

Immigration Policy

415.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Sonoma County Sheriff's Office relating to immigration and interacting with federal immigration officials.

415.1.1 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.

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

Judicial Probable Cause Determination: 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.

Civil Immigration Warrant: Any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

Notification Request: An Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, OHS Form I-247N. It does not authorize the Sheriff's Office to hold an individual beyond the point at which he or she would otherwise be released.

Transfer Request: 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, OHS Form I-247X.

Hold Request: 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.

Immigration Notification Matrix: A list of conditions that when met requires immigration authorities to be notified of an inmate being, or will be, released on a certain date.

415.2 POLICY

It is the policy of the Sonoma County Sheriff's Office that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this office in protecting and

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serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

415.3 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 without regard to race, ethnicity or national origin in any way that would violate the United States or California constitutions.

415.4 IMMIGRATION INQUIRIES PROHIBITED

Deputies shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

415.4.1 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).

415.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

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

415.5 DETENTIONS AND ARRESTS

A deputy 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).

A deputy who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under USC § 1326(b)(2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). 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 deputy 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

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prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

A deputy shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

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

415.5.1 SUPERVISOR RESPONSIBILITIES

When notified that a deputy 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.

415.6 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this office 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.).

415.7 INFORMATION SHARING

No member of this office 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 office 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.

415.7.1 IMMIGRATION HOLD REQUESTS AND REQUEST FOR NOTIFICATION

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6). The Sonoma County Sheritrs Office shall not unlawfully extend the detention of an inmate so that ICE may detain the individual based on such a detainer or hold request, unless the Sonoma County Sheritr Office has received a duly issued judicial warrant and probable cause determination for the arrest of the inmate signed by a federal judge or federal magistrate.

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

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- (a) The individual's release date or other information is available to the public.
- (b) The individual has been convicted or arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (c) The individual has been convicted or arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (d) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (e) The individual is a current registrant on the California Sex and Arson Registry.
- (f) 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.
- (g) The individual has been convicted within the past 5 years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony ("wobbler") for, or has been convicted within the last 15 years of a felony, or any of the offense categories listed in Government Code § 7282.5(a)(3). The examples of specific crimes listed under the categories set forth in § 7282.5(a)(3) is extensive and include some straight misdemeanor crimes (i.e. 242 PC) amongst the wobbler offenses. Officers shall verify a crime is, in fact, a wobbler offense prior to responding to an ICE notification request form. A straight misdemeanor conviction should not be considered qualifying criteria under § 7282.5(a)(3). (Sheriff's Office members personnel shall refer to the Sonoma County Sheriff's Office Immigration Notification Matrix for listed exceptions).

415.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification or transfer request along with information as to whether the Sheriff's Office intends to comply with the request (Government Code § 7283.1).

If the Sheriff's Office 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).

Sheriff's Office members shall not provide personal information, as defined in Civil Code § 1798.3, about an individual, including, but not limited to, the individual's home address or work address, to immigration authorities unless that information is available to the public.

415.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Sonoma County Sheriff's Office 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

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attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

415.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (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.

415.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Detention Records supervisor shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Detention Information Bureau Manager for required reporting to the DOJ (Government Code § 7284.6(c)(2)).

415.8 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)).

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 Investigative Bureau supervisor assigned to oversee the handling of any related case. The Investigative Bureau 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 1-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). The certification shall be

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- completed and not refused for the specified reasons in Penal Code § 679.10(k)(3).
3. Form 1-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.110(3).
 4. Forward the completed Form 1-918 Supplement B certification or completed Form 1-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)
- (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.
1. If Form 1-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).
- (e) Inform the victim liaison of any requests and their status.

415.8.1 TIME FRAMES FOR COMPLETION

Deputies 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).

Deputies 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 (as defined in Penal Code § 679.10 and Penal Code § 679.11) 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.

415.8.2 REPORTING TO LEGISLATURE

The Investigative Bureau 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).

415.8.3 POLICE REPORTS

Upon request, the Office shall provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

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415.9 TRAINING

The Training Lieutenant 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.).