



El Segundo Police Department

Training Section

348 Main Street, El Segundo, CA 90245

Phone (310) 524-2200

TRAINING BULLETIN

Date: September 22, 2015

Subject: ICE Detainers

OVERVIEW

Based on a recent federal court case decision¹ in the state of Oregon, along with ICE bulletins and the published opinion of the CA Attorney General (14-01), ICE detainers are not to be regarded as mandatory, and shall be treated as an agency REQUEST only. As such, arrestees shall not be detained by this Department beyond their release date from other criminal charges based solely on an ICE detainer, unless the detainer request is accompanied by documentation of a judicially approved Probable Cause Determination (PCD) or by a court issued warrant for the arrest or deportation of the arrestee.

If the arrestee is being held on an open charge, the ICE hold will be attached and the arrestee sent to court on the open charge. Do not prevent an arrestee from being bonded out due to the sole reason of having an ICE hold.

CA AG POSITION


Both the federal government and the CA Attorney General have taken the position that an ICE Detainer is not a mandate. Local governments will expose themselves to liability in an effort to support a federal regulation which is merely a request.

DIRECTIVE

Department Officers and jail staff are directed NOT to hold individuals or deny bond solely based on ICE detainers. Officers are directed not to take individuals into custody based solely on an ICE detainer. An ICE hold is solely a request and is not to be interpreted as a judicial order. If the arrestee has an open charge, the ICE hold will be attached and the arrestee sent to court on the open charge.

ATTACHMENTS: 1. AG Information Bulletin, 2. ICE Detainer

¹ Miranda-Olivares v. Clackamas County, April 11, 2014

<p>California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Larry Wallace, Director, Division of Law Enforcement</p>		<h1 style="margin: 0;">INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Responsibilities of Local Law Enforcement Agencies under Secure Communities and the TRUST Act</p>	<p>No. 14-01</p>	<p><i>Contact for information:</i></p>	
	<p><i>Date:</i> June 25, 2014</p>	<p>Larry Wallace, Director, Division of Law Enforcement 916-319-8200</p>	

TO: Executives of State and Local Law Enforcement Agencies

The purpose of this bulletin is to update information provided in Information Bulletin No. 2012-DLE-01, dated December 4, 2012, titled “Responsibilities of Local Law Enforcement Agencies under Secure Communities.” In that Bulletin, we outlined the responsibilities of state and local law enforcement agencies regarding custody of undocumented immigrants subject to federal detainer requests. We clarified that federal detainers issued under the Secure Communities program are not mandatory, but are merely requests enforceable *at the discretion of the local law enforcement agency* holding the individual arrestee.

Since then, effective January 1, 2014, the “Transparency and Responsibility Using State Tools Act” (TRUST Act) has been enacted into California law. (Gov. Code, §§ 7282, 7282.5; Stats. 2013, ch. 570.) The TRUST Act limits the discretion of law enforcement officials to detain an individual pursuant to a federal immigration detainer request unless certain conditions are met. Additionally, new federal case law has created legal risk for local jurisdictions that voluntarily comply with an Immigration and Customs Enforcement (ICE) request to detain an individual. In summary:

- Jurisdictions that choose to comply with ICE detainer requests may only do so in circumstances that meet the TRUST Act’s enumerated conditions;
- The TRUST Act does not affect obligations under Health and Safety Code section 11369, which requires federal notification when an arrest is made for specified controlled substances offenses and there is reason to believe the individual may not be a citizen of the United States;
- New case law and the TRUST Act only limit discretion to *detain* individuals and do not affect local law enforcement agency discretion to provide information to or otherwise cooperate with federal immigration officials; and
- A federal court outside of California’s jurisdiction has held a county liable for damages where it voluntarily complied with an ICE request to detain an individual, and the individual was otherwise eligible for release. If courts with jurisdiction affecting California follow the decision reached by this court, local law enforcement agencies may also be held liable for such conduct.

TRUST Act Conditions for Retaining Custody of Detained Individuals

The TRUST Act provides that continued detention pursuant to an ICE detainer request is authorized only if two conditions are met. First, the continued detention must “not violate any federal, state, or local law, or any local policy,” and second, the detainee’s criminal history must include one of the following:

- Has been convicted of a serious felony or violent felony identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code or has been convicted of an offense that was committed in another state which, if committed in California, would be punishable as a serious felony

or violent felony as defined by in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code;

- Has been convicted of a felony punishable by imprisonment in state prison;
- Has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony;
- Has been convicted at any time of a felony for any of the offenses listed in Government Code section 7282.5, subdivision (a)(3);
- Is a current registrant on the California Sex and Arson Registry;
- Is arrested and taken before a magistrate on a charge involving: (1) a serious or violent felony identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code; (2) a felony punishable by imprisonment in state prison, other than domestic violence; or (3) a felony for any of the offenses listed in Penal Code section 7282.5, subdivision (a)(3), other than domestic violence; and the magistrate makes a finding of probable cause as to that charge;
- Has been convicted of a federal crime that meets the definition of aggravated felony under the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(A)-(P); or
- Is identified by ICE as the subject of an outstanding federal felony arrest warrant.

(Gov. Code, § 7282.5, subd. (a).)

Only if both of these conditions are met, then local law enforcement may continue to detain the individual for up to 48 hours (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody. If one of these conditions is not satisfied, then an immigration detainer will not support the continued detention of an individual otherwise eligible for release, and under the TRUST Act, the individual shall not be detained on the basis of the detainer after the individual otherwise becomes eligible for release from custody.

The TRUST Act Does Not Affect Notification Obligations Under Health and Safety Code Section 11369

Health and Safety Code section 11369 provides that arresting agencies shall notify the appropriate federal agency (ICE) when there is reason to believe that a person arrested for violating a specified controlled substances offenses may not be a citizen of the United States. (See Health & Safety Code, § 11369.) The listed offenses are violations of sections 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550 of the Health and Safety Code. Compliance with section 11369 only requires notification to ICE; it does not permit continued detention solely on the basis of an arrest for one of the specified offenses above.

ICE and Federal Court Rulings Confirm That ICE Detainer Requests Are Not Mandatory

Again, satisfaction of the TRUST Act conditions for compliance with ICE immigration detainer requests does not mean that compliance is mandatory. As we explained in Bulletin No. 2012-DLE-01, law enforcement agencies in California are not required to fulfill an ICE immigration detainer. Recent court rulings and correspondence from ICE's Acting Director have further confirmed that ICE immigration detainers are not mandatory. In a February 25, 2014, letter to Representative Mike Thompson, Acting ICE Director Daniel H. Ragsdale stated that “[w]hile immigration detainers are an important part of ICE’s effort to remove criminal aliens who are in federal, state, or local custody, they are not mandatory as a matter of law.”

In a March 4, 2014, ruling, the Third Circuit Court of Appeals held that ICE detainers are voluntary requests. (*Galarza v. Szalczyk* (3rd Cir. 2014) 745 F.3d 634.) The court concluded that “immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal” and that the county in that case was “free to disregard the ICE detainer.” (*Id.* at pp. 636, 645.) The court specified

that settled constitutional law clearly establishes that immigration detainers must be deemed requests, citing the Tenth Amendment concerns that were explained in Bulletin No. 2012-DLE-01. (*Id.* at pp. 643-645.)

A federal court in Oregon also recently held that ICE detainers are voluntary requests, relying on the reasoning in *Galarza* and on this office's December 4, 2012 Information Bulletin. (*Miranda-Olivares v. Clackamas Co.* (D.Or. April 11, 2014, No. 3:12-cv-02317-ST) [2014 WL 1414305].) Accordingly, subject to federal and state limitations described above, in circumstances where compliance with ICE immigration detainers is permitted, an agency may use its discretion whether to devote resources to holding a suspected undocumented immigrant on behalf of the federal government. California law enforcement agencies should consider the merits of each request carefully, consider whether the individual may be dangerous and pose a public safety risk, and take the course of action that best protects public safety.

Jurisdictions May Be Exposed to Liability If They Voluntarily Comply with ICE Detainer Requests

The *Miranda-Olivares* court held, consistent with Information Bulletin No. 2012-DLE-01, that local authorities can choose to comply with a request from ICE, but are not required to do so by law. The court also held that because compliance with an ICE detainer is voluntary rather than mandatory, a local agency could violate the Fourth Amendment by detaining an individual solely based on the request of ICE, without some other probable cause for arrest.

No state or federal court with California jurisdiction has yet ruled on whether detentions authorized under the TRUST Act, but solely based on the request of ICE, violate the Constitution. If a California court adopts the reasoning of the district court in *Miranda-Olivares*, local jurisdictions may be held liable for damages for such a detention.

Further, compliance with the TRUST Act may not immunize local jurisdictions from liability. As described above, the TRUST Act permits a law enforcement official to detain an individual on the basis of an immigration hold after that individual becomes otherwise eligible for release from custody only if the continued detention would "not violate any federal law . . ." (Gov. Code, § 7282.5, subd. (a).) If continued detention is found to violate the Fourth Amendment, it would therefore likely be no defense for the local jurisdiction to argue that it was acting under the authority of the TRUST Act.

Federal Case Law and the TRUST Act Do Not Limit Other Cooperation with Immigration Officials

The *Miranda-Olivares* holding and the TRUST Act only affect discretion to *detain* individuals. They do not affect a law enforcement agency's discretion to otherwise cooperate with federal immigration officials. Specifically, law enforcement officials may provide information to ICE, including notification of the date that an individual will be released, as requested on an immigration detainer form. Federal law provides that state and local governments may not be prohibited from providing information to or receiving information from ICE. (8 U.S.C. §§ 1373, 1644; see also 75 Ops.Cal.Atty.Gen. 270, 277 (1992) [concluding that a city may not prohibit its officers and employees from cooperating in their official capacities with immigration officials].)

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(15-2021)

DEPARTMENT OF HOMELAND SECURITY (DHS)
IMMIGRATION DETAINER - REQUEST FOR VOLUNTARY ACTION

Subject ID: 353604439
Event #: WSM1508001444

File No: 200 246 212
Date: August 23, 2015

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency) EL SEGUNDO POLICE DEPT. 348 MAIN ST. EL SEGUNDO, CA 902453885

FROM: (DHS Office Address) DRO - Westminster, CA Sub Office ICE ERO LAGUNA NIGUEL SUB OFFICE 24000 AVILA RD RM# 3400

FBI: 827087936, SID: CA11878053

Name of Subject: PEREZ-LOPEZ, ALEX YOBARRI

Date of Birth: 11/26/1980 Citizenship: HONDURAS Sex: M

1. DHS HAS DETERMINED THAT (mark at least one option in subsection A and one option in subsection B, or skip to section 2):

- A. THE SUBJECT IS AN IMMIGRATION ENFORCEMENT PRIORITY BECAUSE HE/SHE:
[] has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;
[] has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is at least 16 years old and intentionally participated in an organized criminal gang to further its illegal activities;
[] has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the alien's immigration status;
[] has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43) at the time of conviction;
[X] has been convicted of a "significant misdemeanor," as defined under DHS policy; and/or
[] has been convicted of 3 or more misdemeanors, not including minor traffic offenses and state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.

B. PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON:

- [] a final order of removal against the subject;
[] the pendency of ongoing removal proceedings against the subject;
[X] biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
[X] statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE SUBJECT TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION.

- [] Upon completion of the proceeding or investigation for which the subject was transferred to your custody, DHS intends to resume custody of the subject to complete processing.

IT IS THEREFORE REQUESTED THAT YOU:

- Serve a copy of this form on the subject and maintain custody of him/her for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. This request takes effect only if you serve a copy of this form on the subject, and it does not request or authorize that you hold the subject beyond 48 hours. This request arises from DHS authorities and should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
• As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling [X] U.S. Immigration and Customs Enforcement (ICE) or [] U.S. Customs and Border Protection (CBP) at 2138304925. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
• Notify this office in the event of the subject's death, hospitalization or transfer to another institution.

- [] If checked: Please cancel the detainer related to this subject previously submitted to you on _____ (date).

B 2259 WOJCIK - IEA

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

Notice: If the subject is taken into DHS custody, he or she may be removed from the United States. If the subject may be the victim of a crime or you want the subject to remain in the United States for a law enforcement purpose, please notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing, or faxing a copy to _____.

Local Booking/Inmate #: _____ Est. release date/Time: _____ Date of latest criminal charge/conviction: _____

Latest offense charged/convicted: _____

This Form I-247D was served upon the subject on _____, in the following manner:

- [] in person [] by inmate mail delivery [] other (please specify): _____

(Name and title of Officer)

(Signature of Officer)

DHS Form I-247D (5/15)

RECORD

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian (the agency that is holding you now) to inquire about your release. If you have a question or complaint regarding this detainer, please contact the ICE ERO Detention Reporting and Information Line at (888) 351-4024. For complaints related to alleged violations of civil rights or civil liberties connected to DHS activities, please contact the Joint Intake Center at (877) 2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-8903.

NOTIFICACIÓN AL DETENIDO

El Departamento de Seguridad Nacional (DHS) ha emitido una orden de detención migratoria en su contra. Una orden de detención migratoria es un aviso a la autoridad de seguridad pública que DHS tiene la intención de asumir custodia sobre usted (después que normalmente hubiera sido liberado de su custodia) porque existe causa probable que usted esté sujeto a ser removido de los Estados Unidos bajo la ley federal de inmigración. DHS ha pedido que la autoridad de seguridad pública que actualmente lo tiene detenido lo mantenga en su custodia por un periodo que no sobrepase 48 horas después del momento cuando usted hubiera sido liberado basado en sus cargos o condenas criminales. Si DHS no lo toma bajo su custodia durante este periodo adicional de 48 horas, usted debe contactar a la agencia responsable por su custodia (la que actualmente lo tiene detenido) para preguntar acerca de su liberación. Si usted tiene alguna pregunta o queja concerniente a esta orden de detención, por favor contacte la Línea para Reportar e Información de ICE ERO al (888) 351-4024. Para quejas relacionadas a violaciones alegadas de derechos civiles o libertades civiles conectadas a las actividades de DHS, por favor contacte al Joint Intake Center (Centro de Admisión) al (877) 2INTAKE (877-246-8253). Si usted cree ser un ciudadano de los Estados Unidos o víctima de un crimen, por favor avísele a DHS llamando gratis al ICE Law Enforcement Support Center (Centro de Apoyo de ICE para las Agencias para el Cumplimiento de la Ley) al (855) 448-8903.

AVIS AU DETENU

Le Département de la Sécurité Nationale (en anglais: DHS) a émis un ordre d'arrêt d'immigration contre vous. Un ordre d'arrêt d'immigration est un avis à un organisme d'application de la loi que DHS a l'intention d'assumer votre garde (après votre libération) car il existe cause probable que vous soyez sujet à l'expulsion des Etats-Unis en vertu du droit fédéral de l'immigration. DHS a demandé à l'agence d'application de la loi qui actuellement vous détient, de vous maintenir sous garde pendant une période n'excédant pas 48 heures après avoir été libéré en fonction des accusations ou condamnations criminelles contre vous. Si DHS ne vous prend pas en garde à vue au cours de cette période de 48 heures supplémentaires, vous devez contacter votre gardien (l'agence qui vous retient aujourd'hui) pour enquêter au sujet de votre libération. Si vous avez une question ou une plainte au sujet de cette demande, veuillez contacter la Ligne pour Rapporter et d'Information de ICE ERO au (888) 351-4024. Pour les plaintes relatives à des violations présumées des droits et libertés civils liés à des activités de DHS, veuillez contacter Joint Intake (Centre d'Admissions) au (877) 2INTAKE (877-246-8253). Si vous croyez que vous êtes un citoyen américain ou victime d'un crime, veuillez prévenir DHS, en appelant gratuitement ICE Law Enforcement Support Center (Centre d'Appui de ICE pour les Organismes d'Application de la Loi) au 855 448-8903.

AVISO AO DETENTO

O Departamento de Segurança Interna (DHS, pela sigla americana) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de aplicação da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja libertado. O DHS pediu que a agência de aplicação da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas após o período em que seria libertado pelas autoridades estaduais ou municipais de aplicação da lei, de acordo com as respectivas acusações e penas criminais. Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, você deverá entrar em contato com a agência custodiante (a agência de aplicação da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua libertação da custódia estadual ou municipal. Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o *Joint Intake Center*, que seja o Centro de Entrada Conjunta da Agência de Controis de Imigração e Alfândega (ICE, pela sigla americana) pelo telefone 1-877-246-8253. Se você acreditar que é cidadão dos EUA ou está sendo vítima de um crime, informe ao DHS, ligando para o *Law Enforcement Support Center*, que seja o Centro de Apoio para Aplicação da Lei do ICE pelo telefone de ligação gratuita (855) 448-8903.

THÔNG BÁO CHO NGƯỜI ĐANG BỊ GIAM

Bộ An ninh Nội địa Mỹ (DHS) có lệnh giam giữ ông/bà vì lý do liên quan đến luật di trú. Lệnh giam giữ vì lý do liên quan đến luật di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định dành thẩm quyền để tạm giữ ông/bà (sau khi ông/bà được thả). Lý do là, theo luật di trú của liên bang Mỹ, DHS có lý do chính đáng để xếp ông/bà vào diện có thể bị trục xuất ra khỏi Mỹ. DHS đã yêu cầu cơ quan thi hành luật pháp, nơi đang giam ông/bà, phải tiếp tục giam ông/bà thêm cho đến tối đa không được quá 48 tiếng đồng hồ, thời điểm mà ông/bà coi như đã được thả, căn cứ vào lời buộc tội hoặc bản án kết tội của tòa. Nếu trong vòng 48 tiếng đồng hồ bổ sung này mà DHS không đến nhận ông/bà, thì ông/bà nên liên lạc với nhân viên quản lý của mình (nơi đang giam giữ ông/bà) để biết chi tiết và vấn đề được thả ra khỏi nhà giam. Nếu ông/bà có thắc mắc hoặc khiếu nại về lệnh tạm giữ này, xin liên lạc với ICE ERO Detention Reporting and Information Line ở số (888) 351-4024. Nếu ông/bà có phàn nàn về các hoạt động, công tác của DHS mà ông/bà cho là có vi phạm đến dân quyền hoặc tự do dân quyền, xin liên lạc Joint Intake Center ở số (877) 2INTAKE (877-246-8253). Nếu ông/bà tin rằng mình có quốc tịch Mỹ, hoặc mình là nạn nhân trong vụ tội, xin gọi ICE Law Enforcement Support Center ở số điện thoại miễn phí (855) 448-6903 để báo cho DHS biết.

對扣留者的通告

美国国土安全部 (DHS) 已發出一張扣留令。對你進行扣留。移民扣留令的目的是告訴執法機關現在DHS 有權力扣押你 (在你被关押的部門釋放之後) 因為根據美國聯邦移民法, 我們有頗能成立的因由可將你遣送出境。DHS 已向扣留你的有關執法機關提出要求在你刑事控罪及定罪後被釋放的48小時內對你繼續進行扣留。如果在這48小時內DHS沒有扣押你, 那你可以聯絡你的保管人 (現关押你的部門) 查詢有關你釋放的事。如果你對這扣留令有任何問題或投訴, 請聯絡ICE ERO 拘留報告信息熱線 (888) 351-4024。任何有關DHS涉嫌違反民權或民權自由行為的投訴, 請联系美国移民及海關執法局聯合接待中心 (ICE Joint Intake Center) (877) 2INTAKE (877-246-8253)。如果你相信你是美国公民或是受害者, 請联系美国移民及海關執法局的執法支援中心 (ICE Law Enforcement Support Center) 告知DHS, 其免費電話號碼是 (855) 448-6903。