


<p align="center">SAN FRANCISCO SHERIFF'S DEPARTMENT</p>  <p align="center">POLICY AND PROCEDURE</p>	<p>Date Issued: 12/07/2017</p> <p>Last Revised:</p>	<p>Policy #: SFSD 02-39</p>
<p>Chapter: 02 Legal Enforcement and Operations</p>	<p>Related Policies: SFSD 01-09 - CORI SFSD 01-17 - CLETS Compliance FODM 07-01 - Central Warrant Bureau Responsibilities</p> <p>Approved By: <i>Vicki L. Hennessy</i> Vicki L. Hennessy, Sheriff</p> <p>Title: Immigration</p>	

POLICY: The San Francisco Sheriff's Department (SFSD) shall serve all members of the public equally without consideration of immigration status. A person's immigration status shall have no bearing on the manner in which employees execute their duties. The SFSD does not comply with Department of Homeland Security / Immigration and Customs Enforcement Agency (DHS / ICE) requests to detain individuals after they are eligible to be released from SFSD custody.

The Sheriff alone may exercise discretion to respond to DHS / ICE requests for notification of release from SFSD custody, if the subject of that request meets the specific criteria set forth in San Francisco Administrative Code 12I.3(d.)

The SFSD does comply with criminal arrest warrants signed by a judge. This policy does not prohibit or restrict employees "from sending to, or receiving from, DHS / ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual." (8 U.S.C. 1373.)

Under no circumstances shall employees arrest or detain an individual based solely on their known or suspected immigration status.

PURPOSE: To provide guidelines about SFSD employees duties, and responsibilities associated with the enforcement of immigration law, including DHS / ICE Requests for Release Notification and / or detention, in conformity with federal, state and local law.

I. General:

- A. This policy supersedes and replaces all previous SFSD policies and directives concerning immigration.
- B. Background
 - 1. Immigration Enforcement Jurisdiction
 - a. DHS / ICE has primary responsibility to investigate and enforce federal immigration laws. DHS / ICE is responsible for the identification, apprehension, and removal of undocumented persons, where appropriate under federal immigration law.
 - i. Removal is a civil, not a criminal matter.
 - b. Federal law does not compel state and local LEA' (LEA) participation

in federal civil immigration functions. SFSD employees may not assist DHS / ICE in the enforcement of federal civil immigration laws, except as noted in this policy.

- i.* All employees must forward DHS / ICE requests for SFSD enforcement assistance in the investigation of non-immigration related criminal violations to the Sheriff, through the chain of command, for approval.
- ii.* SFSD employees may assist DHS / ICE by providing emergency assistance when employees determine that an emergency poses an imminent danger to public safety, including to the safety of DHS / ICE agents.
- iii.* If safety permits, employees must seek supervisor approval before providing emergency assistance. On-scene supervisors shall evaluate each request for emergency assistance to ensure the SFSD's participation remains consistent with this policy while protecting human life and property.

2. Federal Criminal Enforcement:

- a.* State and local law permits SFSD cooperation with federal criminal investigations. The Sheriff, through the chain of command, shall direct all SFSD cooperation with federal criminal investigations.

3. DHS / ICE Voluntary Detainer / Notification Requests:

- a.* A DHS / ICE detainer / notification request is typically a written request to a LEA, asking the LEA to:
 - i.* hold an individual beyond the time when the individual is otherwise eligible for release from local custody, so that DHS / ICE may take custody of that individual and / or;
 - ii.* notify DHS / ICE in advance of the individual's scheduled release. DHS / ICE detainer / notification requests are only requests, and compliance is completely voluntary. The form of these requests may vary. Currently, DHS / ICE requests detention and release notification by submitting to LEAs a Form I-247A (Immigration Detainer – Notice of Action). According to DHS / ICE, Form I-247A replaces the following forms:
 - Form I-247D (Immigration Detainer- Request for Voluntary Action)
 - Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien)
 - Form I-247X (Request for Voluntary Transfer.)
 - Form I-247 A requests that the receiving local LEA:
 - iii.* Notify DHS / ICE as early as practicable, at least 48 hours, if

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possible, before a removable alien is released from local custody; and

- iv.* Maintain custody of the alien for a period not to exceed 48 hours beyond the time he / she would otherwise have been released to allow DHS / ICE to assume custody for removal purposes.
- b. Additionally, DHS / ICE requests for detention and release notification may include the following attachments:
 - i.* Form I-200, “Warrant for Arrest of Alien” or
 - ii.* Form I-205, “Warrant for Removal/Deportation.”
 - iii.* Both Form I-200 and Form I-205 are administrative civil warrants signed by Immigration officials and not by a judge. These documents are not criminal warrants.

II. Procedures:

A. Order

1. When SFSD personnel encounter perceived immigration law violations, members shall be guided by the options set forth in this policy, in compliance with federal, state and local law.
2. Immigration Violation Complaints:
 - a. If members of the public contact SFSD employees to report suspected immigration violations, employees shall inform such persons that DHS / ICE – not SFSD – enforces the civil immigration laws.
3. Immigration Status:
 - a. SFSD employees shall not initiate contact with, investigate, detain, or arrest any person based solely upon their known or suspected immigration status.
 - i.* However, employees may investigate the immigration status of victims, witnesses or suspects if employees reasonably believe that immigration status may be a material fact of an alleged criminal violation, including for example, trafficking, smuggling, harboring and terrorism.
 - b. SFSD personnel shall not conduct sweeps, or assist DHS / ICE sweeps, intended solely to locate and detain undocumented immigrants.
 - c. Employees may assist DHS / ICE by providing emergency assistance when employees determine that an emergency poses an imminent danger to public safety, including to the safety of DHS / ICE agents.
 - i.* If safety permits, employees must seek supervisor approval before providing emergency assistance.
 - ii.* On-scene supervisors shall evaluate each request for emergency assistance ensure the SFSD’s participation remains consistent

with this policy while protecting human life and property.

B. Establishing Identity

1. SFSD personnel shall attempt to identify any person they detain, arrest or who come into the custody of the SFSD.
2. Any person eligible for citation and release, who is unable to present satisfactory evidence of his or her identity, shall be detained for the purpose of establishing his or her identity.

C. Central Warrant Bureau Procedure:

1. SFSD personnel who are tasked with confirming warrants shall continue to process DHS / ICE warrants for booking that are confirmed as criminal warrants per memo (Reference: 2016-037, dated March 11, 2016, see attached.) If there is such a booking, Central Warrant Bureau employees shall notify Sheriff's Legal Counsel immediately.
2. SFSD employees shall process all confirmed criminal arrest warrants received from any law enforcement agency, including DHS / ICE, consistent with SFSD Field Operations Division Policy 17-01, Central Warrant Bureau Responsibilities.
 - a. As noted above, DHS / ICE requests for detention and notification are not criminal arrest warrants.

D. DHS / ICE Immigration Detainers and Requests for Notification / Process

1. Fingerprints:

- a. Once a person is arrested, SFSD scans his / her fingerprints during the booking intake process. The inmate's fingerprints are automatically sent to California Department of Justice (Cal DOJ). According to Cal DOJ, the fingerprints are shared with the Federal Bureau Investigations (FBI), the FBI shares them with DHS / ICE to check for prior contacts, and following a contact, DHS / ICE may then send a Form I-247A – a combination detainer and notification request - to the SFSD requesting action.

2. Detainer Requests:

- a. A DHS / ICE detainer (currently Form I-247A) requests that SFSD detain the subject for up to 48 hours after they are eligible to be released from local custody.
- b. The SFSD does not honor these detainer requests.

3. Notification Requests:

- a. A DHS / ICE release notification request (currently Form I-247A) asks that SFSD notify DHS / ICE at least 48 hours before the inmate is released from custody. All DHS / ICE notification requests for intended release dates of suspected undocumented immigrant inmates in our custody are voluntary in nature. San Francisco Administrative Code 12I.3(d) defines the circumstances under which the Sheriff may honor

DHS / ICE notification requests. If those conditions are met, the Sheriff may exercise discretion to notify pursuant to that request.

- b. SFSD has established the following process to individually review each request and track the appropriate action in each case.
 - i. The Central Records Unit shall review all Voluntary Requests (DHS Form 1-247 D, 1-247X, 1-247 N) and the consolidated form 247A) to determine if responding to the request complies with local and state law.
 - ii. If an inmate, who is the subject of a voluntary notification request, is held to answer on an open felony case, the Central Records Unit will then review the individual's criminal history to determine if the individual meets the Administrative Code section 12I.3(d) criteria.
 - iii. If the Central Records Unit determines that the individual meets the Administrative Code section 12I.3(d) criteria, Central Records employees shall forward the voluntary request to the Sheriff for final consideration.

E. Truth Act Compliance

1. In conformance with Government Code Section 7283.1, upon receiving a DHS / ICE detention, notification or transfer request, Prisoner Legal Services Employees shall:
 - a. Provide a copy of the request to the inmate in our custody.
 - b. Provide a copy of the attached SFSD Form 17-1, "Information Regarding DHS / ICE Request for Notification of Release", which informs the subject whether the Department intends to comply with the DHS / ICE voluntary request, to the inmate.
 - c. Request that the inmate complete SFSD Form 17-2 "Designation of Persons to Receive DHS / ICE Request Information" so SFSD will know who to notify in the event the Sheriff exercise discretion under 12I to notify DHS / ICE of the inmate's release date or release.
2. The decision whether to honor the voluntary request will be made pursuant to this policy and in compliance with San Francisco Administrative Code 12I.3(d).
3. If SFSD notifies DHS / ICE that an individual is being, or will be, released on a certain date and time, the SFSD employees providing that information to DHS / ICE shall promptly provide the same notification, using Form 17-3 "Decision to Notify ICE", to the inmate and to the inmate's attorney or designee, using the contact information provided by the inmate on Form 17-2.

F. Communications with LEA, Including Agencies Conducting Civil Immigration Enforcement.

1. SFSD employees are authorized to provide to any LEA, including DHS / ICE, upon request, the following information,

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- a. Date and location of Arrest
 - b. Current charges
 - c. Next court date
 - d. Bail amount
2. SFSD employees are NOT authorized to provide the following access or information to any agency representatives or individuals conducting civil immigration enforcement (including DHS / ICE):
 - a. Access to inmates in jail
 - b. Access to SFSD computers and/or databases
 - c. SFSD Logs
 - d. Booking and arrest documents
 - e. Release dates and times
 - f. Home or work contact information
 3. Responses to I-247A or other DHS / ICE release notification requests unless expressly authorized by the Sheriff.
 4. Employees shall refer all DHS / ICE requests for assistance with criminal investigations to the Central Records Unit. The Central Records Unit shall forward those requests to the Sheriff who shall direct any assistance, through the chain of command.

G. Contact:

1. SFSD employees or others with questions regarding this policy shall be referred to Sheriff's Legal Counsel, Monday thru Friday 0800 to 1700 hours:
 - a. Chief Legal Counsel Mark Nicco
415-554-7212
 - b. Assistant Chief Legal Counsel Suzy Loftus
415-554-7295
 - c. Or after hours at the Central Warrant Bureau – emergency notification line to reach Sheriff's Legal Counsel 415-558-2411.

III. Forms:

SFSD Form "Information Regarding ICE Requests for Notification of Release, Initial Statement"

SFSD Form "Information Regarding ICE Requests for Notification of Release, Designation of Persons to Receive ICE Request Information"

SFSD Form "Information Regarding ICE Requests for Notification of Release, Determination to Notify"

IV. Reference:

“The Miranda-Olivares v. Clackamas County decision (Case No. 3:12-cv-02317-ST), a 2014 Federal decision, established that holding a person in custody based solely upon an ICE immigration detainer request may violate the individual’s constitutional rights, and the involved local/state agency can be held liable for this violation of constitutional rights.

“ICE Guidance for Completing FORM I-247A

San Francisco Administrative Code 12I.3(d.)

(8 U.S.C. 1373.)

SFSD Criminal Warrants Memo (Reference: 2016-037, dated March 11, 2016)