

# **DAVIS POLICE DEPARTMENT**

## **Immigration Procedures Policy and Procedure 2.43-A**

### **DEPARTMENT MANUAL**

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## **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. 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 Constitutions<sup>i</sup>.

## **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:
  - a. DHS Form I-247 Immigration Detainer – Notice of Action (I-247 detainer<sup>ii</sup>);
  - b. DHS Form I-247A Immigration Notice – Notice of Action (I-247A detainer<sup>iii</sup>);
  - c. DHS Form I-200 Warrant for Arrest of Alien (I-200 Warrant<sup>iv</sup>); or
  - d. DHS Form I-205 Warrant of Removal/Deportation (I-205 Warrant<sup>v</sup>).

### 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<sup>vi</sup>. 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.<sup>vii</sup>
- 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 4<sup>th</sup> Amendment requirements requiring reasonable suspicion and probable cause and in accordance with California law. (CA TRUST ACT<sup>viii</sup>).

### B. Arrest Notification to ICE

Except as specified below, 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.

Whenever an officer has reason to believe that an individual arrested for any offense listed in California Health and Safety Code § 11369 may not be a citizen of the United States, and the individual is not going to be booked into the county jail, the arresting officer shall notify ICE or another appropriate agency of the United States<sup>ix</sup>. Inquiry into immigration status is not required in determining whether the person is a citizen of the United States.<sup>x</sup> Further, compliance with section 11369 only requires notification to ICE; it does not permit continued detention of a person on a Form I-247, I-247A, I-200 or I-205 detainer/warrant solely on the basis of an arrest for one of the specified offenses.

### 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.

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<sup>xi</sup>
  - 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.<sup>xii xiii</sup>
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<sup>xiv</sup>. 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.<sup>xv</sup>

## 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.<sup>xvi</sup>
  - 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**

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<sup>i</sup> 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.)

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

<sup>iii</sup> <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>

<sup>iv</sup> [https://www.ice.gov/sites/default/files/documents/Document/2017/I-200\\_SAMPLE.PDF](https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF)

<sup>v</sup> [https://www.ice.gov/sites/default/files/documents/Document/2017/I-205\\_SAMPLE.PDF](https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF)

<sup>vi</sup> <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>

<sup>vii</sup> 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.

<sup>viii</sup> A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under specified circumstances (serious offenses). Trust Act - Government Code § 7282.5. Additionally, 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 F2d 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.").

<sup>ix</sup> § 11369. Notification to deportation agency on arrest of person believed to be alien. When there is reason to believe that any person arrested for a violation of Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550, may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters. Compliance with section 11369 only requires notification to ICE; it does not permit continued detention solely on the basis of an arrest for one of the specified offenses above.

<sup>x</sup> H & S C § 11369 supports neither a tort claim based upon negligence per se nor on the breach of a mandatory duty. *Bologna v. City & County of San Francisco* (2011, 1st Dist.) 192 Cal App 4th 429.

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

<sup>xii</sup> 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):

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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.

<sup>xiii</sup> 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).

<sup>xiv</sup> Further direction will generally be limited to lodging the person in the Yolo County jail pursuant to State law.

<sup>xv</sup> 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 4<sup>th</sup> Amendment to detain a person for ICE based solely on a civil federal offense regarding immigration so they can be interviewed.

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