Policy
428

Fresno Police Department Policy Manual

Immigration Violations

428.1 POLICY
It is the policy of the Fresno 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 immigration status. It is the policy of the Department that officers shall not enforce violations of immigration law/status.

428.1.1 PURPOSE AND SCOPE
Immigration status alone is not a matter for police action. Awareness of this will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 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 without regard to actual or perceived characteristics such as race, sex, sexual orientation, gender, gender identity or expression, age, ethnicity, religion, creed, color, national origin, disability, marital status, military and veteran status, or any other classification or status protected by law in any way that would violate the United States or California Constitutions.

428.3 JURISDICTION AND ENFORCEMENT
The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry, etc. When assisting ICE at their specific request, this Department may assist in the enforcement of any suspected criminal violations discovered as a result of inquiries or investigations initiated by ICE.

428.4 SWEEPS
The Fresno 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, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, socioeconomic status, or other group.

The disposition of each contact (e.g., warning, citation, arrest, etc.), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, etc.

428.4.1 BASIS FOR CONTACT
The fact that an individual is suspected of being an undocumented alien shall not be the basis for contact, detention, or arrest.

428.5 DETENTIONS
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). Officers are authorized to take action in response to a Judicial Probable Cause Determination or Judicial Warrant.

428.6 ARRESTS
If the officer intends to take enforcement action and the individual is unable to reasonably establish their true identity, the officer may take the person into custody on the suspected criminal violation (see

Vehicle Code §40302a, and Penal Code §836, if pertinent to the circumstances). A field supervisor shall approve the arrest.

428.7 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into FCJ for the suspected criminal violation and held for bail.

If a person is detained pursuant to the authority of VC §40302(a), for an infraction that person may be detained upon approval of a supervisor for a reasonable period not to exceed two hours for the purpose of establishing their true identity. Regardless of the status of that person's identity at the expiration of two hours, the person shall be released on their signature with a promise to appear in court for the vehicle code infraction involved.

428.8 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exists:

(a) Transfer is authorized by a judicial warrant or judicial probable cause determination;
(b) 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.

428.9 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this Department will provide available support services, such as traffic control or keep-the-peace efforts, or in response to officer safety concerns, during the federal operation. Requests for assistance beyond that described above should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act, GC §7284.2 et seq. Any detention by a member of this Department should be based upon the reasonable belief that an individual is involved in criminal activity.

428.10 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; GC §7284.6):

(a) Sending information to, or requesting or receiving such information from federal immigration officials;
(b) Maintaining such information in department records; and
(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.

428.11 CALIFORNIA LAW ENFORCMENT 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 (GC §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 (GC §15160).

428.12 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Fresno Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any subject. Race, gender, religion, sex, sexual orientation, gender expression or identity, age, occupation, or other arbitrary aspects are of no bearing on the decision to arrest.

428.13 VALID IDENTIFICATION CARDS / “MATRICULA CONSULAR"

The identification card known as the “Matrícula Consular” is issued by the Mexican Consulate to Mexican citizens who have established residency in the United States. This valid form of identification includes the person’s photograph, name, address, date of birth, and a serial number. Department members shall familiarize themselves with the card’s security features to determine its authenticity. Department members shall recognize this card as a valid form of identification when attempting to establish a person’s identity during an investigation and/or while issuing a misdemeanor citation. This identification card is not to be considered as a valid driver’s license.

428.14 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.

Any request for assistance in applying for U Visa or T Visa status should be forwarded in a timely fashion to the U Visa Coordinator. The coordinator should do the following:

(a) Consult with the assigned investigator to determine the current status of any related case and whether an update on the case 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 that whether a certification or declaration is warranted;
(c) Review the instructions for completing the certification if necessary. Address the request and complete the certification or declaration, if appropriate, in a timely manner. Instructions for completing Form I-918 Supplement B certification and declaration can be found on the DHS website at http://www.uscis.gov;
(d) 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);
(e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. A copy of any completed certification or declaration shall be included in the case file;
(f) 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); and
(g) Inform the victim liaison of any requests and their status.

428.15 TIME FRAMES FOR COMPLETION

Members and their supervisors who are assigned to investigate a case of human trafficking as defined by PC §236.1 shall complete the above process and the documents needed for indicating the individual is a victim for a T Visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (PC §236.5).

Members 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 PC §679.10 and PC §679.11 within 30 days of a request from the victim, victim’s family, or authorized representative (as defined in PC §679.10 and PC §679.11) related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 7 days of the first business day following the day the request was received.

428.16 IMMIGRATION COMPLAINTS

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 the ICE has primary jurisdiction for enforcement of Title 8, USC.

428.17 POLICE REPORTS

Upon the request of a victim, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a state or local law enforcement agency with whom the victim had filed a police report shall provide a copy of the police report after it has been completed, within seven (7) days of the request. (PC §679.10).

428.18 REPORTING TO LEGISLATURE

The U Visa Coordinator Supervisor shall 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 GC §9795 (PC §679.10; PC §679.11).

428.19 TRAINING

The Training Manager 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 offense has been committed; and
(c) Prohibitions contained in the California Values Act (GC §7284 et seq.).