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**From:** Jim Franklin [mailto:jfranklin@]

**Sent:** Thursday, March 23, 2017 4:13 PM

**To:** Bill Hutton <william.hutton@>; Bruce Ponath (bruce@) <bruce@>; Serier, Jack <jack.serier@>; James Olson <jolson@>; Jim Stuart <james.stuart@>; Joe Hagerty <joe.hagerty@>; Joel Brott <joel.brott@>; John Sanner <john.sanner@>; Luke Hennen - Scott (LHennen@) <LHennen@>; Rich Stanek <rich.stanek@>; Rick Duncan <rldunca@>; Scott Rehmann <scott.rehmann@>; Tim Leslie <tim.leslie@>; Troy Heck <troy.heck@>; apirri@; Brandon Thyen (Bjthyen@) <Bjthyen@>; Bruce Bechtold <bruce.bechtold@>; Dan Starry <dan.starry@>; Donald Starry <donald.starry@>; Jason Kamerud <jkamerud@>; Jon Lentz (Jon.lentz@) <Jon.lentz@>; Joseph Leko <joseph.leko@>; Rudie, Julie <julie.rudie@>; Kevin Halweg (Kevin.Halweg@) <Kevin.Halweg@>; Michael D. Carlson <michael.d.carlson@>; Neal Jacobson <neal.jacobson@>; Patrick Nienaber <pat@>; Tim Langenfeld <tim.langenfeld@>; Todd Hoffman <Todd.Hoffman@>

**Subject:** Update ICE Detainer Hold Issue

**To All Sheriffs, Chief Deputies and Jail Administrators:**

The following memo is an attempt to summarize the current status of the ICE Detainer Immigration issues. This continues to be a evolving issue and the final chapter is not yet written.

**List of Attachments:**

- 1 ICE Detainer Memo Written by Hennepin County Attorney Office June 2014
- 2 ACLU 9 Agency policy/rules (Undated)
- 3 Copy of sample 247X and I-200 Warrant to Arrest Illegal Alien Form

- 4 NY Supreme Court Case Regarding 247D; I-205 and I-200, forms and authority to Hold

### **Current Status of This Issue:**

- 1 Prior to 2014 if ICE issued a Detainer hold, most LE agencies would honor that request.
- 2 Late 2014/15 many of us in MN were advised by our County Attorney's that the ICE Detainers were not legal unless signed by a Judge. Most of our Counties followed that advice. (attached Hennepin Cty opinion)
- 3 About this same time the ACLU issued their document as to recommended LE policies/rules. (attached). Lawsuits have followed for many agencies who were still holding for ICE.
- 4 Some time in about 2015/16, ICE developed the I-200 and I-205 forms which were intended to be "warrant for arrest of alien". As I understand the system, if ICE knew of a possible alien in your county jail, they would sent the SO a 247N or X form which notified the SO that ICE wanted that subject. ICE would then follow up that notification with a second form I-205 or 200 which was a "warrant for arrest of alien".
- 5 This I-200 form according to ICE would be signed by "Authorized Immigration Officer" who was specially trained to analyze and authorize these holds. This is not a court Judicial Officer, but according to ICE the judicial officer signature for this purpose was not necessary.
- 6 In December 2015 the NY Supreme Court ruled in favor of the Sheriff who was honoring these 247-I-200 form/warrant requests and ruled this was an appropriate probable cause arrest hold for ICE. However this is NY case and some attorneys feel this case is not applicable to our current MN ICE issues.
- 7 According to ICE SAC in MPLS, Scott Banieceke, he attempted during the Obama Administration to get a further legal review and clarification on this issue if local officers could legally accept this detainer form.

- 8 Fast forward now to the new administration. The new Executive Order calls out those Sheriffs/LE who may have stopped honoring these detainers and I-200 requests and places the agencies on a “non-cooperative” list. For many of our MN Sheriffs Offices, you may well find your name on that list, since back in 2014/15 we MSA advised many of our Sheriffs to follow the legal analysis published by the Hennepin County Attorney.
- 9 What does this mean for your office today: a) I would send a cc of this memo to all CA and ask for their counsel as if they agree with the ICE position that the I-200 form is a PC authorized warrant for arrest of alien. b) I will tell you now we have a few CA’s that are saying yes, some NO and some will get back to you??? c) If you do hold a person for ICE, be sure you have a I-200 or 205 form signed by the ICE authorized officer. Without this form ICE does agree the party cannot be legally held on a detainer.
- 10 I have also asked an additional question, if this ICE PC Arrest hold is not valid, and ICE is a bonified recognized LE agency, does this mean that the PC holds we as state LE use every day with and between each other are no longer legal either? No answer to this question next.
- 11 As stated above this is an evolving issue.....if anyone has additional updates please let me know.

**James Franklin**

**Executive Director**

**Minnesota Sheriffs’ Association**

**100 Empire Drive Suite 222**

**St. Paul, MN 55103**

**Phone:**

[jfranklin@](#)

[www.mnsheriffs.org](http://www.mnsheriffs.org)