

**TO:** Police Commission Working Group on SFPD Department General Order 5.15  
**FROM:** Advancing Justice – Asian Law Caucus  
**DATE:** August 14, 2017  
**RE:** Revisions to SFPD Department General Order 5.15

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## INTRODUCTION

This memo sets out recommended revisions for San Francisco Police Department (“SFPD”) Department General Order (“DGO”) 5.15, Enforcement of Immigration Laws, which was last updated on July 5, 2017. These revisions intend to bring the policy in line with other DGOs and respond to Immigration and Customs Enforcement’s (“ICE”) shifting tactics. This memo is intended to provide further context to the redlined edits of DGO 5.15, which is included as Attachment A.

### I. Revisions to Section II

Section II addresses state and local laws around immigration enforcement. The recommended revisions to this Section make DGO 5.15 consistent with other SFPD policies, address recent incidents involving SFPD officers and immigration enforcement, and provide updates based on changes in ICE’s enforcement at the federal level.

#### A. Section II(A). Detentions.

Section II(A) currently reads:

DETENTION: Members shall not stop, question, or detain any individual solely because of the individual’s national origin, foreign appearance, inability to speak English, or immigration status (also see DGO 5.03, Investigative Detentions). Members shall not inquire into an individual’s immigration status.

We recommend removing the word “solely” to ensure that appearance or limited English proficiency are not one of the reasons someone is stopped, questioned, or detained (rather than the “sole” reason).

In addition, we recommend changing “inability to speak English” to “limited English proficiency.” DGO 5.20, Language Access Services for Limited English Proficient (LEP) Persons, uses the phrase “limited English proficiency” instead of “inability to speak English.” Limited English proficiency is defined in DGO 5.20 as “[i]ndividuals whose primary language is not English and who have a limited ability to read, write, speak, or understand English.” By contrast, “inability to speak English” is not used in DGO 5.20 and also could be interpreted to apply only to individuals who speak no English, rather than individuals who speak some English but English is not their primary language. To ensure consistency between DGOs, we suggest changing “inability to speak English” to “limited English proficiency” in the above paragraph.

**B. Section II(B). Documents.**

Section II(B) currently requires that in the scope of their regular duties, SFPD members shall not require someone to provide a document to prove their immigration status. This recommendation should go further to remind SFPD members that they must accept San Francisco Municipal Identification Cards and Consular ID cards if they require any member of the public to show proof of identity, regardless of immigration status. Former SFPD Chief Heather Fong issued Department Bulletin 09-134 on May 26, 2009, after several incidents where SFPD members refused to accept Municipal Identification Cards from immigrant community members. Because of the importance of codifying this Department Bulletin more permanently, it should be incorporated into this DGO.

**C. Section II(C). Assisting ICE/CBP.**

This section states that members will not cooperate with an ICE/CBP operation where the purpose is enforcing federal immigration laws. We recommend changing “*the* purpose” to “*a* purpose” since ICE/CBP may have other purported reasons in addition to federal immigration enforcement for engaging in the operation.

**D. Section II(D). Information Gathering/Dissemination for Immigration Enforcement Purposes.**

Part 1 of this Section requires that SFPD members not request or disseminate information about a person’s release status or other personal, confidential information including home, work, or family contact information. The term “release status” comes from the City and County of Refuge and Due Process for All Ordinances, which link release status to ICE’s notification requests.<sup>1</sup> These requests seek the date and time of a person’s release from criminal custody so that ICE agents can take the person into immigration custody upon release. In order to improve clarity, we recommend adding “including release dates and times” to “release status” in DGO 5.15. The Department of Police Accountability also has suggested adding “location” to this provision, and we agree with that recommendation. Thus, the provision should read: “Members shall not request information about, or disseminate information, regarding **the release status, which includes, but it not limited to release dates, times, and location, of any individual . . .**”

Furthermore, we suggest adding in a provision prohibiting SFPD members from *threatening* individuals with the release of personal information. The prior version of DGO 5.15 stated that “[a] member shall not inquire into an individual’s immigration status or release or **threaten to release information** to the [immigration agency] regarding an individual’s identity or immigration status . . . .”<sup>2</sup> Because of a recent incident caught on camera of an SFPD member allegedly threatening a group of individuals with calling ICE,<sup>3</sup> it is crucial to prevent such threats in order to preserve public trust in our local law enforcement.

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<sup>1</sup> See S.F. Admin. Code Sec. 12H & I.

<sup>2</sup> San Francisco Police Department General Order 5.15, Enforcement of Immigration Laws (Dec. 13, 1995), available at <https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14776-DGO5.15.pdf>.

<sup>3</sup> Vicky Nguyen *et al.*, “SFPD Investigating Officer Caught on Camera Making Deportation Threats,” NBC BAY AREA, June 2, 2017, <http://www.nbcbayarea.com/investigations/SFPD-Investigating-Officer-Caught-on-Camera-Making-Deportation-Threats-425592444.html>.

## **E. Section II(E). ICE/CBP Detainers/Administrative (Civil) Warrants**

This Section includes some forms of immigration detainers (I-247A), but it does not include other forms that ICE may issue (I-247D, I-247N, and I-247X). Accordingly, we recommend adding in “I-247D, I-247N, and I-247X” to subsection 3.

## **II. Revisions to Section III**

Section III addresses situations in which SFPD may provide emergency assistance to ICE or Customs and Border Protection (“CBP”). The recommended revisions aim to clarify ambiguity as to what constitutes an emergency and when such assistance should be provided.

### **A. Section III(A). ICE/CBP Requests for Emergency Assistance.**

This Section describes that SFPD may provide ICE/CBP emergency assistance as SFPD would to any other law enforcement agency. However, there is little guidance as to what type of situation constitutes an emergency. We recommend that there be a more uniform definition of “emergency assistance” and to the extent that such a definition is included in any other DGO, DGO 5.15 should refer to that policy.

## **III. Revisions to Section IV**

Section IV addresses interagency operations and any instance in which SFPD may assist ICE in carrying out criminal investigations. The recommended revisions raise concerns about SFPD’s involvement with joint taskforces where both criminal and civil immigration enforcement are taking place, as is common with ICE operations.

### **A. Section IV(B). Joint Criminal Operations.**

Section IV(B) currently allows SFPD members to collaborate with other law enforcement agencies, including ICE, in joint criminal operations. The current policy requires that if an SFPD member becomes aware that the operation involves civil immigration enforcement, the member should notify a supervisor, cease the operation if possible, and suspend the interagency operation. However, recent events have demonstrated that joint criminal operations with ICE inevitably lead to civil immigration enforcement. In February 2017, the Santa Cruz Police Department conducted a joint criminal operation with Homeland Security Investigations (“HSI”), a division of ICE, where the stated goal was investigating the MS-13 in Santa Cruz. Apart from criminal arrests, HSI also conducted collateral arrests of 10 people solely for civil immigration violations. The arrests were only brought to the Santa Cruz Police Department’s attention after community members voiced their concerns about the arrests at a City Council meeting. Shortly thereafter, Santa Cruz Police Chief Kevin Vogel stated that ICE had assured the Department that there would be no civil immigration arrests and that he did not know whether he could work with ICE in the future.<sup>4</sup> Moreover, Acting ICE Director Thomas Homan stated that

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<sup>4</sup> See David Marks, “Santa Cruz Police: ICE Lied to Us About Immigration Arrests,” KQED, Feb. 24, 2017, <https://ww2.kqed.org/news/2017/02/24/santa-cruz-police-ice-lied-to-us-about-immigration-arrests/>; see also “ICE agent loses workspace at Santa Cruz PD,” MERCURY NEWS, Apr. 27, 2017, <http://www.mercurynews.com/2017/04/27/ice-agent-loses-workspace-at-santa-cruz-pd/>.

all undocumented immigrants “should be afraid” and acknowledged that the agency conducts collateral arrests, which are arrests of individuals for civil immigration enforcement purposes who are not the target of the criminal enforcement operation.<sup>5</sup> Locally, HSI’s insistence on carrying out civil immigration enforcement during joint criminal operations has caused agencies to reconsider joint taskforce relationships with ICE or any of its subagencies.<sup>6</sup> Oakland’s City Council’s Public Safety Committee voted unanimously last month to cut ties on joint taskforces with ICE, a recommendation that will go to the full city council later this month.<sup>7</sup> Because of these recent incidents and of ICE’s stated intent to conduct collateral arrests during joint criminal operations, we recommend that SFPD not take part in any interagency agreement or operation with ICE.

At the bare minimum, the joint criminal operation section should include a transparency provision to require the SFPD to report to the Police Commission and make available on its website any Memorandums of Understanding or other agreements with ICE regarding joint taskforces and issue quarterly reports of all joint taskforce operations, including:

- The agency that initiated the joint criminal investigation;
- The number of individuals arrested and criminally charged during the operation; and
- The number of individuals arrested for immigration enforcement purposes.

#### **IV. Additional Sections**

We recommend adding three additional sections to DGO 5.15 to provide clarity and transparency as to SFPD’s involvement with ICE.

##### **A. Section on Identification**

In recent years, ICE agents making civil immigration enforcement arrests in San Francisco and across the country have been identifying themselves as “police” when picking someone up from their home or place of employment without a judicial warrant. These practices have led to further erosion of trust between immigrant community members and local law enforcement, as they believe local police are involved in immigration arrests. Just last month, Governor Brown signed into law AB 1440, which states that ICE agents are not licensed peace officers and asks state agencies to take “any and all necessary actions to disassociate the actions of ICE officers with those of state and local peace officers.”<sup>8</sup> Accordingly, we recommend that SFPD incorporate into this DGO a provision urging ICE not to identify itself as police when making arrests in San Francisco.

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<sup>5</sup> See Tal Kopan, “ICE director: Undocumented immigrants ‘should be afraid,’” CNN, June 16, 2017, <http://www.cnn.com/2017/06/16/politics/ice-immigrants-should-be-afraid-homan/index.html>.

<sup>6</sup> Hamed Aleaziz, “‘Collateral’ immigration arrests threaten key crime alliances,” S.F. CHRONICLE, Apr. 29, 2017, <http://www.sfchronicle.com/bayarea/article/Collateral-immigration-arrests-threaten-key-11106426.php>.

<sup>7</sup> Darwin BondGraham, “Oakland Takes First Step Toward Cutting Ties with Federal Immigration Agency,” EAST BAY EXPRESS, July 11, 2017, <https://www.eastbayexpress.com/SevenDays/archives/2017/07/11/oakland-takes-first-step-toward-cutting-ties-with-federal-immigration-agency>.

<sup>8</sup> Cal. Asm. Bill 1440 (2017).

## **B. Section on Reporting**

San Francisco Administrative Code Section 12I.5, the Due Process for All Ordinance, contains a reporting provision requiring the Sheriff and the Juvenile Probation Officer to provide information to the Board of Supervisors about their contacts with ICE, including the number of detainer and notification requests they receive and to which they respond. We recommend that the SFPD adopt a similar provision to provide transparency and build public trust as to the Department's communications with ICE. In addition, this addition to the DGO would be consistent with the San Francisco Police Commission's Resolution 73-10 "Requiring the San Francisco Police Department to Audit the Impact of 'SComm' or 'Secure Communities,'" which requires that SFPD issue bimonthly reports that includes this information.<sup>9</sup>

## **C. Section on the TRUTH Act**

We recommend adding a section that implements a new state law, known as the TRUTH Act, California Government Code 7283.1. The TRUTH Act requires that "[u]pon receiving any ICE hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request." We understand that under this DGO, SFPD does not respond to these ICE requests. We also understand that detained individuals usually are held only a few hours in SFPD holding cells. However, this provision of the TRUTH Act still applies to SFPD if SFPD receives any ICE hold, notification, or transfer requests.

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<sup>9</sup> See SF Police Commission Meeting Minutes, June 23, 2010, *available at*: <https://sanfranciscopolice.org/ftp/meetingarchive/www.sf-police.org/modules/jun23mins-documentid=25647.pdf>.

# DRAFT

## ATTACHMENT A

San Francisco Police Department

### GENERAL ORDER

5.15

Rev.

#### ENFORCEMENT OF IMMIGRATION LAWS

The purpose of this order is to establish policies regarding the San Francisco Police Department's role in the enforcement of immigration laws and cooperation with U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP") or successor agencies whose role is to enforcement immigration laws, in conformity with state and federal laws and San Francisco Administrative Code Chapters 12H and 12I.

#### I. POLICY.

It is the policy of the San Francisco Police Department to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents, City officials, and law enforcement, and to ensure community security. It is also Department policy, consistent with its obligations under state and federal law, to adhere to San Francisco Administrative Code Chapters 12H and 12I. These Chapters generally prohibit the use of City resources to assist in the enforcement of federal immigration laws, except as required by federal or state law.

**II. STATE AND LOCAL LAW.** In accordance with Chapter 12H and state law, members of the Department shall, in performing their official duties, adhere to all of the following:

- A. **DETENTION:** Members shall not stop, question, or detain any individual solely because of the individual's national origin, foreign appearance, inability to speak English, limited English proficiency, or immigration status. (also See DGO 5.03, Investigative Detentions). Members shall not inquire into an individual's immigration status.
- B. **DOCUMENTS:** In the course and scope of their duties e.g., traffic enforcement, investigations, and taking reports, members shall not require individuals to produce any document to prove their immigration status. Members are reminded they shall accept a City of San Francisco Municipal Identification Card when requiring members of the public to show proof of identity.
- C. **ASSISTING ICE/CBP:** Members shall not cooperate with or assist ICE/CBP in any investigation, detention, or arrest procedures, public or clandestine, where in any such instance the purpose is enforcing federal immigration laws.

**Comment [SH1]:** See recommendation I(A) in the accompanying memo.

**Comment [SH2]:** See recommendation I(A) in the accompanying memo.

**Comment [SH3]:** See recommendation I(B) in the accompanying memo.

**Comment [SH4]:** See recommendation I(C) in the accompanying memo.

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D. INFORMATION GATHERING/DISSEMINATION FOR IMMIGRATION ENFORCEMENT PURPOSES:

- 1) **Release Status/Confidential Information for immigration enforcement purposes.** Members shall not request information about, or disseminate information, regarding the release status, which includes, but is not limited to the ~~or~~ release date, ~~e-or~~ time, or location of any individual or any other confidential, identifying information such as home, work, or family or emergency contact information, except as required by federal or state law. Members shall not threaten to release any personal information about an individual to federal immigration authorities.
- 2) **Services.** The Department shall not include on any application, questionnaire, or interview form it uses in relation to benefits, services, or opportunities provided by the City and County of San Francisco, any questions regarding immigration status other than those required by federal or state law.

Comment [SH5]: See recommendation I(D) in the accompanying memo.

Comment [SH6]: See recommendation I(D) in the accompanying memo.

E. ICE/CBP DETAINERS/ADMINISTRATIVE (CIVIL) WARRANTS:

Members shall not arrest or detain an individual, or provide any individual’s personal information to a federal immigration officer, solely on the basis of an administrative (civil) warrant, prior deportation order, or other civil immigration document that only addresses alleged violations of the civil provisions of immigration laws. Members shall not place an administrative (civil) immigration hold or detainer on an individual who is in custody. National Crime Information Center (“NCIC”) or California Law Enforcement Telecommunication System (“CLETS”) warrant responses currently make clear whether the warrant is administrative (civil) or criminal.

Members shall adhere to all of the following when reviewing or examining outstanding warrants in the NCIC or CLETS system. Members:

- 1) Shall contact the Sheriff’s Central Warrant Bureau (“CWB”) to confirm any \_\_\_\_\_ warrant before taking action on the warrant.
- 2) Shall not enforce federal administrative (civil) warrants for arrest (currently Department of Homeland Security (“DHS”) Form I-200) or for removal/deportation (currently DHS Form I-205).
- 3) Shall not enforce Administrative Immigration Detainer – Notice of Action (currently DHS Form I-247A, I247-D, I-247N, and I-247X).
- 4) May enforce criminal warrants after consulting with CWB and confirming the criminal warrant.
- 5) Shall record the name of the individual from CWB staff who confirmed the criminal warrant in the incident report. (See DGO 6.18, Warrant Arrests).

Comment [SH7]: See recommendation I(E) in the accompanying memo.

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Upon receiving any ICE hold, notification, or transfer request, Members shall provide a copy of the request to the individual and inform him or her in writing that SFPD will not comply with the request.

**Comment [AC8]:** See recommendation IV(C) in the accompanying memo.

### III. PROVIDING EMERGENCY ASSISTANCE TO ICE/CBP.

- A. ICE/CBP REQUESTS FOR EMERGENCY ASSISTANCE:** Members may provide emergency assistance to ICE/CBP to the same extent members would respond to emergency assistance to any other law enforcement agency. For example, members may provide emergency assistance when the member determines there is an emergency posing a significant and immediate danger to public safety or to the ICE/CBP agents.
- B. DUTIES OF MEMBERS:** Members providing emergency assistance to ICE/CBP shall immediately notify their supervisor and complete an incident report describing the reasons for their assistance.
- C. DUTIES OF SUPERVISORS:** When notified that a member is providing emergency assistance to ICE/CBP, supervisors shall immediately respond to the location and ensure that such assistance is warranted.
- D. TRANSPORTATION:** Members shall not assist ICE/CBP in transporting individuals suspected solely of violating federal immigration laws.
- E. ASSISTANCE:** Member shall not provide assistance to ICE/CBP agents for routine ICE/CBP operations, investigations, or raids. If ICE/CBP requests assistance that does not amount to an emergency as outlined in this section, members shall follow the protocols listed for Interagency Operations (see DGO 5.14, Interagency Operations).

**Comment [SH9]:** See recommendation II(A) in the accompanying memo.

### IV. ASSISTING OTHER LAW ENFORCEMENT AGENCIES AND FOREIGN GOVERNMENT.

- A. INTERAGENCY OPERATIONS:** If ICE/CBP requests assistance with a planned, unplanned, or spontaneous operation, members must obtain approval from the member's Assistant Chief. (See DGO 5.14, Interagency Operations).

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**B. JOINT CRIMINAL OPERATIONS:** Members may continue to collaborate with other law enforcement agencies, with approval of the member's Assistant Chief, to protect public safety and participate in joint criminal investigations that are permitted under Department policy or applicable city or state law. When a member becomes aware that the criminal investigation involves the enforcement of immigration laws, the member shall:

- 1) Notify ~~of~~ a Supervisor; and
- 2) Cease operation if doing so would not pose a risk to the officers or the public; and
- 3) Suspend Interagency Operations.

**Comment [SH10]:** See recommendation III(A) in the accompanying memo.

The Department must provide the Police Commission and make available on its public website any Memoranda of Understanding with ICE/CBP or other agency tasked with the enforcement of immigration laws regarding joint criminal operations. On a quarterly basis (January 1st, April 1st, July 1st, and October 1st of each year), the Department must provide reports of all joint taskforce operations, including:

- 1) The agency that initiated the joint criminal investigation;
- 1) The number of individuals arrested and criminally charged; and
- 2) The number of individuals arrested for immigration enforcement purposes.

**Comment [SH11]:** In the event that this DGO does not end joint criminal operations between SFPD and ICE, this piece covers the transparency and reporting provisions around those operations. See recommendation III(A) in the accompanying memo.

**C. ASSISTING FOREIGN GOVERNMENT:** Members shall not assist or cooperate with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws. (See DGO 8.10, Guidelines for First Amendment Activities.) Any assistance or cooperation with a foreign government must be approved by the member's Assistant Chief. (See DGO 5.14, Interagency Operations.) Members requesting approval of the Interagency Operation shall notify the Officer-in-Charge ("OIC") of the Special Investigations Division ("SID") who will evaluate whether the U.S. State Department should be notified of the assistance or cooperation.

**V. DEPARTMENT BULLETINS.** Department Bulletins describing current versions or relevant examples of DHS forms and the most current samples of NCIC or CLETS print-outs of both administrative (civil) warrants will be issued as necessary.

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**VI. IDENTIFICATION.** In recent years, community members have reported ICE/CBP agents identifying themselves as police when enforcing civil immigration laws in the City. The Department urges that agencies tasked with civil immigration enforcement cease this practice, as not to create the perception that Department members are involved in the enforcement of civil immigration laws.

**Comment [SH12]:** See recommendation IV(A) in the accompanying memo.

**VII. COMPLIANCE WITH OTHER STATE OR LOCAL LAWS.** Nothing in this General Order prohibits members from performing their duties in enforcing state and local laws.

**VIII. REPORTING.** The Department shall submit a written report to the Police Commission, by January 1st and July 1st of each year, addressing the following issues for the time period covered by the report:

- 1) A description of all communications received from federal immigration authorities, including but not limited to the number of civil immigration detainees, requests for detention or notification, requests for emergency assistance, participation in joint criminal operations, or other types of communications; and
- 2) A description of any communications the Department made to federal immigration authorities, including but not limited to any Department's responses to inquiries as described in subsection 1 of this provision.

**Comment [SH13]:** See recommendation IV(B) in the accompanying memo.

### References

DGO 5.03, Investigative Detentions  
DGO 5.14, Interagency Operations  
DGO 6.18, Warrant Arrests  
DGO 8.10, Guidelines for First Amendment Activities