



# Independent Office of Law Enforcement Review and Outreach

## Recommendation to Sonoma County Office of the Sheriff-Coroner Concerning Policies Related to Immigration Status and Enforcement

Jerry Threet, Director  
March 30, 2017

## **SUMMARY**

One of the chief charges of the Independent Office of Law Enforcement Review and Outreach (“IOLERO”) is “to propose thoughtful policy recommendations to the [Sonoma County Office of the] Sheriff-Coroner.”<sup>1</sup> Such recommendations may result from IOLERO audits of individual complaints against employees of the Sheriff’s Office or from broader policy reviews by IOLERO and/or IOLERO’s Community Advisory Council (“CAC”).

In this report, IOLERO recommends changes in agency policies related to cooperation with federal immigration enforcement. This recommendation follows four public meetings of the CAC, at which testimony was taken from Sheriff’s staff, as well as the public, including immigrant community members and those who provide services to them. The recommendations also are informed by multiple community meetings between the IOLERO Director and undocumented immigrants in various parts of Sonoma County. The recommendations are based on direct input from immigrants, from information collected at CAC meetings, from studies of how immigration enforcement affects local public safety, and on a careful consideration of the various interests that impact the policies in this area.

### **Summary Recommendations**

IOLERO recommends that the Sheriff’s Office further limit its cooperation with federal civil immigration enforcement, to circumstances where a non-citizen presents a demonstrable present risk to public safety in Sonoma County. In order to best accomplish this goal, IOLERO recommends that the Sheriff’s Office change its policies to prohibit cooperation with ICE, except ***where a non-citizen has been convicted within ten years of a designated serious or violent felony*** that evidences the individual’s risk to public safety in the County.

IOLERO further recommends that the county support SB 54, with amendments that would reflect the recommended changes to the Sheriff’s Office’s current policies. SB 54, as amended, would establish a state-wide policy restricting the ability of local government to use local or state resources to cooperate with immigration enforcement.

### **Procedural Background to the Policy Recommendations**

Beginning on December 5, 2016, and continuing through public meetings on January 2, 2017, February 6, 2017, and March 6, 2017, the IOLERO Community Advisory Council (“CAC”) conducted a series of hearings on the policies of the Sheriff’s Office that relate to immigration enforcement and immigration status. These hearings were a natural outcome of expressed concerns by local immigrants concerning the election of President Trump, who campaigned on promises to greatly increase immigration enforcement, if elected, including by forcing local jurisdictions to further cooperate with federal immigration enforcement.

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<sup>1</sup> *Sonoma County Municipal Code Section 2.392(a)(2).*

During these public hearings by the IOLERO CAC, staff of the Sheriff's Office was present and shared a great deal of information about agency policies related to immigration status and any cooperation by the Sheriff's Office with federal enforcement of immigration laws. This policy review and recommendation would not have been possible without this level of transparency and cooperation by the Sheriff's Office. These meetings also included very robust public comment on the matters discussed, as well as on any suggestions for changes to policies of the Sheriff's Office. The Sheriff's Office also separately shared information with the public through various media outlets and at other public meetings on these topics

In addition to these public meetings of the IOLERO CAC, the IOLERO Director separately conducted outreach to immigrant community members and service providers in Sonoma County. From November 8, 2016 through February 6, 2017, the Director attended many meetings where local immigrants, particularly undocumented immigrants, were expected to participate. These meetings included multiple meetings with parents of English language learners attending public schools, through the English Learner Advocate Committees mandated for each public school under state law. They also included local community meetings and a meeting of worker-leaders of the Graton Day Labor Center, a local organization run by day laborers predominately populated by undocumented laborers. In total, the Director held over ten community meetings over the course of three months to gather information on these policy issues, meeting with over 200 community members, almost all of whom were undocumented immigrants.

Also, both the Director and CAC members conducted research on policing "best practices" in this policy area. This effort was intended to discover how the valid policing goal of public safety was actually affected by local policies governing local law enforcement cooperation with federal, civil immigration enforcement. The results of these research findings are incorporated into this report, as well as the attached CAC recommendation.

As a result of the CAC's meetings, it made its own recommendation for changes to the policies that are the subject of this report (See Appendix). The IOLERO Director took part in the CAC hearings, and carefully considered its thoughtfully crafted recommendations. This report incorporates much of the substance of this CAC process and the analysis underlying the CAC recommendations. While IOLERO's recommendations differ in some respects from the CAC recommendations, their substance is very similar and consistent.

### **National Political Context of the Policy Recommendations**

While these policies may have become the focus of review and recommendation even absent recent political events, changes in our national political climate have certainly given this review more urgency. Few in the community of undocumented immigrants failed to note the promises of presidential candidate Donald Trump as they related to immigration enforcement. President Trump has been faithful to his campaign promises and has issued several Executive Orders that seek to significantly increase immigration enforcement and to provide very wide discretion to federal immigration officers in targeting individuals for enforcement actions. As a result, federal

immigration enforcement no longer is focused primarily on criminal aliens, but also seeks deportation of virtually any undocumented alien. In addition, the President also has indicated his intention to punish local jurisdictions that refuse to cooperate with federal immigration enforcement. These changes in immigration enforcement priorities and the intention to obtain local cooperation with such enforcement, have combined to bring much greater community interest and concern to the area of the immigration related policies of the Sheriff's Office.

### **Current Policies of the Sheriff's Office**

Any fair description of the Sheriff's Office's policies in this area must start by recognizing the limited nature of local cooperation with federal immigration enforcement. The Sonoma County Sheriff's Office, unlike some jurisdictions in other parts of the nation, does not act as a local arm of U.S. Immigration and Customs Enforcement ("ICE").<sup>2</sup> In fact, the general policy of the Sheriff's Office is to eschew acting to enforce immigration laws, and to forbid the use of immigration status as a basis on which a deputy may exercise their discretion in a law enforcement encounter. The staff of the Sheriff's Office and the Sheriff himself have made multiple public statements in which they have clearly stated that they are not interested in the immigration status of a member of the public encountered during patrol activities, but only in protecting the safety of members of the public.

Nevertheless, the Sheriff's Office's policies in the jail setting differ from this general approach in two notable ways. First, the jail voluntarily cooperates with ICE requests to be notified of the release date of an inmate. Should ICE send such a request, the jail will notify ICE within 24-48 hours previous to the release of the inmate, regardless of the reason for the inmate's release. Second, the jail voluntarily honors ICE requests for access to an inmate's detention file, or D-file, which includes documents revealing the country of origin of an inmate, as well as their claimed Social Security Number, in order to conduct an investigation. This access is granted by the jail without regard to the reason or nature of the ICE investigation, which could be a civil immigration matter rather than a criminal one.

In explaining this policy of cooperation by the jail with ICE, the Sheriff's Office has pointed to a public safety rationale, suggesting that it is better to deport a criminal from the jail rather than release them back into the county, where they may endanger others or ICE may be forced to detain them in circumstances that may endanger others.

A look at inmates for which the jail has provided notice to ICE from January 1 – February 16, 2017 is informative. During that time, ICE requested notification of release dates for 33 inmates. The jail sent notices to ICE related to 14 of those inmates. Presumably, the other 19 inmates for whom notices were not sent were not within 24-48 hours of their release dates during the time period in question. Of the 14 inmates for whom the jail notified ICE of release dates, all 14 were

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<sup>2</sup> Federal law allows local law enforcement to enter into agreements under section 287(g) of the Immigration and Nationality Act, and thus act as deputized immigration officer; however, Sonoma County has no such agreement in place and no intention to enter into any such agreement.

charged with a crime. 4 of these were released after felony conviction, although 2 of those involved felony DUI/drug possession crimes for which the sentence was supervised treatment. Another 4 inmates had committed a felony within the last 10 years, although they had no disposition on their current charges at the time of release. Of the remaining 6 inmates, 1 had just been convicted of DUI/drug possession misdemeanors and sentenced to a treatment program and had a prior misdemeanor conviction for the same crimes; 4 had been charged with a misdemeanor at the time of their release and had a previous misdemeanor record; and 1 had been charged with a misdemeanor and had no prior criminal record. As this record makes clear, the jail notifies ICE of release dates for a variety of inmates, some of whom are clearly public safety risks, and some of whom may not be.

### **History of Sheriff's Office Policies on Immigration**

This discussion does not take place in a local vacuum, but rather in the context of a specific local history which remains conscious for the immigrant community in Sonoma County. That history includes active involvement by local law enforcement in immigration raids within the lifetimes of living members of the undocumented immigrant community. It involves multiple lawsuits and/or state legislation that limited local law enforcement cooperation with federal immigrant enforcement, in the face of apparent reluctance by local law enforcement.

A 2011 settlement of a lawsuit filed in 2008 against the Sheriff's Office by immigrant advocates ended joint field operations between the Sheriff's Office and ICE unless ICE agreed not to take custody of persons solely on suspicion of a civil immigration violation. The same settlement prohibited the Sheriff's Office from continuing to notify ICE when an immigrant was booked into jail on a traffic infraction.

In 2013, the California legislature passed the TRUST Act, which prohibited county jails from detaining undocumented immigrants past their release dates at the request of ICE, unless they had been convicted of specified crimes listed in the legislation. Governor Brown vetoed the legislation at the urging of the California Sheriff's Association. The following year, the legislature passed another version of the TRUST Act, which included a broader range of crimes that would allow cooperation with ICE detainees. The broader range of exceptions was negotiated with the Governor's office in reaction to the concerns of the Sheriff's Association, but they nevertheless opposed the bill, which was signed by the Governor.

In January, 2014, the effective date of the California TRUST Act, the Sheriff's Office ended its policy of complying with all ICE detainers of jail inmates, limiting such compliance to circumstances where an inmate was convicted of those crimes listed in the TRUST Act. In May, 2014, the Sheriff's Office ended its policy of voluntarily complying with ICE detainers under the TRUST Act, after federal court decisions holding that such cooperation was a violation of an inmate's rights under the Fourth Amendment of the U.S. Constitution.

This history is often pointed to by members of the immigrant community and their supporters as evidence that it is difficult to trust local law enforcement when it comes to cooperation with immigration enforcement. This relatively recent history follows more robust local cooperation within the lifetimes of many immigrants. Given this history, it is understandable that local undocumented immigrants would be reluctant to trust local law enforcement. This combination of factors provides the Sheriff's Office with a unique opportunity to send a clear message to the local community of undocumented immigrants that a corner has been turned, and that the Sheriff's Office is now focused solely on protecting the public safety of immigrants in the same manner as the broader community of Sonoma County.

### **Analysis of the Sheriff's Office's Current Policies on Immigration**

The Sheriff's local policies on immigration are here analyzed from several general perspectives. First, what is the effect of these policies within the current immigration enforcement context on who may be deported as a result of Sheriff's Office jail personnel cooperation with ICE.? Second, what effect does such local cooperation have on the willingness of immigrants to cooperate with local law enforcement? And, third, what effect will policies on jail cooperation with ICE enforcement have on public safety in Sonoma County?

### ***Local Policy Interaction with Federal Immigration Policy***

Whatever one's views of the enforcement priorities of the Obama administration, it is clear that the Trump administration has changed the landscape for immigration enforcement, both nationally and locally. Under recent Executive Orders, immigration officers are empowered with discretion to initiate summary deportation based on their subjective perceptions that an alien presents an ill-defined threat to national security. Immigration enforcement now explicitly allows for focus on aliens with no criminal history or charges. Thus, any local policy that facilitates ICE taking custody of an unauthorized alien also may facilitate deportation of individuals with no criminal history, who may not even be charged with a crime. To see how this could occur. It is useful to review a few examples.

#### ***- Voluntary Notification of Inmate Release***

Individuals are booked into the county jail upon their arrest by local law enforcement agencies, including the Sheriff's Patrol Division. Such individuals are not always charged by the District Attorney with a crime, and may subsequently be released following a decision that forgoes such charges. For example, an individual recently was arrested and booked into the jail on reasonable suspicion of assaulting a police officer. The District Attorney declined to charge the suspect after viewing the body worn camera video of the incident. Had the suspect been an undocumented alien, ICE may have requested notification of his release date and been waiting to detain him upon his release from the jail. Currently, the jail voluntarily complies with all such requests, without regard to the circumstances of the individual suspect.

Similarly, if a suspect is booked into jail on a misdemeanor, that too can trigger an ICE request for notification of release date. Once bail is set, and the suspect posts bail, the jail would then notify ICE that the suspect is about to be released, and ICE could detain the suspect for deportation before they even face trial on a low-level charge. During hearings by the CAC on this issue, several attorneys who practice at the intersection of criminal defense and immigration law related stories about individuals who had been charged with a misdemeanor DUI, and were convicted to serve in a diversionary program while wearing ankle monitors. Upon completion of the program, even after they had paid their program fees and served their time in monitored status, they were picked up by ICE following notification from the jail.

The jail's policy of voluntarily notifying ICE of an inmate's release date can certainly facilitate the removal of a criminal from Sonoma County, and thus support the Sheriff's stated policy goal of protecting public safety. However, it also appears that, without additional refinement, it facilitates the removal from the county of hard working, productive community members, as well as those whose involvement in the criminal justice system is minimal and has little effect on public safety. This has become even more likely with the recent federal expansion of focus for deportation beyond criminal aliens to include virtually any unauthorized alien.

#### **- *Voluntary Access to Inmate Detention-File ("D-File") Documentation***

When a suspect is booked into county jail, they receive a D-File that includes documents inmates are asked to complete. Among these are documents that ask for an inmate's country of origin, Social Security Number, and other information that ordinarily would not be shared with individuals by the suspect. This information could be useful for an investigator seeking to determine whether the inmate is an unauthorized alien subject to deportation.

The jail's current policy is to grant access by ICE immigration officers to an inmate's D-File, upon request, without reference to the nature of the investigation being conducted by ICE. Under the enforcement priorities of the Obama administration, this local policy may have tended to assist ICE immigration officers with investigations related to criminal aliens, although the data suggests that a good percentage of deported aliens had either no criminal records or only misdemeanor offenses. However, under current enforcement priorities, there can be no assumption that ICE access to jail D-Files will be limited to criminal enforcement investigations. Absent limits on the types of investigations for which access to inmate D-Files will be granted to ICE, one may reasonably assume that such access may facilitate civil immigration enforcement investigations. In addition, criminal ICE investigations may focus on inmates arrested or convicted of lower level crimes, who may have family members awaiting their return.

#### ***Public Safety Effects of Local Law Enforcement Cooperation with Immigration Enforcement***

This section of the analysis reflects personal engagement and discussion with many local residents who are undocumented immigrants. It also reflects the available research and data on this issue. Before discussing the findings of these two efforts, it is important to note limitations. This section presents general conclusions about the effects of cooperation by local law

enforcement with federal immigration enforcement. It is not possible at this time to draw detailed conclusions from the research about the effects of small differences in relative levels of cooperation. Nevertheless, this information is both important and relevant to this discussion.

- ***Research Data***

A 2015 study by Gill and Nguyen looked at two communities that began participating in the 287(g) program whereby local law enforcement agencies' officers become "immigration officers" for purposes of enforcing federal immigration law. The study found that "despite different jurisdictional implementation styles and contexts", the "ambiguity about the role of law enforcement after the adoption of 287g and fear of deportation have made immigrants less civically engaged, less inclined to access public services and fear becoming victims of crime because they cannot turn to local law enforcement to protect them. Furthermore, immigrant businesses experienced a disruption in economic activity and immigrants report greater exploitation by employers and landlords. These are social and economic concerns relevant to the entire community, not just immigrants."<sup>3</sup>

A more recent 2017 study by Wong systematically compared sanctuary and non-sanctuary counties across a range of social and economic indicators. The analysis found that crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. In the study, sanctuary counties were defined as those that do not cooperate with ICE by holding people beyond their release date on the basis of immigration detainers. Nonsanctuary counties were defined as those that comply with immigration detainer requests. Thus, the definition of sanctuary county in this study would include Sonoma County given the Sheriff's current policies.

This study confirmed the previous finding by Gill and Nguyen that sanctuary policies impact local economic activity. In sanctuary cities, the economy was stronger along a wide variety of measures, including:

- There are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.
- Median household annual income is, on average, \$4,353 higher in sanctuary counties compared to non-sanctuary counties.
- The poverty rate is 2.3 percent lower, on average, in sanctuary counties compared to non-sanctuary counties.
- Unemployment is, on average, 1.1 percent lower in sanctuary counties compared to non-sanctuary counties.

"Altogether, the data suggest that when local law enforcement focuses on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, communities

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<sup>3</sup> See INTERIOR IMMIGRATION ENFORCEMENT: THE IMPACTS OF EXPANDING LOCAL LAW ENFORCEMENT AUTHORITY, Mai Thi Nguyen, Hannah Gill, *Urban Studies*, Vol 53, Issue 2, pp. 302 – 323, January 8, 2015 ([http://journals.sagepub.com/doi/full/10.1177/0042098014563029#\\_i22](http://journals.sagepub.com/doi/full/10.1177/0042098014563029#_i22))

are safer and community members stay more engaged in the local economy. This in turn brings benefits to individual households, communities, counties, and the economy as a whole.” In addition to the author’s own research, Wong cites the International Association of Chiefs of Police, and Major Cities Chiefs Association, both of which have concluded that involvement of local police officers with immigration enforcement decreases reporting of crimes and cooperation between immigrant communities and police. Wong concludes that “[b]y keeping out of federal immigration enforcement, sanctuary counties are keeping families together-and when households remain intact and individuals can continue contributing, this strengthens local economies.”<sup>4</sup>

In a 2016 analysis of “Sanctuary Cities,” the authors looked at whether such cities, defined as “a city or police department that has passed a resolution or ordinance expressly forbidding city or law enforcement officials from inquiring into immigration status and/or cooperation with ICE,” compared to other statistically similar cities, had more crime, “be it violent, property, or rape[.]” The study analyzed crime data in two ways – first at the individual-city level by observing whether crime rates change in the year following the implementation of a sanctuary policy within the city. The second method was to conduct a match between sanctuary cities and similarly situated cities that do not have sanctuary policies, then examine whether crime is different across the two groups. The results from both methods indicated that there is “no discernible difference on each type of crime we measured between sanctuary and non-sanctuary cities. Thus, when it comes to crime, we conclude that sanctuary cities have essentially no impact one way or the other.”<sup>5</sup>

A 2016 study published by the institute on Taxation and Economic Policy quantified the potential level of economic disruption that could result from robust local cooperation with federal immigration enforcement. “The truth is that undocumented immigrants living in the United States pay billions of dollars each year in state and local taxes.” The California total is \$3.17 Billion. The study also found that undocumented immigrants pay on average 8 percent of their incomes in state and local taxes, as compared to the 5.4% of income paid by top 1 percent of taxpayers.<sup>6</sup> Because immigrant owned businesses suffer when there poor police-community relations, it is a reasonable assumption that increased cooperation of local law enforcement with ICE could negatively impact local sales tax collection.

Finally, Law Enforcement Leaders to Reduce Crime and Incarceration, an organization consisting of 200 current and former police chiefs, sheriffs, federal and state prosecutors, and attorneys general from all 50 states, recently released a report recommending priorities for the new

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<sup>4</sup> See THE EFFECTS OF SANCTUARY POLICIES ON CRIME AND THE ECONOMY, Tom K. Wong, Center for American Progress, January 26, 2017

(<https://cdn.americanprogress.org/content/uploads/2017/01/25131646/SanctuaryJurisdictions-report.pdf>)

<sup>5</sup> THE POLITICS OF REFUGE: SANCTUARY CITIES, CRIME, AND UNDOCUMENTED IMMIGRATION, Loren Collingwood, Stephen El-Khatib, Benjamin Gonzalez-O’Brien, August 16, 2016

([http://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/shelter\\_nopols\\_blind.pdf](http://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/shelter_nopols_blind.pdf))

<sup>6</sup> (<http://www.itep.org/pdf/immigration2016.pdf>)

president. One of their key conclusions clearly articulates why increasing numbers of local law enforcement agencies are limiting cooperation with ICE. “A mistrustful community puts police officers at risk. Without cooperation between law enforcement and the community, enhancing public safety is next to impossible.”<sup>7</sup>

From these summaries of the available research, one can draw general conclusions regarding the effects of local law enforcement cooperation with federal immigration enforcement. Where local law enforcement fully cooperates with immigration enforcement by making local officers into immigration officers (under the 287(g) program), this harms local public safety and the local economy. In addition, counties that honor ICE detention requests also suffer local declines in public safety and the economy. The reasons for such declines: a decrease in trust in local law enforcement among local undocumented immigrants, which causes them both report fewer crimes and to avoid interacting with local law enforcement and can create local environments of relative lawlessness. This harms both the immigrant communities and the broader local community. It also correspondingly may increase the risk to an officer of a law enforcement encounter, as an undocumented immigrant may view such an encounter as having higher stakes for them and their family than might another individual subject to a stop. While these effects and their causes seem reasonably clear from the studies, what is less clear is whether such effects are measurable when comparing counties that have smaller differences in their relative levels of cooperation with ICE.

- ***Feedback from Outreach to Local Undocumented Immigrants & Supporters***

As described more fully above, both the Director and CAC members met over several months with immigrant community members, both documented and undocumented, as well as service providers and advocates for these communities. Similarly, there were public comments by members of these communities at the multiple public meetings of the CAC to discuss these policies. These meetings provided an opportunity for immigrant community members and their supporters to share their personal stories of, as well as their concerns about, interacting with local law enforcement. An almost universal view expressed by undocumented immigrants during these meetings was that, should they contact the Sheriff’s Office about a crime, they might themselves end up arrested and then deported. Another common belief among these community members was that local law enforcement targets them for enforcement actions based on their ethnicity and/or perceived country of origin. Also, several people clarified that they have no objection to dangerous criminals being deported, as they share concerns that such criminals could harm them and their families if released back into the community. When questioned further about this issue, several distinguished between someone who preys on the community versus an individual who may have been charged with driving without a license or a single instance of driving while drunk or a single domestic violence incident.

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<sup>7</sup> “FIGHTING CRIME AND STRENGTHENING CRIMINAL JUSTICE: An Agenda for the New Administration” ([http://lawenforcementleaders.org/wp-content/uploads/2017/02/LEL\\_Agenda\\_for\\_a\\_New\\_Administration.pdf](http://lawenforcementleaders.org/wp-content/uploads/2017/02/LEL_Agenda_for_a_New_Administration.pdf))

Several individuals shared stories about parents and other friends and family members being deported in the past as a result of immigration raids in which local law enforcement took part. Some recalled more recent experiences of friends and family members who were arrested for driving without a license and lost their vehicles due to towing and the associated fees that they could not afford to pay. We also heard several stories of individuals arrested and/or convicted of minor offenses, who went to the jail and never returned to their families. The cumulative effect of such stories and beliefs within this community is that undocumented immigrants in Sonoma County tend to believe that they cannot risk cooperating with the Sheriff's Office, for fear that they will end up deported. And these effects may accrue also to other local police departments, all of which use the county jail for detention.

- ***Opacity of Sheriff's Office Policy on Jail Cooperation with ICE***

While the current practice of the Sheriff's Office in cooperating with ICE is clear, its written policy has been somewhat confusing. In addition, the messaging from the Sheriff's Office about these policies and practices has been less than completely clear. This lack of clarity has created an environment where beliefs can develop and spread within the immigrant community that may not always be consistent with the actual practices and policies of the Sheriff's Office, and may make it challenging to expect cooperation from community members.

Until recently, written policies of the Sheriff's Office included sections that would allow the jail to honor ICE detainers under certain circumstances. In practice, the jail no longer honored such detainers, after federal court decisions held that honoring such detainers could violate an inmates Fourth Amendment rights. Thus, there has been a disconnect between the written policy and the practice.

In addition, the practice of the jail has been, and still is, to voluntarily comply with all ICE requests for notification of an inmate's release date. However, the Sheriff's Office has generally responded to questions about their immigration policies by stating that deputies have no interest in immigration status and do not hold any person in the jail on an ICE detainer. While true, these statements ignore the areas where the jail fully cooperates with ICE. In contrast, members of the public may have personal knowledge, or heard stories from those they trust, about individuals being picked up by ICE from the jail or upon completion of DUI diversion programs. This disconnect between practice and policy, and lack of clarity about actual policy and practice, tends to accentuate lingering mistrust between undocumented immigrants and the Sheriff's Office. This is particularly true when viewed against the backdrop of the inflammatory rhetoric coming from the Trump administration, which has generally described immigrants as violent criminals.

## - ***Conclusions***

So, does the current policy of the Sheriff's Office on immigration accentuate or undermine public safety? While it is difficult to draw universal conclusions, the above information suggests that public safety in Sonoma County would be served best by further restricting cooperation by the county jail with ICE. One can reasonably conclude from the available research data that increased cooperation by local law enforcement with immigration enforcement decreases public safety, as it makes undocumented immigrants become isolated, distrustful, and uncooperative. This leads to local pockets where residents fail to report crimes and will not cooperate with criminal investigations, for fear of deportation. Feedback gathered from local undocumented immigrants confirms that this dynamic prevails in Sonoma County, as well, where such individuals tend to avoid interactions with the Sheriff's Office. This tendency can only have increased as the Trump administration has begun to ramp up immigration enforcement. Yet, it also appears that undocumented immigrants may share a belief that deporting violent criminals may promote public safety in their communities.

Thus, it would appear that the answer to this question is a nuanced one. A policy of general cooperation with ICE enforcement, even if confined to the county jail, would appear to undermine public safety by making immigrants less likely to cooperate with local law enforcement. While the research data is less than clear about the extent of such an effect, feedback from local immigrants suggest it nevertheless exists at present. That same feedback, however, also suggests that some level of cooperation between the county jail and ICE could take place without decreasing public safety, if focused on the removal of criminals convicted of clearly defined felonies that present a clear danger to the community.

### **Recommended Changes to Sheriff's Office's Policies on Immigration**

Given the above analysis, the most reasonable conclusion is that the public safety mission of the Sheriff's Office would be enhanced by a change in its policies related to immigration. The change recommended here would further limit cooperation by the jail with ICE in ways similar to previous limits placed on ICE detainees under the TRUST Act. By changing the policies in this way, the Sheriff's Office still will be able to identify those inmates in the jail who are a demonstrable threat to the public safety of the immigrant community and cooperate with ICE only as to those inmates. In addition, the changed policy would allow the Sheriff's Office to send a clear and consistent message to immigrants that its only concern is with the safety of immigrants and other communities. Therefore, IOLERO recommends that the Sheriff's Office further limit its cooperation with federal civil immigration enforcement.<sup>8</sup>

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<sup>8</sup> These recommendations would further limit existing policies allowing the county jail to cooperate with ICE. No change in policies of the patrol division of the Sheriff's Office is suggested at this time. In particular, the patrol division's current policy allows cooperation with an ICE criminal enforcement action to prevent endangering the public or officers. For example, if ICE were raiding a home where suspected gang members were believed to have automatic weapons and such a raid could endanger surrounding neighbors or officers, the Sheriff's Office could provide limited assistance to limit the danger to the public. Under current policies, such cooperation is premised on ICE entering into an agreement that ICE will not detain any immigrants who were not the subject of the criminal enforcement action.

- ***Voluntary Notification of Inmate Release***

In the case of jail notification of release dates, such cooperation should be limited to circumstances where an immigrant presents a demonstrable present risk to public safety in Sonoma County. In order to best accomplish this goal, IOLERO recommends that the Sheriff's Office change its policies to prohibit cooperation with ICE, except ***where a non-citizen has been convicted within ten years of a designated serious or violent felony*** that evidences the individual's risk to public safety in the County. This exception also could allow such cooperation where ICE provides verified evidence of such a conviction under federal law or under the law of another county.

The further question is what crimes should be considered to be within the definition of serious or violent felonies. The state already has given an answer to this policy question by defining these terms in the California Penal Code. California's Proposition 36 was enacted by voters in 2012 to restrict the definition of a "third strike" in the state's "Three Strikes Law" to a serious or violent felony. Under these definitions, a "serious felony" means any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code. "Violent felony" means any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

Given that the state already has defined these categories of crimes, the presumption is that these crimes are the ones that constitute a demonstrable threat to public safety sufficient to justify their use by the county jail in cooperating with immigration enforcement. Of course, the California Sheriff's Association disagreed with this conclusion in opposing the original TRUST Act, and insisted on a broader exception allowing cooperation with ICE detainees. While it may be justifiable to include additional crimes beyond these two statutory categories, the onus reasonably should be on those proposing such additional exceptions to demonstrate that other crimes present a sufficient threat to public safety to justify the deportation of an inmate. Should misdemeanors be proposed for the list of exceptions, an even greater burden of justification would be present, as misdemeanors inherently represent crimes considered less serious than felonies. IOLERO therefore further recommends that, should the Sheriff's Office wish to include additional crimes, that it also provide an analysis justifying the inclusion of those crimes as exceptions to a general policy of non-cooperation with ICE.

- ***ICE Access to Inmate D-Files***

With regard to the jail providing ICE agents with access to an inmate's D-File, the Sheriff's Office should employ the same standard. In order for ICE to gain such access, they should have to provide to the Sheriff's Office proof that they are investigating a criminal violation that would constitute an offense equivalent to the categories of serious or violent felony described above.

- ***County Support for SB 54, as Amended***

In making these recommendations, IOLERO is aware that the state legislature is now considering passage of SB 54, which would change these very policies on a statewide level. IOLERO recommends that SB 54 be amended consistent with the above recommendations, and that it be strongly supported by the County. SB 54, as amended, would establish a state-wide policy restricting the ability of local government to use local or state resources to cooperate with immigration enforcement, as generally described above. Such a statewide policy would minimize the risks of the County being target by the federal government for non-cooperation with immigration enforcement, and also carry with it the advantages of a consistent statewide policy.

It therefore may make sense for the Sheriff's Office to delay changes in these policies while SB 54 is pending and appears likely to pass in the near future. Nevertheless, the vicissitudes of the legislature are plain, and the fear and anxiety of the local immigrant community is intense and deserves to be addressed in the very near future. Therefore, IOLERO recommends that a decision on local changes to the Sheriff's Office's immigration policies should be prioritized, rather than delayed for long.

- ***Conclusion***

In conclusion, IOLERO respectfully submits the forgoing analysis and policy recommendation to the Sheriff's Office and respectfully requests that the Sheriff respond to the recommendation as quickly as possible and within 30 days.

## Appendix

### Community Advisory Council Motion, Data Research, and Immigration Policy Recommendations

## Exhibit A

### Independent Office of Law Enforcement Review & Outreach Community Advisory Council Motion

March 6, 2017 – Submitted by Member Rick Brown

***Finally passed, as amended, by CAC on vote of 10-0***

Whereas: The Community Advisory Council (CAC) has heard from community members, defense attorneys, immigration lawyers, law enforcement, and community activists regarding concerns of the immigrant community in Sonoma County and the voluntary cooperation of the Sheriff's Office with Immigration and Customs Enforcement (ICE).

Whereas: Immigrant community members, community service providers, activists, and the above mentioned attorneys expressed an increasing palpable fear of deportation, the separation of families, and sense of injustice at being met by ICE officials after completing minor sentences at the jail, treatment center, or home detention, due to the voluntary cooperation of the Sonoma County Sheriff's Office and this Federal agency.

Whereas: It currently is the SCSO policy to voluntarily assist ICE in enforcing federal civil immigration laws. This cooperation includes: 1. giving ICE notice, upon request, of the release date of an immigrant inmate; 2. allowing ICE agents to personally examine an inmate's jail D-file as part of an ICE investigation; 3. holding immigrant inmates after the individual has posted bail and becomes eligible for release from custody; 4. notifying ICE of the immigration status of inmates; and 5. otherwise assisting ICE as requested.

Whereas: Sheriff's Office representatives have expressed to the CAC that the Sheriff's Office's rationale for voluntary cooperation with ICE is rooted in concerns for public safety.

Whereas: the overwhelming research shows that communities are safer and economically stronger when local law enforcement limits cooperation with ICE (as evidenced by the summary attached as Exhibit B).

Whereas: Based on input from immigrant community members, the CAC has concluded that the Sonoma County Sheriff's current policy of voluntary cooperation with ICE increases the fear in the immigrant community and creates an atmosphere of distrust between these communities and local law enforcement. This distrust leads to a general lack of cooperation by members of these communities with local law enforcement. This can hamper the ability of Deputy Sheriffs to discharge their duties to protect and serve all members of our community.

Whereas: It is in the best interests of the Sonoma County Sheriff's Office to have the full trust and cooperation of the communities they serve, and a shift away from the current policy of voluntary cooperation with ICE requests would likely improve those relationships and have a positive and meaningful effect on the lives of the immigrant families in this county.

Whereas: The CAC previously approved the statement titled "It Won't Happen Here" pledging to "recognize the rights and dignity of all people" regardless of documentation.

Therefore: We, the CAC, do recommend that the Sonoma County Sheriff's Office refrain from any cooperation whatsoever with ICE (including, but not limited to, release notifications, access to an inmate's file, or personal interviews) unless the subject of the cooperation has been convicted of a serious and violent felony (as defined in the policy recommendations that were approved by the CAC on March 6, 2017, attached as Exhibit B), during the five years previous to the cooperation.

## Exhibit B

**Subject: Data/Research on Local Law Enforcement Cooperation with ICE and Public Safety**

**Date: February 22, 2017**

### **Summary of Findings**

Recent research shows that the more local law enforcement cooperates with Federal Immigration, Customs and Enforcement (ICE), the more fear and distrust there is among the immigrant community, resulting in degraded police-community relationships and higher levels of crime, and greater obstacles to law enforcement carrying out its primary mission, protecting public safety. **In other words, the less local enforcement cooperates with ICE, the safer the community.** Furthermore, research shows that economies are stronger in communities that do not cooperate with ICE.

### **Review of Data/Research**

Gill and Nguyen (2015), in a study of local law enforcement involvement in the Immigration, Customs and Enforcement (ICE) 287g program in two communities, found that “despite different jurisdictional implementation styles and contexts”, there was a consistent drop in civic engagement, and perceived vulnerability to crime. (Note: Section 287g enables the federal government to partner with state and local law enforcement agencies to enforce civil and criminal immigration violations) 287g even impacted immigrant owned business, who “experienced a disruption in economic activity and immigrants report greater exploitation by employers and landlords”. The study also found that this economic disruption spilled over to the entire community, even in the community where participation in 287g and Secure Communities was less rigorously applied.

(<http://journals.sagepub.com/doi/full/10.1177/0042098014563029# i22>)

Wong (2017), more recently, in a systematic analysis comparing sanctuary and non-sanctuary counties across a range of social and economic indicators, found that crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>

This study also confirmed the finding that such policies impact local economic activity. In sanctuary cities, the economy was stronger along a wide variety of measures, including:

- There are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.
- Median household annual income is, on average, \$4,353 higher in sanctuary counties compared to non-sanctuary counties.
- The poverty rate is 2.3 percent lower, on average, in sanctuary counties compared to non-sanctuary counties.
- Unemployment is, on average, 1.1 percent lower in sanctuary counties compared to non-sanctuary counties.
- While the results hold true across sanctuary jurisdictions, the sanctuary counties with the smallest populations see the most pronounced effects.

“Altogether, the data suggest that when local law enforcement focuses on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, communities are safer and community members stay more engaged in the local economy. This in turn brings benefits to individual households, communities, counties, and the economy as a whole.”

In addition to the author’s own research Wong cites The International Association of Chiefs of Police, and Major Cities Chiefs Association which conclude that involvement of local law enforcement with immigration enforcement leads to decreased reporting of crimes and cooperation between immigrant communities and police. Further Wong concludes that “By keeping out of federal immigration enforcement, sanctuary counties are keeping families together-and when households remain intact and individuals can continue contributing, this strengthens local economies.”

A study published by the institute on Taxation and Economic Policy in February, 2016, (<http://www.itep.org/pdf/immigration2016.pdf>) quantified the potential level of economic disruption such non-sanctuary policies could produce, “The truth is that undocumented immigrants living in the United States pay billions of dollars each year in state and local taxes.”; i.e., at total of \$11.64 billion a year. The California total is \$3.17 Billion. The study also found that undocumented immigrants pay on average 8 percent of their incomes in state and local taxes, as compared to the 5.4% of income paid by to top 1 percent of taxpayers. Because immigrant owned businesses suffer when there poor police-community relations, it is not hard to assume that increased cooperation of local law enforcement with ICE could negatively impact local sales tax collection.

In a rigorous analysis of “Sanctuary Cities” (The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration, August 16, 2016) the authors looked at whether such cities, defined as: *“a city or police department that has passed a resolution or ordinance expressly forbidding city or law enforcement officials from inquiring into immigration status and/or cooperation with ICE”*, compared to other statistically similar cities, had more crime, “be it violent, property, or rape, as claimed by some political candidates and opponents of sanctuary cities.” The study noted that “in recent years, a few high profile incidents where undocumented immigrants have committed...crimes have led some political candidates ... to make sweeping negative claims about the deleterious effects of sanctuary cities. The argument is that sanctuary cities bring crime: undocumented immigrants ... go to these cities to commit their crimes because they know there their chances of deportation are much lower.”

The study analyzed crime data in two ways – first at the individual-city level by observing whether crime rates change in the year following the implementation of a sanctuary policy within the city. The second method was to conduct a match between sanctuary cities and similarly situated cities that do not have sanctuary policies, then examine whether crime is different across the two groups. The results from both methods indicated that there is “no discernible difference on each type of crime we measured between sanctuary and non-sanctuary cities. Thus, when it comes to crime, we conclude that sanctuary cities have essentially no impact one way or the other.”

([http://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/shelter\\_nopols\\_blind.pdf](http://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/shelter_nopols_blind.pdf))

Finally, *Law Enforcement Leaders to Reduce Crime and Incarceration*, an organization consisting of 200 current and former police chiefs, sheriffs, federal and state prosecutors, and attorneys general from all 50 states, recently released a report titled, "FIGHTING CRIME AND STRENGTHENING CRIMINAL JUSTICE: An Agenda for the New Administration". One of their key conclusions clearly articulates why increasing numbers of local law enforcement agencies are limiting cooperation with ICE:

"A mistrustful community puts police officers at risk. Without cooperation between law enforcement and the community, enhancing public safety is next to impossible."

[http://lawenforcementleaders.org/wp-content/uploads/2017/02/LEL\\_Agenda\\_for\\_a\\_New\\_Administration.pdf](http://lawenforcementleaders.org/wp-content/uploads/2017/02/LEL_Agenda_for_a_New_Administration.pdf)

#### Other Sources

Demby, Gene "Why Sanctuary Cities Are Safer" Code Switch NPR, 29 January 2017: pages1-3.

<http://www.npr.org/sections/codeswitch/2017/01/29/512002076/why-sanctuary-cities-are-safer>

The premise that sanctuary cities are endangering our nation is fundamentally unsound. "Immigrants who are in the country illegally are less likely to commit crimes or be incarcerated than the general population". This article cites the evidence presented in Tom K Wong's afore referenced research.

Misra, Tanvi "Sanctuary Cities Are Safer and More Productive." The Atlantic, 26 January 2017: pages1-4

<http://www.citylab.com/crime/2017/01/sanctuary-cities-are-safer-and-more-productive/514508/>

Citing the above referenced report by Tom Wong as well as the National Immigration Law Center, and a 2012 congressional report, this article concludes that "sanctuary cities show lower crime and higher economic well being". Further, that "mayors on both sides of the political aisle who have argued that conflating policing with immigration enforcement leads to a breakdown in community trust."

New York Times Editorial

[https://www.nytimes.com/2017/02/25/opinion/the-costs-of-mr-trumps-drag-net.html?emc=edit\\_th\\_20170226&nl=todaysheadlines&nid=48510242](https://www.nytimes.com/2017/02/25/opinion/the-costs-of-mr-trumps-drag-net.html?emc=edit_th_20170226&nl=todaysheadlines&nid=48510242)

Editorial cited 2014 report that: "Unauthorized workers are paying an estimated \$13 billion a year in social security taxes and only getting around \$1 billion back, according to a senior government statistician. Stephen Goss, the chief actuary of the Social Security Administration (SSA)... estimated 7 million people are currently working in the US illegally. Of those, he estimates that about 3.1 million are using fake or expired social security numbers, yet also paying automatic payroll taxes. Goss believes that these workers pay an annual net contribution of \$12 billion to the Social Security Trust Fund.

The SSA estimates that unauthorized workers have paid a whopping \$100 billion into the fund over the past decade. Yet as these people are in the US illegally, it is unlikely that they will be able to benefit from their contributions later in life.”

<https://medium.com/homeland-security/papers-please-1ce6811d39c7#.29w49dgwx>

[Preview attachment Secure or Insecure Communities\\_7 Reasons to Abandon Secure Communities Program group2.pdf](#)  
[Secure or Insecure Communities\\_7 Reasons to Abandon Secure Communities Program group2.pdf](#)131 KB

[Preview attachment does immigration enforcement reduce crime\\_082514 group 2.pdf](#)  
[does immigration enforcement reduce crime\\_082514 group 2.pdf](#)576 KB

## Exhibit C

Subject: IOLERO Community Advisory Council Immigration Policy Recommendations

**Booking-General Procedures-Detention Wide Version, version 22.5.15, Revised 12/2013**

### **CAC RECOMMENDATION NO. 1**

SCSO CURRENT POLICY:

SCSO Booking-General Procedures Detention Wide policy 4.2 (D), Bail Information 4.2 (D) currently allows SCSO to hold persons for 48 hours, even after a person has posted bail, in order to allow ICE to pick up an inmate be changed as follows:

4.2 BAIL INFORMATION: “D. Inmates booked on bailable charges which also have Immigration and Customs Enforcement (ICE) holds, may have bail posted on the bailable charges. After bail is posted, ICE has 48 hours (excluding Federal holidays and weekends) to pick up the inmate before they are released.”

**RECOMMENDED POLICY CHANGE: After bail is posted, the inmate shall be immediately released, unless ICE has a warrant signed by a judge to hold the inmate.**

### **CAC RECOMMENDATION NO. 2**

SCSO CURRENT POLICY:

SCSO Booking-General Procedures- Detention Wide 4.6 (A) Immigration Information and Contacting Foreign Nationals’ Consulates policy states in part:

4.6 IMMIGRATION INFORMATION AND CONTACTING FOREIGN NATIONALS’ CONSULATES:

A. It is the general policy of the Sheriff’s Office to comply with ICE requests for information relating to a specific inmate...”

**RECOMMENDED POLICY CHANGE: 4.6 IMMIGRATION INFORMATION AND CONTACTING FOREIGN NATIONALS’ CONSULATES:**

- A. It is the general policy of the Sheriff's Office not to comply with ICE requests for information, relating to a specific inmate unless: 1. It is for a legitimate law enforcement purpose relating to a criminal violation, or 2. ICE agents present a warrant signed by a judge to release information.**

### **CAC RECOMMENDATION NO. 3**

#### **SCSO CURRENT POLICY:**

SCSO Immigration Status- Detention Division 4.0 (A) and (B) General Information policy states:

##### **4.0 General Information: "A. Immigration Enforcement Jurisdiction.**

The U.S. Department of Homeland Security's Immigration and Customs Enforcement agency (ICE) has primary responsibility to investigate and enforce federal immigration laws. Sheriff's Office personnel may assist ICE in the enforcement of federal immigration laws upon its specific request and in those situations where ICE initiated investigations have led to the discovery of criminal violations of California law. Assistance to ICE will also be provided in response to officer safety issues.

B. Records will review all immigration detainers to determine if the Sheriff's Office will honor or deny the hold. In the absence of the Records staff, a Sergeant will review immigration detainers. (ICE Detainer form) (Exemptions form)"

#### **RECOMMENDED POLICY CHANGE:**

##### **4.0 General Information:**

**A. Immigration Enforcement Jurisdiction. The U.S. Department of Homeland Security's Immigration and Customs Enforcement agency (ICE) has primary responsibility to investigate and enforce federal immigration laws. Sheriff's Office personnel may not assist ICE in the enforcement of federal immigration laws upon its request unless: 1. There is a situation where ICE initiated investigations have led to the discovery of criminal violations of California law, 2. to assist ICE in response to officer safety issues, or 3. ICE presents a valid warrant issued by a judge.**

**B. Inmates who are eligible for release from custody shall not be held pursuant to an I-247D form (I-247D-Immigration Detainer-Request for Voluntary Action) unless ICE agents present a warrant signed by a judge to hold the inmate.**

### **CAC RECOMMENDATION NO. 4:**

#### **SCSO CURRENT POLICY:**

5.0 PROCEDURES: SCSO Immigration Status- Detention Division 5.0 (A) through (D) Procedures policy states in relevant part as follows:

“A. The Sonoma County Sheriff’s Office will no longer honor ICE immigration Detainers, in compliance with the Trust Act, unless ICE presents proof that it has probable cause for the detention, for example by providing an arrest warrant.

B. Immigration Violations Complaints.

1. If members of the public contact the Sheriff’s Office to report suspected immigration violations, such person should be directed to ICE.

C. Notification of ICE of Immigration Violations.

1. The Detention Division generally will not notify ICE of the Immigration status of inmates.

D. ICE immigration Detainees. The Sheriff’s Office regularly receives Immigration Detainer requests (Form I-247) from ICE. The detainer is a request that the law enforcement agency advise ICE, prior to releasing the individual, in order for ICE to arrange to assume custody. These detainer requests will not be honored except as stated below.

...

2. Immigration Detainers. Inmates who are eligible for release from custody shall not be held, pursuant to an immigration hold, beyond the time they would otherwise be released, unless conditions set forth in subparagraphs a-f apply.

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

...

b. ICE detainers will be honored for any conviction or prior conviction for serious felonies (see PC 1192.7(c)) or violent felonies (see PC 667.5(c)), as listed in attachment 1;

c. Detainers will be honored for any conviction or prior conviction for a felony punishable by imprisonment in the state prison;

d. Detainers will be honored for any conviction or prior conviction for which the person is required to register on the California Sex and Arson Registry (CSAR) as a sex offender pursuant to PC 290 or as an arson offender pursuant to PC 457.1;

e. Detainers will be honored for: (i) any misdemeanor conviction within the last five years, that could also have been charged either as a misdemeanor or as a felony (i.e., “wobblers”) involving the following specified crimes; or (ii) any felony conviction (at any time), involving the following specified crimes.

- (A) Assault (except for 240 PC)
- (B) Battery (except for 242 PC)
- (C) Use of threats
- (D) Sexual abuse, sexual exploitation, or crimes endangering children

- (E) Child abuse or endangerment
- (F) Burglary, robbery, theft, fraud, forgery, or embezzlement (except for the following: 487, 496, 503, 530.5, 532, 550 PC)
- (G) Driving under the influence of alcohol or drugs, but only for a felony conviction,
- (H) Obstruction of justice
- (I) Bribery (except for the following: 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138 and 165 PC)
- (J) Escape
- (K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction
- (L) Possession of an unlawful deadly weapon under the Deadly Weapons Recodification Act of 2010 (PC 16000)
- (M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances (except for 11350, 11357 and 11377 H&S)
- (N) Vandalism with prior convictions (except 594.7 PC)
- (O) Gang-related offenses
- (P) An attempt, or any conspiracy, to commit an offense specified in this section
- (Q) A crime resulting in death, or involving the personal infliction of great bodily injury
- (R) Possession or use of a firearm in the commission of an offense
- (S) An offense that would require the individual to register as a sex offender
- (T) False imprisonment, slavery, and human trafficking
- (U) Criminal profiteering and money laundering
- (V) Torture and mayhem
- (W) A crime threatening the public safety
- (X) Elder and dependent adult abuse
- (Y) A hate crime
- (Z) Stalking
- (AA) Soliciting the commission of a crime
- (BB) An offense committed while on bail or released on their own recognizance
- (CC) Rape, sodomy, oral copulation, or sexual penetration
- (DD) Kidnapping
- (EE) A violation of CVC 20001 (c)

f. Detainers should also be honored for any conviction of any federal crime that meets the definition of an aggravated felony as set forth in the Immigration and Nationality Act (8 U.S.C. Sec. 1101 at Section 1101 (a)(43)(A) to (P). The full listing of specified crimes follows:

(43) The Term “aggravated felony” means-

- (A) Murder, rape, or sexual abuse of a minor

- (B) Illicit trafficking in a controlled substance
- (C) Illicit trafficking in a firearms or destructive
- (D) Laundering of monetary instruments if the amount of funds exceeded \$10,000
- (E) An offense relating to explosive materials
- (F) A crime of violence, but not including a purely political offense for which the term of imprisonment is at least one year
- (G) A theft offense or burglary offense for which the term of imprisonment is at least one year
- (H) The demand for or receipt of ransom
- (I) Child pornography
- (J) Racketeer influenced corrupt organizations or gambling offenses, for which a sentence of one year imprisonment or more may be imposed
- (K) Owning, controlling, managing or supervising of a prostitution business; peonage, slavery, involuntary servitude, and trafficking in persons
- (L) Gathering or transmitting national defense information relating to disclosure of classified information relating to sabotage, relating to treason, relating to protecting the identity of undercover intelligence agents or relating to protecting the identity of undercover agents
- (M) Fraud or deceit in which the loss to the victim or victims exceeds \$10,000; tax evasion in which the revue loss to the Government exceeds \$10,000
- (N) Alien smuggling (except in the case of a first offense for which the alien had affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child or parent)
- (O) An offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph
- (P) Falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument and for which the term of imprisonment is at least 12 months (except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the aliens spouse, child, or parent (and not other individual))

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

3. Changed Circumstances:

a. Compliance with ICE detainer requests will be rescinded and the detainer request will not be furthered honored whenever the factors justifying the detainer no longer exist.

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

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

**RECOMMENDED POLICY CHANGE:**

## **5.0 PROCEDURES**

**A. The Sonoma County Sheriff's Office will no longer honor ICE immigration Detainers, in compliance with the Trust Act, unless ICE presents proof that it has probable cause for the detention, for example by providing an arrest warrant.**

**B. Immigration Violations Complaints.**

- (1) If members of the public contact the Sheriff's Office to report suspected immigration violations, such person should be told that SCSO does not enforce federal civil immigration laws.

**C. ICE immigration Detainees.** The Sheriff's Office regularly receives Immigration Detainer requests (I-247 N Form- Request For Voluntary Notification of Release of Suspected Priority Alien) from ICE. The I-247N is a request that the SCSO voluntarily notify ICE, prior to releasing the individual, in order for ICE to arrange to assume custody. I-247N requests may be honored when the subject of the request has been convicted of a serious or violent felony (as listed below) during the five years previous to the request;

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

1. Murder of voluntary manslaughter;
2. Mayhem;
3. Rape;
4. Sodomy by force, violence, duress, menace, threat of great bodily injury on the victim or another person;
5. Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
6. Lewd or lascivious act on a child under 14 years of age;
7. Any felony punishable by death or imprisonment in the state prison for life;
8. Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
9. Attempted murder;
10. Assault with intent to commit rape or robbery;
11. Assault with a deadly weapon or instrument on a peace officer;

12. Assault by a life prisoner on a non-inmate ;
13. Assault with a deadly weapon by an inmate;
14. Arson ;
15. Exploding a destructive device or any explosive with intent to injure;
16. Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
17. Exploding a destructive device or any explosive with intent to murder;
18. Any burglary of the first degree;
19. Robbery or bank robbery;
20. Kidnapping;
21. Holding of a hostage by a person confined in a state prison;
22. Attempt to commit a felony punishable by death or imprisonment in the state prison for life;
23. Any felony in which the defendant personally used a dangerous or deadly weapon;
24. Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine- related drug, or any of the precursor s of methamphetamines;
25. Any violation of PC 289(a) where the act is accomplished against the victim 's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
26. Grand theft involving a firearm;
27. Carjacking;
28. Any felony offense, which would also constitute a felony violation of PC 186.22;
29. Assault with the intent to commit mayhem, rape, sodomy, or oral copulation;
30. Throwing acid or flammable substances;
31. Assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or fire fighter;
32. Assault with a deadly weapon against a public transit employee, custodial officer, or school employee
33. Discharge of a firearm in an inhabited dwelling, vehicle or aircraft;
34. Commission of rape or sexual penetration in concert with another person;
35. Continuous sexual abuse of a child;
36. Shooting from a vehicle;
37. Intimidation of victims or witnesses;
38. Criminal threats;
39. Any attempt to commit a crime listed in this subdivision other than assault;
40. Violation of PC 12022.53 (Enhancements for use of a firearm in 18 specified felonies);

41. Violation of subdivision (b) or (c) of Section 11418;
42. Any conspiracy to commit an offense described in this subdivision. And any offense committed in another state, which if committed in California, would be punishable as a listed serious felony.

As used in PC 667.5(c), “violent felony” means any of the following:

1. Murder of voluntary manslaughter;
2. Mayhem;
3. Rape;
4. Sodomy;
5. Oral copulation;
6. Lewd or lascivious act;
7. Any felony punishable by death or imprisonment in the state prison for life;
8. Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
9. Any robbery;
10. Arson;
11. Sexual penetration;
12. Attempted murder;
13. A violation of PC 18745, 18750, or 18755 (explosives);
14. Kidnapping;
15. Assault with intent to commit a specified felony, in violation with Section 220;
16. Continuous sexual abuse of a child;
17. Carjacking;
18. Rape, spousal rape, or sexual penetration;
19. Extortion, which would constitute as a felony violation of PC 186.22;
20. Threats to victims or witnesses, which would constitute as a felony violation of PC 186.22;
21. Any burglary of the first degree, wherein it is charged and proved that another person, other than the accomplice, was present in the residence during the commission of the burglary;
22. Any violation of PC 12022.53 (Enhancements for use of a firearm in 18 specified felonies);
23. A violation of PC 1418 (b) or (c) (weapon of mass destruction). And any offense committed in another state, which if committed in California, would be punishable as a listed violent felony.

D. I-247N requests shall not be honored for inmates who are merely arrested and charged with a crime.