

**What is an ICE hold?** An ICE hold (also known as an ICE detainer), is a *request* that Immigration and Customs Enforcement (ICE), sends to local law enforcement asking that an individual be held until ICE can come to the jail and take custody. Thus, even though an individual should be free to leave jail in the criminal matter, they may still be held for immigration to pick them up for deportation.

**What has changed under the San Francisco Due Process for All Ordinance?** On October 8, 2013, San Francisco signed into law the "San Francisco Due Process Ordinance for All on Civil Immigration Detainers."<sup>1</sup> The policy went into effect on **Nov. 8, 2013**. Under the policy, the vast majority of individuals who enter the criminal justice system in San Francisco will no longer be turned over to ICE through use of an ICE hold request. Thus, even if ICE issues an ICE hold, San Francisco law enforcement will not detain the individual for extra time for ICE. There are very limited circumstances in which some people *may* be turned over to ICE, described below.

Also, on October 1, 2016, or comprehensive immigration reform, whichever comes first, no ICE holds will be responded to in *any* circumstance.

**Why was the SF Due Process for All Ordinance passed?** Individuals who are arrested should be treated equally in the criminal justice system. When immigrants are held by local law enforcement for extra time for ICE, when they should otherwise be released in the criminal matter, it undercuts due process and leads to a disproportionately severe double punishment. Individuals are separated from families when transferred to immigration detention centers, often across the country, and then permanently torn apart through deportation.

**When can an ICE hold still be used to turn people over to ICE?** San Francisco law enforcement is prohibited from responding to ICE hold requests except in the following, limited circumstances. Even if the following circumstances apply, the ICE hold will not automatically be responded to. Law enforcement still may decide NOT to respond to the ICE hold after considering evidence of rehabilitation, described below.

Local law enforcement *may* respond to an ICE hold request only if:

1. The individual has been **convicted** of a **violent felony** or three additional crimes<sup>2</sup> in **the last seven years** **AND**;
2. The individual has a **present charge** for a **violent felony**, and a judge made a finding that there is probable cause to move forward with the charge (pursuant to CA Penal Code 827).

In these circumstances, an ICE hold *may* be responded to for 48 hours after the individual is otherwise eligible for release in their criminal case. Note that if the District Attorney decides not to file charges or if the judge doesn't find probable cause to move forward with the charge, it can **NOT** be used to hold someone on an ICE hold.

**What is a violent felony?** For purposes of this policy, a violent felony<sup>3</sup> is any of the following: murder or voluntary manslaughter; mayhem; rape;<sup>4</sup> sodomy;<sup>5</sup> oral copulation;<sup>6</sup> lewd or lascivious acts;<sup>7</sup> any felony punishable by death or state imprisonment for life; any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as such;<sup>8</sup> any robbery; arson;<sup>9</sup> sexual penetration;<sup>10</sup>

<sup>1</sup> For full text of the SF Due Process for All Ordinance, see <https://sfgov.legistar.com/View.ashx?M=F&ID=2650835&GUID=9E9091EA-082D-41EB-8282-43E2BD3AC2CA>.

<sup>2</sup> The crimes that can serve as a basis for responding to an ICE hold request under the SF Due Process for All Ordinance are: "Violent Felony" means any crime listed in Penal Code Section 667.5(c); human trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon, machinegun, or .50 BMG rifle, while committing or attempting to commit a felony that is charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and 12022.5.

<sup>3</sup> Violent felony is defined as listed in California Penal Code Section 667.5(c). "

<sup>4</sup> See paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

<sup>5</sup> See subdivision (c) or (d) of Section 286.

<sup>6</sup> See subdivision (c) or (d) of Section 288a.

<sup>7</sup> See subdivision (a) or (b) of Section 288.

<sup>8</sup> Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

<sup>9</sup> See subdivision (a) or (b) of Section 451.

attempted murder; exploding or attempting to explode a device with intent to commit murder;<sup>11</sup> kidnapping; assault with intent to commit a specified felony;<sup>12</sup> continuous sexual abuse of a child;<sup>13</sup> carjacking;<sup>14</sup> rape, spousal rape, or sexual penetration;<sup>15</sup> extortion;<sup>16</sup> threats to victims or witnesses;<sup>17</sup> any first degree burglary;<sup>18</sup> any of these violent crimes when committed with a firearm;<sup>19</sup> and use of a weapon of mass destruction.<sup>20</sup> Consult a criminal attorney if you are uncertain if a conviction or charge is a "violent felony," as defined here.

In addition to this list of violent crimes, the Ordinance also includes three additional exceptions: human trafficking, felony assault with a deadly weapon, any crime involve use of a firearm, assault weapon, machinegun, or .50 BMG rifle.

**Even if the above circumstances apply, will San Francisco law enforcement definitely respond to the ICE hold?** No. Even if the above circumstances apply, the ICE hold will not automatically be responded to. Instead, law enforcement can still choose to NOT respond to the ICE hold after considering evidence of rehabilitation. In particular, law enforcement will consider the individual's ties to the community, if the individual has been a victim of a crime, any contribution to the community, the individual's participation in social service or rehabilitation programs, and whether the individual poses a public safety risk.

**Does the Ordinance apply to juveniles (individuals who are under 18 when arrested)?**

Yes. Under the Ordinance, juveniles can NOT be held for ICE in any case. The narrow carve out explained above does not apply so there are no exceptions in which an ICE hold can be responded to for a juvenile.

**Who decides whether an ICE hold should be responded to?** Generally, the SF Sheriff's Department for adults (over 18) or the Juvenile Probation Department for juveniles (under 18).

**Who do I contact to see if an ICE hold is going to be responded to?** Ask your criminal defense attorney, or you can contact the SF Sheriff's Department at (415) 554-7225 or the Juvenile Probation Department at (415) 753-7800.

**How do I advocate that an ICE hold not be responded to?** Contact your criminal defense attorney to advocate that the ICE hold not be responded to. You can also contact the Sheriff at (415) 554-7225.

The individual should be ready to show evidence of rehabilitation: if the individual has been a victim of a crime, if the individual has contributed to the community, or if the individual has participated in social service or rehabilitative programs. Also include if the individual has any other compelling equities such as having lived in the United States for a very long time, having family in the United States, or being very sick.

**Reporting:** The Sheriff and Juvenile Probation Officer will submit annual reports to the Mayor and Board of Supervisors describing the number of ICE holds that were responded to and why.

**For questions on the San Francisco Due Process for All Ordinance, contact:**

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Grisel Ruiz, Immigrant Legal Resource Center, at [gruiz@ilrc.org](mailto:gruiz@ilrc.org)

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<sup>10</sup> See subdivision (a) or (j) of Section 289.

<sup>11</sup> See CA Penal Code 18745, 18750, and 18755.

<sup>12</sup> See Section 220.

<sup>13</sup> See Section 288.5

<sup>14</sup> See subdivision (a) of Section 215.

<sup>15</sup> See Section 264.1.

<sup>16</sup> See Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

<sup>17</sup> See Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

<sup>18</sup> See subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

<sup>19</sup> See Section 12022.53.

<sup>20</sup> See (b) or (c) of Section 11418.