

DAVIS POLICE DEPARTMENT

Immigration Procedures Policy and Procedure 2.43-A

DEPARTMENT MANUAL

Index as:

Immigration

ICE

Undocumented non-citizens

Visas, U & T

U Visa

T Visa

I. POLICY

It is the policy of the Davis 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 individuals, regardless of their 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. Members will not seek out and prosecute individuals because of their immigration status, nor will members take immigration status into account when determining whether to detain a person or when enforcing criminal laws. Encounters involving individuals will be governed by the California Values Actⁱ. While it may be necessary to determine the identity of an individual, 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 Constitutionsⁱⁱ.

II. PROCEDURE

A. Criminal Offenses vs. Civil Offenses

1. Members will enforce valid arrest warrants issued by California and Federal Courts (the arrest warrant must be signed by a neutral and detached magistrate and order the arrest of the person). Members will also enforce local, state and federal criminal laws under applicable Constitutional constraints and without regard to legal immigration status.
2. Members may not detain a person solely to investigate immigration status or detain or arrest a person based on the following Department of Homeland and Security (DHS) detainers/warrants (see California Values Act):
 - a. DHS Form I-247 Immigration Detainer – Notice of Action (I-247 detainerⁱⁱⁱ);
 - b. DHS Form I-247A Immigration Notice – Notice of Action (I-247A detainer^{iv});
 - c. DHS Form I-200 Warrant for Arrest of Alien (I-200 Warrant^v); or
 - d. DHS Form I-205 Warrant of Removal/Deportation (I-205 Warrant^{vi}).
3. Criminal Entry and Federal Offenses

An individual who enters into the United States illegally has committed a misdemeanor for their first offense and a felony for any subsequent offenses. (8 USC § 1325(a)). DHS

through Immigrations and Customs Enforcement (ICE) and Customs & Border Protection (CBP) enforce federal criminal entry laws. Members may not enforce criminal entry laws absent a criminal arrest warrant signed by a neutral and detached federal magistrate.

4. Civil Detainers and Civil Arrest Warrants

Generally, a person without citizenship who initially made a legal entry into the United States, but has remained beyond what is a legal period of time, has committed a federal civil offense. Additionally, a person without citizenship may be subject to civil deportation for committing certain crimes within the United States.

- a. ICE may issue I-247, I-247A, I-200 and I-205 detainers/warrants, which are civil administrative warrants to hold individuals in order to enforce federal removal orders or determine whether to initiate deportation proceedings under federal law^{vii}. I-247, I-247A, I-200 and I-205 detainers/warrants are not criminal arrest warrants, they are not court orders, and they are not issued by a neutral and detached magistrate as an arrest warrant is. They are unsworn documents that may be issued by a wide variety of immigration enforcement agents and deportation officers. (8 C.F.R. § 287.7(b)). They are issued when a federal agent believes they have probable cause the subject is a removable alien. They do not represent a finding of a person's immigration status. The fact that ICE has issued a detainer does not mean that the subject is actually a non-citizen subject to deportation.^{viii}
- b. Individuals will not be held in Davis PD custody solely on an I-247 or I-247A detainer or an I-200 or I-205 Warrant issued pursuant to 8 C.F.R. § 287.7.
- c. An officer cannot detain or arrest any individual, for any length of time, for a civil violation of federal immigration laws or related civil warrants. Detentions and warrantless arrests must be made in accordance with 4th Amendment requirements requiring reasonable suspicion and probable cause and in accordance with California law. (CA TRUST ACT^{ix}).

B. Arrest Notification to ICE

It is not necessary to notify ICE when booking arrestees at the Davis Police Department or at the Yolo County jail. Biometric notification is made through fingerprints at time of booking, which normally occurs at the Yolo County jail.

C. ICE Requests for Assistance

1. General requests by ICE or any federal agency for assistance regarding immigration matters should be directed to a sworn police administrator^x (see California Values Act).
2. Requests for emergency assistance by ICE or any federal agency will be directed to the duty Watch Commander who will direct an appropriate response. The Watch Commander will provide administrative notification as soon as possible after receiving the request.
3. When conducting criminal investigations that are unrelated to immigration violations, in determining whether notification to, or cooperation with, ICE is appropriate, an officer should, in consultation with the Police Chief or a Deputy Police Chief, consider the totality of circumstances of each case, including, but not limited to:
 - a. Seriousness of the offense^{xi}
 - b. Community safety
 - c. Potential burden on ICE or other federal agency
 - d. Impact on the community

4. A member may not interfere with ICE or any federal officer performing their duties.

D. Information Sharing

1. Information sharing with ICE and federal agencies shall be in accordance with local, state and federal laws.^{xii xiii}
2. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of sharing information with ICE.

E. Notice to Individuals (TRUTH ACT)

Individuals who are arrested on fresh criminal charges or pursuant to a valid arrest warrant will be timely released on a Notice-to Appear or taken to the Yolo County Jail as required by state law and department policy. Because individuals are not held at the Davis Police Department for more than a very limited period of time, the TRUTH Act has little to no application to Davis Police Department operations. In the event that ICE does make a direct request to hold or contact an individual who is in-custody at the Davis Police Department, the officer receiving the request shall contact the Police Chief or a Deputy Police Chief for further direction^{xiv}. Pursuant to Government Code § 7283.1, in all cases;

1. Individuals shall be given a copy of documentation received from ICE regarding a hold, notification or transfer request along with information as to whether the Police Department intends to comply with the request. Members will not hold a person on an I-247, I-247A, I-200 or I-205 detainer/warrant (see II, A. above).
2. If ICE is notified 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 their attorney or to one additional person who the individual may designate.
3. The Davis Police Department will notify the City Council of the requirement to hold a community forum annually if the Police Department allows ICE access to any individual.
4. Before any interview between ICE personnel and an individual in custody for civil immigration violations, the Davis 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.^{xv}

F. U and T Visas

1. 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 the Police Chief or his/her designee in order for a U visa to be issued.
2. 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 the Police Chief or his/her designee in order for a T visa to be issued.
3. Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Police Chief. The Police Chief or his/her designee shall:

- a. Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
 - b. Contact the Assistant Chief Deputy District Attorney 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.
 - d. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.^{xvi}
 - e. Form I-918 Supplement B certification shall be completed if the victim qualifies under California Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under California Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
 - f. 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.
 - g. Inform the victim liaison of any requests and their status.
4. T visa applications shall be completed and processed within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (California Penal Code §§ 236.1 & 236.5).
 5. T and U visa requests shall be processed 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.
 6. The Police Chief or his/her 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 California Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).
- G. Professional Standards shall ensure that all appropriate members receive immigration training.

Darren Pytel
Police Chief
12/16

04/17 updates due to ICE Policy 10074.2
12/17 California Values Act added

ⁱ 7284.6.

(a) California law enforcement agencies shall not:

(1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(A) Inquiring into an individual's immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

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- (D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.
- (E) Making or intentionally participating in arrests based on civil immigration warrants.
- (F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.
- (G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.
- (2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.
- (3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
- (4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Section 7282.5.
- (5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.
- (6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8 (commencing with Section 7310).
- (b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:
- (1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).
- (2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.
- (3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:
- (A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.
- (B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.
- (C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.
- (4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.
- (5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).
- (c)
- (1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The law enforcement agency shall report the following information, if known, for each task force of which it is a member:
- (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.
- (2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer, pursuant to paragraph (4) of subdivision (a).
- (3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or

would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

ⁱⁱ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. 14th Amend.)

ⁱⁱⁱ <https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>

^{iv} <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>

^v https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF

^{vi} https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

^{vii} <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>

^{viii} Immigration detainees are not the same as criminal detainees governed by the Interstate Agreement on Detainers (Government Code § 7282 & Penal Code § 1389). Criminal detainees do not request or purport to authorize additional time in custody; they are lodged when a prisoner has actual criminal charges pending in a different jurisdiction, and the statutes provide prisoners with a prompt procedural mechanism for disputing or resolving those pending charges. Immigration detainees, in contrast, are lodged when there may be no pending immigration proceedings; they ask the custodian to extend a person's time in custody, and they lack any due process mechanisms that persons can invoke to contest the extended custody.

^{ix} A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). See also Trust Act - Government Code § 7282.5. State and local participation in federal immigration enforcement programs raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status. See *Sanchez Ochoa v. Campbell, et al.* (E.D. Wash. 2017) 2017 WL 3476777; *Trujillo Santoya v. United States, et al.* (W.D. Tex. 2017) 2017 WL 2896021; *Moreno v. Napolitano* (N.D. Ill. 2016) 213 F. Supp. 3d 999; *Morales v. Chadbourne* (1st Cir. 2015) 793 F.3d 208; *Miranda-Olivares v. Clackamas County* (D. Or. 2014) 2014 WL 1414305; *Galarza v. Szalczyk* (3d Cir. 2014) 745 F.3d 634. The Fourth Amendment requires that seizures be objectively reasonable in light of the facts and circumstances. *Graham v. Connor*, 490 US 386, 397 (1989). Prolonged detention after a seizure, such as full custodial confinement (arrest) without an arrest warrant, must be based on probable cause that a crime has been committed. *United States v. Ayarza*, 874 F.2d 647, 650 (9th Cir 1989), citing *Florida v. Royer*, 460 US 491, 503 (1983). Absent probable cause to arrest a person for crime, a detention for an ICE detainer alone does not demonstrate probable cause to hold a person. *Miranda Olivares v. Clackamas County*, 2014 WL 1414305 (District of Oregon, 2014). An ICE detainer specifies that an investigation "has been initiated" to determine whether she was subject to removal from the United States. *Arizona v. United States*, 132 S Ct at 2509 ("Detaining individuals solely to verify their immigration status would raise constitutional concerns.").

^x 7282.5. (a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the specified circumstances.

^{xi} In addition to immigration enforcement, ICE also investigates the illegal movement of people and goods and helps prevent terrorism. <https://www.ice.gov/> .

^{xii} 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):

1. Sending information to, or requesting or receiving such information from ICE.
2. Maintaining such information in Department records.
3. Exchanging such information with any other federal, state or local government entity.

^{xiii} Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 USC § 1664).

^{xiv} Further direction will generally be limited to lodging the person in the Yolo County jail pursuant to State law.

^{xv} The Davis Police Department does not have the required consent forms. Individuals being held on fresh criminal charges should be taken to the Yolo County Jail or released on a Notice-to-Appear as required by California state law. It is a violation of the 4th Amendment to detain a person for ICE based solely on a civil federal offense regarding immigration so they can be interviewed.

^{xvi} <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>