

**From:** (b)(6) (b)(7)(c)  
**To:** CAP HQ  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** ACC December 2010 CAP Surge After Action Report  
**Date:** Wednesday, December 22, 2010 6:30:40 PM  
**Attachments:** [CAP Surge Report Dec 2010.xls](#)  
                  [ACC After Action Report December 2010.pdf](#)  
**Importance:** High

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Attached please find the after action review for the CAP surge conducted at Adams County Correctional Center, Natchez, MS.

Please let me know if you require any additional information.

Thank you,

Philip T. Miller  
Field Office Director  
New Orleans Field Office

Office: 504.590 (b)(6) (b)(7)(c)  
BlackBerry: 504.915 (b)(6) (b)(7)(c)

U.S. Department of Homeland Security  
830 Pinehill Road  
Jena, LA 71342



**U.S. Immigration  
and Customs  
Enforcement**

December 22, 2010

MEMORANDUM FOR: Philip T. Miller  
Field Office Director

THROUGH OFFICIAL CHANNELS

FROM: (b)(6) (b)(7)(c)  
Supervisory Detention and Deportation Officer

SUBJECT: After Action Report  
Adams County Correctional Center CAP Surge

The Jena, LA sub-office conducted a CAP Surge on the detained population at the Adams County Correctional Center located at 20 Hobo Fork Rd, Natchez, MS 39120. This CAP Surge was conducted from 0730 hrs on December 11, 2010 through 1600 hrs on December 19, 2010.

The following is a summary of results of the Adams County Correctional Center CAP Surge:

**Detainees Interviewed and Processed from December 11, 2010 through December 19, 2010**

Total facility population:	2536 (beginning of CAP Surge)
Foreign born inmates at facility:	100%
Total number of inmates interviewed and processed:	547
Interviewed and processed inmates that are removable:	544
ICE Detainers filed during CAP Surge:	228

During the interview process three inmates, although foreign born, were fully identified as U.S. Citizens. Detainers were not filed, lifted if previously filed, and the facility was advised of their USC status in order to transfer the inmate to another facility if warranted by their procedures.

**Lessons Learned:**

Basic bio-graphical information, the interview conducted, and the fingerprints taken is of the upmost value in furtherance of the local IRP program. If such surges are to be conducted on an annual or bi-annual basis, ICE-ERO Jena, LA can establish advanced target lists, consisting of those individuals that have never been encountered by ICE, and whose identity has not otherwise been established.

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

Field/AFOD Office	FNL/Jena, LA	Surge Dates	12/11/10 to 12/19/10	POC & Title	(b)(6) (b)(7)(c)	SDDO
Surge Facility Location	ACCC, Natchez, MS	Daily Report Date	12/22/2010	Contact No.	318-998(6) (b)(7)(c)	

Line Item	INTERVIEWS CONDUCTED	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 1-7 Total
1	Total number of individuals interviewed (total from lines 2 & 3)	53	49	49	41	94	103	158	547
2	Individuals determined not removable	3							3
3	Individuals interviewed and amenable to removal	50	49	49	41	94	103	158	544
4	Individuals claimed USC/unknown @ time of booking & determined removable	3							3
	DETAINERS	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 1-7 Total
5	Total ICE detainees (I-247) lodged (total from lines 6 to 8)								
6	Charged w/ Level I Offense(s)								
7	Charged w/ Level II Offense(s)								
8	Charged w/ Level III Offense(s)								
9	Total ICE detainees lodged w/ convictions (total from lines 10 to 12)	6	15	7	8	39	92	61	228
10	Lodged/convicted of Level I Offense(s)								
11	Lodged/convicted of Level II Offense(s)	6	15	7	8	39	92	61	228
12	Lodged/convicted of Level III Offense(s)								
13	ICE Detainers (I-247) removed								
	CHARGING DOCS ISSUED	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 1-7 Total
14	Notice to Appear issued (I-862) - INA 240								
15	Admin removal (I-851) - INA 238(b)	3							3
16	Re-instatement (I-871) - INA 241(a)(5)								
17	Stipulated removals								
18	Oustanding final removal order (I-205)(Fugitive Located)								
19	Other removal order (VR, ER, visa waiver, etc.)								
20	Judicial removal order								
	PROSECUTIONS	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 1-7 Total
21	Accepted Prosecutions								

\* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

\* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.

\* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

Field/AFOD Office	FNL/Jena, LA	Surge Dates	12/11/10 to 12/19/10	POC & Title	(b)(6) (b)(7)(c)	SDDO
Surge Facility Location	ACCC, Natchez, MS	Daily Report Date	40534	Contact No.	318-992-5161 (b)(6) (b)(7)(c)	

Line Item	INTERVIEWS CONDUCTED	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14	Days 8-14 Total
1	Total number of individuals interviewed (total from lines 2 & 3)	0	0	0	0	0	0	0	0
2	Individuals determined not removable								0
3	Individuals interviewed and amenable to removal								0
4	Individuals claimed USC/unknown @ time of booking & determined removable								0
	DETAINERS	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14	Days 8-14 Total
5	Total ICE detainees (I-247) lodged (total from lines 6 to 8)	0	0	0	0	0	0	0	0
6	Charged w/ Level I Offense(s)								0
7	Charged w/ Level II Offense(s)								0
8	Charged w/ Level III Offense(s)								0
9	Total ICE detainees lodged w/ convictions (total from lines 10 to 12)	0	0	0	0	0	0	0	0
10	Lodged/convicted of Level I Offense(s)								0
11	Lodged/convicted of Level II Offense(s)								0
12	Lodged/convicted of Level III Offense(s)								0
13	ICE Detainers (I-247) removed								0
	CHARGING DOCS ISSUED	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14	Days 8-14 Total
14	Notice to Appear issued (I-862) - INA 240								0
15	Admin removal (I-851) - INA 238(b)								0
16	Re-instatement (I-871) - INA 241(a)(5)								0
17	Stipulated removals								0
18	Oustanding final removal order (I-205)(Fugitive Located)								0
19	Other removal order (VR, ER, visa waiver, etc.)								0
20	Judicial removal order								0
	PROSECUTIONS	Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14	Days 8-14 Total
21	Accepted Prosecutions								0

\* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

\* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.

\* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

Field/AFOD Office	FNL/Jena, LA	Surge Dates	12/11/10 to 12/19/10	POC & Title	(b)(6) (b)(7)(c)	SDDO
Surge Facility Location	ACCC, Natchez, MS	Daily Report Date	40534	Contact No.	318-992- (b)(6) (b)(7)(c)	

Line Item	INTERVIEWS CONDUCTED	Day 15	Day 16	Day 17	Day 18	Day 19	Day 20	Day 21	Days 15-21 Total
1	Total number of individuals interviewed (total from lines 2 & 3)	0	0	0	0	0	0	0	0
2	Individuals determined not removable								0
3	Individuals interviewed and amenable to removal								0
4	Individuals claimed USC/unknown @ time of booking & determined removable								0
	DETAINERS	Day 15	Day 16	Day 17	Day 18	Day 19	Day 20	Day 21	Days 15-21 Total
5	Total ICE detainees (I-247) lodged (total from lines 6 to 8)	0	0	0	0	0	0	0	0
6	Charged w/ Level I Offense(s)								0
7	Charged w/ Level II Offense(s)								0
8	Charged w/ Level III Offense(s)								0
9	Total ICE detainees lodged w/ convictions (total from lines 10 to 12)	0	0	0	0	0	0	0	0
10	Lodged/convicted of Level I Offense(s)								0
11	Lodged/convicted of Level II Offense(s)								0
12	Lodged/convicted of Level III Offense(s)								0
13	ICE Detainers (I-247) removed								0
	CHARGING DOCS ISSUED	Day 15	Day 16	Day 17	Day 18	Day 19	Day 20	Day 21	Days 15-21 Total
14	Notice to Appear issued (I-862) - INA 240								0
15	Admin removal (I-851) - INA 238(b)								0
16	Re-instatement (I-871) - INA 241(a)(5)								0
17	Stipulated removals								0
18	Oustanding final removal order (I-205)(Fugitive Located)								0
19	Other removal order (VR, ER, visa waiver, etc.)								0
20	Judicial removal order								0
	PROSECUTIONS	Day 15	Day 16	Day 17	Day 18	Day 19	Day 20	Day 21	Days 15-21 Total
21	Accepted Prosecutions								0

\* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

\* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.

\* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

Field/AFOD Office	FNL/Jena, LA	Surge Dates	12/11/10 to 12/19/10	POC & Title	(b)(6) (b)(7)(c)	SDDO
Surge Facility Location	ACCC, Natchez, MS	Daily Report Date	40534	Contact No.	318-992(6) (b)(7)(c)	

Line Item	INTERVIEWS CONDUCTED	Day 22	Day 23	Day 24	Day 25	Day 26	Day 27	Day 28	Days 22-28 Total
1	Total number of individuals interviewed (total from lines 2 & 3)	0	0	0	0	0	0	0	0
2	Individuals determined not removable								0
3	Individuals interviewed and amenable to removal								0
4	Individuals claimed USC/unknown @ time of booking & determined removable								0
	DETAINERS	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 22-28 Total
5	Total ICE detainees (I-247) lodged (total from lines 6 to 8)	0	0	0	0	0	0	0	0
6	Charged w/ Level I Offense(s)								0
7	Charged w/ Level II Offense(s)								0
8	Charged w/ Level III Offense(s)								0
9	Total ICE detainees lodged w/ convictions (total from lines 10 to 12)	0	0	0	0	0	0	0	0
10	Lodged/convicted of Level I Offense(s)								0
11	Lodged/convicted of Level II Offense(s)								0
12	Lodged/convicted of Level III Offense(s)								0
13	ICE Detainers (I-247) removed								0
	CHARGING DOCS ISSUED	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 22-28 Total
14	Notice to Appear issued (I-862) - INA 240								0
15	Admin removal (I-851) - INA 238(b)								0
16	Re-instatement (I-871) - INA 241(a)(5)								0
17	Stipulated removals								0
18	Oustanding final removal order (I-205)(Fugitive Located)								0
19	Other removal order (VR, ER, visa waiver, etc.)								0
20	Judicial removal order								0
	PROSECUTIONS	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 22-28 Total
21	Accepted Prosecutions								0

\* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

\* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.

\* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

'1 1/22/09

**Field/AFOD Office** FNL/Jena, LA  
**Surge Facility Location** ACCC, Natchez, MS

**Surge Dates** 12/11/10 to 12/19/10  
**Daily Report Date** 40534

**POC & Title** (b)(6) (b)(7)(c) SDDC  
**Contact No.** 318-992 (b)(6) (b)(7)(c)

Line Item	INTERVIEWS CONDUCTED	Days 1-7	Days 8-14	Days 15-21	Days 22-28	Grand Total
1	Total number of individuals interviewed (total from lines 2 & 3)	547	0	0	0	547
2	Individuals determined not removable	3	0	0	0	3
3	Individuals interviewed and amenable to removal	544	0	0	0	544
4	Individuals claimed USC/unknown @ time of booking & determined removable	3	0	0	0	3
	<b>DETAINERS</b>					
5	Total ICE detainees (I-247) lodged (total from lines 6 to 8)	0	0	0	0	0
6	Charged w/ Level I Offense(s)	0	0	0	0	0
7	Charged w/ Level II Offense(s)	0	0	0	0	0
8	Charged w/ Level III Offense(s)	0	0	0	0	0
9	Total ICE detainees lodged w/ convictions (total from lines 10 to 12)	228	0	0	0	228
10	Lodged/convicted of Level I Offense(s)	0	0	0	0	0
11	Lodged/convicted of Level II Offense(s)	228	0	0	0	228
12	Lodged/convicted of Level III Offense(s)	0	0	0	0	0
13	ICE Detainers (I-247) removed	0	0	0	0	0
	<b>CHARGING DOCS ISSUED</b>					
14	Notice to Appear issued (I-862) - INA 240	0	0	0	0	0
15	Admin removal (I-851) - INA 238(b)	3	0	0	0	3
16	Re-instatement (I-871) - INA 241(a)(5)	0	0	0	0	0
17	Stipulated removals	0	0	0	0	0
18	Oustanding final removal order (I-205)(Fugitive Located)	0	0	0	0	0
19	Other removal order (VR, ER, visa waiver, etc.)	0	0	0	0	0
20	Judicial removal order	0	0	0	0	0
	<b>PROSECUTIONS</b>					
21	Accepted Prosecutions	0	0	0	0	0

\* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.

\* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.

\* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

**From:** (b)(6) (b)(7)(c)  
**To:** CAP HO  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: CAP Enforcement Operations  
**Date:** Friday, November 26, 2010 2:49:32 PM  
**Attachments:** [ACCC December 2010 Signature Page.pdf](#)  
[ACCC December 2010 CAP Surge.doc](#)

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Attached please find an ops plan for a CAP Surge scheduled for December 11-19, 2010.

Please let me know if you require any additional information.

Thanks

(b)(6) (b)(7)(c)

Deputy Field Office Director  
New Orleans Field Office  
U.S. Immigration and Customs Enforcement  
Office of Enforcement and Removal Operations

Office: 318.335 (b)(6) (b)(7)(c)

BlackBerry: 318.491 (b)(6) (b)(7)(c)

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**From:** DRO Taskings  
**Sent:** Wednesday, November 17, 2010 1:30 PM

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**Subject:** CAP Enforcement Operations

***The following message is sent on behalf of Gregory J. Archambeault, Acting Assistant Director for Enforcement and approved by Michael J. Pitts, Acting Assistant Director for Field Operations:***

**To: Field Office Directors and Deputy Field Office Directors:**

**Subject: CAP Enforcement Operations**

The Criminal Alien Program (CAP) has the primary responsibility in ICE to effectively identify and remove aliens found within Federal, State, and local jail and prison facilities. In addition to identifying removable aliens, the ultimate goal of enforcement operations is to increase the number of criminal and non-criminal alien removals during the fiscal year. With this in mind, every Field Office Director (FOD) is directed to plan enforcement operations within their area of responsibility targeting removable aliens that may be or have been released from a law enforcement agency and/or facility or may be at large in the community. Planning should focus primarily on jail facilities, known jail releases and/or Violent Criminal Alien Section (VCAS) targets.

FODs are asked to plan one CAP Removal Surge, Joint Criminal Alien Response Team, or VCAS operation during the month of December. Each field office is required to submit their plan(s) utilizing one of the attached operational plan templates to the CAP HQ mailbox NLT COB Wednesday, December 1, 2010. HQ CAP will ensure coordination with the field offices

and other headquarters components, as well as provide guidance for reporting requirements once the operational plans are consolidated, reviewed, and approved.

If there are any questions, please contact (A) CAP Unit Chief [REDACTED] (b)(6) (b)(7)(c) via email or at (202) 732-[REDACTED] (b)(6) (b)(7)(c)

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

**AUTHORIZING OFFICIAL**

Field Office Director  
New Orleans Field Office

**APPROVING OFFICIAL**

(A) Assistant Director, Enforcement  
Office of Enforcement and Removal  
Operations

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Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

**New Orleans Field Office**  
**CAP Removal Surge Operational Plan**

**LIMITED OFFICIAL USE**

**HEADQUARTERS  
CRIMINAL ALIEN PROGRAM OPERATIONS UNIT**

1

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Pages 13 through 20 redacted for the following reasons:

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(b)(5)

**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

**AUTHORIZING OFFICIAL**

---

**Philip T. Miller**  
Field Office Director  
New Orleans Field Office

**APPROVING OFFICIAL**

---

Gregory J. Archambeault  
(A) Assistant Director, Enforcement  
Office of Enforcement and Removal  
Operations

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**From:**  
**To:**

(b)(6) (b)(7)(c)

**Subject:** FW: Criminal and overall removals  
**Date:** Friday, January 29, 2010 6:44:50 PM

---

Please provide any suggestions to (b)(6) (b)(7)(d). I hope that our expanded detention of M-4 priority cases will assist with increasing our removals. All ideas and suggestions are welcome.

Thanks,  
Phil

Philip T. Miller  
Field Office Director  
New Orleans Field Office

Office: 504.59 (b)(6) (b)(7)(c)

BlackBerry: 504.915 (b)(6) (b)(7)(c)

---

**From:** DRO Taskings  
**Sent:** Friday, January 29, 2010 4:01 PM

(b)(6) (b)(7)(c)

**Subject:** Criminal and overall removals

*This message is sent on behalf of* (b)(6) (b)(7)(c) *Assistant Director for Detention and Removal Management and approved by Marc J. Moore, Assistant Director for Field Operations:*

**To: Field Office Directors, Deputy Field Office Directors, Assistant Field Office Directors**

**Subject: Field Office FY 2010 Removal Goals**

At the end of first quarter FY 2010, overall removals are down approximately 10 percent over the same time last year. Although criminal removals are up 46 percent over the same time as last year, this percentage has decreased each week from a 90 percent increase to the current 46 percent increase. Assumptions indicate that if the downward trend continues, DRO will not surpass the number of removals conducted in FY 2009.

FY 2010 removal goals will be forwarded to your respective field offices, with first quarter statistics included. Please meet with your staff to ensure the necessary steps are taken to meet your field office removal goals.

For all questions regarding your goals, please contact Marc J. Moore, Assistant Director for Field Operations. For questions regarding removal resources and tools available for your field office, please contact (b)(6) (b)(7)(c) DAD, Removal Management Division, at

(b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** Fwd: Proposed CAP Surge  
**Date:** Tuesday, December 06, 2011 12:28:27 PM

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(b)(6) (b)(7)(c)

The Warden said he has no problem with this as long as it doesn't interfere with our operations. If you need anything give me a call.

(b)(6) (b)(7)(c)

Begin forwarded message:

**From:** (b)(6) (b)(7)(c)  
**Date:** December 6, 2011 11:22:51 AM CST  
**To:** (b)(6) (b)(7)(c)  
**Subject: RE: Proposed CAP Surge**

I am good with it. Thanks

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, December 02, 2011 2:35 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject: Fwd: Proposed CAP Surge**

Warden (b)(6), (b)(7)(C) nd Executive Staff Members below is a proposal from ICE Requesting to do a CAP Surge at the facility . Please advise me if these dates will work and if ICE can do the CAP Surge. Once I receive your responds I will then advise ICE.

Have a good weekend and I will see you on Monday.

(b)(6) (b)(7)(c)

Begin forwarded message:

**From:** (b)(6) (b)(7)(c)  
**Date:** December 2, 2011 2:10:27 PM CST

(b)(6) (b)(7)(c)

**Subject: Proposed CAP Surge**

(b)(6) (b)(7)(c)

This e-mail is pursuant to yesterday's conversation. ICE would like to conduct another CAP Surge at ACC. The proposed dates are from February 13, 2012 (Monday) through March 10, 2012 (Saturday), for a total of four weeks. Also for your consideration is the possibility of working Saturday and Sundays, but at this point would be an option for the ICE Employees. The target goal for this operation is 1000 interviews. Processing and interviews would be of the same method of the December 2010 CAP Surge (short Q&A, fingerprints, etc). For this particular CAP Surge we will not have the MPV on site, and will not do full processing as was done on the very first CAP Surge.

Initial targets will be ACC inmates with no ICE Detainers on file and inmates who have no known A#'s or have obvious incorrect A#'s documented in SENTRY. Once these initial targets have been interviewed, the remaining targets will consist of inmates whose cases are not currently being addressed by ICE. These final targets will be prioritized by release date.

As for operations itself during the CAP Surge, we intend on providing a target list to your staff at least one day in advance, but once again will have to gauge and dial in the speed of processing – overall, I see our processing and interviews being quite swift. If an alien does not have an ICE Detainer on file we will file one at time of interview.

It is anticipated at this time that the Surge team will consist of detailed officers. Hours of operation at this point is dependent on what you allow, but I personally anticipate the need for one daytime shift consisting (b)(7)e As for weekends I do not anticipate the need for ICE to conduct interviews on site, but would utilize those resources for doing computer entry at the Jena ICE Office. If however we fall behind in interviews and it appears that we may not make our 1000 target, then we would like to keep the Saturday/Sunday option open – but that is completely up to you.

Please make a determination as to where we can conduct the interviews, in my opinion, the Sierra Unit VTC room may be ideal and would provide a fax and phone if needed.

Thank you for your consideration and your feedback and response would greatly be appreciated. At a minimum, please provide a confirmation or rejection to the proposed dates as soon as possible as I need to submit an operation plan as soon as possible. If these dates are inconvenient please let me know and we can discuss and address as needed.

Thank you again,

(b)(6) (b)(7)(c)

*Supervisory Detention & Deportation Officer*

*Jena, Louisiana*

*Office: (318) 992*

*Fax: (318) 992-* (b)(6) (b)(7)(c)

*Mobile: (225) 892*

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**From:** [REDACTED]  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Cc:** [REDACTED]  
**Subject:** RE: CAP Surge  
**Date:** Friday, December 17, 2010 10:16:47 AM

---

Great work! Thanks [REDACTED] (b)(6), (b)(7)(C)

---

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Friday, December 17, 2010 9:00 AM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** CAP Surge

Sorry, fell behind with respect to reporting to you daily. Here is where we currently stand:

<b>DATE PROCESSED</b>	<b>TOTAL PROCESSED</b>	<b>NUMBER OF DETAINERS FILED OF TOTAL</b>
12/11/10	53	6
12/12/10	49	15
12/13/10	49	7
12/14/10	41	8
12/15/10	94	39
12/16/10	103	92
<b>TOTAL:</b>	<b>389</b>	<b>167</b>

NOTE: We have [REDACTED] on call out today with [REDACTED] (b)(7)(E). We will load the cases into ENFORCE over the weekend. We hit our 225 goal. The D.O.'s stepped up and volunteered to double up on work and to work on AUO. We should exceed the secondary goal of 500 as well.

[REDACTED] (b)(6) (b)(7)(c)

*Supervisory Detention & Deportation Officer  
Jena, Louisiana*  
**Office:** (318) 992-[REDACTED]  
**Fax:** (318) 992-[REDACTED]  
**Mobile:** (225) 892-[REDACTED] (b)(6) (b)(7)(c)



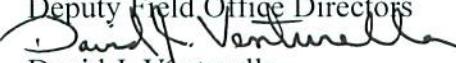
U.S. Immigration  
and Customs  
Enforcement

JAN 05 2010

MEMORANDUM FOR:

Field Office Directors  
Deputy Field Office Directors

FROM:

  
David J. Venturella  
Acting Director

SUBJECT:

Fiscal Year 2010 Criminal Alien Program Goals

Purpose

This memorandum outlines the Office of Detention and Removal Operations (DRO) Fiscal Year 2010 (FY10) Criminal Alien Program (CAP) program goals. Field Offices will ensure the appropriate deployment of resources to meet FY10 program goals, which have been designed in an effort to identify all foreign-born nationals incarcerated in jails and prisons in the United States. This supersedes the "Manual CAP Reporting Requirements" in the memorandum dated December 21, 2007, entitled, *Reporting Guidance for the Criminal Alien Program (Follow-up to Director's July 11, 2006 Memorandum)* signed by Director John P. Torres.

Background

CAP has the primary responsibility in U.S. Immigration and Customs Enforcement (ICE) to effectively identify and remove criminal aliens located within Federal, state, and local jails and prison facilities, regardless of the status of their convictions. In previous fiscal years, CAP set goals related to the number of Charging Documents Issued (CDIs), which was not reflective of the workload since CAP encounters more foreign-born nationals through screenings and interviews than it issues charging documents.

Utilizing resources provided by the Secure Communities initiative and the ongoing collaboration of delegated state and local law enforcement agencies acting under Section 287(g) of the Immigration and Nationality Act, CAP's goal will be to increase the number of aliens encountered in identified jail and prison facilities, and to capture those encounters in ENFORCE. For FY10, DRO will continue to screen all individuals booked into federal, state and local jails to identify those with foreign places of birth. Individuals identified as possible foreign-born nationals will be considered encounters; and will be documented in ENFORCE using the methods described in the CAP/Fugitive Operations reference guide, as directed by the memorandum signed on September 1, 2009 entitled, *Updated Directives for the Criminal Alien Program Case Identification in ENFORCE*. Encounters will include all documented or self-proclaimed foreign-born nationals, individuals claiming derived citizenship, naturalization or where citizenship is unknown.

In FY07, CAP developed a risk based assessment to prioritize the screening of foreign-born inmates incarcerated in jails and prisons located in the 24 DRO Field Offices' respective Areas of Responsibility (AORs). More than 4,000 jails and prisons have been assessed and placed into one of four distinct threshold levels. These four thresholds represent high to low risk, and encompass Federal, state and local correctional facilities. By increasing the number of facilities

who are currently designated limited coverage to 100 percent screening in FY10, CAP will also increase the number of encounters.

In an effort to increase deterrence and reduce future recidivism rates on violent criminal aliens, the Violent Criminal Alien Section (VCAS) Program was established with the goal of aggressively prosecuting recidivist criminal aliens. This aggressive approach will continue throughout FY10, with the purpose of continually increasing public safety and national security by removing violent and recidivist criminal aliens.

### Discussion

#### Strategic Goal 1- Increase the Number of Foreign-Born Nationals Encountered

The ultimate goal of CAP is to identify all foreign-born nationals located at all jails and prisons in the United States. This is accomplished by investigating, either through biographical record check and/or personal interviews, those aliens encountered at jails and prisons. An ICE agent/officer conducts a one-on-one interview with a foreign-born national to determine if that person is removable from the United States. A record check is the investigation of the status of a foreign-born national using the biographical data reported to other law enforcement agencies upon arrest. These checks are done through immigration or other electronic law enforcement databases. The continued deployment of interoperability will also increase the number of referrals to field offices.

As the deployment of interoperability increases, field offices must prioritize enforcement actions to ensure the identification and removal of the most dangerous criminal aliens from the United States. Field Offices must evaluate the use of detention space and other resources to ensure the most cost effective means to conduct its law enforcement operations without compromising mission integrity.

FY10 performance will be measured by the number of encounters in jails and prisons of individuals identified as foreign-born and captured in ENFORCE. Identifications are dependent upon the number of arrests and bookings made by federal, state and local law enforcement agencies. It is important that DRO continues to screen all individuals booked into, housed at, or released from correctional facilities, and detained or arrested by law enforcement agencies, to ensure that all foreign-born nationals are identified, investigated and processed if found amenable for removal.

Statistical reports will be electronically extracted from ENFORCE through the ICE Integrated Decision Support (IIDS) system. CAP will collaborate with field offices to ensure data quality and integrity. Each FOD will be provided with baseline data calculated from FY09.

#### Strategic Goal 2 – Increase the Number of Jails with Limited Coverage to 100 Percent Screening in Fiscal Year 2010 by 10 Percent Based on Criminal Alien Program Risk Assessment (CAPRA)

Based upon CAPRA, in FY09, there were 4,374 facilities across the country within DRO's AOR. Of those 4,374 facilities, DRO maintains 100 percent screening at all 1,281 adult federal and state correctional facilities, 585 (19 percent) of local jail facilities, and 7 Native American correctional institutions. DRO has limited coverage at the remaining 2,499 local jail facilities and 2 Native American facilities.

In FY10, CAP will continue to maintain 100 percent screening at all adult federal and state correctional facilities, and will strive to increase the number of facilities with limited coverage by 10 percent to ensure 100 percent screening. CAP will collaborate with field offices to

increase screening to 100 percent at those jails with limited coverage. The deployment of interoperability will be coordinated with Secure Communities and the field offices to assist in increasing screenings at facilities with limited coverage. Those field offices that currently have 100 percent screening at federal, state and local facilities will ensure that 100 percent screening is maintained.

Reports will be extracted from the CAPRA database on a monthly basis. CAP will collaborate with field offices to ensure data quality and integrity. Each FOD will receive their current CAPRA data.

**Strategic Goal 3 – Increase the Number of Indictments/Information by 5 Percent over Fiscal Year 2009**

The FY10 program goal represents a five percent increase of indictments/information from FY09. VCAS will receive greater attention in FY10; and CAP will collaborate with field offices to further identify best practices and to develop strategies to increase presentation rates for criminal prosecution. Through greater identification and tracking of aliens who have illegally re-entered the United States, CAP will seek to present for prosecution all applicable cases.

Statistics will be electronically extracted from TECS. CAP will collaborate with field offices to ensure data quality and integrity. Each FOD will receive FY09 data.

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fourth Amendment Refresher Training  
**Date:** Tuesday, October 15, 2013 4:15:37 PM  
**Attachments:** [11001 1-hd-nfop\\_priorities\\_goals\\_expectations\\_\(3\).pdf](#)  
[ERO Tasking\\_4\\_12\\_2012 4th Amendment Training for Alternatives to Detention Officers and Agents doc](#)  
[ERO Tasking\\_12\\_3\\_2012 XT - Expanded Targeting.msg.doc](#)  
[DHS ICE training attendance roster 4th Amendment 1st Benchmark FY2014.doc](#)  
**Importance:** High

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(b)(6) (b)(7)(c)

To all AFOD(s),

In an effort to remain in compliance with the mandatory 4<sup>th</sup> Amendment training requirements, please review and disseminate the following message regarding the schedule for the upcoming 4<sup>th</sup> Amendment training.

The Office of Chief Counsel will conduct Fourth Amendment Refresher Training (every six months) for FNL agents/officers for the following ERO offices:

**FY2014 1<sup>st</sup> Benchmark schedule**

The information below represents the six month bench mark date (on or before) for each office/team in which they are scheduled to complete the training.

Duty Location	Last Training Date	Six Month Benchmark Date	Next Training Date	Start Time (CST)
Jena (MET)	6/04 & 6/05/2013	12/04/2013 – 12/05/2013		
Oakdale (MET)	6/04 & 6/05/2013	12/04/2013 – 12/05/2013		
Fort Smith & Fayetteville (ATD/CAP)	7/08/2013	1/08/2014		
Jackson (ATD)	8/06/2013	2/06/2014		
Baton Rouge (CAP)	8/06/2013	2/06/2014		
Lafayette & Lake Charles	8/07/2013	2/07/2014		
New Orleans (ATD)	8/07/2013	2/07/2014		
New Orleans (CARI)	8/08/2013	2/08/2014		
New Orleans & Houma (CAP)	8/08/2013	2/08/2014		
New Orleans (FOT)	8/13/2013	2/13/2014		
Little Rock (FOT)/Fayetteville (CAP)	9/05/2013	3/05/2014		
Shreveport & Texarkana (CAP)	3/07/2013	9/07/2014		
Nashville (FOT)	9/19 & 9/28/2013	3/19 & 3/28/2014		
Chattanooga (CAP)	9/19/2013	3/19/2014		
Knoxville (CAP)	9/19/2013	3/19/2014		
Montgomery (CAP)	9/07/2013	3/07/2014		
Birmingham (FOT)	9/05/2013	3/05/2014		
Gadsden (CAP)	9/05 & 9/07/2013	3/05 & 3/07/2014		
Mobile (ATD/CAP)	9/20/2013	3/20/2014		
Gulfport (ATD/CAP)	9/26/2013	3/26/2014		
Memphis(ATD/FOT) / Nashville (CAP)	9/28 & 10/04/2013	3/28 & 04/04/2014		

**Note:**

- **11/28/2013 (Thanksgiving Day Holiday)**
- **12/25/2013 (Christmas Day Holiday)**
- **01/01/2014 (New Year's Day Holiday)**
- **01/20/2014 (Martin Luther King, JR's Holiday)**
- **02/17/2014 (George Washington's Holiday)**
- **03/04/2014 (Mardi Gras Observed)**
- **05/26/2014 (Memorial Day Holiday)**
- **Criminal Alien Program (CAP)**
- **Criminal Alien Removal Initiative (CARI)**
- **Fugitive Operations Team (FOT)**
- **Alternatives to Detention (ATD) cases**
- **Mobile Enforcement Team (MET)**

Please submit all availability **date/time** to my attention by **COB on Friday, October 25, 2013**, this will allow OCC time to accommodate FNL's training request. In furtherance, please ensure all personnel utilize the attached training roster to record their training attendance.

In addition, another email will be sent in advance of the training dates listing the name of the OCC representative who will conduct the training via Video Teleconference (VTC) or in person for each location.

**As a reminder supervisor please designate a POC to test your VTC system with another location 24 to 48 hours prior to the training date. Please call VTC Service Support @ 202-732-(b)(6) (b)(7)(c) or email (b)(6) (b)(7)(c) if you have any issues with your VTC system.**

(b)(6) (b)(7)(c)

**Senior Field Training Officer**  
**ICE – Enforcement and Removal Operations**  
**1250 Poydras Street, Suite (b)(6) (b)(7)(c)**  
**New Orleans, LA 70113**  
**(504) 599-(b)(6) (b)(7)(c)**  
**(504) 589-(b)(6) (b)(7)(c)**

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**From:** ERO Taskings  
**Sent:** Thursday, April 12, 2012 4:37 PM  
**Subject:** Fourth Amendment Training for Alternatives to Detention Officers and Agents

***The following message is being sent on behalf of Tae D. Johnson, Assistant Director for Detention Management, and approved by David J. Venturella, Assistant Director for Field Operations:***

**To:** Field Office Directors and Deputy Field Office Directors  
**Subject:** Fourth Amendment Training for Alternatives to Detention Officers and Agents

**Background:**

The Alternatives to Detention (ATD) Program is currently undergoing a shift in focus from court appearance rates to removals as a measure of success in support of the ERO mission. One of the ways ATD officers and agents can support this mission is to identify and arrest for detention those participants who violate the conditions of the program.

To properly prepare ATD officers/agents for making street arrests of ATD violators and absconders, it is important for them to participate in Fourth Amendment training. Like the National Fugitive Operations Program (NFOP), ATD officers/agents will be required to participate in Fourth Amendment training every six months.

The next training session for NFOP is set for July 2012 and we are working toward including ATD in that training. Until that time, Field Office Directors should ensure that all ATD officers/agents review the attached PowerPoint presentation prior to engaging in street arrests.

Once officers/agents have completed a review of the presentation, at the Field Office Director's discretion, ATD officers/agents are encouraged to make arrests of those aliens who have absconded or otherwise violated the conditions of ATD and who are appropriate candidates for detention.

**Task:**

Please distribute the attached PowerPoint presentation on the Fourth Amendment to ATD officers/agents in your area of responsibility. ATD officers/agents should review the presentation. Once all officers/agents have reviewed the presentation, please complete the attached Excel spreadsheet and return to the ATD Unit mailbox at [REDACTED] (b)(6) (b)(7)(c) by 12 pm EDT, April 25, 2012. If you have any questions, please contact HQ ATD Staff Officer [REDACTED] (b)(6) (b)(7)(c) at 202-732-[REDACTED] (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Monday, December 03, 2012 12:34 PM  
**Subject:** XT - Expanded Targeting

*The following message is being sent by Gary Mead, Executive Associate Director, Enforcement and Removal Operations:*

**To:** All ERO Employees

**Subject:** XT - Expanded Targeting

At a number of town hall meetings, employees have asked how they can be more involved in direct enforcement activities. In response to these questions, we are launching a voluntary Expanded Targeting (XT) initiative that will provide all ERO law enforcement officers (LEOs) who are not routinely involved in at-large arrests, the opportunity to do so. Subject to the conditions outlined below, all interested LEOs, not routinely involved in at-large arrests, will be given a caseload of potential targets. These cases can be worked during whatever time the LEOs can invest, so long as it does not interfere with their regularly assigned duties. While the caseloads will vary from Field Office to Field Office, they will generally consist of Secure Communities Level 3 criminals and non-criminal fugitives. When an LEO has worked an XT case to the point they believe an arrest is possible, they will be given the opportunity to participate in the apprehension effort.

Participation in XT is subject to the following conditions:

- All LEOs not regularly involved in the planning and execution of at-large arrests are eligible to request participation;
- Prior to participation, LEOs must complete 4<sup>th</sup> Amendment training;
- Completion of the Field Operations Training Program (DFOTP ) is not a requirement;
- Actual arrests must be coordinated and conducted under procedures developed by each field office;
- Work on XT cases must not interfere with regularly assigned duties;
- Participation in XT is voluntary and may be terminated at anytime.
- Participation must be approved by the LEO's first level supervisor.

**Requests should be approved unless the applying LEO is already routinely involved in the planning and execution of at-large arrests as part of his/her current duties. If participation is denied, written reasoning for the denial will be provided to the employee following review by the National Fugitive Operations Program Unit Chief.**

Each Field Office, in coordination with the local union, will be responsible for developing a local XT implementation plan, and field managers and union representatives will be receiving separate guidance to assist them. I want to thank everyone who contributed to this initiative, particularly the union members for their insights and support.

For any questions regarding this initiative, please email the HQERO, FUGOPS mailbox, or email or contact NFOP Unit Chief (b)(6) (b)(7)(c) at (202) 732 (b)(6) (b)(7)(c) in the alternate to (b)(6) (b)(7)(c)

**NOTICE:** This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.



**U.S. Immigration  
and Customs  
Enforcement**

## **Training Attendance Roster**

**Office:**

## **Course Title: 4<sup>th</sup> Amendment Refresher Training**

Date:



U.S. Immigration  
and Customs  
Enforcement

DEC 08 2009

MEMORANDUM FOR: Field Office Directors and  
All Fugitive Operation Team Members

FROM: John Morton  
Assistant Secretary

A handwritten signature in black ink that reads "John Morton".

SUBJECT: National Fugitive Operations Program: Priorities, Goals, and  
Expectations

Purpose

This memorandum serves to clarify the enforcement priorities of the National Fugitive Operations Program (hereinafter the program) within the Office of Detention and Removal Operations (DRO) and supersedes previously issued fugitive operations guidance. The existence and continuation of this program are essential to the integrity of the immigration and border controls. Good government is poorly served if, after much time and the expenditure of government resources, final orders of removal are ignored without consequence. Indeed, the sound administration of the nation's immigration system depends on an efficient, fair, and meaningful removal process. As a result, it is the clear policy of this agency that final orders of removal should be enforced and that those who knowingly disobey or evade a final order of removal should be apprehended and removed.

In order to ensure that the program's resources are used efficiently and as envisioned by Congress, it is the policy of this agency that the program focus on its core mission—the apprehension and removal of fugitive aliens.<sup>1</sup> In the interest of public safety and the rule of law, the program's resources may also be used to apprehend and remove (1) aliens who have been removed previously from the United States and then return illegally, and (2) criminal or otherwise dangerous aliens living at large in our communities. As a general rule, the program's resources should not be used to target other classes of removable aliens, although fugitive operations teams may apprehend and remove such aliens if encountered during normal operations.

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<sup>1</sup> A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion or has failed to report to ICE after receiving notice to do so.

Enforcement Priorities

The following three tiers reflect, in order of priority, how fugitive operations teams should focus their resources. Teams must focus the vast majority of resources, at least 70%, on tier 1 fugitives. The remainder should be directed to tiers 2 and 3. The priorities within each tier are also listed below, with level I generally warranting more attention than level II, and so forth. These tiers and levels provide clear guidance to the field but should not be applied so rigidly as to undermine sound judgment when exceptions are warranted by circumstance.<sup>2</sup> Similarly, the tiers should not be so rigidly interpreted to prevent prioritizing an illegal reentrant with a serious criminal conviction over a fugitive with no criminal history.

Tier 1 Fugitive aliens

- I. Fugitives who pose a threat to national security
- II. Fugitives convicted of violent crimes or who otherwise pose a threat to the community
- III. Fugitives with a criminal conviction other than a violent crime
- IV. Fugitives with no criminal conviction

Tier 2 Previously removed aliens

- I. Previously removed aliens who pose a threat to national security
- II. Previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community
- III. Previously removed aliens with a criminal conviction other than a violent crime
- IV. Previously removed aliens with no criminal conviction

Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of level 1 offenses, as defined for purpose of Secure Communities
- II. Aliens convicted of level 2 offenses, as defined for purposes of Secure Communities
- III. Aliens convicted of level 3 offenses, as defined for purposes of Secure Communities

With respect to non-criminal fugitive targets in Tier 1, level IV, the Fugitive Operations Support Center (FOSC) and teams should consider that aliens who are the subject of in absentia orders and aliens with pending applications for relief before U.S. Citizenship and Immigration Services are more likely to have viable motions to reopen. For that reason, resources—particularly detention resources—may be better focused on other targets, unless aggravating circumstances offset the possibility of reopening or prolonged proceedings.

To promote efficiency, teams are expected to focus resources on cases with the most current investigative leads, including cases with the most recently issued final orders as these are most

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<sup>2</sup> These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

likely to contain up-to-date contact information. These should be targeted as soon as possible to limit the opportunity for a fugitive to relocate. Teams are expected to act expeditiously if they receive current, time-sensitive leads.

As resources are best spent on cases with the freshest and most reliable leads, FOSC has created a cold case docket for those cases without any investigative leads in the past decade. FOSC will review the cold case docket twice a year to determine if new information has surfaced. New information may cause FOSC to conclude the case is resolved (for instance, because the case was reopened) or return it to the active fugitive docket (for instance, because of new information about the alien's location).

Teams will receive Fourth Amendment training every six months which will focus on the special considerations when apprehending fugitives at their home. Any team member with questions should consult his or her supervisors and consult with the Office of Chief Counsel. Team members are encouraged to engage in surveillance both to promote officer safety and increase the likelihood the team will encounter the targeted alien—rather than aliens who are not in the tiers above and would not otherwise have been the focus of limited government resources.

If during the course of operations teams encounter removable aliens, teams may place those aliens into removal proceedings, even if they are not in one of the three tiers. However, this should not detract attention away from the reason Congress mandated and funded fugitive operation teams—the apprehension and removal of fugitive aliens. In any event, detention resources shall be focused on aliens in the three tiers above and aliens subject to mandatory detention by law. Absent extraordinary circumstances, team members should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm. To detain aliens in those categories, team members must secure approval from the Field Office Director and send a significant event notice (SEN) to headquarters.

### Measuring Success

As apprehending and removing fugitives is the program's core mission, field offices' performance will be measured in part by the reduction in the fugitive docket and by compliance with priorities. Each field office and the FOSC should strive to reduce the pool of fugitives by 5% more in FY 2010 than it did in FY 2009. A field office may increase productivity—the reduction in the fugitive pool—by apprehending fugitives or otherwise resolving fugitive cases, even if no arrest is involved. This includes resolving cases by determining that a target has departed the country on his or her own or determining that the case was reopened or the target has since received an immigration benefit. Field offices should not feel such pressure to meet this goal that they lose focus on the priorities and sound use of resources. This goal does not constitute a quota; rather, this goal allows the teams to gage their productivity.

The field should not focus on numbers to the detriment of targeting and arresting the most egregious, violent offenders in their area of responsibility (AOR). To acknowledge the tiered prioritization above, DRO also will track fugitive arrests, by tier, using EARM/FCMS/TECS. Arrests will be separated by tiers, criminal and non-criminal arrests, and indictments and

convictions attributed to teams during operations. This system will credit teams for locating high priority aliens, even if those cases require more time to investigate and close.

Field offices are expected to focus not simply on the apprehension of aliens, but also on their removal. Headquarters will evaluate removals in addition to the metrics above. When fugitives are taken into custody, officers should pay attention to lawful avenues to secure the person's travel documents to reduce detention times and facilitate removal.

### Field and National Operations

Field offices have the discretion to conduct operations to advance the program's priorities and accomplish the goal of reducing the fugitive pool. Field offices are encouraged to participate in Operation Cross Check and Operation Secure Streets in collaboration with local United States Attorney's offices. These operations are important as they identify criminal aliens who fall within the three tiers above. Field offices also will be called on to participate in national and strategic headquarters-driven operations. Major operations, whether driven by the field or headquarters, will be coordinated with the Office of the Principal Legal Advisor.

### Building Partnerships

Field Office Directors and team members are encouraged to maintain and build positive relationships with federal, state, local, and tribal law enforcement agencies in their AOR. This includes information sharing, consistent with law and policy. Team members are encouraged to advise, and cooperate with, local law enforcement partners when conducting operations. Field Office Directors will coordinate with any local participants in the task force model of the 287(g) program to share information and avoid duplication of efforts.

Field Office Directors also are expected to build relationships with community groups to identify and address concerns about the conduct of fugitive operations. Allegations of misconduct and wrongdoing are referable to the Joint Intake Center (JIC).

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Cc:**  
**Subject:** FW: Risk Classification Assessment  
**Date:** Monday, January 07, 2013 4:35:01 PM  
**Attachments:** [RCA FNL Template v2.docx](#)

(b)(6) (b)(7)(c)

Risk Classification Assessment (RCA) Phase 6 deployment, which includes the New Orleans Field Office, is scheduled to begin January 28, 2012. Virtual University training for all end-users is scheduled to begin today and continue through 01/27/2013. Please forward this message to supervisors in your AOR to ensure that all ENFORCE end-users complete the VU courses by the required date. The nominees to be the training Subject Matter Experts (SME) for Oakdale were (b)(6) (b)(7)(c) They should have attended a webinar and completed their VU training regarding RCA and can assist other officers if needed.

Virtual University has three RCA courses available for end-users:

1. **Web-based Training (WBT):** The WBT is located on the (b)(7)e and is a systems training aimed at familiarizing you with the assessment process in RCA. You can access the WBT via the ICE Virtual University and by searching for "RCA."
  - All users must complete the WBT and pass the final assessment.
  - Do not continuously click through the course, as the course will not be able to register that you have completed a module. Modules must be completed prior to attempting the final assessment.
  - Please note that the Virtual University will log you out automatically after one hour. If you are approaching one hour, please exit the WBT and log back in to the course. The course will save your work if you log out, but your progress will not be saved if you are logged out by the system.
  - Turn off the pop-up block on your browser prior to launching the WBT.
2. **RCA Playbook and Training Environment:** A Playbook has been created to assist you with performing risk classification assessments using RCA in the training environment. The RCA Playbook can be found on the (b)(7)e by searching for "RCA Playbook." The Playbook consists of four scenarios and includes directions for logging into the training environment with agent and supervisor user IDs.
  - The Playbook and training environment are optional training materials. Users are encouraged to practice in the training environment prior to the December 10 release.
  - When logging into the CES training environment, users should log in with their IRMNET account information.
3. **RCA Quick Reference Guide:** A quick reference guide has been created to help you navigate the system and ensure that you have captured the correct information on the appropriate screens. The quick reference guide is filled with screen shots and includes links to additional resources on special vulnerabilities. The guide can be accessed by searching "RCA Reference" in the (b)(7)e
  - The Playbook and training environment are optional training materials. Users are encouraged to become familiar with the quick reference guide for use following the January 28 release.

I have also attached a flowchart for the FNL area which generically shows who is responsible for input of information into the module.

I will work with SFTO [REDACTED] (b)(6) (b)(7)(c) to get a training roster for this course distributed for tracking completion of the training.

Thank you,

[REDACTED] (b)(6) (b)(7)(c)

Supervisory Detention and Deportation Officer  
U.S. Immigration and Customs Enforcement  
Office of Enforcement and Removal Operations  
Jackson, Mississippi

Office 601.933 [REDACTED] (b)(6) (b)(7)(c)  
Mobile 504.43 [REDACTED] (b)(6) (b)(7)(c)  
Fax 601.933 [REDACTED] (b)(6) (b)(7)(c)

## RCA Workflow Questionnaire

**Area of Responsibility:** New Orleans

**Workflow Approval by:** \_\_\_\_\_

The following questionnaire provides a template and example workflows for how your AOR will complete the Risk Classification Assessment process in each field/sub office. Examples have been provided for reference. Please review the examples and then complete the RCA Business Process template for each field/sub office with the unit responsible for completing each step of the RCA workflow.

If the templates provided do not adequately represent your field office's business processes, please provide LESA HQ details on how your field office will operate to complete the necessary RCA recommendations and decisions. Questions regarding the template should be directed to the RCA mailbox at

(b)(7)e

Office Name: New Orleans

Please denote which unit(s) will be responsible for the following RCA submissions and approvals in this office:

	CAP	Detention	FugOps	287g	ATD/ Non-Detained	Other (Please Specify)
<b>Submit Detain/Release Recommendation</b>	X	X	X	X	X	
<b>Approve Detain/Release Decision</b>	X	X	X	X	X	
<b>Submit Custody Classification Recommendation</b>		X				
<b>Approve Custody Classification Decision</b>		X				
<b>Submit Community Supervision Recommendation</b>	X	X	X	X	X	
<b>Approve Community Supervision Decision</b>	X	X	X	X	X	

Using the information above, please complete one of the two process template on the next page by indicating what unit within this office will be responsible for each function (templates differ by place in intake process where book-in into EADM occurs). If you have any comments about how the process followed by this office differs than the diagram, please explain:

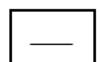
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RCA Workflow Template for Field Office: New Orleans

(b)(7)e



ICE2012FOIA02544.003432

**From:** (b)(6) (b)(7)(c)  
**To:** [ERO Operation Center](#)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FNL - ERO Operational Calendar  
**Date:** Monday, October 07, 2013 11:37:49 AM

---

Good Afternoon,

The New Orleans Field Office does not have any scheduled CAP Surges, at detention facilities within our AOR to report at this time. Below are the number of level one and level two criminals arrested last week.

**Week of September 22 – September 28, 2013 (results)**

**ERO New Orleans**

**Total Arrests for the week of September 22 – September 28, 2013:**

**Arrests by priority:**

Level 1 criminal alien: 5

Level 2 criminal alien: 2

Please let me know if I may be of further assistance.

*Thanks,*

(b)(6) (b)(7)(c)

SERA

Oakdale, LA

(318) 385 (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Saturday, June 09, 2012 5:46 AM  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** RE: Addendum to the New Format for the ERO Operational Calendar:

(b)(6) (b)(7)(c)

Last April we included added a section highlighting the planned arrests of egregious criminal aliens to the ERO Operational Calendar. Between now and the end of the fiscal year we have suspended that requirement. I've attached the newest update to the ERO Operational Calendar tasking for you.

Here's an example of the format for an upcoming CAP surge focused at a detention facility:

***Criminal Alien Program***

**ERO El Paso**

**Office Event Description:** ERO El Paso will conduct a CAP operation in the Pecos sub office AOR. This operation seeks to identify and process criminal aliens detained at Lea County, NM jails and prisons. ERO personnel will work closely with Lea County law enforcement personnel to interview all individuals arrested and booked into local jails. Currently incarcerated individuals will be screened for removability. All arrests will be vetted to insure that they meet ICE priorities and for prosecutorial discretion factors at the time of encounter.

**Location:** Lea County, NM

**Projected Date:** April 26 - 30, 2012

**Expected Media Coverage:** None expected.

**Juvenile presence expected:** None expected.

**Sensitive locations:** None expected.

**Anticipated Arrests/Detainers:** The number of anticipated arrests and detainers is unknown as it will depend on the population of foreign born individuals who are at the facilities during the time of the operations.

Here's an example of the format for reporting an ongoing or completed CAP Surge at a detention facility.

**ERO El Paso**

**Office Event Description:** ERO is conducting a CAP Surge operation at the Reeves County Detention Center in Pecos, TX. The Reeves County Detention Center is a BOP facility; all inmates are serving a federally imposed criminal sentence. A majority of those aliens encountered are aggravated felons and have narcotics trafficking convictions. Other convictions include but are not limited to illegal re-entry, fraud, weapons violations, etc. All arrests will be vetted that they meet ICE priorities and for prosecutorial discretion factors at the time of encounter.

**Location:** Reeves County Detention Center in Pecos, TX.

**Projected Date:** February 21 - March 1, 2012

**Total Detainers as of February 27, 2012:** 127

**Detainers by priority:**

<b>Level 1 criminal alien:</b>	119
<b>Level 2 criminal alien:</b>	8

Between now and the end of the fiscal year these are the only operations your office needs to report on. Instead of reporting about upcoming and past operations targeting at-large criminal aliens and fugitives, we want each office to tally up the number of Level One and Level Two criminal aliens apprehended at-large (not picked up at jails, not reporting to the bond window) for the previous week. You may report any Level One or Level Two criminal arrests made by any component: CAP, Fugitive Operations, non-detained, etc. as long as the arrests were made in the field. The format for this is as follows:

**ERO Atlanta**

**Total Arrests for the week of May 20-26, 2012:** 20

**Arrests by priority:**

<b>Level 1 criminal alien:</b>	6
<b>Level 2 criminal alien:</b>	14

I'm on a TDY until mid-July. If you'd like to call with questions please reach out to DDO [REDACTED] (b)(6), (b)(7)(C)  
They will be covering the calendar for me in my absence.

Sincerely,

[REDACTED] (b)(6) (b)(7)(c)

---

**From:** [REDACTED] (b)(6) (b)(7)(c)

**Sent:** Friday, June 08, 2012 11:42 AM

**To:** [REDACTED] (b)(6) (b)(7)(c)

**Subject:** FW: Addendum to the New Format for the ERO Operational Calendar:

Good Morning ,

I need to get some clarification regarding the Operational Report and the Egregious Criminal Arrest Report. Does the "Criminal Alien Removal Initiative Weekly Report of Significant Arrests" replace the Egregious report in reference to this email or is it in addition to this report?

Also what is the correct format for the Operational Report?

Our phone system is down at the moment so I couldn't call you.

*Thank you and have a great day!*

[REDACTED] (b)(6) (b)(7)(c)

Management & Program Analyst

ICE/ERO/FNL – Oakdale

1010 E. Whatley Rd.

Oakdale, LA 71463

(318) 335-[REDACTED] (b)(6) (b)(7)(c)

(318) 335-9405 fax

---

**From:** ERO Taskings  
**Sent:** Friday, April 20, 2012 10:48 AM  
**Subject:** Addendum to the New Format for the ERO Operational Calendar:

\*\*\*\*\*

*This message is sent on behalf of David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors  
**Subject:** **Addendum to the New Format for the ERO Operational Calendar:**

In an effort to highlight the outstanding work ERO officers and agents do on a daily basis, ERO will begin to add write ups for egregious criminal arrests planned for the upcoming week to the ERO Operational Calendar report.

To that end, when submitting your weekly ERO Operational Calendar Report each field office must provide at least one write up for the most egregious criminal your office plans to arrest/pursue in the upcoming week. Highlighted criminal arrests, should be a street arrests, but can be fugitives, reentries or at large criminals. Each office is to provide a write-up whether the arrest is part of a scheduled operation or your everyday enforcement actions. Below is a sample write up.

**ERO Buffalo**

**Event Description:** *The Buffalo Field Office, in coordination with the Rochester, NY Organized Crime Drug Enforcement Task Force (OCDETF), will arrest [REDACTED] (b)(6) (b)(7)(c) [REDACTED] a citizen of Jamaica. (b)(6) (b)(7)(c) is a previously removed criminal alien and a member of a narcotics distribution network operating in the Greater Rochester, NY area. (b)(6) (b)(7)(c) faces a number of federal charges, including reentry of a removed alien and narcotics trafficking. Any incidental aliens encountered will be vetted pursuant to ICE priorities and prosecutorial guidance.*

Please submit your write-ups as a part of your weekly submissions for the ERO Operational Calendar. If you do not have an operation planned you must still submit the egregious write up. The attachment is a sample of what is reported to the department on a weekly basis, for the Secretaries visibility, we need to do a better job of highlighting the tremendous work the Field does.

Should you have any questions, please contact the ERO Operations Center by email at [REDACTED] (b)(7)(E) or [REDACTED] (b)(6) (b)(7)(c) at (202) 734-6700 via email at [REDACTED] (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Wednesday, January 25, 2012 1:30 PM  
**Subject:** New Format - ERO Operational Calendar Report

*This message is sent on behalf of David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors  
**Subject:** **Addendum to the New Format for the ERO Operational Calendar:**

**Starting immediately, all submissions for the Operational Calendar will be due to the ERO Operation Center Mailbox [REDACTED] (b)(7)(E) by close of business (COB) on Fridays.**

If a holiday should fall on either a Friday or a Monday, then your submission must be received no later than COB on Thursday.

Your continued assistance is appreciated. The Operational Calendar continues to evolve in order to provide the Director's Office with ERO operational information.

If you have any questions, please contact the ERO Operations Center by email at [REDACTED] (b)(7)(E) [REDACTED] (b)(6), (b)(7)(C)

(b) (6), (b) (7)(D) (202) 7(B)(6) (b) (7)(C) via email at [redacted]

[redacted] (b) (6) (b) (7)(C)

*This message is sent on behalf of David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors

**Subject:** Addendum to the New Format for the ERO Operational Calendar:

Starting immediately, all submissions for Operational Calendar will require that target lists be vetted for possible prosecutorial discretion consideration and to ensure that they meet the ERO priorities. Additionally, all Operational Calendar submissions must include the verbiage below indicating that the target list as well as the individuals upon arrest were vetted against prosecutorial discretion consideration factors.

*"Each target was vetted that it meets ICE priorities and for prosecutorial discretion factors prior to being targeted for the operation" and "all arrests were vetted that they meet ICE priorities and for prosecutorial discretion factors at the time of encounter"*

If you have any questions, please contact the ERO Operations Center by email at [redacted]

(b) (7)(E)

**From:** ERO Taskings

**Sent:** Tuesday, December 27, 2011 1:54 PM

**Subject:** New Format - ERO Operational Calendar Report

*This message is sent on behalf of David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors

**Subject:** **New Format** - ERO Operational Calendar Report

Starting **immediately**, Field Offices must report all enforcement operations utilizing the attached format.

Please provide a weekly submission of anticipated enforcement operations utilizing the attached template. Negative responses are required. Please ensure that the reporting period covers **a five week** period. The previous week to include the results of any operations and four weeks out from the due date.

Examples of enforcement events include, but are not limited to:

- Fugitive Operations
- Enhanced CAP Surges
- Joint Operations with other DHS, Federal, State or Local Law Enforcement Agencies
- Probation/Parole Operations
- Cross-Check Operations
- Any other event or operation you feel is significant

In the report, please provide the following: (as appropriate)

- **Office Event Description:** (*Describe the enforcement event. See attached template.*)
- **Location:** (*City and State of the operation*)
- **Projected Date:** (*Start and end dates of the operation*)
- **Expected Media Coverage:** (*Describe the level of media coverage expected. Include information regarding recent significant stories on immigration in the local area.*)
- **Juvenile presence expected:** (*Describe the likelihood of encountering children during the operation.*)
- **Sensitive locations:** (*Describe the likelihood of the operation occurring at or near sensitive locations.*)
- **Anticipated Detainers/Arrests:** (*for CAP Surge operations*)
- **Total Targets:**
- **Targets by priority:**
  - Level 1 criminal alien:
  - Level 2 criminal alien:
  - Level 3 criminal alien:
  - Fugitive aliens:
  - Re-entries:
  - Recent Border Entrants:

- Total Arrests as of:
- Arrests by priority:
  - Level 1 criminal alien:
  - Level 2 criminal alien:
  - Level 3 criminal alien:
  - Fugitive aliens:
  - Re-entries:
  - Recent Border Entrants:
- Total Detainers/Arrests as of: (for CAP Surge operations)

This will be a recurring report that will be due every **Friday by close of business**. Please submit your responses to the [REDACTED] (b)(7)(e) Outlook mailbox. For holidays that occur on a **Friday or Monday**, the tasking will be due on the **previous Thursday**.

If you have any questions, please contact the ERO Operations Center by email at [REDACTED] (b)(7)(e) or [REDACTED] (b)(6) (b)(7)(c) (202) 7[REDACTED] (b)(7)(c) via email at [REDACTED] (b)(6) (b)(7)(c)

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Proposed to CAP Duty Officer Responsibilities  
**Date:** Tuesday, October 22, 2013 10:16:03 AM

Please disregard my proposal, the supervisors in Oakdale and Jena articulated their displeasure with this proposal, therefore, it's a moot point, thank you for your attention in this matter.

(b)(6) (b)(7)(c) | Assistant Field Office Director I SCI Field Coordinator I Field Office Intel Coordinator  
U.S. Department of Homeland Security | Enforcement and Removal Operations  
1250 Poydras Street Suite (b)(6) (b)(7)(c) New Orleans, LA 70113  
[REDACTED] : 504-589-(b)(6) (b)(7)(c) : 504-589-(b)(6) (b)(7)(c)  
(b)(6) (b)(7)(c)

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Tuesday, October 22, 2013 8:35 AM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Cc:** [REDACTED]  
**Subject:** RE: Proposed to CAP Duty Officer Responsibilities

There will be a primary and an alternate Duty Officer, last time I checked, all the agents are over the age of 21 yo, so we should them accountable for coordinating their own coverage if they opt to take leave or attend some training, as well as you will have a copy for your records, you can refer to the duty rotation whenever they submit a request.

---

(b)(6) (b)(7)(c) | Assistant Field Office Director I SCI Field Coordinator I Field Office Intel Coordinator  
U.S. Department of Homeland Security | Enforcement and Removal Operations  
1250 Poydras Street Suite (b)(6) (b)(7)(c) New Orleans, LA 70113  
[REDACTED] : 504-589-(b)(6) (b)(7)(c) : 504-589-(b)(6) (b)(7)(c)  
(b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, October 22, 2013 8:13 AM  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** RE: Proposed to CAP Duty Officer Responsibilities

Sounds good but how would we deal with pay for the rotation and or anyone needing to swap off in the rotation due to leave, training, etc.

(b)(6) (b)(7)(c)  
Supervisory Detention Deportation Officer  
ICE-Enforcement and Removal Operations  
Baton Rouge Sub-Office  
New Orleans Field Office  
(225)757 (b)(6) (b)(7)(c)  
(504) 329 (b)(6) (b)(7)(c)  
(225) 766 (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, October 22, 2013 7:19 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** Proposed to CAP Duty Officer Responsibilities

Good morning,

I would like to prosed a revision to the responsiblity of the CAP Duty Officer for the state of the Louisiana.

Currently, we all have several officers / agents rotate on a weekly or biweekly basis to address / respond to all CAP related inquiries within our respective area of responsibilities. My proposal is to establish one CAP Duty Officer rotation, where that officer / agent would respond to all CAP related inquiries for the entire state. Thus minimizing the confusion of who covers what parish for CAP, as well as the confusion for Sector on who they need to contact for local law enforcement agencies calls.

I understand that the Hub has a Detention Supervisor Duty Officer, this proposal will not interfere with that concept, and he / she will still have their responsibility to address all detention related issues within the Hub.

Based on our current staffing, at the most, I think each officer / agent will have the Duty Officer for (b)(7)(E)

Please weigh in, and let me know what you think of this idea, thanks.

(b)(6) (b)(7)(c) Assistant Field Office Director | SCI Field Coordinator | Field Office Intel Coordinator  
U.S. Department of Homeland Security | Enforcement and Removal Operations

1250 Poydras Street Suite (b)(6) (b)(7)(c) Orleans, LA 70113

Telephone: 504-549-(b)(6) (b)(7)(c) Fax: 504-549-(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

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## ERO New Orleans Table of Organization - CAP

FOD - (b)(6) (b)(7)(c)

DFOD - (b)(6) (b)(7)(c)

- Detention &amp; Deportation Officer - (b)(6) (b)(7)(c)

**AFOD Arkansas, Louisiana & Mississippi****Arkansas***Ft. Smith**Texarkana  
Shreveport**Fayetteville**Little Rock*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**Louisiana***Baton Rouge  
Lake Charles  
Lafayette**New Orleans  
Houma*

(b)(6) (b)(7)(c)

**Baton Rouge**

(b)(6) (b)(7)(c)

**Lake Charles**

(b)(6) (b)(7)(c)

**Houma**

(b)(6) (b)(7)(c)

**Lafayette**

(b)(6) (b)(7)(c)

**Mississippi***Jackson**Gulfport*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**AFOD Alabama**

(b)(6) (b)(7)(c)

*Gadsden  
Homewood**Montgomery  
Gulfport  
Mobile*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

*Homewood*

(b)(6) (b)(7)(c)

**AFOD Tennessee**

(b)(6) (b)(7)(c)

*Memphis*

*Memphis*

*Chattanooga*

*Knoxville*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

*Nashville*

*Nashville*

(b)(6) (b)(7)(c)

**AFOD Oakdale, Louisiana**

(b)(6) (b)(7)(c)

*Oakdale*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**AFOD Jena, Louisiana**

(b)(6) (b)(7)(c)

*Jena*

*Jena*

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Detainer Tasking  
**Date:** Tuesday, July 30, 2013 6:52:46 AM

---

Hello (b)(6) (b)(7)(c)

Please see information below and send us MLN input by 2pm if possible.

We'll consolidate and forward to DFOD.

Thanks , hope all is well.

-----Original Message-----

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 03:59 PM Eastern Standard Time  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Detainer Tasking

(b)(6) (b)(7)(c) Please take the lead with input form (b)(6) (b)(7)(c)

---

**From:** ERO Taskings  
**Sent:** Friday, July 26, 2013 3:58 PM  
**Subject:** Detainer Tasking

***The following message is being sent on behalf of Matthew T. Albence, Assistant Director for Secure Communities and Enforcement, with the concurrence of Philip T. Miller, Assistant Director for Field Operations:***

**To:** Field Office Directors, Deputy Field Office Directors

**Subject:** Six-Month Detainer Policy Review

On December 21, 2012, Director Morton issued a policy entitled Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems. This memorandum provided national guidance on the use of detainers to ensure uniform adherence to ICE's Civil Immigration Enforcement Priorities. The policy requires a six-month review of the implementation and effect of this guidance to determine whether modifications, if any, are needed.

To effect this review each Field Office must respond to the below questions:

1. What, if any, challenges in implementing the new guidance and form have you experienced?
2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
3. Does your office routinely conduct interviews prior to issuing a detainer?
  - A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
  - B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
  - C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

Please submit your responses by July 31, 2013, to the CAP HQ mailbox at

(b)(6) (b)(7)(c)

Questions regarding this message may be directed to your [CAP](#) point of contact.

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Response to Hudson County Sheriff's OPR 287(g) Review  
**Date:** Friday, July 05, 2013 1:43:00 PM  
**Attachments:** [Hudson County 287\(G\) OPR Response.doc](#)  
[Hudson County OPR 287g.pdf](#)

---

FYI

(b)(6) (b)(7)(c)

*Assistant Field Office Director*

*DHS/ICE/ERO*

*Newark Field Office*

*Criminal Alien Program*

*614 Frelinghuysen Ave,*

(b)(6) (b)(7)(c)

*Newark, NJ, 07114*

*Office - (973) 776-*

*Cell - (973) 332-*

(b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 05, 2013 1:43 PM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** Response to Hudson County Sheriff's OPR 287(g) Review

Mr. (b)(6) (b)(7)(c)

Attached you will find FNE response to the OPR 287(g)Review of Findings for Hudson County Sheriff's Office.

V/R,

(b)(6) (b)(7)(c)

Deputy Field Office Director  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
614 Frelinghuysen Avenue, (b)(6) (b)(7)(c)  
Newark, NJ  
Ofc (973) 776 (b)(6) (b)(7)(c)  
Cell (973) 332 (b)(6) (b)(7)(c)

Fax (973) 623-(b)(6) (b)(7)(c)



**U.S. Immigration  
and Customs  
Enforcement**

**MEMORANDUM FOR:**

(b)(6) (b)(7)(c)  
**Acting Assistant Director  
Secure Communities and Enforcement**

**FROM:**

(b)(6) (b)(7)(c)  
Acting Field Office Director  
Newark

**SUBJECT:** Hudson County Department of Corrections Office of Professional Responsibility 287(g) Review Findings Report Corrective Plan of Action

On week of March 26 - March 28, 2013, the Office of Professional Responsibility (OPR) 287(g) Inspections Unit conducted a review of the Hudson County Corrections Department (HCDOC) 287(g) program and submitted their findings. The following information addresses the OPR review plan of action for each identified area of concern and/or deficiency, to include corrective actions, mitigation plans, and status.

**Area of Concern - 1:** In accordance with the MOA, Section X, ICE Supervision, "Immigration enforcement activities conducted by the participating HCDC personnel will be supervised and directed by ICE supervisory officers or designated ICE team leaders." The memorandum, "Superseding Guidance on Reporting and Investigating Claims to United States Citizenship," signed by the ICE Assistant Secretary, dated November 19, 2009, provides "FODs and SACs are expected to thoroughly investigate all USC claims made by individuals encountered by 287(g) designated officers." One JEO indicated that although no 287(g) interviewee had claimed to be a USC to date, if one did, he would still place a detainer on the arrestee (**AOC/Supervision/4**), after researching and exhausting all possible database indexes. OPR explained to the JEO that he must immediately contact ICE for further guidance if someone they are processing claims to be a USC.

**Corrective Action:** On March 27, 2013, all HCDOC JEO's were advised by OPR as well as ERO management that they must contact ICE immediately and seek guidance when encountering interviewees claiming to be USC's. The Newark SDDO conducted a follow-up with all (4) HCDOC JEO's to ensure that each understood the policy guidance outlined in the Superseding Guidance on Reporting and Investigating Claims to United States Citizenship.

**Mitigation Plan:** On June 20, 2013, an e-mail was forwarded to all the HCDOC JEOs reiterating that interviewees claiming to be USC's must be reported to ICE immediately before a detainer can be placed. A copy of the Superseding Guidance on Reporting and Investigating Claims to United States Citizenship Memorandum was also sent to all four HCDOC JEO's, and a copy was posted in the HCDOC work area.

**Status:** Follow up is conducted daily with the JEOs to confirm interviewees are not claiming USC status.

**Area of Concern - 2:** JEOs/TFOs were extensively trained at the IADP training, specifically during the "Alien Encounters" block, that when exercising immigration authority, JEOs/TFOs must always identify themselves by name, agency, and title (**AOC/Property/1**), including showing documentation of their status as immigration officers. One JEO did not have his ICE-issued credentials on his person when OPR asked for them. The JEO told OPR he identifies himself as an immigration officer verbally to detainees. OPR reminded the JEO that part of the identification process is showing the detainees his ICE-issued credentials. The JEO stated he would carry his credentials when on duty at HCCC and he would show detainees his credentials before each interview. Prior to the conclusion of the inspection, OPR verified that the JEO did in fact have his credentials.

**Corrective Action:** In order to comply with the IADP training, specifically during the "Alien Encounters" block when exercising immigration authority. The Newark SDDO conducted a follow-up with all (4) HCDOC JEO's to ensure that each understood the requirement to properly identify themselves when in the performance of official duties as a Designated Immigration Officer. On June 20, 2013 a follow-up e-mail was sent to all HCDOC JEO's reiterating the policy regarding identifying themselves as well as having their issued 287(g) credentials in their possession while performing in the capacity of an immigration official.

**Mitigation Plan:** Newark ERO Staff monitoring the HCDOC 287(g) program will conduct periodic checks during daily facility visits, ensuring that JEOs have their required credentials on their person.

**Status:** Follow-up will be bi-annually to coincide with the Newark Field Office inventory of individual officer issued property.

**Deficiency - 1:** In accordance with the MOA, Section X, ICE Supervision, "In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HCDC personnel in exercising these authorities shall be DHS and ICE policies and procedures." Appendix D (SOP) provides, "The SAC/FOD office is responsible for providing the AGENCY with current and updated DHS policies regarding the arrest and processing of illegal aliens." The correct 287(g) Processing Guide is currently Version 3.0 (March 18, 2011) (IO/Prioritize/1). The IEA and DO used the CAP processing guide when reviewing 287(g) Forms I-213.

OPR advised the IEA and DO that when reviewing the 287(g) Forms I-213 produced by JEOs, they should be referencing the 287(g) Processing Guide, Version 3.0 (March 18, 2011) only. ERO field management was made aware of this deficiency and stated they would only use the 287(g) Processing Guide.

**Corrective Action:** In order to comply with “The SAC/FOD office is responsible for providing the AGENCY with current and updates DHS policies regarding the arrest and processing of illegal aliens”. A hard copy of the 287(g) Processing Guide, Version 3.0 (March 18, 2011) has been physically present in the 287(g) office for reference and was verified the same day of the inspection.

In addition, the IEA and DO at 287(g) assist but are not the reviewing officials on the forms I-213 produced by JEOs. Therefore, they refer to the CAP processing guide when completing Forms I-213. On March 27, 2013, an e-mail was forwarded to the IEA and DO to refer to when assisting with 287(g) Forms I-213. The most recent copy of the 287(g) Processing guide was also provided to all ICE ERO staff having 287(g) oversight responsibilities at HCDOC.

**Mitigation Plan:** Newark ERO Management is monitoring updates to the 287(g) Processing Guide to ensure appropriate dissemination.

**Status:** A follow-up will be conducted bi-annually or when previous additions are obsolete to ensure that the updated and most current 287(g) Processing Guide is being utilized by both HCDOC and Newark ICE ERO Staff having responsibility for oversight.

**Deficiency - 2:** In accordance with the MOA, Section X, ICE Supervision, “In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HCDC personnel in exercising these authorities shall be DHS and ICE policies and procedures.” Appendix D (SOP) provides, the HCDC “is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, ensuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.” The 287(g) Processing Guide Version 3.0 (March 18, 2011), Step 6 describes the correct application of G-23 line codes (**IO/G-23/1**). OPR found errors in the G-23 line coding on 67 (50 percent) of the 133 Forms I-213 reviewed, even though the JEOs use the current 287(g) Processing Guide. The majority of errors involved offenses recorded as (b)(7)(E) other removable offenses rather than correctly as (b)(7)(E) (narcotics trafficking offenses), (b)(7)(E) (aggravated felonies), and (b)(7)(E) (non-removable offenses), generally resulting in an understatement of offense severity. ERO field management was made aware of the G-23 line code errors. ERO field management stated they would continue training JEOs and monitor all future Forms I-213 to ensure the proper G-23 line codes are used.

**Corrective Action:** In order to comply with Step 6 of the 287(g) Processing Guide Version 3.0 in applying the correct G-23 line-codes. The JEOs are using the current 287(g) Processing Guide Version 3.0 (March 18, 2011). This will ensure appropriate application of the correct G-23 line codes.

**Mitigation Plan:** Newark ERO Management is monitoring the G-23 line coding as appropriate to the 287(g) Processing Guide to ensure appropriate coding is annotated. The review of data quality will continue until the codes are obsolete as projected.

**Status:** Daily continued follow-up will be conducted on all files reviewed for correct coding on the G-23 line or until it becomes obsolete.

**Deficiency - 3:** In accordance with the MOA, Section X, ICE Supervision, “In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HCDC personnel in exercising these authorities shall be DHS and ICE policies and procedures.” Appendix D (SOP) provides, the HCDC “is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, ensuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.” The 287(g) Processing Guide Version 3.0 (March 18, 2011), Step 6 describes the correct application of criminality levels. OPR also reviewed encounters based on ICE offense levels, which ensures compliance with the MOA. OPR found 11 of the 133 Forms I-213 (8 percent) did not include the proper offense level (IO/Levels/1). The majority of errors identified involved drug offenses incorrectly recorded as Level 2 or 3, instead of the correct Level 1, resulting in an understatement of the offenses’ severity. The SDDO stated he would continue training JEOs and monitor all future Forms I-213 to ensure the proper offense levels are used.

**Corrective Action:** In order to comply with Appendix D (SOP) to ensure the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents and criminality levels. The HCDOC JEOs are using the current 287(g) Processing Guide Version 3.0 (March 18, 2011), which includes guidance on application of criminality levels.

**Mitigation Plan:** Newark ERO Management is monitoring the criminality levels coding as appropriate to the 287(g) Processing Guide to ensure compliance.

**Status:** Daily continued follow up will be conducted on all files reviewed for appropriate coding of criminality level.





**U.S. Immigration  
and Customs  
Enforcement**

JUL 05 2013

**MEMORANDUM FOR:**

(b)(6) (b)(7)(c)

**Acting Assistant Director  
Secure Communities and Enforcement**

**FROM:**

(b)(6) (b)(7)(c)

**Acting Field Office Director  
Newark**

**SUBJECT:**

Hudson County Department of Corrections Office of Professional Responsibility 287(g) Review Findings Report Corrective Plan of Action

On week of March 26 - March 28, 2013, the Office of Professional Responsibility (OPR) 287(g) Inspections Unit conducted a review of the Hudson County Corrections Department (HCDOC) 287(g) program and submitted their findings. The following information addresses the OPR review plan of action for each identified area of concern and/or deficiency, to include corrective actions, mitigation plans, and status.

**Area of Concern - 1:** In accordance with the MOA, Section X, ICE Supervision, "Immigration enforcement activities conducted by the participating HCDC personnel will be supervised and directed by ICE supervisory officers or designated ICE team leaders." The memorandum, "Superseding Guidance on Reporting and Investigating Claims to United States Citizenship," signed by the ICE Assistant Secretary, dated November 19, 2009, provides "FODs and SACs are expected to thoroughly investigate all USC claims made by individuals encountered by 287(g) designated officers." One JEO indicated that although no 287(g) interviewee had claimed to be a USC to date, if one did, he would still place a detainer on the arrestee (**AOC/Supervision/4**), after researching and exhausting all possible database indexes. OPR explained to the JEO that he must immediately contact ICE for further guidance if someone they are processing claims to be a USC.

**Corrective Action:** On March 27, 2013, all HCDOC JEO's were advised by OPR as well as ERO management that they must contact ICE immediately and seek guidance when encountering interviewees claiming to be USC's. The Newark SDDO conducted a follow-up with all (4) HCDOC JEO's to ensure that each understood the policy guidance outlined in the Superseding Guidance on Reporting and Investigating Claims to United States Citizenship.

**Mitigation Plan:** On June 20, 2013, an e-mail was forwarded to all the HCDOC JEOs reiterating that interviewees claiming to be USC's must be reported to ICE immediately before a detainer can be placed. A copy of the Superseding Guidance on Reporting and Investigating Claims to United States Citizenship Memorandum was also sent to all four HCDOC JEO's, and a copy was posted in the HCDOC work area.

**Status:** Follow up is conducted daily with the JEOs to confirm interviewees are not claiming USC status.

**Area of Concern - 2:** JEOs/TFOs were extensively trained at the IADP training, specifically during the "Alien Encounters" block, that when exercising immigration authority, JEOs/TFOs must always identify themselves by name, agency, and title (**AOC/Property/1**), including showing documentation of their status as immigration officers. One JEO did not have his ICE-issued credentials on his person when OPR asked for them. The JEO told OPR he identifies himself as an immigration officer verbally to detainees. OPR reminded the JEO that part of the identification process is showing the detainees his ICE-issued credentials. The JEO stated he would carry his credentials when on duty at HCCC and he would show detainees his credentials before each interview. Prior to the conclusion of the inspection, OPR verified that the JEO did in fact have his credentials.

**Corrective Action:** In order to comply with the IADP training, specifically during the "Alien Encounters" block when exercising immigration authority. The Newark SDDO conducted a follow-up with all (4) HCDOC JEO's to ensure that each understood the requirement to properly identify themselves when in the performance of official duties as a Designated Immigration Officer. On June 20, 2013 a follow-up e-mail was sent to all HCDOC JEO's reiterating the policy regarding identifying themselves as well as having their issued 287(g) credentials in their possession while performing in the capacity of an immigration official.

**Mitigation Plan:** Newark ERO Staff monitoring the HCDOC 287(g) program will conduct periodic checks during daily facility visits, ensuring that JEOs have their required credentials on their person.

**Status:** Follow-up will be bi-annually to coincide with the Newark Field Office inventory of individual officer issued property.

**Deficiency - 1:** In accordance with the MOA, Section X, ICE Supervision, "In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HCDC personnel in exercising these authorities shall be DHS and ICE policies and procedures." Appendix D (SOP) provides, "The SAC/FOD office is responsible for providing the AGENCY with current and updated DHS policies regarding the arrest and processing of illegal aliens." The correct 287(g) Processing Guide is currently Version 3.0 (March 18, 2011) (IO/Prioritize/1). The IEA and DO used the CAP processing guide when reviewing 287(g) Forms I-213.

OPR advised the IEA and DO that when reviewing the 287(g) Forms I-213 produced by JEOs, they should be referencing the 287(g) Processing Guide, Version 3.0 (March 18, 2011) only. ERO field management was made aware of this deficiency and stated they would only use the 287(g) Processing Guide.

**Corrective Action:** In order to comply with “The SAC/FOD office is responsible for providing the AGENCY with current and updates DHS policies regarding the arrest and processing of illegal aliens”. A hard copy of the 287(g) Processing Guide, Version 3.0 (March 18, 2011) has been physically present in the 287(g) office for reference and was verified the same day of the inspection.

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**Mitigation Plan:** Newark ERO Management is monitoring updates to the 287(g) Processing Guide to ensure appropriate dissemination.

**Status:** A follow-up will be conducted bi-annually or when previous additions are obsolete to ensure that the updated and most current 287(g) Processing Guide is being utilized by both HCDOC and Newark ICE ERO Staff having responsibility for oversight.

**Deficiency - 2:** In accordance with the MOA, Section X, ICE Supervision, “In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HCDC personnel in exercising these authorities shall be DHS and ICE policies and procedures.” Appendix D (SOP) provides, the HCDC “is responsible for ensuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, ensuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.” The 287(g) Processing Guide Version 3.0 (March 18, 2011), Step 6 describes the correct application of G-23 line codes (IO/G-23/1). OPR found errors in the G-23 line coding on 67 (50 percent) of the 133 Forms I-213 reviewed, even though the JEOs use the current 287(g) Processing Guide. The majority of errors involved offenses recorded as (b)(7)(E) other removable offenses rather than correctly as (b)(7)(E) (narcotics trafficking offenses), (b)(7)(E) (aggravated felonies), and (b)(7)(E) (non-removable offenses), generally resulting in an understatement of offense severity. ERO field management was made aware of the G-23 line code errors. ERO field management stated they would continue training JEOs and monitor all future Forms I-213 to ensure the proper G-23 line codes are used.

**Corrective Action:** In order to comply with Step 6 of the 287(g) Processing Guide Version 3.0 in applying the correct G-23 line-codes. The JEOs are using the current 287(g) Processing Guide Version 3.0 (March 18, 2011). This will ensure appropriate application of the correct G-23 line codes.

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**Mitigation Plan:** Newark ERO Management is monitoring the criminality levels coding as appropriate to the 287(g) Processing Guide to ensure compliance.

**Status:** Daily continued follow up will be conducted on all files reviewed for appropriate coding of criminality level.

**From:**  
**To:**

(b)(6) (b)(7)(c)

**Subject:** FW: Detainer policy  
**Date:** Friday, December 21, 2012 4:45:26 PM  
**Attachments:** [Detainer Policy 12 21 12.pdf](#)  
[2012 Year End Announcement.pdf](#)  
**Importance:** High

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Please see attached new detainer policy effective for all new cases being encountered. Ensure it is discussed with your staff. Please let me know if there are any questions.

Thanks



U.S. Immigration  
and Customs  
Enforcement

DEC 21 2012

MEMORANDUM FOR:  
All Field Office Directors  
All Special Agents in Charge  
All Chief Counsel

FROM:

John Morton  
Director

SUBJECT:  
Civil Immigration Enforcement: Guidance on the Use of Detainers  
in the Federal, State, Local, and Tribal Criminal Justice Systems

#### Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

#### Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,<sup>1</sup> ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

<sup>1</sup> As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

**National Detainer Guidance**

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;<sup>2</sup>
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;<sup>3</sup>
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.<sup>4</sup>

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<sup>2</sup> Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

<sup>3</sup> A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

<sup>4</sup> For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

**FY 2012: ICE ANNOUNCES YEAR-END REMOVAL NUMBERS, HIGHLIGHTS FOCUS ON KEY PRIORITIES AND ISSUES NEW NATIONAL DETAINER GUIDANCE TO FURTHER FOCUS RESOURCES.**

WASHINGTON — U.S. Immigration and Customs Enforcement (ICE) Director John Morton today announced the agency's fiscal year 2012 year-end removal numbers, highlighting trends that underscore the administration's focus on removing from the country convicted criminals and other individuals that fall into priority areas for enforcement. To further focus ICE resources on the most serious criminal offenders, ICE today also issued new national detainer guidance [LINK]. This guidance limits the use of detainers to individuals who meet the Department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses such as traffic offenses and other petty crimes, helping to ensure that available resources are focused on apprehending felons, repeat offenders and other ICE priorities. It is applicable to all ICE enforcement programs, including Secure Communities.

"Smart and effective immigration enforcement relies on setting priorities for removal and executing on those priorities," said Director Morton. "In order to further enhance our ability to focus enforcement efforts on serious offenders, we are changing who ICE will issue detainers against. While the FY 2012 removals indicate that we continue to make progress in focusing resources on criminal and priority aliens, with more convicted criminals being removed from the country than ever before, we are constantly looking for ways to ensure that we are doing everything we can to utilize our resources in a way that maximizes public safety."

Secretary Napolitano has directed ICE to focus its resources on key priorities in all aspects of its immigration enforcement efforts. ICE's implementation of this directive includes today's new national detainer policy, as well as the continued use of investigations and programs like Operation Cross Check that target criminal aliens and ICE's expanded collaboration with CBP to remove recent border crossers.

ICE priorities include the identification and removal of those that have broken criminal laws, threats to national security, recent border crossers, and repeat violators of immigration law. Overall, in FY 2012 ICE's Office of Enforcement and Removal Operations removed 409,849 individuals. Of these, approximately 55 percent or 225,390 of the people removed were convicted of felonies or misdemeanors — almost double the removal of criminals since FY 2008. This includes 1,215 aliens convicted of homicide; 5,557 aliens convicted of sexual offenses; 40,448 aliens convicted for crimes involving drugs; and 36,166 aliens convicted for driving under the influence.

ICE continues to make progress with regard to other categories prioritized for removal. Some 96 percent of all ICE's removals fell into a priority category—a record high.

To support the Department of Homeland Security's efforts to secure our nation's borders, ICE prioritizes the identification and removal of recent border crossers and conducts targeted enforcement operations with the U.S. Border Patrol. The historic results along the Southwest Border are attributable to the joint efforts of U.S. Border Patrol agents and ICE officers and agents, and the emphasis ICE places on the removal of recent border crossers

As part of the effort to ensure that the immigration system can focus its resources on priority cases, ICE has also implemented policies and processes that ensure that those enforcing immigration laws make appropriate use of the discretion they have in deciding the types of individuals prioritized for removal from the country. In addition, ICE has also decided not to renew any of its agreement with state and local law enforcement agencies that operate task forces under the 287(g) program. ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases.

ICE will continue to analyze its policies and the results of its programs, making improvements where necessary to meet our priorities.

Visit our [immigration enforcement Web page](#) for more information.

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Cc:**  
**Subject:** FW: Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Date:** Wednesday, May 22, 2013 11:12:23 AM  
**Attachments:** [Copy of CAP Questionnaire Dashboard v1.xlsx](#)  
**Importance:** High

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Good Morning Michele-

The attached CAP questionnaire is respectfully submitted for your review and consideration.  
Please let me know if I can provide any further information.

Thanks,  
(b)(6) (b)(7)(c)  
973-330 (b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 21, 2013 2:12 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Importance:** High

(b)(6) (b)(7)(c)

Please complete the attached CAP questionnaire and submit it to (b)(6) (b)(7)(c) by COB 5/23.

Thanks,

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 21, 2013 2:10 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Importance:** High

(b)(6) (b)(7)(c)

ERO's Law Enforcement Systems and Analysis Unit (LESA) will conduct a staffing analysis of the Criminal Alien Program to determine whether CAP's workforce is sufficient to meet its current and future mission requirements.

In support of this initiative, each CAP supervisor (AFOD and SDDOs) is asked to complete the attached questionnaire fully describing the workload and challenges of CAP within their AOR. Questionnaires must be completed and submitted via email back to me **NLT COB Thursday, 23 May 2013.**

Thank You,

(b)(6) (b)(7)(c)

Special Assistant

Immigration & Customs Enforcement  
Enforcement & Removal Operations  
Newark Field Office  
614 Frelinghuysen Avenue, (b)(6) (b)(7)(c)  
Newark, NJ 07114  
Office: 973-776-**(b)(6) (b)(7)(c)**  
Cell: 973-862-**(b)(6) (b)(7)(c)**  
Email: (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Tuesday, May 21, 2013 11:10 AM  
**Subject:** Criminal Alien Program Staffing / Workload Analysis

*The following message is being sent on behalf of (b)(6) (b)(7)(c) Acting Assistant Director for Enforcement with concurrence of Philip T. Miller, Assistant Director for Field Operations:*

**To: Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors**

**Subject: Criminal Alien Program Staffing / Workload Analysis**

ERO's Law Enforcement Systems and Analysis Unit (LESA) will conduct a staffing analysis of the Criminal Alien Program (CAP) to determine whether CAP's workforce is sufficient to meet its current and future mission requirements. In support of this initiative, each CAP supervisor (SDDO and/or AFOD) is asked to complete the attached questionnaire fully describing the workload and challenges of CAP within their area of responsibility.

Questionnaires must be completed and submitted via email to DDO (b)(6) (b)(7)(c) (b)(6) (b)(7)(c) on or before COB Friday, May 24, 2013. Should you have questions in relation to this issue, please contact (b)(6) (b)(7)(c) via email or in the alternate at (202) 730-**(b)(6) (b)(7)(c)**

**NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message.**

## Data Collection Interface for Rap Back

1. Please select the appropriate AOR for your office  Newark Area of Responsibility	2. Please indicate whether you are in a Sub Office or a Field Office.  a. Sub Office	3. Can you approximate what percentage of identified criminal aliens (on jail rosters or encountered at large in your AOR) is <b>screened</b> ?  g. 100%	4. Can you approximate what percentage of identified criminal aliens (on jail rosters or encountered at large in your AOR) is <b>interviewed</b> ?  d. 70-80%	5. What percentage of time are CAP officers out of office on <b>escort duty</b> in any given month?  b. 10-20%
6. In your office, please estimate how many non-CAP FTEs are screening criminal aliens at local, state and federal facilities  (b)(7)(E)		7a. Please provide the average time it takes CAP officers to perform a <b>jail roster review</b> ?  > 1 hour	7b. Please provide the average time it takes CAP officers to perform a <b>biographic/biometric check</b> ?  30-45 minutes	7c. Please indicate the average time it takes CAP officers to <b>issue a detainer</b> ?  15-30 minutes
7d. Please indicate the average time it takes CAP officers to perform <b>transportation duties</b> per each case  1-2 hours	7e. Please indicate the average time it takes CAP officers to <b>process a case/issue a charging document</b> ?  > 2 hours	7f. Please indicate the average time it takes CAP officers to <b>perform RCA</b> ?  10-30 minutes	8a. Do CAP officers at your office have <b>secondary or ancillary duties</b> ?  Yes	
8b. Please approximate the percentage of total time per month that CAP officers devote to:  <b>Firearms duty</b>  (b)(7)(E)	8b. Please approximate the percentage of total time per month that CAP officers devote to: <b>Defensive Tactics</b>  (b)(7)(E)	8b. Please approximate the percentage of total time per month that CAP officers devote to: <b>COTR duties</b>  0	8e. Please approximate the percentage of total time per month that CAP officers devote to:  <b>Health/Safety Inspector duties</b>  0	
8f. Please approximate the percentage of total time per month that CAP officers devote to:  <b>Union Representative duties</b>  20-25%	8g. Please approximate the percentage of total time per month that CAP officers devote to: <b>Vehicle Control Officer duties</b>  0	8h. Please approximate the percentage of total time per month that CAP officers devote to: <b>any other non-screening related activities</b>  25%+	8i. If you provided an answer to question 8h, please identify those additional ancillary activities performed by CAP Officers (write in)  th Trenton PD and the USMS RFTF, Multiple Cour	
9. Have you noticed observable trends in the number of criminal aliens CAP has encountered in local, state and federal facilities over the past two years?  Yes	10. What % decrease in CAP encounters do you believe is attributable to <b>Prosecutorial Discretion (PD)</b> or <b>Deferred Action for Child Arrivals (DACA)</b> ?  15-20%	11. Please provide any additional information regarding <b>observable upwards or downwards trends</b> in your AOR (write in)  tive street arrests of at large criminal aliens as a	Submit	

Clear

**Data Collection Interface for Rap Back**

**From:** [REDACTED]  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** FW: Issuance of Criminal Alien Program Handbook  
**Date:** Monday, May 20, 2013 12:28:35 PM

For all officers

---

**From:** ERO Taskings  
**Sent:** Monday, May 20, 2013 12:11 PM  
**Subject:** Issuance of Criminal Alien Program Handbook

*The following message is sent on behalf of [REDACTED] (b)(6) (b)(7)(c) (A) Assistant Director for Secure Communities and Enforcement, with the concurrence of Philip T. Miller, Assistant Director for Field Operations:*

**To:** Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors

**Subject:** Issuance of Criminal Alien Program Handbook

On May 14, 2013, (A) Assistant Director for Secure Communities and Enforcement, [REDACTED] (b)(6) (b)(7)(c) signed the *Criminal Alien Program Handbook*. The Handbook provides procedures, best practices, and a list of related policies regarding Criminal Alien Program (CAP) duties. The Handbook focuses on the identification of criminal aliens, case preparation, and removal proceedings while still allowing for flexibility regarding established local operational procedures. The Handbook will be the base document for CAP training and operations at ERO field offices. While the document contains investigative tools and resources, it should not be considered an all-inclusive guide for conducting CAP operations.

The Handbook is available for view in the ERO Resource Library at the following link:

[REDACTED] (b)(7)(e)

If you have any questions regarding the CAP Handbook, please contact [REDACTED] (b)(6) (b)(7)(c) [REDACTED] (b)(6) (b)(7)(c) Criminal Alien Program Unit Chief at (202) 730[REDACTED] (b)(6) (b)(7)(c) or [REDACTED] (b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Cc:**  
**Subject:** RE: Local Law Enforcement Compliance with ICE Detainers (2013-NEW-258)  
**Date:** Friday, August 30, 2013 2:05:48 PM  
**Attachments:** [Local Law Enforcement Compliance with ICE Detainers.docx](#)  
[Copy of FOD LEA Detainer Spreadsheet.xlsx](#)  
[Detainer Policy 12 21 12.pdf](#)

---

Good Afternoon (b)(6) (b)(7)(c)

Attached are Newark and Marlton's combined responses to both the word document and excel spreadsheet. We also attached Director Morton's Detainer Policy from December 12, 2012 as instructed in question 1 of the word document.

The tasking specifically states not to modify the excel spreadsheet, however we had several concerns. Gloucester County no longer has a jail, it closed earlier this year. Gloucester County inmates are sent primarily to Salem and Cumberland County Jails. We left blocks E, F, and G blank for Gloucester County, we were unable to document the closed jail in that particular row- those cells were locked. We also changed column "D" on the spreadsheet (ERO Sub-Office/Outlying Office) to reflect "MTL" for Ft. Dix, Fairton, and NJDOC/State- the last three rows of the spreadsheet which originally read "NEW". Fairton and Ft. Dix are in the Marlton AOR. Newark has state/NJDOC facilities as well as Marlton. How would you like that to read?

We don't have a mechanism in place to track detainees that aren't accepted. As a result, we have no way of determining the percentage of level 2 or 3 aliens who may have been released because a facility did not take an ICE detainer. I hope the AFODs are given an opportunity to weigh in on that response prior to our final submission. They may have some critical input to provide, and at least one of them is unavailable before the suspense date of the tasking.

Please let us know if we can provide any further information, or if you have any questions or concerns.

Thanks,

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, August 30, 2013 12:07 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** Local Law Enforcement Compliance with ICE Detainers (2013-NEW-258)  
**Importance:** High

(b)(6) (b)(7)(c)

Please open the attached Word Doc and provide responses to the questions posed regarding local LEAs and ICE detainees. In addition, please review the attached Excel spreadsheet and provide responses for columns E, F, & G, for your respective

counties/AORs.

The suspense for this tasking is **1200 EST on Tuesday, 02 September 2013**.

*\*\*For reference only, I have also attached a spreadsheet (3<sup>rd</sup> attachment) that we completed back in December for a similar tasking, it is the same spreadsheet but the questions in columns E, F, & G are different.*

Thank You,

(b)(6) (b)(7)(c)

*Special Assistant*

Immigration & Customs Enforcement  
Enforcement & Removal Operations  
Newark Field Office

614 Frelinghuysen Avenue (b)(6) (b)(7)(c)  
Newark, NJ 07114  
(Office) 973-776-2462 (b)(7)(c)  
(Cell) 973-862-4624 (b)(7)(c)  
(Email) (b)(6) (b)(7)(c)

---

**From:** ERO Taskings  
**Sent:** Wednesday, August 21, 2013 5:03 PM  
**Subject:** Local Law Enforcement Compliance with ICE Detainers

*This message is sent on behalf of Philip T. Miller, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors

**Subject:** Local Law Enforcement Compliance with ICE Detainers

- Most detention facilities are complying with the guidance on our new detainer form; however, complaints from stakeholders indicate that some detention facilities may not be compliant. In order to determine the scope of the problem, Field Ops requests that each FOD complete both the attached word document and excel spreadsheet.

Instructions:

**For both the word and excel documents, please do not reach out to the jurisdictions for a response. Only provide the information that is known by the ERO staff.**

- Word document: Address each question and if there is written guidance available, include that with your response.
- Excel spreadsheet: Do not change or modify the excel spreadsheet.
  1. Columns A-D were pulled from a previous detainer tasking from earlier this year. If any information has changed, please make sure to update those columns.

2. Column E requests that you identify which jurisdictions are accepting, limiting acceptance or not acknowledging ICE detainers.
3. Column F requests information on whether the jurisdiction allows ERO officers access to their booking information.
4. Column G requests information on whether ERO officers can conduct interviews with inmates telephonically, in person or both.
5. For Columns E-G, if you do not know the answer, please select the “Do Not Know” response from the drop down menu. Of note, please do not reach out to the local jurisdictions to obtain the information.

**Please submit the completed word document and excel spreadsheet to the [redacted] (b)(7)(E) mailbox as found in the Microsoft Global Address list by 4 p.m. EDT on August 29, 2013.**

Questions regarding this tasking can be submitted to Staff Officer [redacted] (b)(6), (b)(7)(C) at [redacted] (b)(6) (b)(7)(c) or 202-73[redacted] (b)(6) (b)(7)(c)

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Page 27 redacted for the following reason:

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(b)(5)



U.S. Immigration  
and Customs  
Enforcement

DEC 21 2012

MEMORANDUM FOR:  
All Field Office Directors  
All Special Agents in Charge  
All Chief Counsel

FROM:

John Morton  
Director

SUBJECT:  
Civil Immigration Enforcement: Guidance on the Use of Detainers  
in the Federal, State, Local, and Tribal Criminal Justice Systems

#### Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

#### Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,<sup>1</sup> ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

<sup>1</sup> As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

**National Detainer Guidance**

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;<sup>2</sup>
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;<sup>3</sup>
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.<sup>4</sup>

---

<sup>2</sup> Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

<sup>3</sup> A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

<sup>4</sup> For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

**From:** (b)(6) (b)(7)(c)  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Date:** Wednesday, May 22, 2013 11:12:23 AM  
**Attachments:** [Copy of CAP Questionnaire Dashboard v1.xlsx](#)  
**Importance:** High

---

Good Morning (b)(6) (b)(7)(c)

The attached CAP questionnaire is respectfully submitted for your review and consideration.  
Please let me know if I can provide any further information.

Thanks,

(b)(6) (b)(7)(c)  
973-332 (b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 21, 2013 2:12 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Importance:** High

(b)(6) (b)(7)(c)

Please complete the attached CAP questionnaire and submit it to (b)(6) (b)(7)(c) by COB 5/23.

Thanks,

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 21, 2013 2:10 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** Criminal Alien Program Staffing / Workload Analysis (2013-NEW-178)  
**Importance:** High

(b)(6) (b)(7)(c)

ERO's Law Enforcement Systems and Analysis Unit (LESA) will conduct a staffing analysis of the Criminal Alien Program to determine whether CAP's workforce is sufficient to meet its current and future mission requirements.

In support of this initiative, each CAP supervisor (AFOD and SDDOs) is asked to complete the attached questionnaire fully describing the workload and challenges of CAP within their AOR. Questionnaires must be completed and submitted via email back to me **NLT COB Thursday, 23 May 2013**.

Thank You,

(b)(6) (b)(7)(c)  
Special Assistant

Immigration & Customs Enforcement  
Enforcement & Removal Operations  
Newark Field Office  
614 Frelinghuysen Avenue (b)(6) (b)(7)(c)  
Newark, NJ 07114  
Office: 973-776-**(b)(6) (b)(7)(c)**  
Cell: 973-8**(b)(6) (b)(7)(c)**  
Email: (b)(6) (b)(7)(c)

---

**From:** ERO Taskings  
**Sent:** Tuesday, May 21, 2013 11:10 AM  
**Subject:** Criminal Alien Program Staffing / Workload Analysis

*The following message is being sent on behalf of (b)(6) (b)(7)(c) Acting Assistant Director for Enforcement with concurrence of Philip T. Miller, Assistant Director for Field Operations:*

**To: Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors**

**Subject: Criminal Alien Program Staffing / Workload Analysis**

ERO's Law Enforcement Systems and Analysis Unit (LESA) will conduct a staffing analysis of the Criminal Alien Program (CAP) to determine whether CAP's workforce is sufficient to meet its current and future mission requirements. In support of this initiative, each CAP supervisor (SDDO and/or AFOD) is asked to complete the attached questionnaire fully describing the workload and challenges of CAP within their area of responsibility.

Questionnaires must be completed and submitted via email to DDO (b)(6) (b)(7)(c) (b)(6) (b)(7)(c) on or before COB Friday, May 24, 2013. Should you have questions in relation to this issue, please contact (b)(6) (b)(7)(c) via email or in the alternate at (202) 73**(b)(6) (b)(7)(c)**

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**From:** [REDACTED]  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** CAP Support to 287(g) Mission (2013-NEW-190)  
**Date:** Thursday, June 06, 2013 1:49:15 PM  
**Attachments:** [CAP - 287\(g\) Assistance \(Workload Analysis\).xlsx](#)  
**Importance:** High

---

Hi [REDACTED] (b)(6) (b)(7)(c)

Please see the 287(g) tasking below, which requests us to complete the attached spreadsheet , identifying CAP assigned employees assisting in the execution of the 287(g) mission.

Please send the completed spreadsheet back to me by **COB Friday, 14 June 2013**.

**Thank You,**

[REDACTED] (b)(6) (b)(7)(c)

*Special Assistant*  
Immigration & Customs Enforcement  
Enforcement & Removal Operations  
Newark Field Office  
614 Frelinghuysen Avenue [REDACTED] (b)(6) (b)(7)(c)  
Newark, NJ 07114  
Office: 973-770-[REDACTED] (b)(7)(c)  
Cell: 973-862-[REDACTED] (b)(7)(c)  
[REDACTED] (b)(6) (b)(7)(c)

---

**From:** ERO Taskings  
**Sent:** Wednesday, June 05, 2013 1:19 PM  
**Subject:** CAP Support to 287(g) Mission

*The following message is being sent on behalf of [REDACTED] (b)(6) (b)(7)(c) Acting Assistant Director for Secure Communities and Enforcement, with concurrence of Philip T. Miller, Assistant Director for Field Operations:*

**To: Field Office Directors and Deputy Field Office Directors  
(ATL, BAL, BOS, DAL, DEN, DET, HOU, LOS, MIA, NEW, NOL, PHO, SLC, WAS)**  
**Subject: CAP Support to 287(g) Mission**

The Secure Communities and Enforcement Division is initiating a data call to identify CAP assigned employees assisting in the execution of the 287(g) mission. For each of your offices, please complete the attached spreadsheet identifying all CAP assigned employees that have performed 287(g) work during FY13. For each employee, all data elements must be provided.

Mission-specific questions should be addressed to [REDACTED] (b)(6), (b)(7)(C)

[REDACTED] (b)(6) (b)(7)(c)

(202)732-[REDACTED]

[REDACTED] (b)(6) (b)(7)(c)

(202)732-[REDACTED] (b)(6) (b)(7)(c)

Please return your responses to [REDACTED] (b)(6) (b)(7)(c)  
(202)730[REDACTED](6) (b)(7)(n)o later than June 21, 2013.

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**From:**  
**To:**

(b)(6) (b)(7)(c)

**Cc:**

**Subject:** Risk Classification Assessment (RCA) Deployment

**Date:** Wednesday, December 12, 2012 12:30:53 PM

**Attachments:** [Risk Classification Assessment \(RCA\) Quick Reference Guide.pdf](#)

---

AFOD's,

In anticipation of the Risk Classification Assessment (RCA) scheduled for January 7, 2013.

The following SMEs and Key Users have been selected by the Newark Field Office to assist with training, deployment, and end users support for our AOR.

(b)(6) (b)(7)(c)

The following web-based training will need to be completed by all users on the **ICE Virtual University** by **Friday, December 28, 2012**.

1. **Web-based Training (WBT):** The WBT is located on the **ICE Virtual University** and is a systems training aimed at familiarizing the officer with the assessment process in RCA. You can access the WBT via the ICE Virtual University and by searching for "RCA."
  - All users must complete the WBT and pass the final assessment.
  - Do not continuously click through the course, as the course will not be able to register that you have completed a module. Modules must be completed prior to attempting the final assessment.
  - The WBT will take approximately one hour to complete and will provide the participants with an overview of the RCA project, roles and responsibilities.
2. **RCA Playbook and Training Environment:** A Playbook has been created to assist the SMEs with performing risk classification assessments using RCA in the training

environment. The RCA Playbook can be found on the [\*\*ICE Virtual University\*\*](#) by searching for “RCA Playbook.” The Playbook consists of four scenarios and includes directions for logging into the training environment with agent and supervisor user IDs.

- The Playbook and training environment are optional training materials. Users are encouraged to practice in the training environment.
- When logging into the Crime Entry Screen (CES) training environment, users should log in with their IRMNET account information.

- 3. RCA Quick Reference Guide:** A quick reference guide has been created to help you navigate the system and ensure that you have captured the correct information on the appropriate screens. The quick reference guide is filled with screen shots and includes links to additional resources on special vulnerabilities. The guide can access by searching “RCA Reference” in the [\*\*ICE Virtual University\*\*](#).
- The Playbook and training environment are optional training materials. Users are encouraged to become familiar with the quick reference guide.

Thanks,

Newark Training Unit



# Risk Classification Assessment (RCA) Quick Reference Guide

Version 1.0

Enforcement and Removal Operations  
Law Enforcement Systems and Analysis

May 2012

*Law Enforcement Sensitive/For Official Use Only*



U.S. Immigration  
and Customs  
Enforcement

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## Risk Classification Assessment – Quick Reference Guide

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## 1 Introduction

Risk Classification Assessment (RCA) is a module that will be used to standardize the custody decision making process throughout all Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) field offices. The methodology is based on current industry standard risk assessment techniques and has the intended goal of optimizing public safety. RCA will not only increase standardization, but will also increase transparency for detention and community supervision decisions.

The system will be used by agents and officers during the intake process to automate decisions regarding detaining or releasing an individual. Additionally, the system will be used to determine the custody classification level if an individual is detained, or the community supervision level if an individual is released.

The RCA system is part of the Enforce Alien Removal Module (EARM) Suite and will be used to process an individual taken into ICE custody. Completion of a risk classification assessment results in a detain or release recommendation and decision along with a custody classification level recommendation and decision when the individual is detained, or a community supervision level recommendation and decision when the individual is released. Additionally, if eligible, an initial bond amount is recommended by the system. All RCA recorded recommendation and decisions must be approved by an ICE supervisor. RCA may be utilized as either a primary assessment performed during initial intake, or as a secondary assessment to be performed at any time during custody to make release decisions. A subsequent assessment and re-determination of the detain/release and custody classification/community supervision level decisions may be triggered by Detention Standard procedures, disciplinary infractions, availability of new case information, or violations of conditions of release.

RCA will utilize data that has been entered into the Crime Entry Screen (CES) to evaluate an individual's criminal history, including all charges and convictions. Through this integration, RCA will automatically score multiple factors that are used as part of the assessment. Agents/officers will also provide inputs based on information gathered during the intake process. These combined inputs will enable the system to generate the risk assessment for the individual.

The methodology used by the module is based upon a framework developed by ICE to consider the factors that inform the custodial decision making process. These factors include special vulnerabilities, mandatory detention, risk of harm to public safety, and risk of flight. Most of the factors addressed by RCA system have been used by agents/officers throughout Department of Homeland Security (DHS) during the intake process to make custody decisions. RCA standardizes, formalizes, and documents this process. The framework used by RCA allows for a custody recommendation and determination to be made at time of intake and at other periods of time throughout the individual's detention and community supervision lifecycle. It is derived from Director Morton's June 17, 2011 memo, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens."

The following graphic shows how RCA is an integral part of field operations. The graphic helps depict the flow of decision making regarding first the individual's detain or release evaluation and then the subsequent evaluation of the custody classification, for detained individuals, or the community supervision level, for individual's released.

(b)(7)(e)

## **1.1 Using this Guide**

This guide is organized so that you can navigate to sections you need and bypass the sections that are not required at any given time. Use each section as necessary. For example, some might only need assistance with one portion of the assessment process, while others may wish to review the entire process.

Note that you can also use provided hyperlinks throughout this guide to quickly navigate to other relevant sections. For example, when you click the (b)(7)(e) link to find additional resources, a hyperlink is provided that will take you to that specific section.

## **1.2 RCA System Components**

The RCA system is comprised of a number of components that collectively provide the information that is needed to make a full assessment of the individual. Each of these components has an associated tab within the RCA module:

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## **2 Quick Reference Guide – Intake Officer/Agent**

This section provides quick and simple “how to” instructions for using the primary features of the RCA tool in ENFORCE. For more detailed instructions on completing tasks within RCA, consult the (b)(7)(e) section.

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**NOTE:** Refer to [Appendix B](#) for additional resources on special vulnerabilities.

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## **2.5.2 Assess Mandatory Detention**

RCA completes an automatic assessment of whether an individual is subject to mandatory detention based on the Immigration and Nationality Act (INA) statutes and allegations entered into the EABM and EARM. Mandatory detention items should be reviewed for accuracy. It is important to note that the check on mandatory detention per statutes and allegations is only performed by the system if no final order is uncovered. In cases where an individual has a final order (previously executed or current), a system check on mandatory detention per statutes and allegations is not performed.

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**NOTES:**

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### **2.5.3 Assess Public Safety Factors**

The Risk to Public Safety section refers to the individual's previous criminal history and the severity of past convictions, charges, supervision history, and any open wants and warrants. This section pulls information from the criminal history that has been entered in CES. *It is important that the criminal history data has been correctly entered into both the encounter and person in CES.* Additional information regarding the individual will come from the intake interview, and will detail such information

as Security Threat Group affiliation. Within Risk to Public Safety Factors, there are three fields that you must verify, assess, and record information to complete the public safety determination.

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## Risk to Public Safety

Last update: 08/17/2011 0934

Update

Assessment History

Print

### - Criminal Record

Incomplete

➡ Severity of charges / convictions associated with the ICE encounter. <a href="#">(info)</a>	Incomplete
➡ Number of <i>special public safety factors</i> (such as DUI) (excluding those used above). <a href="#">(info)</a>	Incomplete
➡ Single most serious conviction remaining in criminal history (excluding those used above). <a href="#">(info)</a>	Incomplete
➡ Number of felony / misdemeanor convictions remaining (excluding those used above). <a href="#">(info)</a>	Incomplete
➡ History/Pattern of Violence (two of more required) (excluding those used above). <a href="#">(info)</a>	Incomplete

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**NOTES:**

- When a factor is complete (either automatically through the system or manually), a green check mark appears in the left column.
- If a factor was not completed, a red arrow appears in the left column.
- A number of the manual factors that must be completed manually will have a *system recommended* value made by RCA. Use your judgment to decide whether this value is correct, and then select the appropriate response from the interface.
- Some drop-down lists and check boxes may be “greyed out” (disabled), meaning that they can no longer be selected to describe the individual due to previously selected drop-down lists and check boxes.

## **2.6 Submit Detain/Release Decision for Supervisory Approval**

The individual's risk classification assessment will need to be submitted for supervisory approval. Directions and results in the system will vary depending upon the detain/release recommendation and the following custody classification or community supervision level.

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## **2.7 Submit Custody Classification for Supervisory Approval**

Following supervisor review and approval of a detain/release decision, an individual who is to be detained will need a custody classification level assigned. The purpose of this is to determine the best custody level based on criminal history, among other factors.

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**IMPORTANT:** The [info](#) link located under **Additional factors for supervisory consideration** may be referenced for civil enforcement priorities and factors related to Policy Memorandum 10075.1. View the [info](#) pop-up box in (b)(7)(e)

(b)(7)(e)

**NOTES:**

- Following the custody classification and supervisory approval, the determination of custody level may need to be shared with other ICE entities or ICE partners. Agents/officers may print a copy of the Detailed Summary to be shared in paper form.

## **2.8 Submit Community Supervision for Supervisory Approval**

Following supervisor review and approval of a detain/release decision, an individual who is to be released will need a community supervision level assigned. The purpose of this is to determine the best community supervision level based on flight risk and risk to public safety.

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### 3 Quick Reference Guide – Supervisor

Within RCA, supervisors are **required** to approve the detain/release decision, as well as the custody classification or the community supervision level assignments. Supervisors will enter the system through EARM and search for the individual's records in the same way as the intake agent/officer. Supervisors will have the ability to review the data used to assess the individual via the **Summary** tab. Additionally, supervisors may further review the inputs and automatically populated information via the appropriate tabs within the system. Supervisors completing an assessment for an individual are not able to also provide the supervisory approval. In this case, another supervisor will need to provide the approval for detain/release decision, as well as the custody classification or community supervision level.

**IMPORTANT:** The DCO of the submitting agent/officer must match the DCO of the supervisor providing approval.

**NOTE:** Supervisors have the option of running a report via the EARM Reporting Center that lists assessments that are pending supervisory action. To review instructions on accessing this report, please refer to (b)(7)(e)

#### 3.1 Approve Detain/Release Decision

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**IMPORTANT:** If the system-generated recommendation is **Officer to Determine**, a final decision regarding detain/release will be entered further down on the form.

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(b)(7)(e)

### **3.2 Approve Custody Classification**

After the detain/release decision has been submitted and approved by a supervisor, a decision to detain will need to be followed by a custody classification recommendation and approval. The approval of the custody classification by the supervisor will not take place until after a detain/release decision has been made by a supervisor and the system-generated custody classification is submitted by an agent/officer.

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**NOTE:** This field is required only when a supervisor disagrees with the system-generated recommendation.

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### ***3.4 Initiate a Redetermine Detain/Release Decision***

A supervisor may initiate a redetermine detain/release decision when the system-generated recommendation is not considered applicable. This process will occur after the intake agent/officer has submitted the initial or subsequent custody classification or community supervision level for supervisory review. Only supervisors perform this action.

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**IMPORTANT:** Providing a justification for proceeding with a redetermination of a detain/release decision is required.

**IMPORTANT:** The **info** link located under **Additional factors for supervisory consideration** may be referenced for civil enforcement priorities and factors related to Policy Memorandum 10075.1. View the **info** pop-up box in [Appendix G](#).

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## 4.1 Navigation

Within RCA, there is a navigation menu that allows you to navigate between sections of the assessment classification. Below is a brief explanation of each of the sections.

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## **4.2 Detailed Summary**

RCA has a feature that allows end users to see a detailed summary of the individual being processed. Note that this summary is a *point-in-time* snap shot. The detailed summary can be accessed any time, and users can easily identify where in the RCA process the individual is by viewing the biographical, encounter, and case information located at the top of the screen.

Users can access the detailed summary for an assessment via the **Recommendation / Decision Log** tab. Because there are individual's with multiple encounters, links to the appropriate detailed summary will be located on the same row as an assessment decision in the Detailed Summary column.

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Supervisors may also view and access the detailed summary by clicking the **Detailed Summary** button located at the bottom of the supervisory approval (detain/release, custody classification, and community supervision) screens.

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The detailed summary is broken down into sub-sections that correspond with the tabs located within RCA. Users can click a section link located below individual's information to be taken directly to that section. Users may also scroll through the information from top to bottom.

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Below these details, users have the option to click a link to different components of the assessment to view the information as they would on each of the tabs within RCA. At the end of each of these sections, users can click the **Back to Top** link to return to the individual's details.

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The detailed summary also includes a list of prior and current system recommendations and decisions, including the agent/officer who completed the recommendation or decision.

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Finally, the detailed summary can be printed using the [Print](#) link in the top right corner of the screen (above the biographical data). Documents and forms containing personally identifiable information should be handled according to field office operations and should be closely monitored to ensure proper handling.

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### **4.3 Scenarios**

The scenarios in the following sub-sections are intended to provide you with examples of common, but difficult, situations that may occur when processing individuals using RCA. These example scenarios are not intended to provide answers on how best to proceed in a given situation, but are instead provided to illustrate a typical navigation through the system.

#### **4.3.1 Scenario #1**

A 29-year-old female is pregnant and arrested for driving without a license, and has a 2-year-old son at home. She has one previous conviction for shoplifting.

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#### **4.3.2 Scenario #2**

A 78-year-old man is arrested for battery with no previous criminal history.

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#### 4.3.3 Scenario #3

A 30-year-old man is arrested for domestic violence with two previous misdemeanor arrests and convictions.

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#### 4.4 Commonly Used Terms

The following table contains a list of terms and their descriptions/definitions to aid you in completing a risk classification assessment.

Term	Description
Community Supervision Level	The release of an individual back into the community with or without technology supervision (e.g., GPS and telephonic monitoring) based on an assessment of the individual's risk to public safety, risk of flight, and special vulnerabilities
Custody Classification Level	Low, Medium, and High classification levels analogous to the classification levels described in PBNDS 2008 Standard 5 "Classification System"
Custody Determination	Determination of whether an individual is subject to mandatory detention, will be detained and eligible for bond, or will be released to community supervision
Disabled	A serious physical or mental disability causing an individual to require assistance with daily activities such as bathing, eating, toileting, and dressing
Elderly	An individual 65 years of age or older and/or an individual suffering from physical indicators of infirmity or fragility caused by old age
Flight Risk	The risk an individual poses of absconding or failing to appear for future immigration hearings

Term	Description
Mandatory Detention	Mandatory detention determined by assessing an individual's immigration violation charges under the Immigration and Nationality Act apply (crimes warranting mandatory detention include: inadmissible (criminal/security), crimes involving moral turpitude, crimes involving controlled substances, multiple criminal convictions, controlled substance traffickers, aggravated felons, controlled substance conviction, drug abuses and addictions, firearms offenses, espionage with a sentence > 5 years, section 871 and section 960 or USC law, trading with enemy, counterfeiting, importation for illegal means, terrorism)
Nursing	Assessment of whether a female individual is nursing an infant or toddler
Risk Based on Sexual Orientation/Gender Identity	Assessment of an individual's fear of harm in detention based on their sexual orientation or gender identity
Risk to Public Safety	An individual's threat to public safety based on an assessment of the individual's criminal history, specifically the severity of charges/convictions associated with the ICE encounter, special public safety factors such as charges/convictions for DUI and Domestic Violence, the single most serious conviction in the individual's criminal history, additional prior convictions, a history or pattern of violence, outstanding active warrants, supervision history, and association(s) to a security threat group(s)
(b)(7)(E)	
Serious Mental Illness	A mental illness determined by questioning and review of documentation of hospitalization, treatment, and medication used to treat illness, as well as observation of factors such as whether the individual appears to be disoriented, aware of their surroundings, capable of focusing on instructions, is hearing voices, or is expressing irrational or violent thoughts towards themselves or others
Serious Physical Illness	A serious physical illness such as diabetes, seizures, HIV/AIDS, heart problems, cancer, epilepsy, or other serious illnesses assessed through reviewing an individual's medical records, prescription medications, and I-794/I-795 medical forms
Primary Caretaking Responsibility	Assessment of whether an individual is the primary person responsible for the care of a child, elderly person, or another individual who is otherwise unable to care for him or herself
Special Vulnerability	A condition, illness, or other factor that may affect custody determination (i.e., physical/mental illness, disability, victim status); ICE guidelines recommend any individual with Special Vulnerabilities be considered for release on community supervision

Term	Description
Sustained Disciplinary Infractions	Offenses that involve violence or behavior representing a threat to ERO facilities which are listed in the "Greatest" and "High" offense categories of the PBNDS 2008 Standard 19 "Disciplinary System", Attachment A
Ties to the Local Community	A flight factor used to determine the risk an individual poses of absconding or failing to appear for future immigration hearings through the assessment of the individual's community ties including whether the individual (or spouse) is: currently serving in or is a veteran of the U.S. Armed Forces or enrolled in a school or training program; or has: an outstanding benefit application filed with USCIS, a U.S. citizen spouse or child, a child or other family member(s) in the local community, work authorization, and/or legal representation
Victim of Human Trafficking	An individual's history of being intimidated, deceived, obligated, or forced into prostitution or labor against his or her will upon entering the United States
Victim of Persecution/Torture	Assessment of an individual's history of suffering persecution/torture through a review of the claim and evidence of trauma
Victim of Sexual Abuse or Violent Crime	Assessment of an individual's history of suffering from sexual abuse or violent crime through review of the claim and supporting evidence
Violent Crime/Crime of Violence	An offense involving the use, attempted use, or threatened use of physical force against the person or property of another or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
Wants/Warrants	A legal document authorizing the arrest and detention of an individual that is supported by a signed and sworn affidavit showing probable cause that a specific crime(s) has been committed by the named individual

## 5 Appendices

These appendices are intended to provide visuals of the pop-up boxes and error messages that may be encountered throughout the RCA system. Additional details are included, as appropriate.

### 5.1 Appendix A – Assessment Initiation Screens

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### 5.2 Appendix B – Special Vulnerabilities

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### **5.3 Appendix C – Mandatory Detention**

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## **5.5 Appendix E – Risk of Flight Info Boxes**

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## ***5.6 Appendix F – Detain/Release Decision Submission Errors***

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## ***5.7 Appendix G – Supervisory Approval Pop-up Boxes***

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## **5.8 Appendix H – Assessments on Individuals During Phased Deployment**

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## **5.9 Appendix I – Accessing the RCA Decision History Report**

Supervisors and super users can generate an RCA report to view risk classification assessments that are pending approval. To generate this report, refer to the steps below. Note that there is a lag time of 20 minutes between when an agent/officer submits a reports and when it will be available in the reporting center.

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## 6 Version

Version	Date	Description	Approval
1.0	04/04/2012	Phase 1 Deployment	ICE ERO LESA

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Detainer Tasking  
**Date:** Tuesday, July 30, 2013 2:23:08 PM  
**Attachments:** [Detainer Policy 12 21 12.pdf](#)  
[2012 Year End Announcement.pdf](#)

---

fyi

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, July 30, 2013 2:21 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** FW: Detainer Tasking

Hello,

*The information below contains the responses for the detainer tasking.*

*The responses were a coordinated effort from all the supervisors and upper management in the CAP program.*

*Please review and edit any information you deem appropriate.*

*We believe the new detainer policy is adequate and no issues are reported. We also believe that there are no aliens subject to a detainer that do not meet the criteria noted in the policy; in certain circumstances where identity is an issue, detainees are lodged until an adequate search of identifiers is made.*

*Please let us know if more information is needed.*

Thank you.

(b)(6) (b)(7)(c)  
**Assistant Field Office Director**  
**DHS/ICE/ERO**  
**Newark Field Office**  
**Criminal Alien Program**  
614 Frelinghuysen Ave, (b)(6) (b)(7)(c)  
Newark, NJ, 07114  
Office - (973) 776 (b)(6) (b)(7)(c)  
Cell - (973) 332 (b)(6) (b)(7)(c)

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should

be furnished to the media, either in written or verbal form.

1. What, if any, challenges in implementing the new guidance and form have you experienced?

*The Newark Field Office addressed any challenges back in early December with all local, state and federal law enforcement agencies.*

*Some examples of challenges were regarding detainees lodged on individuals that had minor traffic offenses; this past practice was addressed with correctional staff and the new policy in place is working accurately.*

*The field office has not encountered any significant difficulties after meeting with the correctional facilities and other local law enforcement agencies.*

2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainees? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.

*The Newark Field Office met with front office staff from our partners in law enforcement at all correctional facilities (federal, state and local); items reviewed consisted of identifying correct call numbers, standard operating procedures regarding ICE detainees, and pickup requirements with the new policy.*

*ICE officers are available to answer any questions from facility staff during their daily visits to their jails. ICE supervisors meet regularly with facility staff and directors and review any issues regarding ICE detainees. ICE phone contact numbers and email accounts are provided and open lines of communication exist and no issues have been reported.*

*Local outreach with police departments are done regularly by Newark ERO.*

3. Does your office routinely conduct interviews prior to issuing a detainer?

*Yes, all detainees issued by ICE officers are based on a field interview and if that is not possible, a phone or VTC interview is conducted.*

*If a subject alien's identity cannot be verified by phone interviews, a detainer is lodged until an ICE officer can respond; normally a response is conducted the next business day.*

*In the event that a foreign born subject was encountered and a timely detainer determination could not be made and the alien released; ICE officers would work up the case as a proactive encounter.*

- A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?

*Interviews are routinely conducted in person at the jail or through VTC. Interviews are also conducted telephonically with local LEAs, upon arrest, and prior to issuing a detainer.*

- B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?

*Newark Field Office After hours calls are handled by Batavia and or the LESC, they in turn refer cases that need an interview prior to lodging a detainer, to the Field Office's after hours Duty officer.*

- C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

*Once a detainer is lodged by the LESC or Batavia on a name match or fingerprint verification, Newark ERO officers respond the next business day and interview the subject.*

-----Original Message-----

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 03:59 PM Eastern Standard Time  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Detainer Tasking

(b)(6), (b)(7)(C)ease take the lead with input from (b)(6), (b)(7)(C)

---

**From:** ERO Taskings  
**Sent:** Friday, July 26, 2013 3:58 PM  
**Subject:** Detainer Tasking

***The following message is being sent on behalf of Matthew T. Albence, Assistant Director for Secure Communities and Enforcement, with the concurrence of Philip T. Miller, Assistant Director for Field Operations:***

**To:** Field Office Directors, Deputy Field Office Directors

**Subject: Six-Month Detainer Policy Review**

On December 21, 2012, Director Morton issued a policy entitled Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems. This memorandum provided national guidance on the use of detainers to ensure uniform adherence to ICE's Civil Immigration Enforcement Priorities. The policy requires a six-month review of the implementation and effect of this guidance to determine whether modifications, if any, are needed.

To effect this review each Field Office must respond to the below questions:

1. What, if any, challenges in implementing the new guidance and form have you experienced?
2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
3. Does your office routinely conduct interviews prior to issuing a detainer?
  - A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
  - B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
  - C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

Please submit your responses by July 31, 2013, to the CAP HQ mailbox at

(b)(6) (b)(7)(c)

Questions regarding this message may be directed to your (b)(7)(E) point of contact.

**NOTICE:** This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message.



U.S. Immigration  
and Customs  
Enforcement

DEC 21 2012

MEMORANDUM FOR:  
All Field Office Directors  
All Special Agents in Charge  
All Chief Counsel

FROM:

(b)(6) (b)(7)(c)

SUBJECT: Civil Immigration Enforcement: Guidance on the Use of Detainers  
in the Federal, State, Local, and Tribal Criminal Justice Systems

Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,<sup>1</sup> ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

<sup>1</sup> As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

**National Detainer Guidance**

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;<sup>2</sup>
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;<sup>3</sup>
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.<sup>4</sup>

---

<sup>2</sup> Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

<sup>3</sup> A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

<sup>4</sup> For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

**FY 2012: ICE ANNOUNCES YEAR-END REMOVAL NUMBERS, HIGHLIGHTS FOCUS ON KEY PRIORITIES AND ISSUES NEW NATIONAL DETAINER GUIDANCE TO FURTHER FOCUS RESOURCES.**

WASHINGTON — U.S. Immigration and Customs Enforcement (ICE) Director John Morton today announced the agency's fiscal year 2012 year-end removal numbers, highlighting trends that underscore the administration's focus on removing from the country convicted criminals and other individuals that fall into priority areas for enforcement. To further focus ICE resources on the most serious criminal offenders, ICE today also issued new national detainer guidance [LINK]. This guidance limits the use of detainers to individuals who meet the Department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses such as traffic offenses and other petty crimes, helping to ensure that available resources are focused on apprehending felons, repeat offenders and other ICE priorities. It is applicable to all ICE enforcement programs, including Secure Communities.

"Smart and effective immigration enforcement relies on setting priorities for removal and executing on those priorities," said Director Morton. "In order to further enhance our ability to focus enforcement efforts on serious offenders, we are changing who ICE will issue detainers against. While the FY 2012 removals indicate that we continue to make progress in focusing resources on criminal and priority aliens, with more convicted criminals being removed from the country than ever before, we are constantly looking for ways to ensure that we are doing everything we can to utilize our resources in a way that maximizes public safety."

Secretary Napolitano has directed ICE to focus its resources on key priorities in all aspects of its immigration enforcement efforts. ICE's implementation of this directive includes today's new national detainer policy, as well as the continued use of investigations and programs like Operation Cross Check that target criminal aliens and ICE's expanded collaboration with CBP to remove recent border crossers.

ICE priorities include the identification and removal of those that have broken criminal laws, threats to national security, recent border crossers, and repeat violators of immigration law. Overall, in FY 2012 ICE's Office of Enforcement and Removal Operations removed 409,849 individuals. Of these, approximately 55 percent or 225,390 of the people removed were convicted of felonies or misdemeanors — almost double the removal of criminals since FY 2008. This includes 1,215 aliens convicted of homicide; 5,557 aliens convicted of sexual offenses; 40,448 aliens convicted for crimes involving drugs; and 36,166 aliens convicted for driving under the influence.

ICE continues to make progress with regard to other categories prioritized for removal. Some 96 percent of all ICE's removals fell into a priority category—a record high.

To support the Department of Homeland Security's efforts to secure our nation's borders, ICE prioritizes the identification and removal of recent border crossers and conducts targeted enforcement operations with the U.S. Border Patrol. The historic results along the Southwest Border are attributable to the joint efforts of U.S. Border Patrol agents and ICE officers and agents, and the emphasis ICE places on the removal of recent border crossers

As part of the effort to ensure that the immigration system can focus its resources on priority cases, ICE has also implemented policies and processes that ensure that those enforcing immigration laws make appropriate use of the discretion they have in deciding the types of individuals prioritized for removal from the country. In addition, ICE has also decided not to renew any of its agreement with state and local law enforcement agencies that operate task forces under the 287(g) program. ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases.

ICE will continue to analyze its policies and the results of its programs, making improvements where necessary to meet our priorities.

Visit our [immigration enforcement Web page](#) for more information.

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: Notification of Organized Events Opposing ICE Police Collaboration  
**Date:** Friday, April 23, 2010 5:20:00 PM  
**Attachments:** [SC FAO\\_April 2010 .doc](#)  
[SC Talking Points\\_042310.doc](#)

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FYI- The New Jersey demonstrations appear to be set in Morristown regarding both Secure Communities & the 287(g) Program

(b)(6) (b)(7)(c)

Supervisory Detention & Deportation Officer  
Criminal Alien Program  
ICE - DRO  
Newark Field Office  
970 Broad Street - Room [REDACTED] (b)(6) (b)(7)(c)  
Newark, NJ 07102  
(973) 776 [REDACTED] (b)(6) (b)(7)(c)  
(973) 332 [REDACTED] (b)(6) (b)(7)(c)  
(973) 776 [REDACTED]

---

**From:** ICE Secure Communities  
**Sent:** Friday, April 23, 2010 5:13 PM

[REDACTED] (b)(6) (b)(7)(c)

**Subject:** Notification of Organized Events Opposing ICE Police Collaboration

Field Coordinators:

The following message sent on behalf of David Venturella, Executive Director of Secure Communities, is for your information only so that you are aware of events that may be occurring in your AOR next week. No action is required on your part. Please refer any questions or concerns to your Regional Coordinator.

Next week, beginning Monday, April 26th, several non-governmental organizations will begin holding media events across the country to express their opposition to ICE and local law enforcement collaboration. The events will focus on ICE's Secure Communities strategy and a FOIA request the organizations have submitted. We are notifying you of these events for your information only; no action is required.

Events are currently scheduled in Arizona, California, Florida, Georgia, New Jersey, New York City, North Carolina, Oregon, Texas and Washington, D.C. For more information about events happening in your area and updates, visit [REDACTED] (b)(7)(e). Please note some of these events will announce additional requests for information from our law enforcement partners.

Should you receive inquiries from media, stakeholders or others, simply follow your standard

procedures for addressing their requests. Also, please know the ICE regional public affairs officers are informed of these events. Attached are standard frequently asked questions (internal use only) about Secure Communities for your reference.

For awareness purposes, we are also notifying our partners within government and external stakeholders. ICE continues to maintain an open and transparent dialogue with organizations and to ensure that our criminal alien enforcement efforts are effective, efficient and fair.

(b)(6) (b)(7)(c)

Chief of Staff  
Secure Communities  
Immigration & Customs Enforcement

(b)(6) (b)(7)(c)

(202) 732 [redacted]  
(b)(6) (b)(7)(c)



**ICE**

Secure  
Communities



## FREQUENTLY ASKED QUESTIONS

April 2010

*Internal Use Only*

Please note that the highlighted questions below are the most frequently asked questions by external stakeholders.

### **OVERVIEW**

1. What is Secure Communities?
2. How does Secure Communities maintain transparency?

### **IDENT/IAFIS INTEROPERABILITY**

3. What is IDENT/IAFIS interoperability?
4. What is the benefit of using IDENT/IAFIS interoperability?
5. Is IDENT/IAFIS interoperability mandatory for all jurisdictions? Can a jurisdiction choose to “opt out”?
6. Is IDENT/IAFIS interoperability mandatory for all jurisdictions? Can a jurisdiction choose to “opt out”?

### **PRIORITIZATION**

7. As part of the Secure Communities strategy, ICE prioritizes the removal of certain criminal aliens. What are the priority levels and are they the same across the country?
8. If Secure Communities is prioritizing the identification and removal of aliens charged with or convicted of Level 1 offenses, why is ICE identifying and removing more aliens charged with or convicted of Level 2 and 3 offenses?

### **CRIMINAL ALIEN ENFORCEMENT**

9. What are the differences between ICE’s criminal alien enforcement programs, such as Secure Communities, the 287(g) program and the Criminal Alien Program (CAP), and how do they complement each other?
10. Why does IDENT/IAFIS interoperability sometimes identify criminal aliens for potential removal who are simply charged with crimes instead of focusing solely on those actually convicted of crimes?

### **OVERSIGHT OF IDENT/IAFIS INTEROPERABILITY**

11. What is ICE doing to ensure the protection of civil rights and the appropriate response to complaints filed regarding cultural or racial profiling? How does someone file a complaint?



**ICE**

Secure  
Communities

## **OVERVIEW**

### **1. What is Secure Communities?**

Secure Communities is the U.S. Immigration and Customs Enforcement's (ICE) comprehensive strategy to improve and modernize efforts to identify and remove criminal aliens from the United States. This strategy satisfies a congressional mandate, while enabling ICE to transform the overall criminal alien enforcement process to ensure efficient and effective enforcement operations.

One of the Secure Communities strategy's important tools is the deployment of a Department of Homeland Security (DHS) and Department of Justice (DOJ) biometric information-sharing capability called IDENT/IAFIS interoperability. This capability enables ICE to more accurately and efficiently identify criminal aliens when they are arrested by law enforcement.

### **2. How does Secure Communities maintain transparency?**

ICE is committed to transparent and accountable immigration enforcement and continues to inform the public, non-governmental organizations, law enforcement agencies and other stakeholders about the Secure Communities strategy.

Specific efforts by ICE include but are not limited to:

- Meeting with state and local law enforcement agencies to explain the Secure Communities strategy prior to activating IDENT/IAFIS interoperability;
- Distributing press releases regularly about Secure Communities;
- Making information available through our Web site, which maintains a current list of activations, as well as press releases and other information;
- Regularly meeting with non-governmental organizations to answer questions and maintain a dialogue about ICE's immigration enforcement efforts including Secure Communities;
- Participating in events to answer questions and inform the public about Secure Communities, such as the local and national conferences, roundtable events hosted by members of Congress to better inform their constituents, law enforcement organizations and others;
- Providing information about how to report allegations of racial profiling, due process violations or other violations of civil rights or civil liberties related to the use of IDENT/IAFIS interoperability in all outreach briefings, in addition to making it available on our Web site.

## **IDENT/IAFIS INTEROPERABILITY**

### **3. What is IDENT/IAFIS interoperability?**

IDENT/IAFIS interoperability is an information-sharing capability between DHS's biometric system for immigration records, the Automated Biometric Identification System (IDENT), and the DOJ's biometric system for criminal records, the Integrated

Automated Fingerprint Identification System (IAFIS). The interoperability of these two systems enables fingerprints submitted to IAFIS to be automatically checked against IDENT.

**4. What is the benefit of using IDENT/IAFIS interoperability?**

IDENT/IAFIS interoperability enables ICE to identify criminal aliens more quickly and accurately. It requires no change to local law enforcement current operational procedures and can be deployed at little to no cost to a jurisdiction. The biometric information sharing happens automatically once fingerprints have been submitted as part of the standard booking process.

Biometrics, in this case fingerprints, are accurate, reliable and virtually impossible to forge. By using biometrics, ICE agents can quickly and accurately determine whether an individual in local custody is a criminal alien, despite the possible use of an alias or false biographic information given at the time of arrest.

Also, IDENT/IAFIS interoperability reduces the opportunity for allegations of racial and ethnic profiling because the fingerprints of every individual arrested and booked into custody are checked against immigration records, not just those manually submitted based on subjective indicators, such as something a subject has said.

Finally, IDENT/IAFIS interoperability also provides identity information to law enforcement officers that may help them with biographic identity verification checks. This means they have more information about the person they have arrested, which can improve officer safety and may support their investigation.

**5. Where has ICE deployed IDENT/IAFIS interoperability and to which locations is it planning to deploy next?**

A map of current and planned deployment is available on the Secure Communities Web site, [www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities). ICE plans to make IDENT/IAFIS interoperability available to all local law enforcement jurisdictions nationwide by 2013.

**6. Is IDENT/IAFIS interoperability mandatory for all jurisdictions? Can a jurisdiction choose to “opt out”?**

By 2013, IDENT/IAFIS interoperability is expected to be available to all jurisdictions, which means that all fingerprints checked against federal criminal records in IAFIS will also be checked against IDENT, and ICE will be automatically notified of matches to IDENT data.

IDENT/IAFIS interoperability is mandated by Congress and in line with the recommendations of the 9/11 Commission. If a jurisdiction does not want fingerprints checked against IDENT, the jurisdiction would need to coordinate with its state so fingerprints are not submitted to IAFIS.

ICE is also working closely with each state and jurisdiction to ensure that law enforcement agencies understand how IDENT/IAFIS interoperability works and why it is a top priority for DHS.

A jurisdiction can “opt out” of one part of the information-sharing capability—the response message from IDENT that includes identity information. This message is automatically generated by IDENT and sent to ICE. If the requesting agency has the technological capability to receive such messages, it may elect not to receive the response.

## **PRIORITIZATION**

**7. As part of the Secure Communities strategy, ICE prioritizes the removal of certain criminal aliens. What are the priority levels and are they the same across the country?**

Nationwide, ICE is prioritizing the removal of criminal aliens identified through IDENT/IAFIS interoperability by taking immigration enforcement action against those charged with or convicted of a Level 1 offense.

Level 1 offenses are defined as: national security threats, homicide, kidnapping, sexual offenses, robbery, assault, drugs (sentence >1 year)—those offenses that pose the greatest threat to the public.

Discretion is left to the field offices for removal of aliens charged with or convicted lesser offenses, described as Level 2 and Level 3 offenses.

Additionally, multiple misdemeanors may carry the same weight as a felony. Criminal aliens with multiple misdemeanors may be processed for removal as if they were charged with or convicted of a Level 1 offense.

**8. If Secure Communities is prioritizing the identification and removal of aliens charged with or convicted of Level 1 offenses, why is ICE identifying and removing more aliens charged with or convicted of Level 2 and 3 offenses?**

ICE is identifying more aliens charged with or convicted of Level 2 and Level 3 offenses because more individuals commit and are arrested for crimes falling under these levels. However, ICE prioritizes the removal of aliens charged with or convicted of Level 1 offenses, which is demonstrated by the overall higher removal percentages for aliens charged with or convicted of Level 1 offenses, versus the percentage of removals of aliens charged with or convicted of Level 2 and 3 offenses.

## **CRIMINAL ALIEN ENFORCEMENT**

**9. What are the differences between ICE’s criminal alien enforcement programs, such as Secure Communities, the 287(g) program and the Criminal Alien Program (CAP), and how do they complement each other?**

ICE is taking a multipronged approach, which includes implementing the Secure Communities strategy and programs like the 287(g) program and CAP, to address the complex and dynamic challenges of criminal alien enforcement.

Secure Communities is ICE's comprehensive strategy to improve and modernize efforts to identify and remove criminal aliens from the United States. This strategy complements programs and initiatives within ICE responsible for tackling the criminal alien challenge through tools such as IDENT/IAFIS interoperability. The Secure Communities strategy does not cede federal immigration enforcement authority to state and local law enforcement officers, nor does it provide operational resources such as more federal agents on the ground.

The 287(g) program cross designates local law enforcement officers, authorizing them to enforce immigration law on the streets (task force model) and in the jails (jail model). This program acts as a force-multiplier, expanding ICE's presence on the streets and in jails to take enforcement action against aliens subject to removal.

CAP places ICE federal agents and officers in jails to screen convicted criminals that were either convicted before IDENT/IAFIS interoperability was deployed to the area or those who might not have been picked up by IDENT/IAFIS interoperability because they have not previously interacted with DHS.

**10. Why does IDENT/IAFIS interoperability sometimes identify criminal aliens for potential removal who are simply charged with crimes instead of focusing solely on those actually convicted of crimes?**

ICE's mission is to protect the security of the American people and homeland by vigilantly enforcing the nation's immigration and customs laws. As such, ICE has the authority to take enforcement action toward any alien subject to removal.

IDENT/IAFIS interoperability identifies aliens charged with or convicted of crimes at the earliest possible opportunity—when they are arrested/booked into jail or prison. By identifying these individuals early in the criminal justice process, ICE has the time necessary to determine, and possibly initiate, appropriate immigration enforcement action against aliens who pose a threat before they are released from local custody. IDENT/IAFIS interoperability also reveals previous criminal history information to ICE agents that may make the individual in custody charged with a crime subject to removal based on prior convictions.

Based on the resources available to ICE field offices, officers prioritize immigration enforcement action against aliens charged with or convicted of Level 1 offenses.

**OVERSIGHT OF IDENT/IAFIS INTEROPERABILITY**

**11. What is ICE doing to ensure the protection of civil rights and the appropriate response to complaints filed regarding cultural or racial profiling? How does someone file a complaint?**

To date, ICE has not received any formal complaints or allegations of racial profiling as a result of IDENT/IAFIS interoperability deployment.

The deployment of IDENT/IAFIS interoperability requires no change to current procedures for local law enforcement and all fingerprints are submitted, not just those of individuals suspected by law enforcement of being foreign nationals. Existing processes are in place at the local, state and federal levels to report allegations of racial profiling or abuse occurring in local law enforcement agencies. Because DHS is serious about responding to reported allegations of racial profiling, due process violations or other violations of civil rights or civil liberties relating to the use of IDENT/IAFIS interoperability, the DHS Office of Civil Rights and Civil Liberties (CRCL) expanded the existing complaints process to include Secure Communities.

The complaint process can be found on the Secure Communities Web site at [http://www.ice.gov/secure\\_communities/complaint\\_process.htm](http://www.ice.gov/secure_communities/complaint_process.htm).

**Additional information about Secure Communities can be found online at:  
[www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities).**



**ICE**

Secure  
Communities



## Secure Communities Talking Points

*For Internal Use Only*

- U.S. Immigration and Customs Enforcement (ICE) is the Department of Homeland Security's (DHS) largest investigative agency. ICE's mission is to protect the security of the American people and homeland by vigilantly enforcing the nation's immigration and customs laws.
- Congress, DHS and ICE recognize that identifying and removing criminal aliens from the United States is a priority and essential to our nation's security. ICE's Secure Communities strategy is leading the agency's efforts to improve and modernize the identification and removal of criminal aliens from the United States.
- A key part of the strategy is using a biometric information-sharing capability to identify aliens in local custody more accurately and efficiently. Biometrics, in this case fingerprints, are accurate, reliable and virtually impossible to forge.
- The aliens identified through the biometric information-sharing capability are most often charged with major drug offenses. Serious traffic offenses—of which driving under the influence accounts for the overwhelming majority—are the second largest group of charges.
- ICE focuses first on removing those criminal aliens who pose the greatest threat, such as those charged with or convicted of homicide, rape, robbery, kidnapping, major drug offenses and threats to national security.
- ICE is committed to transparent and accountable immigration enforcement and continues to inform the public, non-governmental organizations, law enforcement agencies and other stakeholders about the Secure Communities strategy.
- Secure Communities will continue to maintain an open dialogue with organizations to ensure that ICE's criminal alien enforcement efforts are effective, efficient and fair.
- Regular outreach is part of Secure Communities' commitment to transparency. Specific efforts by Secure Communities to engage stakeholders include, but are not limited to:
  - meeting with state and local law enforcement agencies prior to activating the biometric information-sharing capability;
  - regularly distributing press releases;
  - making information available through the Web site;
  - regularly meeting with non-governmental organizations; (please see the ICE FOIA Reading Room for a list of attendees at the past two Secure Communities meetings)

- participating in events, such as conferences and roundtable events hosted by members of Congress, law enforcement organizations and others;
  - providing information about how to report allegations of racial profiling, due process violations or other violations of civil rights or civil liberties, in addition to making that information available on the Web site.
- ICE takes any concerns about the Secure Communities strategy seriously and is committed to taking action should specific cases be identified.

*If asked about allegations of racial profiling or other abuses raised by non-governmental organizations (NGO):*

- ICE is committed to ensuring that the biometric identification technology capability, known as IDENT/IAFIS Interoperability, is used appropriately to identify and remove dangerous criminal aliens. ICE encourages reporting of any allegations of racial profiling, due process violations, or other violations of civil rights or civil liberties related to the use of IDENT/IAFIS Interoperability. All complaints should be filed with the DHS Office of Civil Rights and Civil Liberties (CRCL), on the [CRCL complaint intake Web site](#).
- ICE regularly meets with NGOs, including those organizing this week's events such as the National Day Laborers Organizing Network, Immigration Policy Center, the ACLU and the Rights Working Group, among others.
- ICE has routinely encouraged these organizations to provide specific cases where racial profiling or other abuses are suspected so that it may take appropriate action. To date ICE has received no such information.

**From:** (b)(6) (b)(7)(c)  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Local Law Enforcement Compliance with ICE Detainer Instructions  
**Date:** Thursday, November 29, 2012 12:28:00 PM  
**Attachments:** [FOD LEA Detainer Outreach Spreadsheet \(MLN\).xlsx](#)

---

(b)(6) (b)(7)(c)

I have attached (b)(6) (b)(7)(c) portion of this tasking.

Thanks,

(b)(6) (b)(7)(c)

**Assistant Field Office Director**  
**Newark Field Office**  
**Marlton Sub-Office**  
**406 Lippincott Drive Suite (b)(6) (b)(7)(c)**  
**Marlton, NJ 08053**  
**(856) 810-(b)(6) (b)(7)(c) (office)**  
**(973) 332-(b)(6) (b)(7)(c) (cell)**  
**(856) 810-(b)(6) (b)(7)(c) (fax)**

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, November 23, 2012 11:14 AM  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Local Law Enforcement Compliance with ICE Detainer Instructions

(b)(6) (b)(7)(c)

Please complete and send to (b)(6), (b)(7)(c) by COB Thursday, December 6, 2012.

Thanks,

(b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Friday, November 23, 2012 10:51 AM  
**Subject:** Local Law Enforcement Compliance with ICE Detainer Instructions

***The following message is being sent on behalf of Gary Mead, Executive Associate Director, Enforcement and Removal Operations:***

**To:** **Field Office Directors**

**Subject:** **Local Law Enforcement Compliance with ICE Detainer Instructions**

While it appears that most detention facilities are complying with the guidance on our new detainer form, complaints from stakeholders indicate that some may not be. In order to

determine if there is a problem, and if there is, its size, I need you to survey the facilities where you typically place detainees to obtain answers to the following questions:

- Do you release individuals subject to ICE detainers if ICE does not assume custody within 48 hours (excluding Saturdays, Sundays, and holidays)?
- Do individuals in your agency's custody with ICE detainers have access to telephones that permit them to call the 800 numbers listed on the "Notice to the Detainee" portion of the ICE detainer?
- Does your agency provide individuals in your custody with a copy of their ICE detainer form, including the "Notice to the Detainee?"

Please use the attached Excel spreadsheet to record the answers to these questions for the relevant jurisdictions. Return this spreadsheet with your completed tab to [REDACTED] (b)(6) (b)(7)(c) Senior Community Relations Officer, at [REDACTED] (b)(6) (b)(7)(c) by **Friday, December 7, 2012**. Should you have any questions you may contact [REDACTED] (b)(6) (b)(7)(c) at 202-732-[REDACTED] (b)(6) (b)(7)(c)

**NOTICE:** This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

**From:** [REDACTED]  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Cc:** [REDACTED]  
**Subject:** RE: Detainer Tasking  
**Date:** Tuesday, July 30, 2013 9:52:36 AM  
**Attachments:** [December21FODDirective.pdf](#)  
[Detainer Policy 12 21 12.pdf](#)  
[2012 Year End Announcement.pdf](#)  
[November23FODDirective.pdf](#)  
[FOD LEA Detainer Outreach Spreadsheet.xlsx](#)

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Good Morning [REDACTED] (b)(6) (b)(7)(c)

The original December 21, 2012 Morton memo and year end memorandum referenced in the six-month detainer review tasking below are attached. The FOD directive ensuring compliance with the detainer policy is also attached.

Additionally, I have included some preceding guidance I found regarding the implementation of previous detainer policy back in late November, 2012. At that time we were tasked to reach out to all our jails, review the new detainer policy, and provide instruction. You may have been over FUGOPS at the time and not directly tasked with the assignment. I believe we also reviewed the new detainer policy with the PDs in our AOR. As a result of the November review, we are in pretty good shape with the application of the December 21, 2012 memorandum.

1. What, if any, challenges in implementing the new guidance and form have you experienced?

We addressed any challenges as a Field Office back in early December. We have not encountered any significant difficulties after providing that training.

2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.

We did provide training to our law enforcement partners; reviewing the designated call numbers, the standard operating procedures regarding ICE detainees, and pickup requirements.

3. Does your office routinely conduct interviews prior to issuing a detainer?

Yes.

- A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc. ?

Interviews are routinely conducted in person at the jail or through VTC. Interviews are also conducted telephonically with local LEAs, upon arrest, and prior to issuing a detainer.

- B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?

After hours calls are handled by either Batavia or the LESC, they in turn refer cases that need an interview prior to lodging a detainer, to the Field Office NCIC duty officer.

- C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

If a detainer is lodged by the LESC or Batavia on a name match or fingerprint verification, our officers go out the next business day and interview the subject. The vast majority of the time these interviews are conducted prior to a detainee rolling into ICE custody.

Please let us know if we can provide any further information, or if we can assist in any way.

Regards,

(b)(6) (b)(7)(c)  
973-3324 (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, July 30, 2013 6:53 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Detainer Tasking

Hello (b)(6) (b)(7)(c)

Please see information below and send us MLN input by 2pm if possible.

We'll consolidate and forward to DFOD.

Thanks , hope all is well.

-----Original Message-----

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 03:59 PM Eastern Standard Time  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Detainer Tasking

(b)(6) (b)(7)(c) please take the lead with input form (b)(6) (b)(7)(c)

**From:** ERO Taskings  
**Sent:** Friday, July 26, 2013 3:58 PM  
**Subject:** Detainer Tasking

***The following message is being sent on behalf of Matthew T. Albence, Assistant Director for Secure Communities and Enforcement, with the concurrence of Philip T. Miller, Assistant Director for Field Operations:***

**To:** **Field Office Directors, Deputy Field Office Directors**

**Subject:** **Six-Month Detainer Policy Review**

On December 21, 2012, Director Morton issued a policy entitled Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems. This memorandum provided national guidance on the use of detainers to ensure uniform adherence to ICE's Civil Immigration Enforcement Priorities. The policy requires a six-month review of the implementation and effect of this guidance to determine whether modifications, if any, are needed.

To effect this review each Field Office must respond to the below questions:

1. What, if any, challenges in implementing the new guidance and form have you experienced?
2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
3. Does your office routinely conduct interviews prior to issuing a detainer?
  - A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
  - B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
  - C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

Please submit your responses by July 31, 2013, to the CAP HQ mailbox at

(b)(6) (b)(7)(c)

Questions regarding this message may be directed to your (b)(7)(e) point of contact.

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message.

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, December 27, 2012 8:20 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Detainer policy  
**Attachments:** Detainer Policy 12 21 12.pdf; 2012 Year End Announcement.pdf

**Importance:** High

I sent this to all your guys yesterday.

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, December 21, 2012 4:45 PM

(b)(6) (b)(7)(c)

**Subject:** FW: Detainer policy  
**Importance:** High

Please see attached new detainer policy effective for all new cases being encountered. Ensure it is discussed with your staff. Please let me know if there are any questions.

Thanks



U.S. Immigration  
and Customs  
Enforcement

DEC 21 2012

MEMORANDUM FOR:  
All Field Office Directors  
All Special Agents in Charge  
All Chief Counsel

FROM:

John Morton  
Director

SUBJECT:  
Civil Immigration Enforcement: Guidance on the Use of Detainers  
in the Federal, State, Local, and Tribal Criminal Justice Systems

#### Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

#### Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,<sup>1</sup> ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

<sup>1</sup> As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

**National Detainer Guidance**

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;<sup>2</sup>
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;<sup>3</sup>
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.<sup>4</sup>

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<sup>2</sup> Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

<sup>3</sup> A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

<sup>4</sup> For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

**FY 2012: ICE ANNOUNCES YEAR-END REMOVAL NUMBERS, HIGHLIGHTS FOCUS ON KEY PRIORITIES AND ISSUES NEW NATIONAL DETAINER GUIDANCE TO FURTHER FOCUS RESOURCES.**

WASHINGTON — U.S. Immigration and Customs Enforcement (ICE) Director John Morton today announced the agency's fiscal year 2012 year-end removal numbers, highlighting trends that underscore the administration's focus on removing from the country convicted criminals and other individuals that fall into priority areas for enforcement. To further focus ICE resources on the most serious criminal offenders, ICE today also issued new national detainer guidance [LINK]. This guidance limits the use of detainers to individuals who meet the Department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses such as traffic offenses and other petty crimes, helping to ensure that available resources are focused on apprehending felons, repeat offenders and other ICE priorities. It is applicable to all ICE enforcement programs, including Secure Communities.

"Smart and effective immigration enforcement relies on setting priorities for removal and executing on those priorities," said Director Morton. "In order to further enhance our ability to focus enforcement efforts on serious offenders, we are changing who ICE will issue detainers against. While the FY 2012 removals indicate that we continue to make progress in focusing resources on criminal and priority aliens, with more convicted criminals being removed from the country than ever before, we are constantly looking for ways to ensure that we are doing everything we can to utilize our resources in a way that maximizes public safety."

Secretary Napolitano has directed ICE to focus its resources on key priorities in all aspects of its immigration enforcement efforts. ICE's implementation of this directive includes today's new national detainer policy, as well as the continued use of investigations and programs like Operation Cross Check that target criminal aliens and ICE's expanded collaboration with CBP to remove recent border crossers.

ICE priorities include the identification and removal of those that have broken criminal laws, threats to national security, recent border crossers, and repeat violators of immigration law. Overall, in FY 2012 ICE's Office of Enforcement and Removal Operations removed 409,849 individuals. Of these, approximately 55 percent or 225,390 of the people removed were convicted of felonies or misdemeanors — almost double the removal of criminals since FY 2008. This includes 1,215 aliens convicted of homicide; 5,557 aliens convicted of sexual offenses; 40,448 aliens convicted for crimes involving drugs; and 36,166 aliens convicted for driving under the influence.

ICE continues to make progress with regard to other categories prioritized for removal. Some 96 percent of all ICE's removals fell into a priority category—a record high.

To support the Department of Homeland Security's efforts to secure our nation's borders, ICE prioritizes the identification and removal of recent border crossers and conducts targeted enforcement operations with the U.S. Border Patrol. The historic results along the Southwest Border are attributable to the joint efforts of U.S. Border Patrol agents and ICE officers and agents, and the emphasis ICE places on the removal of recent border crossers

As part of the effort to ensure that the immigration system can focus its resources on priority cases, ICE has also implemented policies and processes that ensure that those enforcing immigration laws make appropriate use of the discretion they have in deciding the types of individuals prioritized for removal from the country. In addition, ICE has also decided not to renew any of its agreement with state and local law enforcement agencies that operate task forces under the 287(g) program. ICE has concluded that other enforcement programs, including Secure Communities, are a more efficient use of resources for focusing on priority cases.

ICE will continue to analyze its policies and the results of its programs, making improvements where necessary to meet our priorities.

Visit our [immigration enforcement Web page](#) for more information.

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, November 26, 2012 9:42 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Local Law Enforcement Compliance with ICE Detainer Instructions  
**Attachments:** FOD LEA Detainer Outreach Spreadsheet.xlsx

(b)(6) (b)(7)(c)

Please survey our jails and complete the attached spreadsheet by COB Wednesday. Also, please include the state/federal jails.

Thanks,

(b)(6) (b)(7)(c)

**Assistant Field Office Director**  
**Newark Field Office**  
**Marlton Sub-Office**  
**406 Lippincott Drive Suite (b)(6) (b)(7)(c)**  
**Marlton, NJ 08053**  
**(856) 810- (b)(6) (b)(7)(c)**  
**(973) 332- (cell)**  
**(856) 810- (b)(6) (b)(7)(c) (fax)**

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, November 23, 2012 11:14 AM  
**To:** (b)(6) (b)(7)(c)  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Local Law Enforcement Compliance with ICE Detainer Instructions

(b)(6) (b)(7)(c)

Please complete and send to (b)(6) (b)(7)(c) by COB Thursday, December 6, 2012.

Thanks,

(b)(6) (b)(7)(c)

---

**From:** ERO Taskings  
**Sent:** Friday, November 23, 2012 10:51 AM  
**Subject:** Local Law Enforcement Compliance with ICE Detainer Instructions

*The following message is being sent on behalf of Gary Mead, Executive Associate Director, Enforcement and Removal Operations:*

**To:** Field Office Directors

**Subject:** Local Law Enforcement Compliance with ICE Detainer Instructions

While it appears that most detention facilities are complying with the guidance on our new detainer form, complaints from stakeholders indicate that some may not be. In order to determine if there is a problem, and if there is, its size, I need you to survey the facilities where you typically place detainees to obtain answers to the following questions:

- Do you release individuals subject to ICE detainers if ICE does not assume custody within 48 hours (excluding Saturdays, Sundays, and holidays)?
- Do individuals in your agency's custody with ICE detainers have access to telephones that permit them to call the 800 numbers listed on the "Notice to the Detainee" portion of the ICE detainer?
- Does your agency provide individuals in your custody with a copy of their ICE detainer form, including the "Notice to the Detainee?"

Please use the attached Excel spreadsheet to record the answers to these questions for the relevant jurisdictions. Return this spreadsheet with your completed tab to (b)(6) (b)(7)(c) Senior Community Relations Officer, at (b)(6) (b)(7)(c) by **Friday, December 7, 2012**. Should you have any questions you may contact (b)(6) (b)(7)(c) at 202-732-(b)(6) (b)(7)(c)

**NOTICE:** This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Statewide Activation Plan  
**Date:** Monday, October 28, 2013 1:21:23 PM

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For CAP FOIA

**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, August 29, 2011 12:08 PM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** RE: Statewide Activation Plan

What do you mean by not consistent?

We no longer pay facilities to hold on ICE detainer. That is a SCAAP issue. We stopped paying non-IGSAs several months ago.

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, August 29, 2011 11:58 AM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** FW: Statewide Activation Plan

(b)(6) (b)(7)(c)  
The attached numbers do not seem consistent with our local numbers. In discussion (b)(6), (b)(7)(c) am in agreement that we can handle level one and twos. Threes would be too much to absorb without additional staffing/resources. One additional resource needed before they flip the switch would be additional bedspace funding to handle the one day roll over cost associated with lodging aliens in county facilities purely on ICE detainees (we have had budget shortfalls already on this issue). The reinstates and final orders should be a shared responsibility with FUGOPs. Currently in CAP the Officer closest to the county facility is notified before the workday to pick-up the alien(s). By adding FUGOPs to this procedure it will be the force multiplier to ensure 100% coverage.

Let me know if we are still meeting on this prior to your call to Mr. Mead.

Thank you,  
(b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, August 25, 2011 12:45 PM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** RE: Statewide Activation Plan

Here is the level 1 number by county. Be prepared to discuss what the workload increase (over current ops) would be and how we can manage it. Thanks

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, August 25, 2011 12:33 PM  
**To:** (b)(6) (b)(7)(c)

**Cc:** (b)(6) (b)(7)(c)

**Subject:** FW: Statewide Activation Plan

**Importance:** High

(b)(6) (b)(7)(c)

We had a teleconference with Gary Mead this morning regarding activating 287 (g) within the State of New Jersey. HQ would seek to turn the system on without entering into an MOU. We would be immediately responsible for responding to level 1's or 2's. Please meet with your staff today to get an assessment on the impact this would have on our operations (i.e. staffing, etc.). If we are unable to be able to handle the 287(g) turn on immediately than we need to be able to give a detailed justification and possible timeline for when it would be feasible. Attached below are the projections of Level 1 cases that we may encounter as a result of the State system being turned on. We will have a meeting tomorrow at 11:00 am here to get the results of your assessment. We need to report our findings to (b)(6) (b)(7)(c) Please keep a close hold on this information.

(b)(6) (b)(7)(c)

You don't need to come up for this meeting. Can you be available from Marlton via VTC?

Thanks,

(b)(6) (b)(7)(c)

Deputy Field Office Director  
U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Newark Field Office  
Phone: (973) 645-<sup>(b)(6)</sup>(b)(7)(c)  
Cell: (201) 485-<sup>(b)(6)</sup>(b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, August 25, 2011 10:15 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** Statewide Activation Plan

Close hold. Level 1 projections. Ill provide additional information after the meeting

Marc A. Rapp  
Acting Assistant Director  
ICE Enforcement and Removal Operations  
Secure Communities Program  
(o) 202-732-<sup>(b)(6)</sup>(b)(7)(c)  
(m) 202-553-<sup>(b)(6)</sup>(b)(7)(c)  
(b)(6) (b)(7)(c)

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED]  
**Subject:** FW: SCAAP  
**Date:** Monday, October 28, 2013 1:21:01 PM

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For CAP FOIA

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Wednesday, December 08, 2010 8:18 PM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** Re: SCAAP

Sounds like legitimate question considering the billing itself is in violation of the reg.

---

Sent from my BlackBerry Wireless Handheld

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Wed Dec 08 18:52:36 2010  
**Subject:** Re: SCAAP

We can ask them to tell us what they are doing and then verify and take appropriate action. Thoughts?

---

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Wed Dec 08 19:29:44 2010  
**Subject:** RE: SCAAP

(b)(6) (b)(7)(q)

From the FY2010 SCAAP Guidelines see below:

“Unless otherwise covered by a cost reimbursement agreement, inmates who are ready for release once qualifying charges or convictions are concluded, and who are temporarily held in the applicant facility on the basis of outstanding warrants or detainees from other jurisdictions, including federal law enforcement agencies, are SCAAP eligible. The applicant jurisdiction may claim the total number of days the inmate was in custody, including the days the inmate was held on the detainees or outstanding warrants.”

The highlighted portion concerns me. This means those counties charging us for the 48 hours may be double dipping as you suspected. [REDACTED] (b)(5)

[REDACTED] (b)(5)

---

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Wednesday, December 08, 2010 12:01 PM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** FW: SCAAP

See link

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**From:** (b)(6) (b)(7)(c)

**Sent:** Thursday, December 02, 2010 6:11 PM

**To:** (b)(6) (b)(7)(c)

**Cc:** (b)(6) (b)(7)(c)

**Subject:** SCAAP

See link below and click on "2010 SCAAP Awards". (b)(6) (b)(7)(c) had funds provided to them. This is a big issue if they are getting reimbursed twice. (b)(6) (b)(7)(c) please speak with (b)(6) (b)(7)(c) so we can research further.

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Immigration Detainers Legal Issue  
**Date:** Monday, October 28, 2013 1:20:33 PM  
**Attachments:** [CRS Report Immigration Detainers Legal Issues 08312012.pdf](#)

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, September 13, 2012 12:47 PM

(b)(6) (b)(7)(c)

**Subject:** Immigration Detainers Legal Issue

To all,

Attached is a report prepared by a legislative attorney from Congressional Research Service prepared for Congress regarding the legal issues surrounding detainees for your operational awareness.

Regards,

(b)(6) (b)(7)(g)

(b)(6) (b)(7)(c) AFOD

Congressional Relations / Media Affairs  
Newark Field Office  
(973) 776-(b)(6) (b)(7)(c)



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# Immigration Detainers: Legal Issues

**Kate M. Manuel**  
Legislative Attorney

August 31, 2012

Congressional Research Service  
7-5700  
[www.crs.gov](http://www.crs.gov)  
R42690

## Summary

An “immigration detainer” is a document that advises other law enforcement agencies that the Department of Homeland Security (DHS)—and specifically U.S. Immigration and Customs Enforcement (ICE)—seeks custody of an alien whom they are holding in order to arrest and remove the alien. ICE and its predecessor, the Immigration and Naturalization Service (INS), have used detainers as one means of obtaining custody of aliens for removal proceedings since at least 1950. However, implementation of the Secure Communities program has recently prompted numerous questions about detainers. This program relies upon information sharing between various levels and agencies of government to identify potentially removable aliens.

Prior to 1986, the Immigration and Nationality Act (INA) did not explicitly address detainers, and the INS appears to have issued detainers pursuant to its “general authority” to guard U.S. borders and boundaries against the illegal entry of aliens, among other things. However, in 1986, Congress amended the INA to address the issuance of detainers for aliens arrested for controlled substance offenses. After the 1986 amendments, INS promulgated two regulations, one addressing the issuance of detainers for controlled substance offenses and the other addressing detainers for other offenses. These regulations were merged in 1997 and currently address various topics, including who may issue detainers and the temporary detention of aliens by other law enforcement agencies. There is also a standard detainer form (Form I-247) that allows ICE to indicate that it has taken actions that could lead to the alien’s removal, and request that another agency take actions that could facilitate removal (e.g., notify ICE prior to releasing the alien).

Some commentators and advocates for immigrants’ rights have asserted that, because the INA addresses only detainers for controlled substance offenses, ICE’s detainer regulations and practices are beyond its statutory authority and, thus, unlawful. The only court to address this issue found otherwise, but several recently filed cases raise the issue anew in other jurisdictions.

Although many states and localities apparently comply with immigration detainers as a matter of comity, questions have also arisen about whether federal law requires them to comply. ICE amended Form I-247 in 2010 to indicate that states and localities are *requested*—rather than *required*—to comply with immigration detainers, and an argument could be made that any attempt to require state and local compliance would violate the Tenth Amendment. However, some have suggested that DHS regulations and revisions made to Form I-247 in December 2011 could be construed as requiring state and local compliance, and one court appears to have adopted the view that compliance is required. Other recently filed litigation, in contrast, asserts that states and localities are not—or cannot be—required to comply.

In addition, questions have been raised about who has custody of aliens subject to detainers, and whether the detainer practices of state, local, and/or federal governments impinge upon aliens’ constitutional rights, particularly their rights to due process and to be free from unreasonable seizures. Answers to these questions may depend upon the facts and circumstances of the case. For example, courts have found that the filing of a detainer, in itself, does not result in an alien being in federal custody, although aliens could be found to be in federal custody if they are subject to final orders of removal or, potentially, if they are held because of the detainer after they would have been released for their criminal offense. Similarly, courts may be less likely to find a violation of the alien’s constitutional rights if the detainer merely requests that the agency notify ICE prior to the alien’s release, or if a warrant of arrest in removal proceedings is attached to the detainer, than if the alien is held so that ICE may investigate whether the alien is removable.

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## Introduction

An “immigration detainer” is a document that advises other federal, state, and local law enforcement agencies that the Department of Homeland Security (DHS)—and specifically U.S. Immigration and Customs Enforcement (ICE)—seeks custody of an alien whom they are holding in order to arrest and remove the alien.<sup>1</sup> The standard detainer form (Form I-247) allows ICE to indicate that it has taken certain actions that could lead to the alien’s removal (e.g., initiating removal proceedings or an investigation into the alien’s removability). The form also allows ICE to request that the other agency take certain actions that could facilitate removal (e.g., holding the alien temporarily, notifying ICE prior to releasing the alien).<sup>2</sup>

ICE and its predecessor, the Immigration and Naturalization Service (INS), have used detainers as one means of obtaining custody of aliens for purposes of removal proceedings since at least 1950.<sup>3</sup> However, numerous questions about ICE’s use of detainers have recently arisen due, in part, to DHS’s Secure Communities program, which has resulted in the issuance of more detainers for persons at earlier stages in criminal proceedings than was the practice previously.<sup>4</sup> Secure Communities—which was first implemented in 14 jurisdictions in 2008 and is scheduled for implementation nationwide in 2013—relies upon the sharing of information regarding persons arrested by state and local law enforcement to identify aliens who may be removable.<sup>5</sup> Specifically, the fingerprints of persons arrested by state and local officers are sent to the Federal Bureau of Investigation’s (FBI’s) Integrated Automatic Fingerprint Identification System (IAFIS),

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<sup>1</sup> 8 C.F.R. §287.7(a). An “alien” is any person who is not a citizen or national of the United States. INA §101(a)(3), 8 U.S.C. §1101(a)(3). Detainers have allegedly been issued for U.S. citizens, and resulted in their being held so that ICE could investigate their removability and/or assume custody. *See, e.g.*, Morales v. Chadbourne, C.A. No. 12-301 M, Complaint for Injunctive and Declaratory Relief and Monetary Damages (D. R.I., filed April 24, 2012). However, federal law does not purport to authorize the issuance of immigration detainers for U.S. citizens, and such cases are outside the scope of this report.

<sup>2</sup> *See, e.g.*, U.S. Dep’t of Homeland Security, Immigration Detainer—Notice of Action, DHS Form I-247 (12/11), available at <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.

<sup>3</sup> DHS also obtains custody of aliens for removal purposes through other means. In some cases, ICE has custody because ICE personnel arrested the alien for an immigration violation. In other cases, the alien is transferred to DHS custody without the issuance of a detainer. For example, an alien could be arrested upon his or her release from state or local custody by state or local personnel participating in the 287(g) program, or an “Order to Detain” (Form I-203) could be lodged with a local jail that also holds prisoners on behalf of ICE pursuant to an inter-governmental service agreement (IGSA). *See, e.g.*, Ricketts v. Palm Beach County Sheriff, 985 So.2d 591, 592 (Fla. Dist. Ct. App. 2008) (transfer of custody by means of Form I-203); Carrie L. Arnold, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 127-29 (2007) (discussing arrests by personnel participating in the 287(g) program). The 287(g) program, discussed in more detail below, relies upon specially trained state and local officers to perform specific functions relative to the investigation, apprehension, or detention of aliens, during a predetermined time frame and under federal supervision. *See infra* note 14 and accompanying text.

<sup>4</sup> *See, e.g.*, Brizuela v. Feliciano, No. 3:12CV226, Memorandum of Law in Support of Motion for Order to Show Cause and Leave to Propound Precertification Discovery Requests (filed D. Conn., February 22, 2012), at 7 (“Immigration detainers are an integral part of the Secure Communities program; indeed, the program depends on immigration detainers to work.”); Nat’l Day Laborer Organizing Network v. U.S. ICE, No. 1:10-cv-3488, Declaration of Ann Benson in Support of Plaintiffs’ Opposition to Defendants’ Motion for Stay (filed S.D.N.Y., November 18, 2011) (“The belief among the advocacy community is that if a local jurisdiction refuses to honor detainer requests, then the consequences of Secure Communities can be averted.”).

<sup>5</sup> *See, e.g.*, U.S. ICE, Secure Communities: The Basics, available at [http://www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities) (last accessed: August 20, 2012).

which then sends them to ICE’s Automated Biometric Identification System (IDENT).<sup>6</sup> This system automatically notifies ICE personnel whenever the fingerprints of persons arrested by state and local officers match those of a person previously encountered and fingerprinted by immigration officials. ICE personnel then review other databases to determine whether the person is here illegally or otherwise removable, and may issue detainers for any aliens who appear removable.<sup>7</sup>

DHS claims to prioritize “criminal aliens,” those who pose a threat to public safety, and repeat immigration violators for removal through Secure Communities,<sup>8</sup> and the Director of ICE has further indicated that, among “criminal aliens,” the focus should be upon those convicted of “aggravated felonies,” as defined in the Immigration and Nationality Act (INA);<sup>9</sup> those convicted of other felonies; and those convicted of three or more misdemeanors.<sup>10</sup> However, some commentators have expressed concern that detainers have been issued for persons who have not been convicted of any offense, or whose sole offense was a misdemeanor.<sup>11</sup> Because of these and related concerns, several jurisdictions have adopted policies of declining immigration detainer requests for at least some aliens.<sup>12</sup> Several lawsuits have also recently been filed challenging the detainer practices of state, local, or federal governments.<sup>13</sup> On the other hand, some Members of

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<sup>6</sup> DHS has taken the position that this sharing of information “fulfills a 2002 Congressional mandate for the FBI to share information with ICE, and is consistent with a 2008 federal law that instructs ICE to identify criminal aliens for removal.” U.S. ICE, Secure Communities: The Secure Communities Process, *available at* [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/) (last accessed: August 20, 2012). Others, however, have questioned whether this sharing of information is authorized by federal law. *See, e.g.*, Brizuela v. Feliciano, Memorandum of Law, *supra* note 4, at 7 (asserting that ICE has “failed to identify adequate legal authority” for Secure Communities).

<sup>7</sup> ICE is not required to issue a detainer in the event of a match, and IDENT can only be used to identify aliens whose fingerprint records have been digitized. *See* Secure Communities: The Secure Communities Process, *supra* note 6.

<sup>8</sup> *Id.*

<sup>9</sup> As used here, “aggravated felony” includes specific offenses or types of offenses listed in Section 101 of the INA. *See* INA §101(a)(43), 8 U.S.C. §1101(a)(43) (listing murder, rape, or sexual abuse of a minor; illicit trafficking in controlled substances or firearms; and “crimes of violence” for which the term of imprisonment is at least one year, among other offenses).

<sup>10</sup> John Morton, Director, U.S. ICE, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, March 2, 2011, *available at* <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

<sup>11</sup> *See, e.g.*, Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy, *available at* <http://cliniclegal.org/sites/default/files/NGO%20Detainer%20Comments%20Final%2010%2001%202010.pdf>. These comments were made in response to changes in ICE’s detainer policy proposed in 2010. Critics of Secure Communities have also alleged that state and local officials hold aliens longer than the 48 hours (excluding weekends and federal holidays) purportedly authorized by the detainer form and regulations, and that the program results in racial profiling and negatively affects community policing strategies. *See, e.g., id.*; William Fisher, U.S. Sheriff Abused Immigration “Detainer,” Lawsuit Charges, Inter Press Service, April 23, 2010, *available at* <http://ipsnews.net/news.asp?news=51173>.

<sup>12</sup> *See, e.g.*, Policy for Responding to ICE Detainers, September 7, 2011, *available at* [http://cookcountygov.com/l1\\_pub\\_cook/cook\\_ordinance.aspx?WindowArgs=1501](http://cookcountygov.com/l1_pub_cook/cook_ordinance.aspx?WindowArgs=1501) (amending Section 46-37 of the Cook County, Illinois, Code); *Santa Clara County to Stop Honoring Immigration Detainers for Low-Level Offenders*, LOS ANGELES TIMES, October 18, 2011, *available at* <http://latimesblogs.latimes.com/lanow/2011/10/santa-clara-county-to-stop-honoring-immigration-detainers-for-low-level-offenders-.html> (reporting that Santa Clara County, California, has adopted a policy of only honoring ICE detainers placed on those accused of “serious and violent felonies”); Brent Begin, *San Francisco County Jail Won’t Hold Inmates for ICE*, SAN FRANCISCO EXAMINER, May 5, 2011, *available at* <http://www.sfexaminer.com/local/2011/05/san-francisco-county-jail-won-t-hold-inmates-ice> (reporting that the San Francisco Sheriff has instructed officers not to honor detainers for persons arrested for “petty offenses”).

<sup>13</sup> *See, e.g.*, Morales v. Chadbourne, Complaint, *supra* note 1; Brizuela v. Feliciano, No. 3:12-cv-00226, Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (filed D. Conn., February 13, 2012); Jimenez Moreno v. Napolitano, No. 1:2011cv05452, Complaint for Injunctive and Declaratory Relief and Petition for a (continued...)

the 112<sup>th</sup> Congress have introduced legislation that would authorize certain state and local officials to issue detainers for or hold certain aliens.<sup>14</sup>

By way of background, this report surveys the various authorities governing immigration detainers, including the standard detainer form (Form I-247) sent by ICE to other law enforcement agencies. The report also discusses key legal issues raised by immigration detainers, including (1) whether DHS's detainer regulations and practices are beyond its statutory authority; (2) whether states and localities are required to comply with immigration detainers; (3) who has custody of aliens subject to detainers; and (4) whether detainer practices violate aliens' constitutional rights. In considering these topics, it is important to note that Form I-247 and DHS's detainer practices have changed frequently over the past two years,<sup>15</sup> and that decisions on the merits have not yet been issued in many cases challenging the use of detainers in conjunction with the Secure Communities program.<sup>16</sup> This program potentially raises more issues regarding ICE's use of detainers than were raised by earlier programs and practices because it takes a broader approach to identifying aliens who may be subject to removal.<sup>17</sup>

## Background

ICE and its predecessor, the INS, have long issued detainers for potentially removable aliens, although the case law mentioning such detainers may provide only a partial picture of INS's practices, in particular.<sup>18</sup> For example, in a 1950 decision, a federal district court addressed a

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Writ of Habeas Corpus (filed N.D. Ill., August 11, 2011); Uroza v. Salt Lake County, No. 11-0713, First Amended Complaint for Declaratory Judgment and Monetary Damages (filed D. Utah, March 26, 2011); Galarza v. Szalczyk, No. 10-6815, Complaint (filed E.D. Pa., November 19, 2010).

<sup>14</sup> Criminal Alien Removal Act of 2011, H.R. 932, §2(d)(3)(A)-(B) (authorizing officials in states participating in the Criminal Alien Program (CAP) to issue detainers "allow[ing] an alien who completes a term of incarceration within the State to be detained by the State prison until personnel from [ICE are] able to take the alien into custody," as well as "hold" aliens who are unlawfully present or removable for a period of up to 14 days after they complete a term of incarceration within the state in order to "effectuate" their transfer to federal custody); Scott Gardner Act, H.R. 3808, §2 (authorizing state and local officers to issue detainers for aliens who are present without authorization and apprehended for driving while intoxicated). Certain state and local officials may currently issue immigration detainers if their jurisdiction participates in the 287(g) Program, and the terms of the agreement between their jurisdiction and the federal government authorize this. *See, e.g.*, 8 C.F.R. §287.7(b)(8); Torres v. Bureau of Immigration & Customs Enforcement, 347 Fed. App'x 47 (5<sup>th</sup> Cir. 2009). However, their doing so involves an exercise of delegated federal authority, as opposed to state authority. Under the 287(g) program, state and local officers whose jurisdictions have entered written agreements with the federal government may, subject to certain conditions, enforce federal immigration law. Under CAP, in contrast, ICE officers assigned to federal, state, and local prisons identify criminal aliens in order to facilitate their removal. For more on these programs, see CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, by Marc R. Rosenblum and William A. Kandel.

<sup>15</sup> See *infra* notes 45-48 and 76 and accompanying text.

<sup>16</sup> See *supra* note 13.

<sup>17</sup> *See, e.g.*, Brizuela v. Feliciano, Petitioner's Memorandum of Law, *supra* note 4, at 7 (arguing that "Secure Communities will automatically result in an immigration status check for every individual arrested anywhere in the state, no matter how minor the charges against the individual or their eventual disposition. Those status checks will enlarge the total pool of individuals against whom detainers will be lodged."); Christopher N. Lasch, *Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers*, 35 WM. MITCHELL L. REV. 164, 176 (2008/2009) (suggesting that, with Secure Communities, ICE only needs state and local assistance in obtaining custody of removable aliens, not in identifying them).

<sup>18</sup> The first reference to "immigration detainers" in federal regulations appears to have been in 1962, when the Department of Justice issued regulations addressing the parole of prisoners subject to deportation. *See Dep't of Justice, (continued...)*

challenge to the legality of a deportation order for an alien who was the subject of an immigration detainer requesting his delivery “to the custody of the immigration authorities at the time sentence is fulfilled in the state institute.”<sup>19</sup> Later, in a 1975 decision, the Board of Immigration Appeals, the highest administrative body for interpreting and applying immigration laws, heard an alien’s challenge to the conditions under which federal prison authorities held him, allegedly as the result of an immigration detainer which requested that the prison notify INS at least 30 days prior to his release.<sup>20</sup> Between them, these two cases illustrate INS’s use of detainers to request that a law enforcement agency transfer an alien to INS custody at the completion of the alien’s criminal sentence, or notify INS prior to the alien’s release. However, they do not indicate whether INS used detainers for other purposes, such as to request that a person be held after he or she would otherwise have been released for any criminal offense so that INS could investigate the person’s removability and/or take custody.

The Immigration and Nationality Act (INA) did not expressly address the issuance of detainers prior to 1986. However, the INS appears to have issued detainers prior to this date pursuant to various powers and responsibilities delegated to it by the INA. Specifically, the INA (1) grants the Attorney General (currently the Secretary of Homeland Security) “the power and duty to control and guard the borders and boundaries of the United States against the illegal entry of aliens,”<sup>21</sup> (2) establishes certain categories of aliens who are barred from admission to the United States, or may be removed from the United States after their admission,<sup>22</sup> and (3) generally grants immigration officials broad discretion as to which aliens are removed from the United States.<sup>23</sup> The INS cited all these provisions, among others, as authority when it ultimately promulgated regulations governing the issuance of detainers, as discussed below,<sup>24</sup> and it seems to have consistently viewed these provisions as broadly authorizing its detainer practices.<sup>25</sup> Neither INS

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Prescribing Regulations of the United States Board of Parole and Youth Correction Division of the Board, 27 Fed. Reg. 8487 (August 24, 1962). Later regulations also refer to “deportation detainers.” *See, e.g.*, Dep’t of Justice, Bureau of Prisons, Control Custody, Care, Treatment, and Instruction of Inmates, 47 Fed. Reg. 47168 (October 22, 1982).

<sup>19</sup> *Slavik v. Miller*, 89 F. Supp. 575, 576 (W.D. Pa. 1950) (also noting that “a detainer has been lodged for the body of the petitioner at the time that the fulfillment of the state sentence has expired”).

<sup>20</sup> *In re Lehder*, 15 I. & N. Dec. 159 (February 7, 1975). As a general matter, aliens are to complete any criminal sentence imposed upon them prior to removal. *See* 8 U.S.C. §1226(c)(1) (providing that the Secretary of Homeland Security is to take certain deportable aliens into custody “when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation”).

<sup>21</sup> INA §103(a)(5), 8 U.S.C. §1103(a)(5).

<sup>22</sup> INA §212, 8 U.S.C. §1182 (grounds of inadmissibility); INA §237, 8 U.S.C. §1227 (grounds for removal).

<sup>23</sup> INA §242, 8 U.S.C. §1252 (limiting judicial review of certain decisions made by immigration officers and immigration judges).

<sup>24</sup> *See infra* notes 30-32 and accompanying text.

<sup>25</sup> *See, e.g.*, Dep’t of Justice, INS, Enhancing the Enforcement Authority of Immigration Officers, 59 Fed. Reg. 42406 (August 17, 1994) (“[Some] commentators stated that the authority for issuance of detainers in §§242.2(a)(1) and 287.7(a)(1) of the proposed rule was overly broad because the authority to issue detainers is limited by section 287(d) of the Act to persons arrested for controlled substance offenses. This comment overlooked the general authority of the Service to detain any individual subject to exclusion or deportation proceedings. *See* 8 U.S.C. 1225(b), 1252(a)(1). The detainer authority of these sections of the proposed rule were promulgated pursuant to this general authority. The statutory provision cited by the commentators places special requirements on the Service regarding the detention of individuals arrested for controlled substance offenses, but does not delimit the general detainer authority of the Service.”).

nor ICE appears to have relied upon the “inherent authority” of law enforcement to issue detainers, although some jurisdictions appear to have recognized such authority.<sup>26</sup>

Then, Congress enacted the Anti-Drug Abuse Act of 1986, which, among other things, amended Section 287 of the INA to address the issuance of detainers for aliens arrested for “violation[s] of any law relating to controlled substances.”<sup>27</sup> Section 287 generally specifies the powers of immigration officers and employees<sup>28</sup> and, as amended, provides that

[i]n the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of the facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.<sup>29</sup>

After the 1986 amendments, the INS amended its regulations to address the issuance of detainers. The INS initially promulgated two separate regulations, one (codified in 8 C.F.R. §287.7) governing detainers for controlled substance offenses and another (codified in 8 C.F.R. §242.2) governing detainers for other offenses.<sup>30</sup> The final versions of these two regulations were virtually identical,<sup>31</sup> and in 1997, the two regulations were merged into one.<sup>32</sup> This regulation was located

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<sup>26</sup> See, e.g., *Hicks v. Gravett*, 849 S.W.2d 946, 948 (Ark. 1993) (noting that a lower court had found that a sheriff has inherent authority to lodge a detainer requesting that a federal prison hold the plaintiff to serve his state sentence when he completes his federal sentence). The appellate court affirmed the judgment of the lower court without reaching this issue. However, it did find that the plaintiff’s mandamus action failed, in part, because he could not establish a “specific legal right” whose performance could be ordered by the court based on his assertion that no statute authorized the sheriff to issue detainers. *Id.*

<sup>27</sup> P.L. 99-570, §1751(d), 100 Stat. 3207-47 to 3207-48 (October 27, 1986). Section 287 of the INA is codified at 8 U.S.C. §1357(d). The act did not define the term “controlled substance” for purposes of Section 287, although it did for other sections of the INA. See Dep’t of Justice, INS, Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole Judicial Recommendations Against Deportation Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal Field Officers; Powers and Duties: Interim Rule with Request for Comments, 52 Fed. Reg. 16370 (May 5, 1987). However, INS promulgated regulations that define this term, for purposes of Section 287, to mean “the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801 et seq., and shall include any substance contained in Schedules I through V of 21 CFR 1308.1 et seq.” 8 C.F.R. §287.1(f).

<sup>28</sup> See generally 8 C.F.R. §287.5 (defining which immigration officers may exercise specific powers).

<sup>29</sup> INA §287(d)(1)-(3), 8 U.S.C. §1357(d)(1)-(3).

<sup>30</sup> Dep’t of Justice, INS, Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole Judicial Recommendations Against Deportation Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal Field Officers; Powers and Duties: Final Rule, 53 Fed. Reg. 9281 (March 22, 1988).

<sup>31</sup> Specifically, the two final regulations differed in terms of (1) whether they included a definition of “conviction,” and (continued...)

at 8 C.F.R. §287.7, the former location of the regulation governing detainers for controlled substance offenses. However, it noted that detainers “are issued pursuant to sections 236 and 287” of the INA.<sup>33</sup> Section 236 authorizes or requires the detention of certain aliens pending their removal,<sup>34</sup> while Section 287 generally specifies the powers of immigration officers and employees (as well as expressly authorizes the issuance of detainers for controlled substance offenses).<sup>35</sup>

These detainer regulations currently provide that “[a]ny authorized immigration officer may at any time issue a Form I-247 … to any other Federal, State, or local law enforcement agency,”<sup>36</sup> and identify specific personnel authorized to issue detainers (e.g., deportation officers; immigration inspectors; state and local officials acting pursuant to a 287(g) agreement with DHS).<sup>37</sup> These personnel are the same personnel who are authorized to make warrantless arrests for violations of federal immigration law under certain conditions, as discussed below.<sup>38</sup> In addition, the regulations:

- require that other agencies requesting the issuance of a detainer provide DHS with “all documentary records and information” related to the alien’s status;
- call for the temporary detention of aliens not otherwise detained by a criminal justice agency for up to 48 hours (excluding weekends and federal holidays) so that ICE may assume custody;<sup>39</sup> and
- specify that DHS is not financially responsible for an alien’s detention unless it issues a detainer for, or assumes custody of, the alien.<sup>40</sup>

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(2) the authorities cited for their promulgation. The regulation governing the issuance of detainers for offenses not involving controlled substances included a definition of “conviction” and cited as authority for its promulgation INA §242 (currently §239) (requiring that deportation proceedings be begun “as expeditiously as possible” after an alien’s conviction for a deportable offense); INA §103 (powers of the Attorney General (later Secretary of Homeland Security)); INA §212 (grounds of inadmissibility); INA §237 (grounds for removal); INA §242 (judicial review of orders of removal); and a provision on adjustment of status that was subsequently repealed. The regulation governing the issuance of detainers for controlled substance offenses, in contrast, did not contain a definition of “conviction” and cited as authority for its promulgation INA §287; INA §103 (powers of the Attorney General (later Secretary of Homeland Security)); INA §212 (grounds of inadmissibility); INA §235 (inspection by immigration officers); INA §236 (apprehension and detention of aliens); INA §237 (grounds for removal); and INA §242 (judicial review of orders of removal). The interim version of these regulations had differed in additional ways. *See* 52 Fed. Reg. at 16370.

<sup>32</sup> Dep’t of Justice, INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10392 (March 6, 1997).

<sup>33</sup> 8 C.F.R. §287.7(a).

<sup>34</sup> In particular, Section 236(a) authorizes the arrest and detention of an alien, on a warrant issued by the Secretary of Homeland Security, pending a decision on whether the alien is to be removed from the United States, while Section 236(c) requires the detention of aliens who are inadmissible or removable because they have committed certain criminal offenses. *See* INA §236(a) & (c), 8 U.S.C. §1226(a) & (c).

<sup>35</sup> *See supra* note 28 and accompanying text.

<sup>36</sup> 8 C.F.R. §287.7(a).

<sup>37</sup> 8 C.F.R. §287.7(b)(1)-(8).

<sup>38</sup> *See infra* note 132 and accompanying text.

<sup>39</sup> This provision is implicated in many of the legal questions surrounding current detainer practices. For example, there is some question as to whether the regulation “requires” states and localities to comply with immigration detainers. *See infra* “Are States and Localities Required to Comply with Immigration Detainers”. There are also questions about what authority underlies the apparent seizures of aliens’ persons contemplated by this provision. *See infra* “Are Aliens “Seized” in Violation of Their Constitutional Rights?”

The standard detainer form (Form 1-247) has apparently been in use since at least 1984,<sup>41</sup> and has been amended several times, including recently in response to criticisms of the Secure Communities program.<sup>42</sup> This form enables ICE to notify another agency that it has (1) initiated an investigation to determine whether an alien is subject to removal; (2) initiated removal proceedings and served a Notice to Appear or other charging document on the alien; (3) served a warrant of arrest for removal proceedings; or (4) obtained an order of deportation or removal for the alien.<sup>43</sup> It also allows ICE to request that the other agency take one or more of the following actions:

- maintain custody of the alien for a period not to exceed 48 hours (excluding weekends and federal holidays) beyond the time when the alien would have been released from its custody so as to allow DHS to take custody of the alien;
- provide a copy of the detainer to the alien who is the subject of the detainer;
- notify DHS at least 30 days prior to the alien's release;
- notify DHS of the alien's death, hospitalization, or transfer to another institution;
- consider this request operative only upon the alien's conviction;
- cancel a previously placed detainer.<sup>44</sup>

The option of requesting that a copy of the detainer be provided to the alien who is the subject of the detainer was added in June 2011,<sup>45</sup> in response to concerns that aliens who were subject to detainers were not always aware of this fact.<sup>46</sup> The option of requesting that the detainer be considered operative only upon the alien's conviction was also added in June 2011,<sup>47</sup> because of criticism that ICE has issued detainers for aliens whose charges were dismissed, or who were found not guilty.<sup>48</sup>

ICE also recently issued policy guidance and made other changes pertaining to its use of detainers in response to allegations that the Secure Communities program has resulted in infringement of aliens' rights by state and local officials, and that ICE issues detainers without sufficient evidence

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<sup>40</sup> 8 C.F.R. §287.7(c)-(e).

<sup>41</sup> Office of Justice Assistance, Research & Stats., State Reimbursement Program for Incarcerated Mariel-Cubans, 49 Fed. Reg. 38719 (October 1, 1984).

<sup>42</sup> See *infra* notes 45-48 and accompanying text.

<sup>43</sup> U.S. Dep't of Homeland Security, Immigration Detainer—Notice of Action, *supra* note 2.

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Dep't of Homeland Security, Immigration Detainer—Notice of Action, DHS Form I-247 (6/11) (copy on file with the author).

<sup>46</sup> See, e.g., Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶ 22 ("The I-247 detainer form does not require notice of the immigration detainees to the Plaintiffs/Petitioners."); Morales, Complaint, *supra* note 1, at ¶ 45 (noting that the plaintiff in this case was not aware that a detainer had been lodged against her until she was arraigned for a state offense).

<sup>47</sup> Immigration Detainer—Notice of Action, *supra* note 45.

<sup>48</sup> See, e.g., Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy, *supra* note 11, at 1 ("Issuance is often based on mere arrests for less serious crimes including minor misdemeanors rather than after convictions for serious crimes which pose a threat to public safety.").

of individuals' removability.<sup>49</sup> In August 2010, ICE issued an interim policy on detainers that prohibits immigration officers from issuing detainers unless a law enforcement agency has "exercised its independent authority to arrest the alien,"<sup>50</sup> as well as discourages officers from "relying" on the hold period purportedly authorized by the detainer form and federal regulations.<sup>51</sup> More recently, in December 2011, ICE established a toll-free hotline that detained individuals can call if they believe they may be U.S. citizens or victims of a crime.<sup>52</sup>

The issuance of a detainer for an alien begins a process that could potentially result in the removal of the alien, although ICE does not pick up or attempt to remove all aliens for whom it issues detainers.<sup>53</sup> ICE issued 270,988 detainers in FY2009 and 201,778 detainers in the first eleven months of FY2010.<sup>54</sup> It is unclear, however, how many individuals subject to detainers were ultimately removed.<sup>55</sup> It is also unclear how many of these detainers resulted in an alien being held by state or local authorities beyond the time when he or she would otherwise have been released from custody.<sup>56</sup>

## Legal Issues

Largely because the Secure Communities program has resulted in the issuance of more detainers for persons at earlier stages in criminal proceedings than was the practice previously, numerous questions have recently been raised about detainers. These include (1) whether DHS's detainer regulations and practices are beyond its statutory authority; (2) whether states and localities are required to comply with immigration detainers; (3) who has custody of aliens subject to detainers; and (4) whether detainer practices violate aliens' constitutional rights.<sup>57</sup> However, because the

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<sup>49</sup> *Id.* Whether there is sufficient evidence of individuals' removability may help determine whether any seizure of the alien's person that may result when the alien is held pursuant to a detainer is permissible under the Constitution. See *infra* "Are Aliens "Seized" in Violation of Their Constitutional Rights?"

<sup>50</sup> U.S. ICE, Interim Policy Number 10074.1: Detainers, August 2, 2010, at §4.1 (copy on file with the author). In addition, this provision specifically notes that officers shall not issue detainers for aliens who have been temporarily stopped by a law enforcement agency (e.g., in a roadside or *Terry* stop). The alleged issuance of detainers for aliens who had been temporarily stopped, but were not arrested, by law enforcement was among the issues raised in the *Committee for Immigrants Rights of Sonoma County v. County of Sonoma* litigation, discussed below. See *infra* notes 67-71 and accompanying text.

<sup>51</sup> Interim Policy Number 10074.1, *supra* note 50, at §4.4.

<sup>52</sup> DHS, U.S. ICE, News Release: ICE Establishes a Hotline for Detained Individuals, Issues New Detainer Form, December 29, 2011, available at <http://www.ice.gov/news/releases/1112/111229washingtondc.htm>.

<sup>53</sup> Moreover, even when ICE institutes removal proceedings, the alien could potentially be eligible for relief from removal, or successfully contest his or her removability. See, e.g., Brizuela v. Feliciano, Petition, *supra* note 13, at ¶ 10 (noting that the alien plans to apply for relief from removal, contest his removal, and seek judicial review of any order of removal).

<sup>54</sup> Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶ 28.

<sup>55</sup> Some of these detainers appear to have been issued for citizens, who are not subject to removal, and certain individuals have been subject to multiple detainer requests. See, e.g., Morales v. Chadbourne, Complaint, *supra* note 1.

<sup>56</sup> One recently filed petition challenging state and local detainer practices states that, "[o]n information and belief, on a single day in December 2011, ... there were approximately 130 pretrial detainees and approximately 360 post-conviction detainees" in Connecticut Department of Correction custody with immigration detainers lodged against them. Brizuela v. Feliciano, Petition, *supra* note 13, at ¶ 30.a. However, there is no indication of how many of these persons are being held solely on the basis of the detainer.

<sup>57</sup> These are arguably the major issues that have been raised by the cases filed to date. Individual cases have, however, raised additional issues that are outside the scope of this report. See, e.g., Morales v. Chadbourne, Complaint, *supra* note 1 (alleging that the plaintiff was the victim of intentional torts and negligence, and that she was denied equal (continued...))

Secure Communities program is relatively new, and arguably takes a broader approach to identifying aliens who may be subject to removal than prior programs and practices,<sup>58</sup> there is little case law definitely answering these questions. Various arguments that have been made by plaintiffs and commentators are noted below, but it is often unclear how courts might rule when confronting specific issues. In addition, recently filed suits challenging the use of detainers have varied considerably in the facts and circumstances of the case, the nature of the challenge, and the relief sought. For example, in some cases, individuals who are allegedly U.S. citizens—and, thus, not subject to removal—have brought actions in habeas corpus seeking their release, or have sued for monetary damages for their unlawful detention.<sup>59</sup> In other cases, plaintiffs who include potentially removable aliens have brought class action suits seeking a declaration that use of detainers to request that persons be held so that ICE may investigate their removability is unconstitutional,<sup>60</sup> or have requested injunctions barring state or local governments from holding people pursuant to immigration detainers.<sup>61</sup>

## **Are ICE's Detainer Regulations and Practices Within Its Statutory Authority?**

Because the INA only addresses detainers for controlled substance offenses,<sup>62</sup> some commentators and advocates for immigrant rights have asserted that ICE's current detainer regulations and practices exceed its statutory authority and, thus, are unlawful.<sup>63</sup> In particular, those making this argument note that (1) these regulations and practices entail the issuance of detainers for offenses that do not involve controlled substances; and (2) ICE personnel are

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protection of the law because her information was reported to ICE “solely on the basis of her place of birth, foreign-sounding name, Hispanic appearance, and/or English language ability”).

<sup>58</sup> See *supra* note 17 and accompanying text.

<sup>59</sup> See, e.g., Morales v. Chadbourne, Complaint, *supra* note 1 (seeking monetary damages for various torts and violations of the plaintiff's constitutional rights, as well as to permanently enjoin certain officials from issuing a detainer for her, or holding her pursuant to a detainer). The writ of habeas corpus has historically “served as a means of reviewing the legality of Executive detention.” Rasul v. Bush, 542 U.S. 466, 474 (2004) (citing *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)). Aliens subject to immigration detainers have brought numerous challenges to their detention in habeas proceedings. See *infra* “Who Has Custody of Aliens Subject to Detainers”.

<sup>60</sup> Uroza v. Salt Lake County, First Amended Complaint, *supra* note 13.

<sup>61</sup> See, e.g., Brizuela v. Feliciano, Petition, *supra* note 13 (a proposed class action seeking to enjoin the state of Connecticut from “detain[ing] any individual solely on the basis of an immigration detainer”). Partly in response to this suit, the state recently adopted a protocol for officers to follow when determining whether to hold a person pursuant to an immigration detainer. See, e.g., *Connecticut Adopts Protocols for Dealing with ICE's Secure Communities Program*, WEST HARTFORD NEWS, March 29, 2012, available at <http://www.westhartfordnews.com/articles/2012/03/29/news/doc4f72775aacb8c050176943.txt> (noting that officers are to determine whether ICE has started removal proceedings, has issued a warrant for the person, or has obtained a removal order, among other things).

<sup>62</sup> See *supra* notes 21-29 and accompanying text.

<sup>63</sup> See, e.g., Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy, *supra* note 11, at 12; Jimenez Moreno v. Napolitano, Complaint, *supra* note 13. This argument would suggest that either (1) INS lacked authority to issue detainers for any offense prior to 1986, when Congress granted it authority to issue detainers for controlled substance offenses, or (2) INS had authority to issue detainers for any offense prior to 1986, but Congress impliedly repealed this authority by expressly authorizing the issuance of detainers for controlled substance offenses. See *Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers*, *supra* note 17, at 191-92 (further suggesting that the detainer provisions in Section 287 would have been superfluous if INS had “general authority” to issue detainers).

generally the ones determining whether to issue a detainer.<sup>64</sup> Both things are, they assert, contrary to Section 287 of the INA, which they take to mean that ICE is *only* to determine whether to issue a detainer for an alien arrested for a controlled substance offense *if and when* requested to do so by a “Federal, State, or local law enforcement officer” or “another official.”<sup>65</sup> Federal immigration authorities, in contrast, have taken a broader view of their authority, issuing detainers for offenses that do not involve controlled substances without a request from a non-immigration officer. In particular, the INS seems to have taken the position that holds are permissible pursuant to its general authority to make warrantless arrests for immigration violations, discussed below, and not Section 287’s detainer provisions.<sup>66</sup>

The only court to have addressed this issue to date found that DHS’s detainer regulations are within its statutory authority.<sup>67</sup> The U.S. District Court for the Northern District of California did so by reviewing DHS’s regulations in light of the Supreme Court’s decision in *Chevron, U.S.A. v. Natural Resources Defense Council*, which established a two-step test for judicial review of an agency’s construction of a statute which it administers: (1) Has Congress directly spoken to the precise question at issue, and (2) If not, is the agency’s reasonable interpretation of the statute consistent with the purposes of the statute?<sup>68</sup> Applying *Chevron*, the court first found that the DHS regulations were not “facially invalid,” or contrary to the unambiguously expressed intent of Congress. According to the court:

The fact that §[287] does not expressly authorize ICE to issue detainers for violations of laws other than laws relating to controlled substances hardly amounts to the kind of unambiguous expression of congressional intent that would remove the agency’s discretion at Chevron step one. Rather, the court finds that because Congress left a statutory gap for the agency to fill, Chevron step two requires the court to defer to the agency’s reasonable interpretation of the statute so long as the interpretation is consistent with the purposes of the statute.<sup>69</sup>

The court further found that DHS’s regulations are “consistent with the purpose of the statute” and “not contrary to the discernible intent of Congress … [g]iven the broad authority vested in the Secretary of Homeland Security to establish such regulations as she deems necessary for carrying out her authority to administer and enforce laws relating to the immigration and naturalization of aliens.”<sup>70</sup> Here, the court specifically noted that the detainer provisions in Section 287 of the INA

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<sup>64</sup> See, e.g., *Enforcing the Limits of the Executive’s Authority to Issue Immigration Detainers*, *supra* note 17, at 177.

<sup>65</sup> They further note that immigration officers do not constitute “Federal law enforcement officers” or “another official,” as those terms are used in Section 287, and so cannot be the ones to request that ICE determine whether to issue a detainer. *Id.* at 187-89 (resorting to canons of statutory interpretation, as well as the legislative history of the Anti-Drug Abuse Act of 1986, in asserting that “another official” means another officer like the arresting officer, not an immigration officer).

<sup>66</sup> See *infra* note 133 and accompanying text.

<sup>67</sup> *Committee for Immigrant Rights of Sonoma County v. County of Sonoma*, 644 F. Supp. 2d 1177 (N.D. Cal. 2009). Certain of the plaintiffs’ claims not based on the use of detainers survived the defendants’ motion to dismiss and subsequent motion for reconsideration, and have since been settled. See generally *Committee for Immigrant Rights*, No. C 08-4220 RS, 2011 U.S. Dist. LEXIS 63726 (N.D. Cal., June 16, 2011).

<sup>68</sup> 644 F. Supp. 2d at 1196 (quoting *Chevron*, 467 U.S. 837, 842-43 (1984)). If Congress has spoken directly to the issue, “that is the end of the matter,” and the second step does not factor into the analysis. *Id.* However, when Congress has not spoken directly to the issue, courts typically defer to an agency’s reasonable interpretation of its governing statute, and may substitute their own interpretation of the statute only where the agency’s interpretation is unreasonable or contrary to the discernible intent of Congress. *Id.*

<sup>69</sup> *Id.* at 1198.

<sup>70</sup> *Id.*

are to be construed “simply [as] placing special requirements on officials issuing detainers for a violation of any law relating to controlled substances, not as expressly limiting the issuance of immigration detainers solely to individuals violating laws relating to controlled substances.”<sup>71</sup>

The question of whether DHS’s detainer regulations and practices are beyond its statutory authority has, however, persisted despite this decision. For example, certain recently filed suits allege that the government’s “application of the immigration detainer regulations and issuance of detainers … exceeds [its] … statutory authority.”<sup>72</sup> It remains to be seen how other courts might view such arguments and what significance, if any, reviewing courts might attach to the legislative history of the 1986 amendments, which was apparently not considered by the California district court. Although this history is sparse, a statement by the sponsor of the 1986 amendments read on the floor in the House could potentially be construed as indicating that these amendments were intended to expand—rather than restrict—the use of detainers by requiring immigration officers to at least consider issuing detainers when requested to do so by other law enforcement officers. According to this statement, the amendments responded to complaints from state and local officers that INS did not “issue judgment on a suspect’s citizenship fast enough to allow the authorities to continue to detain him,” and sought to compel INS to take “the necessary actions to detain the suspect and process the case.”<sup>73</sup>

## **Are States and Localities Required to Comply with Immigration Detainers?**

The arguable uncertainty<sup>74</sup> over whether states and localities are required to honor immigration detainers seems to arise, in part, from DHS forms and regulations. The standard detainer form (Form I-247) used between 1997 and 2010 explicitly stated that federal regulations “required” recipients to hold aliens for up to 48 hours (excluding weekends and federal holidays) so that ICE could assume custody.<sup>75</sup> This form was amended in August 2010 to indicate that ICE “requested”—rather than “required”—that aliens be held.<sup>76</sup> However, federal regulations

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<sup>71</sup> *Id.* at 1199. The court also noted the incongruity of permitting the issuance of immigration detainers for controlled substance offenses, but not for “violent offenses such as murder, rape and robbery.”

<sup>72</sup> Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶¶ 37, 39. See also Brizuela v. Feliciano, Petition, *supra* note 13, at 1.

<sup>73</sup> CONG. REC., September 11, 1986, pg. H-22981 (statement of Representative Ackerman read by Representative Smith) (“My amendment … addresses local law enforcement complaints concerning the INS’ inability to issue a judgment on a suspect’s citizenship fast enough to allow the authorities to continue to detain him. … [It] requires the INS to respond quickly to an inquiry by a local law enforcement agency and make a determination as to the status of the suspect. If the individual is determined to be an illegal alien, *the INS must take the necessary actions to detain the suspect and process the case.*”) (emphasis added).

<sup>74</sup> See, e.g., Am. Civil Liberties Union of Michigan, ACLU, MIRC Send Letters to All Michigan Jails Warning of Costly, Illegal Immigration Holds, August 1, 2011, available at <http://www.aclumich.org/issues/immigrant-rights/2011-08/1596> (suggesting that “[l]ocal jails aren’t familiar with the law on immigration detainers,” and therefore may think they are required to hold aliens).

<sup>75</sup> See, e.g., U.S. Dep’t of Justice, Immigration Detainer—Notice of Action, Form I-247 (Rev. 4-1-97) (copy on file with the author) (“Federal regulations (8 C.F.R. 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for INS to assume custody of the alien.”) (emphasis added).

<sup>76</sup> See U.S. Dep’t of Homeland Security, Immigration Detainer—Notice of Action, Form I-247 (08/10) (copy on file with the author) (“Under Federal regulation 8 C.F.R. §287.7. DHS requests that you maintain custody of this individual.”).

continued to include language which some construe to mean that compliance with ICE detainers is mandatory,<sup>77</sup> and in December 2011, ICE further amended Form I-247 in a way that, some have suggested, creates confusion as to whether compliance with detainers is requested or required.<sup>78</sup> Specifically, Form I-247 now states that

This *request* flows from federal regulation 8 C.F.R. §287.7, which provides that a law enforcement agency “*shall* maintain custody of an alien” once a detainer has been issued by DHS.<sup>79</sup>

Some jurisdictions may also have taken DHS’s statements that they are required to participate in the Secure Communities program to mean that they must honor detainers issued in conjunction with that program.<sup>80</sup>

Notwithstanding the language of the detainer form and regulations, the federal government recently appears to have taken the position that detainers are “requests,” not “orders.”<sup>81</sup> This is arguably in keeping with the traditional view that compliance with detainers is a matter of comity between jurisdictions.<sup>82</sup> In addition, an argument could potentially be made that any attempt to “require” state and local compliance would violate the Tenth Amendment of the U.S. Constitution. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,”<sup>83</sup> and has been construed to bar the federal government from “command[ing] the States’ officers … to administer or enforce a federal regulatory program.”<sup>84</sup> The case that gave rise to this holding, *Printz v. United States*, struck down interim provisions of the Brady Handgun Violence Protection Act requiring state and local officers to conduct background checks on prospective handgun purchasers. Requiring state and local officers to maintain custody of an alien, who would otherwise have been released for any criminal offense, at the request of federal officials would appear to be comparable to requiring state and local officers to conduct background checks on handgun purchasers, and could raise similar

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<sup>77</sup> 8 C.F.R. §287.7(d) (“Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency *shall* maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”) (emphasis added). This subsection of the regulation is, however, captioned “Temporary detention at Department *request*.” *Id.* (emphasis added).

<sup>78</sup> See, e.g., Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶ 24.

<sup>79</sup> See Immigration Detainer—Notice of Action, *supra* note 2 (emphasis added).

<sup>80</sup> See, e.g., Mickey McCarter, *ICE to States: Participation in Secure Communities Mandatory*, HOMELAND SECURITY TODAY, August 8, 2011, available at <http://www.hstoday.us/briefings/today-s-news-analysis/single-article/ice-to-states-participation-in-secure-communities-mandatory/3cbcc9927ec1a8893859890f6bc14dff.html>.

<sup>81</sup> Uroza v. Salt Lake County, First Amended Complaint, *supra* note 13, at ¶ 29.

<sup>82</sup> See, e.g., Moody v. Daggett, 429 U.S. 78, 81 n.2 (1976) (“When two autonomous jurisdictions are involved, as for example when a federal detainer is placed against an inmate of a state institution, a detainer is a matter of comity.”); Vargas, 854 F.2d at 1031 n.1. In particular, prior to the implementation of Secure Communities, one study found “widespread willingness to accept detainers from ICE,” with 94 of the 99 jurisdictions responding to the survey indicating that they accepted immigration detainers, and 78 indicating that they would notify ICE before releasing an alien from custody. U.S. Dep’t of Justice, Office of the Inspector General, Audit Div., Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States, January 27, at 13-15, available at <http://www.justice.gov/oig/reports/OJP/a0707/final.pdf>. The State Criminal Alien Assistance Program (SCAAP) compensates states and localities for the costs of detaining certain criminal aliens.

<sup>83</sup> U.S. CONST., amend. X.

<sup>84</sup> Printz v. United States, 521 U.S. 898, 935 (1997).

constitutional issues.<sup>85</sup> The fact that DHS officials, not state and local officials, determine who should be kept in custody is unlikely to change this analysis, given that the Supreme Court in *Printz* noted that “[i]t matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”<sup>86</sup>

One court, however, has recently suggested that states and localities are “required” to comply with immigration detainers,<sup>87</sup> although this statement arose in the context of a challenge to the actions of certain county personnel in responding to an ICE detainer, and the county appears to have asserted that the county’s policy as to immigration detainers was solely to comply with the purported dictates of federal law.<sup>88</sup> In contrast, in other cases, the plaintiffs have asserted that a state or locality is liable for holding them pursuant to an immigration detainer, in part, on the grounds that the state had no obligation to honor immigration detainers and acted unreasonably in doing so.<sup>89</sup> It is unclear whether and how these two lines of argument might be reconciled, or whether local policies of declining to honor at least some ICE detainers might be found to be

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<sup>85</sup> See, e.g., Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶¶ 52-55; Brizuela v. Feliciano, Petition, *supra* note 13, at ¶ 52. “Requiring” states and localities to honor immigration detainers may be distinguished from “requiring” states and localities to participate in Secure Communities. The information sharing between the FBI and DHS that underlies Secure Communities is a matter of federal law, and jurisdictions that object to being “required” to participate in Secure Communities probably could not successfully challenge this information sharing on Tenth Amendment grounds. See, e.g., *Participation in Secure Communities Mandatory*, *supra* note 80 (reporting that ICE has determined that a memorandum of agreement (MOA) between ICE and a state is “not required to activate or operate Secure Communities for any jurisdiction,” and that all MOAs between ICE and states have been terminated). However, jurisdictions could potentially avoid some effects of the sharing of information between the FBI and DHS by not submitting fingerprint data to the FBI, or declining to honor some or all immigration detainees. See, e.g., Michele Waslin, Counties Say No to ICE’s Secure Communities Program, But Is Opting Out Possible? available at <http://immigrationimpact.com/2010/10/01/counties-say-no-to-ices-secure-communities-program-but-is-opting-out-possible/> (reporting that some jurisdictions have considered not submitting fingerprints to the FBI in certain cases); Policy for Responding to ICE Detainers, *supra* note 12 (policy of generally declining to honor ICE detainees).

<sup>86</sup> *Printz*, 521 U.S. at 935. But see *Reno v. Condon*, 528 U.S. 141, 151 (2000) (finding no violation of the Tenth Amendment where Congress regulates state activities directly, as opposed to requiring “States in their sovereign capacities to regulate their own citizens”). Conditioning federal funding upon compliance with immigration detainers is theoretically possible, and would probably not be seen as raising Tenth Amendment issues. See, e.g., *South Dakota v. Dole*, 483 U.S. 203 (1987) (upholding a federal law which conditioned receipt of federal highway funds upon a state’s agreeing to raise the minimum drinking age to 21). However, the federal government has historically paid states and localities for holding aliens, rather than given them grant funding for doing so. See, e.g., Office of the Inspector Gen., Audit Div., Dep’t of Justice, Immigration and Naturalization Service Institutional Removal Program, Audit Report 02-41, September 2002, at 17-19, available at <http://www.usdoj.gov/oig/reports/INS/a0241/final.pdf> (recommending that funding be conditioned on state cooperation in enforcing immigration law, but noting that “SCAAP funds represent a reimbursement of costs borne by state and local governments to incarcerate illegal aliens … and therefore grant conditions would be inappropriate”).

<sup>87</sup> *Galarza v. Szalczky*, 2012 U.S. Dist. LEXIS 47023, at \*55 (E.D. Pa., March 30, 2012) (“Thus, although an immigration detainer ‘serves to advise another law enforcement agency that the Department seeks custody’ and ‘is a request’ to the federal, state, or local law enforcement agency presently holding the individual named in the detainer that it ‘advise the Department, prior to release’ of that individual … once the immigration detainer is issued, the local, state, or federal agency then holding the individual ‘shall’ maintain custody. … Moreover, although the period of time that the agency with custody when the immigration detainer is issued is required to hold the individual is 48 hours, those 48 hours excludes Saturdays, Sundays, and holidays.”) (internal citations omitted).

<sup>88</sup> *Id.*, at \*55-\*56. Elsewhere, the court found that an individual officer had qualified immunity for certain claims against him because, even if the period of detention specified by DHS’s regulations were unconstitutional, “it would not be clear to every reasonable officer that … detention for a period expressly provided by federal regulations was unlawful.” *Id.* at \*52.

<sup>89</sup> See, e.g., *Morales v. Chadbourne*, Complaint, *supra* note 1, at ¶ 74 (“The applicable federal regulation makes clear, however, that the immigration detainer is merely a ‘request,’ not a legally enforceable command.”).

preempted if federal regulations were construed to require compliance with immigration detainers. Cook County, Illinois, for example, has adopted a policy of generally “declin[ing] ICE detainer requests,” at least until it has a written agreement with the federal government ensuring that it will be reimbursed for “all costs” it incurs in complying with ICE detainers.<sup>90</sup> Several other jurisdictions have similar policies.<sup>91</sup>

## Who Has Custody of Aliens Subject to Detainers?

The term “custody” is generally understood to “encompass[] most restrictions on liberty” resulting from a criminal or other charge or conviction, including arrest or supervised release.<sup>92</sup> Custody is not determined solely by where a person is detained, and the entity by whom the person is physically detained is not necessarily the entity that would be found to have “technical” or legal custody of the person.<sup>93</sup> Who has custody of a detained alien can be significant for purposes of any habeas corpus challenge to the legality of the detention,<sup>94</sup> and potentially also for determining whether any “hold” that may have occurred as a result of the issuance of an immigration detainer was authorized. The writ of habeas corpus has historically “served as a means of reviewing the legality of Executive detention,”<sup>95</sup> and detained aliens could potentially

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<sup>90</sup> Policy for Responding to ICE Detainers, *supra* note 12. Specifically, the policy provides that the Sheriff of Cook County shall decline ICE detainer requests “unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainers shall be reimbursed,” and that “[u]nless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals’ incarceration status or release dates while on duty.” The last proviso (i.e., that county personnel may not spend their time on duty communicating with ICE regarding incarceration status or release dates) appears to have been drafted in an attempt to avoid conflicts with Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which expressly prohibits states and localities from enacting measures that would limit the ability of state and local governments or officials to share information regarding “citizenship or immigration status” with federal authorities. See 8 U.S.C. §1373(a)-(b). However, ICE’s Director has reportedly suggested that this and related measures could be impermissible insofar as they prohibit local officials from responding to ICE inquiries or sending immigration data to ICE. See, e.g., *Yale Lawsuit Claims ICE Detainers Are Unconstitutional*, IMMIGRATION REFORM BLOG, February 27, 2012, available at <http://www.fairus.org/legislative-updates/fair-legislative-update-february-27-2012> (also quoting the Director of ICE as calling such policies a “serious impediment” to immigration enforcement that “undermine[] public safety”).

<sup>91</sup> See, e.g., *Santa Clara County to Stop Honoring Immigration Detainers for Low-Level Offenders*, *supra* note 12 (honoring only ICE detainees placed on those accused of “serious and violent felonies”); *San Francisco County Jail Won’t Hold Inmates for ICE*, *supra* note 12 (not honoring detainees for persons arrested for “petty offenses”).

<sup>92</sup> *Pack v. Yusuff*, 218 F.3d 448, 454 n.5 (5<sup>th</sup> Cir. 2000).

<sup>93</sup> See, e.g., *Chung Young Chew v. Boyd*, 309 F.2d 857, 865 (9<sup>th</sup> Cir. 1962) (finding that, once INS has issued a warrant for the alien, the lodging of a detainer with the state currently holding the alien results in the Service gaining “immediate technical custody”); *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 14 (distinguishing between physical and legal custody).

<sup>94</sup> Aliens have sometimes also attempted to bring suit in mandamus, seeking to compel the federal government to assume custody over them after a detainer has been issued. However, such actions typically fail. See, e.g., *Campos v. INS*, 62 F.3d 311, 314 (9<sup>th</sup> Cir. 1995) (affirming the district court’s denial of an alien’s mandamus action seeking an expedited deportation hearing); *Perez v. INS*, 979 F.2d 299, 301 (3d Cir. 1992) (an alien who has been ordered deported, but is still serving a federal sentence, cannot “by mandamus or any other medium compel INS to deport her prior to the completion of her custodial sentence”).

<sup>95</sup> *Rasul*, 542 U.S. at 474. See also *Harris v. Nelson*, 394 U.S. 286, 292 (1969) (“There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.”).

challenge the fact, duration, or execution of their detention by federal, state, or local law enforcement.<sup>96</sup> Successfully maintaining a habeas action depends, in part, upon determining who has custody. Federal courts will generally find that they lack jurisdiction if the alien against whom the detainer is lodged is in state custody,<sup>97</sup> while state courts will find that they lack jurisdiction if the alien subject to the detainer is in federal custody.<sup>98</sup> Who has custody could also be relevant in determining whether any “hold” of the alien that results from the issuance of a detainer is authorized. For example, assuming that holds are made pursuant to ICE’s general authority to make warrantless arrests—rather than the detainer statute, regulations, or form<sup>99</sup>—questions could arise as to whether state and local officers who are not acting pursuant to a 287(g) agreement have authority to detain an alien found to be in state custody.<sup>100</sup> Such questions could, however, potentially be avoided if the alien were found to be in DHS custody.<sup>101</sup>

Whether DHS, or a state or local government, is seen as having custody of an alien for whom a detainer has been issued appears to depend upon how detainees are characterized, as well as the facts and circumstances of the case. Courts in numerous jurisdictions have held that the filing of a detainer, in itself, does not result in an alien being in federal custody.<sup>102</sup> However, these courts have generally viewed detainees as administrative devices, designed to give states and localities notice of ICE’s intentions,<sup>103</sup> and their decisions probably cannot be read to mean that an alien for

<sup>96</sup> See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) (characterizing challenges to the basic fact or duration of imprisonment as the “essence of habeas”). Challenges to the conditions of confinement, in contrast, generally cannot be maintained in habeas, although they could potentially be brought on other grounds. See, e.g., Cohen v. Lappin, 402 Fed. App’x 674, 675 (3d Cir. 2010) (affirming the district court’s dismissal of the petitioner’s claim that an ICE detainer was “adversely impacting his custody level and security designation” on the grounds that claims that do not challenge the basic fact or duration of imprisonment are not actionable in habeas). The court noted, however, that certain claims could potentially be filed pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), in cases where a federal law enforcement agency has custody. Alternatively, where the state has custody, certain claims could be brought pursuant to 42 U.S.C. §1983. But see *infra* note 124 and accompanying text (noting that certain claims may not be maintained on due process grounds because persons do not have protected liberty or other interests in the conditions of their confinement).

<sup>97</sup> See, e.g., Orozco v. U.S. INS, 911 F.2d 539 (11<sup>th</sup> Cir. 1990) (finding that the alien against whom the detainer was lodged was in state custody, rather than INS custody). For more on this case, see *infra* notes 107-108 and accompanying text.

<sup>98</sup> See, e.g., Baez v. Hamilton County, Ohio, No. 1:07cv821, 2008 U.S. Dist. LEXIS 2982 (S.D. Ohio, January 15, 2008) (case moot because alien had been taken into ICE custody). A habeas action could potentially also be found to be moot because the alien has been released. See, e.g., Lemus v. Holder, 404 Fed. App’x 848 (5<sup>th</sup> Cir. 2010); Lopez-Santos v. Arkansas, No. 5:08-vb-05030-JLH (W.D. Ark. 2008) (cited in *Enforcing the Limits of the Executive’s Authority to Issue Immigration Detainers*, *supra* note 17, at 180-181 n.98). However, the petitioners in one recently filed case have asserted that such claims are not moot because they are “capable of repetition yet evading review.” See Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at 2.

<sup>99</sup> See *infra* notes 131-138 and accompanying text.

<sup>100</sup> See, e.g., Arroyo v. Judd, No.:8:10-cv-911-T-23TBM, 2010 U.S. Dist. LEXIS 77087, at \*5 (M.D. Fla., July 30, 2010) (“[T]he regulation providing for a forty-eight-hour detainer, 8 C.F.R. §287.7, delegates no authority to the defendants. This regulation is a federal regulation governing a federal agency.”).

<sup>101</sup> State and local officials could potentially be found to have acted as agents of the federal government in holding an alien. See, e.g., Braden v. 30<sup>th</sup> Judicial Circuit Court, 410 U.S. 484, 489 (1973) (“[Because] the Alabama warden acts ... as the agent of the Commonwealth of Kentucky in *holding* the petitioner pursuant to the Kentucky detainer, we have no difficulty concluding that petitioner is ‘in custody.’”) (emphasis in original).

<sup>102</sup> See, e.g., *Orozco*, 911 F.2d at 541; Zolicoffer v. United States Dep’t of Justice, 315 F.3d 538 (5<sup>th</sup> Cir. 2003); Campos v. INS, 62 F.3d 311, 314 (9<sup>th</sup> Cir. 1995); Prieto v. Gluch, 913 F.2d 1159, 1162-64 (6<sup>th</sup> Cir. 1990); Mohammed v. Sullivan, 866 F.2d 258, 260 (8<sup>th</sup> Cir. 1989); Campillo v. Sullivan, 853 F.2d 593 (8<sup>th</sup> Cir. 1988); Cohen v. Lappin, 402 Fed. App’x 674 (3d Cir. 2010).

<sup>103</sup> See, e.g., Giddings v. Chandler, 979 F.2d 1104, 1105 n.3 (5<sup>th</sup> Cir. 1992) (“Filing a detainer is an informal procedure in which the INS informs prison officials that a person is subject to deportation and requests that officials give the INS (continued...)”)

whom a detainer has been issued is never in federal custody.<sup>104</sup> For example, in *Mohammed v. Sullivan*, the U.S. Court of Appeals for the Eighth Circuit affirmed the district court's dismissal without prejudice of the petitioner's habeas petition because "the filing of an INS detainer with prison officials does not constitute the requisite 'technical custody' for purposes of habeas jurisdiction."<sup>105</sup> The petitioner here was serving a sentence for several drug-related offenses when INS filed a detainer that resulted in a more restrictive security and custody classification being applied. However, the court found that he was not in INS custody for purposes of his challenge to this re-classification.<sup>106</sup> Similarly, in *Orozco v. U.S. INS*, the U.S. Court of Appeals for the Eleventh Circuit found that the "filing of a detainer, standing alone, did not cause [the petitioner] to come within the custody of the INS" for purposes of a habeas proceeding.<sup>107</sup> The detainer in this case indicated that INS had initiated an investigation to determine whether the petitioner was removable, and the court found that "merely lodging" a detainer with such a notice did not result in INS custody.<sup>108</sup>

In certain cases, however, the court has found that an alien is, or at least could potentially be, in federal custody because of the filing of an immigration detainer. For example, in *Galaviz-Medina v. Wooten*, the U.S. Court of Appeals for the Tenth Circuit found that an alien subject to a deportation order and serving a sentence with the federal Bureau of Prisons was in INS custody as the result of an immigration detainer lodged against him.<sup>109</sup> According to the court, while the lodging of the detainer, in itself, did not result in INS custody, the deportation order "establishe[d] conclusively the INS's right to custody following the expiration of his current term."<sup>110</sup> Thus, because the "INS ha[d] a more concrete interest in this alien,"<sup>111</sup> the court found that he was in INS custody. Similarly, in *Vargas v. Swan*, the U.S. Court of Appeals for the Seventh Circuit, rejected the INS's attempt to characterize a detainer as "an internal administrative mechanism" which would not support a finding that the alien was in INS custody.<sup>112</sup> Instead, the court remanded the case for a determination as to whether the jurisdiction receiving the detainer would

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notice of the person's death, impending release, or transfer to another institution."); *Fernandez-Collado v. INS*, 644 F. Supp. 741, 743 n.1 (D. Conn. 1986) ("The detainer expresses only the intention of the Service to make a determination of deportability if and when the subject of the notice becomes available at a later time."); *In re Sanchez*, 20 I. & N. Dec. 223, 225 (BIA 1990) (characterizing an immigration detainer as "merely an administrative mechanism to assure that a person subject to confinement will not be released from custody until the party requesting the detainer has an opportunity to act"). The *Fernandez-Collado* court, in particular, took the position that, "[s]ince a sentenced inmate cannot be deported while imprisoned, the I.N.S. has absolutely no occasion to consider release or custody of the petitioner until after his release from his current confinement." 644 F. Supp. at 744.

<sup>104</sup> But see *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 8 ("[An immigration detainer] does not establish federal custody by DHS or any other agency over the subject of the detainer.").

<sup>105</sup> *Mohammed*, 866 F.2d at 260.

<sup>106</sup> *Id.* The court here did not address the question of whether conditions of custody can be challenged in habeas. See *supra* note 96 and accompanying text.

<sup>107</sup> 911 F.2d at 541. The court did, however, recognize the possibility that the filing of a detainer could result in INS custody for purposes of a habeas action in certain circumstances. *Id.* at 541.

<sup>108</sup> *Id.*

<sup>109</sup> 27 F.3d 487, 493 (10<sup>th</sup> Cir. 1994). See also *Chung Young Chew*, 309 F.2d at 856.

<sup>110</sup> 27 F.3d at 493.

<sup>111</sup> *Id.*, at 494.

<sup>112</sup> 854 F.2d 1028, 1030 (7<sup>th</sup> Cir.).

treat it as a simple notice of INS's interest in a prisoner, or as a request to hold the inmate after his criminal sentence is completed so that INS could take him into custody.<sup>113</sup>

Most of these cases were decided prior to the implementation of the Secure Communities program, and it is possible that a court might adopt a more "bright line" approach to whether the issuance of a detainer results in ICE custody as a result of this nationwide program. At least one of the suits presently challenging state, local, or federal detainer practices involves a petition for a writ of habeas corpus,<sup>114</sup> and thereby raises anew the question of who has custody of aliens subject to detainees.

## Do Detainer Practices Violate Aliens' Constitutional Rights?

Aliens within the United States, including aliens who are present without authorization, enjoy certain protections under the U.S. Constitution, including those of the Fourth and Fifth Amendments.<sup>115</sup> Specifically, the Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,"<sup>116</sup> while the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law."<sup>117</sup> For purposes of the Fourth Amendment, a "seizure" occurs when a person's "freedom to walk away" has been restrained.<sup>118</sup> Similarly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that is protected by the Due Process clause of the Fifth Amendment.<sup>119</sup>

In considering whether the detainer practices of federal, state, and/or local governments infringe aliens' constitutional rights, courts would probably look at the specific actions taken pursuant to individual detainees, as well as ICE's reasons for issuing the individual detainers, rather than considering detainees in the abstract. Arguments can be made that the mere lodging of a detainer can negatively affect aliens' criminal cases and/or sentences, regardless of the actions that ICE requests of state or local officials.<sup>120</sup> For example, an alien subject to a detainer could be denied

<sup>113</sup> *Id.* at 1032-33. See also *id.* at 1032 ("[F]or Vargas to be deemed in custody pursuant to the INS detainer, *the effect of the detainer* here must be that Wisconsin places a hold on Vargas.") (emphasis added). See also *Orito v. Powers*, 479 F.2d 435, 437 (7<sup>th</sup> Cir. 1973) (finding that a state detainer filed with a federal correctional institution resulted in state custody because it requested that the inmate be "held" for state officials).

<sup>114</sup> See *Brizuela v. Feliciano*, Petition, *supra* note 13.

<sup>115</sup> See, e.g., *Silesian Am. Corp. v. Clark*, 332 U.S. 469 (1947) (Fifth Amendment); *Bilokumsky v. Tod*, 263 U.S. 149 (1923) (Fourth Amendment). While the Fourth and Fifth Amendments protect persons only in their dealings with the federal government, the Fourteenth Amendment provides for similar protections in dealings with state or local governments. See generally U.S. CONST., amend. XIV, §1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"); *Mapp v. Ohio*, 367 U.S. 643 (1961) (Fourth Amendment limits state and local conduct); *Wolf v. Colorado*, 338 U.S. 25 (same). Aliens who have not yet entered the territorial jurisdiction of the United States, in contrast, are generally not entitled to such protections. See, e.g., *Johnson v. Eisentrager*, 339 U.S. 763 (1950).

<sup>116</sup> U.S. CONST., amend. IV.

<sup>117</sup> U.S. CONST., amend. V & amend. XIV, §1.

<sup>118</sup> *Terry v. Ohio*, 392 U.S. 1, 16 (1968) ("[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). See also *Vohra v. United States*, No. SA CV 04-00972 DSF, 2010 U.S. Dist. LEXIS 34363, at \*25 (C.D. Cal. February 4, 2010) ("Plaintiff was kept in formal detention for at least several hours longer due to an ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless *arrest*.").

<sup>119</sup> *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

<sup>120</sup> See, e.g., Am. Civil Liberties Union et al., Letter to Assistant Secretary John T. Morton, June 23, 2010, available at (continued...)

bond,<sup>121</sup> or given a more restrictive custody or security designation,<sup>122</sup> because of the detainer. Nonetheless, despite such effects, certain actions pursuant to a detainer would not appear to entail a seizure of the alien's person,<sup>123</sup> or a protected liberty interest (e.g., notifying ICE prior to releasing an alien, or in the event of the alien's transfer or death).<sup>124</sup> Holding a person who otherwise would have been released, in contrast, could potentially be said to result in a seizure of that person, and implicate protected liberty interests. Such a hold is arguably the equivalent of a new arrest<sup>125</sup> and, thus, would require independent authority. The authority underlying the initial arrest would not, in itself, permit the hold.

However, while holds pursuant to detainers would appear to involve seizures of the alien's person and protected liberty interests, they could potentially still be found to be constitutional, depending upon the grounds for the hold. ICE can use Form I-247 to request holds on various grounds, including (1) the initiation of an investigation to determine whether the alien is removable; (2) the initiation of removal proceedings; (3) a warrant of arrest for removal proceedings; and (4) a removal order.<sup>126</sup> Different grounds could potentially raise different issues. For example, a hold based upon a warrant of arrest for removal proceedings, or a removal order, could be found to raise different issues than a hold requested so that ICE may investigate whether an alien is removable. Arrests pursuant to warrants are presumptively reasonable, and ICE has broad authority to detain aliens for removal. In contrast, authority to hold aliens pending an investigation of their removability would appear to be more limited, as discussed below.<sup>127</sup>

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[http://www.aclu.org/files/assets/Detainers\\_revised.pdf](http://www.aclu.org/files/assets/Detainers_revised.pdf) ("Detainers affect and interfere with every aspect of an individual's state criminal case, from bail to eligibility for treatment, social services, and detention alternatives.").

<sup>121</sup> In some jurisdictions, aliens against whom detainers have been lodged are categorically ineligible for bond in criminal proceedings. *See, e.g.*, United States v. Rice, No. 3:04CR-83-R, 2006 U.S. Dist. LEXIS 40737 (W.D. Ky., June 19, 2006); United States v. Magallon-Toro, No. 3:02-MJ-332, 3:02-CR-385-M, 2002 U.S. Dist. LEXIS 23362 (N.D. Tex., December 4, 2002). Other jurisdictions reject this categorical approach. *See, e.g.*, United States v. Barrera-Omana, 638 F. Supp. 2d 1108, 1111-12 (D. Minn. 2009). However, even in jurisdictions where the categorical approach is rejected, the presence of an immigration detainer may still be one of the factors used in bail determinations. *See, e.g.*, United States v. Salas-Urenas, No. 11-3182, 2011 U.S. App. LEXIS 14941 (10<sup>th</sup> Cir., July 19, 2011) (affirming district court decision ordering an alien's pre-trial detention that was based, in part, on the existence of an ICE detainer); United States v. Loera Vasquez, 413 Fed. App'x 42, 43 (10<sup>th</sup> Cir. 2011) (same).

<sup>122</sup> *See, e.g.*, *Mohammed*, 866 F.2d at 260.

<sup>123</sup> For example, requesting that state or local law enforcement notify ICE at least 30 days prior to the release of a person who is being held on other grounds would generally not be found to entail a "seizure" of the person, even if the filing of the detainer results in the person's security classification being changed by the state or locality.

<sup>124</sup> *See, e.g.*, *Nasius v. Two Unknown B.I.C.E. Agents at the Arapahoe County Justice Center*, 366 Fed. App'x 894, 896 (10<sup>th</sup> Cir. 2010) (finding that the plaintiff did not have "a protected liberty interest in being housed in a community corrections facility"); *Borrero v. Wells*, No. CV 309-096, 2010 U.S. Dist. LEXIS 85353 (S.D. Ga., May 25, 2010) (plaintiff lacked a protected liberty interest in housing assignments, transfer to another facility, and participating in rehabilitative programs).

<sup>125</sup> *Cf. Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 46.

<sup>126</sup> *See Immigration Detainer—Notice of Action*, *supra* note 2.

<sup>127</sup> It should also be noted that, even if particular practices were found to violate an alien's constitutional rights, ICE would not necessarily be barred from removing the alien because of these violations. Aliens whose constitutional rights are violated could potentially be entitled to release as a result of a habeas action, or monetary damages for the violation of their rights. In addition, if requested to do so, a court could potentially enjoin state, local and/or federal governments from holding aliens pursuant to a detainer in the future, or declare that particular detainer practices are unconstitutional. *See supra* notes 59-61 and accompanying text. However, the fact that the alien whose rights were violated was in the United States illegally would not necessarily be suppressed in any removal proceedings brought against that alien. *See, e.g.*, *Pac-Ruiz v. Holder*, 629 F.3d 771, 777-78 (8<sup>th</sup> Cir. 2010) (declining to suppress all statements and documentation (continued...))

## Are Aliens “Seized” in Violation of Their Constitutional Rights?

The Fourth Amendment does not prohibit all “seizures” of persons, only those that are “unreasonable.”<sup>128</sup> Seizures that are made pursuant to a warrant—including warrants of arrest for removal proceedings—are presumptively reasonable. In contrast, those “conducted outside the judicial process without prior approval by a judge or magistrate, are *per se* unreasonable...[,] subject only to a few specifically established and well-delineated exceptions.”<sup>129</sup> One such exception is where a law enforcement officer has sufficient reason to believe the person arrested has committed a felony.<sup>130</sup> Congress has granted immigration officers similar authority as to immigration offenses. Specifically, Section 287(a) of the INA provides that

[a]ny officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power *without warrant* ... to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any ... law or regulation [governing the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.<sup>131</sup>

The listing of officers and employees who are authorized to make warrantless arrests pursuant to Section 287(a) is the same as that of officers and employees who are authorized to issue detainers,<sup>132</sup> and the INS, at least, appears to have taken the position that a detainer placed pursuant to 8 C.F.R. §287.7 “is an arrest” pursuant to Section 287(a) of the INA.<sup>133</sup> Other

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regarding an alien’s national origin and citizenship obtained by ICE as a result of his warrantless arrest on the grounds that the exclusionary rule generally does not apply in civil deportation hearings). For example, in *Pac-Ruiz v. Holder*, the court relied on the precedence of *INS v. Lopez-Mendoza*, wherein the Supreme Court held that the “exclusionary rule”—which requires that evidence obtained in violation of certain constitutional rights be excluded from a person’s criminal trial—does not apply in immigration proceedings absent “egregious violations of the Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained.” 468 U.S. 1032, 1046 (1984). Since *Lopez-Mendoza*, the federal courts of appeals have differed as to the appropriate standard for applying the exclusionary rule. *Compare Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1018-19 (9<sup>th</sup> Cir. 2008) (holding that the exclusion of evidence in immigration court turns upon whether the agents committed the violations deliberately, or by conduct that a reasonable officer should have known would violate the Constitution) *with Kandamar v. Gonzalez*, 464 F.3d 65, 71 (1<sup>st</sup> Cir. 2006) (requiring “specific evidence of ... government misconduct by threats, coercion or physical abuse”). In addition, the government has historically declined calls for it to categorically forego removal proceedings against aliens whose constitutional rights have been violated. See, e.g., 53 Fed. Reg. at 9281 (declining to adopt suggestion that INS not assume custody of or remove an alien whose civil rights may have been violated by an illegal or unconstitutional detention by law enforcement officials).

<sup>128</sup> U.S. CONST., amend. IV.

<sup>129</sup> *Horton v. California*, 496 U.S. 128, 133 n.4 (1990).

<sup>130</sup> See, e.g., *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (“In conformity with the rule at common law, a warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.”); *United States v. Watson*, 423 U.S. 411, 417-24 (1976); *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949).

<sup>131</sup> INA §287(a)(2); 8 U.S.C. §1357(a)(2).

<sup>132</sup> *Compare 8 C.F.R. §287.5(c) (power and authority to arrest) with 8 C.F.R. §287.7(b) (authority to issue detainers).*

<sup>133</sup> See, e.g., INS, *The Law of Arrest, Search, and Seizure for Immigration Officers* (1993), available at <http://www.scribd.com/doc/21968268/ICE-M-69-Law-of-Arrest-January-1993> (“A detainer placed under this subsection [i.e., 8 C.F.R. §287.7] is an arrest which must be supported by probable cause.”); Anne B. Chandler, *Why Is the Policeman Asking for My Visa? The Future of Federalism and Immigration Enforcement*, 15 TULSA J. COMP. & (continued...)

provisions of immigration law authorizing or requiring the detention of aliens have also been cited as authority for ICE's detainer practices, including Sections 236 and 241 of the INA.<sup>134</sup> Section 236(a) authorizes the arrest and detention of any alien, on a warrant issued by DHS, pending a decision on whether the alien is to be removed,<sup>135</sup> while Section 236(c) requires the detention of aliens who are inadmissible or removable because they have committed certain criminal offenses.<sup>136</sup> Section 241(a)(2), in turn, requires the detention, during the removal period, of aliens found to be inadmissible or deportable on criminal and related grounds, or due to terrorist activities.<sup>137</sup> In addition, at least some commentators would construe Section 287(d) of the INA to authorize the detention of aliens arrested for controlled substance offenses.<sup>138</sup>

Whether holds pursuant to an ICE detainer would be found to be authorized by one of these authorities, if the alien were found to be in ICE custody, has not been definitively settled by the courts. Some commentators have asserted that the provisions of the INA addressing the issuance of detainers for controlled substance offenses and the regulations implementing them are the sole authority for holds pursuant to detainers.<sup>139</sup> If this argument were adopted by the courts, then holds pursuant to detainers of aliens who were not arrested for controlled substance offenses could be found to be impermissible. However, even if other authorities were found to be generally applicable, questions could potentially be raised as to whether the holds of particular aliens were authorized pursuant to these authorities. For example, for a warrantless arrest to be permissible pursuant to Section 287(a) of the INA, there must be (1) "reason to believe" that the alien is (a) in the United States in violation of immigration law and (b) likely to escape before a warrant can be obtained for his or her arrest; and (2) the alien must be taken "without unnecessary delay" before

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INT'L L. 209, 224 n.57 (2008) (characterizing a hold pursuant to a detainer as a warrantless arrest pursuant to 8 U.S.C. §1357(a)(2) made by a federal officer who determines there is reason to believe that the person detained is an alien who may be removable and who is likely to escape before a warrant is obtained).

<sup>134</sup> See, e.g., Interim Policy Number 10074.1, *supra* note 50, at §5.1.

<sup>135</sup> INA §236(a), 8 U.S.C. §1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."). *But see* Pierre v. Sabol, 2012 U.S. Dist. LEXIS 66231 (M.D. Pa., May 11, 2012) (finding that detention in excess of 20 months pursuant to Section 236(a) was unduly prolonged, entitling him to a bond hearing before an immigration judge where the government will have the burden of showing he is a flight risk or a danger to the community).

<sup>136</sup> INA §236(c)(1), 8 U.S.C. §1226(c)(1) ("The Attorney General shall take into custody any alien who (A) is inadmissible by reason of having committed any offenses covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentenced[d] to a term of imprisonment of at least 1 year, or (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense."). Specifically, Section 236(c) has been found to authorize detention for a reasonable amount of time, after which authorities must make an individualized inquiry as to whether continuing detention is necessary. *See, e.g.*, Leslie v. Attorney General of the United States, 678 F.3d 265 (3d Cir. 2012) (finding that it was unreasonable to detain the petitioner for four years Section 236(c) of the INA without making such a determination); Diop v. ICE/Homeland Security, 656 F.3d 221, 233 (3d Cir. 2011) (determination of what constitutes a reasonable time is a "fact-dependent inquiry that will vary depending on individual circumstances").

<sup>137</sup> INA §241(a)(2), 8 U.S.C. §1231(a)(2) ("During the removal period, the Attorney General shall detain the alien. Under no circumstances during the removal period shall the Attorney General release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B).").

<sup>138</sup> See *supra* note 64-65 and accompanying text.

<sup>139</sup> See, e.g., *Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers*, *supra* note 17, at 191-92.

an immigration officer having authority to examine aliens as to their right to enter or remain in the United States.

“Reason to believe” an alien is in the United States in violation of immigration law has generally been construed to mean that there is probable cause to believe that the alien is in the country in violation of the law.<sup>140</sup> Probable cause, in turn, “exists where the facts and circumstances within [an officer’s] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed,”<sup>141</sup> and questions could potentially be raised about whether there was probable cause to believe that an alien was unlawfully present if a hold is placed so that ICE may investigate an alien’s removability.<sup>142</sup> Similarly, some jurisdictions have required an individualized assessment of factors such as ties to the community (e.g., family, home, job) and attempts to flee in determining whether there was reason to believe that an alien was likely to escape before a warrant could be obtained for his or her arrest,<sup>143</sup> and a court could potentially find a hold placed without any consideration of these factors was impermissible. Moreover, even when there is reason to believe an alien is unlawfully present and likely to escape before a warrant can be obtained, the arresting officer must generally bring the alien before another immigration officer having authority to examine aliens as to their right to enter or remain in the United States within a “reasonable time” after arrest.<sup>144</sup> ICE regulations provide for some flexibility in determining what constitutes a reasonable time by providing that a determination as to whether to bring formal removal proceedings against the alien will generally be made within 48 hours of arrest, “except in the event of an emergency or other extraordinary circumstance[,] in

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<sup>140</sup> See, e.g., Contreras v. United States, 672 F.2d 307, 308 (2d Cir. 1982) (plaintiffs conceding that INS has authority to make warrantless arrests when there is probable cause to believe that an alien is present without authorization, provided that certain conditions are met); Babula v. INS, 665 F.2d 293, 298 (3d Cir. 1981) (“We hold that under section 1357(a)(2) and section 287.3, “arrest” means an arrest upon probable cause, and not simply a detention for purposes of interrogation.”); Tejeda-Mata v. INS, 626 F.2d 721, 724-25 (9<sup>th</sup> Cir. 1980) (“A warrantless arrest … requires probable cause for belief of illegal alienage.”); Murillo v. Musegades, 809 F. Supp. 487, 500 (W.D. Tex. 1992) (“The INS is held to the standard of ‘probable cause’ when one of its Agents arrests an individual without a warrant.”).

<sup>141</sup> Safford Unified Sch. Dist. #1 v. Redding, 557 U.S. 364 (2009) (internal citations omitted).

<sup>142</sup> Cf. *Vohra*, 2010 U.S. Dist. LEXIS 34363, at \*28-\*29 (finding that ICE lacked probable cause to believe an alien was present without authorization, in part, because his name was not in the database listing legal aliens). Some commentators have suggested that probable cause to believe an alien is present without authorization cannot exist when ICE uses Form I-247 to indicate that it has commenced an investigation into the alien’s removability. See, e.g., *Uroza v. Salt Lake County*, First Amended Complaint, at ¶ 30. However, it is possible that a court could view presence without authorization as merely one factor considered in investigations into whether particular aliens are removable.

<sup>143</sup> See, e.g., *Araujo v. United States*, 301 F. Supp. 2d 1095, 1101 (N.D. Cal. 2004) (finding that the government could not demonstrate that the alien was likely to escape before a warrant could be obtained given that he was living with his wife, had filed an application to adjust status to lawful permanent resident, and otherwise had not evidenced an intention to flee); *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 449 (N.D. Cal. 1989) (finding that there was no likelihood of flight where the aliens arrested without a warrant “were long-term employees, had roots in the community, and family with proper immigration status,” among other things). But see *United States v. Cantu*, 519 F.2d 494, 497 (9<sup>th</sup> Cir. 1975) (finding that the likelihood of escape was a serious threat because the aliens were at all times highly mobile, traveling in a car along an interstate).

<sup>144</sup> 8 C.F.R. §287.3(a). Some critics of current detainer practices have noted that, when law enforcement officers enforcing criminal law make a warrantless arrest, they must bring the inmate before a neutral magistrate for a probable cause hearing within 48 hours. See, e.g., *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 47. However, courts have generally found that this requirement does not apply to warrantless arrests for immigration violations, which are, instead, governed by Section 287(a) of the INA and its implementing regulations. See, e.g., *Salgado v. Scannel*, 561 F.2d 1211 (5<sup>th</sup> Cir. 1977) (rejecting the petitioner’s assertion that an affidavit establishing that he was an alien who had entered the United States illegally that was executed after his warrantless arrest should be suppressed since he was arrested without a warrant and was not taken before a neutral magistrate).

which case a determination will be made within an additional reasonable period of time.”<sup>145</sup> However, in the case of particularly long holds, ICE could potentially be found to have failed to bring individual aliens before an immigration officer within a reasonable time.<sup>146</sup>

Additional questions could potentially be raised if an alien held pursuant to an immigration detainer were found to be in state custody, not DHS custody. Some jurisdictions appear to have adopted the position that the detainer regulations and/or Form I-247 authorize states and localities to hold aliens who would otherwise be released, at least for the 48 hours (excluding weekends and holidays) provided for in these regulations and forms.<sup>147</sup> Other jurisdictions, in contrast, have suggested that there must be some basis in state law for any hold pursuant to an immigration detainer, and that the federal regulations and forms do not provide authority for state actions.<sup>148</sup> Some states may have such statutes, although it is unclear whether they would necessarily authorize all holds pursuant to detainers. For example, the plaintiff in a suit challenging certain practices of Salt Lake County, Utah, in responding to ICE detainers has alleged that the county holds people who decline to answer questions about whether they are “in the United States legally,” or who indicate that they are in the country without authorization, without bail “until legal or illegal status can be verified or ICE has an opportunity to interview them and place a detainer.”<sup>149</sup> In the plaintiff’s case, this purported policy allegedly resulted in him being held in state custody for 39 days after he posted bail,<sup>150</sup> even though Form I-247 expressly states that recipients of the form are “not authorized to hold the subject beyond the[] 48 hours” provided for in the detainer regulations and form.<sup>151</sup>

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<sup>145</sup> 8 C.F.R. §287.3(d). ICE regulations also require that aliens arrested without a warrant generally be advised of the reason for their arrest and the right to be represented at no expense to the government. See 8 C.F.R. §287.3(c).

<sup>146</sup> See, e.g., *Pac-Ruiz*, 629 F.3d at 780 (“[A] regulatory violation can result in the exclusion of evidence if the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation.”); *Babula*, 665 F.2d at 298 (noting that, had further questions been asked prior to giving the warnings required by Section 287.3, the conduct of the INS agents could have been found to have violated the rights of the petitioners). But see *Avila-Gallegos v. INS*, 525 F.2d 666 (2d Cir. 1975) (reversal of deportation order properly denied, notwithstanding defects in arrest procedure under Section 287(a)(2), where hearing testimony alone was sufficient to support an order of deportation); *In re Bulos*, 15 I. & N. Dec. 645 (1976) (defect in arrest procedure under Section 287(a)(2) is cured if the resulting deportation order is adequately supported).

<sup>147</sup> See, e.g., *Ochoa v. Bass*, 181 P.3d 727, 733 (Okla. Crim. App. 2008) (“Once the forty-eight (48) hour period granted to ICE, by 8 C.F.R. §287.7(d) ..., for assumption of custody had lapsed without ICE taking any action on its detainees, the state no longer had authority to continue to hold Petitioners.”).

<sup>148</sup> See, e.g., *Arroyo v. Judd*, No. 8:10-cv-911-T-23TBM, 2010 U.S. Dist. LEXIS 77087 (M.D. Fla., July 30, 2010) (“[T]he regulation providing for a forty-eight-hour detainer, 8 C.F.R. §297.7, delegates no authority to the defendants. This regulation is a federal regulation governing a federal agency.”); *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 60 (noting that, because of the state’s practice of honoring immigration detainers, people are being held without any basis in state law).

<sup>149</sup> *Uroza v. Salt Lake County*, First Amended Complaint, *supra* note 13, at ¶ 34. This policy is allegedly based on a state law requiring that the sheriff shall make a “reasonable effort to determine the citizenship status of a person charged with a felony or driving under the influence ... when the person is confined to the county jail for a period of time,” and that if the sheriff cannot verify the person’s lawful status from documents in the person’s possession, the sheriff “shall attempt to verify that status within 48 hours of the person’s confinement at the jail” by contacting DHS. See *id.*, at ¶ 38. The complaint further notes that these statutory provisions are “likely unconstitutional,” but that even if they were not, Salt Lake County’s policy goes beyond what the statute purports to authorize by requiring the detention of individuals for longer than they are lawfully confined to county jail so that ICE may place a detainer, among other things. *Id.*, at ¶ 39.

<sup>150</sup> *Id.*, at ¶ 68.

<sup>151</sup> Immigration Detainer—Notice of Action, *supra* note 2 (“You are not authorized to hold the subject beyond these 48 hours.”).

Requiring authority in state law for any holds pursuant to detainers could also potentially raise questions regarding the role of states and localities in enforcing federal immigration law. The Supreme Court's recent decision in *Arizona v. United States* found that a provision of Arizona law that authorized state officers to make a "unilateral decision ... to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government" was preempted by the federal law.<sup>152</sup> However, this decision would not appear to foreclose a state from holding an alien pursuant to an ICE detainer absent express authorization to do so in state (or federal) law, since a detainer constitutes a request from the federal government to hold—or "arrest"—an alien.

A number of recently filed lawsuits have alleged infringement of aliens' Fourth Amendment rights by state and/or federal governments as a result of immigration detainers issued pursuant to the Secure Communities program,<sup>153</sup> and it remains to be seen how a court might view such claims. Previous cases have addressed Fourth Amendment challenges to immigration detainers, but often in the context of motions to suppress evidence allegedly obtained in violation of aliens' Fourth Amendment rights.<sup>154</sup> The decisions in these cases could provide some guidance on what constitutes a permissible warrantless seizure under Section 287(a) of the INA. However, it is also possible that a court might approach certain issues differently when plaintiffs seek to enjoin holds pursuant to detainers or other similar relief.

## **Do Detainers Result in Aliens Being Deprived of Liberty Interests Without Due Process of Law?**

The Fifth Amendment's guarantee of procedural due process operates to ensure that the government does not arbitrarily interfere with certain key interests (i.e., life, liberty, and property).<sup>155</sup> However, procedural due process rules are not meant to protect persons from the deprivation of these interests, *per se*. Rather, they are intended to prevent the "*mistaken or unjustified* deprivation of life, liberty, or property" by ensuring that the government uses fair and just procedures when taking away such interests.<sup>156</sup> The type of procedures necessary to satisfy due process can vary depending upon the circumstances and interests involved. In *Mathews v. Eldridge*, the Supreme Court announced the prevailing standard for assessing the requirements of due process, finding that

[i]dentification of the specific dictates of due process generally requires consideration of three distinct factors: *first*, the private interest that will be affected by the official action; *second*, the risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and *finally*, the

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<sup>152</sup> No. 11-182,—U.S.—, 2012 U.S. LEXIS 4872, at \*37 (June 25, 2012).

<sup>153</sup> See, e.g., *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 35 (alleging that the issuance of detainers is not guided by any "standards," such as reasonable suspicion, probable cause, or other grounds); *Uroza v. Salt Lake County*, First Amended Complaint, *supra* note 13, at ¶ 75 ("[O]n its face, Form I-247 allows ICE agents to request that local law enforcement agents imprison people without stating probable cause for such a detention.").

<sup>154</sup> See, e.g., *Garcia-Torres v. Holder*, 660 F.3d 333 (8<sup>th</sup> Cir. 2011); *Pac-Ruiz v. Holder*, 629 F.3d 771 (8<sup>th</sup> Cir. 2010); *United States v. Diaz*, 519 F.3d 56 (1<sup>st</sup> Cir. 2008).

<sup>155</sup> At least one case challenging detainer practices has also alleged that these practices infringe upon aliens' rights to substantive due process, as well as procedural due process. See *Brizuela v. Feliciano*, Petition, *supra* note 13, at ¶ 55 (alleging that freedom from physical restraint is a fundamental liberty interest that cannot be infringed unless the infringement is narrowly tailored to serve a compelling government interest).

<sup>156</sup> *Carey v. Piphus*, 435 U.S. 247, 259 (1978).

Government's interest, including the function involved and the administrative and fiscal burdens that the additional or substitute procedural requirements would entail.<sup>157</sup>

Although the requirements of due process may vary depending on the particular context, the government must provide persons with the ability to contest the basis upon which they are to be deprived of a protected interest. This generally entails notice of the proposed deprivation and a hearing before an impartial tribunal.<sup>158</sup> Additional procedural protections, such as discovery of evidence or an opportunity to confront adverse witnesses, may also be required in certain circumstances to minimize the occurrence of unfair or mistaken deprivations of protected interests.<sup>159</sup>

Whether the practices of local and/or federal governments could be found to violate aliens' due process rights under the test established by *Mathews* would, thus, appear to depend upon the aliens' and the government's interests, as well as existing and potential procedural safeguards. Loss of freedom, such as would result when an alien who would otherwise have been released is held pursuant to a detainer, has historically been seen as carrying significant weight for purposes of due process,<sup>160</sup> although some courts have suggested that the liberty interests of at least certain unauthorized aliens may be entitled to less weight.<sup>161</sup> On the other hand, the government has been recognized as having some significant interests in the detention of at least certain aliens. For example, in *Demore v. Kim*, the Supreme Court recognized the government's interest in detaining deportable aliens "during the limited period necessary for their removal proceedings" so as to ensure that they do not flee and, thus, evade removal.<sup>162</sup> Similarly, in *Carlson v. Landon*, the Court recognized that detention of certain aliens furthers the government's efforts to protect the safety and welfare of the community.<sup>163</sup> Both these interests have been expressly recognized by

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<sup>157</sup> 424 U.S. 319, 335 (1976) (emphasis added).

<sup>158</sup> See, e.g., *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950) (describing notice of a proposed deprivation of a protected interest as "[a]n elementary and fundamental requirement of due process"); *Mathews*, 424 U.S. at 333 ("[S]ome form of hearing is required before an individual is finally deprived of a ... [protected] interest."); *In re Murchison*, 349 U.S. 133, 135 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process.").

<sup>159</sup> See Congressional Research Service, Constitution of the United States: Analysis and Interpretation, Fourteenth Amendment: Rights Guaranteed: The Requirements of Due Process, available at <http://www.crs.gov/conan/default.aspx?doc=Amendment14.xml&mode=topic&s=1&t=5|1|3>.

<sup>160</sup> *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.") In *Zadvydas*, the Supreme Court suggested that a statute permitting the indefinite detention of aliens (here, aliens whose removal has been ordered) "would raise a serious constitutional problem."

<sup>161</sup> See, e.g., *Parra v. Perryman*, 172 F.3d 954 (7<sup>th</sup> Cir. 1999) (upholding the constitutionality of Section 236(c) of the INA because the petitioner's legal right to remain in the United States ended once he conceded that he was an aggravated felon and, thus, any liberty interest he may have previously held was minimal); *Avramenkov v. INS*, 99 F. Supp. 2d 210 (2000) ("[B]ecause the Petitioner is almost certainly going to be removed from the country, no significant liberty interest is implicated by §236(c). In addition, the risk of erroneous deprivation is slight in light of the Petitioner's aggravated felony conviction and the fact that he does not dispute this conviction. Consequently, additional procedural safeguards would be of little value to a criminal alien, such as the Petitioner here, whose removal from the country is a virtual certainty.").

<sup>162</sup> 538 U.S. 510, 523-25 (2003) (upholding the constitutionality of Section 236(c) of the INA, which requires that certain aliens be detained for the period necessary for their removal proceedings, without providing for individualized determinations as to whether the aliens presented a flight risk). In *Demore*, the Court specifically distinguished *Zadvydas* (which addressed detention of aliens subject to removal orders, as opposed to aliens currently in removal proceedings) on the grounds that the aliens challenging their detention following final orders of deportation were ones for whom removal was "no longer practically attainable," and the detention was "indefinite" and "potentially permanent."

<sup>163</sup> 342 U.S. 524, 538 (1952). See also *Hermanowski v. Farquharson*, 39 F. Supp. 2d 148, 157-58 (D. R.I. 1999) (continued...)

the courts in upholding, at least in certain circumstances, the constitutionality of provisions of the INA authorizing or requiring the detention of certain aliens pending a decision on their removability or removal proceedings, as previously discussed.<sup>164</sup>

Because there are potentially significant interests involved on the part of the alien *and* the government, the procedural safeguards associated with the issuance of detainers could play a significant role in the court's analysis of pending claims that aliens held pursuant to immigration detainers have deprived of their liberty without due process of law.<sup>165</sup> The federal government has recently made several changes<sup>166</sup> to its detainer form and practices in response to criticism of the Secure Communities program that could affect the analysis of Fifth Amendment challenges to its detainer practices.<sup>167</sup> In particular, Form I-247 was amended in June 2011 to include the option to request that a copy of the detainer be provided to the alien who is the subject of the detainer.<sup>168</sup> Previously, advocates for immigrants' rights had noted that persons subject to detainers were not always aware that detainers had been lodged against them.<sup>169</sup> Even with the June 2011 amendments, however, aliens only have notice of an ICE detainer *after* it has been issued, not *prior* to its issuance. In addition, in December 2011, ICE established a toll-free hotline that detained individuals may call if they believe they may be U.S. citizens or victims of a crime.<sup>170</sup> This hotline responds to criticisms that state and local officials have impinged upon the rights of aliens subject to detainers by using the issuance of a detainer as grounds for holding an alien in excess of 48 hours.<sup>171</sup> The hotline would potentially give certain aliens the opportunity to contest the issuance of a detainer for them. However, there does not appear to be any formal procedure associated with calls to this hotline, and whatever procedure there might be occurs *after* the issuance of a detainer. Whether these procedural safeguards are adequate to protect against erroneous deprivations of persons' liberty rights remains to be seen. It is also unclear what weight, if any, a court might accord to the fact that persons whom ICE seeks to remove from the United States generally receive a Notice to Appear and have their cases heard before immigration judges prior to their removal. These procedures are generally seen as providing due process to the individuals involved, although it is unclear whether a court would view the existence of due process in future removal proceedings as sufficient to protect against deprivations of aliens' liberty interests prior to the commencement of such proceedings.<sup>172</sup>

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(...continued)

(collecting cases and, particularly, discussing the Court's decision in *Carlson*).

<sup>164</sup> See *supra* notes 136-138 and accompanying text.

<sup>165</sup> See, e.g., Jimenez Moreno v. Napolitano, Complaint, *supra* note 13, at ¶¶ 22-23; Uroza v. Salt Lake County, First Amended Complaint, *supra* note 13, at ¶ 31; Brizuela v. Feliciano, Petition, *supra* note 13, at ¶¶ 43-49. Whether the claim is brought against the federal, or a state or local, government could also be significant, since states and localities may have fewer procedural safeguards associated with their detainer practices than the federal government. *But see Connecticut Adopts Protocols for Dealing with Ice's Secure Communities Program*, *supra* note 61 (noting the adoption of a protocol whereby state officers will determine whether certain conditions are satisfied before holding a person pursuant to an ICE detainer (e.g., whether ICE has issued an arrest warrant for the alien, whether there is an outstanding deportation order, etc.).

<sup>166</sup> See *supra* notes 45-48 and 76 and accompanying text.

<sup>167</sup> See, e.g., Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy, *supra* note 11, at 10-12.

<sup>168</sup> Notice of Action, DHS Form I-247 (6/11), *supra* 45.

<sup>169</sup> See *supra* note 46 and accompanying text.

<sup>170</sup> ICE Establishes a Hotline for Detained Individuals, *supra* note 52.

<sup>171</sup> See, e.g., Uroza v. Salt Lake County, First Amended Complaint, *supra* note 13, at 68.

<sup>172</sup> *But see Souleman v. Sabol*, No. 3:09-cv-1981, 2010 U.S. Dist. LEXIS 24258 (M.D. Pa., March 16, 2010) (finding that the petitioner "has received all the process that is due to him" given that he has had "several chances" to present (continued...))

## Conclusion

Further judicial developments pertaining to immigration detainers may be likely, as both the use of and challenges to detainers increase. In particular, future decisions could help clarify whether the issuance of detainers for offenses not involving controlled substances is beyond DHS's statutory authority. The one federal district court to address the issue found that it is not, but the argument has persisted despite this decision. Future decisions could also clarify whether DHS forms and regulations purport to require state and local compliance with immigration detainers, and whether any attempt to require compliance is prohibited by the Tenth Amendment. Such decisions could also clarify (1) when the federal government could be found to have custody of aliens against whom detainers are lodged; (2) whether and when holds pursuant to detainers are permissible warrantless arrests; and (3) what procedural protections, if any, aliens are entitled to prior to being detained for purposes of an investigation of their removability or on other grounds.

Pending such judicial decisions, or in response to them, Congress could also expand or restrict certain detainer practices of DHS and/or state or local governments. For example, Congress could grant DHS express statutory authority to issue detainers for some or all offenses, or could clarify that the 1986 amendments to the INA are intended to preclude the issuance of detainers for offenses that do not involve controlled substances. Similarly, while the Tenth Amendment could potentially bar the federal government from attempting to compel states and localities to honor immigration detainers, Congress could condition certain federal funding on compliance with ICE detainers.<sup>173</sup> Congress could also expand or restrict DHS's authority to make warrantless arrests, mandatory detention of particular aliens pending removal, and/or certain procedures surrounding the issuance of detainers.

## Author Contact Information

Kate M. Manuel  
Legislative Attorney  
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(...continued)

evidence at removal hearings, had the opportunity to challenge his detention and release on bond before an immigration judge, and will have the opportunity to challenge his detention in upcoming hearings).

<sup>173</sup> See *supra* note 86.

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: 287(g) quarterly memos  
**Date:** Monday, October 28, 2013 1:20:06 PM  
**Attachments:** [Hudson County 287g memo 07202010.doc](#)  
[Monmouth County 287g memo 07202010.doc](#)

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 23, 2010 2:21 PM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** 287(g) quarterly memos

I have attached the memos for the HQS tasking regarding the Deputy Director's quarterly 287(g) memo (Hudson & Monmouth).

(b)(6) (b)(7) I have written the final assessment on the second page. DRA (b)(6) (b)(7) will check the cases we spoke about next week and advise if there were any dismissals. I checked the level 3 cases from Monmouth County and none of them had been dismissed- They were listed in NCIC/CJIS as a conviction, no disposition or pending.

Thanks,

(b)(6) (b)(7)(c)

Supervisory Detention & Deportation Officer  
Criminal Alien Program  
ICE - ERO  
Newark Field Office  
970 Broad Street - Room # (b)(6) (b)(7)(c)  
Newark, NJ 07102  
(973) 776 (b)(6) (b)(7)(c) (office)  
(973) 322 (b)(6) (b)(7)(c) (cell)  
(973) 776 (b)(6) (b)(7)(c) (fax)



**U.S. Immigration  
and Customs  
Enforcement**

July 23, 2010

MEMORANDUM FOR: Alonzo Pena  
Deputy Director  
Washington, DC

THROUGH: HQ OSLC  
Washington, DC

FROM: (b) (6) (b) (7)(c)  
Acting Field Office Director  
Newark, NJ

SUBJECT: Hudson County Department of Corrections  
Quarterly Review of the 287(g) Program

The Hudson County Department of Corrections (HCDOC) has been participating in the 287(g) Program under the Detention Model since August 11, 2008. They currently have (b) (7)(E) active officers designated as Jail Enforcement Officers.

They had (b) (7)(E) 287(g) officers during the last quarterly review but (b) (7)(E) of the officers had their authorization revoked due to non compliance of the program. They had not processed any cases for over a year and were not going to be able to process any cases in the future. An agreement was reached between the Newark Field Office (FNE) and the HCDOC management to reinstate two former 287(g) officers after completion of the IADRP Refresher Training in September 2010.

All cases that are processed by the HCDOC 287(g) officers are first checked by the ICE CAP officers assigned to the Hudson County Jail. They look over the file, recommend any corrections and transport the files to the SDDO for the final approval and signature. Utilization of the HCDOC 287(g) officers allows ICE to re-focus resources on making proactive “at large” criminal alien arrests in the community.

FNE’s assessment of the HCDOC’s 287(g) Program is that it is being utilized by the county law enforcement agencies and jail officers in accordance with the existing MOA. There is no evidence of any special emphasis or targeting being executed on any particular group or community nor any pattern of arrests for low level offenses. FNE has met with the Hudson County Prosecutor’s office to emphasize the need to have the criminal charges pursued to completion. The subjects that are turned over to ICE custody have either been convicted, paid bond and/or their criminal case has otherwise been completed. Hudson County pursues criminal cases and does not release subjects to ICE for the sole purpose of deportation.

Hudson County Department of Corrections Quarterly Review of the 287(g) Program  
 Page 2

The first chart contains the statistics for the HCDOC 287(g) Program from October 1, 2009 through July 20, 2010. The second chart contains the statistics regarding the NCIC Levels, established in the existing MOA between ICE and HCDOC, from October 1, 2009 through July 7, 2010 (See charts below):

CHART 1 (As of July 20, 2010)

Fiscal Year	Moa Name				
	Encounters	Q1	Q2	Q3	Q4
2010	Hudson County Department of Corrections	76	79	92	12
					259
	Processed				
2010	Hudson County Department of Corrections	63	69	77	10
					219
	Removals Cases Created				
2010	Hudson County Department of Corrections	63	69	75	7
					214
	Removals				
2010	Hudson County Department of Corrections	40	30	11	
					81

CHART 2 (As of July 7, 2010)

Offense Category	Hudson County DOC JEO Encounters		Hudson County DOC JEO Processed for Removal/VR				Hudson County DOC JEO Removals/VR			
	Total	% Total	Criminals	Non-Criminals	Total	% Total	Criminals	Non-Criminals	Total	% Total
NCIC Level 1*	122	49.4%	41	63	104	50.0%	18	10	28	36.4%
NCIC Level 2	46	18.6%	20	21	41	19.7%	13	4	17	22.1%
NCIC Level 3**	74	30.0%	27	35	62	29.8%	19	13	32	41.6%
Traffic - DUI	1	0.4%	1	0	1	0.5%	0	0	0	0.0%
Traffic - Other	4	1.6%	0	0	0	0.0%	0	0	0	0.0%
Other Criminal	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
None	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
No Data	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
<b>TOTALS</b>	<b>247</b>	<b>100.0%</b>	<b>89</b>	<b>119</b>	<b>208</b>	<b>100.0%</b>	<b>50</b>	<b>27</b>	<b>77</b>	<b>100.0%</b>

An internal audit conducted by FNE on a sampling of the HCDOC 287(g) cases revealed that all cases (Levels 1, 2 & 3) were being pursued to completion by the Hudson County Prosecutor's Office. The aliens were either convicted and deported, convicted and serving a sentence, pending local charges, paid bail and released to ICE custody or still had pending charges. There were no subjects released to ICE custody without bail being paid on the local charges.



**U.S. Immigration  
and Customs  
Enforcement**

July 23, 2010

MEMORANDUM FOR: Alonzo Pena  
Deputy Director  
Washington, DC

THROUGH: HQ OSLC  
Washington, DC

FROM: (b)(6) (b)(7)(c)  
Acting Field Office Director  
Newark, NJ

SUBJECT: Monmouth County Sheriff's Office  
Quarterly Review of the 287(g) Program

The Monmouth County Sheriff's Office (MCSO) has been participating in the 287(g) Program under the Detention Model since March 8, 2010. They currently have (b)(7)(E) active officers designated as Jail Enforcement Officers.

All cases that are processed by the MCSO 287(g) officers are first checked by the ICE CAP officers assigned to the Monmouth County Jail. They look over the file, recommend any corrections and then transport the files to the SDDO for the final approval and signature. Utilization of the MCSO 287(g) officers allows ICE to re-focus resources on making proactive "at large" criminal alien arrests in the community.

The Newark Field Office's (FNE) assessment of the MCSO's 287(g) Program is that it is being utilized by the county law enforcement agencies and jail officers in accordance with the existing MOA. There is no evidence of any special emphasis or targeting being executed on any particular group or community nor any pattern of arrests for low level offenses. FNE has met with the Monmouth County Prosecutor's office to emphasize the need to have the criminal charges pursued to completion. The subjects that are turned over to ICE custody have either been convicted, paid bond and/or their criminal case has otherwise been completed. Monmouth County pursues criminal cases and does not release subjects to ICE for the sole purpose of deportation.

The first chart contains the statistics for the MCSO 287(g) Program from March 8, 2010 through July 20, 2010. The second chart contains the statistics regarding the NCIC Levels, established in the existing MOA between ICE and MCSO, from March 8, 2010 through July 7, 2010 (See charts below):

CHART 1 (As of July 20, 2010)

Fiscal Year	Moa Name					
	Encounters	Q1	Q2	Q3	Q4	
2010	Monmouth County Sheriff's Office		16	58	2	76
	Processed					
2010	Monmouth County Sheriff's Office		16	53	1	70
	Removals Cases Created					
2010	Monmouth County Sheriff's Office		16	52	1	69
	Removals					
2010	Monmouth County Sheriff's Office		7	15		22

CHART 2 (As of July 7, 2010)

Offense Category	Monmouth County SO JEO Encounters		Monmouth County SO JEO Processed for Removal/VR				Monmouth County SO JEO Removals/VR			
	Total	% Total	Criminals	Non-Criminals	Total	% Total	Criminals	Non-Criminals	Total	% Total
NCIC Level 1*	11	14.9%	2	8	10	14.5%	0	1	1	5.6%
NCIC Level 2	18	24.3%	5	11	16	23.2%	0	4	4	22.2%
NCIC Level 3**	44	59.5%	9	33	42	60.9%	4	9	13	72.2%
Traffic – DUI	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
Traffic - Other	1	1.4%	1	0	1	1.4%	0	0	0	0.0%
Other Criminal	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
None	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
No Data	0	0.0%	0	0	0	0.0%	0	0	0	0.0%
<b>TOTALS</b>	<b>74</b>	<b>100.0%</b>	<b>17</b>	<b>52</b>	<b>69</b>	<b>100.0%</b>	<b>4</b>	<b>14</b>	<b>18</b>	<b>100.0%</b>

An internal audit conducted by FNE on a sampling of the MCSO 287(g) cases revealed that all cases (Levels 1, 2 & 3) were being pursued to completion by the Monmouth County Prosecutor's Office. The aliens were either convicted and deported, convicted and serving a sentence, pending local charges, paid bail and released to ICE custody or still had pending charges. There were no subjects released to ICE custody without bail being paid on the local charges.

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: OPR 287(g) Review Findings Report Tasking - Monmouth County Sheriff's Office  
**Date:** Monday, October 28, 2013 1:16:31 PM  
**Attachments:** [MCSO\\_final.pdf](#)  
[Tasking Response Template ERO.doc](#)  
**Importance:** High

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, October 27, 2011 10:33 AM

(b)(6) (b)(7)(c)

**Subject:** FW: OPR 287(g) Review Findings Report Tasking - Monmouth County Sheriff's Office  
**Importance:** High

All- Please review and ensure corrective action is taken immediately. I am very concerned about the following statement in the report.

"ICE supervisors did not audit IDENT/ENFORCE system entries and records properly, JEOs did not notify ICE within 24-hours of detainees filed on weekends, and ICE was not maintaining sole custody of the A-Files."

In addition, with respect to the CAP program in general, I want you to have measures in place to ensure 100% coverage at all the facilities in NJ. This means that supervisors proactively check intake lists to ensure staff is doing appropriate screenings of all foreign-born inmates being booked into the jails. You will be asked to explain the measures you have taken and controls you have put in place to ensure 100% screenings and data quality in our systems for all CAP cases, not just those in 287g.

Thanks

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Wednesday, October 26, 2011 11:28 AM

(b)(6) (b)(7)(c)

**Subject:** FW: OPR 287(g) Review Findings Report Tasking - Monmouth County Sheriff's Office  
**Importance:** High

*This message is being sent on behalf of Gregory J. Archambeault, Assistant Director for Secure Communities and Enforcement, and approved by David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Director and Deputy Field Office Director Newark

**Subject:** OPR 287(g) Review Findings Report Tasking – Monmouth County Sheriff's Office

**Background:**

From, August 16-18, 2011 the Office of Professional Responsibility (OPR) 287(g) Inspections Unit conducted a review of the Monmouth County Sheriff's Office's 287(g) Program and prepared the attached report which details areas that requires attention.

**Instructions:**

Please review and respond with a plan of action to resolve each area of concern and deficiency identified below. Include an implementation schedule and procedure(s) that will mitigate future instances of similar issues. A response, using the attached template, is due to 287(g) OPR [REDACTED] (b)(6) (b)(7)(c) by November 18, 2011. If you have any questions or concerns regarding this tasking, please contact [REDACTED] (b)(6) (b)(7)(c) via email or at (202) 734-[REDACTED] (b)(6) (b)(7)(c).

**AREAS OF CONCERN**

**Complaint Procedure (CP)**

**Area of Concern CP-1**

In accordance with the MCSO MOA, Appendix B, Complaint Procedure, "if any participating MCSO personnel are the subject of a complaint or allegation of any sort that may result in that individual receiving employer discipline, the MCSO shall, to the extent allowed by State law, immediately notify ICE of the existence and nature of the complaint or allegation. The ICE notifications should be made to the Special Agent in Charge and the OPR points of contact in New Jersey." At the time of OPR's review, MCSO's Investigation Unit was unfamiliar with the specific reporting requirements concerning allegations or complaints.

**Interpretation Services (IS)**

**Area of Concern IS-2**

The MCSO MOA, Section XV, Interpretation Services, provides that, "The MCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records." It was unclear from reviewing Forms I-213 whether translators had been used by the JEOs and in what language the interview was conducted. As a best practice, OPR recommended to ICE and MCSO that JEOs document the names of translators in their report narratives since they only create Forms I-213 and charging documents but don't serve aliens with the legal documents.

**Area of Concern IS-3**

The MCSO MOA, Section XV, Interpretation Services, provides that, "The MCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified

interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records." The JEOs were using an inmate trustee who speaks Spanish to translate biographical information on the Forms I-213. If the alien speaks any language other than English or Spanish, the JEOs use the translation line. Since the JEOs only prepare Forms I-213, charging documents, and issue detainees, but do not serve aliens with charging or removal documents, this is an area of concern rather than a deficiency.

## **DEFICIENCIES**

### **Standard Operating Procedures (SOP)**

#### **Deficiency SOP-1**

In accordance with the MCSO MOA dated October 12, 2010, Appendix D - Detention Model, Supervision, "On a regular basis, ICE supervisors are responsible for conducting an audit of the IDENT/ENFORCE computer system entries and records made by the MCSO's officers." Upon review and auditing of the IDENT/ENFORCE computer system entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for MCSO." OPR found one G-23 line coding error during its audit of 15 Forms I-213.

#### **Deficiency SOP-2**

In accordance with the MCSO MOA dated October 12, 2010, Appendix D - Detention Model, Supervision, and "The MCSO shall provide notification to the ICE supervisor of any detainees placed under 287(g) authority within 24 hours." If a JEO issues a detainer after hours on a Friday night or on a weekend, ICE is not notified until the following Monday morning.

### **Service Level Agreement (SLA)**

#### **Deficiency SLA-3**

In accordance with FY2011 USCIS/ICE Service Level Agreement- Version 1.0 (Oct. 10, 2010), the Additional Services/Responsibilities section: "Local law Enforcement obtaining A-Files as part of the 287(g) Program-ICE Field offices must maintain custody of the A-File at all times using the National File Tracking System. Officers with the 287(g) program may not keep an A-File in their possession." At the time of the review, blank and created A-Files were maintained at the MCCI in a locked file cabinet in a room shared by the IEAs, JEOs, and MCSO COs assigned to the classifications unit. Both the IEAs and JEOs had a key to the file cabinet.



**U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
Inspections and Detention Oversight  
Washington, DC 20536**

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## **287(g) Inspections Unit Program Review Findings**

**Monmouth County Sheriff's Office  
Freehold, New Jersey**

**Field Office Director  
Newark, New Jersey**

**August 16 - August 18, 2011**

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**OFFICE OF PROFESSIONAL RESPONSIBILITY  
287(g) Inspections Unit**

**PROGRAM REVIEW  
Monmouth County Sheriff's Office**

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## **REPORT PURPOSE AND REVIEW PROCESS**

This summary outlines the results of the program review of the Monmouth County Sheriff's Office (MCSO) 287(g) Delegation of Authority Program conducted by the Office of Professional Responsibility, 287(g) Inspections Unit (OPR) from August 16 to August 18, 2011. The objective of the review was to assess compliance with the Memorandum of Agreement (MOA) between U.S. Immigration and Customs Enforcement (ICE) and MCSO, and to provide management with feedback on the administration of this program by MCSO and the local ICE office. To accomplish this objective, OPR examined office procedures, MCSO records, and ENFORCE entries. OPR interviewed ICE management and staff; MCSO management and staff, including the Supervising Investigator with the unit responsible for internal affairs investigations; a prosecutor from the Monmouth County Prosecutor's Office, and detainees. OPR also collected and analyzed information from ICE Enforcement and Removal Operations (ERO) Headquarters, the ICE ERO field office, ICE OPR Joint Integrity Case Management System (JICMS), and the MCSO, as well as publicly-available open source information including local and national news media.

This report will be submitted to the ERO 287(g) Unit for review of the issues, deficiencies, concerns, and recommendations. The 287(g) Unit will determine whether these require corrective action or attention, and by whom. The 287(g) Unit will notify the local ICE field office of the issues, deficiencies, concerns, and recommendations, and request the field office to provide an action plan to address these within a specific timeframe. Once all of the issues have been resolved and corrective action taken, the 287(g) Unit will provide OPR with the results. OPR can use the information provided by the 287(g) Unit for future 287(g) inspections.

Specific Areas of Concern and Deficiencies are identified in bold with sequential numbers in this report and in the Appendix. OPR defines a Deficiency as a violation of written policy that can be specifically linked to the terms of the MOA or ICE policy or operational procedure. OPR defines an Area of Concern as something that may lead to or risk a violation of the terms of the MOA or ICE policy or operational procedure.

Comments and questions regarding the report findings can be forwarded to the Deputy Division Director for the 287(g) Inspections Unit, Office of Professional Responsibility.

## **TEAM MEMBERS**



Special Agent	OPR Headquarters, 287(g)

## EXECUTIVE SUMMARY

The ICE ERO 287(g) Unit supervises the national 287(g) program. The MCSO detention model 287(g) program is one of two 287(g) programs in New Jersey managed by ICE ERO, Field Office Director, Newark, New Jersey (FOD/Newark). FOD/Newark has assigned (b)(7)(E) officers to oversee and support the MCSO 287(g) program, which operates exclusively at the Monmouth County Correctional Institution (MCCI) in Freehold, New Jersey. A Supervisory Detention and Deportation Officer (SDDO) has been delegated daily supervision of the program.

On October 15, 2009, the ICE Assistant Secretary signed an MOA with MCSO which established a detention model program authorizing MCSO 287(g) officers to exercise immigration authorities only during the course of their jail duties. The agreement specifically defines the 287(g) program's objectives and the authorities granted by the agreement. In addition, the agreement identifies how ICE will supervise local agency officer operations, information reporting and tracking, and 287(g) local implementation measurement.

A Criminal Alien Program (CAP) SDDO is responsible for managing the MCSO 287(g) program. Additionally, two CAP Immigration Enforcement Agents (IEAs) at the facility provide general assistance and guidance to the 287(g)-certified Jail Enforcement Officers (JEOs). A Deportation Officer (DO) assigned to CAP in Monmouth County also provides assistance at MCCI when the IEAs are not available. The MCSO also houses ICE detainees at the MCCI pursuant to an over 72 hour Inter-Governmental Service Agreement (IGSA) with ICE.

In accordance with the MOA, ICE provides participating MCSO personnel with the required Immigration Authority Delegation Program (IADP) training. ICE instructors train the designated MCSO personnel in the enforcement of Federal immigration laws and policies, the scope of the powers delegated pursuant to the MOA, and civil rights and civil liberties practices. MCSO personnel must successfully complete the IADP training before ICE certifies them to exercise the delegated immigration officer authority.

FOD/Newark provides letters of authorization to certified personnel allowing them to perform the specified functions of an immigration officer for an initial period of one year. ERO records indicate (b)(7)(E) CSO officers have received the IADP training (b)(7)(E) fficers are currently certified and use their authority only during the course of their jail duties at the MCCI. (b)(7)(E) officer received a letter of revocation due to a promotion. All of the JEOs are classified as Corrections Officers (COs) at MCCI, a sworn officer position dedicated exclusively to correctional duties.

The MCSO does not have a patrol division; individuals are brought into the MCCI by state and local agencies after being arrested for various offenses. The MCCI is the primary intake and release facility of detainees for the MCSO's jail system which houses approximately 1,300 detainees. The MCCI conducts initial medical screening of all detainees entering the MCSO's jail system. Additionally, the MCCI is responsible for the classification of all detainees to include managing the population within the jail system.

The MCSO 287(g) program processed 108 aliens for removal in FY 2010 and 102 for the first three quarters of FY 2011, for a total of 210 aliens processed for removal since the inception of the program.

The MOA specifies that complaints or allegations of misconduct against JEOs must be reported to the Special Agent in Charge and the OPR points of contact in New Jersey. JICMS inquiries disclosed no record of complaints or allegations of misconduct related to the MCSO 287(g) program or personnel. Interviews with MCSO management and the Investigation Unit, the division that conducts internal affairs investigations at MCSO, revealed no unreported internal affairs investigations against any JEO.

This is OPR's first review of the MCSO 287(g) program. Communication and the working relationship between ICE and MCSO were very good; ICE personnel are available at the facility, by telephone, and via DHS e-mail, to respond to any JEO concerns. Most JEOs, except § 87(2)(b) who recently graduated from IADP training in July 2011, are competent in the use of IDENT/ENFORCE and all are certified and up-to-date with their ICE Virtual University (VU) training. MCSO had the necessary equipment in its processing area and also the required complaint reporting procedures posters displayed in English and Spanish.

OPR found ICE and MCSO generally comply with the MOA except for three deficiencies. ICE supervisors did not audit IDENT/ENFORCE system entries and records properly, JEOs did not notify ICE within 24-hours of detainees filed on weekends, and ICE was not maintaining sole custody of the A-Files.

OPR also identified three areas of concern. MCSO personnel were using an inmate to help with translations to fill out biographical information on the Forms I-213 (Record of Deportable/Inadmissible Alien), and the JEOs did not note who translated for them and in what language on the Forms I-213. The Supervising Investigator of MCSO's Investigation Unit had not read the MOA and was unfamiliar with the reporting requirements for allegations of misconduct made against JEOs.

FOD/Newark is working on solutions to correct the areas of concern and deficiencies that were not immediately resolved during the review.

## **BACKGROUND AND SUMMARY OF OPERATIONS**

### **ESTABLISHMENT OF THE 287(g) PROGRAM**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, enacted on September 30, 1996, amended the Immigration and Nationality Act (INA) by adding Section 287(g), 8 U.S.C. § 1357(g). Section 287(g) of the INA provides for the Department of Homeland Security (DHS) to enter into agreements to delegate the authority to enforce Federal immigration laws to state and local law enforcement. The law requires that an agreement be created that defines the authorities being delegated, the training requirements, the required supervision, the length of the agreement, and other important issues.

On October 15, 2009, the ICE Assistant Secretary signed an MOA with the MCSO, which established a detention model program authorizing MCSO 287(g) officers to exercise immigration authorities only during the course of their duties at the Monmouth County Correctional Institution (MCCI) in Freehold, New Jersey. The MOA specifically defines the 287(g) program's objectives and the authorities granted by the agreement. The agreement identifies how ICE will supervise local agency officer operations, information reporting and tracking, and 287(g) local implementation measurement. This 287(g) detention model is designed to identify criminal aliens amenable to removal in the MCCI.

As stated in the MOA, ICE provides participating MCSO personnel with the required IADP training. ICE instructors train the designated MCSO personnel in, among other topics, the enforcement of Federal immigration laws and policies, the scope of the powers delegated pursuant to the MOA, and civil rights and civil liberties practices. MCSO personnel must successfully complete all of the requirements of the IADP training before ICE certifies them to exercise the delegated immigration officer authority. Seven MCSO officers received the IADP training and six are currently certified and use their authority only during the course of their jail duties. One officer received a letter of revocation due to being promoted within the MCSO.

The MCSO 287(g) program is a detention model supervised by FOD/Newark. This is one of two 287(g) programs within FOD/Newark's Area of Responsibility (AOR). The program is managed and administratively overseen by a CAP SDDO. Two IEAs located at MCCI and one DO assigned to CAP in Monmouth County provide daily assistance and guidance to the JEOs at the jail. The DO and IEAs described the JEOs as force multipliers for ERO. The JEOs only exercise their immigration authority during the course of their jail duties.

A non-287(g)-certified Lieutenant oversees a variety of areas of responsibility at MCCI to include the 287(g) program, but day-to-day management of the program has been delegated to (b)(7)(E) Sergeants. The Sergeants are 287(g)-certified and have supervised MCSO's program since its inception; they serve as the immediate supervisors of the other (b)(7)(E) JEOs. One JEO is assigned to the 287(g) processing area as his sole duty. Three JEOs are assigned to 287(g) as a collateral duty in addition to inmate classifications or booking, and use their authority when needed.

## **287(g) PROGRAM OPERATIONS**

The MCCI is the primary intake and release facility for detainees for the MCSO's jail system which houses approximately 1,300 detainees. The MCCI conducts initial medical screening of detainees and is also responsible for the classification of all detainees and population management of the jail system.

The MCSO has a 287(g) detention model with (b)(7)(E) JEOs working eight hour shifts. The program provides immigration coverage at MCCI on weekdays, with the majority of JEOs working various shifts between the hours of (b)(7)(E)

(b)(7)(E) During the uncovered shifts, booking officers contact IEAs at the Elizabeth Detention Facility (EDF) in Elizabeth, New Jersey via telephone. EDF is staffed by IEAs and SIEAs 24-hours a day and they run immigration record checks, determine alienage, and if applicable, fax a detainer to a booking officer at MCCI to hold the alien until the JEOs at MCCI return to work the following morning or following Monday if the arrest occurred on a weekend. This system allows screening of all foreign-born arrestees booked into the MCCI.

The MCSO does not have a patrol division; individuals are brought into the MCCI by other state and local agencies after being arrested for various offenses. MCCI booking officers, who are not 287(g) certified, ask all arrestees for biographical information, to include place of birth and country of citizenship. All foreign-born arrestees are referred to the 287(g) program through the MCCI jail intake system.

The JEOs who work the day shift on weekdays run a report of admission each morning through the MCCI jail intake system database to check for foreign-born or foreign national arrestees. If they identify any, the JEOs run record checks in DHS databases, interview arrestees, and screen them to determine if the subject is an alien and amendable for removal. The midnight shift JEO runs record checks and issues detainers if applicable. The JEOs process the alien completely in ENFORCE/IDENT, and prepare Forms I-213 and other charging documents; they issue a detainer but do not serve the aliens with any charging or removal documents.

When the JEOs have immigration-related questions they normally consult with the IEAs assigned to MCCI. The JEOs stated if an IEA is not present, they can communicate telephonically with the SDDO or the IEAs at the EDF. When the JEOs encounter a suspected alien claiming to be a United States citizen, they immediately notify the IEAs per ICE policy at MCCI. They also immediately notify the IEAs after a detainer has been placed.

The IEAs at MCCI initially review the JEOs' work product before it is sent to the SDDO for final review and signature on the immigration charging documents. Cases that involve a review for legal sufficiency from the ICE Office of the Principal Legal Advisor (OPLA), such as lawful permanent residents and re-entry after deportations, are processed and handled by the CAP IEAs assigned to MCCI. The IEAs also refer aliens amenable to Federal criminal prosecutions to the FOD/Newark Violent Criminal Alien Section (VCAS).

If aliens do not bond out on their criminal cases, they remain in Monmouth County custody until the case is adjudicated. If convicted, the aliens serve their sentences before being released to

ICE pursuant to the detainees filed at the time of booking into MCCI. If aliens are released on bail from Monmouth County and amenable for removal, ICE assumes custody and serves them with the charging and removal documents prepared by the JEOs. Immigration detention decisions such as to issue a bond or release the alien are made by the SDDO.

During the initial 287(g) processing, JEOs provide the detainees the MCSO inmate handbook, which does not include information on 287(g) complaint procedures. Once the alien's state or local charge is adjudicated and they are turned over to ICE custody, they are provided with the ICE Detainee Handbook which explains the complaint reporting procedures. The JEOs explained once the detainee physically enters ICE custody in Newark, New Jersey, they are provided with all of the charging documents and documentation relating to the removal process.

If an arrestee has limited English proficiency and speaks Spanish, the JEOs have been using an inmate trustee who speaks Spanish to conduct biographical interviews on the Forms I-213 (**Area of Concern IS-3**). If the foreign national speaks a language other than English or Spanish, the JEOs use the DHS translation line.

The IEAs are made aware of the issuance of a detainer each weekday morning. If a detainer is issued after hours or on weekends, ICE is notified of the detainer the following weekday morning (**Deficiency SOP-2**), rather than within 24 hours as required by the MOA.

FOD/Newark corrected this by issuing an SOP stating, "E-mail notifications will be made to ICE IEAs and SDDOs on any detainees placed where the next duty day will not be within 24 hours. (examples: weekends starting at 1600 hours on Friday through 1000 hours Sunday or Monday when there exists a federal holiday preceding a weekend, in addition, if the federal Holiday is on a day in the middle of the week or the office is closed due to a snow day or emergency.)" The SDDO stated he made the JEOs aware of this procedure and they are currently following it.

Blank and created A-Files are maintained at the MCCI in a locked file cabinet in a room shared by the IEAs, JEOs, and MCSO COs assigned to the classifications unit. At the time of OPR's inspection, the A-Files were stored in a locked file cabinet that both the IEAs and JEOs could access (**Deficiency SLA-3**). OPR directed the IEAs to maintain sole custody of the key to the file cabinet. FOD/Newark management agreed to this and the deficiency was corrected at the time of the inspection.

OPR inspected the 287(g) processing area and determined MCSO had the necessary equipment for processing aliens, to include two working IDENT/ENFORCE terminals. The processing area also had the required complaint procedure posters displayed in English and Spanish. The JEOs were using the latest 287(g) Processing Guide, Version 3.0 (March 18, 2011) to process the aliens.

## **287(g) PROGRAM STATISTICS**

The MOA requires the program to focus on criminal aliens and prioritize removal of the most serious violators. According to an ENFORCE report dated July 19, 2011, the MCSO 287(g) program processed 108 aliens in FY2010 and 102 in the first three quarters of FY2011. From inception to the date of review, MCSO has processed 210 aliens for removal from the United States. MCSO, one of just two 287(g) programs in New Jersey, processed 210 of the 716 total

aliens processed since FY2010 by these programs, or approximately 29 percent of all aliens processed for removal by 287(g) officers in New Jersey.

The chart below provides details on the 102 aliens processed for removal by MCSO in the first three quarters of FY 2011. The offense levels ICE uses to prioritize enforcement efforts appear in the chart and are explained more fully below, with the highest priority being Level 1, then Level 2, etc.

<b>FY 2011 MCSO 287(g) Statistics*</b>	<b>Total Aliens Processed for Removal</b>	<b>% of Total Aliens Processed for Removal</b>	<b>Number of Criminal Aliens</b>	<b>Turned Over to ICE Without Prosecution</b>	<b>Number of Aliens' Cases Dismissed</b>
Level 1	29	28%	12	0	0
Level 2	23	23%	4	0	0
Level 3	37	36%	15	0	0
Traffic DUI	1	1%	1	0	0
Traffic Other	12	12%	8	0	0
None	0	0%	0	0	0
No Data	0	0%	0	0	0
<b>TOTAL</b>	<b>102</b>	<b>100%</b>	<b>40</b>	<b>0</b>	<b>0</b>

\*This statistical summary is for FY2011 and was prepared from data queried from ENFORCE on July 19, 2011. This information is dynamic in nature and therefore, subject to change upon a subsequent query.

ICE statistics showed that 40 (39%) of those aliens have been identified as criminals. ICE defines a criminal alien as “[a]n alien who has been convicted of a crime, whether in the United States or overseas, so long as the crime is cognizable in the United States. Aliens charged with, but not convicted of, a crime are not criminal aliens.” It is important to note that criminal identifications will increase if state and local charges are adjudicated and properly entered into ENFORCE.

## CASE FILE REVIEW

OPR reviewed ENFORCE statistics provided by the ERO 287(g) Unit and 15 randomly-sampled Forms I-213 completed in ENFORCE by JEOs in FY 2011. OPR reviews past cases to determine whether they were properly coded to provide accurate statistical information to ICE management. To assist with the review, OPR used the 287(g) Processing Guide, Version 3.0 (March 18, 2011). ERO provided this guide to the 287(g) programs to outline the proper procedures to enter an alien encounter into the ENFORCE system.

This review included the method of apprehension code, which indicates the manner in which aliens are encountered. OPR found that all 15 Forms I-213 reviewed had the proper method of apprehension code. OPR also reviewed the G-23 Line Code, which indicates the reason for an alien encounter. ERO has assigned the 287(g) program the following eight G-23 Line Codes:

- (b)(7)(E) – Foreign nationals who have been arrested for, charged with or convicted for a narcotics trafficking offense.
- (b)(7)(E) – Foreign nationals who have been arrested for, charged with or convicted for criminal activity defined as an aggravated felon per Section 101(a)(43) of the Act.
- (b)(7)(E) – Foreign nationals who have been arrested for, charged with or convicted of other removable offenses.
- (b)(7)(E) Foreign nationals who have been arrested/encountered for GANG related activity irrespective of underlying criminal activity.
- (b)(7)(E) ICE Absconders. This should only be used by the task force programs, due to a criminal arrest causing any encounter with a 287(g) jail enforcement officer (JEO). JEOs should use a “PROCESSING DISPOSITION” of “BAG and BAGGAGE” to indicate the identification of an ICE absconder or fugitive.
- (b)(7)(E) – Foreign nationals who have been arrested for, charged with or convicted of non-removable offenses.
- (b)(7)(E) – Immigration-based encounters only (TFO Only-Not to be used by Detention Model).
- (b)(7)(E) – Immigration encounters related to human smuggling to identify the Principals arrested pursuant to Federal, State or Local human smuggling statutes. (TFO Only-Not to be used by Detention Model).

According to the 287(g) Processing Guide, “287(g) users should base the selection of the G-23 line code on the definitions presented in the guide, as it allows for use in arrest or charged situation only. Also, the G-23 line code is based on the existing CRIMINAL HISTORY or the current offense if NO CRIMINAL HISTORY exists.” The aliens’ criminal histories were listed on the Forms I-213 reviewed. OPR found one error in G-23 line coding (**Deficiency SOP-1**). OPR and the IEAs reviewed the G-23 line code error record in ENFORCE. The IEAs determined that the one coding error was missed during a review of the original records. OPR explained the error to the IEAs who advised they would correct the issue and implement proper procedures.

Correct data entry in ENFORCE is important because the database is the only ICE repository that captures statistical information related to the processing of criminal and non-criminal aliens. If data is not entered properly, the statistical information will not accurately portray the work of 287(g) programs. This statistical information is provided to senior ERO and ICE management, as well as Congress and other external stakeholders.

OPR also reviewed encounters based on ICE offense levels, which ensures compliance with the MOA. OPR found all Forms I-213 had the proper offense levels applied.

ICE requires that 287(g) programs prioritize their screening by offense levels; however, if the law enforcement agency has the resources, ICE supports screening all foreign-born individuals, as MCSO does for those booked into MCCI. FOD/Newark makes all bond- and detention-related decisions, and to date has been able to accommodate the number of aliens processed under the MCSO 287(g) program. The offense levels are defined by ICE as:

**Level 1:** Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;

**Level 2:** Aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering;

**Level 3:** Aliens who have been convicted of or arrested for other offenses.

ICE added four additional values to ENFORCE to further delineate the criminality of a 287(g) encounter. Those values are: Traffic – DUI, Traffic – Other, None and NO DATA. “Traffic – DUI” and “Traffic – Other” are used to differentiate between Driving Under the Influence (DUI) and simple traffic offenses, thereby providing a granular perspective on the traffic offenses not captured by the original severity levels. “None” is to be used exclusively by task force models to identify non-criminal encounters or to identify those individuals arrested pursuant to Federal/state/local immigration charges. A “NO DATA” entry indicates that a record was not completed properly, and is a system default value in the absence of any other data value.

OPR reviewed the originating arrest charges for the aliens, which is reflected on the Forms I-213. This ensures the alien was charged with a violation of a state or local criminal charge prior to being referred for immigration screening. The narrative sections of the Forms I-213 prepared by the JEOs were clear and sufficient.

## TRANSLATION SERVICES

The MCSO MOA, Section XV, Interpretation Services, provides that “Participating MCSO personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified Foreign language interpreters will be provided by the MCSO as needed. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.”

JEOs were aware of the DHS translation line and OPR observed the translation line telephone number posted in the processing room. However, JEOs have been using an inmate trustee who speaks Spanish to conduct biographical interviews on the Forms I-213 in lieu of using the translation lines provided to them (**Area of Concern IS-3**). OPR confirmed JEOs only conduct biographical interviews; ICE staff serves all charging and removal documents.

If JEOs encounter a foreign national who does not speak English or Spanish, they use the translation line. JEOs currently do not document the name of who the translator was in the narrative portion on the Forms I-213, nor do they document what language the interview was conducted in (**Area of Concern IS-2**). OPR discussed this with the JEOs and FOD/Newark management and they agreed to document the information on future Forms I-213.

## **PUBLIC RELATIONS**

### **PUBLIC INFORMATION OFFICE**

OPR interviewed the MCSO Public Information Officer (PIO) and the ICE Public Affairs Officer (PAO). The MOA requires the MCSO to coordinate with the ICE Office of Public Affairs prior to releasing any statistics or other information relating to or exchanged under the MOA, as well as information regarding actions taken under the MOA.

The ICE PAO stated he has had very few media queries to handle with MCSO's PIO since the program's inception over a year ago. When MCSO first signed onto the 287(g) program in 2009, there were concerns in Monmouth County as to what the program was all about and how it worked, but there has not been anything in the past year. The PAO stated MCSO rarely issues any news releases related to their 287(g) program.

The PIO is the primary point of contact for all immigration-related inquiries that come to the MCSO. The PIO was familiar with the current MOA and the requirement to coordinate with ICE. All 287(g) program operations and issues are examined by the PIO who prepares draft media releases and forwards them to the two ICE IEAs assigned at the MCCI as well as the ICE PAO in Newark, New Jersey for approval and release. The PIO has an open line of communication with the ICE PAO and has never had any problems contacting him.

The PIO is involved in Monmouth County community outreach programs and has been instrumental in helping at least two local news media organizations, the Asbury Press and a local Latino newspaper, *Nosotros Periodico*, in understanding the MCSO's 287(g) program fundamentals.

### **THIRD PARTY MATERIAL**

OPR analyzed publicly-available open source information including local and national news media and discovered the following:

On October 8, 2008, the News Transcript posted an article highlighting the murders of three college students by an undocumented alien in Newark. See <http://nt.gmnews.com/news/2008-10-08/letters/018.html>. The crime drew wide public outcry against undocumented immigrants and much criticism of perceived inaction from federal and local authorities regarding immigration law enforcement. The article references the former MCSO Sheriff's application of the 287(g) program.

The murders also prompted the New Jersey Attorney General (AG) to issue Law Enforcement Directive No.2007-3. See <http://www.nj.gov/lps/dcj/directiv.htm>. In Section B, Item No.7 of the directive "Provisions Applicable to All Other Section 287(g) Officers" the AG states officers may not exercise federal law enforcement authority under Section 287(g) of the INA unless and until an officer has arrested an individual for a violation of an indictable offense, or for driving while intoxicated, under state law.

On September 3, 2009, Feetin2Worlds.org posted an article highlighting the New Jersey AG's warning police against profiling immigrants under the 287(g) program. According to the article, the AG expressed the principal mission of law enforcement officers in New Jersey is to enforce criminal laws and protect the communities that they serve, not to enforce federal immigration laws. The AG further warned that enforcement of immigration laws by local police can destroy the force's relationship with the community, a point repeatedly made by police chiefs across the country in the face of the increased crackdown on illegal immigration. See <http://news.feetintwo worlds.org/2009/09/03/new-jersey-attorney-general-warns-police-against-profiling-immigrants-under-287g-program/>.

On September 11, 2009, *Nosotros Periodico* posted an article highlighting some of the same concerns. This article included a copy of a letter dated August 28, 2009 from the New Jersey AG to the Sheriff of Monmouth County. According to the letter, the AG was aware that ICE had agreed to proceed with MCSO's request to participate in the 287(g) program. The AG warned against racial profiling and police interactions turning citizen encounters into immigration inquiries. The letter stated that AG Directive 2007-3 allows MCSO to exercise federal authority under 287(g) with respect to an individual detained at the Monmouth County Jail, and that authority must be exercised in a manner consistent with all State laws, regulations and AG Directives, including AG Directive 2005-1, which prohibits law enforcement from engaging in racially-influenced policing. Pretext arrests designed to trigger an immigration inquiry under the Directive, or exercise of authority under Section 287(g), are prohibited. In the letter, the AG also ordered any law enforcement officer that exercises authority under Section 287(g) to submit monthly reports to the Director of the Division of Criminal Justice, as required by AG Directive 2007-3. The Directive requires LEOs to document biographical information on the individual queried, the location of the encounter, basis of the arrest, and the outcome of the inquiry. See

(b)(7)(e)

## **LEA COMPLIANCE WITH MOA**

OPR interviewed MCSO management and staff, to include the Deputy Warden, Lieutenant, JEOs, two Sergeants, a Supervising Investigator with the Investigation Unit (IU), and the Public Information Officer (PIO).

## **MCSO MANAGEMENT AND STAFF**

MCSO management relayed their strong support for the 287(g) program; they believe it has increased public awareness of the importance the MCSO places on immigration enforcement in their jurisdiction. MCSO management believes they have enough 287(g) officers to handle the current level of immigration cases.

A Lieutenant oversees a variety of areas of responsibility to include the 287(g) program, but day-to-day management of the program has been delegated to two Sergeants. The Sergeants are 287(g)-certified and have supervised the MCSO 287(g) program since its inception; they serve as the immediate supervisors of the JEOs. One JEO is assigned full-time to the 287(g) processing area. One JEO is assigned part-time to inmate classifications, and two part-time to booking. The Lieutenant believes they have a good working relationship with the ICE personnel assigned to MCCI and communication between the two agencies is excellent at all levels from the two IEAs at MCCI to the CAP SDDO at FOD/Newark. MCSO management commended the ICE personnel assigned to MCCI on their demonstrated knowledge of immigration law and their willingness to assist the JEOs at all times.

The JEOs attended the 287(g) academy in January 2010 in Charleston, South Carolina; one of the officers graduated number one in the class. The JEOs volunteered for the program and were selected based on their knowledge of booking and classifications, including their overall experience as COs at MCCI. The JEOs are pleased with their assignment even though the position has no incentive pay or additional benefits. Management believes being assigned to a 287(g) position is career enhancing, yet there are no other incentives offered by the MCSO for participation in the program. The only JEO who left the program did so for a promotion.

MCSO management and JEOs are aware of the reporting requirements for allegations of misconduct. No such complaints have been made. If an allegation of misconduct is made against a JEO, the information would be immediately forwarded to the JEO's supervisor and simultaneously forwarded to the MCSO's Investigation Unit and to the FOD/Newark Office and OPR field office in Newark, New Jersey.

MCSO Management did not know whether any of the JEOs spoke Spanish, but for the purpose of translation needs, management stated MCSO has other Spanish-speaking officers and inmates (**Area of Concern IS-3**). The Lieutenant advised OPR of a private translation service available to the MCSO to assist their officers in conducting interviews. The translation service is always available and upon request can provide translation services for many different languages. Presently only the medical staff at MCI uses the private translation service; the JEOs use an inmate trustee or DHS translation line for translations. OPR directed the JEOs to use a certified translator or the translation line, even if it is only for translation of biographical information on Forms I-213. FOD/Newark management and the JEOs agreed to the recommendation.

OPR reviewed Virtual University training records and all 287(g) JEOs are current with the required training. All of the 287(g) officers interviewed were in possession of their Department of Homeland Security-issued credentials as well.

## **INVESTIGATION UNIT (IU)**

The MCSO Investigation Unit (IU) handles all internal affairs allegations at MCSO as well as gang investigations in MCCI. OPR interviewed the Supervising Investigator (Investigator) of the IU regarding the reporting requirements concerning allegations of misconduct or complaints against 287(g) officers, referenced in Section XII, Liability and Responsibility and Appendix B of the MOA.

The Investigator has been with the MCSO for 25 years, 15 years as an investigator in the IU and one year as a supervisor. He explained he knows what the 287(g) program does and how it works within the sheriff's office, but he has never seen or read the MOA (**Area of Concern CP-1**). There have been no allegations of misconduct against the JEOs and there are no open investigations at this time.

He stated once an MCSO internal affairs investigation is concluded, the IU reports its findings to MCSO management and generates a report detailing the outcome of the investigation. If there were a complaint or allegation of misconduct against a JEO, the 287(g) Lieutenant would forward the complaint to the IU and the Investigator stated he would forward the complaint or allegation to the FOD/Newark field office. The Investigator was not aware that the complaint or allegation also needs to be forwarded to OPR. The Investigator did not have a point of contact for OPR in New Jersey, but stated he would go through the 287(g) Lieutenant for that information. OPR provided the Investigator with contact information for the OPR field office in his area.

## **MONMOUTH COUNTY PROSECUTOR'S OFFICE**

OPR interviewed an Assistant Prosecutor (Prosecutor) with the Monmouth County Prosecutor's Office (MCPO). The MCPO cooperates with the United States Attorney's Office (USAO) by prosecuting cases declined by the USAO, but these are generally bank robbery cases, not immigration cases.

The Prosecutor believes the existence of an ICE detainer is a factor in the disposition of certain cases. For more serious crimes, the existence of an ICE detainer is less important because the MCPO wants a conviction for those crimes. For other cases with weaker evidence, the MCPO may accept a plea to a lesser charge, or accept a sentence of time served, knowing the criminal will be removed from the country.

The current AFOD was the SDDO overseeing MCSO's 287(g) program for two years. He stated that during that time, he met with the MCPO prosecutors and educated them on the importance of and reasoning behind pursuing aliens' criminal cases to completion. He explained a conviction factors against ICE's releasing them into the community with a bond, and helps with the removal process if the alien is encountered again. The AFOD believed the prosecutor's office does not release aliens because of the existence of an ICE detainer.

The MCPO reported one issue where a defendant was indicted, posted bond, and was awaiting trial, but was removed by ICE before the case was adjudicated. If a defendant is removed before the case is adjudicated, the MCPO will issue warrants in case the alien returns.

OPR contacted the CAP DO and the AFOD, copying the Prosecutor, to request that ERO address the issue of how the MCPO can retrieve an alien who is in ICE custody and awaiting removal from the United States to allow the criminal case to be adjudicated.

## **DETAINEE INTERVIEWS**

OPR interviewed the five detainees most recently processed for removal by MCSO JEOs to ascertain their perspective on their encounters with the JEOs and the 287(g) process during the intake procedure. Prior to the interviews, OPR personnel identified themselves to the detainees and explained that the interviews would have no bearing on their current immigration or criminal cases; OPR was not there to obtain any information that would jeopardize their case or appeal process. The detainees had been arrested for variety of charges that range from weapons possession to domestic violence.

The detainees described their encounter with the 287(g) officers as pleasant and described the officers as professional. The MCSO officers identified themselves to the detainees as immigration officers and explained the interview was being conducted for immigration purposes. Two of the detainees spoke English and Portuguese, and were offered a translator if they wanted to conduct the interview in Portuguese. The detainees elected to conduct their immigration interviews in English. The remaining three Spanish-speaking detainees indicated their interviews were conducted in Spanish, but the JEOs used another inmate assigned as a trustee to translate for them (**Area of Concern IS-3**). (The detainee interviews were conducted in English and Spanish by a bilingual OPR Agent.)

While allegation reporting procedure posters were posted in English and Spanish in MCCI's 287(g) processing room, the complaint reporting procedure is not provided in the Monmouth County Inmate Handbook. Once the aliens' state or local cases are adjudicated, they are turned over to ICE and then provided the ICE detainee handbook which contains the reporting procedures.

## **ICE OVERSIGHT**

OPR interviewed ICE management and employees involved with the 287(g) program, including

(b)(7)(E)

OPR found ICE and MCSO have a good working relationship and MCSO produces good work product. The MCSO 287(g) program in most part complies with the MOA. FOD/Newark has assigned several employees to oversee and provide guidance to the JEOs. OPR found this full-time ICE oversight ensures the MCSO program operates consistently with ICE priorities.

## **ICE MANAGEMENT AND STAFF**

FOD/Newark oversees MCSO and one other 287(g) program in New Jersey and has assigned a CAP SDDO to manage those programs. (b)(7)(E) CAP IEAs are located at MCCI and assigned to the MCSO 287(g) program to provide daily guidance to the JEOs. A DO assigned to Proactive CAP in Monmouth County fills in for the IEAs if they are not available. OPR found this oversight supported a good working relationship between ICE and the MCSO.

Overall, ICE management is pleased with MCSO's cooperation with ICE in the operation of the 287(g) program. The new Sheriff supports the program and ICE believes they work well together. Communication between ICE and MCSO is described as good, and the program has run smoothly since its inception.

The AFOD had been assigned to his new position for a week at the time of the review. He had been the CAP SDDO who oversaw MCSO's 287(g) program for the past two years; he had signatory authority over the JEOs' work product. The SDDO has final review of the charging documents. ERO staff believes the JEOs take pride in the work that they do and described the JEO's work product as good; one JEO's work product was described as better than or equal to some IEAs'. There was an open line of communication between the JEOs and ERO personnel who are available 24-hours a day to answer any questions or handle any issues. ERO staff described the JEOs as proficient, efficient, and professional.

The AFOD stated he represented the Field Office Director (FOD) during quarterly meetings with MCSO management, most recently in March 2011. The topics of discussion included how MCSO's program is running; any needs or concerns the employees have, program statistics, training, the allegation/complaint posters, and new 287(g) information from ICE Headquarters.

ICE management was not aware of any disciplinary actions or complaints filed against MCSO 287(g) personnel. The AFOD stated MCSO would contact the SDDO if there was a complaint or allegation, and noted that he has never had to write a memo to the FOD about any problems or issues that occurred at MCSO. A query of OPR JICMS for any open cases involving the MCSO 287(g) program and personnel was negative.

## **APPENDIX**

### **AREAS OF CONCERN**

#### **Complaint Procedure (CP)**

##### **Area of Concern CP-1**

In accordance with the MCSO MOA, Appendix B, Complaint Procedure, “if any participating MCSO personnel are the subject of a complaint or allegation of any sort that may result in that individual receiving employer discipline, the MCSO shall, to the extent allowed by State law, immediately notify ICE of the existence and nature of the complaint or allegation. The ICE notifications should be made to the Special Agent in Charge and the OPR points of contact in New Jersey.” At the time of OPR’s review, MCSO’s Investigation Unit was unfamiliar with the specific reporting requirements concerning allegations or complaints.

**RESOLVED:** OPR explained what the reporting requirements were to the Supervising Investigator and this concern was corrected during the inspection.

#### **Interpretation Services (IS)**

##### **Area of Concern IS-2**

The MCSO MOA, Section XV, Interpretation Services, provides that, “The MCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.” It was unclear from reviewing Forms I-213 whether translators had been used by the JEOs and in what language the interview was conducted. As a best practice, OPR recommended to ICE and MCSO that JEOs document the names of translators in their report narratives since they only create Forms I-213 and charging documents but don’t serve aliens with the legal documents.

**RESOLVED:** At the time of the inspection, the SDDO agreed with the OPR recommendation and instructed the JEOs to institute the recommended change.

##### **Area of Concern IS-3**

The MCSO MOA, Section XV, Interpretation Services, provides that, “The MCSO will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.” The JEOs were using an inmate

trustee who speaks Spanish to translate biographical information on the Forms I-213. If the alien speaks any language other than English or Spanish, the JEOs use the translation line. Since the JEOs only prepare Forms I-213, charging documents, and issue detainers, but do not serve aliens with charging or removal documents, this is an area of concern rather than a deficiency.

**RESOLVED:** OPR directed the JEOs to use a certified translator or the translation line, even if it is only for translation of biographical information on Forms I-213. FOD/Newark management and the JEOs agreed to the recommendation.

## **DEFICIENCIES**

### **Standard Operating Procedures (SOP)**

#### **Deficiency SOP-1**

In accordance with the MCSO MOA dated October 12, 2010, Appendix D - Detention Model, Supervision, “On a regular basis, ICE supervisors are responsible for conducting an audit of the IDENT/ENFORCE computer system entries and records made by the MCSO’s officers.” Upon review and auditing of the IDENT/ENFORCE computer system entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for MCSO.” OPR found one G-23 line coding error during its audit of 15 Forms I-213.

**RESOLVED:** At the time of the review, the IEAs and OPR reviewed the G-23 line code error record in ENFORCE. The IEAs determined that the one coding error was missed during a review of the original records. OPR explained the error to the IEAs who advised they would correct the issue and implement proper procedures.

#### **Deficiency SOP-2**

In accordance with the MCSO MOA dated October 12, 2010, Appendix D - Detention Model, Supervision, and “The MCSO shall provide notification to the ICE supervisor of any detainees placed under 287(g) authority within 24 hours.” If a JEO issues a detainer after hours on a Friday night or on a weekend, ICE is not notified until the following Monday morning.

**RESOLVED:** FOD/Newark corrected this by issuing a SOP stating, “E-mail notifications will be made to ICE IEAs and SDDOs on any detainees placed where the next duty day will not be within 24 hours. (examples: weekends starting at 1600 hours on Friday through 1000 hours Sunday or Monday when there exists a federal holiday preceding a weekend, in addition, if the federal Holiday is on a day in the middle of the week or the office is closed due to a snow day or emergency).” The SDDO stated he made the JEOs aware of this procedure and they are currently following it.

#### **Service Level Agreement (SLA)**

#### **Deficiency SLA-3**

In accordance with FY2011 USCIS/ICE Service Level Agreement-Version 1.0 (Oct. 10, 2010), the Additional Services/Responsibilities section: “Local law Enforcement obtaining A-Files as part of the 287(g) Program-ICE Field offices must maintain custody of the A-File at all times using the National File Tracking System. Officers with the 287(g) program may not keep an A-File in their possession.” At the time of the review, blank and created A-Files were maintained at the MCCI in a locked file cabinet in a room shared by the IEAs, JEOs, and MCSO COs assigned to the classifications unit. Both the IEAs and JEOs had a key to the file cabinet.

**RESOLVED:** OPR directed the IEAs to maintain sole custody of the key to the file cabinet. The SDDO agreed to this and the deficiency and was corrected at the time of the inspection.

[Use memo format with FOD signature and date.]

FOR: (b)(6) (b)(7)(c)  
Acting Unit Chief, 287(g) Unit

FROM: [name]  
[Field Office Director]  
[AOR]

SUBJECT: [LEA] Office of Professional Responsibility 287(g) Review Findings Report  
Corrective Plan of Action

On [dates], the Office of Professional Responsibility (OPR) 287(g) Inspections Unit conducted a review of the [LEA] 287(g) program and submitted their findings. The following information addresses the OPR review plan of action for each identified area of concern and/or deficiency, to include correction actions, mitigation plans, and status.

***Area Of Concern or Deficiency:*** [area of concern or deficiency]

**Corrective Action:** [describe the methodology for rectifying the area of concern or deficiency]

**Mitigation Plan:** [describe a plan to assure corrective action was, or will be, implemented, and a mechanism for follow up to prevent replication of this area of concern or deficiency in the future]

**Status:** [provide a timeline for the resolution and follow up]

[repeat for each area of concern or deficiency]

From: (b)(6) (b)(7)(c)  
To: FW: ES Note: Newark PD Detainer Policy  
Subject: Monday, October 28, 2013 1:15:02 PM  
Date: [ES Note Newark PD Detainer Policy.docx](#)

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For CAP FOIA

From: (b)(6) (b)(7)(c)  
Sent: Friday, August 16, 2013 5:19 PM  
To: (b)(6) (b)(7)(c)  
Cc:  
Subject: ES Note: Newark PD Detainer Policy

(b)(6) (b)(7)(c)

The attachment above contains the ES Note requested for the Newark PD Detainer Policy.

V/R,

(b)(6) (b)(7)(c)  
Deputy Field Office Director  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
614 Frelinghuysen Avenue (b)(6) (b)(7)(c)  
Newark, NJ  
Ofc (973) 776-  
Cell (973) 323- (b)(6) (b)(7)(c)  
Fax (973) 623-

From: (b)(6) (b)(7)(c)  
Sent: Friday, August 16, 2013 10:44 AM  
To: (b)(6) (b)(7)(c)  
Cc:  
Subject: FW: Star-Ledger query

(b)(6) (b)(7)(c) we work to put together an ES similar to the attached. We need a summary of what the ordinance will do to your business in NEW. The NOL or Orleans Parish attached ES is similar to what we are looking for. We will request the numbers from the LESA unit for inclusion in the ES

(b)(7)(e)

(b)(6) (b)(7)(c)  
Deputy Assistant Director, Field Operations  
ICE/Enforcement and Removal Operations  
(202) 732- (b)(6) (b)(7)(c)  
(206) 354- (b)(6) (b)(7)(c)  
(b)(6) (b)(7)(c)

From: (b)(6) (b)(7)(c)  
Sent: Wednesday, August 07, 2013 2:10 PM  
To: (b)(6) (b)(7)(c)  
Cc:  
Subject: Star-Ledger query

(b)(6) (b)(7)(c)

Yesterday even (b)(6), (b)(7)(c)lic Affairs Officer, received an inquiry from a reporter. The Newark Star-Ledger reporter inquired about what he says is, "a new Newark Police Department policy, which says in writing that the agency "shall decline all ICE detainer requests?" He asks our "general reaction," and if we have received this kind of response from other departments in NJ, if this at all hinders the concept of the Safer Communities initiative and how many detainer requests, roughly, do you make of Newark Police each year?"

FNE has not received notification or been advised in any capacity by the Newark Police Department of any change toward detainees. However, we have a CAP officer that regularly does liaison work with the Newark Police Department and the Prosecutor's Office. The officer recently observed an internal Newark PD memorandum indicating that ICE detainer requests shall be declined.

FNE and local OCC have consented to the response to the media inquiry: "ICE Enforcement and Removal Operations (ERO) Newark is unaware of any official change in Newark Police Department's policy. ICE ERO has an excellent, professional working relationship with the Newark Police Department."

V/R,

(b)(6) (b)(7)(c)  
Deputy Field Office Director  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
614 Frelinghuysen Avenue (b)(6) (b)(7)(c)  
Newark, NJ  
Ofc (973) 776- (b)(6) (b)(7)(c)  
Cell (973) 323- (b)(6) (b)(7)(c)  
Fax (973) 623-

**From:**(b)(6) (b)(7)(c)  
**Sent:** Wednesday, August 07, 2013 10:14 AM  
**To:**(b)(6) (b)(7)(c)  
**Cc:**(b)(6) (b)(7)(c)  
**Subject:** Re: Star-Ledger query

Concur with this statement?

"ICE Enforcement and Removal Operations (ERO) Newark is unaware of any official change in Newark Police Department's policy. ICE ERO has an excellent, professional working relationship with the Newark Police Department."

(b)(6) (b)(7)(c)  
Public Affairs Officer  
U S. Immigration and Customs Enforcement (ICE)  
Newark, NJ  
O: 973-776-  
O: 973-776-  
M: 973-445-  
(b)(6) (b)(7)(c)

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**From:**(b)(6) (b)(7)(d)  
**Sent:** Wednesday, August 07, 2013 3:01 AM  
**To:**(b)(6) (b)(7)(c)  
**Cc:**(b)(6) (b)(7)(c)  
**Subject:** RE: Star-Ledger query

Never heard of this (b)(6) (b)(7)(c) can check Thanks

-----Original Message-----

**From:**(b)(6) (b)(7)(c)  
**Sent:** Tuesday, August 06, 2013 07:37 PM Eastern Standard Time  
**To:**(b)(6) (b)(7)(c)  
**Cc:**(b)(6) (b)(7)(c)  
**Subject:** Star-Ledger query

(b)(6) (b)(7)(c)

Reporter asks about what he says is, "a new Newark Police Department policy, which says in writing that the agency "shall decline all ICE detainer requests?" Reporter wants:

general reaction?  
- if you have received this kind of response from other departments in NJ  
- if this at all hinders the concept of the Safer Communities initiative  
- how many detainer requests, roughly, do you make of Newark Police each year?

I will call reporter tonight and tell him we are working on a response and will have tomorrow

Thanks.  
(b)(6) (b)(7)(c)  
(b)(6) (b)(7)(c)  
Public Affairs Officer  
U S. Immigration and Customs Enforcement (ICE)  
Newark, NJ  
O: 973-776-  
O: 973-776-  
M: 973-445-  
(b)(6) (b)(7)(c)

Pages 191 through 192 redacted for the following reasons:

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(b)(5)

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Criminal Alien Removal Initiative Operational Plan and Checklist  
**Date:** Monday, October 28, 2013 1:03:29 PM  
**Attachments:** [Criminal Alien Removal Initiative Plan FINAL \(2\) \(2\).docx](#)  
[John Tsoukaris Authorization 050912.pdf](#)  
[Newark GUGOPS dockets.xls](#)

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For CAP FOIA

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, May 10, 2012 2:16 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** Criminal Alien Removal Initiative Operational Plan and Checklist

Hello,

The attachments contain the requested information. The operational plan draft was annotated with the Newark Field Office's information and annex; a signature authorization page is also provided.

The excel attachment has the field office's chain of command and team breakdowns, inclusive of the Fugitive Operations and CAP programs.

Please contact me or AFO (b)(6), (b)(7)(C) if you have any questions.

Thank you.

(b)(6) (b)(7)(c)

Assistant Field Office Director  
Newark Field Office  
Fugitive Operations Program  
153 Halsey Street. 8th Floor  
Newark, NJ, 07102  
Office - (973) 776 (b)(6) (b)(7)(c)  
Cell - (973) 332-

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---

**From:** ERO Taskings  
**Sent:** Tuesday, May 08, 2012 5:59 PM

**Subject:** Criminal Alien Removal Initiative Operational Plan and Checklist

*This message is being sent on behalf of David J. Venturella, Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors

**Subject:** Criminal Alien Removal Initiative Operational Plan and Checklist

As discussed during today's FOD call attached is the Criminal Alien Removal Initiative Operational Plan and Checklist. Please complete and submit your annex to the Operational Plan to Unit Chiefs (b)(6) (b)(7)(c) and (b)(6) (b)(7)(c) by COB on Thursday May 10, 2012.

Please contact (b)(6) (b)(7)(c) at 202-730-(b)(6) (b)(7)(c) with any questions.

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

# **Enforcement and Removal Operations**

## **Criminal Alien Removal Initiative**

### **LIMITED OFFICIAL USE**

#### **HEADQUARTERS (HQ) APPROVED OPERATION PLAN:**

#### **NATIONAL FUGITIVE OPERATIONS PROGRAM**

1

**Law Enforcement Sensitive-Official Use Only**

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**Criminal Alien Removal Initiative**  
**Dates: May 14, 2012– September 28, 2012**

**I. Situation**

Enforcement and Removal Operations (ERO) is experiencing a shortfall in criminal removals for the fiscal year. An augmentation plan to create additional enforcement teams is a solution within the ERO sphere of control to direct enforcement activities toward criminal arrests in order to increase the apprehension of criminal aliens who are readily removable in the remaining five months of this year.

The Fugitive Operations Teams (FOTs) under the National Fugitive Operations Program (NFOP) are the primary ERO field enforcement component conducting investigative operations to locate and arrest at-large aliens for removal from the U.S.

This augmentation plan will create Fugitive Operations Auxiliary (FOX) Teams, led by existing FOT staff, and operating under the same NFOP support structure, to target criminal aliens for arrest and removal. The scope of this plan is focused on the creation and deployment of FOX Teams in a coordinated effort with the FOTs to increase arrests of identified at-large criminal targets.

The Criminal Alien Removal Initiative will utilize the existing 104 FOTs located within the 24 AORs and agents from Border Patrol Sectors across the country. Resources from the Criminal Alien Program (CAP), Joint Criminal Alien Removal Teams (JCART), and Violent Criminal Alien Section (VCAS), as well as from the Detained/Non-Detained units will also participate in this enforcement operation.

The combined resources from the existing FOT and USBP resources will result in 154 fully operational teams. Each local team will target removable criminal aliens within their AOR.

Prior to commencement of the operation, teams will evaluate lead information to identify criminal aliens for arrest. Immigration and Customs Enforcement (ICE) will collaborate with U.S. Citizenship and Immigration Services, Interpol, the U.S. Marshals Service, and state and local law enforcement to evaluate criminal alien case referrals for inclusion in the operation. To further criminal arrest and removal efforts, target cases that may be amenable to criminal prosecution will be presented to the U.S. Attorney's Office (USAO) in pursuit of criminal arrest warrants to include, but not limited to, 8 USC 1326 and 8 USC 1253, as resources permit and per current guidance. Prosecutions for other offenses will be guided by the August 20, 2007 memorandum, ERO/HSI Protocols.

The Field Office Director (FOD) is directed to coordinate with the local Homeland Security Investigations (HSI) Special Agent in Charge (SAC) and the Chief Patrol Agent of the local Border Patrol Sector, as well as other federal, state and local law enforcement agencies (LEAs) when necessary. FODs should coordinate with the United States Marshal Service (USMS) Regional Task Forces, local USMS task forces, and other law enforcement partners. The local probation and parole offices should also be consulted in target development and probationary 4<sup>th</sup> amendment waiver considerations during operations.

This operation will consist of up to five months of enforcement activity executed simultaneously across the 24 ERO field offices throughout the country from May 14 – September 28, 2012.

The Executive Associate Director (EAD), Deputy Executive Associate Director (Deputy EAD), Assistant Director (AD) for Enforcement and the Field Office Director (FODs) have been briefed on this operational plan, and support its execution.

#### A) Targeted Aliens – (7,700<sup>1</sup> per month)

Th (b)(7)(E)FOTs and (b)(7)(E)OX Teams will target approximately 7,700 criminal aliens per month nationwide, or (b)(7) cases per team. Teams will develop leads, generate target folders and obtain legal sufficiency as per daily operational requirements under the guidance and supervision of a Supervisory Detention and Deportation Officer (SDDO) and Assistant Field Office Director (AFOD). All convicted criminal aliens will be considered for targeting in this enforcement initiative.

The Fugitive Operations Support Center (FOSC) will provide geo-targeting data prior and during the operational phase in order for the existing FOTs to prepare sufficient cases for the operation. Within 30 days of the commencement of arrest activities, it is expected that the field offices will be able to sustain case development work locally; the FOSC will then be available to provide focused lead development and targeting support as requested by the field and HQ NFOP.

Enforcement actions may also be taken in this operation for other aliens encountered who are determined to be removable and found to present a public safety threat or otherwise meet ICE enforcement priorities, as provided in this operation plan. If safe, non-targeted aliens encountered during the operation should be checked for criminal and immigration histories while at the arrest location or taken to an ERO office and checked as quickly as

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<sup>1</sup> Focus on targets may be subject to change based on HQ operational directives. Subsequent changes relating to target focus and scope will not require a new operational plan.

possible. Based on the Prosecutorial Guidelines, appropriate charging and detention decisions should be made on a case by case basis.

## B) Hours of Operation

Prior to the beginning of the operation, team members will be briefed on operational objectives and/or daily activities. Team members will conduct necessary pre-operational surveillance as resources permit. Operational hours will be from [REDACTED] (b)(7)(E) hrs each day. Although the operational hours for conducting arrests will be from [REDACTED] (b)(7)(E) hrs daily, the team leader(s) will determine the actual duty hours. No operation will begin prior to [REDACTED] (b)(7)(E) s or after [REDACTED] (b)(7)(E) rs, unless the FOD has reviewed the case and given approval based on specific justifications for each case (**documented in target folders**). All activities will be conducted pursuant to the National Fugitive Operations Program (NFOP) Policy and Procedures. Supervisory staff will change shift hours as needed in order to facilitate the operation.

## C) Local Situation

The [REDACTED] (b)(7)(E) FOT/FOX will conduct the operation together with other resources from local CAP, JCART and VCAS units, and Detained/Non-Detained units, as well as from assisting Law Enforcement Agencies (LEAs). The FODs have committed all necessary resources within their jurisdictions. The FOD may re-direct the allocation of FOX Team resources within the AOR as determined by operational needs and the results of arrest activities. (**See attachment for FOT and FOX Team deployment**)

## D) Operational De-Confliction

Homeland Security Investigations (HSI) has been advised of the operation and has agreed to participate. All targets will be queried in [REDACTED] (b)(7)(e) [REDACTED] (b)(7)(e) to ensure de-confliction with HSI and other law enforcement entities prior to taking any enforcement action against a target.

## E) Local Law Enforcement Agencies (LEAs)

The FOT/FOX Team SDDO/Team Leader shall advise local LEAs prior to the execution of daily enforcement activities. The standard operating procedure for local law enforcement agencies will vary from location to location and should be established through proactive liaison. During the course of the operation, if a target is found to be in an area outside the jurisdictions originally notified as part of the plan, every reasonable effort will be made to notify the newly affected LEA

prior to the FOT/FOX Team's arrival, or as soon as possible thereafter. In exigent circumstances, it may be prudent not to provide notification of impending enforcement operations within your jurisdiction. (**If this is the case, the FOD must be made aware of these circumstances and concur with written justification not to notify the local LEAs.**)

#### F) Sensitive Locations and 4<sup>th</sup> Amendment

Potential FOT/FOX Team activities near locations designated as sensitive as defined in the October 24, 2011, Enforcement Actions at or Focused on Sensitive Locations policy memorandum, will be avoided unless operationally necessary, and then only when in compliance with the memorandum. Pre-planned operations conducted near a sensitive area will be reviewed and approved in writing by the FOD and Headquarters according to the memorandum, and outlined in this section of the operational plan. All personnel assigned to the operation will be briefed on the policy prior to the operation and that briefing documentation will be attached to the plan.

All personnel assigned to the operation must be current on 4<sup>th</sup> Amendment training requirements. In addition, FODs may choose to seek additional training by the Chief Counsel prior to the operation as is the case with national operations. All United States Border Patrol (USBP) agents will be provided with 4<sup>th</sup> Amendment, Prosecutorial Discretion, Sensitive Locations and handling of juveniles training prior to conducting enforcement activities.

#### G) Community Issues or Politically Sensitive Issues

HQERO will provide the Office of Public Affairs (OPA) and Office of Congressional Relations (OCR) with the specifics of the operation, to include the operational dates and location of the initiative. If the operation can reasonably be expected to result in a negative community response, this must be specifically communicated to these offices and the Assistant Director for Field Operations.

#### H) Juveniles

The presence of juveniles at a target location, or in the care of a targeted alien, will be explored during initial investigation, surveillance and diligent research of available indices. In the event that minors are identified, or likely to be encountered at a particular residence, family members, care providers and community, as well as state and county juvenile resources, will be identified and a plan of care for the juveniles will be addressed prior to the commencement of operations. Juveniles will be turned over to county resources only as a last resort. Prosecutorial discretion will be applied as appropriate. Officers will limit contact

with any identified juvenile except where officer safety may be compromised. In addition, the utmost care and consideration will be used when dealing with juveniles, especially when juveniles are present during interviews or encounters with adults. The questioning of juveniles will be kept to a minimum and conducted in the least threatening manner and environment possible.

If unaccompanied alien juveniles are encountered, the local juvenile coordinator will be contacted for guidance. If this person is unavailable, the Office of Refugee Resettlement (ORR) will need to be notified at 202-401-5709 after all processing tasks are performed.

In the event that juvenile(s) is/are present, and their presence was not anticipated during operational enforcement activities, the FOT SDDO and team leaders may need to seek assistance from the state or local governmental agency responsible for juvenile issues, i.e. Child Protective Services (CPS). As such, the FOT SDDO and team leaders are in possession of the agency's appropriate contact numbers, to be used as deemed necessary throughout the entirety of the operation.

### **Department of Children and Families**

222 South Warren Street  
PO Box 729, 3<sup>rd</sup> Floor  
Trenton, NJ 08625  
(877) 652-2873

Whenever possible, juveniles will be placed in the care of immediate family members that have no ascertainable criminal history. If there are no other options, sole care givers who are subject to removal, that have no ascertainable criminal record may be placed on an Order of Supervision or Order of Release on Recognizance with SDDO/AFOD approval.

### **I) Prosecutions**

In instances where an alien is amenable to prosecution, the case will be presented to the United States Attorney's Office/State Attorney's Office as appropriate and per current guidance. If the case is accepted for prosecution, an I-247, Immigration Detainer will be filed with the agency assuming custody of the alien. If the United States Attorney's Office/State Attorney's Office declines to prosecute, the declination will be recorded in the narrative portion of the I-213 and included in the file.

## J) Gangs

(b)(7)(E)

### ICE Definitions of Gang Member and Gang Associate

(b)(7)(E)

## II. Mission

To identify, arrest, and remove criminal aliens; and others who present a danger to national security or are a risk to public safety, as well as those who enter the United

States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

One of the most important ICE mandates is the enhancement of public safety and the security of the American public. The broad authority of ICE allows for the identification and removal of dangerous, often recidivist, criminals engaged in crimes such as murder, predatory sexual offenses, narcotics trafficking, alien smuggling, and a host of other crimes that have a profoundly negative impact on our society. The Fugitive Operations Division supports this mandate by performing strategic planning and establishing policy designed to augment ICE's ability to arrest and remove these aliens from the U.S.

The Criminal Alien Removal Initiative is an effort to direct augmented enforcement activities to locate and arrest criminal aliens at-large in the communities in order to further public safety through increased criminal removals. The assistance of HSI and Customs and Border Protection (CBP) is paramount in order to be successful in this initiative.

### **III. Execution**

#### **A) Director's Intent**

This operation is being conducted in furtherance of the national immigration enforcement priorities and the removal of criminal aliens, and pursuant to the National Fugitive Operations Program Handbook; including the apprehension and removal of aliens convicted of crimes, and otherwise dangerous aliens at large in the community.

#### **B) Concept of Operations**

The operation will consist of multiple arrest teams dispatched throughout the 24 ERO field offices. The teams will consist of members of the 154 FOT/FOX teams; the teams will also be assisted by Deportation Officers (DOs) and Immigration Enforcement Agents (IEAs) from the Criminal Alien Program (CAP), Violent Criminal Alien Section (VCAS), and detained and non-detained sections of local ERO offices, and USBP. One SDDO or ERO officer experienced in fugitive operations will be assigned as the team leader for each team. The teams will utilize unmarked vehicles as well as secure transport vehicles for their use.

As arrest efforts progress, team resources may be reassigned to other geographical areas to meet operational needs or returned to their official duty posts as deemed appropriate by the FOD. HQERO may also determine that the operational phase

may be terminated prior to September 28, 2012 based on changing strategic or operational conditions.

This operation may be conducted anytime during the week (Sunday to Saturday), May 14, 2012, through September 28, 2012. Overtime will generally not be necessary; arrest activities will be conducted as with daily operations necessitating only AUO in most cases.

- Wednesday, May 9, 2012: HQ NFOP and Field Operations hold kick-off call with field points-of-contact, including final discussion of FOX Team assignments.
- Monday, May 14, 2012: Operational briefing and orientation. Officers and agents will begin phased deployments to their assigned locations, with subsequent deployments to be completed on or about June 1, 2012. All participants in the operation will attend pre-operational briefings. Where available, briefings will include a representative from the Office of Chief Counsel to address Fourth Amendment and other pertinent legal considerations. Training in prosecutorial discretion must also be provided to participants.
- Monday, May 14, 2012 to Friday, September 28, 2012: Arrest teams will deploy throughout the country to initiate arrests at residences and places of employment. The Criminal Alien Removal Initiative may conclude prior to September 28<sup>th</sup> as determined by Headquarters.
- Saturday, September 29, 2012: ICE Office of Public Affairs (OPA) will issue a press release following the completion of the initiative once approved by the FODs and HQ.

### C) Tasks

1. HQNFOP: Coordinate with OPLA on delivery of 4<sup>th</sup> Amendment and related training by Monday, May 14, 2012.
2. FOSC: Distribute initial case leads to field POCs (deliverable: COB Monday, May 14, 2012).
3. HQNFOP/CAP: Prepare quick-reference guidance for processing and reporting related to this initiative for distribution to the field.

4. HQNFOP: Coordinate with OPA on public affairs plan for the FODs in case of media or NGO interest related to this initiative; OPA will coordinate cross-agency and departmental issues with CBP, DHS.
5. The Law Enforcement Support Center (LESC) is available 24 hours a day, seven days a week and can provide support to FOTs conducting operations. It is recommended that all officers/agents participating in the operation have the contact number for the LESC: 802- 872 (b)(6) (b)(7)(c)
6. Detention Operations Coordination Center (DOCC): Detention space is suitable within the Newark AOR, and detention locations have been identified. Although DOCC assistance was not requested they have been provided a copy of this operational plan and have concurred with the operation.

## **IV. Administration**

### **A) Safety**

Mandatory Element: **Safety is paramount.**

1.	(b)(7)(E)
2.	

3. Beyond identifying themselves verbally as law enforcement officers/agents, enforcement personnel must utilize law enforcement identifiers, such as neck badges, belt badges, and outer garments affixed with proper agency markings.

4.	
5.	(b)(7)(E)

6. No additional training will be necessary prior to this operation.

## B) Logistics

1. Primary processing location: All detainees will be transported to local detention facilities for processing.
  - a. Secondary detention and processing site(s) to be determined as needed.
  - b. The SDDO will coordinate requests for additional staff to support the enforcement operation. Requests will be made through the Operations AFOD with concurrence from the appropriate FODs.
2. Lodging and per diem: Lodging and per diem expenses may be required for the operation. In the event that the need arises to utilize lodging and per diem, it will be funded at the HQ level. **(If HQ NFOP funds are requested, submissions must include a written request for HQ NFOP funds, including the breakdown of cost estimates for all travel, lodging, and per diem, with any/all additional expenses detailed in writing.)**
3. **Removal efforts:** It is the intent of the FOD to expeditiously remove all ICE criminal aliens from the United States. The below actions have been performed to facilitate this objective:
  - a. Once arrested, all detainees will be transported to the nearest ERO office for initial processing. Processing will be in accordance with the ERO Quick Reference Processing Guide, found in Appendix A. All files will be reviewed by the Fug Ops team leader/SDDO for legal sufficiency prior to the alien being transferred to an appropriate detention facility.
    - No health & safety inspection required for any facility or equipment being utilized for this operation.
    - No contracts need to be reevaluated.
  - b. Each operational team has been instructed to secure any and all legally issued identity documents for all arrestees who will require a travel document for removal. All teams will make every legal effort to secure these documents prior to departing the arrest location. Obtaining these documents at the time of arrest will greatly decrease time spent in detention.

- c. Any non-fugitive arrests that require a Notice to Appear will be presented with the option of a Stipulated Removal, reinstatement, or expedited removal to aid in the reduction of detention time, if deemed appropriate by supervisory personnel given the circumstances. The OPLA/NEW and EOIR/NEW have been advised and contacted as to their availability to approve stipulated removals during the operation.
- d. FOT/FOX Teams will not *target* non-criminal aliens, though such aliens may be arrested as appropriate if encountered during the operation, and circumstances dictate such action.
- e. Prosecutorial discretion in immigration enforcement matters must be exercised, consistent with all established guidelines with supervisory oversight, by ICE officers and agents. This applies at all levels during the execution of the operation and could be applied during the pre-arrest, arrest, and custody phase. Communication within the local field office is imperative and nothing within this operation plan should be interpreted to supersede local management oversight and execution of prosecutorial discretion protocols.
- f. When appropriate, a form of alternative to detention can be utilized if authorized by supervisory personnel.

ATD/ISAP Bracelet  
 Orders of Supervision (OSUP)  
 Release on Recognizance (ROR)

### C) General Reporting Requirements

1. All arrests must be processed in ENFORCE utilizing the proper coding. The field office is responsible for ensuring that all arrest processing is completed as ERO enforcement activity.
  - a. Arrests by the FOTs and FOX Teams will be processed as Fugitive Operations Events.
  - b. Leads developed by the FOTs, FOX Teams or provided by FOSC will be Fugitive Operations Leads.
  - c. Event type is FOE.
  - d. **All ENFORCE entries will use the Operational Code - Criminal Alien Removal Initiative 2012, regardless of any other codes which may be present.**

**Quality Assurance:** An officer(s), and support staff as needed, who are not involved with the operation, will review target files against the daily report to ensure that the statistics reported are accurate. This review must be completed daily and at the conclusion of the operation. If asked to provide statistics prior to validation, the information must be clearly stated to be not validated and subject to change.

2. **Weekly Reports:** Standard HQ FUGOPS reporting will be completed via the Fugitive Case Management System (FCMS). FOT personnel will be responsible for entry and tracking of all arrest activities by local FOX Teams in FCMS.
3. **Report Format:** At the conclusion of field operations, the team leaders will ensure that FCMS is properly updated with all FOT and FOX Team arrests from the operation that are to be validated as FOT arrests in ENFORCE by Close of Business (COB) each Friday.
4. **Significant Event Notification (SEN):** A SEN/Significant Incident Report (SIR)/Significant Proposed Enforcement Activity Report (SPEAR) will only need to be submitted if events or incidents occur that warrant their generation in accordance with established policy and procedures.
5. **Director Notes:** Director Notes should be submitted for events or incidents that warrant their generation in accordance with established policy and procedures.

#### **D) Progress Reporting and After Action Reporting Requirements**

1. Weekly conference calls will be held each Wednesday at 1400 Eastern Standard Time beginning May 23, 2012.
2. Initial after action conferences will be conducted as follows:
  - a. Key operational personnel involved in the final phase(s) of the enforcement operation will be held on the Wednesday following the conclusion of the operational phase.
3. Format: The format for issues will be:
  - a. Topic
  - b. Discussion
  - c. Recommendation(s)

3. Formal after action report: A memorandum of results will be generated and forwarded to the FOD for review as necessary.
4. HQ ICE OPA will coordinate with the Assistant Director for Secure Communities & Enforcement and generate a press release upon completion of the operation as necessary. ICE Public Affairs contact number(s) are available as necessary.

## **V. Command and Control**

1. Primary means of communication will be via radio, telephone and E-mail.

### **General**

Emergencies: 911  
Sector: 1-800 (b)(6) (b)(7)(c) (97(b)(6) (b)(7)(c)  
ORR: 202-401 (b)(6) (b)(7)(c)  
LESC: 802-870 (b)(6) (b)(7)(c)  
FOSC POC: (802) 657 (b)(6) (b)(7)(c)

### **Local**

See Attachment 01

## **Local Annex: Newark Field Office - Operation**

(b)(7)(E)

The Newark Field Office has taken a very aggressive approach in working with local and state agencies to identify at large criminal aliens in line with ICE priorities. As outlined below, these initiatives are expected to positively impact public safety in the community and increase criminal removal numbers for FY2012.

### **NJ State Police Re-entry Project**

(b)(7)(E)

### **HQS Law Enforcement Systems and Analysis Division Re-entry Project**

Newark CAP is also currently working with ICE-HQS Law Enforcement Systems and Analysis Division to identify prior deported aliens who have been arrested in the United States after the date of their removal. This endeavor will seek to identify these aliens that have reentered the United States within the last 5 to 10 years after their removal.

Anticipated targeted arrest for "Operation (b)(7)(E)" is unknown and awaiting HQ input.

### **Megan's Law Project**

In January 2012, CAP Newark conducted outreach with all Megan's Law appointed detectives and prosecutors for the state of New Jersey. The NJSP provided a list of 1,500 foreign born convicted sex offenders on minors. The FOSC hit on 640 of these cases however further vetting is required by local resources. Anticipated targeted arrests for "Operation (b)(7)(E)" is 57 for the remainder of FY2012.

### **DMV Projects**

(b)(7)(E)

(b)(7)(E)

### **Probation Absconder Project**

In February 2012 the Newark Fugitive Operations Unit obtained a list of 19,000 probation and parole violators from the state of New Jersey. The FOSC hit on 1100 of these cases which are being vetted locally to determine whether they are fugitives or new cases requiring an NTA. Anticipated arrests for “Operation Close the Gap” is 409 for the remainder of FY2012. This figure is dependent on the results of additional local vetting of lists provided by Probation.

### **Atlantic City Initiative**

In March 2012, the Marlton Sub-office will launch the Atlantic City Initiative. This initiative will enhance the cooperation between ICE, the Atlantic City Municipal Prosecutor’s Office (ACMPO) and Atlantic City Police Department (ACPD). The ACMPO will provide ICE a weekly court list which will cover the Atlantic City’s Municipal Court’s morning, afternoon, evening and traffic court sessions. These lists will be vetted by ICE officers to determine alienage and amenability on all individuals reporting to these court sessions. Foreign born individuals being detained due to a crime at the ACPD’s central booking facility will be referred to ICE for further investigation. In addition to the facility, the ACPD has instructed their traffic division and NLETS operators to refer all foreign born DUI arrests to ICE. ACPD and ICE will partner in numerous CAP surges throughout the year targeting criminal aliens. Also ERO & RAC Marlton along with ACPD will participate in joint operations targeting prostitution and transnational gangs within Atlantic City, New Jersey. If necessary, ACPD will accept

ICE detainees and hold all amenable foreign born individuals at their central booking facility until ICE arranges for pick-up on the next morning. Any removable alien going to the Atlantic County Jail on local charges will have an ICE detainer lodged against them. Anticipated arrests for “Operation Close the Gap” is 90 for the remainder of FY2012.

### **Secure Communities**

In February 2012, the Secure Communities (SC) program was launched for the entire state of New Jersey. As of Monday May 1, 2012, Newark CAP has received 1775 hits on criminal aliens, 252 detainees were lodged and 161 proactive cases have been identified. A total of 106 proactive cases remain as at large criminals, as they were released by the local LEA prior to an ICE detainer being lodged. A very conservative annual estimate is over 10,000 hits, 1400 detainees lodged and 1000 proactive cases identified with 50 NCIC Level 1; 300 Level 2; and 650 Level 3 pro-active cases. Anticipated arrests for “Operation Close the Gap” is 93 for the remainder of FY2012.

### **Local Police Surges**

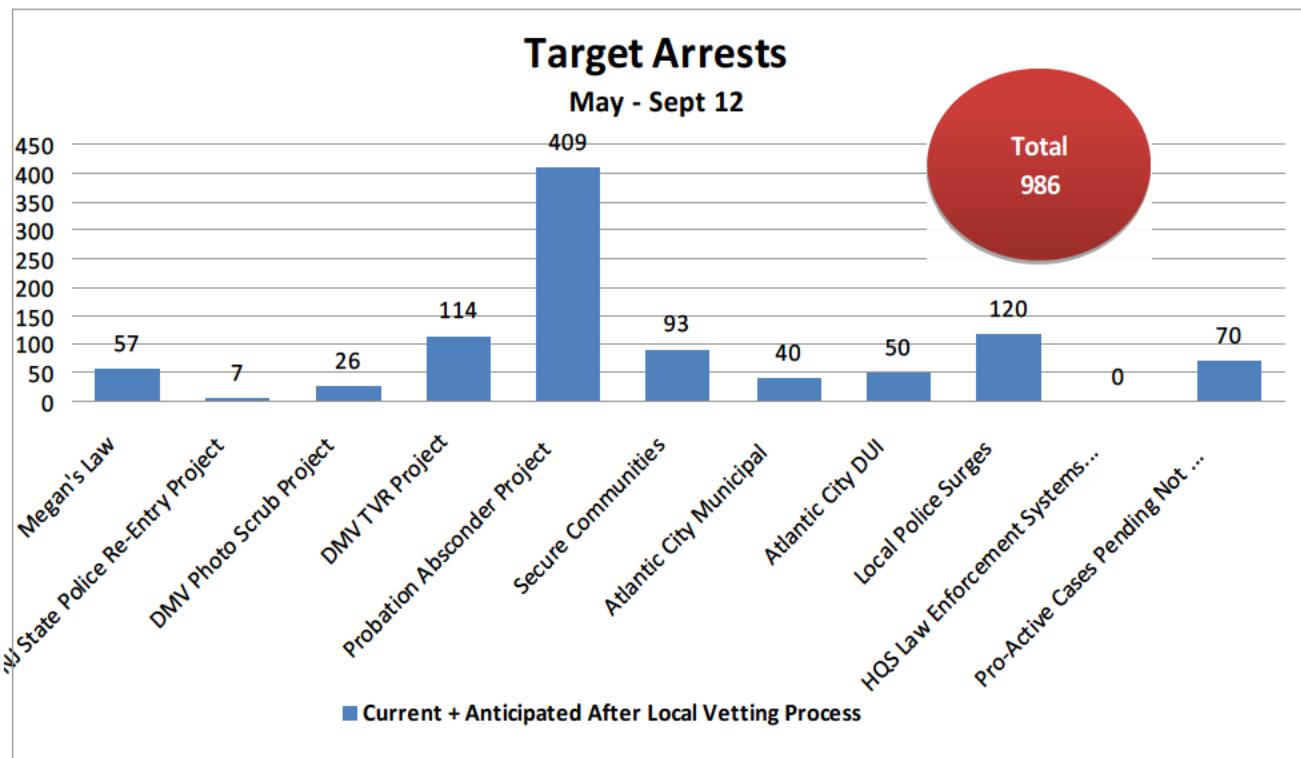
In May 2012, CAP management initiated local police surges across the entire state of New Jersey. CAP is in the process of identifying viable police departments, scheduling meetings and requesting these agencies to provide foreign born at large criminals that are known to them. These lists will be vetted, cases identified will be written and a targeted operation will quickly follow. These targeted operations will consist of 10-20 targets depending on the size of the target location. Targeted locations that are being scheduled for initial meetings are as follows: Dover Police Department, Chatham Police Department, Norfolk Southern Railroad Police Department, Plainfield Police Department, Elizabeth Police Department, North Bergen-Fairview Police Departments, Ramsey-Vernon Police Departments, Sussex-Franklin-Newton Police Departments, Asbury Park Police Department, Wayne-Parsippany Police Department, Paterson Police Department and Long Branch Police Department. All of these operations will be one day operations with an early morning shift and afternoon shift. Any remaining targets will be worked on non-operation days until the target(s) have been apprehended. Anticipated arrests for “Operation [REDACTED] (b)(7)(E) is 120 for the remainder of FY2012.

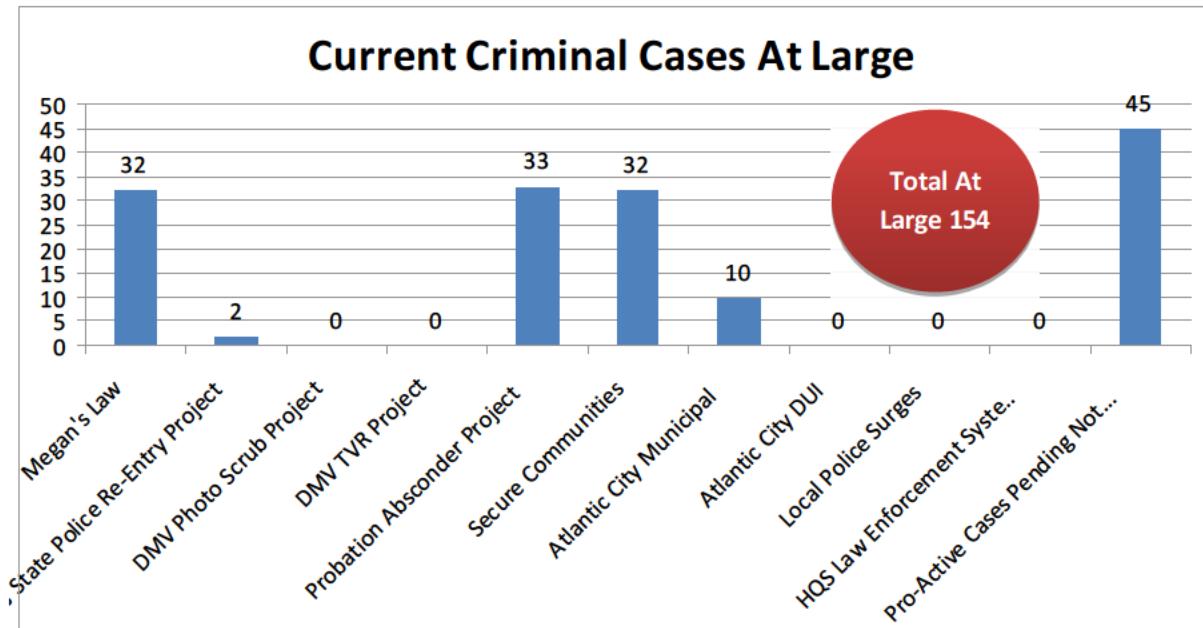
### **Local Court Surges**

In the Marlton AOR, agreements have been reached with 8 municipal courts to provide ICE with their weekly court lists. These lists will be vetted by ICE officers to determine alienage and amenability on all individuals reporting to these court sessions. The municipal courts that have provided ICE with their lists are Brick, Bridgeton, Ewing, Lakewood, Riverside, Seaside Heights, Toms River & Vineland. The procedures taken in these surges are similar to the Atlantic City Initiative. Anticipated arrests for “Operation [REDACTED] (b)(7)(E) is 25 for the remainder of FY2012.

ERO Newark will utilize CBP personnel to vet lists listed above, write CAP cases, conduct jail interviews, monitor Secure Communities, prep target folders for pro-active cases and participate in targeted street enforcement operations.

The estimated figures in the “Target Arrests” chart below depict the total anticipated number of criminal alien arrests (currently outstanding, plus those anticipated after vetting of foreign-born lists) under the local initiatives.





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AUTHORIZING OFFICIAL

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Field Office Director  
Newark Field Office

APPROVING OFFICIAL

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Assistant Director, HQ ERO

**ATTACHMENTS: (If applicable)**

Attachment 01 – NEW Command Chart & Team Breakdown

**DISTRIBUTION:**

HQ NFOP

FOSC

FOD

DFOD

Operations AFOD

DOCC

AUTHORIZING OFFICIAL

(b)(6) (b)(7)(c)

APPROVING OFFICIAL

Assistant Director, HQ ERO

ATTACHMENTS: (If applicable)

DISTRIBUTION:

HQ NFOP  
FOSC  
FOD  
DFOD  
Operations AFOD  
DOCC

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**To:** [REDACTED]  
**Subject:** FW: D1 Get Back on Criminal Removals Enforcement Initiative  
**Date:** Monday, October 28, 2013 1:02:53 PM  
**Attachments:** [Enforcement Initiative Team Creation 05212012 D1\\_discussion final.docx](#)

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For CAP FOIA

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 22, 2012 10:08 AM  
**To:** ERO Operation Center  
**Cc:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** FW: D1 Get Back on Criminal Removals Enforcement Initiative

Good morning,

Newark's additional teams would come from the following internal programs:

Team 1

[REDACTED]  
(b)(7)(e)

Team 2

[REDACTED]  
(b)(7)(e)

Please let us know if you require any further information.

Thanks,

[REDACTED]  
(b)(6) (b)(7)(c)

Deputy Field Office Director  
U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Newark Field Office  
Phone: (973) 776-[REDACTED] (b)(6) (b)(7)(c)  
Cell: (201) 485-[REDACTED] (b)(6) (b)(7)(c)

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**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Monday, May 21, 2012 5:34 PM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** FW: D1 Get Back on Criminal Removals Enforcement Initiative

**From:** (b)(6) (b)(7)(c)

**Sent:** Monday, May 21, 2012 5:21 PM

(b)(6) (b)(7)(c)

**Subject:** FW: D1 Get Back on Criminal Removals Enforcement Initiative

As you will see from the attachment, the plan is shifting again. Previously, you had indicated you could reallocate a specific number of positions to create additional teams on a temporary basis. This time, we have been asked to create a plan for (b)(7)(e) additional, permanent Fug Ops teams with existing resources. We have taken the liberty of inserting specific numbers based on your prior submission. What we need from you this time is to identify where these resources (IEA/DO) would come from internally; (b)(7)(e) We will need responses by noon tomorrow. Please provide them to the ERO Operation Center mailbox.

Thanks

David J. Venturella  
Assistant Director-Field Operations  
Office of Enforcement & Removal Operations

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**From:** (b)(6) (b)(7)(c)

**Sent:** Monday, May 21, 2012 4:46 PM

**To:** (b)(6) (b)(7)(c)

**Cc:** ERO Taskings; (b)(6) (b)(7)(c)

**Subject:** D1 Get Back on Criminal Removals Enforcement Initiative

Hello (b)(6) (b)(7)(c) and (b)(6) (b)(7)(c)

Attached is the final version of the criminal enforcement operations plan that was briefed to Director Morton at about 4 PM today. Director Morton asked that we identify specifically the programs from which each of the officers comprising the new FOT teams will be drawn. He would like this paper updated to include that information by COB tomorrow. ERO-T, please task to SC/E and Field Ops.

Thank you, (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

*Chief of Staff*

*Enforcement and Removal Operations*

U.S. Department of Homeland Security

U.S. Immigration and Customs Enforcement

202.7821(6) (b)(7)(c)

(b)(6) (b)(7)(c)

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**U.S. Immigration  
and Customs  
Enforcement**

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**Overview**

Enforcement and Removal Operations field offices will further concentrate enforcement efforts on identification, arrest and removal of:

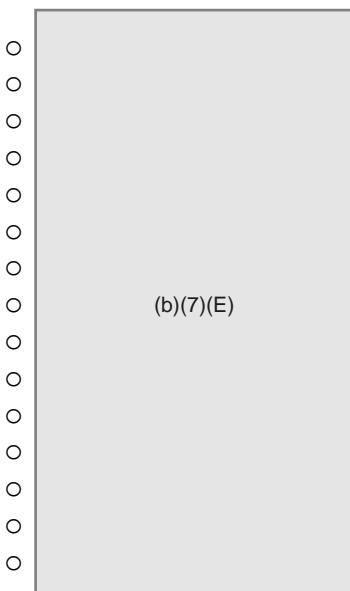
- Level 1-criminals - those aliens convicted of aggravated felonies defined in section 101(a) (43) of the INA or two or more crimes punishable by more than one year;
- Level 2-criminals- those aliens convicted of any felony or three or more crimes each punishable by less than one year.

ERO will redeploy resources where necessary to these areas of emphasis. While increased attention will be placed on targeting these specific cases, other enforcement priority cases encountered during operations will be arrested consistent with current policies. Other priorities include: egregious Level 3 criminal aliens, fugitive aliens, recidivists and recent border entrants. Prosecutions will be considered on a case-by-case basis.

**Strategy**

ERO has examined a number of options to ensure the success of these concentrated efforts. The most significant of these will be increasing the number of fugitive operation teams from (b)(7)(E). All of the teams will (b)(7)(E) specifically focus on the arrest of Level 1 and Level 2 criminal aliens.

The below team deployment locations are based on parole and probation cases, Bureau of Justice Statistics information, ICE statistics, field office submissions and Secure Communities locations with high incidents of release before ICE can place detainees.



- 
- 

(b)(7)(E)

The FODs retain discretion in determining how these teams will be staffed. In general, staff will come from the non-detained docket, ATD, consolidation of collateral duties, and other lower priority programs. However, no programmatic responsibilities will be discontinued entirely as a result of these redeployments.

In addition to the additional (b)(7)(e) this increased focus will be augmented by the additional, soon to be filled, (b)(7)(e) Deportation Officers positions. These positions will support CAP operations also focusing on level 1 and 2 criminal alien cases. In addition, CAP, once staffed with the (b)(7)(e) new DO positions, will also be expected to make “street arrests” of at-large criminal aliens, particularly those released prior to a detainer being placed as well as parole and probation violators.

Other operational support enhancements and redeployments include:

- The Alternative to Detention (ATD) program will re-evaluate current program participants to identify Level 1 and Level 2 criminal aliens who may have received a final order of removal since their initial ATD enrollment.
- Additional ERO field-based enforcement units the JCART in New York and Los Angeles and LEAR in Phoenix will be refocused as well. Specifically, ERO is reallocating six officer positions from LEAR to create one of the (b)(7)(e) additional fugitive operations teams. An additional team may be developed from LEAR resources after further evaluating the requirements of supporting 287(g) efforts in Maricopa County, AZ. At a minimum, additional LEAR resources will be used for TDY assignments in support of these efforts.
- HQ ERO will TDY staff officers to the Interoperability Support Center in Laguna Niguel, CA, the LESC and Bond Review initiative in Burlington, VT, thereby enabling field officers currently assigned there to return to their field office duty locations.
- The Fugitive Operations Support Center (FOSC) remains fully dedicated to its core mission of supporting field enforcement efforts. The FOSC has internally shifted resources to focus on lead development for the field offices and teams identified below.
- ERO conducted a comparison of the “at large” probation and parole population and the non-detained docket, which produced estimates there are more than 76,000 Level 1 offenders who are currently non-detained. More than 19,000 criminals are subject to a final order and are still at large; more than 51,000 criminal aliens are in removal proceedings pending a final order.
- The Law Enforcement and Systems and Analysis Division (LESA) will ensure data collection to capture, where feasible, the following achievement measures:
  - Increases in Level 1 and 2 identifications, encounters, arrests, detentions, and removals

- Effects on operations produced by the creation of (b)(7)(A) additional fugitive operations teams
- Significant cases that arise as a consequence of the concentrated enforcement efforts.

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Issuance of Criminal Alien Program Handbook  
**Date:** Monday, October 28, 2013 1:09:48 PM

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, May 20, 2013 1:19 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Issuance of Criminal Alien Program Handbook

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**From:** ERO Taskings  
**Sent:** Monday, May 20, 2013 1:19 PM  
**Subject:** Issuance of Criminal Alien Program Handbook

*The following message is sent on behalf of (b)(6) (b)(7)(c) (A) Assistant Director for Secure Communities and Enforcement, with the concurrence of Philip T. Miller, Assistant Director for Field Operations:*

**To:** Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors

**Subject:** Issuance of Criminal Alien Program Handbook

On May 14, 2013, (A) Assistant Director for Secure Communities and Enforcement, (b)(6) (b)(7)(c) signed the *Criminal Alien Program Handbook*. The Handbook provides procedures, best practices, and a list of related policies regarding Criminal Alien Program (CAP) duties. The Handbook focuses on the identification of criminal aliens, case preparation, and removal proceedings while still allowing for flexibility regarding established local operational procedures. The Handbook will be the base document for CAP training and operations at ERO field offices. While the document contains investigative tools and resources, it should not be considered an all-inclusive guide for conducting CAP operations.

The Handbook is available for view in the ERO Resource Library at the following link:

(b)(7)(e)

If you have any questions regarding the CAP Handbook, please contact (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c) Criminal Alien Program Unit Chief at (202) 734-0000

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: CAP jail interviews  
**Date:** Monday, October 28, 2013 1:08:14 PM  
**Importance:** High

For CAP FOIA

**From:** [REDACTED] (b)(6) (b)(7)(c)  
**Sent:** Wednesday, February 23, 2011 2:05 PM  
**To:** [REDACTED] (b)(6) (b)(7)(c)  
**Cc:** [REDACTED] (b)(6) (b)(7)(c)  
**Subject:** CAP jail interviews  
**Importance:** High

(b)(6) (b)(7)(c)

Here are the CAP jail interviews conducted under Operation [REDACTED] (b)(7)(e) All subjects have no knowledge of the incident except what they heard or saw on TV

## **Monmouth County Jail**

(b)(6) (b)(7)(c)

Bergen County Jail

(b)(6) (b)(7)(c)

**Union County Jail**

(b)(6) (b)(7)(c)

Thanks,

(b)(6) (b)(7)(c)

Supervisory Detention & Deportation Officer

Criminal Alien Program

ICE - ERO

Newark Field Office

614 Frelinghuysen Avenue

(b)(6) (b)(7)(c)

Newark, NJ 07114

(973) 776-

(973) 332- (b)(6) (b)(7)(c)

(973) 776-

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Updated CAP jail interviews  
**Date:** Monday, October 28, 2013 1:07:49 PM  
**Attachments:** [Fallen Hero.xls](#)

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Wednesday, February 23, 2011 5:57 PM  
**To:**  
**Cc:** (b)(6) (b)(7)(c)  
**Subject:** Updated CAP jail interviews

Attached is the updated CAP jail interview list (as of 1800). The added names are in yellow.

(b)(6) (b)(7)(c) can you send me a breakdown of the cases from today (admin/criminal arrests, interviews, etc.)

Thanks,

(b)(6) (b)(7)(c)

Supervisory Detention & Deportation Officer  
Criminal Alien Program  
ICE - ERO  
Newark Field Office  
614 Frelinghuysen Avenue  
(b)(6) (b)(7)(c)  
Newark, NJ 07114  
(973) 776  
(973) 332  
(973) 776

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Criminal Alien Dispositions and Statistics  
**Date:** Monday, October 28, 2013 1:06:44 PM

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For CAP FOIA

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, August 26, 2011 8:38 AM

(b)(6) (b)(7)(c)

**Subject:** Criminal Alien Dispositions and Statistics

*This message is being forwarded on behalf of John Tsoukaris, Field Office Director.*

*To All,*

*Please see below Criminal Alien Case Dispositions and Statistics.*

*Respectfully yours,*

(b)(6) (b)(7)(c)

*Mission Support Specialist*

*Office of the Director*

*Enforcement and Removal Operations*

*Newark, New Jersey 07102*

---

**From:** ERO Taskings

**Sent:** Thursday, August 25, 2011 2:26 PM

**Subject:** Criminal Alien Dispositions and Statistics

*The following message is being sent on behalf of Marc A. Rapp, Acting Assistant Director for Secure Communities, and approved by David J. Venturella, Assistant Director for Field Operations and Greg Archambeault, Assistant Director for Enforcement:*

**To:** **Field Office Directors and Deputy Field Office Directors**

**Subject:** **Criminal Alien Case Dispositions and Statistics**

This message serves as a reminder to Enforcement and Removal Operations (ERO) Managers, Supervisors, Officers and Agents of the importance of ensuring timely and accurate updating of the ENFORCE Alien Removal Module (EARM) Crime Entry Screen (CES) and the ENFORCE Alien Booking Module (EABM).

Through ongoing ICE initiatives such as IDENT/IAFIS Interoperability, Fugitive Operations, the Criminal Alien Program and the 287(g) jail enforcement model, Immigration and Customs Enforcement (ICE) continues to place record numbers of criminal aliens in removal proceedings. A complete criminal history on aliens encountered by ERO officers ensures that operations are consistent with the Agency's priorities set forth in Director Morton's March 2, 2011 memorandum titled, (b)(7)(e)

(b)(7)(e)

The entry of complete alien criminal history information in ENFORCE assists ICE in validating its operations internally and with a variety of external stakeholders. The current criminal history records that ERO officers typically obtain during alien case processing are consolidated within FBI's National Crime Information Center (NCIC). These criminal histories are often missing integral information concerning the disposition of arrests and criminal court cases. The absence of complete criminal history information, therefore, makes it challenging to render timely, fully-informed decisions.

These references provide guidance on criminal alien statistics, processing of aliens arrested by ERO, proper updating of EABM and EARM CES, and resources available to obtain state and county criminal dispositions:

1. The August 29, 2008 [REDACTED] (b)(7)(e) memorandum signed by Acting Director of Enforcement and Removal Operations, [REDACTED] (b)(6) (b)(7)(c) outlines the importance of accurately capturing and updating information in ENFORCE.
2. The August 3, 2010 [REDACTED] (b)(7)(e) [REDACTED] (b)(7)(e) signed by Executive Associate Director James M. Chaparro, was revised to ensure data integrity and improve ERO's abilities to capture statistics. Page 21 section 20, titled *Criminal Statistics*, states that in order to comply with the memorandum titled "Criminal Alien Statistics" dated August 29, 2008, all ERO officers/agents are to ensure that all criminal statistics are entered correctly in the ENFORCE system. Page 25 section 22, titled *Documenting Positive Responses to NCIC queries in EARM*, states that all positive NCIC results must be listed on the "Crime" screen.
3. The June 14, 2011 [REDACTED] (b)(7)(e) approved by [REDACTED] (b)(6) (b)(7)(c) Assistant Director for Field Operations, provides guidance pertaining to performing the essential task of obtaining criminal case dispositions and provides a spreadsheet containing state and county judiciary internet sites and other useful information.
4. Virtual University Courses are available for training and guidance purposes.
  - a) The "ENFORCE Crime Entry Screen (CES) version 1.1: Frequently Asked Questions (FAQ)" document presents answers to commonly asked questions regarding the updated CES. It complements the updated Quick Reference Guide by providing more detailed explanations of specific changes to how users interact with the system. All CES users should read, understand, and apply the system updates to capturing crime information that are presented in the CES 1.1 FAQ.
  - b) The "ENFORCE Crime Entry Screen (CES) version 1.1: Quick Reference Guide (QRG)" explains the process for entering data, provides screenshots, and defines key terms for the online system. As a reference for users, this document reflects the changes to the CES user interface, business logic, and data input procedures that were implemented on June 18, 2011. All CES users should read, understand, and apply the system updates to capturing crime information that are presented in the CES 1.1 QRG.

Please contact Management and Program Analyst, [REDACTED] (b)(6) (b)(7)(c) at 202-730-1234 [REDACTED] (b)(7)(c) via e-mail at [REDACTED] (b)(6) (b)(7)(c) with any concerns or questions regarding this broadcast message. To be notified of future updates to this document in the ERO Resource Library, please subscribe to the ERO Resource Library email notifications using the following link:  
[REDACTED] (b)(7)(e)

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** FW: Clarification - Criminal Alien CAP  
**Date:** Monday, October 28, 2013 1:02:21 PM

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## For CAP FOIA

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, June 08, 2012 9:55 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** RE: Clarification - Criminal Alien CAP

One way to address this may be, depending on the number of Level 1 and 2 targets we identify, to assign these cases exclusively to a dedicated Fug Ops team and a dedicated CAP team. We are in a unique situation as we already do pro-active CAP arrests for Probation, etc.

Also, remind officers of the definition of Secure Community Level 1 and 2 as listed in the Morton memo of June 30, 2010.

We can discuss further next week.

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, June 08, 2012 9:35 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Clarification

See below

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, June 08, 2012 9:31 AM

(b)(6) (b)(7)(c)

**Subject:** Clarification

All,

There has been a number of questions raised by the Field to HQ regarding the May 29<sup>th</sup> email from Director Mead which specified the targeting of Level 1 and Level 2 criminal aliens. AD Greg Archambeault and I met with Mr. Mead and Mr. Homan yesterday on this particular subject. For clarification, the **targeting** restriction of Level 1s and 2s only applies to Fug Ops activities and teams. There are no **targeting** restrictions that apply to other ERO enforcement activities

related to criminal aliens (CAP, 287g, Secure Communities, VCAS, JCART).

I understand that in reality, the separation of Fug Ops and CAP activities which target at large criminal aliens in the field may be difficult to achieve and report but I believe it can be easily addressed in the assignment of targets – i.e. assign at large Level 1 and Level 2 targets to the Fug Ops teams and Level 3 to CAP teams.

If this has only confused this issue more, then please see me Monday, June 18<sup>th</sup> at the NSA conference to discuss further. I will be holding my last FOD meeting around 5:00 pm in the lobby of the Radisson Hotel.

David J. Venturella  
Assistant Director-Field Operations  
Office of Enforcement & Removal Operations

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**FY2014 November 3, 2013 Changes**  
**FY2014 November 17, 2013 Changes**

Enforcement and Removal Operations  
Newark Field Office

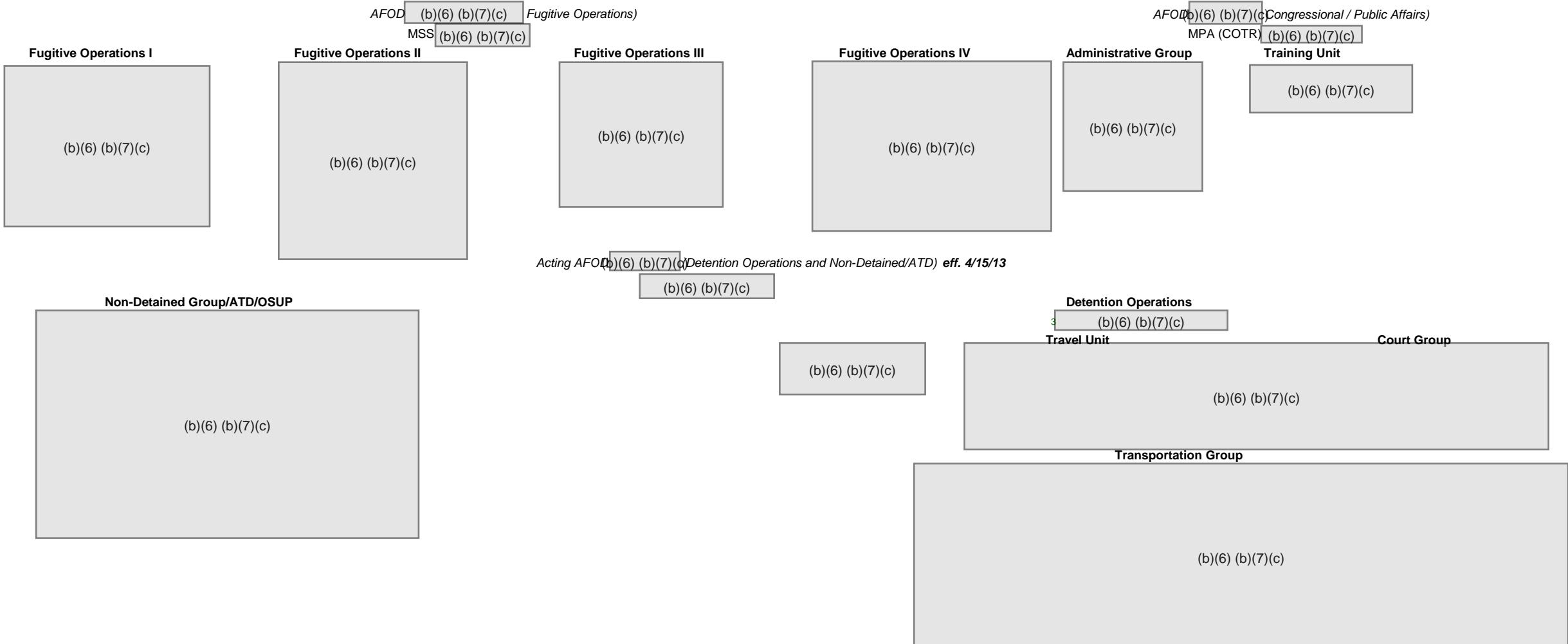
Newark Main Office (b)(7)(c) Positions

Field Office Director - (b)(6) (b)(7)(c)

Deputy Field Office Director (b)(6) (b)(7)(c)

Special Asst - (b)(6) (b)(7)(c)

PAO - Harold Ort



Enforcement and Removal Operations  
Newark Field Office

<sup>35</sup> AFOD (b)(6) (b)(7)(C) Criminal Alien Program

(b)(6) (b)(7)(c)

CAP I

<sup>34</sup> AFOD (b)(6) (b)(7)(C) Case Management Essex & Hudson

(b)(6) (b)(7)(c)

Detention Service Manager (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c) Field Case Manager

CAP II

(b)(6) (b)(7)(c)

CAP III

CAP III

(b)(6) (b)(7)(c)

(b)(7)(e)

*New Employees Pending HIRING/EOD/TRNG*

(b)(6) (b)(7)(c)

Enforcement and Removal Operations  
Newark Field Office

**Elizabeth Detention Facility (36 Positions)**

AFOD (b)(6) (b)(7)(c) Case Management Elizabeth & Delaney Hall

(b)(6) (b)(7)(c)

Detention Service Manager Lillian Rosario-Dunning

Case Management Elizabeth

Case Management Delaney

Detention Management Elizabeth & Delaney

(b)(6) (b)(7)(c)

**Marlton Sub-Office (46 Positions)**

AFOD (b)(6) (b)(7)(c) (TDY effective 5/19/2013)

AFOD (b)(6) (b)(7)(c)

3

(b)(6) (b)(7)(c)

Fugitive Operations & Non-Detained

CAP I & VCAS

CAP II & State/Federal Jails/Processing

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

Field Office Director

(b)(6), (b)(7)c, (b)(7)e

**From:**  
**To:**

(b)(6) (b)(7)(c)

**Cc:**  
**Subject:** ENFORCE PROCESSING GUIDE Version 2  
**Date:** Tuesday, May 25, 2010 6:03:56 PM  
**Attachments:** [Reference Guide CAPFUGOPS.DOC](#)

---

Please use for ENFORCE processing.

(b)(6) (b)(7)(c)

**(A) Assistant Field Office Director**  
**ICE/Detention & Removal Operations**  
**Salt Lake City Field Office**

**Office - 801-313** (b)(6) (b)(7)(c)  
**Fax - 801-265-** (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**DHS/ICE/DRO**  
**5272 S. College Dr. Suite** (b)(6) (b)(7)(c)  
**Salt Lake City, UT 84123**

LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY



## U.S. Immigration and Customs Enforcement

### *Criminal Alien Program/Fugitive Operations (CAP/FUGOPS)*

#### **QUICK REFERENCE PROCESSING GUIDE**

*Version 2*

LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY

ICE2012FOIA02544.003678



This Quick Reference Guide is designed for the processing of subjects encountered through the Criminal Alien Division utilizing the JCART, VCAS, CAP, FUGOPS and LEAR programs.

Information contained herein is Law Enforcement Sensitive. Do not share this document in any form with anyone who does not have a need to know.



## Initial Processing

All processing of CAP/FUGOPS subjects will begin at the initial event screen to ensure proper event creation. This quick reference is designed to guide all officers involved with CAP/FUGOPS in the correct procedures for processing of aliens. There are no other acceptable methods to process. Full processing should be completed after the subject's identity, arrest and criminal history have been verified through IDENT/IAFIS.

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
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*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
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*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



# U.S. Immigration and Customs Enforcement

## QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

### Detainers and Criminal Severity Levels

*\*\* This steps below must be completed before completing a Detainer\*\**

(b)(7)(e)



(b)(7)(e)

### **Arrests and Severity Levels**

As noted, all arrests should have an appropriate Arrest Landmark associated that represents the means of the arrest. As outlined in the ENFORCE/EARM Landmark tasking dated October 30, 2008, all Field Office Directors are to ensure, through their ENFORCE Data Systems Administrators (DSA), the creation of Arrest Landmarks within ENFORCE for their area of responsibility (AOR). These landmarks are to be utilized by all DRO and 287(g) personnel when making an arrest and issuance of a charging document. The following steps should be completed in ENFORCE when the arrest and issuance of a charging document against an alien is warranted.

After initial processing through full client and at the time the subject is to be placed in ICE custody users will continue processing the Arrest from the

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE  
*CAP/FUGOPS Specific***

(b)(7)(e)



# U.S. Immigration and Customs Enforcement

## QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

**Appropriate landmarks will contain a minimum as follows for the corresponding programs:**

**CAP:**

Name of Jail

“CAP Street Arrest” = a CAP arrest without coordination with an LEA and the subject is not incarcerated

Name of LEA

**JCART:**

NAME of LEA

“JCART Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

**VCAS:**

Name of LEA

“VCAS Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

**LEAR:**

LEAR/Name of LEA

“LEAR Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

**FUGOPS:**

“Fugitive Operations”



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



**U.S. Immigration  
and Customs  
Enforcement**

**QUICK REFERENCE GUIDE**  
*CAP/FUGOPS Specific*

(b)(7)(e)



# U.S. Immigration and Customs Enforcement

## QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

### **Criminal Statistics:**

CAP, VCAS, LEAR, JCART and FUGOPS officers are to ensure that all criminal statistics are inputted correctly in the ENFORCE system. In order to satisfy the minimum standard that is necessary to comply with the memorandum titled "Criminal Alien Statistics" signed by DRO Director [REDACTED] (b)(6) (b)(7)(c) on August 29, 2008, officers are to utilize the "criminal record" box to note if the subject found removable is a convicted criminal or not.

(b)(7)(e)



**Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT):**

ICE Rapid REPAT is another law enforcement tool available that assists in ensuring that all criminal aliens serving criminal sentences are identified and processed for removal prior to their release from state custody. The identification and processing of incarcerated criminal aliens prior to release reduces the burden on the taxpayer, and ensures that criminal aliens are promptly removed from the United States upon completion of their criminal sentence. This program allows ICE to more effectively achieve its objective of identifying and quickly removing criminal aliens from the United States. ICE Rapid REPAT also allows ICE and participating States to reduce the costs associated with bed space.

When an alien is encountered based on a RAPID REPAT release, officers will ensure that it is notated in the alert section of the edit subject screen.

(b)(7)(e)



# U.S. Immigration and Customs Enforcement

## QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

It is imperative that these procedures are followed for all CAP/JCART/VCAS/LEAR cases. This will insure that DRO maintains data integrity in the management. Data quality errors will be published monthly. These errors will be corrected within seven days of receipt and notification of the correction will be forwarded to the CAP HQ mailbox along with the manager that is to be contacted if errors are found to be pending.

Guide prepared by:

Headquarters, Immigration and Customs Enforcement  
Criminal Alien Program  
Operations

For questions, please contact:

Unit Chief (b)(6) (b)(7)(c)  
DDO (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Wednesday, February 13, 2013 11:39 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Weekly ERO Enforcement Report

(b)(6) (b)(7)(c)

All AFODs will be instructing SDDOs to increase all criminal at-large arrests immediately. The SLC, LVG, and BOI AFODs have set a goal of 10-15 at-large criminal aliens arrests each week (combined total, not for each office) to not only catch up to last year's numbers but surpass them as well. This quota will not be projected to the employees in any way...it is simply a means to push SDDOs to meet our expectations. For the employees we will emphasize more at-large arrests and push our SDDOs to meet our management goals.

This will be accomplished by:

- Increasing our targets by investigating state wants/warrants records.
- Improving liaison with local task forces and probation and parole
- Immediately targeting level 3 at-large criminals aliens with greater manpower to include more IEAs participating with CAP at-large cases.
- Prioritize our OSN target list to include the top 50 targets; all subsequent targets will be worked immediately.

We will also improve statistical tracking and data by:

- Having each SDDO responsible their employee's at-large arrest must verify that ENFORCE processing is completed correctly, specifically placing the non-custodial arrest (NCA) in ENFORCE when appropriate. This will entail looking at ENFORCE not just the A-file.
- Each office will assign an employee to manually track all at-large arrests and report the stats weekly to one designated person in our AOR. This will help identify if we have a data quality issue or productivity issue when comparing to HQ stats.

If you approve of these measures, I will discuss with our AFODs. Thank you.

(b)(6) (b)(7)(c)

Assistant Field Office Director  
DHS/ICE/ERO  
Salt Lake City Field Office

Office: (801) 886-(6) (b)(7)(c)

Fax: (801) 886-(6) (b)(7)(c)

Email: (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, February 12, 2013 12:43 PM

**To:** (b)(6) (b)(7)(c)

**Subject:** FW: Weekly ERO Enforcement Report  
**Importance:** High

**AFODS ONLY**

AFODs,

Our at large arrests have fallen off. Across the board we are down -16% compared to last year, up 6% on level 1's, -3% on level 2's, and down -49% on level 3's. Now I know we had "issues" with the level 3's but that number should be going up, not down. Compared to the last report in January we are continuing to go down in our numbers. I pass on this data as soon as I get it and you are supposed to be reviewing your assigned areas to watch for things like this. We should be arresting everyone we can AND THEN make good custody decisions. We SHOULD NOT, NOT be arresting targets just because of the likelihood that we will not be able to detain them.

We are significantly behind the rest of the country with our at large arrests. By COB tomorrow I need a plan of action from each AFOD for their area on how you intend to increase these areas immediately.

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

Field Office Director (A)

\*\*\*\*\*

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations

Salt Lake City Field Office

Office: (801) 886 [REDACTED] (b)(7)(c)

Fax: (801) 886 [REDACTED] (b)(7)(c)

Email: [REDACTED] (b)(6) (b)(7)(c)

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(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, April 24, 2012 8:46 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: CAP Surge Info  
**Attachments:** Copy of CAP Surge Report Stats USE.xlsx; FSL LOCAL CAP SURGE Plan Feb 5-25 2012.doc; CAP SURGE OP PLAN 2.5.12 to 2.25.12.pdf; ERO Anticipated Operational Activity Feb 2012 CAP SURGE.docx; After Action Report Feb 2012 CAP Surge.doc

(b)(6) (b)(7)(c)

Assistant Field Office Director  
DHS/ICE/ERO  
Salt Lake City Field Office

Office: (801) 886-  
(b)(6) (b)(7)(c)  
Fax: (801) 886-  
(b)(6) (b)(7)(c)  
Email: (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, March 29, 2012 1:09 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** CAP Surge Info

- The first attachment "CAP Surge Report" is for internal use and doesn't need to be submitted. It is merely a tracking tool we use for CAP case.
- The second and third attachment is the op plan. You will need to rewrite the whole thing. Keep the format and keep the green highlighted areas green (you may add other info in the green areas). HQ wants it.
- The third attachment is the operational calendar report. This report cause a lot on concerns/issues. Please call CAP HQ and let them provide you with the forms to report and how they want it reported. CAP HQ DDOs will want advanced notice that you are doing a Local Cap Surge. **They will help so please use them.**
- The last attachment is the after action report which is due within five days of the surge ending.

The Local Surge Op Plan will be scanned to HQ. HQ will not approve or deny the op, they just want it for their records. This is a local surge and therefore you only need FOD approval.

ADVICE:

Track every single case. I looked up ENFORCE every morning to see if all the data fields were input timely and correctly. (b)(6) (b)(7)(c) printed the crime entry data screen on every case. This helped him track criminal stats. We also made sure that (if a crim) an alert was input. This will only help identifying crims. If your numbers are not close to what they have, it will draw more questions and work.

**Make sure you put CAP SURGE under operation in the initial event screen. This is very important and must be done for every case or your numbers will be jacked.**

**Never report stats without help from the STU or note that the STU has not verified your stats.**

If you have problems let me know. Just track everything. The op calendar report will be scrutinized.

(b)(6) (b)(7)(c)

Assistant Field Office Director  
DHS/ICE/ERO  
Salt Lake City Field Office

Office: (801) 886-  
Fax: (801) 886-  
Email: (b)(6) (b)(7)(c)

# CRIMINAL ALIEN PROGRAM CAP SURGE REPORT

V1 1/22/09

Field/AFOD Office

SLC

Surge Dates

02/05/2012-02/25/2012

POC & Title

Surge Facility Location

SLC ADC

Week 3

Contact No.

Line Item

## INTERVIEWS CONDUCTED

	19th	20th	21st	22nd	23rd	24th	25th	Total
--	------	------	------	------	------	------	------	-------

1	Total number of individuals interviewed (total from lines 2 & 3)		5	2	6	4	2	19
2	Individuals determined not removable		0	0	0	0	0	0
3	Individuals interviewed and amenable to removal		5	2	6	4	2	19
4	Individuals claimed USC/unknown @ time of booking & determined removable		0	0	0	0	0	0

## DETAINERS

5	Total ICE detainers (I-247) lodged (total from lines 6 to 8)		4	1	4	3	1	13
6	Charged w/ Level I Offense(s)		3	0	2	1	1	7
7	Charged w/ Level II Offense(s)		0	0	0	0	0	0
8	Charged w/ Level III Offense(s)		1	1	2	2	0	6
9	Total ICE detainers lodged w/ convictions (total from lines 10 to 12)		1	1	2	1	1	6
10	Lodged/convicted of Level I Offense(s)		0	0	2	1	0	3
11	Lodged/convicted of Level II Offense(s)		1	1	0	0	0	2
12	Lodged/convicted of Level III Offense(s)		0	0	0	0	1	1
13	ICE Detainers (I-247) removed							

## CHARGING DOCS ISSUED

14	Notice to Appear issued (I-862) - INA 240		4	1	2			7
15	Admin removal (I-851) - INA 238(b)		1	0	3			4
16	Re-instatement (I-871) - INA 241(a)(5)		1	0	2			3
17	Stipulated removals		1	1	2			4
18	Oustanding final removal order (I-205)(Fugitive Located)		0	0	0			0
19	Other removal order (VR, ER, visa waiver, etc.)		0	0	0			0
20	Judicial removal order		0	0	0			0

## OTHER

Re-entry encounters		1	1	1	0	0	3
PD		0	0	0	0	0	0
Fugitive encounters		0	0	0	0	0	0

## PROSECUTIONS

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Days 1-7 Total
Accepted Prosecutions	0	0	0	0	0	0	0	0

- \* Level I - Individuals who have been arrested and/or convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery and kidnapping.
- \* Level II - Individuals who have been arrested and/or convicted of minor drug offenses and property offenses such as retail theft, larceny, fraud, and money laundering.
- \* Level III - Individuals who have been arrested and/or convicted of other less serious offenses but are removable from the United States.

Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

## Salt Lake City Field Office

### CAP SURGE Operational Plan

LIMITED OFFICIAL USE

HEADQUARTERS  
CRIMINAL ALIEN PROGRAM OPERATIONS UNIT

1

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Enforcement and Removal Operations  
Criminal Alien Division

**CRIMINAL ALIEN PROGRAM**  
**Salt Lake City FIELD OFFICE**

**CAP SURGE Operation Plan**  
**Date: January 30, 2012**

**I. Situation**

Criminal Alien Program (CAP) Removal Surge Operations are conducted to ensure 100% of all individuals booked into targeted facilities that are amenable to immediate removal, obtain a removal order or are voluntarily returned to their country of citizenship once released from local law enforcement custody or otherwise are placed into removal proceedings.

Surge Operations will be conducted within the Salt Lake City Office. The Field Office Director (FOD), Deputy Field Office Director (DFOD), and Assistant Field Office Director (AFOD) have all been briefed on this operational plan; and statistical reporting is provided to HQERO upon conclusion of the operation.

**Targeted Facilities**

- Salt Lake County Adult Detention Complex (ADC) - It is estimated that 15-20 cases are not being encountered as the detainees are moved back from court to ADC in the evening hours on Tuesdays and Thursdays. These detainees immediately bond out of custody before ICE is notified. On Friday and Saturday nights, 10-15 cases are not being encountered due to detainees being booked in and then released before ICE is notified. All detainees not previously identified will be processed for immediate removal from the United States.

**A) Hours of Operation**

During the Surge, all individuals booked into and released from the facility will be screened for alienage and removability. The current incarcerated population in the facility will be screened as manpower and time permit.

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Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

ERO Staff will be on site as follows:

**Tuesday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Thursday Night Shift**

- (b)(7)(e) Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Friday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

**Saturday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Sunday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

Coverage outside of these hours will be accomplished by regular CAP Agents and Secure Communities.

**\*\*\* Supervisory staff will change shift hours as needed, in order to effectively facilitate the operation.**

**B) Staffing**

The Surge will not require additional support from outside the field office. The FOD has committed all necessary resources within his or her jurisdiction.

Requested detail staff positions:

\_\_\_\_ SDDO

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

DO

SIEA

IEA

DRA

**C) Community Issues or Politically Sensitive Issues**

Three days prior to the execution of the Surge, the Field Office will provide the Office of Public Affairs (OPA) and Office of Congressional Relations (OCR) with the specifics of the operation, including the operational dates and location of the initiative. *Local CAP surge operations will be excluded from this reporting requirement.* Due to social and political climates, this operation may result in a negative response from the communities in which it is conducted.

**D) Prosecutions**

In instances where an alien is amenable to prosecution (e.g. re-entry, false claims), the case will be presented to the United States Attorneys Office (AUSA) for criminal prosecution. These presentations will be noted in TECS.

**II. Mission**

The primary objective of CAP is to ensure that all criminal aliens serving criminal sentences are processed for removal prior to their release from Federal, State and local custody. This intention affirms the ultimate mission of ICE/ERO, which is to effect the removal of criminal aliens upon being turned over to ICE custody. CAP strives to ensure that all incarcerated foreign-born nationals are screened; and where applicable, processed for removal from the United States. CAP Surge Operations are an enhanced part of this effort with a goal to ensure 100% of all inmates booked into and released from targeted facilities are screened for alienage and removability and when applicable, processed for removal from the United States.

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

**Execution**

**A) Director's Intent**

CAP's primary objective is to ensure that all criminal aliens serving criminal sentences are processed for removal prior to their release from Federal, State and local custody.

**B) Concept of Operations**

The Field Office will implement CAP Removal Surge Operations to ensure 100% of all individuals booked into targeted facilities that are amenable to immediate removal, obtain a removal order or are voluntarily returned to their country of citizenship once released from local law enforcement custody or otherwise are placed into removal proceedings.

As efforts progress, field office resources may be reassigned to other geographical areas to meet operational needs; or returned to their official duty posts, as deemed appropriate by the SDDO. A liaison officer will be responsible for establishing and coordinating operations with correction officials at target facilities where Surge Operations will be conducted.

ERO enforcement personnel will identify themselves as ICE Officers or Agents to all persons questioned. ICE Officers/Agents will only wear official ICE uniforms and identifying equipment. In addition, all personnel will follow ICE policy to carry ICE credentials to prove the authorization that enables them to perform the various functions involved in the Surge Operation.

This operation will consist of 21 days of surge activities being executed at the Salt Lake City AOR from February 5, 2012 through February 25, 2012.

Phase I: February 5, 2012: Operational briefing at 1300 hours at the Salt Lake City Office. All officers participating in the operation will attend this pre-operational briefing.

Phase II: February 5, 2012: Officers from the Salt Lake City Field Office will deploy to the operational site to initiate screening.

Phase III: If deemed necessary, the ICE Public Affairs Office will issue a press release following the completion of the operation, once approved by the FOD.

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Enforcement and Removal Operations  
Criminal Alien Division

### C) Tasks

1. The Point of Contact (POC) for communications with HQCAP Operations Unit is SDDO (b)(6), (b)(7)c His cell phone number is 801-502 (b)(6) (b)(7)(c) and his desk number is 801-886 (b)(6) (b)(7). He will report to the FOD each Friday by noon EST, using the CAP Surge tracking spreadsheet with updated statistics.
2. Fugitive Operations Support Center (FOSC): No assistance is anticipated from the FOSC.
3. The Law Enforcement Support Center (LESC): No assistance is anticipated from LESC.
4. Detention Operations Coordination Center (DOCC): Detention space in the Salt Lake City Office is available. No funding request is required for additional beds to support this operation. DOCC assistance is not requested.

### D) Safety and Logistics

1. Mandatory Element: **Safety is paramount.** All personnel participating in the operation will be aware of local facility emergency procedures; and a team leader will be assigned to ensure that these procedures are followed.
2. Primary processing location: Aliens encountered from the designated facility that require immediate transfer to ICE will be transported to the Salt Lake City Office for processing. All transportation will be conducted per ERO policy.
  - a. Secondary detention and processing site(s) to be determined as needed.
  - b. The SDDO will coordinate requests for additional staff to support Surge Operations. Requests will be made through the appropriate AFOD with concurrence from the Salt Lake City FOD.

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

3. Logistics.
  - a. Lodging and per diem expenses will not be required for the Surge Operation. In the event that the need arises to utilize lodging and per diem, funding will be requested from CAPHQ.
  - b. The Surge Operation will not require any Health & Safety inspections at any facility.
4. Removal Efforts: It is the intent of the FOD to process all removable aliens in an expeditious manner. The below actions will be performed to facilitate this objective:
  - a. Immediately upon determination of alienage and removability, an Immigration detainer, form I-247, will be logged using the ENFORCE system.
  - b. All arrests that require a Notice to Appear (NTA) will be presented with the option of a Stipulated Removal if applicable to the Field Office's AOR. The OCC/SLC and EOIR/SLC have been advised and contacted as to the availability to approve stipulated removals during the Surge. All other Immigration proceedings will be utilized as applicable.
  - c. ERO personnel will be instructed to secure and place any and all identity documents relating to each removable subject in the "A" file. Additionally, they will be instructed to ensure that photocopies are placed in the subjects' "A" file. ERO personnel will make every legal effort to secure these documents.

**E) General Reporting Requirements**

1. Weekly Reports: Submitted to the AFOD utilizing the "Surge Activity Report" spreadsheet.
2. Significant Event Notification (SEN): A SEN/SIR will need to be submitted only if events or incidences occur that warrant their submission in accordance with established policy and procedures.

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

3. Report Format: At the conclusion of the Surge, the field office's POC to the CAP Operations Unit, previously identified above, will ensure that HQCAP is properly supplied with the final statistical report for the Surge. This will be due within five days of the completions of the CAP surge operation.

**F) After Action Reporting Requirements**

1. Initial after-action conferences will be conducted as follows:
  - a. Key operational personnel involved in the final Phase(s) of the Surge will be held on **February 25, 2012** at the **Salt Lake City Office**.
2. Format: The format for issues will be:
  - a. Topic
  - b. Discussion
  - c. Recommendation(s)
3. Formal after-action report: An after action report will be generated and forwarded to the FOD for review.
4. **SLC** Public Affairs will coordinate with the FOD and generate a press release upon completion of the operation (if needed). (b)(6) (b)(7)(c) **949-360** (b)(6) (b)(7)(c)

**G) Command and Control**

1. Primary means of communication will be via radio as allowed by each facility, as well as telephone and e-mail.
2. All personnel will have identifiers created with SECTOR communications to facilitate record checks and status verifications.

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Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

APPROVING OFFICIAL

(b)(6) (b)(7)(c)

Field Office Director  
Salt Lake City Field Office

AUTHORIZING OFFICIAL

(b)(6) (b)(7)(c)

Deputy Field Office Director  
Salt Lake City Field Office

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Criminal Alien Division

**Salt Lake City Field Office**  
**CAP SURGE Operational Plan**

**LIMITED OFFICIAL USE**

**HEADQUARTERS  
CRIMINAL ALIEN PROGRAM OPERATIONS UNIT**

1

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Criminal Alien Division

**CRIMINAL ALIEN PROGRAM**  
**Salt Lake City FIELD OFFICE**

**CAP SURGE Operation Plan**  
**Date: January 30, 2012**

**I. Situation**

Criminal Alien Program (CAP) Removal Surge Operations are conducted to ensure 100% of all individuals booked into targeted facilities that are amenable to immediate removal, obtain a removal order or are voluntarily returned to their country of citizenship once released from local law enforcement custody or otherwise are placed into removal proceedings.

Surge Operations will be conducted within the Salt Lake City Office. The Field Office Director (FOD), Deputy Field Office Director (DFOD), and Assistant Field Office Director (AFOD) have all been briefed on this operational plan; and statistical reporting is provided to HQERO upon conclusion of the operation.

**Targeted Facilities**

- Salt Lake County Adult Detention Complex (ADC) - It is estimated that 15-20 cases are not being encountered as the detainees are moved back from court to ADC in the evening hours on Tuesdays and Thursdays. These detainees immediately bond out of custody before ICE is notified. On Friday and Saturday nights, 10-15 cases are not being encountered due to detainees being booked in and then released before ICE is notified. All detainees not previously identified will be processed for immediate removal from the United States.

**A) Hours of Operation**

During the Surge, all individuals booked into and released from the facility will be screened for alienage and removability. The current incarcerated population in the facility will be screened as manpower and time permit.

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

ERO Staff will be on site as follows:

**Tuesday Night Shift**

- (b)(7)(e) Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Thursday Night Shift**

- (b)(7)(e) Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Friday Night Shift**

- (b)(7)(e) Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
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Enforcement and Removal Operations  
Criminal Alien Division

**Saturday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

**Sunday Night Shift**

- (b)(7)(e) -Operational Hours
  - Supervisory Detention & Deportation Officers
  - Deportation Officers
  - Supervisory Immigration Enforcement Agent
  - (b)(7)(e) Immigration Enforcement Agents
  - Deportation Removal Assistant
  - Other Support (ie. JPATS, PATH)  
(list)
- 

Coverage outside of these hours will be accomplished by regular CAP Agents and Secure Communities.

**\*\*\* Supervisory staff will change shift hours as needed, in order to effectively facilitate the operation.**

**B) Staffing**

The Surge **will not** require additional support from outside the field office. The FOD has committed all necessary resources within his or her jurisdiction.

Requested detail staff positions:

       SDDO

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

DO

SIEA

IEA

DRA

**C) Community Issues or Politically Sensitive Issues**

Three days prior to the execution of the Surge, the Field Office will provide the Office of Public Affairs (OPA) and Office of Congressional Relations (OCR) with the specifics of the operation, including the operational dates and location of the initiative. *Local CAP surge operations will be excluded from this reporting requirement.* Due to social and political climates, this operation may result in a negative response from the communities in which it is conducted.

**D) Prosecutions**

In instances where an alien is amenable to prosecution (e.g. re-entry, false claims), the case will be presented to the United States Attorneys Office (AUSA) for criminal prosecution. These presentations will be noted in TECS.

**II. Mission**

The primary objective of CAP is to ensure that all criminal aliens serving criminal sentences are processed for removal prior to their release from Federal, State and local custody. This intention affirms the ultimate mission of ICE/ERO, which is to effect the removal of criminal aliens upon being turned over to ICE custody. CAP strives to ensure that all incarcerated foreign-born nationals are screened; and where applicable, processed for removal from the United States. CAP Surge Operations are an enhanced part of this effort with a goal to ensure 100% of all inmates booked into and released from targeted facilities are screened for alienage and removability and when applicable, processed for removal from the United States.

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Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

**Execution**

**A) Director's Intent**

CAP's primary objective is to ensure that all criminal aliens serving criminal sentences are processed for removal prior to their release from Federal, State and local custody.

**B) Concept of Operations**

The Field Office will implement CAP Removal Surge Operations to ensure 100% of all individuals booked into targeted facilities that are amenable to immediate removal, obtain a removal order or are voluntarily returned to their country of citizenship once released from local law enforcement custody or otherwise are placed into removal proceedings.

As efforts progress, field office resources may be reassigned to other geographical areas to meet operational needs; or returned to their official duty posts, as deemed appropriate by the SDDO. A liaison officer will be responsible for establishing and coordinating operations with correction officials at target facilities where Surge Operations will be conducted.

ERO enforcement personnel will identify themselves as ICE Officers or Agents to all persons questioned. ICE Officers/Agents will only wear official ICE uniforms and identifying equipment. In addition, all personnel will follow ICE policy to carry ICE credentials to prove the authorization that enables them to perform the various functions involved in the Surge Operation.

This operation will consist of 21 days of surge activities being executed at the Salt Lake City AOR from February 5, 2012 through February 25, 2012.

Phase I: February 5, 2012: Operational briefing at 1300 hours at the Salt Lake City Office. All officers participating in the operation will attend this pre-operational briefing.

Phase II: February 5, 2012: Officers from the Salt Lake City Field Office will deploy to the operational site to initiate screening.

Phase III: If deemed necessary, the ICE Public Affairs Office will issue a press release following the completion of the operation, once approved by the FOD.

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

**C) Tasks**

1. The Point of Contact (POC) for communications with HQCAP Operations Unit is SDDO (b)(6), (b)(7)c His cell phone number is 801-30(b)(6) (b)(7)(c) and his desk number is 801-886(6) (b)(7)(d) He will report to the FOD each Friday by noon EST, using the CAP Surge tracking spreadsheet with updated statistics.
2. Fugitive Operations Support Center (FOSC): No assistance is anticipated from the FOSC.
3. The Law Enforcement Support Center (LESC): No assistance is anticipated from LESC.
4. Detention Operations Coordination Center (DOCC): Detention space in the Salt Lake City Office is available. No funding request is required for additional beds to support this operation. DOCC assistance is not requested.

**D) Safety and Logistics**

1. Mandatory Element: **Safety is paramount.** All personnel participating in the operation will be aware of local facility emergency procedures; and a team leader will be assigned to ensure that these procedures are followed.
2. Primary processing location: Aliens encountered from the designated facility that require immediate transfer to ICE will be transported to the Salt Lake City Office for processing. All transportation will be conducted per ERO policy.
  - a. Secondary detention and processing site(s) to be determined as needed.
  - b. The SDDO will coordinate requests for additional staff to support Surge Operations. Requests will be made through the appropriate AFOD with concurrence from the Salt Lake City FOD.

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

3. Logistics.
  - a. Lodging and per diem expenses **will not** be required for the Surge Operation. In the event that the need arises to utilize lodging and per diem, funding will be requested from CAPHQ.
  - b. The Surge Operation will not require any Health & Safety inspections at any facility.
4. Removal Efforts: It is the intent of the FOD to process all removable aliens in an expeditious manner. The below actions will be performed to facilitate this objective:
  - a. Immediately upon determination of alienage and removability, an Immigration detainer, form I-247, will be logged using the ENFORCE system.
  - b. All arrests that require a Notice to Appear (NTA) will be presented with the option of a Stipulated Removal if applicable to the Field Office's AOR. The **OCC/SLC** and **EOIR/SLC** have been advised and contacted as to the availability to approve stipulated removals during the Surge. All other Immigration proceedings will be utilized as applicable.
  - c. ERO personnel will be instructed to secure and place any and all identity documents relating to each removable subject in the "A" file. Additionally, they will be instructed to ensure that photocopies are placed in the subjects' "A" file. ERO personnel will make every legal effort to secure these documents.

**E) General Reporting Requirements**

1. Weekly Reports: Submitted to the AFOD utilizing the "Surge Activity Report" spreadsheet.
2. Significant Event Notification (SEN): A SEN/SIR will need to be submitted only if events or incidences occur that warrant their submission in accordance with established policy and procedures.

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**Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division**

3. Report Format: At the conclusion of the Surge, the field office's POC to the CAP Operations Unit, previously identified above, will ensure that HQCAP is properly supplied with the final statistical report for the Surge. This will be due within five days of the completions of the CAP surge operation.

**F) After Action Reporting Requirements**

1. Initial after-action conferences will be conducted as follows:
  - a. Key operational personnel involved in the final Phase(s) of the Surge will be held on **February 25, 2012** at the **Salt Lake City Office**.
2. Format: The format for issues will be:
  - a. Topic
  - b. Discussion
  - c. Recommendation(s)
3. Formal after-action report: An after action report will be generated and forwarded to the FOD for review.
4. **SLC** Public Affairs will coordinate with the FOD and generate a press release upon completion of the operation (if needed). **Virginia Kice 949-360-3096.**

**G) Command and Control**

1. Primary means of communication will be via radio as allowed by each facility, as well as telephone and e-mail.
2. All personnel will have identifiers created with SECTOR communications to facilitate record checks and status verifications.

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Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Criminal Alien Division

APPROVING OFFICIAL

(b)(6) (b)(7)(c)

Field Office Director  
Salt Lake City Field Office

AUTHORIZING OFFICIAL

(b)(6) (b)(7)(c)

Deputy Field Office Director  
Salt Lake City Field Office

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## ICE ERO Anticipated Operational Activity/Events

February 5, 2012 – February 25, 2012

### *Criminal Alien Program*

#### ERO Salt Lake City

**Office Event Description:** ERO will be conducting a local CAP surge operation in the Salt Lake County Adult Detention Complex. This operation seeks to locate and arrest criminal aliens or aliens with pending criminal charges which may later result in a conviction.

**Location:** Salt Lake City, Utah

**Projected Date:** February 5-25, 2012

**Expected Media Coverage:** *No media coverage is expected.*

**Juvenile presence expected:** *The likelihood of encountering children during this operation is not expected.*

**Sensitive locations:** *This operation will not occur at or near sensitive locations.*

**Total Targets:** 75 (estimated)

#### Targets by priority:

<b>Level 1 criminal alien:</b>	30 (estimated)
<b>Level 2 criminal alien:</b>	20 (estimated)
<b>Level 3 criminal alien:</b>	15 (estimated)
<b>Fugitive aliens:</b>	5 (estimated)
<b>Re-entries:</b>	5 (estimated)
<b>Recent Border Entrants:</b>	0

*All arrests stemming from the above mentioned CAP Surge will be vetted so that they meet ICE priorities and prosecutorial discretion factors at the time of encounter and/or arrest.*

**Total Arrests as of: February 25, 2012** 30

#### Arrests by priority:

<b>Level 1 criminal alien:</b>	8
<b>Level 2 criminal alien:</b>	0
<b>Level 3 criminal alien:</b>	2
<b>Level 1 non-criminal alien:</b>	3
<b>Level 2 non-criminal alien:</b>	2
<b>Level 3 non-criminal alien:</b>	15

<b>Fugitive aliens:</b>	0
<b>Re-entries:</b>	3 (accounted for above)
<b>Recent Border Entrants:</b>	0

Continued...

**Total Detainers as of: February 25, 2012 85**

**Detainers by priority:**

Level 1 criminal alien: 15

Level 2 criminal alien: 8

Level 3 criminal alien: 8

Level 1 non-criminal alien: 28

Level 2 non-criminal alien: 3

Level 3 non-criminal alien: 23

Fugitive aliens: 0

\*Re-entries: 13

Recent Border Entrants: 0

*\*Re-entry detainees have been categorized above according to criminality. These are not separate detainees.*

**The non-criminal aliens are pending criminal charges and have no prior convictions.**  
**These aliens are categorized based on their NCIC level charge.**

**These statistics have not been verified by the STU.**



**U.S. Immigration  
and Customs  
Enforcement**

February 27, 2012

MEMORANDUM FOR:

(b)(6) (b)(7)(c)

Field Office Director  
Salt Lake City Field Office

FROM:

(b)(6) (b)(7)(c)

Assistant Field Office Director  
Salt Lake City Field Office

SUBJECT:

After Action Report for Salt Lake County Jail Local CAP Surge

The Salt Lake City ICE Enforcement and Removal Operations (ERO) Office conducted a Criminal Alien Program (CAP) surge at the Salt Lake County Adult Detention Complex (ADC) on February 5, 2012 through February 25, 2012.

This CAP surge was authorized by the Salt Lake City Field Office Director in an effort to encounter detainees that are moved from court to ADC during non-business hours and to perform additional CAP operations. Two (2) Immigration Enforcement Agents and/or Deportation Officers were scheduled overtime during nights and weekends to prevent inmates from being released before ERO could conduct immigration interviews and to also provide additional coverage at ADC.

On February 3, 2012, a pre-operation briefing was conducted with Salt Lake City Field Office personnel, to include: Immigration Enforcement Agents, Detention and Removal Assistants, Deportation Officers, Supervisory Immigration Enforcement Agent(s), and Supervisory Detention and Deportation Officer(s). No outside detailed staff was requested to support the operation. Topics of discussion included: the surge schedule, meeting location, and processing procedures.

Immigration Enforcement Agents and Deportation Officers conducted interviews, placed immigration detainees and made arrests when appropriate. When warranted, charging documents were issued on all individuals amenable to removal proceedings in accordance with ICE mission priorities.

The following CAP surge statistics were provided on February 27, 2012 by the HQ Statistical Tracking Unit.

ICE Threat Level	Encounters
Level 1	19
Level 2	4
Level 3	23
Non-Criminal Immigration Violator	51
<b>Total</b>	<b>97</b>

ICE Threat Level	Detainers
Level 1	34
Level 2	6
Level 3	20
No Criminal Record Recorded at Time of Detainer	26
<b>Total</b>	<b>86</b>

ICE Threat Level	Arrests
Level 1	7
Level 3	5
Non-Criminal Immigration Violator	20
<b>Total</b>	<b>32</b>

ICE Threat Level	CDIs
Level 1	7
Level 3	5
Non-Criminal Immigration Violator	18
<b>Total</b>	<b>30</b>

On February 27, 2012, a post-operation briefing was conducted with the supervisory staff. During the discussion, overall numbers and findings were disseminated and a dialogue was opened to gauge overall effectiveness of the surge. The information acquired will be rendered during any future CAP surges in this AOR.

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, October 04, 2012 9:25 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: CAP data request  
**Attachments:** Data Request 09202012 detainees.xlsx

SGU has one case. Will you check it out, make updates to EARM/EADM, and fill out this spreadsheet. Please return to me when complete. Thanks (b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)  
Assistant Field Office Director  
DHS/ICE/ERO  
Salt Lake City Field Office

Office: (801) 886-6666 (b)(7)(c)  
Fax: (801) 886-6666 (b)(7)(c)  
Email: (b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, October 04, 2012 9:21 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: CAP data request

AFODs,  
Please ensure ENFORCE is updated accordingly; 3 LVG, 1 SGU.

Thanks,

(b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Thursday, October 04, 2012 10:07 AM

(b)(6) (b)(7)(c)

**Subject:** CAP data request

All,

Please see the list of detainees that according to ENFORCE have been placed on USC's. Please review these cases and ensure that the system is updated correctly. A similar tasking was sent out to the field a few weeks ago and it was found that most, if not all detainees had been previously lifted and the system was updated to indicate the correct

information. I assume that we will have the same outcome here. Please complete this review and have all cases updated by COB on Tuesday 10/9.

Thanks  
[redacted]  
(b)(6) (b)(7)(c)

**FY12 - Detainers for Citizenship of: United States vs UNKNOWN**

AOR	UNITED STATES	UNKNOWN	Total
NO AOR	1	3	4
Atlanta	6	3	9
Boston		1	1
Chicago	1	9	10
Dallas	2	5	7
Denver	4		4
Detroit		2	2
El Paso	1	2	3
Houston	5	28	33
HQ	1	1	2
Los Angeles	17	3	20
Miami	9	2	11
New Orleans	3	1	4
Newark	1	1	2
Philadelphia	19	2	21
Phoenix	72	4	76
Salt Lake City	3	1	4
San Antonio	16	6	22
San Diego	7	2	9
San Francisco	3	3	6
Seattle	5	1	6
St. Paul		20	20
Washington		2	2
<b>Total</b>	<b>176</b>	<b>102</b>	<b>278</b>

IIDS data as of 09/20/2012

**Criteria:**

*Process Disposition:* Foreign Born USC; Other

*Citizenship:* UNITED STATES; UNKNOWN

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, June 25, 2013 8:58 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** Processing of Cubans at POE's  
**Attachments:** 20132506-Processing of Cubans at Ports of Entry.pdf

AFODs,

As an FYI in case you see Cubans that have not been NTA you will know why.

(b)(6) (b)(7)(c)

Field Office Director

Idaho – Montana - Nevada - Utah

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Salt Lake City Field Office  
Office: (801) 886-<sup>(6)</sup>(b)(7)(c)  
Fax: (801) 886-<sup>(6)</sup>(b)(7)(c)  
Email: (b)(6) (b)(7)(c)

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**U.S. Customs and  
Border Protection**

**JUN 25 2013**

**MEMORANDUM FOR:** Directors, Field Operations  
Director, Preclearance Operations  
Office of Field Operations

Director, Field Operations Academy  
Director, Advance Training Center  
Office of Training and Development

**FROM:** Acting Executive Director [REDACTED] (b)(6) (b)(7)(c)  
Admissibility and Passenger

**SUBJECT:** Processing of Cubans at Ports of Entry

This memorandum supersedes the memorandum issued June 10, 2005 titled "Treatment of Cuban Asylum Seekers at Land Border Ports of Entry" wherein new procedures were established regarding the inspection of Cuban nationals arriving at land border ports of entry. Total citizens of Cuba encountered and processed for adverse actions at ports have risen from an average of 7,000 per fiscal year in 2010 and 2011 to more than 12,000 during Fiscal Year 2013 to date. Addressing the additional workload associated with these arrivals while continuing to ensure the security of the inspection process has necessitated some procedural changes, effective upon receipt of this memorandum.

#### **Processing at Ports**

The current workload associated with the issuance of Form I-862 Notice to Appear (NTA) to Cuban nationals is significant, requiring more than 50,000 staff hours per year. In addition, the vast majority of Cuban nationals processed for a hearing before an Immigration Judge are never actually required to appear for the hearing and the NTA is ultimately cancelled. After consultation with and concurrence from ICE and U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) has determined that it should amend its current procedures. Therefore, effective immediately, ports will cease issuance of NTA's to Cuban nationals that fit the following criteria:

1. No record or indication of being or having been a member of the Castro Regime;
2. No record or indication of being or having been a member of the Communist Party;
3. No record or indication of criminal arrest, conviction, wants, or warrants;
4. No record of prior removal under Section 240 of the INA;

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Processing of Cubans at Ports of Entry  
Page 2

5. No record or indication of past or current involvement in alien smuggling;
6. No ground of inadmissibility other than Sections 212(a)(4), (5), and (7) of the INA;
7. No interest expressed by the intelligence community that would preclude release; and
8. The results of the Cuban survey do not indicate reason for NTA issuance and detention.

For Cuban nationals that fit the above criteria, citizenship, nationality and admissibility will be firmly established, a survey (attached) will be completed to collect intelligence information, biometric and biographic information will be captured in appropriate systems, and parole will be granted for a period of two (2) years and as outlined below. A principal family member may, when appropriate, complete the survey for an entire family unit. Individual surveys may be required in those instances where supervisory review of the survey completed by the principal indicates that additional or confirming information is necessary.

**Period of Parole**

To ensure that the period of parole is sufficient to allow for qualification under the provisions of the Cuban Refugee Adjustment Act of 1966 [Public Law 89-732] (CRAA), to allow time for issuance of Employment Authorization Documents (EAD) by USCIS, and to provide an authorized stay sufficient to ensure provision of social services and other benefits available to CRAA applicants, the period of parole for all Cuban nationals considered for release without detention will be two (2) years.

Lesser periods of parole may be granted but must be authorized by a manager at the GS-14 or higher level and only for significant cause. In most cases, if a lesser period of parole is being considered because of potential risk to society, past criminal history, or other contributing factors, detention in lieu of parole would be the more appropriate action.

**Citizens and Nationals of Cuban with Dual Citizenship and Dependents of the Citizen and National of Cuba**

Ports of entry are interdicting an increasing number of Cuban nationals who are arriving in the United States from their established residences in countries other than Cuba. In many instances, they are accompanied by Cuban and non-Cuban family members. These cases present unique challenges, must be considered on a case-by-case basis, and must include careful analysis and verification of all facts and evidence presented.

Generally, the following guidelines for processing these cases may be used:

1. Those subjects born in Cuba but who subsequently became citizens of other countries fully qualify for CRAA and, after verification of birth in Cuba, may be paroled or otherwise processed as outlined above;
2. Those subjects born in another country but who became naturalized citizens of Cuba fully qualify for CRAA and, after verification of naturalization in Cuba, may be paroled or otherwise processed as outlined above;

Processing of Cubans at Ports of Entry  
Page 3

3. The dependent spouse and children of a Cuban national fully qualify for CRAA and, after verification of the bona fides of the relationship and that the dependent(s) resides with the Cuban principal, may be paroled or otherwise processed as outlined above; and
  - a. Note that because CRAA eligibility for dependents of Cuban nationals is dependent on establishment of a bona fide relationship and current residence with the principal, parole of these dependents should not be considered unless accompanying the principal alien.
4. Typical bars to adjustment do not apply in CRAA cases. Cuban nationals who are crewmen or Visa Waiver Program (VWP) applicants may seek adjustment, and therefore paroled to seek adjustment, under CRAA.
  - a. Cuban nationals who are dual nationals applying for admission under the VWP and presenting a VWP passport in support of their application for admission to the primary CBP officer shall be treated as a VWP applicant.
  - b. If the applicant claims a fear of return, normal VWP procedures for referral to an Immigration Judge for a limited review of the asylum issues should be followed.<sup>1</sup> Ports may consult with their local Chief Counsel's office for additional advice on referring a specific case to an Immigration Judge for a limited review.<sup>2</sup>

To prove eligibility for CRAA, the following forms of identification and proof may be used:

1. A valid (expired or unexpired) Cuban passport;
2. A valid Cuban Civil Registry Document;
3. A valid Cuban consular certificate of citizenship; or,
4. A valid document signed by a Cuban official indicating a named individual is Cuban.

Those claiming Cuban nationality, citizenship, or eligibility for CRAA status should not be considered for parole and release unless they can affirmatively establish citizenship through presentation of one or more of the above documents; CBP has conducted all available background checks; and additionally, the person(s) do not pose a criminal or national security threat to the United States.

Please ensure that this guidance is disseminated to all ports within your area of responsibility. Questions or concerns regarding this guidance may be directed to (b)(6) (b)(7)(c) Acting Director, Enforcement Programs Division at (202) 344-(b)(6) (b)(7)(c)

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<sup>1</sup> See *In re Suseenthira KANAGASUNDRAM* (22 I&N 963 – BIA 1999).

<sup>2</sup> *Matter of B-R-* (26 I&N 119 – BIA 2013), states that “An alien who is a citizen or national of more than one country but has no fear of persecution in one of those countries does not qualify as a ‘refugee’ under Section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. Section 1101(a)(42) (2006), and is ineligible for asylum.”

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

Tuesday, August 06, 2013 1:08 PM

(b)(6) (b)(7)(c)

**From:**

**Sent:**

**To:**

**Subject:**

**Attachments:**

**Importance:**

FW: Guidance for Submitting Segregation Notifications to ERO Headquarters  
Segregation Review Form.docx; Segregation Review Spreadsheet 07162013.xlsx

High

AFODs,

Ensure we are good to go on our reporting at the 30 and 60 day [redacted] (b)(7)(D). This is an issue HQ meets on weekly and we need to ensure our books are in order. Review your current segregation cases and [redacted] (b)(7)(E) now when you are complete. What I want is for you to go through and make sure we haven't missed anything.

Thanks,

(b)(6) (b)(7)(c)

Field Office Director

Idaho – Montana - Nevada - Utah

U.S. Immigration and Customs Enforcement

Enforcement and Removal Operations

Salt Lake City Field Office

Office: (801) 886-[redacted] (b)(7)(c)

Fax: (801) 886-[redacted] (b)(7)(c)

Email: [redacted] (b)(6) (b)(7)(c)

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---

**From:** ERO Taskings

**Sent:** Wednesday, July 17, 2013 2:24 PM

**Subject:** Guidance for Submitting Segregation Notifications to ERO Headquarters

*The following message is being sent on behalf of [redacted] (b)(6) (b)(7)(c) Assistant Director for Custody Management, with concurrence by [redacted] (b)(6) (b)(7)(c) Assistant Director for Field Operations:*

**To:** Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors

**Subject:** Guidance for Submitting Segregation Notifications to ERO Headquarters

ICE has developed a form and spreadsheet to ensure standardized reporting of all relevant information about detainees who are placed in segregation for longer than 30 days. The purpose of this broadcast is to provide

guidance to Field Office Directors (FODs) and their staff regarding the completion of these documents and their submission to ERO Custody Management Division (CMD). Specifically, ICE has developed a Segregation Review Form and a Segregation Review Spreadsheet to facilitate collection of information and reporting on segregation cases in each Area of Responsibility.

For each instance when a detainee has been in segregation for more than 30 days and again for more than 60 days from the date of their initial placement, FODs, or their designee, are requested to submit a detailed Segregation Review Form. It should describe the reason why the detainee was placed in segregation, document any special issues or concerns, and recommend viable alternatives to segregation, if alternatives are appropriate. These submissions should be sent by email to [REDACTED] (b)(6) (b)(7)(c) [REDACTED] as needed.

For ongoing tracking of segregation cases, we ask that FODs, or their designees, submit a completed Segregation Review Spreadsheet. This spreadsheet will contain a snapshot of all detainees held in segregation for more than 30 days. These submissions should be sent by email to [REDACTED] (b)(6) (b)(7)(c) [REDACTED] by close of business each Friday.

The Segregation Review Spreadsheet contains four tabs:

1. Instructions: Instructions for completing the spreadsheet.
2. New Segregation Notification: for notifying ERO of new cases of detainees who have been in segregation for more than 30 days. This should be updated in conjunction with completing the Segregation Review Form.
3. Segregation Status Updates: for updating ERO on changes to segregation cases that were previously submitted, including releases or changes in the reason for placement.
4. Definitions and Standards Reference: listing applicable detention standards.

By Tuesday of each week CMD will send the Field Offices an updated version of the Segregation Review Spreadsheet.

FODs, or their designees, are encouraged to take any steps they believe appropriate whenever they have concerns about a detainee's continued placement in segregation.

Through Field Operations, the Office of Detention Planning and Policy and CMD will organize conference calls with FODs, and/or their designees, to review this process and the standard forms associated with it.

For questions or concerns regarding segregation notification, please contact CMD Interim Segregation Coordinator Advisor [REDACTED] (b)(6) (b)(7)(c) at [REDACTED] (b)(6) (b)(7)(c)

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## ICE Review of Segregation Cases

Alien Number	Last Name, First Name	Gender	Custody Class.	AOR	Facility

**1. Type of Notification:**

- 30-Day
- 60-Day
- Other: \_\_\_\_\_

**2. Initial Date of Placement:** \_\_\_\_\_

**3. Date of Disciplinary Proceeding (If Applicable):** \_\_\_\_\_

**4. Length of Disciplinary Sanction (If Applicable):** \_\_\_\_\_

**5. Reason for Placement: (Select Only One)**

- Disciplinary
- Pending Investigation of Disciplinary Violation
- Facility Security: Violent or Disruptive Behavior
- Facility Security: Due to Seriousness of Criminal Conviction
- Facility Security: Gang Member Status (Not Protective Custody)
- Facility Security Threat: Other
- Protective Custody: Criminal Offense (i.e. Sex Offender)
- Protective Custody: Gang Status
- Protective Custody: Victim of Sexual Assault
- Protective Custody: Lesbian, Gay, Bisexual, Transgender (LGBT)
- Protective Custody: Other Special Vulnerability
- Protective Custody: Other
- Mental Illness
- Medical: TB or Other Infectious Diseases
- Medical: Disabled or Infirm
- Medical: Detox/Withdrawal Observation
- Medical: Other
- Hunger Strike
- Suicide Risk Placement
- Other

*Provide a detailed description of the reason(s) for the segregation placement, including all relevant facts articulated by the facility in justifying the placement:*

**6. Did the detainee request segregation?**

YES      NO

**7. Is the segregation placement in compliance with the requirements of applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews)?**  
 See "Standards Reference" tab of the segregation spreadsheet for information about relevant detention standards.

YES      NO

*If no, explain the area(s) of non-compliance:*

## ICE Review of Segregation Cases

**8. Does the detainee have a disability or serious medical or mental illness?**

YES      NO

*If yes, provide a general description of the medical or mental issue:*

**9. Does the Field Office Director or his/her designee have any concerns regarding the continued placement in segregation?**

YES      NO

*If yes, explain:*

**10. Does the Field Office Director or his/her designee recommend alternatives to segregation based on special vulnerabilities, identified concerns, or other factors? (possible alternatives to segregation include release to general population; transfer to another facility where the detainee can be housed in an environment better suited to the needs of the detainee; transfer to a hospital; or, consistent with the requirements of mandatory detention, public safety, and other immigration enforcement considerations, release from custody.)**

YES      NO

*Explain why or why not:*

**11. Additional Comments:**

**12. Describe the detainee's immigration history and prior criminal history, if applicable:**

**12. Reviewing Supervisory Officer:** \_\_\_\_\_ **13. Date:** \_\_\_\_\_

## Segregation Review Spreadsheet Instructions

Week of: 07/16/2013

### Purpose

ICE HQ has asked Field Office Directors (FODs) to notify ERO Custody Management Division (CMD) whenever an ICE detainee has been placed in segregation for longer than 30 days and again when the detainee has been held in segregation for longer than 60 days. FODs were also asked to provide a summary of relevant information about the segregation placement. CMD developed this spreadsheet and the associated "Segregation Review Form" to provide FODs with a standardized format for reporting the segregation information to CMD.

FODs, or their designees, are requested to provide data on segregation cases in two places, depending on the status. Use Tab #2 (New Segregation Notification) of the accompanying spreadsheet to provide new notifications of detainees who have been segregated for 30 days and for 60 days. Use Tab #3 (Segregation Status Updates) on the accompanying spreadsheet to notify CMD when any of these detainees are released or when their segregation status has changed (changes can be made to the "Date of Release from Segregation" and "Reason for Placement in Segregation" columns, and other updates should be noted in the "Additional Comments" column). Please note that the spreadsheet will document all segregation stays across all AORs, so please filter the attached spreadsheet to review cases associated with each unique AOR.

FODs, or their designees, should also complete a separate "Segregation Review Form" for each detainee who has been in segregation for over 30 or over 60 days. FODs, or their designees, should ensure that there is thorough review of each long-term segregation placement, and that the results of the review are documented.

### Instructions

(b)(7)e

(b)(6) (b)(7)(c)

Tab #	Spreadsheet Tab	Contains when Received by Field Each Week	Instructions
1	Instructions (this tab)	Guidance on the completion of this spreadsheet	N/A
2	New Segregation Notifications	Blank, ready for completion	
3	Segregation Status Updates	A roster of detainees previously reported as having been in segregation for more than 30 or 60 days	(b)(7)e
4	Definitions and Standards	Definitions for "Serious Mental Illness" and "Special Vulnerabilities" and relevant detention standards language to be used as a reference when responding to compliance questions #15 and #16 on the "New Segregation Notifications" tab.	None

**From:** ERO Taskings  
**Sent:** Wednesday, October 16, 2013 8:57 AM  
**Subject:** Modernized Alien Criminal Response Information Management System (Mod ACRIMe)  
**Attachments:** ORI Assignment Mapping  
ALL Mod ACRIMe ORI Routing.zip

*The following message is being sent on behalf of* (b)(6) (b)(7)(c) **Assistant Director for Law Enforcement Systems and Analysis, and approved by** (b)(6) (b)(7)(c) **Assistant Director for Field Operations.**

**To:** Field Office Directors, Deputy Field Office Directors and Assistant Field Office Directors  
**Subject:** Modernized Alien Criminal Response Information Management System (Mod ACRIMe)  
ORI Assignment Mapping

Mod ACRIMe is an enhanced system that will allow field users to access Immigration Alien Responses (IARs) generated at the Law Enforcement Support Center (LESC). Mod ACRIMe is scheduled to begin a phased deployment in fiscal year 2014.

Mod ACRIMe will allow field users to:

- a. View and process IARs they are responsible for.
- b. View and then affirm or edit the Criminal Offense Level (COL) and Status recommendations entered at the LESC.
- c. View searches conducted at the LESC to better understand COL and Status recommendations.
- d. Conduct additional searches, if necessary, within ACRIMe.
- e. Forward IARs to sub-offices within the system.
- f. Generate a PDF document of the IAR packet.

In order for Mod ACRIMe to route ORIs to the appropriate office, the field must validate all ORI information. In February, the Annual Originating Agency Identifier (ORI) Validation Tasker was sent to the field to validate ICE office ORIs. This tasking expands upon the February tasking by validating all ORI routing patterns, including:

- ICE office ORI subsets
- County-to-ICE office assignments
- Sub-offices
- After-hours coverage
- Duty hours for each ICE office

**Tasking Action:**

1. Review the Mod ACRIMe ORI Routing directions which can be found below or in the third tab of the attached spreadsheet.
2. Complete the attached Mod ACRIMe ORI routing spreadsheet for your AOR and submit the validated spreadsheet by October 31, 2013. Many of the fields within the spreadsheet have been pre-populated based on current ORI routing. Please validate these fields in addition to entering any new information. Once the ORI routing information is validated and/or updated, it will be uploaded to the Mod ACRIMe system. Complete and correct routing information will assure that IARs are directed to the appropriate office for processing.

3. When you have completed validating and/or updating the spreadsheet, please send your AOR's Mod ACRIMe ORI routing spreadsheet to [REDACTED] (b)(6) (b)(7)(c)

Thank you in advance for your support toward the success of the Mod ACRIMe deployment.

Please direct any questions regarding this tasking to [REDACTED] (b)(6) (b)(7)(c) 202-534-6202 or email [REDACTED] (b)(6) (b)(7)(c)

Phase	Step	Directions
Introduction		<p>The purpose of this tasking is to review, validate, and correct (if necessary) existing field office and ORI routing information. If corrections need to be made, please change the text color of the cell to red and enter the correct information. In cases where information is missing, please add the necessary information and change the text color of the cell(s) to red.</p> <p><b>Tab 1 (Office Information):</b> This tab lists all offices within your AOR to which jurisdictions are assigned. This tab also contains the time zone and hours of operation for each location, blank space in which to enter POC information for each office, and IAR footer information.</p> <p><b>Tab 2 (Routing Validation):</b> This tab serves as a master reference for all IAR routing and primary/after-hours responsibility. It also documents the ERO county-to-office assignments.</p> <p><b>NOTE:</b> If you have any questions while completing this tasking, please feel free to email [REDACTED] (b)(6) (b)(7)(c)</p> <p><b>To get started, open attached spreadsheet called [AOR] ACRIMe ORI Routing.</b></p>
Tab 1: Office Information	1	<p>On the <i>Office Information</i> tab, Ensure all sub offices to which any counties or jurisdictions within your AOR are assigned are listed. If not, add them to the bottom of the list and populate all columns. Not all offices will be listed (e.g., some CAP offices do not have direct responsibility for any jurisdictions' IARs). All offices that have direct responsibility for IARs from any jurisdictions should be listed, as well as any that need to receive IARs now or in the future.</p> <p><b>NOTE:</b> Please change the font color of all edited or added information to red.</p> <p><b>NOTE:</b> If changes need to be made that are not easily captured, please utilize the notes column and the ACRIMe team will follow up with you as necessary.</p>
	2	Review all field and sub-office entries and ensure the Office Names (col. B), State locations (col. C), EID Codes (col. D), Office Type (col. E) (e.g., Field Office (FO), Sub-Office (SO), Interoperability Response Center (IRC), or Command Center (CC)), and Time Zones (col. F) are accurate.
	3	Indicate the hours during which each office operates by populating the Operation Hours Begin (col. G) and Operation Hours End (col. H) columns using the drop-down menus.
	4	<p><b>NOTE:</b> For example, if your office operates from 6:00am until 6:00pm, please select 6:00 in Operation Hours Begin (col. G) and 18:00 in Operation Hours End (col. H). To convey 24/7 operation, please select 0:00 (displays as 12:00 AM) for both columns.</p> <p>Enter group mailbox email address and duty hour phone number(s) in columns J and K.</p> <p><b>NOTE:</b> This information will serve as a means of communication between the LESC and/or ACRIMe national ORI administrator and your field office if ORI routing assignments are changed.</p>
	5	Conduct a final review the content of the <i>Office Information</i> spreadsheet for accuracy.
Tab 2: Routing Validation	1	<p>Click on the second tab called <b><i>Routing Validation</i></b>.</p> <p><b>NOTE:</b> This tab contains all current routing information from the LESC. The LESC uses this information to determine which field or sub office is responsible for handling IARs, based on the origin of the IAQ. In some cases, the information is the same for an entire state; in other cases, individual ORIs are listed because the LESC has been asked to route them</p>

differently than others within that county.

**NOTE:** All entries will have assigned duty hours and after-hours coverage. Each entry may or may not have a designated emergency location (columns M&N). Although modernized ACRIMe will have the capability to manually route IARs to backup locations, providing this information will help the ACRIMe team understand your office's preferred backup location in the event of an outage or other problem at the primary duty location.

**NOTE:** this tab contains the official county-to-field/sub office assignments, which you will also be asked to validate for modernized ACRIMe, which will allow for partial ORI matching at the county level.

Check each row to ensure the Sub-Office (col. C) is the office to which the County or Agency (col. E) is assigned per ERO.

**NOTE:** Please change the font color of all edited or added information to red. If changes need to be made that are not easily captured, please utilize the notes column and the ACRIMe team will follow up with you as necessary.

Confirm each LESC Code, ORI, or prefix (col. D) is accurately aligned with the sub-office (col. C) and county or agency (col. E).

**NOTE:** For routing exceptions at a level other than those listed (e.g., messages from a specific PD should be routed differently from the rest of the county), please insert the new information at the bottom of the list with the ORI in column D and all associated information. Additionally, if you are aware of specific ORIs that do not follow the standard state/county prefix, please list those and corresponding information in columns A-E.

**NOTE:** Please change the font color of all edited or added information to red. If changes need to be made that are not easily captured, please utilize the notes column and the ACRIMe team will follow up with you as necessary.

Ensure the Duty Hours Coverage (col. G) and corresponding Duty Hours ORI (col. H) are complete and correct.

**NOTE:** Please change the font color of all edited or added information to red.

Ensure the After-Hours Coverage (col. J) and corresponding After-Hours ORI (col. K) are complete and correct.

**NOTE:** Please change the font color of all edited or added information to red.

Ensure the Emergency Duty Hours Coverage (col. M) and corresponding Emergency Duty Hours ORI (col. N) are complete and correct.

**NOTE:** Please change the font color of all edited or added information to red.

**NOTE:** If an office operates 24/7, the after-hours and duty hour locations will be the same.

Conduct a final review the content of the **Routing Validation** spreadsheet for accuracy.

Finalize &  
Submit

1 Save spreadsheet as [AOR] ACRIMe ORI Routing\_VALIDATED.

2 Send saved spreadsheet as an attachment to (b)(6) (b)(7)(c)

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(b)(7)e

<b>Encrypted</b>	<b>Name</b>	<b>Type</b>	<b>Modified</b>	<b>Size</b>
	BOS Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:28 PM	31,758
	BUF Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:30 PM	32,668
	CHI Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:31 PM	60,092
	DAL Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:31 PM	47,876
	DEN Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:32 PM	32,760
	DET Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:33 PM	36,969
	ELP Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:34 PM	31,088
	HOU Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:35 PM	35,225
	LOS Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:36 PM	29,385
	MIA Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:38 PM	35,438
	NEW Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:39 PM	28,648
	NOL Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:40 PM	47,520
	NYC Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:42 PM	29,367
	PHI Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:42 PM	35,282
	PHO Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:43 PM	27,559
	SEA Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:44 PM	34,501
	SFR Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:45 PM	31,346
	SLC Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:46 PM	36,166
	SNA Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:47 PM	34,115
	SND Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:48 PM	26,654
	SPM Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:48 PM	45,932
	WAS Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:49 PM	83,209
	ATL Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:50 PM	48,928
	BAL Mod ACRIMe ORI Routing.xlsx	Microsoft Excel...	10/11/2013 12:27 PM	28,057
<b>24 file(s)</b>				<b>910,543</b>

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 3:06 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** RE: Detainer Tasking

(b)(6) (b)(7)(c)

While you were out last week, the FOD requested similar information. This is what the AOR collectively provided:

- What, if any, challenges in implementing the new guidance and form have you experienced?
  - *No issues have arisen as a result of the new detainer policy.*
- Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
  - *There are no local policies or procedures that govern the issuance of detainers.*
- Does your office routinely conduct interviews prior to issuing a detainer?
  - **YES**
  - If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
    - *Telephonically and in person*
  - If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
    -
  - If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?
    - *After hour Secure Communities IAQs are handled by the Chicago Deport Center (CDC). It is not clear if interviews are conducted by CDC staff prior to the issuance of a detainer. In these cases, the detainee will not be interviewed until he is taken into local ICE custody.*

The question highlighted in yellow was not one of the question asked last week. Maybe someone has some input.

Thanks,

(b)(6) (b)(7)(c)

---

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 2:02 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** FW: Detainer Tasking

Please answer the below questions for your office/sub-offices. One consolidate response from LVG and one from SLC please. I will put together a response for the AOR and submit once cleared by the FOD. Have back to my NLT COB Tuesday, July 30, 2013.

Thanks,

(b)(6) (b)(7)(c)

(A)Deputy Field Office Director  
ICE / Enforcement & Removal Operations  
Salt Lake City Field Office  
(Utah-Nevada-Idaho-Montana)

Boise, Idaho

Ofc: (208) 631-(b)(6) (b)(7)(c) Tel: (208) 631-(b)(6) (b)(7)(c) Fax: (208) 631-(b)(6) (b)(7)(c)

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---

**From:** ERO Taskings  
**Sent:** Friday, July 26, 2013 1:58 PM  
**Subject:** Detainer Tasking

*The following message is being sent on behalf of* (b)(6) (b)(7)(c) *Assistant Director for Secure Communities and Enforcement, with the concurrence of* (b)(6) (b)(7)(c) *Assistant Director for Field Operations:*

**To:** Field Office Directors, Deputy Field Office Directors

**Subject:** Six-Month Detainer Policy Review

On December 21, 2012, Director Morton issued a policy entitled Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems. This memorandum provided national guidance on the use of detainers to ensure uniform adherence to ICE's Civil Immigration Enforcement Priorities. The policy requires a six-month review of the implementation and effect of this guidance to determine whether modifications, if any, are needed.

To effect this review each Field Office must respond to the below questions:

1. What, if any, challenges in implementing the new guidance and form have you experienced?
2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
3. Does your office routinely conduct interviews prior to issuing a detainer?
  - A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
  - B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
  - C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

Please submit your responses by July 31, 2013, to the CAP HQ mailbox at

(b)(6) (b)(7)(c)

Questions regarding this message may be directed to your [CAP](#) point of contact.

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(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

**From:**  
**Sent:**  
**To:**  
**Cc:**  
**Subject:**

Friday, February 24, 2012 1:45 PM

(b)(6) (b)(7)(c)

FW: CAP processing

Please review before you distribute to your peeps. Please let me know if clarification is needed.

All,

When processing all CAP cases, please ensure that the ***Lead Source and Comment*** section on the Event screen follows these guidelines:

Lead source

- There are only 3 options that we should be using
  - LEA- this should be used for all CAP events with the exception of the two options that follow;
  - SC- Secure Communities;
  - CIS- CIS removal referrals

Comment

- This should reflect the name of the facility and state
  - Ex; Summit County Jail, Utah

This guidance was provided by HQ CAP. These boxes must be populated for all CAP encounters, not just during CAP Surge operations.

Please let me know if you have any questions.

(b)(7)e

(b)(6) (b)(7)(c)

*Supervisory Detention & Deportation Officer  
Criminal Alien Program/Secure Communities  
Salt Lake City Field Office  
801-886(6) (b)(7)(c)*

(b)(6) (b)(7)(c)

**From:**  
**Sent:**  
**To:**

(b)(6) (b)(7)(c)

TUESDAY JUNE 25, 2013 8:58 AM

**Subject:** Processing of Cubans at POE's  
**Attachments:** 20132506-Processing of Cubans at Ports of Entry.pdf

(b)(6) (b)(7)(c)

AFODs,

As an FYI in case you see Cubans that have not been NTA you will know why.

(b)(6) (b)(7)(c)

Field Office Director

Idaho – Montana - Nevada - Utah

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations

Salt Lake City Field Office

Office: (801) 886-(6) (b)(7)(c)

Fax: (801) 886-(6) (b)(7)(c)

Email: (b)(6) (b)(7)(c)

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1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**

**JUN 25 2013**

**MEMORANDUM FOR:** Directors, Field Operations  
Director, Preclearance Operations  
Office of Field Operations

Director, Field Operations Academy  
Director, Advance Training Center  
Office of Training and Development

**FROM:** Acting Executive Director [REDACTED] (b)(6) (b)(7)(c)  
Admissibility and Passenger Programs

**SUBJECT:** Processing of Cubans at Ports of Entry

This memorandum supersedes the memorandum issued June 10, 2005 titled "Treatment of Cuban Asylum Seekers at Land Border Ports of Entry" wherein new procedures were established regarding the inspection of Cuban nationals arriving at land border ports of entry. Total citizens of Cuba encountered and processed for adverse actions at ports have risen from an average of 7,000 per fiscal year in 2010 and 2011 to more than 12,000 during Fiscal Year 2013 to date. Addressing the additional workload associated with these arrivals while continuing to ensure the security of the inspection process has necessitated some procedural changes, effective upon receipt of this memorandum.

#### **Processing at Ports**

The current workload associated with the issuance of Form I-862 Notice to Appear (NTA) to Cuban nationals is significant, requiring more than 50,000 staff hours per year. In addition, the vast majority of Cuban nationals processed for a hearing before an Immigration Judge are never actually required to appear for the hearing and the NTA is ultimately cancelled. After consultation with and concurrence from ICE and U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) has determined that it should amend its current procedures. Therefore, effective immediately, ports will cease issuance of NTA's to Cuban nationals that fit the following criteria:

1. No record or indication of being or having been a member of the Castro Regime;
2. No record or indication of being or having been a member of the Communist Party;
3. No record or indication of criminal arrest, conviction, wants, or warrants;
4. No record of prior removal under Section 240 of the INA;

**For Official Use Only  
Law Enforcement Sensitive**

5. No record or indication of past or current involvement in alien smuggling;
6. No ground of inadmissibility other than Sections 212(a)(4), (5), and (7) of the INA;
7. No interest expressed by the intelligence community that would preclude release; and
8. The results of the Cuban survey do not indicate reason for NTA issuance and detention.

For Cuban nationals that fit the above criteria, citizenship, nationality and admissibility will be firmly established, a survey (attached) will be completed to collect intelligence information, biometric and biographic information will be captured in appropriate systems, and parole will be granted for a period of two (2) years and as outlined below. A principal family member may, when appropriate, complete the survey for an entire family unit. Individual surveys may be required in those instances where supervisory review of the survey completed by the principal indicates that additional or confirming information is necessary.

#### **Period of Parole**

To ensure that the period of parole is sufficient to allow for qualification under the provisions of the Cuban Refugee Adjustment Act of 1966 [Public Law 89-732] (CRAA), to allow time for issuance of Employment Authorization Documents (EAD) by USCIS, and to provide an authorized stay sufficient to ensure provision of social services and other benefits available to CRAA applicants, the period of parole for all Cuban nationals considered for release without detention will be two (2) years.

Lesser periods of parole may be granted but must be authorized by a manager at the GS-14 or higher level and only for significant cause. In most cases, if a lesser period of parole is being considered because of potential risk to society, past criminal history, or other contributing factors, detention in lieu of parole would be the more appropriate action.

#### **Citizens and Nationals of Cuban with Dual Citizenship and Dependents of the Citizen and National of Cuba**

Ports of entry are interdicting an increasing number of Cuban nationals who are arriving in the United States from their established residences in countries other than Cuba. In many instances, they are accompanied by Cuban and non-Cuban family members. These cases present unique challenges, must be considered on a case-by-case basis, and must include careful analysis and verification of all facts and evidence presented.

Generally, the following guidelines for processing these cases may be used:

1. Those subjects born in Cuba but who subsequently became citizens of other countries fully qualify for CRAA and, after verification of birth in Cuba, may be paroled or otherwise processed as outlined above;
2. Those subjects born in another country but who became naturalized citizens of Cuba fully qualify for CRAA and, after verification of naturalization in Cuba, may be paroled or otherwise processed as outlined above;

Processing of Cubans at Ports of Entry

Page 3

3. The dependent spouse and children of a Cuban national fully qualify for CRAA and, after verification of the bona fides of the relationship and that the dependent(s) resides with the Cuban principal, may be paroled or otherwise processed as outlined above; and
  - a. Note that because CRAA eligibility for dependents of Cuban nationals is dependent on establishment of a bona fide relationship and current residence with the principal, parole of these dependents should not be considered unless accompanying the principal alien.
4. Typical bars to adjustment do not apply in CRAA cases. Cuban nationals who are crewmen or Visa Waiver Program (VWP) applicants may seek adjustment, and therefore paroled to seek adjustment, under CRAA.
  - a. Cuban nationals who are dual nationals applying for admission under the VWP and presenting a VWP passport in support of their application for admission to the primary CBP officer shall be treated as a VWP applicant.
  - b. If the applicant claims a fear of return, normal VWP procedures for referral to an Immigration Judge for a limited review of the asylum issues should be followed.<sup>1</sup> Ports may consult with their local Chief Counsel's office for additional advice on referring a specific case to an Immigration Judge for a limited review.<sup>2</sup>

To prove eligibility for CRAA, the following forms of identification and proof may be used:

1. A valid (expired or unexpired) Cuban passport;
2. A valid Cuban Civil Registry Document;
3. A valid Cuban consular certificate of citizenship; or,
4. A valid document signed by a Cuban official indicating a named individual is Cuban.

Those claiming Cuban nationality, citizenship, or eligibility for CRAA status should not be considered for parole and release unless they can affirmatively establish citizenship through presentation of one or more of the above documents; CBP has conducted all available background checks; and additionally, the person(s) do not pose a criminal or national security threat to the United States.

Please ensure that this guidance is disseminated to all ports within your area of responsibility. Questions or concerns regarding this guidance may be directed to (b)(6) (b)(7)(c), Acting Director, Enforcement Programs Division at (202) 344-(b)(6) (b)(7)(c)

<sup>1</sup> See *In re Suseenthira KANAGASUNDRAM* (22 I&N 963 – BIA 1999).

<sup>2</sup> *Matter of B-R-* (26 I&N 119 – BIA 2013), states that “An alien who is a citizen or national of more than one country but has no fear of persecution in one of those countries does not qualify as a ‘refugee’ under Section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. Section 1101(a)(42) (2006), and is ineligible for asylum.”

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, August 06, 2013 1:08 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Guidance for Submitting Segregation Notifications to ERO Headquarters  
**Attachments:** Segregation Review Form.docx; Segregation Review Spreadsheet 07162013.xlsx  
**Importance:** High

AFODs,

Ensure we are good to go on our reporting at the 30 and 60 day mark. This is an issue HQ meets on weekly and we need to ensure our books are in order. Review your current segregation cases and let Matt know when you are complete. What I want is for you to go through and make sure we haven't missed anything.

Thanks,

(b)(6) (b)(7)(c)

Field Office Director

Idaho – Montana - Nevada - Utah

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Salt Lake City Field Office  
Office: (801) 886-(6) (b)(7)(c)  
Fax: (801) 886-(6) (b)(7)(c)  
Email: (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Wednesday, July 17, 2013 2:24 PM  
**Subject:** Guidance for Submitting Segregation Notifications to ERO Headquarters

*The following message is being sent on behalf of (b)(6) (b)(7)(c) Assistant Director for Custody Management, with concurrence by (b)(6) (b)(7)(c) Assistant Director for Field Operations:*

**To:** Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors  
**Subject:** Guidance for Submitting Segregation Notifications to ERO Headquarters

ICE has developed a form and spreadsheet to ensure standardized reporting of all relevant information about detainees who are placed in segregation for longer than 30 days. The purpose of this broadcast is to provide

guidance to Field Office Directors (FODs) and their staff regarding the completion of these documents and their submission to ERO Custody Management Division (CMD). Specifically, ICE has developed a Segregation Review Form and a Segregation Review Spreadsheet to facilitate collection of information and reporting on segregation cases in each Area of Responsibility.

For each instance when a detainee has been in segregation for more than 30 days and again for more than 60 days from the date of their initial placement, FODs, or their designee, are requested to submit a detailed Segregation Review Form. It should describe the reason why the detainee was placed in segregation, document any special issues or concerns, and recommend viable alternatives to segregation, if alternatives are appropriate. These submissions should be sent by email to [REDACTED] (b)(6) (b)(7)(c) [REDACTED] as needed.

For ongoing tracking of segregation cases, we ask that FODs, or their designees, submit a completed Segregation Review Spreadsheet. This spreadsheet will contain a snapshot of all detainees held in segregation for more than 30 days. These submissions should be sent by email to [REDACTED] (b)(6) (b)(7)(c) [REDACTED] by close of business each Friday.

The Segregation Review Spreadsheet contains four tabs:

1. Instructions: Instructions for completing the spreadsheet.
2. New Segregation Notification: for notifying ERO of new cases of detainees who have been in segregation for more than 30 days. This should be updated in conjunction with completing the Segregation Review Form.
3. Segregation Status Updates: for updating ERO on changes to segregation cases that were previously submitted, including releases or changes in the reason for placement.
4. Definitions and Standards Reference: listing applicable detention standards.

By Tuesday of each week CMD will send the Field Offices an updated version of the Segregation Review Spreadsheet.

FODs, or their designees, are encouraged to take any steps they believe appropriate whenever they have concerns about a detainee's continued placement in segregation.

Through Field Operations, the Office of Detention Planning and Policy and CMD will organize conference calls with FODs, and/or their designees, to review this process and the standard forms associated with it.

For questions or concerns regarding segregation notification, please contact CMD Interim Segregation Coordinator Advisor [REDACTED] (b)(6) (b)(7)(c) at [REDACTED] (b)(6) (b)(7)(c) [REDACTED]

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## ICE Review of Segregation Cases

Alien Number	Last Name, First Name	Gender	Custody Class.	AOR	Facility

**1. Type of Notification:**

- 30-Day
- 60-Day
- Other: \_\_\_\_\_

**2. Initial Date of Placement:** \_\_\_\_\_

**3. Date of Disciplinary Proceeding (If Applicable):** \_\_\_\_\_

**4. Length of Disciplinary Sanction (If Applicable):** \_\_\_\_\_

**5. Reason for Placement: (Select Only One)**

- Disciplinary
- Pending Investigation of Disciplinary Violation
- Facility Security: Violent or Disruptive Behavior
- Facility Security: Due to Seriousness of Criminal Conviction
- Facility Security: Gang Member Status (Not Protective Custody)
- Facility Security Threat: Other
- Protective Custody: Criminal Offense (i.e. Sex Offender)
- Protective Custody: Gang Status
- Protective Custody: Victim of Sexual Assault
- Protective Custody: Lesbian, Gay, Bisexual, Transgender (LGBT)
- Protective Custody: Other Special Vulnerability
- Protective Custody: Other
- Mental Illness
- Medical: TB or Other Infectious Diseases
- Medical: Disabled or Infirm
- Medical: Detox/Withdrawal Observation
- Medical: Other
- Hunger Strike
- Suicide Risk Placement
- Other

*Provide a detailed description of the reason(s) for the segregation placement, including all relevant facts articulated by the facility in justifying the placement:*

**6. Did the detainee request segregation?**

YES      NO

**7. Is the segregation placement in compliance with the requirements of applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews)?**  
 See "Standards Reference" tab of the segregation spreadsheet for information about relevant detention standards.

YES      NO

*If no, explain the area(s) of non-compliance:*

## ICE Review of Segregation Cases

**8. Does the detainee have a disability or serious medical or mental illness?**

YES      NO

*If yes, provide a general description of the medical or mental issue:*

**9. Does the Field Office Director or his/her designee have any concerns regarding the continued placement in segregation?**

YES      NO

*If yes, explain:*

**10. Does the Field Office Director or his/her designee recommend alternatives to segregation based on special vulnerabilities, identified concerns, or other factors? (possible alternatives to segregation include release to general population; transfer to another facility where the detainee can be housed in an environment better suited to the needs of the detainee; transfer to a hospital; or, consistent with the requirements of mandatory detention, public safety, and other immigration enforcement considerations, release from custody.)**

YES      NO

*Explain why or why not:*

**11. Additional Comments:**

**12. Describe the detainee's immigration history and prior criminal history, if applicable:**

**12. Reviewing Supervisory Officer:** \_\_\_\_\_

**13. Date:** \_\_\_\_\_

## Segregation Review Spreadsheet Instructions

Week of: 07/16/2013

### Purpose

ICE HQ has asked Field Office Directors (FODs) to notify ERO Custody Management Division (CMD) whenever an ICE detainee has been placed in segregation for longer than 30 days and again when the detainee has been held in segregation for longer than 60 days. FODs were also asked to provide a summary of relevant information about the segregation placement. CMD developed this spreadsheet and the associated "Segregation Review Form" to provide FODs with a standardized format for reporting the segregation information to CMD.

FODs, or their designees, are requested to provide data on segregation cases in two places, depending on the status. Use Tab #2 (New Segregation Notification) of the accompanying spreadsheet to provide new notifications of detainees who have been segregated for 30 days and for 60 days. Use Tab #3 (Segregation Status Updates) on the accompanying spreadsheet to notify CMD when any of these detainees are released or when their segregation status has changed (changes can be made to the "Date of Release from Segregation" and "Reason for Placement in Segregation" columns, and other updates should be noted in the "Additional Comments" column). Please note that the spreadsheet will document all segregation stays across all AORs, so please filter the attached spreadsheet to review cases associated with each unique AOR.

FODs, or their designees, should also complete a separate "Segregation Review Form" for each detainee who has been in segregation for over 30 or over 60 days. FODs, or their designees, should ensure that there is thorough review of each long-term segregation placement, and that the results of the review are documented.

### Instructions

Once weekly (on Tuesday) CMD will distribute a revised version of this spreadsheet to the field for updates. Using the spreadsheet, under the "New Segregation Notifications" tab, update the requested information for all new 30-days and 60-days in segregation (initial notifications only), and under the "Segregation Status Updates" tab, update the requested information regarding releases from segregation or changes in segregation status. Return the updated spreadsheet to [REDACTED] (b)(6) (b)(7)(c) by Friday (Close of Business) or sooner each week.

Tab #	Spreadsheet Tab	Contains when Received by Field Each Week	Instructions
1	Instructions (this tab)	Guidance on the completion of this spreadsheet	N/A
2	New Segregation Notifications	Blank, ready for completion	
3	Segregation Status Updates	A roster of detainees previously reported as having been in segregation for more than 30 or 60 days	(b)(7)e
4	Definitions and Standards	Definitions for "Serious Mental Illness" and "Special Vulnerabilities" and relevant detention standards language to be used as a reference when responding to compliance questions #15 and #16 on the "New Segregation Notifications" tab.	None

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 3:06 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** RE: Detainer Tasking

(b)(6) (b)(7)(c)

While you were out last week, the FOD requested similar information. This is what the AOR collectively provided:

- What, if any, challenges in implementing the new guidance and form have you experienced?
  - *No issues have arisen as a result of the new detainer policy.*
- Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
  - *There are no local policies or procedures that govern the issuance of detainers.*
- Does your office routinely conduct interviews prior to issuing a detainer?
  - **YES**
  - If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
    - *Telephonically and in person*
  - If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
    -
  - If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?
    - *After hour Secure Communities IAQs are handled by the Chicago Deport Center (CDC). It is not clear if interviews are conducted by CDC staff prior to the issuance of a detainer. In these cases, the detainee will not be interviewed until he is taken into local ICE custody.*

The question highlighted in yellow was not one of the question asked last week. Maybe someone has some input.

Thanks.

(b)(6) (b)(7)(c)

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, July 26, 2013 2:02 PM  
**To:** (b)(6) (b)(7)(c)  
**Cc:**  
**Subject:** FW: Detainer Tasking

Please answer the below questions for your office/sub-offices. One consolidate response from LVG and one from SLC please. I will put together a response for the AOR and submit once cleared by the FOD. Have back to my NLT COB Tuesday, July 30, 2013.

Thanks,

(b)(6) (b)(7)(c)

(A) Deputy Field Office Director  
ICE / Enforcement & Removal Operations  
Salt Lake City Field Office  
(Utah-Nevada-Idaho-Montana)

Boise, Idaho  
Ofc: (208) 6856 (b)(7)(c) Cell: (208) 5736 (b)(7) Fax: (208) 685 (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Friday, July 26, 2013 1:58 PM  
**Subject:** Detainer Tasking

*The following message is being sent on behalf of (b)(6) (b)(7)(c) Assistant Director for Secure Communities and Enforcement, with the concurrence of (b)(6) (b)(7)(c) Assistant Director for Field Operations:*

**To:** Field Office Directors, Deputy Field Office Directors

**Subject:** Six-Month Detainer Policy Review

On December 21, 2012, Director Morton issued a policy entitled Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems. This memorandum provided national guidance on the use of detainers to ensure uniform adherence to ICE's Civil Immigration Enforcement Priorities. The policy requires a six-month review of the implementation and effect of this guidance to determine whether modifications, if any, are needed.

To effect this review each Field Office must respond to the below questions:

1. What, if any, challenges in implementing the new guidance and form have you experienced?
2. Since the issuance of the December guidance, have you created any local policies, procedures, supplemental guidance or training regarding the issuance of detainers? If so, please send a copy of the guidance or training materials with this response. Please also send any written guidance issued previously if it remains operative in your field office.
3. Does your office routinely conduct interviews prior to issuing a detainer?
  - A. If interviews are routinely conducted, how are they completed, i.e., telephonically, in person, etc.?
  - B. If interviews are not routinely conducted prior to issuing a detainer, what impediments prevent your offices from doing so?
  - C. If interviews are not routinely conducted prior to issuing a detainer, when are they conducted?

Please submit your responses by July 31, 2013, to the CAP HQ mailbox at (b)(6) (b)(7)(c)

Questions regarding this message may be directed to your CAP point of contact.

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# Salt Lake City CAP Management

(b)(6) (b)(7)(c)  
Field Office Director

(b)(6), (b)(7)c, (b)(7)e

## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

### CALIFORNIA CRIMINAL CODE – REMOVABILITY AND INADMISSIBILITY CHART

NINTH CIRCUIT

Produced by the ICE Office of Chief Counsel - Arizona

#### IMPORTANT CHARGING NOTES:

**Agg Fel:** ‘Aggravated felony’ is a term of art and “an offense classified as a misdemeanor under state law may be considered an aggravated felony if it meets the requirements of INA § 101(a)(43).”<sup>1</sup> (However, to be a drug trafficking conviction under INA §101(a)(43)(B), the conviction must be a felony under federal law or involve a trafficking element.)<sup>2</sup> When evaluating whether an offense is an aggravated felony, consider only the sentence imposed for the crime itself plus any probation violations; do not consider separate recidivist sentencing enhancements.<sup>3</sup>

**CIMT:** A single misdemeanor conviction will not support a crime involving moral turpitude (CIMT) charge under INA § 212(a)(2)(A)(i) if sentence is 6 months or less (petty offense), or under INA § 237(a)(2)(A)(i) because the maximum potential sentence cannot be “one year or longer.” However, any felony or two or more misdemeanor convictions can support a CIMT charge under INA § 212(a)(2)(A)(i) regardless of sentence.

**Drugs:** Chargeable under INA § 212(a)(2)(A)(i)(II) or INA § 237(a)(2)(B), *except* that possession of less than 30 grams marijuana for personal use is Not chargeable under INA § 237.

#### DOCUMENTS REQUIRED TO SUSTAIN CHARGE OF REMOVABILITY:

**CV:** The document memorializing the conviction and sentence. In CA Superior Court it is the “Abstract of Judgment” or Minute Order

**CD:** The charging document, i.e., the Complaint, Information, or Indictment

**PA:** Plea Agreement

**TR:** Transcript of the plea proceedings

**PSR:** Presentence Report

**9/24/2012**

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
21a	Attempt	Agg Fel: Yes, under INA § 101(a)(43)(U), <u>if</u> underlying offense is an aggravated felony. <sup>4</sup>	CV, CD <sup>5</sup>
		CIMT: Yes, <u>if</u> underlying offense is a CIMT.	CV
		Drugs: Yes, <u>if</u> the underlying offense is one relating to a controlled substance.	CV, CD <sup>6</sup>
32	Accessory (after the fact)	Agg Fel: Yes, under INA § 101(a)(43)(S), <u>if</u> sentenced to 1 year or more. <sup>7</sup>	CV
		CIMT: No <sup>8</sup>	CV
67	Giving or offering bribes to executive officers	Agg Fel: No <sup>9</sup>	
67.5	Giving or offering bribes to ministerial officers, employees, or appointees	CIMT: Yes	CV
		Agg Fel: No <sup>10</sup>	
		CIMT: Yes	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
69	Obstructing or resisting executive officers in performance of duties	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more <u>and</u> you can show that the force used was more than de minimis. <sup>11</sup>	CV
		CIMT: Yes	CV
71	Threatening public officers and employees and school officials	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more.	CV
		CIMT: Yes	CV
72	Fraudulent Claims	Agg Fel: Yes, under INA § 101(a)(43)(M)(i), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000. <sup>12</sup>	CV, CD, PA, TR <sup>13</sup>
		CIMT: Yes	CV
92	Bribing judicial officers, jurors	Agg Fel: Yes, under INA § 101(a)(43)(S), <u>if</u> sentenced to 1 year or more. <sup>14</sup>	CV
		CIMT: Yes	CV
95.1	Threatening a juror	Agg Fel: Yes, under INA § 101(a)(43)(S), <u>if</u> sentenced to 1 year or more.	CV
		CIMT: No	
102	Injuring, destroying or taking personal property from custody of an officer	Agg Fel: No <sup>15</sup>	
		CIMT: No <sup>16</sup>	
107	Attempted escape from a public training school, reformatory, public hospital by a felony prisoner	Agg. Fel: Yes, under INA § 101(a)(43)(S), <u>if</u> the offensive conduct described in the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects an escape prior to conviction or sentencing, <u>and IF</u> sentenced to 1 year or more. <sup>17</sup>	CV, CD, PA, TR <sup>18</sup>
		CIMT: No <sup>19</sup>	
109	Assisting in the escape of an inmate from a public training school or reformatory	Agg. Fel: Yes, under INA § 101(a)(43)(S), <u>if</u> the offensive conduct described in the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects an escape prior to conviction or sentencing, <u>and IF</u> sentenced to 1 year or more. <sup>20</sup>	CV, CD, PA, TR <sup>21</sup>
		CIMT: No <sup>22</sup>	

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
110	Sending aids useful to assist in escape from a public training school or reformatory.	Agg Fel: Yes, under INA § 101(a)(43)(S), if the offensive conduct described in the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects an escape prior to conviction or sentencing, and IF sentenced to 1 year or more. <sup>23</sup> CIMT: No <sup>25</sup>	CV, CD, PA, TR <sup>24</sup>
112	Manufacturing or selling false government documents	Agg Fel: Yes, under INA § 101(a)(43)(P) if sentenced to 1 year or more. <sup>26</sup> CIMT: Yes <sup>27</sup>	CV CV
113	Manufacture or sale of False Citizenship or Resident Alien documents	Agg Fel: Yes, under INA § 101(a)(43)(P) if sentenced to 1 year or more. <sup>28</sup> CIMT: Yes <sup>29</sup>	CV CV
114	Use of false Citizenship or Resident Alien Documents	Agg Fel: Yes, under INA § 101(a)(43)(P) if sentenced to 1 year or more. <sup>30</sup> CIMT: Yes <sup>31</sup>	CV CV
116.5	Jury tampering	Agg Fel: No <sup>32</sup> CIMT: Yes <sup>33</sup>	CV CV
118	Perjury	Agg Fel: Yes, under INA § 101(a)(43)(S), if sentenced to 1 year or more. <sup>34</sup> CIMT: Yes	CV CV
127	Suborning Perjury	Agg Fel: Yes, under INA § 101(a)(43)(S), if sentenced to 1 year or more. <sup>35</sup> CIMT: Yes	CV CV
134	Preparing false documentary evidence	Agg Fel: Yes, under INA § 101(a)(43)(S), if sentenced to 1 year or more. <sup>36</sup> CIMT: Yes <sup>37</sup>	CV CV
136.1	Intimidation of witnesses and victims	Agg Fel: Yes, under INA § 101(a)(43)(F), if conviction is specifically under § 136.1(c)(1), and IF sentenced to 1 year or more. Yes, under INA § 101(a)(43)(S), if sentenced to 1 year or more. <sup>38</sup> CIMT: Yes	CV, CD CV CV
137	Influencing testimony or information given to law enforcement	Agg Fel: Yes, under INA § 101(a)(43)(S), if sentenced to 1 year or more. <sup>39</sup> CIMT: Yes <sup>40</sup>	CV CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
138	Accepting or offering bribes to a witness	Agg Fel: Yes, under INA § 101(a)(43)(S), if sentenced to at least one year. <sup>41</sup> CIMT: Yes <sup>42</sup>	CV CV
139	Threat of force against a witness, victim, or immediate family	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to one year or more. Yes, under § 101(a)(43)(S), if sentenced to one year or more. <sup>43</sup> CIMT: Yes <sup>44</sup>	CV CV CV
140	Threatening witnesses	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to one year or more. Yes, under INA § 101(a)(43)(S), if sentenced to one year or more. <sup>45</sup> CIMT: Yes <sup>46</sup>	CV CV CV
146	Impersonating an officer	Agg Fel: Yes, under INA § 101(a)(43)(M)(i), if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000, and IF conviction is clearly under Cal. Penal Code § 146(a)(4) or (b)(4). CIMT: Yes, if the conviction is specifically under 146(a). <sup>48</sup>	CV, CD, PA, TR <sup>47</sup> CV, CD
148	Resisting, delaying or obstructing officer or EMT	Agg Fel: Yes, only if convicted under Cal. Penal Code § 148(c) and sentenced to one year or more. CIMT: No	
148.9	False representation of identity to a peace officer	Agg Fel: No <sup>49</sup> CIMT: Yes, <sup>50, 51</sup> but see footnote. <sup>52</sup>	CV, CD, PA, TR, PSR
148.10	Resisting peace officer resulting in death or serious bodily injury to peace officer	Agg Fel: Yes, under INA § 101(a)(43)(F) if sentenced to 1 year or more. CIMT: Yes <sup>53</sup>	CV CV
151	Advocacy to kill or injure peace officer	Agg Fel: No CIMT: Yes	CV
153	Compounding or concealing crimes	Agg Fel: No CIMT: Yes <sup>54</sup>	CV
166	Contempt of court	Agg Fel: No CIMT: Yes <sup>55</sup>	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
171b	Unauthorized possession of weapons in state or local public building or at public meeting	Agg Fel: No CIMT: No	
182	Conspiracy	Agg Fel: Yes, under INA § 101(a)(43)(U), <u>if</u> the underlying offense is an aggravated felony. CIMT: Yes, <u>if</u> the underlying offense is a CIMT. <sup>57</sup> Drugs: Yes, <u>if</u> the underlying offense is one relating to a controlled substance.	CV, CD <sup>56</sup> CV CV, CD <sup>58</sup>
186.10	Money laundering	Yes, under INA § 101(a)(43)(D), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects that the amount of laundered funds exceeds \$10,000. <sup>59</sup> Agg Fel: Yes CIMT: Yes	CV, CD, PA, TR <sup>60</sup> CV, CD, PA, TR, PSR
186.22	Participation in Criminal Street Gang	Agg Fel: No CIMT: Yes	CV, CD, PA, TR, PSR
187	Murder (1 <sup>st</sup> or 2 <sup>nd</sup> Degree)	Agg Fel: Yes, under INA § 101(a)(43)(A) (length of sentence irrelevant). CIMT: Yes	CV CV
191.5	Gross vehicular manslaughter while intoxicated	Agg Fel: Maybe under INA § 101(a)(43)(A) but not under 101(a)(43)(F). <sup>61</sup> CIMT: No	
192	Manslaughter	Agg Fel: Yes, under INA § 101(a)(43)(A). <sup>62</sup> Also under INA § 101(a)(43)(F) <u>if</u> sentenced to 1 year or more, <u>and IF</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that conviction is under subsection (a) and is based on intentional conduct. <sup>63</sup> CIMT: Yes, <u>if</u> the conviction is specifically under § 192(a). <sup>65</sup>	CV, CD, PA, TR <sup>64</sup> CV, CD, PA, TR, PSR <sup>66</sup>
203	Mayhem	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more. <sup>67</sup> CIMT: Yes	CV CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
205	Aggravated Mayhem	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>68</sup> CIMT: Yes	CV CV
206	Torture	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
207	Kidnapping	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes <sup>69</sup>	CV CV
209	Kidnapping for ransom/extortion or to commit robbery/rape	Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. Agg. Fel: Yes, under INA § 101(a)(43)(H) if conviction is clearly under § 209(a) (length of sentence irrelevant). CIMT: Yes	CV CV, CD CV
209.5	Kidnapping during a carjacking	Agg. Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
210	Extortion by posing as a kidnapper	Agg Fel: Yes, under INA § 101(a)(43)(H) (length of sentence irrelevant). CIMT: Yes	CV CV
210.5	False imprisonment for purposes of protection from arrest or to use as a shield	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
211	Robbery	Agg. Fel Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>70</sup> Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more. CIMT: Yes <sup>71</sup>	CV CV CV
215	Carjacking	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>72</sup> Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more. CIMT: Yes	CV CV CV
217.1	Assault upon a public official	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes, <sup>73</sup> but see footnote. <sup>74</sup>	CV CV, CD, PA, TR, PSR

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
220	Assault with intent to commit mayhem, rape, sodomy, oral copulation, lascivious acts upon a child	Agg Fel: Yes, under INA § 101(a)(43)(U) and INA § 101(a)(43)(A), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects an “intent to commit rape” (length of sentence irrelevant). <sup>75</sup>	CV, CD, PA, TR <sup>76</sup>
		Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more. <sup>77</sup>	CV
		CIMT: Yes	CV
236	False imprisonment	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more, <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly shows that conviction is for false imprisonment by “violence or menace.” <sup>78</sup>	CV, CD, PA, TR <sup>79</sup>
		CIMT: Yes, <u>but only if</u> the conviction is for a felony. <sup>80</sup>	CV
237(b)	False imprisonment of elder or dependent person	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more, <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly show that respondent was convicted of false imprisonment by “violence or menace.” <sup>81</sup>	CV, CD, PA, TR <sup>82</sup>
		CIMT: Yes	CV
240	Assault	Agg Fel: No <sup>83</sup>	
		CIMT: Maybe <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects some form of reprehensible conduct and some “special relationship” between the perpetrator and the victim. <sup>84</sup>	CV, CD, PA, TR, PSR <sup>85</sup>
241.1	Assault upon custodial officer	Agg. Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more.	CV
		CIMT: No <sup>86</sup>	

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
243	Battery	Agg Fel: Yes, under § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more and under (e) <u>IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly shows that respondent was convicted of causing more than an “insubstantial” injury to the victim. <sup>87</sup>	CV
		CIMT: Yes, <u>if</u> conviction is specifically under § 243(b) or (c), and under (e)(1) <u>IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly shows that respondent was convicted of causing more than an “insubstantial” injury to the victim. <sup>88</sup>	CV, CD, PA, TR, PSR <sup>90</sup>
		Other: Maybe <u>if</u> conviction is under (a) or (d) <u>and</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript ) reflects some form of reprehensible conduct and some “special relationship” between the perpetrator and the victim. <sup>89</sup>	
		Chargeable under INA § 237(a)(2)(E)(i) <u>if</u> conviction is specifically under § 243(e)(1), <u>and</u> <u>IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly shows that respondent was convicted of conduct that was “violent in nature,” <u>and IF</u> conviction is entered after September 30, 1996. <sup>91</sup>	CV, CD, PA, TR <sup>92</sup>
243.1	Battery against custodial officer in performance of his duties	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more.	CV
		CIMT: Yes <sup>93</sup>	CV
243.4	Sexual Battery	Agg Fel: Yes, under INA § 101(a)(43)(A) (sexual abuse of a minor) <u>if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that the victim was a fifteen years old or younger and the perpetrator was at least four years older than the victim <u>or if</u> we can show that the offense was against a minor and not related to statutory rape. <sup>94, 95</sup>	CV, CD, PA, TR <sup>96</sup>
		Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more. <sup>97</sup>	CV
		CIMT: Yes	CV
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and victim is a minor and there is an actual injury. <sup>98, 99</sup>	CV
245	Assault with a deadly weapon or force likely to produce great bodily harm	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more. <sup>100, 101</sup>	CV
		CIMT: Yes <sup>102</sup>	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
246	Shooting at inhabited dwelling house, occupied building, vehicle or aircraft	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more, <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly shows that conviction is based on willful and Not malicious conduct. <sup>103</sup>	CV, CD, PA, TR <sup>104</sup>
		CIMT: Yes, <sup>105</sup> but see footnote. <sup>106</sup>	CV, CD, PA, TR, PSR
246.3	Grossly negligent discharge of a firearm	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
247	Shooting at unoccupied dwelling house, occupied building, vehicle or aircraft	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>107</sup>	CV
		CIMT: No	
261	Rape	Agg Fel: Yes, under INA § 101(a)(43)(A) (length of sentence irrelevant) if under 261(a)(2). <sup>108</sup>	CV
		CIMT: Yes	CV
261.5	Unlawful intercourse with person under 18	Agg Fel: No <sup>109</sup>	
		CIMT: No <sup>110</sup>	
		Other: No <sup>111</sup>	
262	Spousal Rape	Agg Fel: Yes, under INA § 101(a)(43)(A) (length of sentence irrelevant).	CV
		CIMT: Yes	CV
264.1	Rape or penetration by foreign object	Yes, under INA § 101(a)(43)(A), if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects sexual penetration.	CV, CD, PA, TR <sup>112</sup>
		Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
266h	Pimping	Agg Fel: Yes, under INA § 101(a)(43)(K)(i) (length of sentence irrelevant).	CV
		CIMT: Yes	CV
266i	Pandering	Agg Fel: Yes, under INA § 101(a)(43)(K)(i) (length of sentence irrelevant).	CV
		CIMT: Yes	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
269	Aggravated Sexual assault of a child	Agg Fel: Yes, under INA § 101(a)(43)(A) (length of sentence irrelevant).	CV
		CIMT: Yes	CV
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) if conviction is entered after Sep 30, 1996, victim is a minor and the conviction is under subsection (1) or (2) for convictions under subsections (3)(4) and (5) it is necessary to show actual injury to the child. <sup>113</sup>	CV, CD,
272	Contributing to the delinquency of a minor	Agg Fel: No	
		CIMT: No	
273a	Willful harm or injury to a child	Agg Fel: No	
		CIMT: Maybe, if the record of conviction demonstrates that the conduct was willful or purposeful. <sup>114</sup>	
		Other: Chargeable under INA § 237(a)(2)(E)(i) if conviction is entered after September 30, 1996 and there is an actual injury. <sup>115, 116</sup>	CV
273ab	Assault resulting in the death of child under 8	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
273d	Corporal punishment or injury of a child	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more.	CV
		CIMT: Yes <sup>117</sup>	CV
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) if conviction is entered after September 30, 1996 and victim is a minor. <sup>118</sup>	CV, CD
273.5	Willful infliction of corporal injury	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>119</sup>	CV
		CIMT: Yes if record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects a "special relationship" between the perpetrator and the victim. <sup>120, 121</sup>	CV, CD, PA, TR, PSR
		Other: Chargeable under INA § 237(a)(2)(E)(i)(domestic violence) if conviction is entered after Sep 30, 1996 and the record of conviction establishes that there was a "domestic" relationship, which does Not include mere "former co-habitants." <sup>122</sup>	CV, CD, PA, TR <sup>123</sup>
273.6	Intentional and Knowing violation of a court order	Agg Fel: No	CV
		CIMT: No	CV
		Other: Removable under INA § 237(a)(2)(E)(ii) if convicted of violating a protection order issued under section 6320 of the California Family Code. <sup>124</sup>	

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
278	Child stealing	Agg Fel: No CIMT: No	
285	Incest	Agg Fel: No CIMT: No	
286	Sodomy	Agg Fel: Yes, under INA § 101(a)(43)(A) (sexual abuse of a minor) <u>if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that there was a sexual act, victim was a 15 years old or younger and the perpetrator was at least four years older than the victim <u>or if</u> we can show that the offense was against a minor and not related to statutory rape. <sup>125, 126</sup>  CIMT: Yes  Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after Sep 30, 1996 and victim is a minor. <sup>128</sup>	CV, CD, PA, TR <sup>127</sup>
288	Lewd or lascivious acts	Agg Fel: Yes, under INA § 101(a)(43)(A) (sexual abuse of a minor) <u>if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that there was a sexual act, victim was a 15 years old or younger and the perpetrator was at least four years older than the victim <u>or if</u> we can show that the offense was against a minor involved a sexual act and not related to statutory rape. <sup>129, 130, 131, 132</sup>  CIMT: Yes  Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after Sep 30, 1996 and victim is a minor and there is an actual injury. <sup>134</sup>	CV, CD, PA, TR

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
288a	Oral copulation	Agg Fel: Yes, under INA § 101(a)(43)(A)(sexual abuse of a minor) (length of sentence irrelevant) if conviction is under subsection (b)(2), (c)(1) regardless of age of victim or difference in age between perpetrator and victim <u>or if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that victim was a 15 years old or younger and the perpetrator was at least four years older than the victim <u>or if</u> we can show that the offense was against a minor involved and not related to statutory rape. <sup>135, 136, 137</sup>	CV, CD, PA, TR
		Yes, under INA § 101(a)(43)(F) <u>if</u> sentenced to 1 year or more, <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the conviction is under subsection (c)(2), (d)(1), (d)(3), (f), (g), (h), (i), or (j).	CV, CD, PA, TR
		CIMT: Yes	CV, CD, PA,
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and victim is a minor. <sup>138</sup>	CV, CD, PA, TR
288.5	Continuous sexual abuse of a child	Agg Fel: Yes, under INA § 101(a)(43)(A)(sexual abuse of a minor). <sup>139</sup>	CV, CD, PA, TR
		CIMT: Yes	CV, CD, PA, TR, PSR
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and victim is a minor and we can show actual injury. <sup>140, 141</sup>	CV, CD, PA, TR

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
289	Forcible acts of sexual penetration	Agg Fel: Yes, under INA § 101(a)(43)(A)(sexual abuse of a minor), <u>if</u> (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the conviction is under subsection (i) or(j) regardless of age <u>or if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that the victim was a 15 years old or younger and the perpetrator was at least four years older than the victim <u>or if</u> we can show that the offense was against a minor and not related to statutory rape. <sup>142, 143, 144</sup>	CV, CD, PA, TR
		Yes, under INA § 101(a)(43)(F), <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the conviction is under subsection (a) and that the conviction is based on an act accomplished by force, violence, or a threat of retaliation involving force. <sup>145</sup>	CV, CD, PA, TR
		CIMT: Yes	CV, CD, PA,
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and victim is a minor and we can show actual injury. <sup>146, 147</sup>	CV, CD,
289.5	Sex offender fleeing to avoid prosecution	Agg Fel: No CIMT: Yes	CV
290	Failure of convicted sex offender to register	Agg Fel: No CIMT: Maybe if conviction is under 290(g). <sup>148</sup>	CV
311.1	Sale/Distribution of obscene matter depicting a minor	Agg Fel: Yes, under INA § 101(a)(43)(I) (length of sentence irrelevant). CIMT: Yes	CV CV
311.3	Sexual exploitation of minor	Agg Fel: Yes, under INA § 101(a)(43)(I) (length of sentence irrelevant). CIMT: Yes	CV CV
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and victim is a minor and we can show actual injury. <sup>149, 150</sup>	CV
311.11	Possession/control of child pornography	Agg Fel: Yes, under INA §101(a)(43)(I) (length of sentence irrelevant). CIMT: Yes <sup>151</sup>	CV CV
314	Lewd/obscene conduct/Indecent Exposure	Agg Fel: No CIMT: Yes, <u>if</u> we can show that the conduct is unwanted, sexually motivated exposure that would be highly threatening, intrusive, or psychologically damaging to viewers. <sup>152</sup>	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
350	Manufacture, Sale, or Possession of Counterfeit Registered Mark	Agg Fel: Yes, under INA §101(a)(43)(R), if sentenced to 1 year or more. <sup>153</sup>	CV
		CIMT: Yes <sup>154</sup>	CV
374c	Shooting on public highways	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
415	Fighting; Noise; offensive words (aka: disturbing the peace)	Agg Fel: No	
		CIMT: No	
417	Drawing, exhibiting, or using firearm	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
417.3	Drawing a firearm on a motor vehicle occupant	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
417.4	Drawing or exhibiting an imitation firearm	Agg Fel: No	
		CIMT: No	
417.6	Intentionally inflicting serious bodily injury via drawing or exhibiting a firearm	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
417.8	Drawing or exhibiting a deadly weapon with intent to resist a peace officer	Agg Fel: Yes, under INA §101(a)(43)(F), if sentenced to 1 year or more. <sup>155</sup>	CV
		CIMT: Yes	CV
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense – if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the weapon as a firearm.	CV, CD, PA, TR <sup>156</sup>
422	Criminal Threats	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. <sup>157</sup>	CV
		CIMT: Yes <sup>158</sup>	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
451	Arson	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
451.5	Aggravated Arson	Agg Fel: Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
452	Unlawfully causing a fire of any structure	Agg Fel: No <sup>159</sup> CIMT: No <sup>160</sup>	CV CV
455	Attempted Arson	Agg Fel: Yes, under INA § 101(a)(43)(U) and INA § 101(a)(43)(F), if sentenced to 1 year or more. CIMT: Yes	CV CV
459	Burglary	Yes, under INA § 101(a)(43)(F), if sentenced to 1 year or more, <u>and IF</u> conviction is for Burglary of an inhabited dwelling and documents show that the entry was more than unlawful or unprivileged, and more akin to breaking and entering. <sup>161</sup>	CV, CD, PA, TR <sup>162</sup>
		Agg Fel: Yes, under INA § 101(a)(43)(U), if sentenced to a year or more, <u>and IF</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies that the individual entered a <b>locked</b> vehicle or commercial building with intent to commit a theft <u>or if</u> in the case of a commercial building the record indicates the individual was apprehended on his way out the door or in the parking lot. <sup>163, 164</sup>	CV, CD, PA, TR <sup>165</sup>
		CIMT: Yes, <u>if</u> offensive conduct described in record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects that the entry was more than unlawful or unprivileged and more akin to breaking and entering with intent to commit theft or some other crime involving moral turpitude <u>or if</u> in the case of a commercial building the record indicates the individual was apprehended on his way out the door or in the parking lot.. <sup>166, 167, 168</sup>	CV, CD, PA, TR, PSR <sup>169</sup>
466	Possession of burglary tools	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more. CIMT: Yes	CV CV
470	Forgery; signatures or seals	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more. CIMT: Yes	CV CV
470a	Forgery – Driver's License/ID Card	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more. CIMT: Yes	CV CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
470b	Possession of forged driver's license or ID Card	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more.	CV
		CIMT: No	
471	Forgery	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more.	CV
		CIMT: Yes <sup>170</sup>	CV
475	Forgery – Possession or Receipt of Items; Intent to Defraud	Agg Fel: Yes, under INA § 101(a)(43)(M)(i), if the conviction is clearly under §475(b) or (c), and IF the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000. <sup>171</sup>	CV, CD, PA, TR <sup>172</sup>
		Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more, and IF the conviction is clearly under §475(a). <sup>173</sup>	CV, CD, PA, TR <sup>174</sup>
		CIMT: Yes <sup>175</sup>	CV
476	Forgery – Checks/Notes/Bills	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more. <sup>176</sup>	CV
		CIMT: Yes	CV
476a	Intent to defraud via checks, drafts, orders on banks (i.e., NSF checks)	Agg Fel: Yes, under INA § 101(a)(43)(M), if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000. <sup>177</sup>	CV, CD, PA, TR <sup>178</sup>
		CIMT: Yes <sup>179</sup>	CV
484	Theft	Agg Fel: Yes, under INA § 101(a)(43)(G) if sentenced to 1 year or more and the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects a taking of property without consent with the criminal intent to deprive the owner of right and benefits of ownership. <sup>180</sup>	
		CIMT: Yes	CV
484b	Theft, diversion of funds	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
484e	Theft of access cards	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
484f	Forgery – Access cards	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
484g	Fraudulent use of access cards or account information	Agg Fel: Yes, under INA § 101(a)(43)(M)(i), if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000. <sup>181</sup>	CV, CD, PA, TR <sup>182</sup>
		CIMT: Yes	CV
487	Grand Theft	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more, and IF record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the conviction was NOT for theft of labor. <sup>183</sup>	CV, CD, PA, TR <sup>184</sup>
		CIMT: Yes <sup>185</sup>	CV
488	Petty Theft	Agg Fel: No CIMT: Yes	CV
496	Receiving stolen property	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more. <sup>186</sup> CIMT: Maybe, if we can show an intent to permanently deprive. <sup>187</sup>	CV
503	Embezzlement	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more.	CV
		CIMT: Yes	CV
518	Extortion	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more, and IF offensive conduct described in record of conviction (indictment, complaint, plea agreement, judgment, or transcript) reflects extortion to obtain property. <sup>188</sup>	CV, CD, PA, TR <sup>189</sup>
		CIMT: Yes	CV
529	False personation of another	Agg Fel: No. CIMT: No	
529a	False or counterfeit birth certificate	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more, and IF record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as relating to a counterfeit document.	CV, CD, PA, TR <sup>190</sup>
		CIMT: Yes	CV
529.5	ID Cards and Driver's licenses, deceptive appearance of gov't issuance	Agg Fel: No CIMT: No	

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PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
530.5	Falsely using the personal identity of another to obtain credit, good, services, or medical information	Agg Fel: Yes, under INA § 101(a)(43)(M)(i), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeds \$10,000.	CV, CD, PA, TR <sup>191</sup>
		CIMT: Yes	CV
594	Vandalism	Agg Fel: No	
		CIMT: Yes <sup>192</sup>	CV
602.5	Unauthorized entry of property	Agg Fel: No	
		CIMT: No	
603	Forcible entry, vandalism	Agg Fel: No	
		CIMT: No	
626.10	Bringing or possessing weapons on school grounds	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense – <u>IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the weapon as a firearm.	CV, CD, PA, TR <sup>193</sup>
640.6	Graffiti in general	Agg Fel: No	
		CIMT: No	
641.3	Commercial Bribery	Agg Fel: Yes, under INA § 101(a)(43)(R), <u>if</u> sentenced to 1 year or more.	CV
		CIMT: Yes <sup>194</sup>	CV
646.9	Stalking	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more, <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as based on “following” or identifies specifically violent conduct. <sup>195</sup>	CV, CD, PA, TR <sup>196</sup>
		CIMT: Yes	CV
		Other: Chargeable under INA § 237(a)(2)(E)(i) <u>if</u> conviction is entered after September 30, 1996.	CV, CD
		Agg Fel: No	
647	Disorderly Conduct	Agg Fel: Yes, <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as under subsection (a), <sup>197</sup> (b), <sup>198</sup> (d), <sup>199</sup> (i), or (k).	CV, CD
		CIMT: Yes	

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**CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
647c	Obstruction of street, sidewalk, or other place open to public	Agg Fel: No	
		CIMT: No	
647e	Possession of an open container	Agg Fel: No	
		CIMT: No	
		Agg Fel: Yes, under INA §101(a)(43)(A) (sexual abuse of a minor) <u>if</u> the record of conviction establishes that the facts of the conviction necessarily rested on include evidence that there was a sexual act, victim was 15 years old or younger, and the perpetrator was at least four years older than the victim or we can show that the offense was against a minor, not related to statutory rape and not for annoying. <sup>200, 201</sup>	CV, CD, PA, TR <sup>202</sup>
647.6	Annoying or molesting a child under 18	CIMT: Yes, if (indictment, complaint, plea agreement, judgment, or transcript) establish respondent molested Not annoyed a child.) <sup>203, 204</sup>	CV, CD, PA, TR, PSR <sup>205</sup>
		Other: Chargeable under INA § 237(a)(2)(E)(i)(child abuse) <u>if</u> conviction is entered after September 30, 1996 and is charged under subsection (a)(1) and we can show actual injury. <sup>206, 207</sup>	CV, CD, PA, TR
		Agg Fel: No	
653.22	Loitering to commit prostitution	CIMT: Yes <sup>208</sup>	CV
653.23	Supervising or otherwise aiding a prostitute	Agg Fel: Yes, under INA § 101(a)(43)(K) (length of sentence irrelevant).	CV
		CIMT: Yes <sup>209</sup>	CV
653.55	False statements in preparation of an immigration matter	Agg Fel: No	
		CIMT: Yes <sup>210</sup>	CV
664	Attempt	Agg Fel: Yes, under INA § 101(a)(43)(U), <u>if</u> underlying offense is an aggravated felony.	CV, CD <sup>211</sup>
		CIMT: Yes, <u>if</u> underlying offense is a CIMT.	CV
		Drugs: Yes, <u>if</u> the underlying offense is one relating to a controlled substance.	CV, CD <sup>212</sup>
666	Petty theft—prior conviction	Agg Fel: Maybe <sup>213</sup>	
		CIMT: Yes	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
1320	Willful failure to appear	Agg Fel: Yes, under INA § 101(a)(43)(Q) <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as relating to failure to appear for service of sentence, <u>and IF</u> the underlying offense is punishable by 5 years or more.	CV, CD, PA, TR
		Yes, under INA § 101(a)(43)(S) <u>if</u> sentenced to 1 year or more.	CV, CD
		Yes, under INA § 101(a)(43)(T) <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as relating to failure to appear to answer felony charge for which sentence of 2 years may be imposed.	CV, CD, PA, TR
		CIMT No	
4502	Possession of Weapon in Penal Institution	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense – <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment and transcript) clearly shows that the conviction involved a firearm.	CV, CD <sup>214</sup>
4530	Escape/attempted escape by prisoner	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more <u>and IF</u> conviction is specifically under 4530(a).	CV, CD
		CIMT: Yes, <u>if</u> the conviction is specifically under § 4530(a). <sup>215</sup>	
4532	Escape by a misdemeanant or felon	Agg Fel: Yes, under INA § 101(a)(43)(F), <u>if</u> sentenced to 1 year or more <u>and IF</u> conviction is specifically under 4532(a)(2) or (b)(2).	CV, CD
		CIMT: Yes, <u>if</u> the conviction is specifically under §§ 4530(a)(2) or (b)(2). <sup>216</sup>	
4573	Bringing a controlled substance into a prison, camp, jail, etc.	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the drug is a listed controlled substance. <sup>217</sup>	CV, CD
		CIMT: Yes <sup>218</sup>	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance.	CV, CD <sup>219</sup>
4573.5	Bringing alcohol or other drugs (Not controlled substances) into prison, camp, jail, etc.	Agg Fel: No	
		CIMT: Yes <sup>220</sup>	CV
		Drugs: No	

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
4573.6	Unauthorized possession of controlled substance in prison, camp, jail, etc.	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the offense was committed after a prior drug-related conviction was final, <u>and IF</u> the chemical, dangerous drug, or narcotic drug is a listed controlled substance.	CV, CD, <sup>221</sup> <u>and</u> CV, CD for prior conv.
		CIMT: Yes <sup>222</sup>	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>223</sup>	CV, CD <sup>224</sup>
12001.5	Possession of short-barreled shotguns or rifles	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
12020	Manufacture, sale, possession of a dangerous weapon/carrying concealed explosives or daggers	Agg Fel: Yes, under INA § 101(a)(43)(C), <u>if</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the conviction as involving a firearm and trafficking.	CV, CD, PA, TR <sup>225</sup>
		Yes, under INA § 101(a)(43)(F), <u>if</u> conviction is specifically under 12020(a)(1), <u>and IF</u> record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies weapon as a “short barreled shotgun,” <u>and IF</u> sentenced to 1 year or more. <sup>226</sup>	CV, CD, PA, TR <sup>227</sup>
		CIMT: No <sup>228</sup>	CV
12021	Concealable firearms owned or possessed by an addict or felon	Other: Chargeable under INA § 237(a)(2)(C) as a firearms offense – <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly identifies the weapon as a firearm.	CV, CD, PA, TR <sup>229</sup>
		Agg Fel: Yes, under INA § 101(a)(43)(E)(ii), <u>if</u> conviction is specifically under 12021(a)(1) (length of sentence irrelevant). <sup>230</sup>	CV, CD
		CIMT: No <sup>231</sup>	
12022.2	Possession of armor piercing ammunition, use of body armor	Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
		Agg Fel: No	
		CIMT: Yes <sup>232</sup>	CV
12022.4	Furnishing a firearm to another for a felony purpose	Other: Chargeable under INS § 237(a)(2)(C) as a firearm offense. <sup>233</sup>	CV
		Agg Fel: No	
		CIMT: Yes <sup>234</sup>	CV
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

PENAL CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
12025	Carrying a concealed weapon within vehicle or on person	Agg Fel: Yes, under INA § 101(a)(43)(E)(ii), if conviction is specifically under 12025(b)(1) – stolen firearm – (length of sentence irrelevant).	CV, CD
		CIMT: No <sup>235</sup>	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense. <sup>236</sup>	CV
12031	Carrying a loaded firearm	Agg Fel: Yes, under INA § 101(a)(43)(E)(ii), if conviction is specifically under 12031(a)(2)(A) – prior felony conviction – (length of sentence irrelevant).	CV, CD
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
12034	Firing/permitting a firing of a firearm from a motor vehicle	Agg Fel: Yes, under INA § 101(a)(43)(F), if conviction is specifically under 12034(c) <u>and IF</u> sentenced to 1 year or more	CV, CD, PA
		CIMT: Yes, if conviction is specifically under 12034(c).	CV, CD
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV
12280	Manufacture/Sale/Possession/Etc. Assault Weapon	Agg Fel: No	
		CIMT: No	
		Other: Chargeable under INA § 237(a)(2)(C) as a firearm offense.	CV

FAMILY CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
6320	Ex parte order enjoining contact	Agg Fel: No	CV, CD, PA, TR <sup>237</sup>
		CIMT: No	CV
		Other: Chargeable under INA § 237(a)(2)(E)(ii) violating a protection order.	

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

HEALTH & SAFETY CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
11350	Possession of designated controlled substances	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the controlled substance is Flunitrazepam or more than 5 grams of cocaine base, <sup>238</sup> <u>and IF</u> the chemical, dangerous drug, or narcotic drug is a listed controlled substance. <sup>239</sup>	CV, CD, <sup>240</sup> <u>and</u> CV, CD
		CIMT: No	
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>241</sup>	CV, CD <sup>242</sup>
11351	Possession or purchase for sale of designated controlled substances	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the drug is a listed controlled substance. <sup>243</sup>	CV, CD <sup>244</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>245</sup>	CV, CD <sup>246</sup>
11351.5	Possession of cocaine base for sale	Agg Fel: Yes, under INA § 101(a)(43)(B).	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11352	Transportation, sale, furnishing, administering, offers to transport, giving away of controlled substances	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) is clearly limited to any of the offenses listed other than <u>offer or transportation for personal use, and IF</u> drug is listed as a controlled substance. <sup>247</sup> <sup>248</sup>	CV, CD <sup>249</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance <sup>250, 251</sup>	CV, CD <sup>252</sup>
11353.5	Controlled substances given away or sold to minors (see also 11353.6, Juvenile Drug Trafficking and Schoolyard Act of 1988)	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> drug is a listed controlled substance. <sup>253</sup>	CV, CD <sup>254</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>255</sup>	CV, CD <sup>256</sup>
11353.7	Adult preparing for sale, sale or gift of controlled substance to minor in public parks	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> drug is a listed controlled substance. <sup>257</sup>	CV, CD <sup>258</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>259</sup>	CV, CD <sup>260</sup>

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

HEALTH & SAFETY CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
11355	Sale or furnishing substance falsely represented to be a controlled substance	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> drug is a listed controlled substance. <sup>261</sup>	CV, CD <sup>262</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>263</sup>	CV, CD <sup>264</sup>
11357	Possession of marijuana	Agg Fel: No	CV <u>and</u> CV for prior conv.
		CIMT: No	
		Drugs: Yes	CV
11358	Unauthorized cultivation, harvesting, or processing of marijuana	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>265</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11359	Possession for sale - marijuana	Agg Fel: Yes, under INA § 101(a)(43)(B).	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11360	Transportation, sale, offer to transport, or import of marijuana	Agg Fel: Yes, <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) is clearly limited to any of the offenses listed other than <u>offer or transportation for personal use, and IF</u> drug is listed as a controlled substance. <sup>266</sup>	CV, CD <sup>267</sup>
		CIMT: Yes	CV
		Drugs: Yes <sup>268</sup>	CV
11361	Adults employing or selling marijuana to minors	Agg Fel: Yes, under INA § 101(a)(43)(B) <u>if</u> conviction is for selling, preparing for sale or peddling.	CV
		CIMT: Yes	CV
		Drugs: Yes <sup>269</sup>	CV
11363	Cultivation, harvesting, or processing of peyote	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>270</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes	CV

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**CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

HEALTH & SAFETY CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
11364	Possession of opium pipes and other instruments for injecting or smoking a controlled substance	Agg Fel: No	
		CIMT: No	
		Drugs: Yes	CV, CD
11364.7	Delivering, furnishing, transferring, possessing or manufacture with intent to deliver drug paraphernalia	Agg Fel: No	
		CIMT: No	
		Drugs: Yes	CV, CD
11365	Presence in room or place where controlled substance is used, aiding and abetting	Agg Fel: No	
		CIMT: No	
		Drugs: Yes, <u>if</u> the drug is a listed controlled substance. <sup>271</sup>	CV, CD
11366	Opening or maintaining unlawful place for the purpose of unlawfully selling, giving away, or using a controlled substance	Yes, under INA §101(a)(43)(B). <sup>272</sup>	CV, CD
		Agg Fel:	
		CIMT: Yes	CV
11366.5	Making available for use a building or room for storage, manufacturing, or distribution of a controlled substance	Drugs: Yes, <u>if</u> the drug is a listed controlled substance. <sup>273</sup>	CV, CD
		Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>274</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> the drug is a listed controlled substance.	CV, CD

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**CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

<b>HEALTH &amp; SAFETY CODE</b>	<b>OFFENSE DESCRIPTION</b>	<b>CHARGE / COMMENTS</b>	<b>REQUIRED DOCUMENTS</b>
11366.6	Using a building, room, or space designed to suppress law enforcement entry for the purpose of controlled substance activities	Agg Fel: Yes, under INA § 101(a)(43)(B).	CV
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> the drug is a listed controlled substance.	CV, CD
11366.7	Sale of a chemical, drug, lab equipment with knowledge of intent for use in illegal manufacture	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>275</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> the drug is a listed controlled substance.	CV, CD
11366.8	Construction and use of a false compartment with intent to conceal controlled substance	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects intent to "smuggle or transport."	CV, CD <sup>276</sup>
		CIMT: Yes, <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects intent to "smuggle or transport."	CV, CD, PA, TR, PSR <sup>277</sup>
		Drugs: Yes	CV
11370.1	Possession of certain controlled substances while armed with a firearm	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the controlled substance is Flunitrazepam or more than 5 grams of cocaine base. <sup>278</sup>	CV, CD, <sup>279</sup>
		CIMT: No	
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>280</sup>	CV, CD <sup>281</sup>
11375	Possession, possession for sale, or sale of particular controlled substances	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects "possession for sale" or "sale," <u>and IF</u> drug is a listed controlled substance. <sup>282</sup>	CV, CD, <sup>283</sup>
		CIMT: Yes, <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects "possession for sale" or "sale."	CV, CD, PA, TR, PSR <sup>284</sup>
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>285</sup>	CV, CD <sup>286</sup>
11377	Possession of a controlled substance	Agg Fel: No	CV, CD, <sup>287</sup>
		CIMT: No	
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>288</sup>	CV, CD <sup>289</sup>

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

<b>HEALTH &amp; SAFETY CODE</b>	<b>OFFENSE DESCRIPTION</b>	<b>CHARGE / COMMENTS</b>	<b>REQUIRED DOCUMENTS</b>
11378	Possession of controlled substance for sale	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> drug is a listed controlled substance. <sup>290</sup>	CV, CD <sup>291</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>292</sup>	CV, CD <sup>293</sup>
11378.5	Possession or purchase for sale of PCP	Agg Fel: Yes, under INA § 101(a)(43)(B).	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11379	Transportation, sale, furnishing, offer to transport	Agg Fel: Yes, <u>if</u> the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) is clearly limited to any of the offenses listed other than <u>offer or transportation for personal use, and IF</u> drug is listed as a controlled substance. <sup>294, 295</sup>	CV, CD <sup>296</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>297, 298</sup>	CV, CD <sup>299</sup>
11379.2	Possession for sale/sale of ketamine	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>300</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11379.5	Transportation/sale/furnishing of PCP	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>301</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11379.6	Manufacturing, compounding, converting, etc. of certain substances	Agg Fel: Yes, under INA § 101(a)(43)(B), <u>if</u> drug is a listed controlled substance. <sup>302</sup>	CV, CD <sup>303</sup>
		CIMT: Yes	CV
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>304</sup>	CV, CD <sup>305</sup>
11383	Possession of precursors with intent to manufacture methamphetamine or PCP	Agg Fel: Yes, under INA § 101(a)(43)(B). <sup>306</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes	CV
11550	Use or under influence of controlled substance	Agg Fel: No	
		CIMT: No	
		Drugs: Yes, <u>if</u> drug is a listed controlled substance. <sup>307</sup>	CV, CD <sup>308</sup>

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**CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

<b>HEALTH &amp; SAFETY CODE</b>	<b>OFFENSE DESCRIPTION</b>	<b>CHARGE / COMMENTS</b>	<b>REQUIRED DOCUMENTS</b>
109575	Manufacture, distribution, or possession with intent to distribute imitation controlled substance	Agg Fel: Yes <sup>309</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes <sup>310</sup>	CV
109580	Distribution of imitation controlled substance to a minor	Agg Fel: Yes <sup>311</sup>	CV
		CIMT: Yes	CV
		Drugs: Yes <sup>312</sup>	CV

<b>VEHICLE CODE</b>	<b>OFFENSE DESCRIPTION</b>	<b>CHARGE / COMMENTS</b>	<b>REQUIRED DOCUMENTS</b>
2800.1	Flight from a pursuing peace officer	Agg Fel: No	
		CIMT: No	
2800.2	Driving recklessly to avoid a peace officer	Agg Fel: No <sup>313</sup>	
		CIMT: Yes <sup>314</sup>	CV
2800.3	Willful flight causing death/serious bodily injury	Agg Fel: No <sup>315</sup>	
		CIMT: Yes <sup>316</sup>	CV
4463	Forgery/alteration of registration, license, license plate	Agg Fel: Yes, under INA § 101(a)(43)(R), if sentenced to 1 year or more.	CV
		CIMT: Yes, if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that crime was committed with "intent to defraud."	CV, CD, PA, TR, PSR <sup>317</sup>
10750	Alteration or changing vehicle numbers	Agg Fel: No	
		CIMT: No	
10851(a)	Driving car w/o consent	Agg Fel: Yes, under INA § 101(a)(43)(G), if sentenced to 1 year or more, and IF the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that conviction is Not based on accessory-after-the-fact liability. <sup>318</sup>	CV, CD, PA, TR
		CIMT: Yes, if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects an "intent to permanently deprive." <sup>319</sup>	CV, CD, PA, TR, PSR <sup>320</sup>

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

VEHICLE CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
20001	Hit and Run (injury accident)	Agg Fel: No <sup>321</sup>	
		CIMT: Yes, if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that conviction is based on failure to render reasonable assistance to injured person. <sup>322</sup>	CV, CD, PA, TR, PSR <sup>323</sup>
20002	Hit and Run (property damage)	Agg Fel: No	
		CIMT: No	
23152	Driving Under the Influence	Agg Fel: No <sup>324</sup>	
		CIMT: No <sup>325</sup>	
23110	Throwing substances at vehicles	Agg Fel: Yes, under INA § 101(A)(43)(F), if sentenced to 1 year or more, and IF the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that conviction is under §23110(b). <sup>326</sup>	CV, CD
		CIMT: Yes, if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that conviction is under § 23110(b)	CV, CD, PA, TR, PSR <sup>327</sup>

WELFARE & INST. CODE	OFFENSE DESCRIPTION	CHARGE / COMMENTS	REQUIRED DOCUMENTS
10980	(Welfare Fraud)	Agg Fel: Yes, under INA § 101(A)(43)(M)(i), if the record of conviction (indictment, complaint, plea agreement, judgment, or transcript) clearly reflects that the loss to the victim exceeded \$10,000. <sup>328</sup>	CV, CD, PA, TR <sup>329</sup>
		CIMT: Yes <sup>330</sup>	CV

<sup>1</sup> U.S. v. Gonzalez-Tamariz, 310 F.3d 1168 (9<sup>th</sup> Cir. 2002) (misdemeanor conviction for Battery Causing Substantial Bodily Harm, in violation of Nevada Revised Statute § 200.481, meets the definition of an aggravated felony crime of violence under INA §101(a)(43)(F) because defendant received a one-year sentence of imprisonment.)

<sup>2</sup> Cazarez-Gutierrez v. Ashcroft, 382 F.3d 905 (9<sup>th</sup> Cir. 2004), Ferreira v. Ashcroft, 382 F.3d 1045 (9<sup>th</sup> Cir. 2004); but see Lopez v. Gonzales, 127 S.Ct. 625 (2006), which notes that, pursuant to 18 U.S.C. § 924(c) and 21 U.S.C. § 844(a), a conviction for simple possession committed after a prior conviction for any drug, narcotic, or chemical offense under the law of any State has become final is a federal felony, and therefore an aggravated felony under INA § 101(a)(43)(B).

<sup>3</sup> U.S. v. Ballesteros-Ruiz, 319 F.3d 1101 (9<sup>th</sup> Cir. 2003) (citing U.S. v. Corona-Sanchez, 291 F.3d 1201 (9<sup>th</sup> Cir. 2002)).

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<sup>4</sup> U.S. v. Saavedra-Velazquez, 578 F.3d 1103 (9<sup>th</sup> Cir. 2009) (The definition of an “attempt” to commit a crime under California law is coextensive with the federal definition of “attempt” for the purposes of the sentencing guidelines governing 16-level sentence increase for illegal reentry.)

<sup>5</sup> If required by the underlying offense - check the chart for the required documents.

<sup>6</sup> If necessary because other documents in the record of conviction don’t indicate the type of drug involved.

<sup>7</sup> Matter of Bautista-Hernandez, 21 I&N Dec. 955 (BIA 1997) (18 U.S.C. § 3 “offense of accessory after the fact falls within the definition of an obstruction of justice crime under INA § 101(a)(43)(S)”).

<sup>8</sup> Navarro-Lopez v. Gonzales, 503 F.3d 1063 (9th Cir. 2007) (en banc) (conviction under California Penal Code § 32 for accessory after the fact is not categorically a crime involving moral turpitude because “conduct underlying an accessory after the fact conviction does not necessarily involve conduct that involves baseness or depravity.” Further, because the jury is not required to find all the elements of the generic crime, the modified categorical approach cannot be used “to conform Navarro-Lopez’s accessory after the fact conviction to the generic definition of crimes involving moral turpitude.” In a post Silva-Trevino unpublished decision, while not directly holding so, the BIA deferred to the Ninth’s Circuit’s finding in Navarro-Lopez v. Gonzales that a conviction under California Penal Code § 32 is not a CIMT. See Josue Benjamin Bolanos, A070 034 244, 2009 WL 523166 (BIA Feb. 13, 2009) (unpublished).

<sup>9</sup> Undefined by the INA, the commercial nature of “commercial bribery” under Federal law is consistent regardless of context. Calnetics Corp v. Volkswagen of America, 532 F.2d 674 (9<sup>th</sup> Cir. 1976) (substantial sums of money paid to employees of distributor to ensure purchase of air conditioners from plaintiff); Cly v. U.S., 201 F.2d 806 (9<sup>th</sup> Cir. 1953) (receiving money with intent to influence recommendation regarding rent increases); Allwaste, Inc. v. Hecht, 65 F.3d 1523 (9<sup>th</sup> Cir. 1995) (soliciting kickbacks); 27 U.S.C. § 205(c) (for purposes of the Federal Alcohol Administration Act, commercial bribery covers the “offering or giving of any bonus, premium, or compensation to any officer, or employee, or representative” of the retailer); USSG § 2B4.1, 18 USCA, “Commercial bribery” “involves kickbacks and gratuity payments” made to bank officials or others who “accept payments in return for influence or some type of [commercial] exchange from the person,” and “does not involve officials of federal, state, or local government.”

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<sup>11</sup> Florez-Lopez v. Holder, 685 F.3d 857 (9<sup>th</sup> Cir. 2012) (“Physical force” requirement of the statute defining a “crime of violence,” for purposes of alien removal, demands a greater degree of force than the mere “offensive touching” necessary to sustain a conviction of battery.)

<sup>12</sup> Nijhawan v. Holder, 557 U.S. 29 (2009) (Clear and convincing evidence supported finding, in deportation proceeding arising out of alien’s conviction for conspiring to commit various fraud offenses and money laundering, that the loss resulting from his offenses was greater than \$10,000, as required to make his fraud and deceit conviction a conviction for an aggravated felony, rendering him deportable; at sentencing alien stipulated that the loss exceeded \$100 million, and the sentencing court ordered him to make restitution of \$683 million. Immigration and Nationality Act, §§ 101(a)(43)(M)(i), 237(a)(2)(A)(iii)).

<sup>13</sup> If necessary because other documents in the record of conviction don’t establish that the loss to the victim exceeds \$10,000.

<sup>14</sup> See, e.g., 18 U.S.C. § 1503; USSG § 3C1.1, n.4(i); Okabe v. INS, 671 F.2d 863 (5<sup>th</sup> Cir. 1982) (alien’s bribe offer to immigration officer constitutes a crime involving moral turpitude within the meaning of deportation statute because a corrupt mind is an essential element of the offense.)

<sup>15</sup> Not an aggravated felony because the statute only lists the penalty as a misdemeanor without specifically providing a sentence. “Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail Not exceeding six months, or by fine not exceeding

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## **CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

one thousand dollars (\$1,000), or by both." Cal. Penal Code § 19 (2005).

<sup>16</sup> Although the elements of the offense include "willfully," that is defined as "a purpose or willingness to commit the act. It does not require any intent to violate law, or injure another, or to acquire any advantage." Cal. Penal Code § 7. As such, the conduct proscribed does not appear to rise to the level of "conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general" or "which is per se morally reprehensible and intrinsically wrong or malum in se." Matter of Danesh, 19 I&N Dec. 669, 670 (BIA 1988); Matter of P-, 6 I&N Dec. 795, 798 (BIA 1955).

<sup>17</sup> See USSG § 3C1.1, n.4(e) (escaping or attempting to escape from custody before trial or sentencing is an obstruction of justice); U.S. v. Takahashi, 205 F.3d 1161 (9<sup>th</sup> Cir. 2000) (escape from a correctional facility prior to sentencing is an obstruction of justice.)

<sup>18</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>19</sup> See Matter of B-, 5 I&N Dec 538 (BIA 1953) (an attempt to escape from prison is not a crime involving moral turpitude).

<sup>20</sup> See USSG § 3C1.1, n.4(e) (escaping or attempting to escape from custody before trial or sentencing is an obstruction of justice); U.S. v. Takahashi, 205 F.3d 1161 (9<sup>th</sup> Cir. 2000) (escape from a correctional facility prior to sentencing is an obstruction of justice.)

<sup>21</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>22</sup> See Matter of B-, 5 I&N Dec 538 (BIA 1953) (unlawfully aiding one to escape from jail is not a crime involving moral turpitude).

<sup>23</sup> See USSG § 3C1.1, n.4(e) (escaping or attempting to escape from custody before trial or sentencing is an obstruction of justice); U.S. v. Takahashi, 205 F.3d 1161 (9<sup>th</sup> Cir. 2000) (escape from a correctional facility prior to sentencing is an obstruction of justice.)

<sup>24</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>25</sup> See Matter of B-, 5 I&N Dec 538 (BIA 1953) (unlawfully aiding one to escape from jail is not a crime involving moral turpitude).

<sup>26</sup> The conduct proscribed by the statute appears to be within the scope of 18 U.S.C. § 1546(a).

<sup>27</sup> See 18 U.S.C. § 1426(b); Matter of Flores, 17 I&N Dec 225 (BIA 1980) (uttering and selling false or counterfeit immigration documents entails a deliberate deception and impairment of governmental functions; thus, it is inherently fraudulent and is a CIMT.)

<sup>28</sup> The conduct proscribed by the statute appears to be within the scope of 18 U.S.C. § 1546(a).

<sup>29</sup> See 18 U.S.C. § 1426(b); Matter of Flores, 17 I&N Dec 225 (BIA 1980) (uttering and selling false or counterfeit immigration documents entails a deliberate deception and impairment of Governmental functions; thus, it is inherently fraudulent and is a CIMT.)

<sup>30</sup> The conduct proscribed by the statute appears to be within the scope of 18 U.S.C. § 1546(a).

<sup>31</sup> See 18 U.S.C. § 1426(b); Matter of Flores, 17 I&N Dec 225 (BIA 1980) (uttering and selling false or counterfeit immigration documents entails a deliberate deception and impairment of Governmental functions; thus, it is inherently fraudulent and is a CIMT); Matter of Serna, 20 I&N Dec 579 (BIA 1992) (possession of an altered immigration document with knowledge that it was altered, *but without its use or proof of any intent to use it unlawfully*, is not a conviction for a crime involving moral turpitude).

<sup>32</sup> Not an aggravated felony because the statute only lists the penalty as a misdemeanor without specifically providing a sentence. "Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months..."

<sup>33</sup> See 18 U.S.C. § 1503(a); Knoetze v. U.S. Dept. of State, 634 F.2d 207 (5<sup>th</sup> Cir. 1981).

<sup>34</sup> Matter of Martinez-Recinos, 23 I&N Dec. 175 (BIA 2001).

<sup>35</sup> See USSG § 3C1.1, cmt. n.4(b) (committing, suborning, or attempting to suborn perjury is obstruction of justice); Matter of Martinez-Recinos, 23 I&N Dec. 175 (BIA 2001).

<sup>36</sup> See USSG § 3C1.1, cmt. n. 4(c), (d), (f), and (h), and 18 U.S.C. § 1623 for definitional examples of "obstruction of justice" that fairly encompasses that proscribed by CPC § 134.

<sup>37</sup> The statute requires that the false document be prepared "for any fraudulent or deceitful purpose," and "crimes in which fraud is an ingredient have always been regarded as

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involving moral turpitude.” Jordan v. De George, 341 U.S. 223, 232 (1951).

<sup>38</sup> See, e.g., USSG § 3C1.1, n.4(a); U.S. v. Collins, 90 F.3d 1420, 1430 (9<sup>th</sup> Cir. 1996) (obstruction of justice includes threatening, intimidating or otherwise *unlawfully influencing a ... witness* ... directly or indirectly, or attempting to do so. It is unlawful to instruct others to lie to the police and perjure themselves.)

<sup>39</sup> See, e.g., USSG § 3C1.1, n.4(a); U.S. v. Collins, 90 F.3d 1420, 1430 (9<sup>th</sup> Cir. 1996) (obstruction of justice includes threatening, intimidating or otherwise *unlawfully influencing a ... witness* ... directly or indirectly, or attempting to do so. It is unlawful to instruct others to lie to the police and perjure themselves).

<sup>40</sup> Although there are no cases on point, arguably the inducement of another to give false testimony reflects an implicit intent to defraud the government by subverting its authority, and therefore the offense would be a crime involving moral turpitude. See, e.g., Re E, 9 I&N Dec 421 (1961) (conspiracy to defraud the United States by impeding, obstructing, and attempting to defeat the lawful functions of an agency of the United States was a crime involving moral turpitude.)

<sup>41</sup> See, e.g., 18 U.S.C. § 1512(a)(2); USSG § 3C1.1, n.4(a); U.S. v. Collins, 90 F.3d 1420, 1430 (9<sup>th</sup> Cir. 1996) (obstruction of justice includes threatening, intimidating or otherwise *unlawfully influencing a ... witness* ... directly or indirectly, or attempting to do so. It is unlawful to instruct others to lie to the police and perjure themselves.)

<sup>42</sup> Although there are no cases on point, arguably the inducement of another to give false testimony reflects an implicit intent to defraud the government by subverting its authority, and therefore the offense would be a crime involving moral turpitude. See, e.g., Re E, 9 I&N Dec 421 (1961) (conspiracy to defraud the United States by impeding, obstructing, and attempting to defeat the lawful functions of an agency of the United States was a crime involving moral turpitude.)

<sup>43</sup> See, e.g., 18 U.S.C. § 1512(a)(2); USSG § 3C1.1, n.4(a); U.S. v. Collins, 90 F.3d 1420, 1430 (9<sup>th</sup> Cir. 1996) (obstruction of justice includes threatening, intimidating or otherwise *unlawfully influencing a ... witness* ... directly or indirectly, or attempting to do so.)

<sup>44</sup> Although there are no cases on point, arguably threatening another to give false testimony reflects an implicit intent to defraud the government by subverting its authority, and therefore the offense would be a crime involving moral turpitude. See, e.g., Re E, 9 I&N Dec 421 (1961) (conspiracy to defraud the United States by impeding, obstructing, and attempting to defeat the lawful functions of an agency of the United States was a crime involving moral turpitude.)

<sup>45</sup> See, e.g., 18 U.S.C. § 1512(a)(2); USSG § 3C1.1, n.4(a); U.S. v. Collins, 90 F.3d 1420, 1430 (9<sup>th</sup> Cir. 1996) (obstruction of justice includes threatening, intimidating or otherwise *unlawfully influencing a ... witness* ... directly or indirectly, or attempting to do so.)

<sup>46</sup> Although there are no cases on point, arguably the inducement of another to give false testimony reflects an implicit intent to defraud the government by subverting its authority, and therefore the offense would be a crime involving moral turpitude. See, e.g., Re E, 9 I&N Dec 421 (1961) (conspiracy to defraud the United States by impeding, obstructing, and attempting to defeat the lawful functions of an agency of the United States was a crime involving moral turpitude.)

<sup>47</sup> If necessary because other documents in the record of conviction don’t establish that loss to the victim exceeds \$10,000.

<sup>48</sup> The elements of the offense are arguably analogous to Kidnapping, in violation of California Penal Code § 207, which is a crime involving moral turpitude. Matter of C-M-, 9 I&N Dec. 487 (BIA 1961); Matter of Torres-Varela, 23 I&N Dec. 78 (BIA 2001).

<sup>49</sup> See USSG § 3C1.1, n.5 (a) (providing a false name or identification document at arrest [is not obstruction of justice], except where such conduct actually results in a significant hindrance to the investigation or prosecution of the instant offense.)

<sup>50</sup> See Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness but not negligence.)

<sup>51</sup> See Mirgan Oganyan, A072 301 718, 2004 WL 1739156 (BIA June 29, 2004); Angel Reyes-Anaya, A043 764 881, 2004 WL 2374684 (BIA Aug. 10, 2004) (finding that California Penal Code § 148.9(a) is a CIMT). As California Penal Code § 148.9(b) parallels § 148.9(a), it also appears to be a CIMT.

<sup>52</sup> Blanco v. Mukasey, 518 F.3d 714 (9th Cir. 2008) (misdemeanor conviction for false identification to a peace officer, in violation of California Penal Code § 148.9(a), is not a crime involving moral turpitude because the offense does not require fraudulent intent); Matter of Correa-Garces, 20 I&N Dec 451 (BIA 1992) (conviction for making false statements in order to fraudulently obtain a passport in another person’s name is a crime involving moral turpitude); Hirsch v. INS, 308 F.2d 562 (9<sup>th</sup> Cir. 1962) (conviction for

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violating statute prohibiting making false statements to federal agency not a crime involving moral turpitude because it could be arrived at by a finding that defendant acted "knowingly" but without evil intent, and made false but not fraudulent statement.)

<sup>53</sup> See, e.g., Matter of Ponce-Guerrero, 2004 WL 1167311 (BIA) (unpublished) ("Proof that the respondent intended to injure [a] peace officer is not required to make the respondent's conviction a crime involving moral turpitude since "the requirements that there be knowledge of the assaulted person's status as a peace officer and that the officer be discharging an official duty establish that the accused has used violence to intentionally interfere with the lawful functions of a peace officer.")

<sup>54</sup> This is similar to "misprision of felony." See Itani v. Ashcroft, 298 F.3d 1213 (11th Cir. 2002) ("Misprision of a felony is a crime of moral turpitude because it requires the affirmative, intentional concealment of a known felony and has been condemned at common law.")

<sup>55</sup> See Matter of P-, 6 I&N Dec. 400 (BIA 1954) (Canadian criminal contempt of court by violation of injunction did not present a vile or base intent, nor was the conduct itself vile or base and so inherently immoral as to contain the ingredient of moral turpitude.)

<sup>56</sup> If required by the underlying offense - please check the chart for the required documents.

<sup>57</sup> Goldeshtein v. INS, 8 F.3d 645 (9<sup>th</sup> Cir. 1993) ("Conspiracy to commit offense involves moral turpitude only when underlying substantive offense is crime involving moral turpitude.")

<sup>58</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>59</sup> Nijhawan v. Holder, 557 U.S. 29 (2009) (clear and convincing evidence supported finding, in deportation proceeding arising out of alien's conviction for conspiring to commit various fraud offenses and money laundering, that the loss resulting from his offenses was greater than \$10,000, as required to make his fraud and deceit conviction a conviction for an aggravated felony, rendering him deportable; at sentencing alien stipulated that the loss exceeded \$100 million, and the sentencing court ordered him to make restitution of \$683 million. INA §§ 101(a)(43)(M)(i), 237(a)(2)(A)(iii)).

<sup>60</sup> If necessary because other documents in the record of conviction don't reflect that the amount of laundered funds exceeds \$10,000.

<sup>61</sup> See Matter of M-W-, 25 I&N Dec. 748 (BIA 2012) (Under the principles announced in Leocal v. Ashcroft, 125 S.Ct. 377 (2004), a conviction for Gross Vehicular Manslaughter While Intoxicated, in violation of California Penal Code § 191.5(a) - which requires gross negligence but without malice aforethought - does not qualify as a crime of violence under 18 U.S.C. § 16 because it does not equal the level of purposeful conduct contemplated in that decision (Leocal); see also Lara-Cazares v. Gonzales, 408 F.3d 1217, 1219 (9<sup>th</sup> Cir. 2005) (conviction for driving while under the influence of alcohol, and killing a person with gross negligence (but without malice aforethought), does not constitute a crime of violence because defendant did not actively employ force against another, and statute does not require the intentional use of vehicle to inflict injury.)

<sup>62</sup> Matter of M-W-, 25 I&N Dec. 748 (BIA 2012) (Pursuant to the categorical approach, a conviction for the aggravated felony of murder, as defined in INA § 101(a)(43)(A), includes a conviction for murder in violation of a statute requiring a showing that the perpetrator acted with extreme recklessness or a malignant heart, notwithstanding that the requisite mental state may have resulted from voluntary intoxication and that no intent to kill was established.)

<sup>63</sup> One of the elements of the offense is that the killing was either intentional or "in conscious disregard for life." The California Jury Instructions say that "conscious disregard for life" "means that a killing results from the doing of an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his or her conduct endangers the life of another and who acts in conscious disregard for life." The instructions don't use the word "reckless," but the language is the same as that used in U.S. v. Trinidad-Aquino, 259 F.3d 1140 (9<sup>th</sup> Cir. 2001), a DUI/crime of violence case ("The presence of the volitional 'use against' requirement in both prongs of 18 U.S.C. § 16 means that a defendant cannot commit a crime of violence if he negligently - rather than intentionally or recklessly - hits someone or something with a physical object.") Additionally, and although the statute provides for only two circumstances of voluntary manslaughter ("upon a sudden quarrel or heat of passion"), there is, according to People v. Stephanson, 66 Cal.Rptr. 155, 259 Cal.App.2d 181 (App. 2 Dist. 1968), "at least the further type which occurs during a period of diminished capacity." Intoxication is a form of diminished capacity oft-cited in California decisions that would reduce a murder to voluntary manslaughter by eliminating the element of malice. Thus a 192(a) conviction

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can be based on either reckless or intentional conduct. Pursuant to the Fernandez-Ruiz v. Gonzales, 468 F.3d 1159 (9<sup>th</sup> Cir. 2006) standard of "purposeful" conduct, a conviction under California Penal Code § 192(a) would not categorically qualify as a crime of violence under 18 U.S.C. § 16.

<sup>64</sup> If necessary because other documents in the record of conviction don't reflect that conviction is based on intentional conduct.

<sup>65</sup> Matter of Jean, 23 I&N Dec. 373, 375-76 (A.G. 2002) (conviction for 2nd degree manslaughter, in violation of N.Y. Penal Law § 124.15(1), which allows a conviction for recklessness, is "indisputably" a CIMT); see also Marmolejo-Campos v. Holder, 558 F.3d 903 (9th Cir. 2009) (en banc) (indicating that BIA had previously found voluntary manslaughter to be a CIMT.)

<sup>66</sup> If necessary because other documents in the the record of conviction don't reflect that the offense is based on intentional conduct.

<sup>67</sup> Ruiz-Morales v. Ashcroft, 361 F.3d 1219, 1221 (9th Cir. 2004) ("Notwithstanding petitioner's heroic efforts to concoct an example of mayhem involving no physical force, depriving another person of a member of his body, or disabling, disfiguring, or rendering it useless, quintessentially involves a substantial risk that physical force will be used in the process of committing the offense."); see also 18 U.S.C. § 16(b).

<sup>68</sup> "Notwithstanding petitioner's heroic efforts to concoct an example of mayhem involving no physical force, depriving another person of a member of his body, or disabling, disfiguring, or rendering it useless, quintessentially involves a substantial risk that physical force will be used in the process of committing the offense." Ruiz-Morales v. Ashcroft, 361 F.3d 1219, 1221 (9th Cir. 2004); see also 18 U.S.C. § 16(b).

<sup>69</sup> Matter of C-M-, 9 I&N Dec. 487 (BIA 1961); Matter of Torres-Varela, 23 I&N Dec. 78 (BIA 2001), rev'd on other grounds (noting that crimes involving acts of baseness or depravity have been found to be crimes involving moral turpitude even though they have no element of fraud and, in some cases, no explicit element of evil intent (e.g., murder, rape, robbery, kidnapping, voluntary manslaughter, some involuntary manslaughter offenses, aggravated assaults, mayhem, theft offenses, spousal abuse, child abuse, and incest)).

<sup>70</sup> U.S. v. Flores-Mejia, No. 11-50340 (9<sup>th</sup> Cir. 2012) (sentencing case) (conviction for robbery, in violation of California Penal Code § 211, is a crime of violence.)

<sup>71</sup> Mendoza v. Holder, 623 F.3d 1299 (9<sup>th</sup> Cir. 2010) (conviction for robbery under California law, which defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear," is a crime involving moral turpitude.)

<sup>72</sup> See U.S. v. Velasquez-Bosque, 601 F.3d 955 (9<sup>th</sup> Cir. 2010) (sentencing) (Carjacking, in violation of California Penal Code § 215, is a categorical crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii)); Matter of Leon-Chulo, 2004 WL 2943536 (BIA 2004) (unpublished) (carjacking conviction constitutes an aggravated felony because it involved a substantial risk that physical force may be used in the course of committing the crime.)

<sup>73</sup> See Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness but not negligence.)

<sup>74</sup> While simple assault is not a CIMT, the Board indicated in Matter of Sanudo, 23 I&N Dec. 968 (BIA 2006), that "moral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as **deserving of special protection**, such as a child, a domestic partner, or a **peace officer**." In Matter of Danesh, 19 I&N Dec. 669 (BIA 1988), the Board found that aggravated assault against a police officer is a CIMT. Pursuant to Danesh, for assault against a peace officer to constitute a CIMT, "(1) the person assaulted must sustain bodily injury; (2) the accused must know that the person assaulted is a peace officer; and (3) the peace officer must be engaged in the lawful discharge of an official duty."

In Garcia-Meza v. Mukasey, 516 F.3d 535 (7th Cir. 2008), the U.S. Court of Appeals for the Seventh Circuit determined that aggravated battery of a police officer, in violation of 720 Ill. Comp. Stat. 5/12-4(b)(6), is not a CIMT because, unlike in Danesh, the conviction did not require that the officer sustain bodily injury. In Partyka v. Attorney General, 417 F.3d 408, 411-17 (3d Cir. 2005), the U.S. Court of Appeals for the Third Circuit determined that aggravated assault on law enforcement officer, in violation of N.J. Stat. Ann. § 2C:12-1b(5)(a), is not a categorical CIMT because a person could be convicted for negligent conduct. In Zaranska v. DHS, 400 F.Supp.2d 500, 504-05 (E.D.N.Y. 2005), the U.S. District Court for the Eastern District of New York determined that assault a police officer, in violation of N.Y. Penal Law § 120.15(3), is not a CIMT. In Matter of O-, 4 I&N Dec. 301 (BIA 1951), an assault on a police officer was found not to be a CIMT.

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<sup>75</sup>“Because the Ninth Circuit has determined that the completed offense of rape under California law is an aggravated felony under section 101(a)(43)(A) of the Act, we conclude that the respondent's aggravated attempt to commit that offense also constitutes an aggravated felony under section 101(a)(43)(U).” Matter of Ramirez-Vasquez, 2004 WL 1167073 (BIA) (unpublished).

<sup>76</sup> If necessary because other documents in the record of conviction don't reflect an “intent to commit rape.”

<sup>77</sup>Matter of Ramon-Martinez, 25 I&N Dec. 571 (BIA 2011)( “Under 18 U.S.C. § 16(a), an offense is deemed to be a “crime of violence” if it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” Section 220 requires that an assault be committed with a specific intent to use whatever force is necessary to complete the object offense against the will of the victim. People v. Maury, 68 P.3d 1, 44 (Cal. 2003); People v. Davis, 896 P.2d 119, 143 (Cal. 1995); People v. Dillon, 95 Cal. Rptr. 3d 449, 459 (Cal. Ct. App. 2009) (stating that California Penal Code §220 requires “not only the specific intent to commit the underlying sexual act, but a specific intent to commit that act without the consent of the victim”); People v. Soto, 141 Cal. Rptr. 343, 349 (Cal. Ct. App. 1977) (noting that a conviction requires proof of “the assault and an intent on the part of defendant to use whatever force is required to complete the sexual act against the will of the victim”). In other words, one who violates section 220 must specifically intend to use whatever degree of physical force, including violent force, that might prove necessary to accomplish the object offense, thereby signaling to the victim that resistance will be met with violent coercion.”)

<sup>78</sup> See Cortez-Quiñonez v. Ashcroft, 32 Fed. Appx. 940 (9th Cir. 2002) (unpublished) (false imprisonment by violence in which the crime was perpetrated with a gun is a crime of violence that qualifies as an aggravated felony.)

<sup>79</sup> If necessary because other documents in the record of conviction don't show that conviction is for false imprisonment by “violence or menace.”

<sup>80</sup> See Saavedra-Figueroa v. Holder, 625 F.3d 621 (9<sup>th</sup> Cir. 2010) (conviction for misdemeanor False Imprisonment, in violation of California Penal Code § 236, is not a crime involving moral turpitude because there is no scienter).

<sup>81</sup> See Cortez-Quiñonez v. Ashcroft, 32 Fed. Appx. 940 (9th Cir. 2002) (unpublished). This statute can be divided between acts of deceit and acts of violence, which lead to the false imprisonment.

<sup>82</sup> If necessary because other documents in the record of conviction don't show that conviction is for false imprisonment by “violence or menace.”

<sup>83</sup> Under California Penal Code § 241(a), the maximum penalty for simple assault is six months.

<sup>84</sup> See Uppal v. Holder, 605 F.3d 712 (9<sup>th</sup> Cir. 2010) (For assault to qualify as a CIMT there must be “some aggravating dimension” sufficient to increase the culpability of an assault or battery and so to transform the offense into one categorically a CIMT. The “aggravating dimensions” recognized as sufficiently increasing the culpability of an assault to turn an assault into a CIMT have been the use of a deadly weapon, Matter of Medina, 15 I&N Dec. 611 (BIA 1976), and a victim who has a special status or trust relationship vis à vis the perpetrator, such as a domestic partner or spouse, Matter of Tran, 21 I&N Dec. 291, a child, Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969), or a peace officer, Matter of Danesh, 19 I&N Dec. 669 (BIA 1988). As these categories of cases illustrate, to rise to the level of moral turpitude, an assault crime must involve a particular type of aggravating factor, one that says something about the turpitude or blameworthiness inherent in the action. See generally Nunez v. Holder, 594 F.3d 1124, 1131 & n. 4 (9th Cir. 2010); see also Morales-Garcia v. Holder, 567 F.3d 1058 (9<sup>th</sup> Cir. 2009) and Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness - but not negligence.)

<sup>85</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>86</sup> See endnote for § 217.1.

<sup>87</sup> Ortega-Mendez v. Gonzales, 450 F.3d 1010 (9<sup>th</sup> Cir. 2006) (Battery, in violation of California Penal Code § 242, and Domestic Battery, in violation of California Penal Code § 243(e) are not categorically crimes of violence under 18 U.S.C. § 16(a), and so are not categorically INA § 237(a)(2)(E)(i) crimes of domestic violence; in addition to satisfying the definitional elements, in order to be an 18 USC § 16(a) “crime of violence” the “force necessary . . . must be actually violent in nature;” inasmuch as California courts have held that “the least touching may constitute battery,” that “it need not be violent or severe, cause bodily harm or even pain, or leave any mark,” and can be accomplished by “conduct

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such as throwing a cup of urine in a person's face" or "making unwanted sexual advances involving touching," the "categorical reach" of the offense includes conduct that is not "violent in nature" and so is Not a crime of violence.

<sup>88</sup> For subsection (b), see Matter of Ponce-Guerrero, 2004 WL 1167311 (BIA) (unpublished) ("Proof that the respondent intended to injure the peace officer is not required to make the respondent's conviction a crime involving moral turpitude since "the requirements that there be knowledge of the assaulted person's status as a peace officer and that the officer be discharging an official duty establish that the accused has used violence to intentionally interfere with the lawful functions of a peace officer.") For subsection (d), see Matter of Muñoz-Ramirez, 2004 WL 2374418 (BIA) (unpublished) ("The respondent's offense does not require an intent to cause serious bodily injury. It requires a battery, which is not a crime involving moral turpitude, and a resulting serious bodily injury to the victim. It thus lacks the requisite to render it a crime involving moral turpitude."). For subsection (e)(1), see Matter of Sanudo, 23 I&N Dec. 968 (BIA 2006) (Domestic battery in violation of California Penal Code §§ 242 and 243(e)(1) does not qualify categorically as a conviction for a "crime involving moral turpitude" inasmuch as the word "violence" in §242 "has no real significance" – and mere touching is sufficient to complete the offense.); Fernandez-Ruiz v. Gonzales, 468 F.3d 1159 (9<sup>th</sup> Cir. 2006) (to be a CIMT, an assault must be based on willful conduct and result in "bodily injury that is more than insubstantial.").

<sup>89</sup> See Uppal v. Holder, 605 F.3d 712 (9<sup>th</sup> Cir. 2010) (For assault to qualify as a CIMT, there must be "some aggravating dimension" sufficient to increase the culpability of an assault or battery and so to transform the offense into one categorically a CIMT. The "aggravating dimensions" recognized as sufficiently increasing the culpability of an assault to turn an assault into a CIMT have been the use of a deadly weapon, Matter of Medina, 15 I&N Dec. 611 (BIA 1976), and a victim who has a special status or trust relationship vis à vis the perpetrator, such as a domestic partner or spouse, Matter of Tran, 21 I&N Dec. 291, a child, Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969), or a peace officer, Matter of Danesh, 19 I. & N. Dec. 669 (BIA 1988). As these categories of cases illustrate, to rise to the level of moral turpitude, an assault crime must involve a particular type of aggravating factor, one that says something about the turpitude or blameworthiness inherent in the action. See generally Nunez v. Holder, 594 F.3d 1124, 1131 & n. 4 (9th Cir. 2010); See also Morales-Garcia v. Holder, 567 F.3d 1058 (9<sup>th</sup> Cir. 2009) and Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness but not negligence.)

<sup>90</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>91</sup> Ortega-Mendez v. Gonzales, 450 F.3d 1010 (9<sup>th</sup> Cir. 2006) (Battery, in violation of California Penal Code § 242, and Domestic Battery, in violation of California Penal Code § 243(e), are not categorically an 18 U.S.C. § 16(a) "crime of violence," and so are not categorically INA § 237(a)(2)(E)(i) crimes of domestic violence; in addition to satisfying the definitional elements, in order to be an 18 U.S.C. § 16(a) "crime of violence" the "force necessary . . . must be actually violent in nature;" inasmuch as California courts have held that "the least touching may constitute battery," that "it need Not be violent or severe, cause bodily harm or even pain, or leave any mark," and can be accomplished by "conduct such as throwing a cup of urine in a person's face" or "making unwanted sexual advances involving touching," the "categorical reach" of the offense includes conduct that is Not "violent in nature" and so is not a crime of violence.)

<sup>92</sup> If necessary because other documents in the record of conviction don't show that respondent was convicted of conduct that was "violent in nature."

<sup>93</sup> See endnote for § 217.1; see also Matter of Ponce-Guerrero, 2004 WL 1167311 (BIA) (unpublished) (proof that the respondent intended to injure the peace officer is not required to make the respondent's conviction a crime involving moral turpitude since "the requirements that there be knowledge of the assaulted person's status as a peace officer and that the officer be discharging an official duty establish that the accused has used violence to intentionally interfere with the lawful functions of a peace officer.)

<sup>94</sup> U.S. v. Aguilera-Montes, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) ("Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense."); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (for the purposes of sexual abuse of a minor, the victim must be 15 years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>95</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir. 1999)).

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<sup>96</sup> If necessary because other documents in the record of conviction don't reflect that the victim is a minor.

<sup>97</sup> See Lisbey v. Gonzales, 420 F.3d 930 (9<sup>th</sup> Cir. 2005) (conviction for sexual battery, in violation of California Penal Code § 243.4(a), is categorically a crime of violence under 18 U.S.C. § 16(b)); but see U.S. v. Espinoza-Morales, 621 F.3d 1141 (9<sup>th</sup> Cir. 2010) (convictions for Sexual Battery, in violation of California Penal Code § 243.4(a), and Penetration with a Foreign Object, in violation of California Penal Code § 289(a)(1), do not qualify categorically as crimes of violence because neither California statute punishes only the use, threatened use, or attempted use of physical force against another; they also do not constitute the enumerated offense of forcible sex as they did not require proof of use of physical force outside of the unwanted sexual touching or penetration.)

<sup>98</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (For purposes of the ground of removal set forth in INA § 237(a)(2)(E)(i), the term "crime of child abuse" means any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person's physical or mental well-being, including sexual abuse or exploitation).

<sup>99</sup> Fregozo v. Holder, 576 F.3d 1030 (9<sup>th</sup> Cir. 2009) (DHS must show an actual injury to the child to qualify as child abuse.)

<sup>100</sup> U.S. v. Heron-Salinas, 566 F.3d 898 (9<sup>th</sup> Cir. 2009) (conviction under California Penal Code § 245(a)(2) is a crime of violence.)

<sup>101</sup> U.S. v. Grajeda, 581 F.3d 1186 (9<sup>th</sup> Cir. 2009) (conviction under California Penal Code § 245(a)(1) is a crime of violence.)

<sup>102</sup> Matter of Velasco del Toro, 2005 WL 1104229 (BIA 2005) (unpublished) ("It has long been settled in the Ninth Circuit that the offense of assault with a deadly weapon, in violation of Cal. Penal Code § 245(a)(1), is a crime involving moral turpitude.")

<sup>103</sup> See U.S. v. Narvaez-Gomez, 489 F.3d 970 (9<sup>th</sup> Cir. 2007) (California Penal Code §246 (malicious and willful discharge of a firearm at an inhabited dwelling) includes "conscious indifference," an "intent element [that] is equivalent to recklessness," and so is not categorically a crime of violence.) "As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not."

<sup>104</sup> If necessary because other documents in the record of conviction don't reflect that the conviction is based on willful, rather than malicious, conduct.

<sup>105</sup> See Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness but not negligence.)

<sup>106</sup> See U.S. v. Narvaez-Gomez, 489 F.3d 970 (9<sup>th</sup> Cir. 2007) (California Penal Code §246 (malicious and willful discharge of a firearm at an inhabited dwelling) includes "conscious indifference," an "intent element [that] is equivalent to recklessness."); and Fernandez-Ruiz v. Gonzales, 468 F.3d 1159 (9<sup>th</sup> Cir. 2006) (a finding of willfulness or evil intent is necessary in order to establish moral turpitude.)

<sup>107</sup> See Matter of Cruz-Castro, 2003 WL 23269883 (BIA 2003) (unpublished) (shooting at an unoccupied motor vehicle is an aggravated felony under INA § 101(a)(43)(F)).

<sup>108</sup> U.S. v. Ruiz-Apolonio, 657 F.3d 907 (9<sup>th</sup> Cir. 2011) (conviction for forcible rape, in violation of California Penal Code § 261(a)(2), is categorically a crime of violence, as defined in the USSG.)

<sup>109</sup> Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (for the purposes of sexual abuse of a minor, the victim must be 15 years old or younger and the perpetrator must be at least four years older than the victim.). Additionally, because California Penal Code § 261.5 is a strict liability offense, there is no way to show the necessary mens rea for a conviction to qualify as an aggravated felony.

<sup>110</sup> Because California Penal Code § 261.5 is a strict liability offense there is no way to show the necessary mens rea for a conviction to qualify as a crime involving moral turpitude.

<sup>111</sup> Because California Penal Code § 261.5 is a strict liability offense, there is no way to show the necessary mens rea for a conviction to qualify as an crime of child abuse.

<sup>112</sup> If necessary because other documents in the record of conviction don't reflect an "intent to commit rape."

<sup>113</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (For purposes of the ground of removal set forth in INA § 237(a)(2)(E)(i), the term "crime of child abuse" means any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person's physical or mental well-being, including sexual abuse or exploitation.)

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<sup>114</sup> “[N]egligent conduct is sufficient to support a conviction under California Penal Code § 273a(a). This Board, however, has held that negligent conduct does not involve moral turpitude. Matter of Perez-Contreras, 20 I&N Dec. 615 (BIA 1992). The California court in *People v. Sanders*, 10 Cal. App. 4<sup>th</sup> 1268, 1274 (5<sup>th</sup> Dist. 1992) also concluded that a conviction under California Penal Code § 273a(a) is not a crime involving moral turpitude because it can be violated by wholly passive conduct.” Matter of Cortes, 2004 WL 2943461 (BIA 2004) (unpublished)

<sup>115</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 113 for parenthetical).

<sup>116</sup> Fregozo v. Holder, 576 F.3d 1030 (9<sup>th</sup> Cir. 2009) (DHS must show an actual injury to the child to qualify as child abuse.)

<sup>117</sup> See Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969) (child beating is a crime of moral turpitude because of the willful manner in which the injury was inflicted. Willful defined as “bad motive or evil intent”).

<sup>118</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 113 for parenthetical).

<sup>119</sup> U.S. v. Ayala-Nicanor, 659 F.3d 744 (9<sup>th</sup> Cir. 2011); Banuelos-Ayon v. Holder, 611 F.3d 1080 (9<sup>th</sup> Cir. 2010); U.S. v. Laurico-Yeno, 590 F.3d 818 (9<sup>th</sup> Cir. 2010); Matter of Perez Ramirez, 25 I&N Dec. 203 (BIA 2010).

<sup>120</sup> See Uppal v. Holder, 605 F.3d 712 (9<sup>th</sup> Cir. 2010) (for assault to qualify as a CIMT there must be “some aggravating dimension” sufficient to increase the culpability of an assault or battery and so to transform the offense into one categorically a CIMT. The “aggravating dimensions” recognized as sufficiently increasing the culpability of an assault to turn an assault into a CIMT have been the use of a deadly weapon, Matter of Medina, 15 I&N Dec. 611 (BIA 1976), and a victim who has a special status or trust relationship vis à vis the perpetrator, such as a domestic partner or spouse, Matter of Tran, 21 I&N Dec. at 291, a child, Guerrero de Nodahl v. INS, 407 F.2d 1405 (9th Cir. 1969), or a peace officer, Matter of Danesh, 19 I&N Dec. 669 (BIA 1988). As these categories of cases illustrate, to rise to the level of moral turpitude, an assault crime must involve a particular type of aggravating factor, one that says something about the turpitude or blameworthiness inherent in the action. See generally Nunez v. Holder, 594 F.3d 1124, 1131 & n. 4 (9th Cir. 2010); see also Morales-Garcia v. Holder, 567 F.3d 1058 (9<sup>th</sup> Cir. 2009) and Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008) (A CIMT must include reprehensible conduct and some degree of scienter such as specific intent, deliberateness, willfulness, or recklessness but not negligence.)

<sup>121</sup> See Matter of Martinez-Granados, 2003 WL 23521869 (BIA 2003) (unpublished) (A battery is a crime involving moral turpitude when it is intentionally committed or done with conscious disregard for human life and safety.)

<sup>122</sup> Morales-Garcia v. Holder, 567 F.3d 1058 (9<sup>th</sup> Cir. 2009) (conviction for abuse of cohabitant, in violation of California Penal Code § 273.5, not categorically a crime involving moral turpitude because, under the statute, some perpetrator-victim relationships are more akin to strangers or acquaintances (since California law allowed someone to be a cohabitant even if he cohabited with several partners at once or did not have key to residence), and because the statute covered acts between former cohabitants.)

<sup>123</sup> If necessary because other documents in the record of conviction don’t reflect that the victim is a minor.

<sup>124</sup> Alanis-Alvarado v. Holder, 558 F.3d 833 (9<sup>th</sup> Cir. 2009) (conviction for intentionally and knowingly violating a protective order obtained pursuant to California Family Code § 6320, in violation of California Penal Code § 273.6, qualifies as a removable offense under INA § 237(a)(2)(E)(ii) because California Family Code § 6320 specifically authorizes an injunction only for protection against violent, threatening, and harassing behavior.). California Family Code § 6320’s language is unique because other state statutes allow a protective order to include an award of monetary assistance, including rent payments, child support, court costs and attorney fees, and compensation for lost earnings. Thus, a conviction for a violation of a protective order issued under such statutes would require additional proof as to “what portion” of the protection order was violated.

<sup>125</sup> U.S. v. AgUILA-MONTES de OCA, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) (“Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense”); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (Holding that for the purposes of sexual abuse of a minor the age of the individual must be 15 years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>126</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to

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statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir.1999)).

<sup>127</sup> If necessary because other documents in the record of conviction don't reflect that the victim is a minor.

<sup>128</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (For purposes of the ground of removal set forth in INA § 237(a)(2)(E)(i), the term "crime of child abuse" means any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person's physical or mental well-being, including sexual abuse or exploitation.)

<sup>129</sup> U.S. v. Aguilas-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) ("Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense"); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (Holding that for the purposes of sexual abuse of a minor the age of the individual must be 15 years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>130</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir.1999)).

<sup>131</sup> U.S. v. Castro, 599 F.3d 1050 (9<sup>th</sup> Cir. 2010) (because a defendant can be convicted under California Penal Code § 288(c)(1) even if the government fails to prove beyond a reasonable doubt that the conduct involved constitutes a sexual act, section 288(c)(1) is broader than the generic crime of statutory rape and does not constitute sexual abuse of a minor.)

<sup>132</sup> See U.S. v. Baron-Medina, 187 F.3d 1144 (9th Cir. 1999) ("California crime of lewd or lascivious act on a child under the age of 14 years constitutes "sexual abuse of a minor," and thus an "aggravated felony.")

<sup>133</sup> U.S. v. Castro, 607 F.3d 566 (9<sup>th</sup> Cir. 2010) (because a defendant can be convicted under California Penal Code § 288(c)(1) even if the government fails to prove beyond a reasonable doubt that the conduct constitutes a 'sexual act,' section 288(c)(1) is broader than the generic crime of statutory rape. Therefore, because it constitutes neither 'sexual abuse of a minor' nor "statutory rape," a conviction under California Penal Code § 288(c)(1) does not categorically constitute a crime of violence.)

<sup>134</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>135</sup> U.S. v. Aguilas-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) ("Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense"); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (For the purposes of sexual abuse of a minor, the age of the victim must be 15 years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>136</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir.1999)).

<sup>137</sup> U.S. v. Farmer, 627 F.3d 416 (9<sup>th</sup> Cir. 2010) (sentencing case)

<sup>138</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>139</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir.1999)).

<sup>140</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>141</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>142</sup> U.S. v. Aguilas-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) ("Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense"); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (for the purposes of sexual abuse of a minor, the age of the individual must be 15

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years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>143</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir.1999)).

<sup>144</sup> See U.S. v. Mendoza-Iribar, 198 F.3d 742, 744-745 (9th Cir. 1999) ("Defendant's prior conviction under California statute imposing criminal penalties for penetrating genital or anal openings of child under 14 years of age with foreign object was "aggravated felony."")

<sup>145</sup> U.S. v. Espinoza-Morales, 621 F.3d 1141 (9<sup>th</sup> Cir. 2010); California Penal Code §§ 289(a)(1) and 289(a)(2) are not categorically crimes of violence because the statute is divisible and includes conduct that does not necessarily represent an 18 USC 16 actual, attempted, or threatened use of physical force (i.e., duress, menace, or unspecified threats of retaliation). A conviction under either section could nevertheless support a crime of violence charge *if* we can demonstrate from the record of conviction that the conviction was for an act accomplished by force, violence, or a threat of retaliation involving force. Accomplishing that will generally require either the jury verdict form or a transcript of the plea proceeding wherein it is clear exactly what conduct the alien was convicted of. Inasmuch as the statute is divisible, specific language in the charging document can be relied upon only if the conviction document includes "the critical phrase" "as charged in the Information" (or substantively similar language). U.S. v. Vidal, 504 F.3d 1072 (9<sup>th</sup> Cir. 2007).

<sup>146</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>147</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>148</sup> To the extent that Marmalejo-Campos, 558 F.3d 903 (9<sup>th</sup> Cir. 2009) overruled Plasencia-Ayala v. Mukasey, 516 F.3d 738 (9<sup>th</sup> Cir. 2008), OCC's in the Ninth Circuit are now free to argue that this is a crime involving moral turpitude in accordance with Matter of Tobar-Lobo, 24 I&N Dec. 143 (BIA 2007). However, Plasencia-Ayala declined to follow the BIA's conclusion that California Penal Code § 290 is a CIMT in Matter of Tobar-Lobo. Plasencia-Ayala also held that failure to register as a sex offender, in violation of N.R.S. § 179D.410(11), is not a CIMT, and even if committed willfully (an element present in California Penal Code § 290 but not in the Nevada statute), it does not involve 'some level of depravity or baseness 'so far contrary to the moral law' that it gives rise to moral outrage,'" and would not, therefore, be a CIMT. *Id.* at 747. Additionally, in Pannu v. Holder, 639 F.3d 1225 (9<sup>th</sup> Cir. 2011) the Ninth Circuit expressed doubts about the validity of this statue as a CIMT, and held, "[E]ven though the California sex offender registration statute facially requires a willful violation, the BIA acknowledged that it had been applied by California courts to include even mere forgetfulness. Tobar-Lobo, 24 I. & N. Dec. at 144–45 (citing People v. Barker, 34 Cal.4th 345, 18 Cal.Rptr.3d 260, 96 P.3d 507 (2004); People v. Cox, 94 Cal.App.4th 1371, 115 Cal.Rptr.2d 123 (2002)). That California courts have applied the statute in such a manner makes clear that there is a "realistic probability," and not just a "theoretical possibility," of such an application. Silva-Trevino, 24 I. & N. Dec. at 697–98. The result is, in effect, a strict liability crime. Cf. *id.* at 706–07 (rejecting conclusion that Texas statute involving sexual conduct with a minor is a categorical CIMT because it lacked a mistake-of-age defense)."

<sup>149</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>150</sup> Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical).

<sup>151</sup> See Matter of Olquin-Rufino, 23 I&N Dec. 896 (BIA 2006) (Possession of child pornography, in violation of section 827.071(5) of the Florida Statutes [which requires knowing possession of a medium which defendant knows to include any sexual conduct by a child], is a crime involving moral turpitude. The elements of California Penal Code § 311.11 are substantially identical to that of the Florida statute under consideration.)

<sup>152</sup> See Nunez v. Holder, 594 F.3d 1124 (9<sup>th</sup> Cir. 2010) (Because nude dancers and partially exposed purveyors of "sexual" insults have been convicted under § 314, there is "a realistic probability, not a theoretical possibility, that the State would apply [the indecent exposure] statute to conduct that falls outside the generic definition of [moral turpitude]." Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193 (2007). Here the "state courts in fact did apply the statute in the special (nongeneric) manner for which [Ocegueda] argues." *Id.* Indecent exposure is therefore not, categorically, a crime of moral turpitude. California's statute, as interpreted by state court judges, has not been limited to conduct that can objectively be held to meet our standardless standard that governs moral turpitude.)

<sup>153</sup> Rodriguez-Valencia v. Holder, 652 F.3d 1157 (9<sup>th</sup> Cir. 2011) (conviction under California law for willfully manufacturing, intentionally selling, and knowingly possessing for

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sale more than 1,000 articles bearing a counterfeit trademark constituted an aggravated felony under the INA, and therefore, alien was removable; any offense “relating to counterfeiting” was considered an aggravated felony under the INA, and, at time INA was enacted, counterfeiting offenses had grown to include more than imitation of currency, including state and foreign securities, passports, stamps and trafficking in counterfeit goods and services. Immigration and Nationality Act, § 101(a)(43)(R)).

<sup>154</sup> Tall v. Mukasey, 517 F.3d 1115 (9<sup>th</sup> Cir. 2008) (because “fraud is so inextricably woven into the statute as to clearly be an ingredient of the crime,” California Penal Code § 350(a) is a crime involving moral turpitude.)

<sup>155</sup> Reyes-Alcaraz v. Ashcroft, 363 F.3d 937, 941 (9<sup>th</sup> Cir. 2004) (“Exhibiting a deadly weapon with intent to evade arrest constituted an aggravated felony under the INA”).

<sup>156</sup> If necessary because other documents in the record of conviction don’t identify the weapon as a firearm.

<sup>157</sup> See Rosales-Rosales v. Ashcroft, 347 F.3d 714 (9<sup>th</sup> Cir. 2003) (defendant’s conviction for terrorist threats to commit crime which would result in death or great bodily injury, with specific intent that his statements were to be taken as threats, qualified as “crime of violence” and as “aggravated felony.”).

<sup>158</sup> Latter-Singh v. Holder, 668 F.3d 1156 (9<sup>th</sup> Cir. 2012) (“Because § 422 criminalizes only the willful threatening of a crime that itself constitutes a crime of moral turpitude with the intent and result of instilling sustained and imminent grave fear in another, we conclude that it is categorically a crime involving moral turpitude”).

<sup>159</sup> Jordison v. Gonzales, 501 F.3d 1134, (9<sup>th</sup> Cir. September 4, 2007) (Under California Penal Code § 452(c) “recklessly set[ting] fire to . . . a structure or forest land” was not a “crime of violence” under 18 U.S.C. § 16(b)).

<sup>160</sup> Even if the Ninth Circuit follows the BIA’s determination in Matter of Silva-Trevino that recklessness is a sufficient type of scienter to constitute a CIMT, a violation of California Penal Code § 452 is still probably not a CIMT. Post Matter of Silva-Trevino, The BIA has indicated that “where the crime involves recklessness, at a minimum, there must be an offense involving the infliction of serious bodily injury, or some aggravating factor.” Juda Edwin, A097 843 215, 2009 WL 422060 (BIA Jan. 29, 2009) (unpublished) (citing Godinez-Arroyo v. Mukasey, 540 F.3d 848, 851 (8th Cir. 2008); Matter of Fualaau, 21 I&N Dec. 475, 478 (BIA 1996); Matter of Medina, 15 I&N Dec. 611, 613 (BIA 1976); cf. Jimenez-Gonzalez v. Mukasey, 549 F.3d 557 (7th Cir. 2008)). As a violation of California Penal Code § 452 only refers to harm done to property, it is not a CIMT.

<sup>161</sup> Kwong v. Holder, 671 F.3d 872 (9<sup>th</sup> Cir. 2011) (anytime a burglar enters a dwelling with felonious or larcenous intent there is a risk that in the course of committing the crime he will encounter one of its lawful occupants, and use physical force against that occupant either to accomplish his illegal purpose or to escape apprehension); U.S. v. Aguila-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) (“In sum, burglary under California Penal Code § 459 is categorically broader than generic burglary because California’s definition of ‘unlawful or unprivileged entry,’ unlike the generic definition, permits a conviction for burglary of a structure open to the public and of a structure that the defendant is licensed or privileged to enter if the defendant enters the structure with the intent to commit a felony.”); U.S. v. Ramos-Medina, 682 F.3d 852 (9<sup>th</sup> Cir. 2012).

<sup>162</sup> If necessary because other documents in the record of conviction don’t show that the conviction is for 1<sup>st</sup> Degree Burglary of an inhabited dwelling.

<sup>163</sup> U.S. v. Aguila-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) (“In sum, burglary under California Penal Code § 459 is categorically broader than generic burglary because California’s definition of ‘unlawful or unprivileged entry,’ unlike the generic definition, permits a conviction for burglary of a structure open to the public and of a structure that the defendant is licensed or privileged to enter if the defendant enters the structure with the intent to commit a felony.”)

<sup>164</sup> Hernandez-Cruz v. Holder, 651 F.3d 1094 (9<sup>th</sup> Cir. 2011).

<sup>165</sup> See Bunty-Ngaeth v. Mukasey, 545 F.3d 796 (9<sup>th</sup> Cir. 2008) (conviction for burglary, in violation of California Penal Code § 459 ( upon plea to entering locked motor vehicle with intent to commit theft), constitutes an attempted theft “aggravated felony” under INA § 101(a)(43)(U) because alien’s entry of vehicle when doors were locked was substantial step towards committing theft, and entry was committed with intent to commit grand or petit larceny, Thus, INA definition of attempted theft satisfied).

<sup>166</sup> U.S. v. Aguila-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) (“In sum, burglary under California Penal Code § 459 is categorically broader than generic burglary because California’s definition of ‘unlawful or unprivileged entry,’ unlike the generic definition, permits a conviction for burglary of a structure open to the public and of a structure that the defendant is licensed or privileged to enter if the defendant enters the structure with the intent to commit a felony.”)

<sup>167</sup> Hernandez-Cruz v. Holder, 651 F.3d 1094 (9<sup>th</sup> Cir. 2011) (“Simply entering a commercial building, however, is not in itself a “substantial step” supporting attempted theft

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

liability").

<sup>168</sup> In Cuevas-Gaspar v. Gonzales, 430 F.3d 1013, 1019 (9th Cir. 2005), the Ninth Circuit found that the "act of entering is not itself 'base, vile or depraved,' and that it is the particular crime that accompanies the act of entry that determines whether the offense is one involving moral turpitude."

<sup>169</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>170</sup> Matter of Seda, 17 I&N Dec. 550 (BIA 1980) (forgery is a CIMT).

<sup>171</sup> Nijhawan v. Holder, 557 U.S. 29 (2009)( clear and convincing evidence supported finding, in deportation proceeding arising out of alien's conviction for conspiring to commit various fraud offenses and money laundering, that the loss resulting from his offenses was greater than \$10,000, as required to make his fraud and deceit conviction a conviction for an aggravated felony, rendering him deportable; at sentencing alien stipulated that the loss exceeded \$100 million, and the sentencing court ordered him to make restitution of \$683 million. Immigration and Nationality Act, §§ 101(a)(43)(M)(i), 237(a)(2)(A)(iii)).

<sup>172</sup> If necessary because other documents in the record of conviction don't show that the conviction is for 1<sup>st</sup> Degree Burglary of an inhabited dwelling.

<sup>173</sup> Vizcarra-Ayala v. Mukasey, 514 F.3d 870 (9<sup>th</sup> Cir. 2008) (conviction for Forgery, in violation of California Penal Code § 475(c), encompasses conduct involving real, unaltered documents and, thus, is not categorically an offense "relating to ... forgery" under INA § 101(a)(43)(R)).

<sup>174</sup> If necessary because other documents in the record of conviction don't show that the conviction is for 1<sup>st</sup> Degree Burglary or involves something other than a motor vehicle.

<sup>175</sup> Matter of Frentescu, 18 I&N Dec. 244 (BIA 1982); Matter of De La Nues, 18 I & N Dec. 140 (BIA 1981); Matter of Leyva, 16 I & N Dec. 118 (BIA 1977); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Matter of L-, 6 I&N Dec. 666 (BIA 1955); Matter of Z-, 5 I&N Dec. 383 (BIA 1953).

<sup>176</sup> Morales-Alegria v. Gonzales, 449 F.3d 1051 (9th Cir. 2006).

<sup>177</sup> Nijhawan v. Holder, 557 U.S. 29 (2009)(clear and convincing evidence supported finding, in deportation proceeding arising out of alien's conviction for conspiring to commit various fraud offenses and money laundering, that the loss resulting from his offenses was greater than \$10,000, as required to make his fraud and deceit conviction a conviction for an aggravated felony, rendering him deportable; at sentencing alien stipulated that the loss exceeded \$100 million, and the sentencing court ordered him to make restitution of \$683 million. Immigration and Nationality Act, §§ 101(a)(43)(M)(i), 237(a)(2)(A)(iii)..

<sup>178</sup> If necessary because other documents in the record of conviction don't establish that the loss to the victim exceeds \$10,000.

<sup>179</sup> Planes v. Holder, 652 F.3d 991 (9<sup>th</sup> Cir. 2011) (alien's convictions for passing a bad check with intent to defraud under California law, and for possessing 15 or more access devices with intent to defraud under federal law, were categorically crimes involving moral turpitude, and thus supported alien's removal under the INA, since alien's crimes each included fraud as element of offense. INA § 237(a)(2)(A)(ii).)

<sup>180</sup> U.S. v. Rivera, 658 F.3d 1073 (9<sup>th</sup> Cir. 2011) ("The felony complaint and felony information alleged that Rivera 'did unlawfully and in violation of Penal Code Section 484(a), steal take and carry away the personal property of WAL-MART.' By pleading guilty to this charge, Rivera pleaded guilty to "'a taking of property ... without consent with the criminal intent to deprive the owner of rights and benefits of ownership....'").

<sup>181</sup> Nijhawan v. Holder, 557 U.S. 29 (2009)(clear and convincing evidence supported finding, in deportation proceeding arising out of alien's conviction for conspiring to commit various fraud offenses and money laundering, that the loss resulting from his offenses was greater than \$10,000, as required to make his fraud and deceit conviction a conviction for an aggravated felony, rendering him deportable; at sentencing alien stipulated that the loss exceeded \$100 million, and the sentencing court ordered him to make restitution of \$683 million. Immigration and Nationality Act, §§ 101(a)(43)(M)(i), 237(a)(2)(A)(iii)).

<sup>182</sup> If necessary because other documents in the record of conviction don't establish that the loss to the victim exceeds \$10,000.

<sup>183</sup> Ramirez-Villalpando v. Holder, 645 F.3d 1035 (9<sup>th</sup> Cir. 2010) (conviction for grand theft did not categorically qualify as an aggravated felony; statute of conviction encompassed theft of labor, which was not included in the definition of generic theft.)

<sup>184</sup> If necessary because other documents in the record of conviction don't reflect that the conviction is not for theft of labor.

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

<sup>185</sup> See Rashtabadi v. I.N.S., 23 F.3d 1562 (9th Cir. 1994) (defendant's grand theft convictions constitute crimes of moral turpitude).

<sup>186</sup> Verdugo-Gonzalez v. Holder, 581 F.3d 1059 (9<sup>th</sup> Cir. 2009); Alvarez-Reynaga v. Holder, 596 F.3d 534 (9<sup>th</sup> Cir. 2010) (conviction under California Penal Code § 496d(a) qualifies categorically as an aggravated felony.)

<sup>187</sup> Castillo-Cruz v. Holder, 581 F.3d 1154 (9<sup>th</sup> Cir. 2009)

<sup>188</sup> See Matter of Cardiel-Guerrero, 25 I&N Dec. 12 (BIA 2009); U.S. v. Corona-Sanchez, 234 F.3d 449 (9<sup>th</sup> Cir. 2000) (the definition of a "theft offense" under INA § 101(a)(43)(G) should be derived from the Model Penal Code, which includes "theft by extortion").

<sup>189</sup> If necessary because other documents in the record of conviction don't reflect extortion to obtain property.

<sup>190</sup> If necessary because other documents in the record of conviction don't identify the conviction as relating to a counterfeit document.

<sup>191</sup> If necessary because other documents in the record of conviction don't establish that the loss to the victim exceeds \$10,000.

<sup>192</sup> The offense requires proof that the vandalism was committed "maliciously." See Matter of N, 8 I&N Dec. 466 (BIA 1959), Matter of R, 5 I&N Dec. 612 (BIA 1954), Matter of M, 3 I&N Dec 272 (BIA 1948).

<sup>193</sup> If necessary because other documents in the record of conviction don't identify the weapon as a firearm.

<sup>194</sup> See U.S. v. Pomponio, 511 F.2d 953, 956 (4<sup>th</sup> Cir. 1975) ("There can be no question but that any crime of bribery involves moral turpitude"), citing U.S. v. Esperdy, 285 F.2d 341, 342 (2<sup>nd</sup> Cir. 1961).

<sup>195</sup> Malta-Espinoza v. Gonzales, 478 F.3d 1080 (9<sup>th</sup> Cir. 2007) (a divisible statute (following or harassing) charged conjunctively (following and harassing) is not categorically a crime of violence because harassment "may include conduct carried on only at a long distance from the victim.")

<sup>196</sup> If necessary because other documents in the record of conviction don't identify the conviction as based on "following" OR don't identify specifically violent conduct.

<sup>197</sup> U.S. v. Nunez-Garcia, 262 F.Supp.2d 1073, 1082 (C.D.Cal. 2003) ("Committing a lewd act in public is a crime of moral turpitude").

<sup>198</sup> See Rohit v. Holder, 670 F.3d 1085 (9<sup>th</sup> Cir. 2012) (Solicitation of prostitution is also closely analogous to renting a room with the knowledge that it will be used for prostitution. Both are intended to facilitate the act of prostitution. There is no meaningful distinction that would lead us to conclude that engaging in an act of prostitution is a crime of moral turpitude but that soliciting or agreeing to engage in an act of prostitution is not. Because California Penal Code § 647(b) does not prohibit any conduct that does not also satisfy the generic definition of conduct involving moral turpitude, it is a "categorical match" with [INA § 237(a)(2)(A)(ii)]; Matter of Lambert, 11 I&N Dec. 340 (BIA 1965) ("Conviction for letting or renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation or prostitution is conviction of a crime involving moral turpitude."))

<sup>199</sup> See, e.g., McLaughlin v. Board of Medical Examiners, 35 Cal.App.3d 1010 (Cal. App. 2<sup>nd</sup> Dist. 1973) for conduct encompasses by subsection (c) but which is charged under subsection (a).

<sup>200</sup> U.S. v. Aguila-Montes de Oca, 655 F.3d 915 (9<sup>th</sup> Cir. 2011) (en banc) ("Under the modified categorical approach, we determine, in light of the facts in the judicially noticeable documents, (1) what facts the conviction necessarily rested on (that is, what facts the trier of fact was actually required to find); and (2) whether these facts satisfy the elements of the generic offense"); Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) (for the purposes of sexual abuse of a minor, the victim must be 15 years old or younger and the perpetrator must be at least four years older than the victim.)

<sup>201</sup> See U.S. v. Medina-Villa, 567 F.3d 507 (9<sup>th</sup> Cir. 2009) (sentencing case) (Limiting the holding in Estrada-Espinoza v. Mukasey, 546 F.3d 1147 (9th Cir. 2008) (en banc) to statutory rape type offenses and reaffirming the court's holding in United States v. Baron-Medina, 187 F.3d 1144, 1147 (9th Cir. 1999)) See also U.S. v. Pallares-Galan, 359 F.3d 1088 (9<sup>th</sup> Cir. 2004) (for a conviction under California Penal Code § 647.6(a) to qualify as sexual abuse of a minor, the record of conviction must establish that the respondent was convicted of molesting not annoying his victim.)

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

<sup>202</sup> If necessary because documents in the record of conviction fail to establish that the offense involved “injuring, hurting, or damaging” the minor victim.

<sup>203</sup> Nicanor-Romero v. Mukasey, 523 F.3d 992 (9<sup>th</sup> Cir. 2008) (under categorical approach, alien's conviction under California statute prohibiting annoying or molesting child under age 18 was not morally turpidinous within meaning of Immigration and Nationality Act (INA), i.e. there was realistic probability of conviction for behavior not involving moral turpitude; statute's actus reus element, “conduct a normal person would unhesitatingly be irritated by,” required relatively minor conduct, and mens rea element, “motivated by an unnatural or abnormal sexual interest or intent,” could be satisfied by showing that defendant possessed otherwise natural and normal interest in underage person whom he negligently believed to be over 18. INA § 237(a)(2)(A)(i)(I)), rev'd on other grounds by Marmolejo-Campos v. Holder, 558 F.3d 903 (9th Cir. 2009).

<sup>205</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>206</sup> Rodriguez-Macias v. Holder, 380 Fed. Appx. 564 (9<sup>th</sup> Cir. 2010) (unpublished) (Document showing that alien had admitted to making sexual comments to an 11-year-old girl was insufficient to determine whether girl had suffered any injury as a result of alien's conduct, and thus no facts supported conclusion that alien's California state conviction for offense of child annoyance was a conviction for child abuse, such as would make alien removable.) See also Matter of Velazquez-Herrera, 24 I&N Dec. 503 (BIA 2008) (see footnote 128 for parenthetical.).

<sup>208</sup> See Matter of Lambert, 11 I&N Dec. 340 (BIA 1965) (“Conviction for letting or renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation or prostitution is conviction of a crime involving moral turpitude.”)

<sup>209</sup> See Matter of Lambert, 11 I&N Dec. 340 (BIA 1965) (acts done for the purpose of prostitution constitute crimes involving moral turpitude.)

<sup>210</sup> See Matter of H- & Y-, 3 I&N Dec 236 (BIA 1948) (“Intent (attempt) to defraud the United States by improper use of the United States passport showing him to be a citizen of the United States and to have been born at San Francisco, California, for the purpose of effecting entry into the United States, knowing full well that he was Not born there and was Not a citizen of the United States, in violation of 18 U. S. C. 80, is an offense involving moral turpitude.”)

<sup>211</sup> If required by the underlying offense - please check the chart for the required documents.

<sup>212</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>213</sup> U.S. v. Corona-Sanchez, 291 F.3d 1201 (9<sup>th</sup> Cir. 2002); but see U.S. v. Rodriguez, 553 U.S. 377 (2008); In Re: Sergio Ernesto Garcia-Urbina 2008 WL 4420095 (September 19, 2008) (unpublished)

<sup>214</sup> If necessary because other documents in the record of conviction don't show that the conviction involved a firearm.

<sup>215</sup> See Matter of Sloan, 12 I&N Dec. 840 (BIA 1966), Matter of B-, 5 I&N Dec. 538 (BIA 1953) (aiding a convicted prisoner to escape does not involve moral turpitude).

However in Matter of Z-, 1 I&N Dec. 235 (BIA 1942), the Board indicated that the prison breach did not involve moral turpitude since the offense did not require force or fraud as an essential element. As an element of § 4530(a) is “force or violence” this sections is likely a CIMT.

<sup>216</sup> See Matter of Sloan, 12 I&N Dec. 840 (BIA 1966), Matter of B-, 5 I&N Dec. 538 (BIA 1953) (aiding a convicted prisoner to escape does not involve moral turpitude.). However in Matter of Z, 1 I&N Dec. 235 (BIA 1942), the Board indicated that the prison breach did not involve moral turpitude since the offense did Not require force or fraud as an essential element. As an element of § 4530(a) is “force or violence” this sections is likely a CIMT.

<sup>217</sup> Although “the federal counterpart for introducing drugs into a prison is found in 18 U.S.C. § 1791, which does not fall under one of the three enumerated [statutes in the Controlled Substances Act]” (Matter of Villegas-Chavez, 2004 WL 2374419 (BIA) (unpublished)), the offense implicitly includes the “trafficking elements” of “distribution” “importation” and as such would be a drug trafficking crime. See Cazarez-Gutierrez v. Ashcroft, 382 F.3d 905 (9<sup>th</sup> Cir. 2004).

<sup>218</sup> See People v. Norwood, 219 Cal.Rptr. 913, 924 (Cal. App. Div 2 1985) (“[P]ossession of drugs in prison. . . with its inherent potential for corrupting others and disrupting a penal institution, more closely resembles possession for sale than simple possession, and thus should also be considered a crime involving moral turpitude.”)

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## **CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

<sup>219</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>220</sup> See People v. Norwood, 219 Cal.Rptr. 913 (Cal. App. Div 2 1985). “[P]ossession of drugs in prison,” . . . with its inherent potential for corrupting others and disrupting a penal institution, more closely resembles possession for sale than simple possession, and thus should also be considered a crime involving moral

<sup>221</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>222</sup> People v. Norwood, 219 Cal.Rptr. 913, 924 (Cal. App. Div 2 1985) “[P]ossession of drugs in prison,” . . . with its inherent potential for corrupting others and disrupting a penal institution, more closely resembles possession for sale than simple possession, and thus should also be considered a crime involving moral turpitude.”

<sup>223</sup> Matter of Moncada-Servellon, 24 I&N Dec. 62 (BIA 2007) (The exception to deportability contained in INA § 237(a)(2)(B)(i) for an alien convicted of possessing 30 grams or less of marijuana for his own use does not apply to an alien convicted under a statute that has an element requiring that possession of the marijuana be in a prison or other correctional setting).

<sup>224</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>225</sup> If necessary because other documents in the record of conviction don't show that the conviction involved a firearm and trafficking.

<sup>226</sup> U.S. v. Delaney, 427 F.3d 1224 (9<sup>th</sup> Cir. 2005) (sentencing case) (Conviction for possession of a short-barreled shotgun, in violation of California Penal Code § 12020(a)(1), is a crime of violence under U.S.S.G. 4B1.2(1)(2) because “sawed-off shotguns are inherently dangerous, lack usefulness except for violent and criminal purposes and their possession involves the substantial risk of improper physical force.”) citing U.S. v. Hayes, 7 F.3d 144, 145 (9<sup>th</sup> Cir. 1993). Note that the Hayes/Delaney analysis could arguably apply to other firearms prohibited by California Penal Code § 12020 if it can be demonstrated that the weapon has only a criminal purpose.

<sup>227</sup> If necessary because other documents in the record of conviction don't identify weapon as a “short barreled shotgun.”

<sup>228</sup> See Matter of Granados, 16 I&N Dec. 726 (BIA 1979) (Conviction for possession of a concealed sawed-off shotgun is not a crime involving moral turpitude).

<sup>229</sup> If necessary because other documents in the record of conviction don't identify the weapon as a firearm.

<sup>230</sup> U.S. v. Castillo-Rivera, 244 F.3d 1020 (9<sup>th</sup> Cir. 2001); Matter of Vasquez-Muniz, 23 I&N Dec. 207 (BIA 2002) (possession of a firearm by a felon, in violation of California Penal Code § 12021(a)(1), is an aggravated felony under INA § 101(a)(43)(E)(ii) because it is “described in” 18 U.S.C. § 922(g)(1)).

<sup>231</sup> “[C]arrying or possessing a concealed weapon has been held to involve moral turpitude only when the intent to use it against another person has been established.” Matter of Serna, 20 I&N Dec. 579 (BIA 1992), modified on other grounds, Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997).

<sup>232</sup> See People v. Garrett, 195 Cal.App.3d 795 (Cal.App. 2 Dist. 1987) (mere possession of weapons that are “insidious instruments normally used for criminal purposes” “is indicative of a readiness to do evil”).

<sup>233</sup> Offense requires proof that defendant was “armed with a firearm” during its commission.

<sup>234</sup> See, e.g., Matter of Serna, 20 I&N Dec. 579 (BIA 1992), modified on other grounds, Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997) (“it is in the intent that moral turpitude inheres, thus carrying or possessing a concealed weapon has been held to involve moral turpitude only when the intent to use it against another person has been established.”) Since the elements of the offense require that the firearm be provided “during the commission or attempted commission of a felony” “for the purpose of aiding, abetting, or enabling that person to commit a felony,” the intent to use the firearm against another is implicit.

<sup>235</sup> “[C]arrying or possessing a concealed weapon has been held to involve moral turpitude only when the intent to use it against another person has been established.” Matter of Serna, 20 I&N Dec. 579 (BIA 1992), modified on other grounds, Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997).

<sup>236</sup> Gil v. Holder, 651 F.3d 1000 (9<sup>th</sup> Cir. 2011).

<sup>237</sup> If necessary because other documents in the record of conviction don't establish that loss to the victim exceeds \$10,000.

<sup>238</sup> Both are Federal felonies under the Controlled Substances Act, 21 U.S.C. § 844(a).

<sup>239</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

stated that a West plea "does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic." Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>240</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>241</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea "does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic." Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

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<sup>246</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

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<sup>248</sup> See U.S. v. Rivera-Sanchez, 247 F.3d 905 (9th Cir. 2001) (Solicitation offenses – "offer" – are not aggravated felonies under 101(a)(43)(B)).

<sup>249</sup> If necessary because other documents in the record of conviction don't indicate that the conviction is limited to any of the offenses listed other than *offer or transportation for personal use* AND don't indicate the type of drug.

<sup>250</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea "does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic." Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>251</sup> Coronado-Durazo v. INS, 123 F.3d 1322 (9th Cir. 1997) does not apply to California Health and Safety Code §§ 11352/11360/11379. Coronado-Durazo concluded that Solicitation, in violation of Arizona Revised Statute § 13-1002, is a stand-alone generic offense and, as a result, is not a crime necessarily relating to a controlled substance (even if the underlying offense relates to a controlled substance). Although the Ninth Circuit has found that the "offer" language in California Health and Safety Code §§ 11352/11360/11379 is a barrier to an aggravated felony charge (see Rivera-Sanchez), there is no Ninth Circuit or BIA decision that limits the Government's ability to charge the California offenses as crimes relating to a controlled substance. In fact, there are several unpublished Ninth Circuit decisions that agree that convictions under the California statutes support an INA § 237(a)(2)(B)(i) charge. See, e.g., Menjavar-Palma v. Gonzales, 210 Fed.Appx. 625 (2006); Rodriguez-Uribe v. Gonzales, 2007 WL 1814138 (9th Cir. 2007).

<sup>252</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>253</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea "does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic." Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

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## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

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<sup>258</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

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<sup>264</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>265</sup> See Masters v. Schiltgen, 28 Fed.Appx. 712 (9<sup>th</sup> Cir. 2002) (unpublished) (conviction for marijuana cultivation is an aggravated felony, rendering alien removable.)

<sup>266</sup> See U.S. v. Rivera-Sanchez, 247 F.3d 905 (9th Cir. 2001) (Solicitation offenses that involve an "offer" are not aggravated felonies under INA §101(a)(43)(B).)

<sup>267</sup> If necessary because other documents in the record of conviction don't indicate that the conviction is limited to any of the offenses listed other than *offer*.

<sup>268</sup> Coronado-Durazo v. INS, 123 F.3d 1322 (9th Cir. 1997) does not apply to California Health and Safety Code §§ 11352/11360/11379. Coronado-Durazo concluded that Solicitation, in violation of Arizona Revised Statute § 13-1002, is a stand-alone generic offense and, as a result, is not a crime necessarily relating to a controlled substance (even if the underlying offense relates to a controlled substance). Although the Ninth Circuit has found that the "offer" language in California Health and Safety Code §§ 11352/11360/11379 is a barrier to an aggravated felony charge (See Rivera-Sanchez, *supra*), there is no Ninth Circuit or BIA decision that limits the Government's ability to charge the California offenses as crimes relating to a controlled substance. In fact, there are several unpublished Ninth Circuit decisions that agree that convictions under the California statutes support an INA § 237(a)(2)(B)(i) charge of removal. See, e.g., Menjavar-Palma v. Gonzales, 210 Fed.Appx. 625 (2006); Rodriguez-Uribe v. Gonzales, 2007 WL 1814138 (9th Cir. 2007)).

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<sup>269</sup> See Guerrero-Silva v. Holder, 599 F.3d 1090 (9<sup>th</sup> Cir. 2010) (“We recognize that 8 U.S.C. § 1227(a)(2)(B)(i) provides an exception to removability for a ‘single offense involving possession for one’s own use of 30 grams or less of marijuana.’ That provision does not apply here, however, because the actions California Health and Safety Code § 11361(b) prohibits—‘furnish[ing], administer[ing], or giv[ing], or offer[ing] to furnish, administer, or give’—are actions that, by definition, do not include ‘possession for one’s own use.’”)

<sup>270</sup> See Masters v. Schiltgen, 28 Fed.Appx. 712 (9<sup>th</sup> Cir. 2002) (unpublished) (conviction for marijuana cultivation was an aggravated felony, rendering him removable).

<sup>271</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>272</sup> The activities proscribed – “selling, giving away (distribution), or using (dispensing)” either clearly or arguably reflect “drug trafficking elements.” “Distribution” and “dispensing” are included in the U.S Sentencing Guidelines definition of “drug trafficking” at U.S.S.G. 2L1.2, cmt. n. 1

<sup>273</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>274</sup> Requires that the accused have knowledge that the substance is being manufactured or stored for the purpose of sale or distribution to others.

<sup>275</sup> Requires that the accused have knowledge that the product or equipment will be used to prepare a controlled substance for unlawful sale or distribution.

<sup>276</sup> If necessary because other documents other documents in the record of conviction don’t reflect intent to “smuggle or transport.”

<sup>277</sup> If necessary because other documents in the record of conviction don’t reflect an escape prior to conviction or sentencing.

<sup>278</sup> Both are Federal felonies under the Controlled Substances Act, 21 U.S.C. § 844(a).

<sup>279</sup> If necessary because other documents in the record of conviction don’t indicate the type of drug.

<sup>280</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

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<sup>282</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>283</sup> If necessary because other documents in the record of conviction don’t indicate the type of drug.

<sup>284</sup> If necessary because other documents in the record of conviction don’t reflect an escape prior to conviction or sentencing.

<sup>285</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

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## **CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

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<sup>295</sup> See *U.S. v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001) (Solicitation offenses – “offer” – are Not aggravated felonies under 101(a)(43)(B)).

<sup>296</sup> If necessary because other documents in the record of conviction don’t indicate that the conviction is limited to any of the offenses listed other than *offer* AND don’t indicate the type of drug.

<sup>297</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to *People v. West*. The United States Court of Appeals for the Ninth Circuit, has stated that a *West* plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a *West* plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” *Fregozo v. Holder*, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>298</sup> *Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) does Not apply to CHSC §§ 11352/11360/11379. *Coronado-Durazo* concluded that inasmuch as ARS 13-1002, Solicitation, was a stand-alone generic offense that it was Not a crime necessarily relating to a controlled substance (even if the underlying offense related to a control substance). While the 9th Circuit has found the "offer" language in CHSC §§ 11352/11360/11379 to be a barrier to charging a conviction as an aggravated felony (See *Rivera-Sanchez, supra*), there is No 9<sup>th</sup> Circuit or BIA decision limiting our ability to charge the CA statutes as a crime relating to a controlled substance. In fact there are a couple of unpublished 9th Circuit decisions that agree that convictions under the CA statutes will support a 237(a)(2)(B)(i) charge (*Menjavar-Palma v. Gonzales*, 210 Fed.Appx. 625 (2006); *Rodriguez-Uribe v. Gonzales*, 2007 WL 1814138 (9th Cir. 2007)).

<sup>299</sup> If necessary because other documents in the record of conviction don’t indicate the type of drug.

<sup>300</sup> Ketamine is a Federal Schedule III controlled substance.

<sup>301</sup> Phencyclidine is a Federal Schedule II controlled substance.

<sup>302</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to *People v. West*. The United States Court of Appeals for the Ninth Circuit, has stated that a *West* plea “does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a *West* plea, without more, does not establish the factual predicate to support a determination that the conviction was generic.” *Fregozo v. Holder*, 576 F.3d 1030, 1040 (9th Cir. 2009).

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## **CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

<sup>305</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>306</sup> Lopez-Jacinde v. Holder, 600 F.3d 1215 (9<sup>th</sup> Cir. 2010) (Use of a firearm is not required for a state conviction to constitute an aggravated felony "drug trafficking crime" and the federal crime corresponding to California Health and Safety Code § 11383(c)(1) did not require possession of a minimum amount of pseudoephedrine)

<sup>307</sup> It will be very difficult to show the controlled substance if the respondent plead guilty pursuant to People v. West. The United States Court of Appeals for the Ninth Circuit, has stated that a West plea "does not establish factual guilt, and therefore, unless the record of the plea proceeding reflects that the defendant admitted to facts, a West plea, without more, does not establish the factual predicate to support a determination that the conviction was generic." Fregozo v. Holder, 576 F.3d 1030, 1040 (9th Cir. 2009).

<sup>308</sup> If necessary because other documents in the record of conviction don't indicate the type of drug.

<sup>309</sup> See U.S.S.G. § 2L1.2, cmt. n. 1 (includes "counterfeit substance" in the definition of "drug trafficking offense").

<sup>310</sup> See U.S.S.G. § 4B1.2(b) (includes "counterfeit substance" in the definition of "controlled substance offense").

<sup>311</sup> See U.S.S.G. § 2L1.2, cmt. n. 1 (includes "counterfeit substance" in the definition of "drug trafficking offense").

<sup>312</sup> See U.S.S.G. § 4B1.2(b) (includes "counterfeit substance" in the definition of "controlled substance offense").

<sup>313</sup> Penuliar v. Ashcroft, 395 F.3d 1037 (9<sup>th</sup> Cir. 2005) ("Because it would be possible to engage in "willful or wanton disregard for the safety of persons or property" by negligently committing three Vehicle Code violations, California Vehicle Code § 2800.2 is broader than a "crime of violence" as defined by 18 USC § 16, [and so does not categorically qualify as an aggravated felony "crime of violence."]" ).

<sup>314</sup> Although not controlling, the California courts have consistently found that California Vehicle Code § 2800.2 is a crime involving moral turpitude. See People v. Howard, 120 Cal.Rptr.2d 728 (Cal. App. 2002); see also People v. Dewey, 49 Cal.Rptr.2d 537 (Cal. App. 1996). The U.S. Court of Appeals for the Ninth Circuit has adopted Dewey in concluding - in a non-precedential but nevertheless persuasive unpublished decision - that CVC 2800.2 is indeed a CIMT inasmuch as its statutory elements "evince intent to evade law enforcement and jeopardize the safety of persons and property." Vasquez-Atempa v. Ashcroft, 81 Fed.Appx. 256 (9th Cir. 2003). The BIA has also acknowledged - again in a non-precedential, but nevertheless persuasive unpublished decision - that CVC 2800.2 is a CIMT. Matter of Supnet, 2007 WL 2074430 (BIA 2007) (motion to reopen denied in part because respondent "has presented no evidence that the U.S. Court of Appeals for the Ninth Circuit has held, since the Immigration Judge issued his decision, that a violation under section 2800.2 of the California Vehicle Code would not be a crime involving moral turpitude). The challenge is that Fernandez-Ruiz, 468 F.3d 1159 (9th Cir. 2006), established that "a finding of willfulness and/or evil intent is necessary in order to establish moral turpitude," and Penuliar v. Ashcroft, 395 F.3d 1037 (9th Cir. 2005), concluded that the "willful or wanton disregard for the safety of persons or property" element of California Vehicle Code § 2800.2 could be violated by negligently committing three Vehicle Code violations (and so is Not categorically an 18 USC 16 "crime of violence"). That may well be what the IJ is relying on in concluding that California Vehicle Code § 2800.2 is not a CIMT. However, while California Vehicle Code § 2800.2(b) does provide that commission of three or more traffic violations can equate to the requisite "willful or wanton disregard," it makes it clear that those violations must be committed when "driving while fleeing or attempting to elude a pursuing peace officer." Clearly, "fleeing or attempting to elude" is willful, even if the resultant jeopardy to public safety is a result of a series of negligent acts committed in the course of that willful conduct. It is also noteworthy that the non-precedential BIA decision in Supnet was issued well after both Fernandez and Penuliar, and in Supnet there appears to be No question but that California Vehicle Code § 2800.2 is a CIMT in the absence of a 9th Circuit decision to the contrary.

<sup>315</sup> The statute requires no volitional element regarding the resultant injury, only proximate causation. See U.S. v. Trinidad-Aquino, 259 F.3d 1140 (9<sup>th</sup> Cir. 2001).

<sup>316</sup> In Mei v. Ashcroft, 393 F.3d 737 (7<sup>th</sup> Cir. 2004), the circuit court found that aggravated fleeing from a police officer in violation of 625 ILCS 5/11-204.1(a)(1) was a CIMT. Although, an important factor in the court's determination was that the Illinois statute violated defined a subset of fleeing, namely fleeing at 21 or more miles per hour above the speed limit. However, the Board has also found fleeing from a police officer to categorically be a CIMT in an unpublished decision. In José Luis Aldana, A91243113, 2008 WL 3919073, (BIA July 23, 2008), the Board indicated that where an offensive "necessarily involve[s] an intentional attempt to evade lawful arrest by means of a vehicle, we conclude that the offense, involves moral turpitude. The BIA additionally found, "The use of a motor vehicle to flee from the police is an aggravating factor because it greatly increases the

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likelihood that officers or innocent bystanders will be injured, or property damaged." The California statute does not require that the defendant intend to avoid "arrest", but merely that he intends to "elude a pursuing peace officer's motor vehicle." For further guidance see endnote 2800.2.

<sup>317</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>318</sup> U.S. v. Vidal, 504 F.3d 1072 (9<sup>th</sup> Cir. 2007) (conviction for a violation of California Vehicle Code § 10851(a), which criminalizes "theft and unlawful driving or taking of a vehicle," is not categorically an aggravated felony within the meaning of INA §101(a)(43)(G), because the statute extends to accessories after the fact and the generic theft offense only reaches principals and other similar offenders.)

<sup>319</sup> Matter of D-, 1 I&N Dec 143 (BIA 1941) (deprivation of possession of a vehicle for a temporary period without intent to steal – such as by prankishness – is not a crime of moral turpitude absent a showing of intent to permanently deprive the owner.).

<sup>320</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>321</sup> "[T]he crime of leaving the scene of an accident under California Vehicle Code § 20001(a) occurs when the offender leaves the scene of the accident and that such behavior does not constitute a "crime of violence" as defined by section 101(a)(43)(F) of the Act." See Matter of Tran, 2004 WL 1059650 (BIA) (unpublished); see also U.S. v. Trinidad-Aquino, 259 F.3d 1140 (9<sup>th</sup> Cir. 2001).

<sup>322</sup> Cerezo v. Mukasey, 512 F.3d 1163 (9<sup>th</sup> Cir. 2008) ("CVC § 20001(a) (leaving the scene of an accident resulting in bodily injury or death) does Not categorically involve moral turpitude, because the statute 'is divisible into several crimes, some of which may involve moral turpitude and some of which may not (i.e., failure to provide all forms of identification).'"")

<sup>323</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>324</sup> See U.S. v. Trinidad-Aquino, 259 F.3d 1140 (9<sup>th</sup> Cir. 2001) (Prior California conviction for driving under influence of alcohol with injury to another was not "crime of violence," and thus was not "aggravated felony" warranting 16-level increase in sentence for illegally re-entry following deportation, inasmuch as statute prohibiting such California offense could be violated through negligence.); Leocal v. Ashcroft, 543 U.S. 1 (2004) (alien's conviction for driving under the influence of alcohol (DUI) and causing serious bodily injury in an accident, in violation of Florida law, was not a "crime of violence").

<sup>325</sup> See Fernandez-Ruiz v. Gonzales, 468 F.3d 1159 (9<sup>th</sup> Cir. 2006) ("A finding of willfulness and/or evil intent is necessary in order to establish moral turpitude").

<sup>326</sup> Matter of Soto-Luna, 2004 WL 2952324 (BIA 2004) (unpublished) (conviction for Throwing Substance at Vehicles, in violation of California Vehicle Code § 23110(b), is an aggravated felony crime of violence under INA § 101(a)(43)(F)).

<sup>327</sup> If necessary because other documents in the record of conviction don't reflect an escape prior to conviction or sentencing.

<sup>328</sup> Ferreria v. Ashcroft, 390 F.3d 1091 (9<sup>th</sup> Cir. 2004) ("[T]he California Court of Appeal has specifically held that WIC section 10980(c)(2)'s predecessor statute, which contained language identical to the present statute, required proof of intent to defraud. People v. Faubus, 48 Cal.App.3d 1, 5, 121 Cal.Rptr. 167 (1975) (holding that "because of the legislative history of Welfare and Institutions Code section 11483, we conclude [that an intent to defraud] is also an ingredient of a violation of that statute.") Thus, California caselaw indicates that all convictions under WIC section 10980(c)(2) involve fraud or deceit.")

<sup>329</sup> If necessary because other documents in the record of conviction don't establish that loss to the victim exceeds \$10,000.

<sup>330</sup> *Id.* Although Ferreria does not directly consider whether the statute is turpitudinous, it's conclusion that the elements of "fraud or deceit" are implicit in the statute is directly applicable to the question.

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Editor: Senior Attorney (b)(6), (b)(7)(c) 520-869-6 (b)(7)(c)(b)(6) (b)(7)(c) suggestions for improvement welcomed

# CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

## Appendix 1

### Silva-Trevino CIMTCheat Sheet

*Prepared by the Office of Chief Counsel - Arizona*

- **Crime must involve BOTH:**

- 1) **Reprehensible conduct**, and
- 2) **Some degree of scienter:** specific intent, deliberateness, willfulness, or recklessness
  - Note: negligence not listed
  -

- **Determination for removability:**

**STEP 1:**

- **Categorical Inquiry**

- 212 Proceedings
  - **Standard:** The immigration court should determine whether there is a “realistic probability, not a theoretical possibility” that the State or Federal criminal statute would be applied to reach conduct that does not involve moral turpitude.
  - **Burden on the ALIEN:** to show that a conviction is NOT categorically a CIMT.
  - **Burden on the ALIEN:** to establish that at the time of the alien’s removal proceeding, any actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude.
- 237 Proceedings

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Editor: Senior Attorney (b)(6), (b)(7)(c) 520-670-**(b)(6)**, (b)(7)(c) (b)(6), (b)(7)(c) - suggestions for improvement welcomed

## **CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART**

- **Standard:** The immigration court should determine whether there is a “realistic probability, not a theoretical possibility” that the State or Federal criminal statute would be applied to reach conduct that does not involve moral turpitude.
- **Burden on DHS:** to assess the criminal statute (or criminal acts) to see if, at the time of the alien’s removal proceeding, any actual (as opposed to hypothetical) case exists, including the alien’s own case, in which the relevant criminal statute was applied to conduct that did not involve moral turpitude.
  - **Note:** Look at annotated version of statute in Westlaw to see what actual cases the statute has been applied to.
- If the statute has not been applied to any conduct that did not involve moral turpitude (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.

### **STEP 2:**

- **Modified Categorical Inquiry** (only if the statute applies to non-CIMT conduct or if the statute is divisible)

- **212 Proceedings**

- **Burden on the ALIEN:** to supply the record of conviction: indictment, judgment of conviction, jury instructions, signed guilty plea, and the plea transcript.
- **Burden on the ALIEN:** to show that his own conviction was for conduct that DID NOT involve moral turpitude.

- **237 Proceedings**

- **DHS has the burden:** to produce the record of conviction, including: the indictment, judgment of conviction, jury instructions, signed guilty plea, and the plea transcript.
- **DHS must produce evidence of a good faith attempt:** If one of the documents mentioned above is unavailable DHS must produce some evidence that a good faith attempt was made to obtain the missing document.
- **DHS has the burden:** to show the alien’s conviction was for conduct that DID involve moral turpitude.

### **STEP 3:**

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Editor: Senior Attorney (b)(6), (b)(7)(c) 520-670-1 (b)(7)(c) (b)(6), (b)(7)(c) - suggestions for improvement welcomed

## CALIFORNIA CRIMINAL CODE - REMOVABILITY AND INADMISSIBILITY CHART

- **Consideration of Any Additional Evidence Deemed Necessary**

- **212 Proceedings**

- If Respondent fails to produce the entire record of conviction or the record of conviction is inconclusive: the immigration court can consider “any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question”
  - DHS may rebut: may offer the pre-sentence report or police report to rebut Respondent’s assertion that his conduct was not a CIMT.
- The “sole purpose of the inquiry is to ascertain the nature of a prior conviction;” It “is not an invitation to relitigate the conviction itself.”
  - Note: Look at record of conviction and PSR/PSI to determine conduct.
  - Note: Police report should be avoided – Obtain PSR/PSI as those provide Respondents with an opportunity to object to inaccuracies, and are relied on by the criminal courts in finding guilt and imposing sentence.

- **237 Proceedings (Must Attempt to Obtain Transcripts before attempting use step 3 in 237 cases)**

- When record of conviction inconclusive (indictment, judgment of conviction, jury instructions, signed guilty plea, and the plea transcript): court may consider “any additional evidence<sup>330</sup> deemed necessary or appropriate to resolve accurately the moral turpitude question” including the pre-sentence report or police report.
- The “sole purpose of the inquiry is to ascertain the nature of a prior conviction;” It “is not an invitation to relitigate the conviction itself.”
  - Note: Look at record of conviction and PSR/PSI to determine conduct.
  - Note: Police report should be avoided – Obtain PSR/PSI as those provide Respondents with an opportunity to object to inaccuracies, and are relied on by the criminal courts in finding guilt and imposing sentence.

- Hints

- Always obtain PSR/PSI. If the court is not inclined to find that an offense is a CIMT under the categorical approach, be prepared to argue using the relevant documents discussed under the modified categorical approach.

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Editor: Senior Attorney (b)(6), (b)(7)(c) 520-670-6701, (b)(7)(c) (b)(6), (b)(7)(c) - suggestions for improvement welcomed

**From:** (b)(6) (b)(7)(c)  
**To:**  
**Subject:** CAP processing  
**Date:** Friday, February 24, 2012 3:40:00 PM  
**Attachments:** [image003.png](#)

---

All,

When processing all CAP cases, please ensure that the ***Lead Source and Comment*** section on the Event screen follows these guidelines:

Lead source

- There are only 3 options that we should be using
  - LEA- this should be used for all CAP encounters with the exception of the two options that follow;
  - SC- Secure Communities;
  - CIS- CIS removal referrals

Comment

- This should reflect the name of the facility and state
  - Ex; Summit County Jail, Utah

This guidance was provided by HQ CAP. These boxes must be populated for all CAP encounters, not just during CAP Surge operations.

Please let me know if you have any questions.

(b)(6) (b)(7)(c)

*Supervisory Detention & Deportation Officer  
Criminal Alien Program/Secure Communities  
Salt Lake City Field Office  
801-886- (b)(7)(c)*



U.S. Immigration  
and Customs  
Enforcement

DEC 21 2012

MEMORANDUM FOR:  
All Field Office Directors  
All Special Agents in Charge  
All Chief Counsel

FROM:

(b)(6) (b)(7)(c)

SUBJECT: Civil Immigration Enforcement: Guidance on the Use of Detainers  
in the Federal, State, Local, and Tribal Criminal Justice Systems

Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,<sup>1</sup> ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

<sup>1</sup> As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

**National Detainer Guidance**

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;<sup>2</sup>
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;<sup>3</sup>
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.<sup>4</sup>

---

<sup>2</sup> Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

<sup>3</sup> A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

<sup>4</sup> For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

(b)(6) (b)(7)(c)

(b)(6) (b)(7)(c)

Tuesday December 27 2011 11:07 AM

(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** (b)(6) (b)(7)(c)  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Additional Guidance on the Revised Detainer Form I-247 - Notifications  
**Attachments:** Information for Immigration Officers.docx

For your review and dissemination to officers/agents. Information below needs to be distributed to officers/agents NLT Friday, December 30, 2011. Ensure that officers/agents understand the changes created by revised Form I-247.

(b)(6) (b)(7)(c)  
**Field Office Director**  
**Salt Lake City Field Office**  
**2975 S. Decker Lake Drive, Suite (b)(6) (b)(7)(c)**  
**West Valley City, UT 84119 (b)(6) (b)(7)(c)**  
**(801) 886- (b)(6) (b)(7)(c)**  
**(801) 831- (b)(6) (b)(7)(c)**

---

**From:** ERO Taskings  
**Sent:** Tuesday, December 27, 2011 11:15 AM  
**Subject:** Additional Guidance on the Revised Detainer Form I-247 - Notifications

*The following message is being sent on behalf of (b)(6) (b)(7)(c) Assistant Director for Enforcement with approval of (b)(6) (b)(7)(c) Assistant Director for Field Operations:*

**To:** Field Office Directors and Deputy Field Office Directors

**Subject:** Additional Guidance on the Revised Detainer Form I-247 - Notifications

The revised [form I-247](#) provides aliens with contact information for the Law Enforcement Support Center (LESC) and the Joint Intake Center (JIC). The detainer directs aliens to call the LESC if they are a United States citizen or have been the victim of a crime. The form directs aliens to call the JIC if they have a complaint about the detainer or wish to report violations of their civil rights or civil liberties. In addition, the form advises Law Enforcement Agencies (LEAs) to contact the LESC if the alien is a victim of a crime, or if the LEA wants the individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness. The attached document labeled '*Information for Immigration Officers*' has been prepared to advise field officers of these changes and to assist them in the implementing the new requirements.

Please keep in mind that the LEAs are requested to provide a copy of the detainer to the alien. Field Office Directors (FODs) should take into consideration that the alien or family members will have contact information listed on the detainer including names of the issuing officer, LEA information, and contact phone numbers for the LEAs to notify ICE of release of alien.

Additionally, FODs should consider methods to respond to complaints that are referred to the Joint Intake Center.

## **Guidance:**

On December 7, 2011, FODs were asked to establish a new email address through which they could maintain a uniform method of receiving and sending information relating to the revised document. When responding to LESC referrals, field officers should adhere to the following requirements:

- When possible, cases in ICE custody should be reviewed prior to issuance of a charging document;
- Interview subject of referral not in ICE custody and attempt to verify claim;
- Treat each referral on a case-by-case basis;
- If favorable exercise of discretion is warranted, ERO should lift the detainer, provide a copy of form I-918, Petition for U Nonimmigrant status to subject, update ENFORCE by entering the Alert Code "NLO- No ICE locator listing", enter the operational code "384" in the alert comments within ENFORCE; and
- If exercise of discretion is denied and the individual remains detained, ERO should update ENFORCE by entering the Alert Code "NLO", "384" in the alert comments to flag the case and generate a G-166 in ENFORCE requiring the signature of the FOD describing the circumstances of the decision.

When the field office receives an e-mail from the LESC with the subject line heading "Immediate review needed: USC claim," the field officers must review and refer the claim in accordance with the Assistant Secretary's November 19, 2009 memorandum entitled *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship*.

As there is no right to the favorable exercise of discretion by the agency, nothing in this field distribution should be construed to prohibit the arrest, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of ICE or any of its personnel to enforce federal immigration law.

**This information should be distributed to your Officers no later than Friday, December 30, 2011. Questions relating to this information may be referred to the Acting Criminal Alien Program Unit Chief, (b)(6) (b)(7)(c), at (b)(6) (b)(7)(c) or (202) 732-(b)(6) (b)(7)(c)**

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(b)(6) (b)(7)(c)

**From:**  
**Sent:**  
**To:**  
**Subject:**

(b)(6) (b)(7)(c)

Tuesday June 04 2013 11:33 AM

(b)(6) (b)(7)(c)

FW: Cancellation of the Criminal Alien Removal Initiative (CARI) Weekly Report of Significant Arrests

Sent from my iPhone

-----Original Message-----

**From:** ERO Taskings  
**Sent:** Tuesday, June 04, 2013 02:19 PM Eastern Standard Time  
**To:**  
**Subject:** Cancellation of the Criminal Alien Removal Initiative (CARI) Weekly Report of Significant Arrests

*The following message is being sent on behalf of [REDACTED] (b)(6) (b)(7)(c), Acting Assistant Director for Secure Communities and Enforcement, with the concurrence of [REDACTED] (b)(6) (b)(7)(c) Assistant Director for Field Operations*

**To:** Field Office Directors and Deputy Field Office Directors  
**Subject:** Cancellation of the Criminal Alien Removal Initiative (CARI) Weekly Report of Significant Arrests

Effective June 4, 2013, the CARI Weekly Report of Significant Arrest is cancelled. Enforcement and Removal Operations (ERO) is able to capture this data using the field office Significant ERO Enforcement Actions Report. ***This cancellation does not change the reporting requirement for the Significant ERO Enforcement Actions Report.***

Thank you for your cooperation over the last year in submitting this report. Any questions or concerns related to this action, please contact the National Fugitive Operations Program, Unit Chief, [REDACTED] (b)(6) (b)(7)(c) at (202) 734- [REDACTED] (b)(7)(d) via email at [REDACTED] (b)(6) (b)(7)(c)

**NOTICE:** This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message.

**From:** ERO Taskings  
**Sent:** Thursday, June 07, 2012 3:48 PM  
**Subject:** Criminal Alien Removal Initiative Weekly Report of Significant Arrests

This message is sent on behalf of [REDACTED] (b)(6) (b)(7)(c) Assistant Director for Secure Communities and Enforcement and approved by [REDACTED] (b)(6) (b)(7)(c) Assistant Director for Field Operations:

To: Field Office Directors and Deputy Field Office Directors

Subject: Criminal Alien Removal Initiative Weekly Report of Significant Arrests

ERO has been asked to provide weekly information on significant arrests that occur during the Criminal Alien Removal Initiative (CARI).

**Effective Monday June 11, 2012**, each field office is expected to provide a brief summary of the most significant arrest within their AOR related to Operation CARI. If field offices have multiple arrests that meet the criteria, please provide a bullet on each.

The criteria for reporting these arrests are those aliens convicted of felony offenses, with a particular emphasis on violent criminal felons (murder, rape, assault, etc....) and/or repeat felony offenders.

Please send your responses to the HQERO Fugitive Operations mailbox as found in the Microsoft Outlook Global Address List **by the close of business every Friday**. In addition, in your daily submissions, please provide point of contact in your field office that HQ NFOP can contact with questions on your submission. **This is a new report; field offices are still expected to continue reporting on any Significant Events that occur within their field offices on a daily basis to the ERO Operations Center mailbox.**

Below are some examples of responses we would like to receive:

- ERO Seattle - CARI Arrest – On June 4, 2012, ERO Seattle arrested [REDACTED] (b)(6) (b)(7)(c). [REDACTED] (b)(6) (b)(7)(c) a citizen of Mexico who was convicted for the murder of her three year old son. ERO Seattle served [REDACTED] (b)(6) (b)(7)(c) a Notice to Appear and she will remain in custody pending the outcome of her removal proceedings. **Media Note:** No media attention is expected as a result of this arrest.
- ERO Philadelphia – CARI Arrest – On June 5, 2012, ERO Philadelphia arrested [REDACTED] (b)(6) (b)(7)(c). [REDACTED] (b)(6) (b)(7)(c) a citizen of Jamaica who illegally reentered the United States after being removed. [REDACTED] (b)(6) (b)(7)(c) was convicted of assault and battery. ERO Philadelphia will present FOSTER for prosecution in the U.S. District Court for the Eastern District of Pennsylvania. **Media Note:** No media attention is expected as a result of this arrest.
- ERO Baltimore – CARI Arrest – On June 4, 2012, ERO Baltimore arrested [REDACTED] (b)(6) (b)(7)(c). [REDACTED] (b)(6) (b)(7)(c) a citizen of Pakistan with a final order of removal. [REDACTED] (b)(6) (b)(7)(c) was convicted of rape. [REDACTED] (b)(6) (b)(7)(c) will remain in custody pending his removal from the US. **Media Note:** No media attention is expected as a result of this removal.

Should you have any questions regarding this task please contact NFOP Unit Chief, [REDACTED] (b)(6) (b)(7)(c) at 202-734-[REDACTED] (b)(6) (b)(7)(c) via email at [REDACTED] (b)(6) (b)(7)(c)

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(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, May 20, 2013 8:54 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: CAP HANDBOOK

fyi

(b)(6) (b)(7)(c)  
**Field Office Director**

**Idaho – Montana - Nevada - Utah**

**U.S. Immigration and Customs Enforcement**

**Enforcement and Removal Operations**

**Salt Lake City Field Office**

**Office: (801) 886-6(b)(7)(c)**

**Fax: (801) 886-6(b)(7)(c)**

**Email: (b)(6) (b)(7)(c)**

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**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, May 20, 2013 9:38 AM

(b)(6) (b)(7)(c)

**Subject: CAP HANDBOOK**

In 2007, the Criminal Alien Program (CAP) was created from a merger of the Institutional Removal Program and the Administrative Criminal Alien Program and all control of the two programs was placed with Detention and Removal Operations, now of course Enforcement and Removal Operations. Since that time CAP has grown from working in the jails and getting its statistics from issuing charging documents and documenting its coverage in the Criminal Alien Program Risk Assessment to having ties with every aspect of ICE's Enforcement and Removal Operations to include prosecutions, at large arrests, academy training, and international criminal history sharing.

It was and remains the hard work and dedication of all the staff nationwide that has come through this program from the Handbook's inception till its national dissemination, which I hope is today, that has made CAP what it is today. It is the hope of the program that this handbook and the additions that come in the future, be a testament to you who have created it and to those that will benefit from it.

(b)(7)e

Thank You,

(b)(6) (b)(7)(c)

Criminal Alien Program, Unit Chief  
Enforcement and Removal Operations  
202-731-  
12 (b)(6) (b)(7)(c)

**CONFIDENTIALITY NOTICE:** This document may contain confidential and sensitive U.S. Government information, and is not for release, review, retransmission, dissemination or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies of the original. Any disclosure of this document must be approved by the Department of Homeland Security, U.S. Immigration and Customs Enforcement.

(b)(6) (b)(7)(c)

**From:**  
**Sent:**  
**To:**  
**Subject:**

(b)(6) (b)(7)(c)

Thursday, February 07, 2013 9:36 AM

(b)(6) (b)(7)(c)

Detained CAP

AFODs,

As a reminder, we will not take into custody any non-criminal, non-mandatory cases. As of today we currently don't have any of these cases in custody. Ensure you are reviewing all cases before authorizing detention.

Thanks,

(b)(6) (b)(7)(c)

Field Office Director (A)

\*\*\*\*\*

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Salt Lake City Field Office  
Office: (801) 881-  
Fax: (801) 881-  
Email: (b)(6) (b)(7)(c)

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(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Friday, September 16, 2011 4:16 PM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: ERO Directive 11152.1 - Enforcement and Removal Encounters

---

**From:** ERO Taskings  
**Sent:** Thursday, September 15, 2011 2:59 PM  
**Subject:** ERO Directive 11152.1 - Enforcement and Removal Encounters

*The following message is being sent on behalf of* (b)(6) (b)(7)(c) **Assistant Director for Enforcement, and approved by** (b)(6) (b)(7)(c) **Assistant Director for Field Operations:**

**To:** **Field Office Directors and Deputy Field Office Directors**

**Subject:** **Enforcement and Removal Encounters**

In 2009, the Office of Inspector General (OIG) conducted a review of the Criminal Alien Program (CAP) to analyze the effectiveness of CAP in state facilities. In November of 2010, OIG issued a draft report recommending that all screenings and identifications of foreign born individuals incarcerated in Federal, State and local correctional facilities be documented and recorded in ENFORCE. U.S. Immigration and Customs Enforcement concurred with this recommendation and as a result, on July 29, 2011, Executive Associate Director Mead signed into policy, ERO Directive 11152.1, Enforcement and Removal Encounters ( [2011\\_07\\_29\\_E11152v1 Enforcement and Removal Encounters.pdf](#)). This directive requires ERO law enforcement officers to document foreign born national encounters in the Enforcement Integrated Database (EID) using the ENFORCE application.

**TASK:**

Commencing October 1, 2011, FODs are to ensure that all ERO law enforcement officers within their field office are fully compliant with ERO Directive 11152.1. It is highly encouraged that FODs ensure their officers have a full understanding of this policy, its effects on statistical tracking, and the processing changes and coordination which must occur with interoperability response centers.

Questions relating to this issue can be directed to (b)(6) (b)(7)(c) Criminal Alien Division via email at (b)(6) (b)(7)(c) or by phone 202-732-(b)(6) (b)(7)(c)

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(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Monday, May 20, 2013 9:16 AM  
**To:** (b)(6) (b)(7)(c)  
**Subject:** FW: Issuance of Criminal Alien Program Handbook

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**From:** ERO Taskings  
**Sent:** Monday, May 20, 2013 10:11 AM  
**Subject:** Issuance of Criminal Alien Program Handbook

*The following message is sent on behalf of (b)(6) (b)(7)(c) (A) Assistant Director for Secure Communities and Enforcement, with the concurrence of (b)(6) (b)(7)(c) Assistant Director for Field Operations:*

**To:** Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors  
**Subject:** Issuance of Criminal Alien Program Handbook

On May 14, 2013, (A) Assistant Director for Secure Communities and Enforcement, (b)(6) (b)(7)(c) signed the *Criminal Alien Program Handbook*. The Handbook provides procedures, best practices, and a list of related policies regarding Criminal Alien Program (CAP) duties. The Handbook focuses on the identification of criminal aliens, case preparation, and removal proceedings while still allowing for flexibility regarding established local operational procedures. The Handbook will be the base document for CAP training and operations at ERO field offices. While the document contains investigative tools and resources, it should not be considered an all-inclusive guide for conducting CAP operations.

The Handbook is available for view in the ERO Resource Library at the following link:

(b)(7)e

If you have any questions regarding the CAP Handbook, please contact (b)(6) (b)(7)(c) Criminal Alien Program Unit Chief at (202) 733-(b)(6) (b)(7)(c) (b)(6) (b)(7)(c)

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(b)(6) (b)(7)(c)

**From:** (b)(6) (b)(7)(c)  
**Sent:** Tuesday, May 29, 2012 3:12 PM  
**To:**  
**Cc:**  
**Subject:** FW: Removal of Criminal Aliens

(b)(6) (b)(7)(c)

FYI and compliance. Discuss with officers/agents to ensure they are aware of and understand this policy.

Let us know if you have any questions relating to this policy.

Thank you,

(b)(6) (b)(7)(c)  
**Field Office Director**  
Salt Lake City Field Office  
2975 S. Decker Lake Drive, Suite (b)(6) (b)(7)(c)  
West Valley City, UT 84119-6096  
(801) 886-  
(801) 831 (b)(6) (b)(7)(c)

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**From:** ERO Taskings  
**Sent:** Tuesday, May 29, 2012 11:35 AM  
**Subject:** Removal of Criminal Aliens

*The following message is sent on behalf of* (b)(6) (b)(7)(c) **Executive Associate Director.**

**To:** **Field Office Directors and Deputy Field Office Directors**  
**Subject:** **Removal of Criminal Aliens**

As you know, the highest U.S. Immigration and Customs Enforcement (ICE) immigration enforcement priority is the enhancement of national security and community safety through the removal of criminal aliens. While we have already increased our focus on apprehending and removing criminal aliens, I want to further enhance our attention to this priority. All Fugitive Operations, Joint Criminal Alien Removal Taskforce, and Violent Criminal Alien Section teams are to concentrate on targeting and arresting removable Level 1 and Level 2 criminal aliens. While the teams will increase their efforts to identify and work these specific cases, aliens fitting other immigration enforcement priorities who are encountered during targeted operations, should be arrested and processed consistent with current policies and procedures. Other immigration enforcement priorities include: serious Level 3 criminal aliens, ICE fugitives, re-entrants, and recent border crossers. Prosecutions should be considered on a case by case basis.

Offices that have been identified to participate in expanding the number of fugitive operations teams from (b)(7)e (b)(7)e should immediately take the necessary steps to assemble and activate the additional teams. Field Office Directors are expected to follow local union requirements as appropriate.

Please be sure to use all available Alternatives to Detention resources, stipulated removals, administrative removals, and voluntary returns to support this effort as appropriate.

In addition, coordinate closely with Chief Counsels and Homeland Security Investigations (HSI) Special Agents in Charge to maximize their support of this effort, particularly the apprehension of Level 1 and Level 2 criminal aliens by HSI.

All other enforcement activities including Criminal Alien Program, 287g, and Secure Communities should continue as they have been over the past several months.

If you have any questions, please reach out immediately to [REDACTED] (b)(6) (b)(7)(c)  
or me.

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**From:** (b)(6) (b)(7)(c)  
**To:**  
**Cc:**  
**Subject:** FW: CAP processing  
**Date:** Friday, February 24, 2012 3:45:00 PM  
**Attachments:** [image003.png](#)

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Please review before you distribute to your peeps. Please let me know if clarification is needed.

All,

When processing all CAP cases, please ensure that the **Lead Source and Comment** section on the Event screen follows these guidelines:

Lead source

- There are only 3 options that we should be using
  - LEA- this should be used for all CAP events with the exception of the two options that follow;
  - SC- Secure Communities;
  - CIS- CIS removal referrals

Comment

- This should reflect the name of the facility and state
  - Ex; Summit County Jail, Utah

This guidance was provided by HQ CAP. These boxes must be populated for all CAP encounters, not just during CAP Surge operations.

Please let me know if you have any questions.

(b)(6) (b)(7)(c)

*Supervisory Detention & Deportation Officer*

*Criminal Alien Program/Secure Communities*

*Salt Lake City Field Office*

*801-886* (b)(7)(c)

**Updated Immigration Detainer Form I-247**  
**Information for Immigration Officers**

On December 19, 2011, a revised Immigration Detainer – Notice of Action (Form I-247) will be uploaded into the Enforcement Integrated Database (EID) commonly known as the Enforcement Case Management Tracking System (ENFORCE) along with a standardized Detainer FAX cover sheet. The use of Form I-247 should be consistent with Interim Policy Number 10074.1, entitled *Detainers*, which was signed by U.S. Immigration and Customs Enforcement (ICE) Director John Morton on August 2, 2010, and Policy Number ERO 11152.1, entitled *Enforcement and Removal Encounters*, which was signed by the Office of Enforcement and Removal Operations (ERO) Executive Associate Director, (b)(6) (b)(7)(c) on July 29, 2011.

The revised Form I-247 contains several revisions highlighted below. ERO recommends that all issuing offices review the changes to the detainer form and the relevant policies with anyone authorized to issue a detainer and with the LEAs which will maintain custody of aliens for ERO based on a detainer. The issuing office should emphasize the following:

- A detainer notifies an LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention. Immigration Officers shall not issue a detainer unless an LEA has exercised its independent authority to arrest the alien.
  - The placement of a detainer on an alien means that the Immigration Officer made a determination that the alien is subject to removable grounds of the INA, and ICE intends to remove the subject or place the subject in removal proceedings. Issuing offices should reinforce this policy to personnel authorized to issue detainers, including at the Law Enforcement Support Center (LESC), Command Centers or Incident Response Centers (IRC) to ensure that detainers are not being placed on subjects that are not removable or Naturalized/Derivative United States Citizens.
  - Per Interim Policy Number 10074.1, Immigration Officers shall take particular care when issuing a detainer against a lawful permanent resident (LPR), as some grounds of removability hinge on a conviction, while others do not. Although in certain instances ICE may hold LPRs for up to 48 hours to make charging determinations, immigration officers should exercise such authority judiciously and immediately seek the advice of counsel if the LPR has not been convicted of a removable offense.
- A detainer seeks LEA compliance with federal regulation 8 C.F.R. § 287.7(d), which states that LEAs "shall maintain custody of an alien" for 48 hours, excluding weekends and holidays, once a detainer is issued by DHS.

- Hold Period limited to 48 hours. The revised Form I-247 emphasizes that the authorized hold pursuant to a detainer cannot exceed 48 hours (excluding Saturday, Sundays, and holidays).
  - If ICE does not assume custody after 48 hours, the LEA is required to release the individual. The Form I-247 contains a Notice to the Alien that makes them aware of this requirement.
  - The holding period is not to exceed 48 hours (excluding Saturday, Sundays, and holidays) from the time the LEA would have otherwise released the detainee.
- Conditions of Detention. The revised Form I-247 reminds LEAs that the detainer “does not limit [the LEAs] discretion to make decisions related to [the alien’s] custody classification, work, quarter assignments, or other matters.”
  - The existence of a DHS detainer should not impact or prejudice the alien’s conditions of detention.
- **NEW!** ICE discourages dismissing criminal charges based on a detainer.
  - Issuing offices are recommended to do outreach to all the agencies to ensure the LEA is advised that once individuals are in ICE custody, they may be removed from the United States. If the LEA or prosecuting office wants an individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness or if they believe that an individual is a victim of a crime, the LEA should contact the LESC at (802) 872-(6) (b)(7)(c)
- **NEW!** Consider this request for a detainer operative only upon the subject’s conviction.
  - This box may be used for subjects being considered for prosecutorial discretion when the discretion hinges on the conviction of the pending charge.
- Notify this office of the time of release at least 30 days prior to release, or as far in advance as possible.
  - ICE is committed to removing aliens that have been determined to be removable from the United States. Notifying the local ICE office in advance of an alien’s expected release date will assist ICE officers in timely taking custody of an alien.
- Notify this office in the event of the inmate’s death, hospitalization or transfer to another institution.
  - This notification is intended for the issuing office to close any pending investigations initiated and/or reassign the alien’s case to the appropriate ICE office.
- Cancel the detainer previously placed by this office on (date).

- This section should be checked to document lifting the Form I-247 at a facility.
- NEW! Provide a copy to the subject of this detainer.
- The revised detainer form requests that the LEA provide a copy of the detainer to the alien at no expense to ICE. ICE cannot require the LEA to provide a copy, however DHS anticipates that the LEAs will comply with the detainer and appreciates their assistance in ensuring that a copy is provided to the alien.
- The revised detainer form also provides notice to the detainee informing the detainee of DHS's interest in assuming custody. The last two pages of the form have been translated into Spanish, Portuguese, French, Chinese and Vietnamese.
- The revised detainer form includes phone numbers for an alien to call if they have a complaint related to the ICE process or if the person believes they have been the victim of a crime.

Please address any questions regarding this document to the Acting Criminal Alien Program Unit Chief, (b)(6) (b)(7)(c) at (202) 732-(b)(6) (b)(7)(c) or via email at

(b)(6) (b)(7)(c)