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# Immigration Violations

## 436.1 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.

### 436.1.1 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.

## 436.2 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. UCPD, 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 UCPD should not be diverted from this mission to the enforcement of federal immigration laws; UCPD shall not enforce federal immigration law.

Campus police 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.

## 436.3 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.

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### **436.4 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.).

### **436.5 NO SWEEPS**

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

When the 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,

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.

#### **436.5.1 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 (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.

#### **436.5.2 POLICE REPORTS**

Upon request, an officer or supervisor should 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).

### **436.6 IDENTIFICATION**

Whenever an individual is reasonably suspected of a criminal violation (infraction, misdemeanor or felony), the investigating officer should take reasonable steps to determine the person's identify 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 reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identify is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

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### **436.7 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 have the responsibility for any actions required by the California Truth Act and the California Trust Act.

### **436.8 INFORMATION SHARING**

The University of California, Irvine 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.

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.

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.

### **436.9 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 UCPD 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 procedure 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 supervisor the handing 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.

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(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) 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.

### **436.10 TIME FRAMES FOR COMPLETION**

The department, in cases of human trafficking as defined by Penal Code 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.

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 679.10 and Penal Code 679.11 are processed within 90 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, the certification shall be processed within 14 days of the request.