



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF  
DAVID O. LIVINGSTON  
SHERIFF - CORONER

December 1, 2017

The Honorable Alan Hanson  
Acting Assistant Attorney General  
Office of Justice Programs  
U.S. Department of Justice  
810 Seventh Street NW  
Washington, DC 20531

Dear Mr. Hanson:

Thank you for your letter dated November 15, 2017, in which you invited this Office to address issues relating to 8 USC §1373 compliance. In your letter, you expressed concern that two aspects of our Immigration Status Policy (Policy No. 1.02.28) appeared “to restrict the sending or requesting of information regarding immigration status.”

We are in compliance with 8 USC §1373, and our policy is not intended to conflict with that statute. Nevertheless, we do observe the ambiguity you point out, and we are in the process of rewriting our policy to make clear that our personnel may send to, or receive from, immigration authorities (including ICE), information regarding the immigration status, lawful or unlawful, of any individual. The rewritten policy will also provide that such information as is permitted to be sent or received pursuant to §1373 may be maintained and may be exchanged with any other federal, state, or local government entity. We expect that our new policy will be approved and be in effect on or before January 1, 2018.

As you are aware, the State of California has recently enacted SB 54 (“The California Values Act”), with which we must comply. That Act provides specifically that it,

“does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code” (at §7284.6).”

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Thus, we are able to comply with both SB 54 and 8 USC 1373.

This Office, through a long-standing contract with the Federal Government, houses detainees for the Immigration and Customs Enforcement Agency at our West County Detention Facility in Richmond, California. We have provided this facility to the Department of Homeland Security for many years and we have worked with our law enforcement partners to assure the operation of a Constitutionally compliant detention facility in accordance with California law, ICE regulations, and contractual instructions. I would respectfully encourage you to contact the leadership of the San Francisco ICE office to learn more about our working relationship in this regard.

We submit that we are in compliance with the Byrne JAG grant program requirements, as we trust you will so determine. Should you have any further questions, or should you wish to discuss this matter personally, you can reach me, or my Undersheriff, Mike Casten, at (925) 335-1510.

Sincerely,



**DAVID O. LIVINGSTON**  
Sheriff – Coroner

DOL:dk:sl

Enclosure: Draft General Policy and Procedure 1.02.28, Law Enforcement Role and Authority, Immigration Status

cc: J. McClay, AFOD, DHS/ICE/ERO San Francisco Field Office



<b>Contra Costa County Office of the Sheriff</b>  <b>General Policy and Procedure</b>	<b>CCCSO</b>	<b>NUMBER: 1.02.28</b>
	<b>RELATED ORDERS:</b> AB 4 (Trust Act), AB 2792 (Truth Act), SB 54 (California Values Act), Gov't. Code §§7282-7284.6, SB 29 Civil Code §1670.9, 8 CFR 287.7, 8 USC §1101(a)(43), 8 USC §1373, 8 USC §1644	
<b>ISSUE DATE:</b> 12-3-2013 <b>REVISION DATE:</b> 11/16/2017	<b>CLEARANCE:</b> <b>Office of the Sheriff</b>	
<b>CHAPTER:</b> <b>Law Enforcement Role and Authority</b>	<b>SUBJECT:</b> <b>IMMIGRATION STATUS</b>	

**I. POLICY.**

- A. No person shall be contacted, detained, or arrested solely on the basis of his or her immigration status.
- B. The Contra Costa County Office of the Sheriff will equally enforce the laws and serve the public without regard to immigration status. Except as specifically set forth in this Policy, the immigration status of a person, and the lack of immigration documentation, should have no bearing on the manner in which Deputies execute their duties.
- C. No Departmental funds nor personnel may be used to investigate, interrogate, detain, detect, or arrest persons *for immigration enforcement purposes*. Nevertheless, Office of the Sheriff personnel may send to, or receive from, immigration authorities (including ICE), information regarding the immigration status, lawful or unlawful, of any individual (8 USC §1373) (see IV.C.).

**II. DEFINITIONS.**

- A. **IMMIGRATION DETAINER.**  
 An Immigration Detainer is a request by the U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) that law enforcement agencies advise ICE, prior to releasing an individual, in order for ICE to arrange to assume custody for the purpose of deportation. The ICE Detainer Request is presented on ICE Form I-247A. These requests are processed in accordance with IV.E. below.

**III. GENERAL.**

- A. **IMMIGRATION ENFORCEMENT JURISDICTION.** ICE has primary responsibility to investigate and enforce federal immigration laws. Office of the Sheriff personnel shall not assist ICE in the enforcement of federal immigration laws except as set forth below. Assistance to ICE personnel in

personal distress will be provided.

1. Notwithstanding "A" above, we may investigate, enforce, or detain upon reasonable suspicion of, or arrest for a violation of 8 USC 1326(a) [illegal reentry by a previously deported or removed alien] that is detected during an unrelated law enforcement activity.
  2. We may respond to a request from immigration authorities for information about a specific person's criminal history.
  3. We may conduct enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, but only if the specific provisions set forth in Gov. Code §7284.6 (b)(3)(A) and (B) and (C) are met.
  4. We may grant immigration authorities access to interview an individual in our custody. All interview access shall comply with IV.I ("TRUTH Act Notifications").
  5. We may send to ICE, and receive from ICE information regarding the immigration status of any individual (see IV.G.). (Do not confuse information regarding immigration status with information regarding the anticipated release date of individuals with immigration status, which information may not be released except as set forth in this policy at IV.H. and IV.L.)
- B. LAW ENFORCEMENT CONTACTS. Contacts (whether consensual or not), detentions, and arrests shall be based on reasonable suspicion or probable cause. A Deputy may never initiate any law enforcement action based on observations relating to immigration status (such as lack of documentation), but such issues may, as part of several factors, be relevant to the direction and analysis of an investigation.
- C. THE CALIFORNIA VALUES ACT.
1. California law enforcement agencies shall not:
    - a. Use agency moneys or personnel to investigate, interrogate, detain, detect, or arrest persons *for immigration law purposes*, including any of the following:
      1. Inquiring into an individual's immigration status (but see III.B. above, and IV.C. below);
      2. Detaining an individual on the basis of a hold request;
      3. Providing information 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 ICE that satisfies the conditions set forth in IV.H. and IV.L.;
      4. Providing personal information about an individual, including, but not limited to, the individual's home address or work address *unless that information is available to the public*;
      5. Making or intentionally participating in arrests based on civil

- immigration warrants;
6. Performing the functions of an immigration officer, whether pursuant to 8 USC 1357(g) or any other law, regulation, or policy, whether formal or informal;
  7. Placing peace officers under the supervision of federal agencies for the purposes of immigration enforcement.
- b. Use Immigration Authorities as interpreters for law enforcement matters relating to individuals in custody.
  - c. Transfer an individual to immigration authorities unless authorized by a judicial warrant.
  - d. Provide office space exclusively dedicated for immigration authorities for use within a law enforcement facility
2. The prohibition stated in III.C.1.a. only prohibit such activities “for immigration law purposes.”
  3. The activities described in III.C.1.a.3. [Notification of release date] and in III.C.1.c. [Transfer of an individual to ICE custody] shall only occur with respect to inmates who are in custody for the specific offenses, or who have the prior convictions, that are specifically listed in IV.L.
  4. Deputies retain discretion to cooperate with immigration authorities if doing so does not violate any Federal, state, or local law or policy, and only where permitted by the California Values Act. The California Values Act permits communications between Office of the Sheriff personnel and immigration authorities “regarding the citizenship or immigration status ...of an individual?” (see IV.C.).
- D. ICE DETAINEES: The Office of the Sheriff, pursuant to a contract with the Federal government, houses ICE detainees at its West County Detention Facility in Richmond, CA. These individuals are not in our custody; they are in the custody of the Department of Homeland Security. Our duties and obligations with respect to these persons, referred to as ICE Detainees, are based on the Federal contract. This contract is authorized pursuant to Gov. Code 7310 and Civil Code §1670.9. Wherever this policy refers to, or relates to, persons in our custody, such policy provisions do not apply to ICE Detainees.

#### IV. PROCEDURES.

##### A. IMMIGRATION VIOLATION COMPLAINTS.

1. If members of the public contact the Office of the Sheriff to report suspected immigration violations, such persons should be directed to ICE.

##### B. IMMIGRATION STATUS.

1. A Deputy’s suspicion about any person’s immigration status shall not be used as a sole basis to initiate contact, detain, or arrest that person unless such status is reasonably relevant to the investigation of a crime, such as trafficking, smuggling, harboring, and terrorism.

2. Sweeps intended solely to locate and detain undocumented immigrants are not permitted. Deputies will not participate in ICE-organized sweeps to locate and detain undocumented aliens. Office of the Sheriff personnel shall not provide support services, such as traffic control, during an ICE operation.

C. COMMUNICATIONS WITH ICE.

Office of the Sheriff personnel may send to, or receive from, immigration authorities (including ICE), information regarding the immigration status, lawful or unlawful, of any individual (8 USC §1373), including specifically any alien in the United States (8 USC §1644). Such information as is permitted to be sent or received pursuant to this subsection may be maintained and may be exchanged with any other Federal, State, or local government entity (8 USC §1373). (Compliance with 8 USC §1373 and 8 USC §1644 is specifically permitted pursuant to Gov. Code 7284.6(e)).

D. WITNESSES AND VICTIMS.

1. Undocumented immigrants must feel secure that contacting the Office of the Sheriff will not put them at risk of deportation. The immigration status of crime victims or witnesses should not be probed unless it is reasonably relevant to the investigation of a crime.
2. U-Visa Nonimmigrant Status. Federal law grants immigration benefits to victims of qualifying crimes who have been helpful to the investigation and/or prosecution of the case. A law enforcement certification is prepared and issued by specifically designated administrative personnel.

E. ICE DETAINER REQUESTS.

The Office of the Sheriff regularly receives Immigration Detainer requests on ICE Form I-247A. A detainer serves to advise that ICE seeks both notification of the anticipated release of a removable alien from custody and his or her continued detention in order for ICE to arrange to assume custody. The request to detain will *not* be honored (see IV.G.). The request to Notify will be honored only under the circumstances set forth in IV.H. and IV.L. below.

- F. TRUST ACT. The Trust Act (AB 4) provides that a person may not be held in custody solely on the basis of an immigration detainer if he or she is otherwise eligible to be released from custody, unless at the time the individual becomes eligible for release from custody certain conditions are met. "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; or
- b. The individual has been acquitted of all criminal charges filed against him or her; or
- c. The individual has served all the time required for his or her sentence; or
- d. The individual has posted a bond; or



- e. The individual is otherwise eligible for release under state or local law, or local policy.
- G. IMMIGRATION DETAINERS. Inmates who are eligible for release from custody shall *not* be held, pursuant to an immigration hold, beyond the time he or she would otherwise be released.
- H. IMMIGRATION NOTIFICATION. The Office of the Sheriff will provide release information in response to individual-specific ICE requests for notification (ICE Form I-247A), but only in compliance with the conditions set forth in IV.L. Individuals meeting the conditions set forth in IV.L. will be released to ICE custody (but never detained to do so), if immigration authorities are present at our facility's Release Window at the time of an individual's release.
1. Individuals meeting the conditions set forth in IV.L. and released to ICE custody at the time of their release, may not be converted into ICE Detainees. Immigration authorities desiring to house such persons as ICE Detainees at WCDF must escort such persons outside of our facility, and then return them, via Intake, to be newly booked as ICE Detainees for transport to WCDF.
- I. TRUTH ACT NOTIFICATION (Gov't Code 7283.1; AB-2792). Upon receiving any ICE notification request on Form I-247A, the named inmate shall be provided a copy of the respective form. If ICE is to be notified of the proposed release of an inmate, he or she shall be notified as well. Additionally, efforts will be made to notify the inmate's attorney or an additional person of the inmate's choosing.
- a. Immigration authorities shall be granted access to interview inmates following compliance with the Truth Act notification provision: In advance of any interview between ICE and an inmate, the inmate shall be provided with a written consent form either consenting or declining to participate in the interview. Standardized copies of this form are available (under the heading AB 2792 Forms) at [http://www.bsec.ca.gov/m\\_divisions.php](http://www.bsec.ca.gov/m_divisions.php)
- J. EQUALITY OF ACCESS. All persons arrested for a criminal offense and held in our custody will have equal access to custody programs if otherwise program-eligible.
- K. COURT ORDERS. Court Orders and warrants are entirely separate and should not be confused with Form I-247A requests. Duly issued warrants will, in all cases, be honored.
- L. CONDITIONS FOR ICE NOTIFICATION. ICE requests for notification of the anticipated release date of an inmate will be honored only with respect to inmates who are being held for certain charges or who have specific prior convictions.
1. These conditions include (but are not limited to) inmates who have been *convicted* of (i) of a **serious felony** [PC 1192.7(c)] or a **violent felony**, [PC 667.5(c)] (see listing below).
- a. As used in PC 1192.7(c), "**serious felony**" means any of the

following:

- (1) murder or voluntary manslaughter
- (2) mayhem
- (3) rape
- (4) 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
- (5) 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
- (6) lewd or lascivious act on a child under 14 years of age
- (7) any felony punishable by death or imprisonment in the state prison for life
- (8) 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
- (9) attempted murder
- (10) assault with intent to commit rape or robbery
- (11) assault with a deadly weapon or instrument on a peace officer
- (12) assault by a life prisoner on a non-inmate
- (13) assault with a deadly weapon by an inmate
- (14) arson
- (15) exploding a destructive device or any explosive with intent to injure
- (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem
- (17) exploding a destructive device or any explosive with intent to murder
- (18) any burglary of the first degree
- (19) robbery or bank robbery
- (20) kidnapping
- (21) holding of a hostage by a person confined in a state prison
- (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life
- (23) any felony in which the defendant personally used a dangerous or deadly weapon
- (24) 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, or any of the precursors of methamphetamines
- (25) any violation of PC 289(a) 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
- (26) grand theft involving a firearm
- (27) carjacking
- (28) any felony offense, which would also constitute a felony violation of PC 186.22
- (29) assault with the intent to commit mayhem, rape, sodomy,



- or oral copulation
- (30) throwing acid or flammable substances
- (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter
- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft
- (34) commission of rape or sexual penetration in concert with another person
- (35) continuous sexual abuse of a child
- (36) shooting from a vehicle
- (37) intimidation of victims or witnesses
- (38) criminal threats
- (39) any attempt to commit a crime listed in this subdivision other than an assault
- (40) any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies]
- (41) a violation of subdivision (b) or (c) of Section 11418
- (42) any conspiracy to commit an offense described in this subdivision
- (43) And any offense committed in another state, which if committed in California, would be punishable as a listed serious felony

b. As used in PC 667.5(c), "violent felony" means any of the following:

- (1) Murder or voluntary manslaughter
- (2) Mayhem
- (3) Rape
- (4) Sodomy
- (5) Oral copulation
- (6) Lewd or lascivious act
- (7) Any felony punishable by death or imprisonment in the state prison for life
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved, or any felony in which the defendant uses a firearm which use has been charged and proved
- (9) Any robbery
- (10) Arson
- (11) Sexual penetration
- (12) Attempted murder
- (13) A violation of PC 18745, 18750, or 18755 (explosives)
- (14) Kidnapping
- (15) Assault with the intent to commit a specified felony, in violation of Section 220
- (16) Continuous sexual abuse of a child
- (17) Carjacking

- (18) Rape, spousal rape, or sexual penetration
- (19) Extortion, which would constitute a felony violation of PC 186.22
- (20) Threats to victims or witnesses, which would constitute a felony violation of PC 186.22
- (21) Any burglary of the first degree, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary
- (22) Any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies]
- (23) A violation of PC 11418(b) or (c)(weapon of mass destruction)
- (24) And any offense committed in another state, which if committed in California, would be punishable as a listed violent felony

2. Notification requests will be honored for any conviction or prior conviction for a felony punishable by imprisonment in the state prison.
3. Notification requests will be honored for any conviction or prior conviction for which the person is required to register on the California Sex and Arson Registry (CSAR) as a sex offender pursuant to PC 290 or as an arson offender pursuant to PC 457.1
4. Notification requests will be honored for (i) any **felony conviction** within the last 15 years, or (ii) any misdemeanor conviction within the past five years, that is punishable as either a misdemeanor or a felony (i.e.: "wobbler") involving the following specified crimes:
  - (A) Assault
  - (B) Battery
  - (C) Use of threats
  - (D) Sexual abuse, sexual exploitation, or crimes endangering children
  - (E) Child abuse or endangerment
  - (F) Burglary, robbery, theft, fraud, forgery, or embezzlement
  - (G) Driving under the influence of alcohol or drugs, but only for a felony conviction
  - (H) Obstruction of justice
  - (I) Bribery
  - (J) Escape
  - (K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction
  - (L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (PC 16000)
  - (M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances
  - (N) Vandalism with prior convictions
  - (O) Gang-related offenses
  - (P) An attempt, or any conspiracy, to commit an offense specified in this section

- (Q) A crime resulting in death, or involving the personal infliction of great bodily injury
- (R) Possession or use of a firearm in the commission of an offense
- (S) An offense that would require the individual to register as a sex offender
- (T) False imprisonment, slavery, and human trafficking
- (U) Criminal profiteering and money laundering
- (V) Torture and mayhem
- (W) A crime threatening the public safety
- (X) Elder and dependent adult abuse
- (Y) A hate crime
- (Z) Stalking
- (AA) Soliciting the commission of a crime
- (AB) An offense committed while on bail or released on his or her own recognizance
- (AC) Rape, sodomy, oral copulation, or sexual penetration
- (AD) Kidnapping
- (AE) A violation of CVC 20001(c)

5. Notification requests should also be honored for any federal conviction of any crime that meets the definition of an aggravated felony as set forth in the Immigration and Nationality Act (8 U.S.C. Sec. 1101 at Section 1101(a)(43)(A) to (P). The full listing of specified crimes follows:

The term "aggravated felony" means --

- (A) murder, rape, or sexual abuse of a minor
- (B) illicit trafficking in a controlled substance
- (C) illicit trafficking in firearms or destructive devices
- (D) laundering of monetary instruments if the amount of the funds exceeded \$10,000
- (E) an offense relating to explosive materials
- (F) a crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year
- (G) a theft offense or burglary offense for which the term of imprisonment is at least one year
- (H) the demand for or receipt of ransom
- (I) child pornography
- (J) racketeer influenced corrupt organizations or gambling offenses, for which a sentence of one year imprisonment or more may be imposed
- (K) owning, controlling, managing, or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons
- (L) gathering or transmitting national defense information relating to disclosure of classified information relating to sabotage, relating to treason, relating to protecting the identity of undercover intelligence agents or relating to protecting the identity of undercover agents
- (M) fraud or deceit in which the loss to the victim or victims exceeds \$10,000; tax evasion in which the revenue loss to the Government exceeds \$10,000



- (N) alien smuggling (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent)
- (O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph
- (P) falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument and for which the term of imprisonment is at least 12 months (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual.)

DRAFT