
NEVADA COUNTY SHERIFF'S OFFICE



GENERAL ORDER
69
Effective Date 01/01/2018

SUBJECT **COOPERATION WITH IMMIGRATION AUTHORITIES AND U
VISA**

PURPOSE The purpose of this order is to provide employees with guidelines on their duties and responsibilities associated with immigration law, enforcement, arrests, and detentions.

POLICY The Nevada County Sheriff's Office (NCSO) will equally enforce laws and serve the public without consideration of immigration status. Except as specifically outlined in this General Order, the immigration status of a person, or the lack of immigration documentation, shall have no bearing on the manner in which staff execute their duties.

Under no circumstances shall a person be contacted, detained, or arrested by agency members based on his or her immigration status, whether known or unknown.

This policy does not apply to inmates held under an existing contract for housing federal inmate. This policy is not meant to eliminate the requirements of Corrections Division Directive 21, when applicable.

DEFINITIONS: **IMMIGRATION AND CUSTOMS ENFORCEMENT:** The U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) has primary responsibility to investigate and enforce federal immigration laws.

CUSTOMS AND BORDER PROTECTION: The U.S. Department of Homeland Security's Customs and Border Protection Agency (CBP) is charged with all border-related security, regulatory and administrative missions.

FEDERAL IMMIGRATION AUTHORITY: Any officer, employee, or person otherwise paid by or acting as an agent of United States Immigration and Customs Enforcement or United States Customs and Border Protection, or any division thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security who is charged with immigration enforcement.

JUDICIAL WARRANT: A criminal warrant based on probable cause and signed by a federal judge or a federal magistrate judge.

IMMIGRATION HOLD REQUESTS: Immigration hold requests (also known as ICE holds or detainers) are requests from a federal immigration authority to a local law enforcement agency to 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 a federal immigration authority and includes, but is not limited to, Department of Homeland Security (DHS) Forms I-247A, I-247X, I-247N, and I-2470.

IMMIGRATION NOTIFICATION REQUESTS: Requests from a federal immigration authority to local law enforcement for notification of the release date and time of an individual in its custody and includes, but is not limited to, OHS Forms I-247A and I-247N.

IMMIGRATION TRANSFER REQUESTS: Requests from a federal immigration authority to local law enforcement asking to facilitate the transfer of an individual in its custody to federal immigration authorities, and includes, but is not limited to, OHS Forms I-247A and I-247X.

CODE REFERENCE California Government Code §§ 7282 through 7284.12

PROCEDURE

A) IMMIGRATION ENFORCEMENT:

- 1) Immigration enforcement shall not be used as a basis to initiate contact, detain, or arrest any individual.
- 2) Members of the public shall not be asked about their immigration status or that of another member of the public.
- 3) The NCSO shall not collect any information about a person's immigration status.
- 4) The NCSO shall not provide any support to, or use any resources for, federal immigration authorities to facilitate the location and/or detention of individuals for immigration enforcement purposes.
- 5) The NCSO shall not engage in any actions, including but not limited to a joint task force or operation, with federal immigration authorities intended to locate, arrest, or detain individuals for immigration enforcement purposes.
- 6) The NCSO shall not use any Immigration Authority agents, including CBP or ICE, as interpreters.
- 7) If a member of the Department suspects or knows that immigration enforcement arrests occurred in a joint task force or operation, that member shall promptly advise their Division Commander via a written memorandum. The memorandum shall detail the following information to be submitted to the California Attorney General's Office:
 - 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.

B) ACCEPTABLE FORMS OF IDENTIFICATION:

- 1) Individuals should not be detained solely for the purpose of establishing his or her identity.
- 2) If establishing identification is needed for criminal enforcement purposes, unrelated to immigration enforcement, acceptable forms of identification include, but are not limited to, student IDs, identification cards or drivers licenses from any U.S. state or foreign country, municipal IDs issued by a U.S. jurisdiction, foreign passports, and consular ID cards.
- 3) Individuals may not be compelled to establish identity outside of a booking process, and failure to identify oneself alone does not constitute a violation of Penal Code §148(a)(1), for resisting, delaying, or obstructing a peace officer.

C) IMMIGRATION HOLD, TRANSFER, AND NOTIFICATION REQUESTS:

- 1) **Under no circumstance shall any inmate be held longer than the date releasing them from jail on state or local charges, regardless of whether they are pre-trial or post-sentence, regardless if they are the subject of an immigration hold, transfer or notification request, and regardless of any discretionary response as outlined in sub-sections 2 and 3 below.**
- 2) The NCSO has discretion to respond to an immigration hold, transfer or notification request. Any determination made to respond to an immigration hold, transfer or notification requests shall first be made by a Classification Officer and subsequently verified by a supervisor.
- 3) All immigration hold, transfer or notification requests shall then be reviewed by the jail commander or designee, to ensure a response would not violate any federal, state and local laws and policies.
- 4) If any question exists as to deciding whether to respond to an immigration hold, transfer or notification request, employees should not respond until further advised and shall immediately forward the information up the chain of command.
- 5) Any decision to respond to an immigration hold, transfer or notification request should be made as soon as administratively possible and shall only occur under the following conditions pursuant to Government Code § 7282.5:
 - a) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.
 - b) The individual has been convicted of a felony punishable by imprisonment in the state prison.
 - c) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

- (i) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.
- (ii) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.
- (iii) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.
- (iv) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.
- (v) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.
- (vi) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.
- (vii) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.
- (viii) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.
- (ix) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.
- (x) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.
- (xi) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.
- (xii) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).
- (xiii) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.
- (xiv) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.
- (xv) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.
- (xvi) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.
- (xvii) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.
- (xviii) Possession or use of a firearm in the commission of an offense.
- (xix) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.
- (xx) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

- (xxi) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.
- (xxii) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.
- (xxiii) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.
- (xxiv) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.
- (xxv) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.
- (xxvi) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.
- (xxvii) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.
- (xxviii) An offense committed while on bail or released on his or her own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.
- (xxix) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.
- (xxx) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.
- (xxxi) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

- d) The individual is a current registrant on the California Sex and Arson Registry.
- e) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.
- f) If the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall have discretion to cooperate with immigration officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6 (notification of release date or other information).
- g) In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.

D) CIVIL IMMIGRATION WARRANTS:

- 1) The NCSO shall not respond to any civil immigration warrants or ICE custody documents (1-200, 1-203, 1-205, and any listed in the National Crime Information Center Database (NCIC)) because these documents are not signed by a judge and are not based on a finding of probable cause for an alleged criminal law violation.

E) ICE REQUESTS TO ACCESS NCSO INMATES, RECORDS & FACILITIES

- 1) Federal immigration authority shall not be given access to County facilities, computers, equipment, records/databases, or individuals in NCSO custody.
- 2) Except pursuant to Section C above, the NCSO shall not respond to federal immigration authority inquiries or communicate with federal immigration authorities regarding any individual's hearing date, incarceration status, or release date and time, unless the information to be provided is available to the public.
- 3) The NCSO shall not provide personal information, as defined by California Civil Code § 1798.3, about an individual, including, but not limited to, the individual's home address or work address, unless the information to be provided is available to the public.

F) OTHER RESTRICTIONS

NCSO employees shall not:

- 1) Inquire into an individual's immigration status.
- 2) Detain an individual on the basis of a hold request.
- 3) Make or intentionally participate in arrests based on civil immigration warrants
- 4) Assist immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code
- 5) Perform 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

G) EQUAL TREATMENT

Citizenship, immigration status, national origin, race, ethnicity, religion or the existence of an immigration hold, transfer or notification request shall have no bearing on an individual's treatment in the jail (including but not limited to classification status, eligibility for work programs, his or her eligibility for alternative to incarceration programs), his/her right to release on bail, or on decisions to initiate stops or make arrests.

H) DATA COLLECTION

If any suspected violation of this policy occurs, a memorandum shall be promptly submitted to the Division Commander detailing the personnel who are alleged to have been involved in the violation, the date of the alleged violation, and a detailed description of the alleged violation.

I) U VISA CERTIFICATION

- 1) The Victims of Trafficking and Violence Prevention Act (VTVPA) created the U Visa, a Non-immigrant visa for victims of certain crimes who have been, or are likely to be, helpful to law enforcement in the investigation or prosecution of a crime. The purpose of this is two- fold. First, it enhances law enforcement's ability to investigate and prosecute crimes. Second, it furthers humanitarian interests by protecting victims of crimes. A similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking.
- 2) Any request for assistance in applying for a U visa or T visa should be forwarded in a timely manner to the Operations Division Commander for review and endorsement. Under California state law, when completing a U visa certification (Form I-918 Supplement B), there is a rebuttable presumption of helpfulness so long as the victim has not refused or failed to provide information and assistance reasonably requested. This certification provides the applicant the ability to apply for a U Visa, but does not guarantee that the U Visa will be granted.
- 3) Victims can request and obtain certification even if no charges were filed, no conviction resulted, the investigation is complete, or an investigation has not yet been opened. The Department will not request additional information from the victim as the information provided by the victim in the certification form and law enforcement files are sufficient for completing the certification form.
- 4) There is no statute of limitations for U visa and T visa certification requests and victims can re-submit requests if the deficiencies related to the original request are addressed or the denial occurred prior to current policy for U visa and T visa certifications.

The NCSO shall approve or deny the request and complete the certification or declaration, if appropriate, within 90 days of the certification request, unless the individual is in removal proceedings, in which case the certification shall be processed within 14 days of the request. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (OHS) website and under Penal Code § 679.10.