

Immigration

438.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Culver City Police Department, sworn and non-sworn, relating to immigration and interacting with federal immigration officials.

438.2 POLICY

It is the policy of the Culver City Police Department 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 department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their actual or perceived race, ethnicity, national origin, religion, color, sexual orientation/ identification, gender, gender identity, marital status, age, disability, political affiliation, or immigration status.

Except as otherwise specified below, it is the policy of the Culver City Police Department not to assist in the enforcement of federal immigration law. (Res. No. 2017-R025 § 3(1))

438.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel as secure as possible that contacting or being addressed by members of law enforcement will not 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 actual or perceived race, ethnicity, national origin, religion, color, sexual orientation/ identification, gender, gender identity, marital status, age, disability, political affiliation, or immigration status in any way that would violate the United States or California constitutions.

438.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for any purpose not specifically authorized under this policy and, if authorized, only to the extent necessary to achieve that purpose. (Government Code § 7284.6; Res. No. 2017-R025 § 2(5)).

Because place of birth may be perceived or used as a proxy for immigration status, inquiries into place of birth are permitted only as follows. With regard to an individual who is subject to arrest, such inquiries are permitted where necessary for law enforcement purposes unrelated to immigration enforcement. With regard to an individual who is interviewed voluntarily (including as a potential witness or victim), or who is temporarily detained but not under arrest, officers should not ask for or record his or her place of birth.

Officers may inquire into an individual's immigration status only in circumstances involving qualifying that individual for a U-Visa or T-Visa (8 USC § 1101(a) (15) (T) & (U)), as well as for the purposes of extending appropriate privileges and immunities to foreign diplomatic and consular representatives, in accordance with international law.

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438.5 DETENTIONS FOR IMMIGRATION VIOLATIONS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws, nor based on an immigration-related civil or administrative warrant or detainer (Government Code § 7284.6; (Res. No. 2017-R025 § 2(9)). An officer shall not detain any individual, for any length of time, on the basis of an actual or perceived criminal violation of federal immigration laws, absent a federal judicial warrant (Government Code § 7284.6).

438.5.1 DETENTIONS OR INVESTIGATIONS FOR NON-IMMIGRATION CRIMES

An officer shall not investigate or surveil an individual with respect to non-immigration crimes on the basis, in whole or in part, of such individual's actual or perceived immigration status (Res. No. 2017-R025 § 2(7)). When exercising reasonable discretion whether to detain, interrogate, or arrest an individual for a non-immigration crime, including whether to cite and release an individual with a notice to appear, officers shall make such decisions based on public safety considerations and not, in whole or in part, on an individual's actual or perceived immigration status (Res. No. 2017-R025 § 2(7), 3(3)).

When exercising such reasonable discretion, an officer shall accept a valid California AB60 driver's license, a federal non-compliant driver's license, as well as a Consular Card, as identification to the same extent, without discrimination, as any other valid California driver's license (Vehicle Code 12801.9).

438.5.2 EMERGENCY CARE FOR CHILDREN FOUND IN PRESENCE OF ARRESTED/ DETAINED INDIVIDUALS

Absent evidence of the child involved in commission of the crime suspected, child abuse, neglect or immediate danger to the child, an officer shall afford opportunity for a detained individual whose child is found in their presence and detained to call a family member, appropriate caregiver or close family friend to transfer care of said child to the family member, caregiver or close family friend prior to contacting the Department of Children and Family Services. Such opportunity should be afforded to the detained individual upon arrest, and should not be unreasonably delayed after detention. Communication of, or inquiries into, information related to the immigration status of the child, family member, guardian, care giver, or close family friend who may take custody of the child for purposes of immigration enforcement to the federal authorities shall follow the same prohibitions provided for in the instance of victims or witnesses in this policy.

438.6 FEDERAL REQUESTS FOR ASSISTANCE AND JOINT OPERATIONS

Department members shall not assist federal immigration officials nor grant any requests for such assistance unless specifically authorized by a supervisor. Such authorization by a supervisor is permitted only if such assistance is mandatory under federal or state law or is contractually obliged. This prohibition includes all assistance with or participation in any immigration enforcement operation or joint operation or patrol that involves, in whole or in part, enforcement of federal immigration law, except where, and limited to the extent that, Culver City Police Department involvement is necessary to protect public safety during a federal operation. It should be noted,

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for the purposes of this policy, actions to preserve public safety shall not include immigration enforcement actions.

(Government Code § 7284.2 et seq.; Res. No. 2017-R025 § 3(1)). In the event that any assistance provided to federal immigration authorities is authorized under this section, the Culver City Police Department shall notify the City Council as soon as possible.

438.7 INFORMATION SHARING & NOTIFICATIONS

Except as specified below, or absent a judicial warrant, court order, or subpoena, members of this department shall not release to federal immigration authorities any personal information of any sort, nor any information that may be used to locate any individual, unless for a law enforcement purpose unrelated to civil or criminal immigration law. Such information also may not be shared with any other person or agency with either the purpose or the reasonable likelihood that such person or agency will share such information with federal immigration authorities, unless for a law enforcement purpose unrelated to immigration law. (Government Code § 7284.6; Res. No. 2017-R025 § 2(6)).

Notwithstanding the above, no member of this department will prohibit, or in any way restrict, any other member of the department from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual, in accordance with (8 USC § 1373; Government Code § 7284.6 (e)):

- (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.

438.8 IMMIGRATION DETAINERS & NOTIFICATIONS

Individuals shall not be held based in whole, or in part, on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6; Res. No. 2017-R025 § 2(1)), (2), (9)).

Notification to a federal immigration authority shall not be made prior to release of an individual, nor shall any notification request be honored, unless 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 (Government Code § 7282.5; Government Code § 7284.6; Res. No. 2017-R025 §§ 2(6), 3(1)).

438.9 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 Culver City Police Department intends to comply with the request (Government Code § 7283.1). Individuals in custody may request and be afforded translation of said documentation.

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If the Culver City 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). Individuals in custody may request and be afforded translation of said documentation.

438.10 ACCESS TO DETAINED INDIVIDUALS OR CCPD FACILITIES

Department members shall not grant federal immigration officials access to any person in custody, or to any nonpublic area of Department facilities, unless specifically authorized by a supervisor. Such authorization by a supervisor is permitted only if such access is mandated by a court order or is necessary for law enforcement purposes unrelated to immigration enforcement. (Res. No. 2017-R025 § 2(3)). In the event that any federal immigration official is provided access under this section, the Culver City Police Department shall notify the City Council as soon as possible. In the event that any federal immigration official is provided access under this section, the department shall ensure that they are clearly identified as federal immigration agents (Res. No. 2017-R025 § 2(4)).

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Culver City 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.

438.11 TRANSFERS TO IMMIGRATION AUTHORITIES

Department members shall not transfer an individual to federal immigration authorities unless specifically authorized by a supervisor. Such authorization by a supervisor is permitted only if 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 (Govt. Code § 7284.6(a)(4); Res. No. 2017-R025§ 2(2), (3), 3(1)).

In the event that any transfer to federal immigration officials is authorized under this section, the Culver City Police Department shall notify the City Council as soon as possible.

438.12 INTERMEDIARIES

Department member shall not take actions that allow this policy to be circumvented by enabling other persons or agencies, including other law enforcement agencies, to engage in conduct that would be prohibited under this policy if undertaken by members of this department. This includes, but is not limited to, sharing information that a department member reasonably expects will then be shared with federal immigration officials or transferring custody to an agency that will then transfer custody to federal immigration officials. Nothing in this section shall prohibit cooperation with other persons or agencies for purposes unrelated to immigration enforcement. Where reasonably feasible, the department shall take steps to limit the terms of such cooperation so as to prevent other agencies from using such cooperation to assist federal immigration officials.

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438.13 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 Community Services Bureau Commander assigned to oversee the handling of any related case. The Community Services Bureau Commander 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.

438.14 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 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.

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438.15 REPORTING TO LEGISLATURE

The Community Services Bureau Commander 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).

438.16 TRAINING

The Training Manager shall ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Identifying judicial warrants versus civil or administrative warrants, immigration detainers, and orders of removal.
- (c) Trainings should include the contents of this policy, as well as the Trust Act, Truth Act, and California Values Act (Government Code § 7282-7284.12 et seq.), the Culver City Sanctuary City Resolution (Res. No. 2017-R025), and AB60 (Vehicle Code § 12801.9).
- (d) Handling of mixed status families held in custody.