

Immigration Violations

413.1 PURPOSE AND SCOPE

All employees of this Department shall be committed to equally enforcing the law and providing equal service to the public regardless of immigration status. No individual living in, working, or visiting our community will be subjected to detention or investigation solely based on their immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

413.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including 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.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

413.2 POLICY

The purpose of this policy is to provide guidelines to members of the Santa Monica Police Department related to immigration as well as to outline the scope of the Department's interaction with federal immigration officials in accordance with existing law.

413.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

413.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6). As such, officers are also prohibited from asking any other private actors, such as employers, landlords, or family members, about an individual's immigration status.

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413.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

413.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

413.5 GUIDELINES FOR DETENTIONS AND ARRESTS

The following will provide guidelines for officers in the field when they legally detain individuals without identification, and when it is permitted, under the California Values Act, to verify whether a legally detained individual is subject to enhancement by the Attorney General.

413.5.1 MINOR CRIMINAL OR TRAFFIC VIOLATIONS

Whenever any individual is reasonably suspected of committing a minor criminal or traffic violation, the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources. If an individual would have otherwise been released for an infraction or misdemeanor on a citation, then once the person's identity is reasonably established, the original citation release should be completed without consideration of immigration status.

This does not preclude an officer from taking enforcement action when an individual has committed a minor criminal or traffic violation and the individual is unable to reasonably establish his/her true identity. Based on the totality of the circumstances, an officer may take an individual into custody on the suspected criminal and/or traffic violation per Penal Code § 836 and Vehicle Code § 40302(a), as applicable. A field supervisor shall approve all such arrests.

413.5.2 FEDERAL CIVIL OFFENSES

An individual who initially made legal entry into the United States, but remained beyond the time approved in their documents, generally, has committed a federal civil offense. The investigation and prosecution of violations of civil federal immigration law falls within the scope and authority of the federal government.

As such, officers shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

413.5.3 ENHANCEMENT BY ATTORNEY GENERAL

If an officer has reasonable suspicion that an already lawfully detained individual has committed a criminal violation of 8 UCS § 1326(a) (unlawful reentry) that may be subject to enhancement, then the officer may verify whether the United States Attorney General has granted the individual

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permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6).

The length of the detention shall be the reasonable amount of time it would have otherwise taken to complete the initial investigation for an offense not related to the individual's immigration status. No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

A sworn officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

413.5.4 SUPERVISOR RESPONSIBILITIES

When notified that a sworn officer has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

413.6 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this Department should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

413.7 INFORMATION SHARING

No member of this Department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in Department records
- (c) Exchanging such information with any other federal, state, or local government entity

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

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413.8 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Except as may be required by law, it is not the practice of the Santa Monica Police Department to notify Immigration and Customs Enforcement ("ICE") when booking arrestees.

No individual who is otherwise ready to be released should continue to be detained solely for the purpose of making notification to immigration authorities except to the extent required by law.

413.8.1 NOTICE TO INDIVIDUALS

In the event the Santa Monica Police Department Jail receives an authorized hold from U.S. Immigrations and Customs Enforcement (ICE) for an individual in custody, then that individual shall (Government Code § 7283.1):

1. Receive a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding any hold, notification, or transfer request.
2. Be informed as to whether the Santa Monica Police Department intends to comply with the request.

If the Santa Monica Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

413.8.2 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Santa Monica Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary and that he/she may decline to be interviewed or may choose to be interviewed only with his/her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

413.8.3 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist:

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

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413.9 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). Refer to Policy §414 U visa Certification for further information on Department guidelines and procedures.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Criminal Investigations Division supervisor assigned to oversee the handling of any related case. The Criminal Investigations Division supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

413.9.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

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413.9.2 REPORTING TO LEGISLATURE

The Criminal Investigations Division supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

413.9.3 POLICE REPORTS

Upon request, the victim or authorized representative should be provided with a copy of the police report filed by the victim within seven days of the request (Penal Code § 679.10).

413.10 TRAINING

The Training Sergeant should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).