I. PURPOSE: The purpose of this order is to provide deputies with guidelines on their duties and responsibilities associated with immigration law, enforcement, arrests, and detentions.

II. POLICY: The Plumas 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, and the lack of immigration documentation, shall have 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 or her immigration status whether known or unknown.

III. DEFINITIONS:

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. Plumas 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. Citizen contacts, detentions, and arrests shall be based on reasonable suspicion or probable cause in a manner prescribed by law. A deputy shall not initiate law enforcement action based solely on observations related to a subject's immigration status.

This General Order does not prohibit investigative inquiries in instances where the immigration status of involved parties to a criminal act needs to be thoroughly investigated. Inquiries will be based on a "need to know" to complete California criminal code violations. These inquiries include, but are not limited to, investigations into human trafficking, smuggling, harboring, and terrorism.

IV. ORDER: When Plumas County Sheriff's personnel encounter perceived immigration law violations, members shall be guided by the options set forth in this Order, which is in compliance with state law.
A. IMMIGRATION VIOLATION COMPLAINTS:

1. If members of the public contact any member of the Plumas County Sheriff’s Office 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 the sole 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 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 critical incidents or emergency requests for assistance. Each level of assistance will be evaluated by the on-scene supervisor to ensure PCSO’s level of participation remains consistent with this order while protecting human life and property.

C. ESTABLISHING IDENTITY:

1. Deputies should make all attempts to identify any person they detain, arrest, or who come 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 his or her identity.

D. ICE IMMIGRATION DETAINEES:

1. The Plumas County Sheriff’s Office regularly receives immigration detainer requests (Form 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 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. TRUST ACT. 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.
3. ICE IMMIGRATION DETAINERS:

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 Plumas 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 1192.7(c), or a “violent” felony, as defined in Penal Code 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 7282.5(a). Although the below charges could result in felony convictions, these are not included in AB 4 and an ICE detention would not be authorized on these charges alone.

1. PC 32 Accessory
2. PC 38 Misprision of treason
3. PC 118 Perjury
4. PC 182 Conspiracy
5. PC 278.5 Depriving right to child visitation
6. PC 337f Horse doping
7. PC 405b Lynching
8. PC 502(c) (1), (2), (4), or (5) Unauthorized computer system access
9. PC 529 False impersonation
10. PC 537e (a) (3) Removal of serial number
11. PC 591 Damage to transmission wire
12. PC 594 Vandalism
13. PC 594.3 Vandalism to house of worship
14. PC 597 Cruelty to animals
15. PC 600(a) Attack on police dog or horse
16. PC 653f (a), (d) Solicitation to commit specific crime
17. PC 1320 Failure to Appear on a felony
18. PC 11419 Possession of restricted biological agent
19. PC 18735 Possession of ammunition greater than .60 caliber
20. PC 20110(a) and/or (b) Setting or possessing a booby trap
21. PC 29650 Possession of ammunition by a minor
22. PC 32310 Possession for sale, or sale, of large capacity firearm magazine
23. H&S 11355 Sale of fictitious controlled substances
24. H&S 25189.5 Illegal disposal of hazardous waste
25. H&S 25189.6(b) Reckless disposal of hazardous waste with injury
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.

E. ICE REQUESTS TO HOLD DETAINEE:

1. PCSO will continue to honor immigration detainers (I-247 form) issued by ICE consistent with section D above. When PCSO 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 Intake Transfer and Release Record’s Deputy. The Record’s Deputy shall be responsible for the following:

a. Check jail records to ensure the detained subject has no further criminal matters pending in Plumas County and is eligible for release.

b. Evaluate the ICE immigration detainer and verify that it is complete and valid. If relying on out of state convictions, ensure proper documentation is present.

c. Conduct a records check to ascertain if the subject has suffered an applicable felony conviction in California. A list of non-applicable felony convictions is provided in this General Order.

d. Notify the ITR Sergeant of the findings and provide supporting documentation. The ITR Sergeant will evaluate the information and authorize the release or continued detention of the subject.

e. If the ITR Sergeant determines the subject does not have an appropriate felony conviction to mandate honoring an ICE detainer, and ICE has not provided supporting documentation to prove out of state convictions, process the subject for release.

f. If the ITR Sergeant determines the subject has a prior applicable felony conviction, he/she is eligible to be held for ICE. ICE will be notified of the subject’s availability for pick-up. The detained subject will not be held longer than 48 hours, not including weekends and holidays.

2. ICE detainees in the custody of the Sheriff’s Office will receive all the rights and privileges consistent with a county or contract 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.
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. Szaleczyk (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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