

Immigration Violations

415.1 PURPOSE AND SCOPE

The immigration status of individuals alone is generally not a matter for police action. It is incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

415.1.1 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards:

415.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws as described in this policy.

415.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of Title 8, United States Code.

415.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented immigrant shall not be the sole basis for contact, detention, or arrest. Under no circumstances shall a person be detained or arrested by the Hayward Police Department based solely on his or her immigration status, known or unknown.

415.3.2 SWEEPS

The Hayward Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented immigrants.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

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415.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this Department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this Department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this Department should be based upon the reasonable belief that an individual is involved in criminal activity.

415.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor or felony), 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, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

415.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (see applicable sections of the Vehicle Code and Penal Code, if applicable).

415.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved unless there is cause to hold the arrestee under the non-release provisions of section 853.6(i) of the penal code. Immigration status shall not be a consideration in determining release, and arrestees shall not be held in custody on the basis of an immigration detainer alone.

415.4 SPECIAL CONSIDERATIONS FOR WORKING WITH ICE

The Hayward Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

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All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer shall not report the person to ICE unless circumstances indicate such reporting is reasonably necessary, such as in the case of a valid federal warrant. An immigration detainer signed by an ICE agent is not the same as a warrant signed by a judge. ICE will still have access to our jail, and will receive the same treatment and courtesy extended toward any law enforcement officer conducting business with this Department.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

415.4.1 ICE IMMIGRATION DETAINERS AND REQUESTS FOR NOTIFICATION

The Hayward Police Department regularly receives immigration detainers (Form I-247D formerly known as the Form 247) from ICE. A detainer serves to advise that ICE seeks custody of an individual in the custody of the Hayward Police Department. The Hayward Police Department does not honor these detainers.

If ICE asks for information about an individual that we would otherwise share with other law enforcement agencies or is publicly available information (including a Request for Notification, Form I-247N, through the 2015 Priority Enforcement Program) the Hayward Police Department shall share this information with ICE. The Request for Notification does not seek any extended detention of the individual, but is merely asking that they receive timely notification of the release of priority persons for which there is an enforcement interest, as indicated by the issuance of the Request for Notification.

The Hayward Police Department may also inform ICE about the release of undocumented persons, even if ICE has not made a formal Request for Notification, where the Hayward Police Department believes the individual(s) pose significant public safety concerns. Such determinations shall be made on a case by case basis. Again, the Hayward Police Department shall not extend the detention of an inmate so that ICE may detain the individual; rather, the Hayward Police Department shall only provide ICE with timely notification of release.

415.4.2 TRUST ACT

The Trust Act provides that a person may not be held in custody solely on the basis of a request for notification and/or detainer if he or she is otherwise eligible to be released from custody. "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- a. All criminal charges against the individual have been dropped or dismissed; or
- b. The individual has been acquitted of all criminal charges; or
- c. The individual has served all the time required for their sentence; or

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- d. The individual has posted bond; or
- e. The individual is otherwise eligible for release under state or local law.

415.4.3 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigations Division sergeant assigned to supervise the handling of any related case. The Investigations Division sergeant should do the following:

- a. Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- b. Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.
- c. Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- d. Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- e. Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/ certification in the case file.

415.4.4 HUMAN TRAFFICKING T-VISA

Officers and their supervisors who are assigned to investigate a case of human trafficking shall complete the above process and documents needed for a T-Visa application within 15 business days of the first encounter with the victim, whether or not it is requested by the victim (Penal Code § 236.5).

415.5 REVISIONS

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