



Mecklenburg County Sheriff's Office

700 East Fourth Street
Charlotte, NC 28202

T (704) 336-2543 • F (704) 336-6118

www.mecksheriff.com

GARRY L. MCFADDEN
SHERIFF

RODNEY M. COLLINS
CHIEF DEPUTY SHERIFF

TELISA E. WHITE
CHIEF OF DETENTION

MCSO Arrest Processing Directive: ICE Detainer Requests and ICE Warrants

MCSO implemented a new Arrest Processing Directive in December 2018 in connection with ICE detainer requests and ICE warrants. The directive was created on the advice of counsel and with input from Arrest Processing staff and Chiefs. The directive delineates when MCSO is obligated to hold an individual for immigration-related reasons. To be absolutely clear, MCSO remains fully in compliance with state and federal laws. For example, when a person is booked into jail, MCSO fingerprints that individual. ICE then has access to federal databases to see who is in the jail. ICE would know, for example, if that individual has an old removal (deportation order). ICE can also draw its own conclusions about whether certain inmates may be in the U.S. without authorization. ICE continues to have full access to anyone detained in the Mecklenburg County Detention Center for criminal matters. *[MCSO Arrest Processing Directive: ICE Detainer Requests and ICE Warrants, attached hereto]*

ICE Detainers/ICE Warrants vs. Criminal Process/Criminal Warrants

Under the previous administration, MCSO voluntarily agreed to act as an extension of U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) and hold people past their court-scheduled release date. MCSO ended that voluntary practice of honoring "ICE detainers" or "ICE warrants" on December 5, 2018: MCSO, much like other offices across the state, will no longer hold someone in custody without a criminal warrant issued by a judge.

An ICE detainer is a request issued by ICE for a jail to hold someone for a possible *civil* immigration violation; an ICE detainer is not signed by a magistrate or judge, and it does not pertain to *criminal* charges.

An ICE detainer is legally different from a criminal warrant, which is an actual criminal process issued by a judicial official against a person when there is probable cause of criminal conduct. MCSO always honors a criminal warrant if and when one is presented by another law enforcement agency.

Additional features, definitions, and terms can be found in the attached *MCSO Arrest Processing Directive: ICE Detainer Requests and ICE Warrants*.

Bail and Pretrial Release

Once a person is in the custody of MCSO, their case follows the 26th Judicial District's Bail Policy. As you may know, our district has a new bail policy that goes into effect March 1, 2019. This policy was developed by a workgroup formed out of the Criminal Justice Advisory Group, which consists of Judges, the District Attorney, the Public Defender's Office, and the Chief Magistrate. This policy was approved by the Mecklenburg County Board of County Commissioners last summer. The new bail policy removes bail schedules and is part of the broader county-wide initiatives aimed at reducing racial and ethnic disparities in our criminal justice system. *[26th Judicial District's Bail Policy, attached hereto]*

A "secured bond" is bond that requires money or collateral to be used to secure the release of the charged individuals. An "unsecured bond" is a monetary bond but the individual is not actually required to pay that money in order to be released from custody. If the individual subsequently fails to appear for a scheduled court date, they would have a judgment against them for that amount of money. Both "secured" and "unsecured" bonds allow for individuals to be released from custody pending trial.

MCSO was not a member of that Criminal Justice Advisory Group. MCSO does set bail or determine the conditions of anyone's pretrial release. MCSO's role in the bail and pretrial release context is to execute the pretrial release orders set by Magistrates and Judges within the 26th Judicial District. MCSO has no voice in determining whether a bond is secured, unsecured, or if an individual in any given case is deemed eligible for pre-trial services. MCSO is obligated to abide by the conditions of release set by the court.

Changes in MCSO's Relationship with ICE

The major changes with respect to MCSO's relationship with ICE include the termination of 287(g) and the decision not to honor ICE detainers. As this Board knows, 287(g) was a voluntary agreement with ICE wherein several MCSO deputies were given authority to screen for potential immigration violations. In addition, ICE had a daily presence in the jail. Now, with the termination of 287(g) ICE no longer has an office space or presence in the jail.

ICE's assertion that MCSO is somehow out of step with law enforcement in this country is simply false. Back when it voluntarily participated in ICE's 287(g) program, Mecklenburg County was doing the job of immigration enforcement in a way *very* few other counties do anywhere in the country. Out of the roughly 3,000 counties nationwide, fewer than 80 have a 287(g) agreement. In North Carolina, only four counties out of 100 voluntarily participate.

Indeed, other law enforcement offices around the state have done just what MCSO did in December with respect to dealings with ICE. For example, the Wake County Sheriff's Office recently ended their 287(g) program participation. The Alamance County Sheriff dropped his participation in the program. And the Henderson County Sheriff says he is considering leaving 287(g) in the coming months because the costs of the program are a burden on taxpayers. Sheriffs in Wake, Durham, and Forsyth counties have also stopped honoring ICE detainers. And other sheriffs around the state ended agreements that allow ICE to hold people charged with immigration offenses in their jails. This has been happening elsewhere in the country too: In December 2018, the County Executive of Anne Arundel County (Maryland) conducted an audit

of its 287(g) activity and found the *program* to be a *threat* to public safety. The county ended its voluntary participation in 287(g.)

As a result of these policy changes, ICE no longer has an office embedded within MCSO; MCSO no longer has officers deputized to do the job of ICE under 287(g); and MCSO no longer holds an individual in custody based solely on a warrantless "request" from ICE.

ICE Activity in the Mecklenburg County Courthouse

On July 9, 2018, a woman and her 16-year-old son were both arrested by ICE agents in the Mecklenburg County Courthouse. The woman was facing misdemeanor charges; her son was a victim/witness in a related case. All of the criminal charges against the woman were dropped by prosecutors, and it came to light that she and her child were the victims of domestic violence. Immigration officials said at the time that the woman had entered the country legally but that her visa had expired in November 2016. In November 2018, it was reported that the woman's deportation case had been closed.

On January 16, 2019, plainclothes ICE agents took a person into custody inside of the Mecklenburg County Courthouse. The ICE agents showed their law enforcement credentials upon entry into the courthouse but wore no other identifying clothing or attire that identified them as law enforcement. ICE approached the person of interest outside of a courtroom and proceeded to take the individual into custody. MCSO deputies in the area were initially uncertain who the ICE agents were until they clearly identified themselves during the arrest. Deputies working in other areas of the courthouse are not always aware of who enters the courthouse since the screening stations are a separate work area than courtrooms or other areas within the courthouse.

The January 16 incident prompted MCSO to change its policy as it pertains to any law enforcement agency that seeks to arrest someone within the Mecklenburg County Courthouse. On January 17, 2019, MCSO amended its Courts Security Policy to ensure moving forward that there is a more coordinated approach between MCSO and any law enforcement agency (including ICE) that may seek to arrest someone inside the courthouse. The revised policy provides outside law enforcement agencies with contact information to MCSO's Courthouse Control Room so that they can provide advance notice so that there is better coordination and increased safety for all involved. ***[Court Security Procedures, attached hereto]***