

Immigration Violations

438.1 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.

438.1.1 DEFINITIONS

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

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.

438.2 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. UCIPD, on the other hand, has primary responsibility for preserving and protecting public safety for the University community. Community trust and cooperation is essential to effective law enforcement on campus and other University property.

The limited resources of UCIPD should not be diverted from this mission to the enforcement of federal immigration laws; UCIPD shall not enforce federal immigration law.

UCIPD should avoid actions that create a disincentive to report crime, or to offer testimony as a witness to a crime, such as requesting information about immigration status from crime victims and witnesses.

In accordance with the California Values Act, Government Code section 7284.6(a)(1), UCIPD shall not use University resources 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 federal immigration "hold" request.
- C. Providing information to federal immigration enforcement agencies regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public.
- D. Providing an individual's home address, work address or other personal information, as defined in Section 1798.3 of the Civil Code, unless that information is available to the public.
- E. Making or intentionally participating in arrests based on civil immigration warrants

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- 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.

438.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be advised that immigration enforcement is the responsibility of the federal government.

438.3.1 BASIS FOR CONTACT, DETENTION, QUESTIONING OR ARREST

UCIPD Officers shall not contact, detain, question or arrest an individual solely on the basis of suspected undocumented immigration status or to discover the immigration status of an individual.

438.3.2 NO SWEEPS

The UC Irvine Police Department does not conduct sweeps or other concentrated efforts to detain suspected undocumented persons.

When law 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.

438.3.3 ICE REQUEST FOR ASSISTANCE

Requests by federal immigration officials for assistance from UC Irvine Police Department should be directed to the Chief of Police or designee, who will determine the department's response.

In accordance with the California Values Act, UCIPD shall not:

1. Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers of special federal deputies for purposes of immigration enforcement.
2. Use immigration authorities as interpreters for law enforcement matters relating to individuals in UCIPD custody.
3. Provide office space exclusively dedicated for immigration authorities to use within a UCIPD facility.

In accordance with the California Values Act, this department shall not participate in enforcement or investigative duties associated with a joint law enforcement task force, as defined in Section 7284.4(g) of the California Government Code, including the sharing of confidential information, unless the (1) primary purpose of the joint law enforcement task force is not immigration enforcement, and (2) the enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement. (Gov. Code §7284.6(b)).

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Nothing in this policy shall prohibit UCIPD from managing the flow of traffic, peacekeeping, ensuring officer safety, or other activities necessary to prevent personal injury and/or property damage.

Members of this department shall not participate in federal operations as part of any federal immigration detention team. Any detention by a member of this department must be based upon the reasonable belief that an individual is involved in criminal activity in violation of laws other than federal immigration laws. County jail authorities, rather than members of this department, have responsibility for compliance with the California Truth Act, the California TRUST Act, and the California Values Act provisions on providing information about or transferring individuals to the custody of federal immigration authorities.

438.3.4 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 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.

438.3.5 ARREST AND BOOKING

Whenever an individual is arrested for a misdemeanor violation, the arresting officer shall process that individual pursuant to California Penal Code § 853.6 and the department's Cite and Release Policy. County jail bookings for misdemeanors should be approved by the watch commander.

Individuals arrested for felony violations should be booked in the County jail according to local policy. Upon booking, County jail authorities, rather than members of this department, have responsibility for any actions required by the California Truth Act, by the California TRUST Act, and by the California Values Act in connection with providing information about or transferring individuals to the custody of federal immigration authorities.

438.4 INFORMATION SHARING

UCIPD 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.

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.

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Nothing in this policy on Immigration Violations is intended to restrict officers from responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

Nothing in this policy on Immigration Violations is intended to restrict officers from exchanging with ICE information regarding the citizenship or immigration status, lawful or unlawful, of any individual, to the extent such restriction is inconsistent with the requirements of 8 USC § 1373 and 8 USC § 1644.

438.4.1 GUIDANCE SURROUNDING USE OF NON-CRIMINAL HISTORY INFORMATION

UCIPD should adopt the following policies surrounding the use of non-criminal history database information:

1. As part of any application, memorandum of understanding, or agreement to access any law enforcement databases, LEAs should inquire regarding the purpose for which the LEA intends to use the information contained within the database. Users who state that they will be using the information for immigration enforcement purposes should be required, as a condition for accessing the UCIPD database, to agree that they will only do so for those individuals with a criminal history, or for information regarding the immigration or citizenship status of any individual. Users should likewise be required to agree they will not use non-criminal history information, aside from information regarding immigration or citizenship status, for immigration enforcement purposes.
2. UCIPD database login screens that provide access to CLETS, other DOJ criminal justice information systems, as well as UCIPD databases should be updated to include instruction on the proper use of the information contained in the database.
Sample language is provided below:
"Federal, state or local law enforcement agencies shall not use any non- criminal history information contained within this database for immigration enforcement purposes. This restriction does not pertain to any information that is regarding a person's immigration or citizenship status pursuant to 8 U.S.C. §§ 1373 and 1644."
3. Any policies governing the use of non-criminal history information should include the above-referenced language.
4. Any data sharing agreements, memorandums of understanding, and/or contracts between law enforcement agencies and vendors/service providers should be updated to reflect policies that prohibit the use of non-criminal history information for immigration enforcement purposes.
5. Limit, wherever possible, the collection of personal information of victims and witnesses of crime(s). Further, consider adopting retention periods no longer than is necessary to fulfill the purpose justifying collection of the information.
6. Agencies should survey their databases to determine which databases contain criminal history information, non-criminal history information, and/or both criminal

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history and non-criminal history information to assist with audits, training, and policy compliance.

438.4.2 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)). Where UCIPD receives a request for assistance with a petition for U- Visa/T-Visa Nonimmigrant Status, if appropriate, the Chief of Police or his or her designee (the department) shall ensure the required declaration/certification documentation is completed in accordance with state law (Penal Code § 679.10; Penal Code § 679.11) and the procedures set forth below.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded within 24 hours to the Chief of Police or his or her designee assigned to supervise the handling of any related case. The department should ensure the following occurs

- (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, within the timeframes set forth in state law. (Penal Code § 679.10; Penal Code § 679.11).
- (e) Provide a written explanation for certification denials, including specific details of any reasonable requests for cooperation and a detailed description of how the individual refused to cooperate. (Penal Code § 679.10; Penal Code § 679.11).
- (f) Return completed certifications to the immigrant crime victim or the victim's representative without requiring them to come in person or the victim to provide a government#issued identification. (Penal Code § 679.10; Penal Code § 679.11).
- (g) 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.

438.4.3 TIME FRAMES FOR COMPLETION

The department, in cases of human trafficking as defined by Penal Code section 236.1, shall ensure the above process is followed and the documents needed for a T visa application are completed within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5). In accordance with Penal Code section 236.5, where the department finds that certification is inappropriate for a victim of trafficking in persons, the department shall within 15 days provide the victim with a letter explaining the grounds of the denial. If the victim submits additional evidence, the department must reconsider the denial of the certification within one week of the receipt of additional evidence.

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The department shall ensure the above process is followed and the documents needed for a U visa or T visa application pursuant to Penal Code section 679.10 and Penal Code section 679.11 are processed within 30 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings or if the individual asserts their qualifying family member will lose eligibility to apply for a U visa within 60 days (such as if the victim's noncitizen sibling will turn 18, the victim's noncitizen child will turn 21, or the victim will turn 21), the certification shall be processed within 7 days of the first business day following the day the request was received. (Penal Code § 679.10; Penal Code § 679.11).

438.4.4 REPORTING

The Chief of Police or his or her authorized designee should ensure that certification requests are reported to the Legislature by January 1 of each year. The report must include the number of certifications signed and the number denied, with data disaggregated by type (U visa or T visa). The report must comply with Government Code section 9795. (Penal Code § 679.10; Penal Code § 679.11).

438.5 ARREST OR DETENTION OF FOREIGN NATIONALS

Nothing in this policy prohibits mandatory notifications pursuant to Penal Code § 834c, which requires law enforcement officials to notify foreign nationals who are arrested that, upon request, they have the right to communicate with an official from the consulate of their country, or in some cases requires law enforcement officials to automatically notify the consulate of the foreign national's country. Section 834c does not authorize communication with United States immigration authorities, which is governed by the California Values Act.

438.6 TRAINING

The Chief of Police or designee should ensure that all appropriate members receive training on the issues covered in this section.

Initial law enforcement and UCIPD database security awareness training for new employees and ongoing biannual recertification should be updated to include questions to demonstrate knowledge of the updated policies regarding limitations on the use of non-criminal history information for immigration enforcement purposes.

438.7 AUDIT CRITERIA FOR NON-CRIMINAL HISTORY INFORMATION

When internal database compliance audits are conducted, UCIPD should ensure database users are in compliance with policies that limit the use of non-criminal history information for immigration enforcement purposes.