

## Immigration Violations

### 428.1 PURPOSE AND SCOPE - CONFORMANCE TO SB54 AND RELATED LAWS

The purpose of this policy is to establish guidelines with the California Values Act, and related statutes, concerning responsibilities associated with immigration law, including cooperation with the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE), or other federal immigration officers, regarding persons arrested and booked into the Sheriff's custody, and other Departmental operations.

### 428.2 POLICY

It is the policy of the Humboldt County Sheriff's Office to comply with state and local law governing law enforcement's ability to interact and cooperate with federal immigration officers.

Pursuant to the California Values Act, members of the Department may not use Department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

- (a) Inquiring into an individual's immigration status.
- (b) Detaining an individual on the basis of a hold request.
- (c) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless in compliance with the provisions set forth herein.
- (d) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless in compliance with the provisions set forth herein.
- (e) Making or intentionally participating in arrests based on civil immigration warrants.
- (f) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.
- (g) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

Members of the Department may not place other members of the Department under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All members of this Department are subject to California law governing conduct of peace officers and the policies of this Department.

Members of this Department may not use immigration authorities as interpreters for law enforcement matters relating to individuals in Department custody.

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Members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or as otherwise set forth herein. See 428.9 of this Policy and appendices 1, 2, and 3 set forth below.

Members of the Department may not provide office space exclusively dedicated for immigration authorities for use within county law enforcement facilities. However, immigration authorities may be provided office space for their use so long as the office space provided is non-exclusive for such use.

Members of the Department are not prohibited from the following pursuant to the California Values Act:

- (a) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code
- (b) From sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

### **428.3 DEFINITIONS**

- (a) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.
- (b) "Conviction" shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.
- (c) "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred: All criminal charges against the individual have been dropped or dismissed, the individual has been acquitted of all criminal charges filed against him or her, the individual has served all the time required for his or her sentence, the individual has posted a bond, or the individual is otherwise eligible for release under state or local law, or local policy.
- (d) "Hold request," "notification request," and "transfer request" have the same meanings as provided in Section 7283.
- (e) Specifically, a "hold request" means a federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247D.
- (f) "Notification request" means an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance

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of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N.

- (g) "Transfer request" means an Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X. Hold, notification, and transfer requests include requests issued by the United States Immigration and Customs Enforcement or the United States Customs and Border Protection as well as any other immigration authorities.
- (h) "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.
- (i) "Joint law enforcement task force" means at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.
- (j) "Judicial probable cause determination" means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.
- (k) "Judicial warrant" means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.
- (l) "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.
- (m) "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.

### **428.4 LAW ENFORCEMENT CONTACTS**

Non-consensual contacts, detentions, and arrests shall be based on reasonable suspicion or probable cause as appropriate. A Deputy shall not initiate any law enforcement action based on observations relating to immigration status (such as lack of documentation).

### **428.5 INMATE CLASSIFICATION/PROGRAMMING**

(1) Members of the Department shall not restrict access to any educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status,

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including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

(2) Members of the Department shall not consider citizenship and immigration status as a factor in determining a person's custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

### **428.6 RELEASE OF ARRESTEE/INMATE INFORMATION TO DHS/ICE**

All Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) inquiries will be subject to the guidelines as outlined in the California Values Act, TRUST Act and TRUTH Act. Further, unless otherwise provided herein, all requests from ICE will be handled in the same manner as requests for information from the general public pursuant to the California Public Records Act. To ensure uniform compliance with applicable laws and regulations, all DHS and ICE inquiries will be directed to Facility Manager or their designee. The Facility Manager or designee will ensure compliance with the Values Act, Measure K, and the Public Records Act prior to disclosing information to DHS or ICE agents.

Receipt of a DHS, Voluntary Notification of Release of Suspected Priority Alien (Form I-247N), or Immigration Detainer – Notice of Action (Form I-247A), provided by ICE, shall be considered a request made pursuant to the California Public Records Act for information regarding an individual's release date. Such information may only be provided to DHS/ICE if disclosure is required pursuant to the Public Records Act and the information has been made available to the public on the Department's web page and/or at the public information desk.

Requested information cannot be provided to DHS/ICE except in compliance with this policy. Information cannot be provided to DHS/ICE for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code, unless that information has been made available on the Department's web page and/or at the public information desk.

In the event that the Facility is required to act on a warrant, subpoena, or other order which requires the sharing of personal information and/or release dates, the individual named in the warrant or subpoena shall be notified in writing immediately upon receipt by the agency.

### **428.7 INMATE NOTIFICATION PURSUANT TO CALIFORNIA TRUTH ACT**

The Facility Manager or designee will, in advance of any interview between ICE and an individual in Department custody regarding civil immigration violations, provide the inmate with the Department's written consent form ICE Interview Rights Form explaining the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The ICE Interview Rights Form

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shall be provided in English, Spanish, Chinese, Tagalog, Vietnamese, or Korean, as appropriate for the inmate.

The inmate's response shall be documented in the departments ICE Tracking Files. If the inmate refused to sign the form, the refusal shall be documented on the ICE interview Rights Form.

Upon receiving and DHS/ICE hold, notification, or transfer request, the Facility Manager or designee shall provide a copy of the request to the individual and inform him or her whether the Department intends to comply with the request. If the Department provides DHS/ICE with notification that an individual is being, or will be, released on a certain date in compliance with this policy, the Facility Manager or designee shall promptly provide the same notification in writing, utilizing the ICE Notification of Release Date Form to the inmate and to his or her attorney or to one additional person who the individual shall be permitted to designate.

### **428.8 JOINT TASK FORCE PARTICIPATION**

Members of the Department, pursuant to local ordinance Measure K, may not participate in any task force where DHS/ICE is a participant or for which a purpose is enforcement of federal immigration laws

#### **428.8.1 JOINT TASK FORCE REPORTING REQUIREMENTS**

For each joint law enforcement task force in which the Department is dedicating personnel or resources on an ongoing basis, the Sheriff or their designee shall submit a report annually to the Department of Justice, as specified by the Attorney General. The Department's report shall include the following information, if known, for each task force of which it is a member:

- (A) The purpose of the task force.
- (B) The federal, state, and local law enforcement agencies involved.
- (C) The total number of arrests made during the reporting period.
- (D) The number of people arrested for immigration enforcement purposes.

### **428.9 RELEASE OF INMATE**

In no event shall an inmate be held past their scheduled date of release or be delayed during the release process due to the issuance of an I-247A, or any other federal immigration form. Moreover, as noted herein, members of this Department may not transfer an individual in Department custody to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or that individual has been convicted of the crimes or otherwise met the criteria set forth in Appendix 1, 2, or 3.

### **428.10 PUBLIC RECORD**

All reports described in Sections 428.7 and 428.8.1 of this policy shall be considered public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure.

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Records relating to ICE access include, but are not limited to, data maintained by the Department regarding the number and demographic characteristics of individuals to whom the Department has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

### **428.11 INMATE FINGERPRINTING**

Except as shall be required for booking upon arrest upon suspicion of criminal activity not pertaining to immigration status, no individual shall be required to submit to a fingerprint check of any sort unless there is an outstanding warrant or pending criminal charges on the individual.

### **428.12 REPORTING OF DATA**

The Facility Manager or designee shall prepare a report which shall be sent annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers of inmates to DHS/ICE custody. The report shall specify the offense that allowed for the transfer, in accordance with the criteria set forth herein.

By no later than July 1, 2019, the Sheriff shall provide, to the Board of Supervisors, a written report stating the number of detentions that were solely based on a civil immigration detainer (if any) during the first six months following the effective date of Measure K and detailing the legal criteria behind each of those civil immigration detainer.

Bi-annually the Sheriff shall submit a written report to the Board of Supervisors and the Mayor of Eureka, 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 the Federal agency charged with enforcement of the Federal Immigration law, including but not limited to the number of civil immigration detainees, notification requests, or other types of communication.
- (2) A description of any communications the Department made to the Federal agency charged with enforcement of the Federal immigration law, including but not limited to an Department's responses to inquires as described herein.

### **428.13 APPENDIX 1 - "SERIOUS FELONIES"**

- (1) Murder or voluntary manslaughter;
- (2) Mayhem;
- (3) Rape;
- (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;

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- (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, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
- (25) Any violation of subdivision (a) of Section 289 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;

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- (28) Any felony offense, which would also constitute a felony violation of Section 186.22;
- (29) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
- (30) Throwing acid or flammable substances, in violation of Section 244;
- (31) Assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;
- (32) Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5;
- (33) Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
- (35) Continuous sexual abuse of a child, in violation of Section 288.5;
- (36) Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100;
- (37) Intimidation of victims or witnesses, in violation of Section 136.1;
- (38) Criminal threats, in violation of Section 422;
- (39) Any attempt to commit a crime listed in this subdivision other than an assault;
- (40) Any violation of Section 12022.53;
- (41) A violation of subdivision (b) or (c) of Section 11418; and
- (42) Any conspiracy to commit an offense described in this subdivision.

### **428.14 APPENDIX 2 - "VIOLENT FELONIES"**

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) 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



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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.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

(21) Any burglary of the first degree, as defined in 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.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

### **428.15 APPENDIX 3 - CONVICTION CRITERIA FOR PROVISION OF NON-PUBLICLY AVAILABLE INFORMATION TO DHS/ICE OFFICIALS AND TRANSFER TO CUSTODY OF DHS/ICE OFFICIALS**

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code. See Appendices I and II above.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

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(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

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(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(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 pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified

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by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.