

Immigration Violations

418.1 PURPOSE AND SCOPE

Best Practice

The purpose of this policy is to provide guidelines to members of the South San Francisco Police Department relating to immigration and interacting with federal immigration officials.

418.1.1 DEFINITIONS

State

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.

418.2 POLICY

Federal

It is the policy of the South San Francisco 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 national origin or immigration status.

418.3 VICTIMS AND WITNESSES

Best Practice

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.

418.4 IMMIGRATION INQUIRIES PROHIBITED

State MODIFIED

Officers shall not inquire into an individual's immigration status, nor require anyone to produce any immigration documents, for immigration enforcement purposes (Government Code § 7284.6).

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418.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

State

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).

418.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

State

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

418.5 CIVIL , ADMINISTRATIVE, OR OTHER IMMIGRATION VIOLATIONS

Agency Content

Officers shall not detain or arrest any individual for any length of time, for any civil or administrative violation(s) of federal immigration laws, for a related civil warrant, or for any other criminal immigration violation of federal immigration laws, except as specifically allowed per Department Policy sections 418.6 (Arrests for Federal Judicial Warrants) and 418.7 (Detentions for Previously Convicted Aggravated Felons with Unlawful Reentry) as noted below (Government Code § 7284.6)

418.6 ARRESTS FOR FEDERAL JUDICIAL WARRANTS

Agency Content

When an Officer who has already lawfully contacted or detained a subject finds that subject has a federal judicial warrant (signed by a Judge or Magistrate) for a validated ***criminal offense*** (*not* a detention or civil order), they should verify the subject's identity and verify the validity of the warrant (through Communications to the issuing agency). If both are confirmed and validated, then the Officer may arrest the subject and book them into San Mateo County jail.

418.7 DETENTIONS FOR PREVIOUSLY CONVICTED AGGRAVATED FELONS WITH UNLAWFUL REENTRY

State MODIFIED

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 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). This verification

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should be done by the on-duty supervisor and not the Communications division. 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 detain 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).

Officer(s) shall notify the on-duty Watch Commander or Supervisor as soon as practicable whenever an individual is detained for violation of 8 USC § 1326(a). The on-duty Watch Commander or Supervisor shall promptly review the circumstances and if they believe there is a violation, they shall immediately notify the Captain or Chief of Police. No arrest or prolonged detention shall be made of a subject for a violation of 8 USC § 1326(a) (unlawful reentry) without the express approval of a Captain or the Chief of Police.

418.7.1 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED**

When notified that an officer has detained an individual for a possible violation of 8 USC § 1326(a), the Captain or Chief of Police should determine whether it is appropriate to notify and transfer the person to federal authorities.

418.7.2 AGGRAVATED FELONY DEFINED

Agency Content

In reference to 8 USC § 1326(a) (unlawful reentry) the following definition for "aggravated felony" [as listed in U.S. Code §#1101 subsection 43] applies:

- (a) murder; rape; or the sexual abuse of a minor;
- (b) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);
- (c) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);
- (d) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (e) an offense described in— (i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses); (ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or (iii) section 5861 of title 26 (relating to firearms offenses);

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- (f) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year;
- (g) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at 5 least one year;
- (h) an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);
- (i) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);
- (j) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (k) an offense that— (i) relates to the owning, controlling, managing, or supervising of a prostitution business; (ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or (iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
- (l) an offense described in— (i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18; (ii) section 3121 of title 50 (relating to protecting the identity of undercover intelligence agents); or (iii) section 3121 of title 50 (relating to protecting the identity of undercover agents);
- (m) an offense that— (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or (ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- (n) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this chapter
- (o) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (p) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this chapter;
- (q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

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- (r) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
- (s) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
- (t) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
- (u) an attempt or conspiracy to commit an offense described in this paragraph. The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

418.8 U VISA AND T VISA NONIMMIGRANT STATUS

Federal

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 Criminal Investigations Bureau supervisor assigned to oversee the handling of any related case. The Criminal Investigations Bureau 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). The certification shall be completed and not refused for the specified reasons in Penal Code § 679.10(k) (3).
 3. Form I-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The

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declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.11(j)(3).

4. Forward the completed Form I-918 Supplement B certification or completed Form I-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)
- (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.
1. If Form I-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).
- (e) Inform the victim liaison of any requests and their status.

418.8.1 TIME FRAMES FOR COMPLETION

State

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 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.

418.8.2 REPORTING TO LEGISLATURE

State

The Criminal Investigations Bureau supervisor 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).

418.8.3 POLICE REPORTS

State

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).

418.9 INFORMATION SHARING

Federal

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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.

418.9.1 IMMIGRATION DETAINERS

State **MODIFIED**

Individuals shall not be held based solely on a federal immigration detainer or administrative or civil warrant under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions listed below (Government Code § 7282.5; Government Code § 7284.6). No such notification shall be made without the express approval of a Captain or the Chief of Police:

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) 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.

418.9.2 NOTICE TO INDIVIDUALS

State

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 South San Francisco Police Department intends to comply with the request (Government Code § 7283.1).

If the South San Francisco 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).

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418.9.3 ICE INTERVIEWS

State

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

418.9.4 TRANSFERS TO IMMIGRATION AUTHORITIES

State **MODIFIED**

Members shall not transfer an individual to immigration authorities unless approved by a Captain or the Chief of Police and 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.

418.9.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

State

The Criminal Investigations Bureau 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 Records Manager for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Division Policy).

418.10 FEDERAL REQUESTS FOR ASSISTANCE

State

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.).

418.11 TRAINING

State

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

Training should include:

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- (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.).

418.12 PROCEDURES FOR IMMIGRATION COMPLAINTS

Agency Content

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of Title 8, United States Code.

418.13 SWEEPS

Agency Content

The South San Francisco Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, due to an increase in criminal activity or in response to specific complaints, all members of the South San Francisco Police Department should give equal consideration to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

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.

418.14 ICE REQUESTS FOR ASSISTANCE

Agency Content

If a specific request is made by ICE or any other federal agency for anything related to immigrations violations or immigrations enforcement, the South San Francisco Police Department will only provide support services (if available) and only when it involves immediate or imminent officer or public safety threat(s), keep-the-peace efforts, or other exigent circumstances necessitating immediate assistance during a federal operation.

Members of the South San Francisco Police Department will not participate in such ICE operations as part of any detention team unless it is in direct response to a request for assistance for officer safety. Any detention by a member of the South San Francisco Police Department should be based upon the reasonable belief that an individual is involved in criminal activity other than immigration status.

418.15 CONSIDERATIONS PRIOR TO REPORTING TO ICE

Agency Content

The South San Francisco 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

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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 shall not attempt to determine the immigration status of crime suspects, victims or 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. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer will not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

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).