



**MADERA COUNTY DEPARTMENT OF CORRECTIONS
OPERATIONAL PROCEDURE**



Subject: Immigration Status	Operational Procedure:
Responsibility: Watch Commanders	Effective Date: January 1, 2014 Review Date:
Approval Authority Title and Signature:	

POLICY:

Madera County Department of Corrections regularly receives Immigration Detainer requests (DHS Form-I-247) from the U.S. Department of Homeland Security’s Immigration and Customs Enforcement agency (ICE). A detainer serves to advise that ICE seeks custody of an individual presently in custody for the purpose of deportation.

PENOLOGICAL INTEREST:

It is in the penological interest of Madera County Department of Corrections to honor ICE detainer requests that meet the criteria as outlined in the Trust Act (AB 4) and to release those individuals that are otherwise eligible for release.

PROCEDURE:

Madera County Department of Corrections regularly receives Immigration Detainer requests. The detainer is a request that the agency advise ICE, prior to releasing the individual, in order for ICE to arrange to assume custody. These detainer requests will *not* be honored except as stated below.

Trust Act: The Trust Act (AB4) 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*. These conditions are listed in this document. “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.

1. **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, unless the conditions set forth in subparagraphs a-f apply.

a. Immigration detainers shall be honored for inmates who are charged with **certain felonies**, if the individual is arrested on (i) a charge involving a **serious felony** [PC 1192.7(c)] or a **violent felony**, [PC 667.5(c)] (see listing below); or (ii) a felony punishable by imprisonment in state prison, *other than domestic violence*; or (iii) any felony listed in section 2(e), *other than domestic violence*; and a magistrate has made a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code (i.e., a judge has signed the Probable Cause form).

b. As used in PC 1192.7(c), "**serious felony**" means any of the following:

- Murder or voluntary manslaughter;
- Mayhem;
- Rape;
- 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;
- 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;
- Lewd or lascivious act on a child under 14 years of age;
- Any felony punishable by death or imprisonment in the state prison for life;
- 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;
- Attempted murder;
- Assault with intent to commit rape or robbery;
- Assault with a deadly weapon or instrument on a peace officer;
- Assault by a life prisoner on a non-inmate;
- Assault with a deadly weapon by an inmate;
- Arson;
- Exploding a destructive device or any explosive with intent to injure;
- Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;

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- Exploding a destructive device or any explosive with intent to murder;
- Any burglary of the first degree;
- Robbery or bank robbery;
- Kidnapping;
- Holding of a hostage by a person confined in a state prison;
- Attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- Any felony in which the defendant personally used a dangerous or deadly weapon;
- 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;
- 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;
- Grand theft involving a firearm;
- Carjacking;
- Any felony offense, which would also constitute a felony violation of PC 186.22;
- Assault with the intent to commit mayhem, rape, sodomy, or oral copulation;
- Throwing acid or flammable substances;
- Assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter;
- Assault with a deadly weapon against a public transit employee, custodial officer, or school employee;
- Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft;
- Commission of rape or sexual penetration in concert with another person;
- Continuous sexual abuse of a child;
- Shooting from a vehicle;
- Intimidation of victims or witnesses;
- Criminal threats;
- Any attempt to commit a crime listed in this subdivision other than an assault;
- Any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies];
- A violation of subdivision (b) or (c) of Section 11418;

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- Any conspiracy to commit an offense described in this subdivision.
 - Additionally, any offense committed in another state, which if committed in California, would be punishable as a listed serious felony.
- c. As used in PC 667.5(c), “**violent felony**” means any of the following:
- Murder or voluntary manslaughter;
 - Mayhem;
 - Rape;
 - Sodomy;
 - Oral copulation;
 - Lewd or lascivious act;
 - Any felony punishable by death or imprisonment in the state prison for life;
 - 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;
 - Any robbery;
 - Arson;
 - Sexual penetration;
 - Attempted murder;
 - A violation of PC 18745, 18750, or 18755 (explosives);
 - Kidnapping;
 - Assault with the intent to commit a specified felony, in violation of Section 220;
 - Continuous sexual abuse of a child;
 - Carjacking;
 - Rape, spousal rape, or sexual penetration;
 - Extortion, which would constitute a felony violation of PC 186.22;
 - Threats to victims or witnesses, which would constitute a felony violation of PC 186.22;
 - 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;
 - Any violation of PC 12022.53 [Enhancements for use of a firearm in 18 specified felonies];
 - A violation of PC 11418(b) or (c)(weapon of mass destruction);
 - And any offense committed in another state, which if committed in California, would be punishable as a listed violent felony.

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- d. ICE detainers will be honored for any conviction or prior conviction for **serious felonies** (see PC 1192.7(c)) or **violent felonies** (see PC 667.5(c));
- e. Detainers will be honored for any conviction or prior conviction for a felony punishable by imprisonment in the state prison;
- f. Detainers 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;
- g. Detainers will be honored for any **misdemeanor conviction** within the last five years, that could also have been charged either as a misdemeanor or as a felony (i.e., "**wobblers**") involving the following specified crimes or any **felony conviction** (at any time), involving the following specified crimes:
- Assault;
 - Battery;
 - Use of threats;
 - Sexual abuse, sexual exploitation, or crimes endangering children;
 - Child abuse or endangerment;
 - Burglary, robbery, theft, fraud, forgery, or embezzlement;
 - Driving under the influence of alcohol or drugs, but only for a felony conviction;
 - Obstruction of justice;
 - Bribery;
 - Escape;
 - Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction;
 - Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (PC 16000);
 - An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances;
 - Vandalism with prior convictions;
 - Gang-related offenses;
 - An attempt, or any conspiracy, to commit an offense specified in this section;
 - A crime resulting in death, or involving the personal infliction of great bodily injury;
 - Possession or use of a firearm in the commission of an offense;
 - An offense that would require the individual to register as a sex offender;
 - False imprisonment, slavery, and human trafficking;

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- Criminal profiteering and money laundering;
 - Torture and mayhem;
 - A crime threatening the public safety;
 - Elder and dependent adult abuse;
 - A hate crime;
 - Stalking;
 - Soliciting the commission of a crime;
 - An offense committed while on bail or released on his or her own recognizance;
 - Rape, sodomy, oral copulation, or sexual penetration;
 - Kidnapping;
 - A violation of CVC 20001(c).
- h. Detainers should also be honored for any conviction of any federal 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 –

- Murder, rape, or sexual abuse of a minor;
- Illicit trafficking in a controlled substance;
- Illicit trafficking in firearms or destructive;
- Laundering of monetary instruments if the amount of the funds exceeded \$10,000;
- An offense relating to explosive materials;
- A crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year;
- A theft offense or burglary offense for which the term of imprisonment is at least one year;
- The demand for or receipt of ransom;
- Child pornography;
- Racketeer Influenced Corrupt Organizations (RICO) or gambling offenses, for which a sentence of one year imprisonment or more may be imposed;
- Owning, controlling, managing, or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons;
- 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;
- Fraud or deceit in which the loss to the victim or victims exceeds \$10,000;

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- Tax evasion in which the revenue loss to the Government exceeds \$10,000;
- 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);
- 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;
- 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).

If none of the conditions listed in 2a-2h above are satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody.

3. **Changed Circumstances:** Compliance with ICE detainer requests will be rescinded and the detainer requests will not be furthered honored whenever the factors justifying the detainer no longer exist.

Similarly, if new evidence is developed meeting the requirements for honoring the detainer request, a prior determination not to honor the detainer request will be reevaluated pursuant to the provisions of the Trust Act.

4. **Equality of Access:** All persons arrested for a criminal offense and held in our custody pursuant to an ICE Detainer will have equal access to custody programs if otherwise program-eligible.
5. **Warrants:** Detainers and warrants are entirely separate and should not be confused. Duly issued warrants will in all cases be honored.

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Madera County
Department of Corrections

Manuel Perez
Director of Corrections
maperez@madera-county.com



AB 4 (TRUST ACT)
IMMIGRATION DETAINER ELIGIBILITY

An Immigration Detainer has been placed on _____ and at least one of the following conditions has been met: _____
Last Name, First Name PID

- The individual has been charged with certain felonies, arrested on a charge involving a serious or violent felony (see listing); or a felony punishable by imprisonment in state prison, *other than domestic violence*; or any other felony listed (see listing), *other than domestic violence*; and a **judge has signed the Probable Cause form**.
- The individual has been convicted of a serious or violent felony (see listing); or the individual has been convicted of a felony punishable by imprisonment in the state prison.
- The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony (i.e., "wobblers"), or has been convicted at any time of the felony (see listing).
- The individual is a current registrant *on* the California Sex (PC 290) or Arson (PC 457.1) Registry.
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony (see listing) or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcements as the subject of an outstanding federal felony warrant.

Conviction date _____ Charges _____

Conviction date _____ Charges _____

Conviction date _____ Charges _____

(If applicable for any of the above conditions)

- ***IF NONE OF THE CONDITIONS ARE SATISFIED, AN INDIVIDUAL SHALL NOT BE DETAINED ON THE BASIS OF AN IMMIGRATION HOLD AFTER THE INDIVIDUAL BECOMES ELIGIBLE FOR RELEASE FROM CUSTODY.***

Dated _____ Print Name _____ L# _____

Watch Commander Signature _____

