



# San Benito County Sheriff's Office Corrections Division

Lt. Edward A. Escamilla, Corrections Commander

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## Memorandum

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DATE: July 11, 2014  
TO: All Correctional Staff  
FROM: Lt. Edward Escamilla  
RE: I.C.E. Detainers

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Effective immediately, the San Benito County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainees. Please read the Executive Order written by Sheriff Thompson.

**If anyone inquires if we honor I.C.E. detainees we are to advise him or her that we do not honor them.**

Thank you,



Lt. Edward Escamilla  
Division Commander



## SAN BENITO COUNTY SHERIFF'S OFFICE

2301 TECHNOLOGY PARKWAY HOLLISTER, CALIFORNIA 95023  
PHONE: 831-636-4080 FAX: 831-636-1416

Darren Thompson  
Sheriff- Coroner

Date: July 10, 2014

To: All Department Personnel

From: Sheriff D. Thompson

A handwritten signature in blue ink, appearing to read "D. Thompson", written over the printed name.

Subject: **ICE Detainers and the Secure Communities and the Trust Act**

As most of you are aware, there has been a lot of discussion regarding California's Secure Communities and the "Trust Act" (Transparency and Responsibility Using State Tools- California Government 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.

In light of a couple of Federal Court Rulings, (*Miranda-Olivares v. Clackamas Co. OR.*, *Galarza v. Szalczyc: City of Allentown PA., et al.*) and the acting Director of ICE indicating that "immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal". The California Attorney General issued an information bulletin on June 25, 2014 stating "because compliance with an ICE detainer is voluntary, a local agency could violate the Fourth Amendment by detaining an individual solely on the request of ICE, without some other probable cause for arrest"

I have received a "Client Alert Memorandum" from Martin J. Mayer Esq. of Jones & Mayer dated July 8, 2014. In that memorandum, Mr. Mayer states "*we advise our clients to NOT honor ICE detainers unless there has been a probable cause hearing (which involves more than the arraignment).*"

Based on the above information it is the directive of the Sheriff that no individual shall be detained by the San Benito County Sheriff's Office based solely on an ICE detainer not supported with a warrant issued by a magistrate based on probable cause.

In response to your Public Records Request dated January 24, 2014; I am providing you with all records pertaining to your request numbered as number one; "Any and all records related to implementing and complying with the California TRUST Act, Assembly Bill 4".

The San Benito County Sheriff's Office Corrections Division does not have a current policy in relations to AB 4. We are in contract with Lexipol and a new policy is in the draft stages. Lexipol is America's leading provider of risk management policies and resources for organizations, delivering services through a unique, web-based development system. Lexipol offers state-specific policy manuals that are integrated with scenario-based daily training on high-risk, low-frequency events.

Because the San Benito County jail has no current policy regarding the implantation of AB 4, the San Benito County Jail has been following the recommended standards found in the AB 4, Chapter 17.1., Standards for Responding to United States Immigration and Customs Enforcement Holds.

Correctional Sergeants have been verbally instructed to follow the standards written in AB 4. For further assistance, Assembly Bill 4 documents were provided to staff. (see attachment ab\_4\_bill\_20131005).

## Response to request # 2

The San Benito 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 AB 4.

The San Benito County Jail uses a Jail Management System that tracks all holds, including ICE holds. A hard copy (Form I-247) is given to correctional staff by an ICE officer, the correctional deputy will then place a hold into the JMS and the hard copy is placed in the inmates file. The San Benito County Jail will then make the determination if the inmate with the hold meets the standards set forth in AB 4. Inmates that do not meet the standards will not be released to ICE and the hold placed into the JMS will be removed.

Our staff knows that the Trust Act, (AB 4, 2013) 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. "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.

Immigration detainers shall not be honored based on a subject's conviction(s) for misdemeanor crimes. 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 San Benito County Sheriff's Office under the following conditions:

- a. If ICE requests an immigration hold be placed on a detainee for a felony conviction suffered outside of California, documentation must be provided by ICE to support the request. This documentation would include, but is not limited to, a federal criminal records check through the FBI database. AB 4 only applies to felonies committed in another state which, if committed in California, would be punishable as a "serious" felony, as defined in Penal Code section 1192.7(c), or a "violent" felony, as defined in Penal Code section 667.5(c). ICE detainer requests for any other out of state felony will not be honored.
- b. The subject of the detainer has suffered a prior felony conviction in California during his/her lifetime for a felony listed in Government Code section 7282.5(a).
- c. The subject of the detainer is required to register on the California Sex and Arson Registry as a sex offender per PC 290 or arson offender per PC 457.1.
- d. If none of the conditions of subsections a through c are satisfied, an individual shall not be detained on the basis of an immigration hold after eligibility for release.
- e. If the conditions in subsections a through c are satisfied, an individual shall be detained only if such detention does not conflict with federal, state, or local law or local policy.

### Response to request #3

The San Benito County Jail found only one record related to participation in ICE's Criminal Alien Program. (see attachment, Interoperability Activation Notification).