Immigration Violations

419.1 PURPOSE AND SCOPE
The purpose of this policy is to provide guidelines to members of the San Leandro Police Department relating to immigration and interacting with federal immigration officials.

419.1.1 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.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

419.2 POLICY
It is the policy of the San Leandro 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.

419.3 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 race, ethnicity, or national origin in any way that would violate the United States or California constitutions.

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

419.5 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).

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). 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).

419.5.1 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.

419.6 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 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.).

419.7 IMMIGRATION HOLDS
Individuals shall not be held in custody solely for a civil immigration hold under 8 CFR 287.7 unless the individual (Government Code § 7282; Government Code § 7282.5):

(a) Has been convicted of offenses specified in Government Code § 7282.5.
(b) Has been charged with offenses specified in Government Code § 7282.5 after a court has determined probable cause supports the charge.
(c) Is a sex or arson registrant.

In no event should a person be held under this section for longer than 48 hours. Notification to the federal authority should be made prior to the release.

419.8 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 Division supervisor assigned to oversee the handling of any related case. The Criminal Investigations Division 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). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).

(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.

(e) Inform the victim liaison of any requests and their status.

419.8.1 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).

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 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.

419.8.2 REPORTING TO LEGISLATURE
The Criminal Investigations Division 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).
419.9 TRAINING
The Professional Standards and Training Lieutenant 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 violation has been committed.
(c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).