

# Immigration Violations

## 414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines and the legal requirements relating to immigration in a non-custodial setting. The Custody and Court Operations Manual section 1206 addresses immigration guidelines related to custodial settings.

### 414.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code §§ 7283):

**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.

**Hold request** - A federal Immigration and Customs Enforcement (ICE) request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE.

**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.

## 414.2 POLICY

It is the policy of the Orange County Sheriff's Department that all Members make a personal and professional commitment 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.

## 414.3 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,

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Members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

### **414.4 IMMIGRATION INQUIRIES PROHIBITED**

Members shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6). This does not prevent Members from inquiring into a victim's immigration status in order to determine whether they are a victim of a crime or trafficking victim in order to obtain a U or T Visa, or asking arrestees/inmates about place of birth or citizenship to comply with consular notification requirements (see 414.5.1).

#### **414.4.1 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).

### **414.5 DETENTIONS AND ARRESTS**

The immigration status of a suspect does not limit a Member's ability to contact, investigate, detain based on reasonable suspicion, or arrest a suspect based on probable cause for a violation of a California state statute or local ordinance as long as the Member did not initiate the investigation because of the suspect's immigration status. However, Members shall not detain any individual, for any length of time, for a civil violation of federal immigration laws, a civil immigration warrant, a hold request, or any other immigration enforcement purposes except as set forth below.(Government Code § 7284.6).

A Member 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 Member 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

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

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

#### **414.5.1 CONSULAR NOTIFICATION**

In the event a known or suspected foreign national is arrested and booked or detained for more than two hours, they shall be advised of their right to communicate with an official from the consulate of their country. This notification shall be done by the arresting officer. If the foreign national is a citizen of one of the Countries requiring mandatory notification, the notification shall be done by the arresting officer regardless of the foreign national's request to the contrary (Penal Code § 834c).

#### **414.6 FEDERAL REQUESTS FOR ASSISTANCE**

A Member shall not assist immigration authorities with the enforcement of immigration law or perform the functions of an immigration officer. 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, with guidance from the Department Commander, is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

##### **414.6.1 SCOPE OF DEPARTMENT PARTICIPATION**

The Orange County Sheriff's Department may participate in joint law enforcement task forces with federal authorities if the primary purpose of the task force is not immigration enforcement. The primary purpose must be both lawful and related to a violation of state or federal law that is unrelated to immigration enforcement. While on a task force with federal authorities, confidential information may be shared for the purpose of the investigation being conducted. Federal immigration authorities cannot be used as interpreters.

##### **414.6.2 FEDERAL USE OF DEPARTMENT FACILITIES**

Immigration authorities cannot be provided with dedicated office space within Department facilities, or house federal detainees for purposes of civil immigration custody (Government Code § 7284.6).

#### **414.7 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

1) The Population Management Unit Sergeant 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 for required annual reporting to the DOJ (Government Code § 7284.6(c)(2)).

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2) If the Orange County Sheriff's Department participates in a joint law enforcement task force, where personnel or resources are dedicated on an ongoing basis, the Investigative Administration Manager(s) will report the following information to the Attorney General annually (Government Code § 7284.6(c)(1):

- a. The purpose of the task force
- b. The federal, state and local law enforcement agencies involved
- c. The total number of arrests made during the reporting period
- d. The number of people arrested for immigration enforcement purposes.

See Lexipol policy 609 U Visa and T Visa Certification and Custody and Court Operations Manual (CCOM) section 1206 Immigration for additional details.