

Immigration Violations

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the CSU Police Department, San Luis Obispo related to the actual or perceived immigration status of suspects, victims of crimes, witnesses in investigations, or other related police operations. The California State University is proud of the diversity of its students and employees and strives to foster a campus community where all members of our university community are not hesitant or afraid to come forward or interact with The University Police department for fear of intervention by U.S. Immigration and Customs Enforcement (ICE). The University Police Department is committed to providing an environment in which all students and employees can pursue their studies, careers, and professional development successfully.

428.1.1 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.

428.2 POLICY

It is the policy of the CSU Police Department, San Luis Obispo 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 national origin or immigration status.

Primary jurisdiction for enforcement of federal immigration laws concerning unlawful entry into the United States rests with U.S. Immigration and Customs Enforcement (ICE), not with the University Police. The University Police will not enter into agreements with state or local law enforcement agencies, ICE, or any other federal agency for the enforcement of federal immigration law, except as consistent with California Government Code §§7282 et seq. or as required by law.

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The University Police Department will not honor ICE immigration hold requests, unless doing so is consistent with California Government Code § 7282.5 or as required by law.

Individuals will not be contacted, detained, questioned, or arrested solely on the basis of being or suspected of being an undocumented immigrant, except as required by law.

The University Police Department should not be diverted from the critical mission of keeping the campus safe by participating in enforcement of federal immigration law or by assisting federal immigration authorities, unless required by law or for officer safety needs and preservation of peace.

428.3 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.

428.4 PROCEDURES FOR IMMIGRATION COMPLAINTS

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

Individuals will not be contacted, detained, questioned, or arrested solely on the basis of being or suspected of being an undocumented immigrant, except as required by law. An officer should not detain any individual, for any length of time, solely for a civil violation of federal immigration laws (e.g., unauthorized entry or visa expiration) or a related civil warrant.

The Department does not conduct or participate in enforcement "sweeps" or other concentrated efforts related to immigration status, other than maintaining campus safety and order or for officer safety needs.

Unless immigration status is relevant to another criminal offense or investigation as required by law (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented immigrant shall not be the basis for contact, detention, or arrest.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information, not related to immigration status, with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

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428.4.1 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).

428.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

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

428.5 DETENTIONS AND ARRESTS

An officer 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).

An officer 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 8 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 officer 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 prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

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

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

428.5.1 RECORDS

UPD will not maintain a database or aid federal efforts to create a registry regarding an individual's immigration status, citizenship status, country of birth or based on any other protected characteristics of victims, witnesses or suspects of crimes unless required by law.

428.5.2 SUPERVISOR RESPONSIBILITIES

When notified that an officer 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.

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- (b) Transfer the person to jail.

428.6 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.).

428.6.1 ICE REQUESTS FOR ACCESS TO CAMPUS

Any request by immigration agents for access to campus records and facilities for enforcement or investigation shall be initially denied and immediately forwarded to the Chief of Police or Deputy Chief of Police and Campus General Counsel for review and legal consideration.

Should an immigration agent request access to a campus facility or record, UPD will verify legal authority and a warrant signed by a federal or state judge describing the purpose for which they request entry and will consult with CSU or campus Office of General Counsel before allowing entry or record.

ICE will not be permitted to use campus facilities for immigration enforcement purposes unless mandated by court order or to provide emergency safety needs.

428.7 INFORMATION SHARING

No member of this department 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 department 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.

428.7.1 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.

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428.7.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Investigations Division 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 Communications and Records Specialist for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Division Policy).

428.8 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 Investigations Division supervisor assigned to oversee the handling of any related case. The Investigations Division 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 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.

428.8.1 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

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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.

428.8.2 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).

428.9 TRAINING

The Training Sergeant 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.).

428.10 TRAINING

The Training Sergeant shall ensure that all members receive immigration status training on how to implement this policy.