
Immigration Violations

427.1 PURPOSE AND SCOPE

In accordance with the intent of the March 9, 2017, statement by the Santa Clara County Police Chief's Association, it is neither local law enforcement's mission nor role to enforce federal immigration laws. Members of this Department will not detain or arrest any person on the basis of a person's citizenship or status under civil immigration laws.

The Department recognizes that mutual trust and respect is the cornerstone in building a solid foundation for success in protecting and serving the entire community, and in seeking justice for all victims of crime. Members of this Department are expected to treat everyone with dignity, regardless of status.

Law-abiding, undocumented immigrants should not fear arrest or deportation for coming forward to members of the Department to report a crime as a victim or witness. Without this cooperation, the Department would be less effective in fulfilling its mission. As such, the Department seeks to serve and protect in a ways that calms fear and builds trust, and it is incumbent upon all members of this department to make a personal commitment to organizational values, equal enforcement of the law and equal service to the public, regardless of immigration status.

DEFINITIONS

Administrative Warrants - Administrative warrants, also called hold requests or retainers, are issued by a government agency, typically by Immigration and Custom Enforcement officials' finding that a person is removable from the United States.

Alien - An individual who is not a U.S. citizen or U.S. national.

Illegal Alien - Also know as an "Undocumented Alien," or "Undocumented Immigrant," is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen "out of status" and is deportable.

Immigrant - An alien who has been granted the right to reside permanently in the United States and to work without restrictions in the United States. Also known as Lawful Permanent Resident, all immigrants are eventually issued a "green card."

Judicial Warrants - Judicial warrants are criminal warrants issued by a judicial officer, typically a magistrate judge.

Nonimmigrant - An alien who has been granted the right to reside temporarily in the United States based upon status that corresponds to the class of visa. Each nonimmigrant status has rules that must be followed in order for the nonimmigrant to remain "in status." A nonimmigrant who violates applicable rules will fall "out of status" and is considered deportable.

U.S. National - An individual who owes his / her sole allegiance to the United States, including all U.S. citizens, and including some individuals who are not U.S. citizens.

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427.2 DEPARTMENT POLICY

The responsibility for enforcement of civil immigration laws rest with the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO).

The Department will continue to cooperate while ICE in matters involving serious crimes, the protection of public safety, and as required by statute, federal regulation, or court decisions. The Department will not cooperate with the enforcement of civil immigration violations enumerated in Title 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326.

427.3 VICTIMS, WITNESSES, AND IMMIGRATION STATUS

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, color or national origin in any way that would violate the United States or California Constitutions.

427.4 BASIS FOR CONTACT

The 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 detain or arrest shall be based upon those factors which establish reasonable suspicion and probable cause respectively, and not on arbitrary aspects. Race, nationality, ethnicity, country of origin, inability to speak English, "foreign" appearance, dress, mannerisms, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to contact, detain, or arrest.

Officers will not detain or question a person for the purpose of discovering either the person's citizenship or status under civil immigration laws.

Officers will not detain or arrest any person on the basis of the person's citizenship or status under civil immigration laws.

Members of the Department will not initiate police action where the primary objective is to discover that the person is an undocumented immigrant or to discover the status of the person under civil immigration laws.

427.5 ASSISTING ICE

The Department does not conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

If a specific request is made by ICE or any other federal agency, this department may provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis

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or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity, or where there is a valid judicial warrant.

ICE personnel shall not be allowed access to individuals detained or held at the Department, unless their access is required in the course of a criminal investigation, pursuant to a judicial warrant, or while providing services unrelated to the enforcement of civil immigration law.

Members of this Department will be clearly identified as Mountain View Police Department personnel.

427.6 NOTIFICATION OF IMMIGRATION AND CONSULAR NOTIFICATION

Generally, members of this department should not ask the immigration status of individuals taken into custody. The United States Department of State Consular Notification policy requires law enforcement to notify certain consular offices when a Foreign National is in custody. (Refer to Department policy and the U.S. Department of State website for complete details. <https://travel.state.gov/content/travel/en/consularnotification.html>). In these instances, the officer shall gather information to determine if consular notification applies.

427.7 CONSIDERATIONS PRIOR TO REPORTING TO ICE

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. In making the determination whether to notify ICE in such circumstances, the officer, in consultation with a supervisor and approval from a command staff member, shall consider the seriousness of the offense and the potential impact to community safety.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

427.8 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)). A law enforcement certification for a U visa may be completed by an officer in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by an officer in order for a T visa to be issued.

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Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Professional Standards Unit who is assigned to oversee the handling of these request. The Professional Standards Unit shall:

- (a) Consult with the assigned investigator's supervisor 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.

427.8.1 SANTA CLARA COUNTY U VISA CERTIFICATION REQUEST HANDLING

In order to comply with prosecution's discovery obligations, a procedure has been adapted by county protocol to ensure that our department notifies the District Attorney's Office when they receive request to certify U Visas. The following is the protocol that is adopted in Santa Clara County:

- (a) If the department receives a request to certify or recertify a U Visa and the department has previously submitted the associated criminal case to the District Attorney's Office, or intends to submit the case to the District Attorney's Office, the department shall forward the U Visa certification request and documents to the designated persons at the District Attorney's Office.
- (b) If the department receives a request to certify or recertify a U Visa and the department has closed the case without submitting it to the District Attorney's Office, the department shall make the certification decision. The department shall then notify the designated persons at the District Attorney's Office. The notification shall include the name and date of birth of the person or persons applying for the U Visa and the department's decision regarding the certification. The notification shall include the case number and shall include a brief reason for the agency's decision.

427.8.2 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

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a 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 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.

427.8.3 REPORTING TO LEGISLATURE

The Professional Standards Unit 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).

427.9 TRAINING

The Personnel & Training Sergeant shall ensure that all appropriate members receive immigration training.