



Monterey County Sheriff's Office

General Order No: 14-01

SUBJECT: DETENTION OF UNDOCUMENTED PERSONS.

EFFECTIVE: 05/09/2014

- I. PURPOSE:** To provide staff with guidelines on their duties and responsibilities associated with detention and release of foreign nationals and the application of immigration law, enforcement, arrests, and detentions.
- II. POLICY:** The Monterey County Sheriff's Office will equally enforce laws and serve the public without consideration of immigration status. Except as specifically outlined in this General Order, the immigration status of a person has no bearing on the manner in which staff execute their duties.

Under no circumstances shall a person be contacted, detained, or arrested by agency members based solely on his/her immigration status whether known or unknown.

III. Guidelines:

- 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. Monterey County Sheriff's personnel may assist ICE in the enforcement of federal immigration laws upon its specific request and in those situations where ICE initiated investigations have led to the discovery of criminal violations of California law. Assistance to ICE will also be provided in response to officer safety issues or emergency requests for immediate assistance.
- B.** Detentions and arrests shall be based on reasonable suspicion, probable or consensual cause in a manner prescribed by law. Staff shall not initiate law enforcement action based solely on observations related to a subject's immigration status.

This General Order allows inquiries as to a person's immigration status where necessary to thoroughly investigate a criminal activity. Inquiries will be based on a "need to know" to complete investigations of criminal violations. Examples of when these inquiries may be needed, include, but are not limited to, investigations into human trafficking, smuggling, harboring, and terrorism.

- IV. ORDER:** When Monterey County Sheriff's staff encounters perceived immigration law violations, members shall be guided by the options set forth in this General Order, which is in compliance with state law.
- A. IMMIGRATION VIOLATION COMPLAINTS:**
1. If members of the public contact any member of the Monterey County Sheriff's Office to report suspected immigration violations, such persons should be directed to ICE.
- B. IMMIGRATION STATUS:**
1. Staff's suspicion about any person's immigration status shall not be used as the basis to initiate contact, detain, or arrest that person unless such status is

reasonably relevant to the investigation of a crime, such as, but not limited to, trafficking, smuggling, harboring, and/or terrorism.

2. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted. Staff will not participate in ICE organized sweeps to locate and detain undocumented residents. This does not preclude staff from assisting ICE during criminal investigations, critical incidents or emergency requests for assistance. Each level of assistance will be evaluated by the on-scene supervisor to ensure the Sheriff's Office's level of participation remains consistent with this order while protecting human life and property.
3. Deputies shall inquire into a whether or not a person placed under arrest for any reason is a foreign national for the purpose of consular notification as required by section 834c P.C. and Article 36 of the 1963 Vienna Convention.

C. ESTABLISHING IDENTITY:

1. Staff should utilize all resources to identify any person they detain, arrest, or who comes 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 their identity as required by 853.6 P.C.

D. ICE IMMIGRATION DETAINEES:

1. The Monterey County Sheriff's Office regularly receives immigration detainer requests (Form I-247) from ICE. A detainer serves to advise that ICE seeks custody of an individual in the custody of the Sheriff's Office. The detainer requests the Sheriff's Office to notify ICE, prior to releasing the individual, in order for ICE to arrange to assume custody. These detainer requests will be honored only within the guidelines established in this General Order.
2. As a result of Court decisions in the following cases *Miranda-Olivares v. Clackamas County* (2014), *Morales v. Chadbourne* (2014), *Garza v. Szalczyk* (2014), *Buquer v. City of Indianapolis* (2011) which found that ICE Detainers are voluntary and non-binding instruments. No 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. "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; or
 - c. The individual has served all the time required for their sentence; or
 - d. The individual has posted a bond; or
 - e. The individual is otherwise eligible for release under state or local law
3. ICE IMMIGRATION DETAINERS. Immigration detainers shall not be honored based solely on a subject's immigration status. The Trust Act allows immigration detainers to be honored for convictions for certain felony offenses listed in Government Code 7282.5(a). Immigration detainers shall only be honored by the Monterey County Sheriff's Office under the following conditions:
 - a. ICE requests an immigration hold be placed on a detainee and provide an affidavit of probable cause stating the person is being held for a criminal violation or an warrant issued by a state or federal magistrate to hold the person. The detainer shall only be honored until the criminal proceedings brought by ICE are adjudicated or ICE removes the person from custody.

- b. If one of these conditions is met an individual shall be detained only if such detention does not conflict with federal, state, or local law or local policy.

E. ICE REQUESTS TO HOLD DETAINEES:

- 1. MCSO may honor immigration detainers (Form I-247) issued by ICE consistent with section D above. When MCSO receives an ICE immigration detainer on a subject in our custody on local charges, the subject will be booked on the new offense(s) consistent with the appropriate criminal charge(s). When the detainee becomes eligible for release on the local charges, a records check shall be conducted by the Lobby or Desk Correctional Specialist (CS) similar to any other subject to be released from custody. The CS shall be responsible for the following:
 - a. Check jail records to ensure the detained subject has no further criminal matters pending in Monterey County, detainers, or active warrants from other jurisdictions and is eligible for release.
 - b. Evaluate the ICE immigration detainer and verify that it is complete and valid and ensure the proper documentation is present in Section D, 3 is present.
 - c. Notify the Main Jail or Rehab Sergeant of the findings and provide supporting documentation. The Main Jail or Rehab Sergeant will immediately evaluate the information and authorize the release or continued detention of the subject based on this policy and current law.
 - d. If the Main Jail or Rehab Sergeant determines ICE has not provided and affidavit of probable cause or warrant to mandate the continued detention of the individual, the CS will process the subject for release as soon as possible in the manner that all persons are normally released from the jail.
 - e. If the Main Jail or Rehab Sergeant determines the subject is eligible to be held for ICE, ICE shall be notified and request that they remove their lawfully detained person from the Monterey County Jail within forty-eight (48) hours.
- 2. ICE detainees in the custody of the Sheriff's Office will receive all the rights and privileges consistent with a county inmate.
- 3. Valid warrants of arrest, regardless of crime, shall be treated equally and will not be confused with an immigration detainer. This General Order does not affect the proper handling of arrests and detentions associated with arrest warrants.

F. ICE ACCESS TO CUSTODY RECORDS

- 1. ICE staff shall only be provided access to information from the booking packet that is a public record, unless a subpoena or court order is provided. ICE shall only be allowed to view those documents that they individually request. ICE may be provided a list of inmates in the custody of the Monterey County Jail when one is available.

G. U Visas

- 1. The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and

are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.

2. Investigators shall provide information to ICE for the processing of U Visa's.