

San Mateo County Sheriff's Office  <b>Corrections Division</b> Policy and Procedures Manual Applicable to all facilities	Section: <b>4.09</b>	Number of Pages: <b>4</b>
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:  Releases	Issue Date: 05-22-2014	Revision Date: 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 1-247A (Immigration Detainer – Notice of Action), Form 1-200 (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 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.