of transfers to ICE by offense code.
 - d. Contact information for the individual completing this form.

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