

Immigration Violations

415.1 PURPOSE AND SCOPE

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

415.1.1 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards:

415.1.2 DEFINITIONS

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.

415.2 SUPPLEMENTAL DEFINITIONS

- A. DHS Form I-247A (Immigration Detainer-Notice of Action) requests the following of the receiving law enforcement agency
 1. Requests HPD notify ICE, as early as practical, of the release date of an inmate prior to his/her release
 2. Requests HPD maintain custody of an inmate for a period not to exceed 48 hours beyond his/her scheduled release
 3. Requests HPD relay the detainer request to any other law enforcement agency to which the inmate is transferred.
 4. Requests HPD notify ICE in the event of the inmate's death, hospitalization, or transfer to another institution.
- B. DHS Form I-200 (Warrant for Arrest of Alien), directs any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of Title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.
- C. DHS Form I-205 (Warrant of Removal/Deportation), directs any immigration officer of the United States Department of Homeland Security to remove/depart the specified inmate.

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- D. ICE Access: The Truth Act defines “Ice Access” for the purposes of civil immigration enforcement, to include when an individual is stopped with or without their consent, arrested, detained, or otherwise under the control of the local law enforcement agency, all the following:
 - 1. Responding to an ICE hold, notification, or transfer request.
 - 2. Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or otherwise.
 - 3. Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs or otherwise.
 - 4. Allowing ICE to interview an individual.
 - 5. Providing ICE information regarding dates and times of probation or parole hold check-ins.
- E. TRUST ACT: Provides that a person may not be held in custody solely based on a request for notification and/or detainer if he or she is otherwise eligible to be released from custody. “Eligible for release from custody” means that the individual may be released from custody because one of the following conditions has occurred:
 - 1. All criminal charges against the individual have been dropped or dismissed.
 - 2. The individual has been acquitted of all criminal charges.
 - 3. The individual has served all the time required for their sentence.
 - 4. The individual has posted a bond.
 - 5. The individual is otherwise eligible for release under state or local law.
- F. California Values Act, Senate Bill 54 (SB 54), enacted on October 5, 2017, amends provisions of Government Code 7282 et seq., barring immigrations enforcement activities and setting specific threshold criteria for responding to ICE requests. SB 54 does not release the agency of its duties as defined by the Truth Act.
- G. Transfer of Custody: The custody exchange of an inmate within the secure area of the facility not accessible to the public, from HPD’s custody to the custody of another law enforcement agency.
- H. Joint Law Enforcement Task Force: At least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

415.3 POLICY

It is the policy of the Hayward 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/office] in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status. Hayward Police Department does not accept or honor detainees from

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Immigration and Customs Enforcement (ICE); an ICE detainer signed by an ICE agent is not an arrest warrant signed by a judge.

Under no circumstances shall a person be detained or arrested by HPD based solely on his or her immigration status, whether known or unknown. The responsibility for enforcement of immigration laws rests solely with ICE, under the direction of the Department of Homeland Security (DHS). ICE detainers are voluntary requests that do not compel state or local law enforcement to detain persons suspected subject to removal.

415.4 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 not in any way that would violate the United States or California constitutions.

415.4.1 BASIS FOR CONTACT

An officer's suspicion about any person's immigration status shall not be used as a basis to initiate contact, detain, or arrest that person unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring and terrorism.

HPD will not inquire about a person's immigration status during arrest procedure, unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring, and terrorism.

415.4.2 SWEEPS

Personnel will not participate in ICE organized sweeps to locate and detain undocumented residents. This does not preclude staff from assisting ICE during critical incidents or emergency requests for assistance. Each level of assistance will be evaluated by the on-scene supervisor to ensure HPD's level of participation remains consistent with this order and California law while protecting human life and property.

415.4.3 IDENTIFICATION

Personnel should make all attempts to identify any person they detain, arrest, or who come into the custody of HPD.

Any person who would be cited and released, but who is unable to present satisfactory evidence of his or her identity, will be detained for the purpose of establishing his or her identity, consistent with the treatment of all individuals.

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415.4.4 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (see applicable sections of the Vehicle Code and Penal Code, if applicable).

415.4.5 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved unless there is cause to hold the arrestee under the non-release provisions of section 853.6(i) of the penal code. Immigration status shall not be a consideration in determining release, and arrestees shall not be held in custody on the basis of an immigration detainer alone.

415.5 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

When HPD personnel encounter suspected immigration law violations, members shall be guided by the options set forth in this policy, pursuant to state law. Citizen contacts, detentions, and arrests shall be based on reasonable suspicion or probable cause in a manner prescribed by law. HPD personnel shall not initiate law enforcement actions based solely on observations related to a subject's immigration status.

415.5.1 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).

415.5.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

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

415.6 DETENTIONS AND ARRESTS

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).

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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 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 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 arrest 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).

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

415.6.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

415.7 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this [department/office] 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.).

415.8 INFORMATION SHARING

No member of this [department/office] 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/office] 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.

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415.8.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer 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 (Government Code § 7282.5; Government Code § 7284.6):

- (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.

415.8.2 DETENTION FACILITY

- A. When receiving a DHS Form I247-A (ICE Detainer-Notice of Action), and it is suspected that the prisoner will be released with a Promise to Appear or is going to post bail, HPD staff will conduct a review of the subject inmate's criminal history via local and state law enforcement databases to determine if they meet the notification criteria established in Gov. Code Section 7282.5. Findings made pursuant to this review will be recorded as part of the scanned booking documents. Requests for interview by ICE do not require the specified inmate meet the criteria in accordance with Gov. Code Section 7282.5 for the interview to take place. The criteria for interview requests will be met in accordance with The Truth Act.
- B. If the criteria have been met to provide ICE with notifications, HPD Staff will complete the bottom portion of the DHS Form I-247A including the release date if one is known and return to ICE. HPD Staff will proceed with the inmate notification process in accordance with The Truth Act. If the criteria have not been met, HPD Staff will not complete the bottom portion of the DHS Form I-247A and will not respond to ICE. HPD Staff will proceed with the proper notification process in accordance with The Truth Act.
- C. HPD Staff must advise the inmate of the ICE request and provide him/her with a copy of the DHS Form I-247A (Refer to "Ice Access" Definition).
- D. HPD Staff must provide written notification of the ICE request to the inmate. This notification is provided via agency notification forms entitled the "Immigration Notification to Inmate" (Truth Act Form 2), and the "Civil Immigration Consent Form" (Truth Act Form 1) forms. The forms will be completed, and copies provided to the inmate, explaining the following:
 1. The HPD "Immigration Notification to Inmate" form advises the inmate of the ICE request and of whether HPD will comply with the request. The form also contains

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- space for the inmate to provide contact information for the inmate's attorney and designated third party, if available.
2. The HPD "Civil Immigration Consent Form" advises the inmate of an ICE request for interview and indicates whether the inmate voluntarily consents or declines the ICE request for interview. The "Civil Immigration Consent" will be provided to the inmate in advance of any interview between ICE and the individual.
 3. The "Immigration Notification to Inmate" and "Civil Immigration Consent" forms are available in several languages, in accordance with The Truth Act. The forms are available in English, Spanish, Cantonese, Mandarin, Tagalog, Vietnamese and Korean.
- E. Once the inmate has been served with the notification forms, the inmate will retain the original copy of the forms. A second copy of the forms will be attached to the inmates booking packet and provided to the Jail Administrator. The Jail Administrator shall retain hard copies of the packets for yearly reporting purposes, and the inmates entire booking packet will be scanned into the corrections module as is current retention practice.
- F. ATTORNEY/DESIGNEE NOTIFICATION FORM: Whenever HPD receives any ICE requests on an inmate within our custody via the DHS Form I-247A, a copy of the form shall also be provided to the specified inmate(s) and their attorney of record, upon the attorney's request.
- G. Upon notification to ICE that an individual is being or will be released on a certain date, HPD staff shall promptly provide the same notification in writing to the individual, to his or her attorney, and to one additional person who the individual shall be permitted to designate.
- H. The HPD form titled "Immigration Notification to Attorney" shall be used to make written notification to the attorney of record and the third-party designee of the inmates choosing. The form will be completed and mailed to each party as designated on the form.
- I. Should a person return to the HPD detention facility on a subsequent incarceration and upon receipt of the DHS Form I-247A for that individual, the entire process shall be repeated.

415.8.3 HPD PARTICIPATION IN JOINT LAW ENFORCEMENT TASK FORCES

1. In situations when HPD participates in a joint law enforcement task force, members of the task force may conduct enforcement or investigative duties, including the sharing of confidential information with other law enforcement agencies. For the purposes of task force investigations. The primary purpose of any joint law enforcement task force HPD is involved with shall not be immigration enforcement. The enforcement or investigative duties shall primarily be related to violations of state law or federal law unrelated to immigration enforcement.
2. HPD or a mutually agreed upon participating California law enforcement agency shall submit an annual report to DOJ outlining the purpose of the task force, specific agencies involved,

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total number of arrests made during the evaluation period, and number of people arrested for immigration enforcement purposes.

415.8.4 NOTICE TO INDIVIDUALS

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 Hayward Police Department intends to comply with the request (Government Code § 7283.1).

If the Hayward 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).

415.8.5 ICE INTERVIEWS

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

415.8.6 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless 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.

415.8.7 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

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 Administrator for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the [Records Bureau] Policy).

415.9 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)).

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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 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.

415.9.1 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 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).

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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.

415.9.2 REPORTING TO LEGISLATURE

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).

415.9.3 POLICE REPORTS

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).

415.10 ADDITIONAL SB 54 GUIDELINES FOR ALL STAFF

1. HPD staff are prohibited from using immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.
2. HPD staff may respond to a request from immigration authorities for information about a specific person's criminal history, including criminal arrests, convictions or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS) database.
3. HPD staff may make 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 federal law.
4. All records relating to ICE access provided by and to HPD, including all non-exempt and non-privileged communication involving ICE, shall be public records for purposes of the California Public Records Act (CPRA). As permitted under the CPRA, personal identifying information and other exempt information may be redacted prior to public disclosure. SB 54 does not otherwise preempt or overrule HPD's obligations under the CPRA.. Records relating to ICE access may include, but are not limited to:
 - a. Data maintained by HPD regarding the number and demographic characteristics of individuals to whom HPD has provided ICE access;
 - b. The date ICE access was provided;
 - c. Whether the ICE access was provided through a notification request, transfer, or through other means, to the extent the HPD maintains such records; and
 - d. Non-exempt records to and/or from ICE and HPD, including, but not limited to ICE notification or transfer requests.

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e. These records shall be maintained in New World Systems RMS.

5. Beginning January 1, 2018, if HPD has provided ICE access to an individual during the last year, HPD and the City of Hayward should coordinate and hold at least one community forum during the following year in an accessible location, and with at least 30 days' notice to provide information to the public about ICE's access to individuals and to receive and consider public comment.

As part of this forum, HPD may provide the City Council with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided and whether the ICE access was provided through a notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.

415.11 TRAINING

The Personnel and Training Administrator should ensure that all appropriate members receive immigration training.

415.12 REVISIONS

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