

NATIONAL CITY POLICE DEPARTMENT



Department Policy 414

Undocumented Person



POLICY

- It is the policy of the National City 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.



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. Members of our department 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.



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).

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 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).



ENFORCEMENT NOT AUTHORIZED

- Officers will not detain undocumented persons for CBP/Border Patrol under the following conditions:
- When they are victims or witnesses of a crime, unless a determination has been made by investigators to hold them as material witnesses.
- When contacted during family disturbances
- Generally, during the enforcement of minor traffic offenses
- When the person(s) is seeking medical treatment



EXCEPTIONS

- Officers are authorized to detain and release undocumented persons to CBP/Border Patrol when contacted under the following conditions:
- **Drop House** – A house or building being utilized as a transfer/holding facility for person engaged in smuggling undocumented persons
- **Load Vehicles** – Vehicles engaged in smuggling undocumented persons
- **Drug House** – House or building being used to facilitate narcotics trafficking



DOCUMENTATION

- Detention reports involving undocumented persons must list in detail the reasons for the detention, including all facts that led to the reasonable suspicion that the subject was involved in criminal activity, unrelated to immigration status.
- In the event officers locate a drop house, load vehicle, or drug house containing multiple undocumented persons, they will document the incident / subject(s) information on the appropriate report. Officer Supplemental Report.
- The name(s) and identification number(s) of the agent(s) who take custody of the detainees will also be included in the report.



SUPERVISORY RESPONSIBILITIES

- When notified that an officer has arrested an individual for violation of 8 USC § 1326(a), the supervisor should determine whether it is appropriate to:
 - Transfer the person to federal authorities.
 - Transfer the person to jail.
 - Release of the individual(s)



IMMIGRATION DETAINERS

- 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):
 1. The individual has been arrested and had a judicial PC for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
 2. The individual arrested and PC for a felony punishable by state penitentiary.
 3. The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
 4. The individual is a current registrant on the California Sex and Arson Registry.
 5. 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.



ICE INTERVIEWS

National City 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.



TRUTH ACT FORM

Re: Consent Form for Immigration and Customs Enforcement Interview

This notice is to inform you that Immigration and Customs Enforcement (“ICE”) wants to interview you, either in person or by phone, to get information that they may use to try to deport you. You have the right to agree or to refuse this interview.

This notice is intended to provide you with information about your rights:

- (1) ICE interviews are voluntary. You can say no to an interview by ICE.
- (2) You have the right to remain silent. Even if you decide to say yes to an interview, you can refuse to answer any questions, including questions about your immigration status. This includes where you were born and how you came to the United States. Anything you say may be used against you in criminal and/or immigration proceedings. You should not sign any forms you do not understand.
- (3) You may request to have an attorney present during any interview. If you request an attorney in this form below, the jail may not bring you to an ICE interview without your attorney present.
- (4) If you are already in removal (deportation) proceedings, you have the right to have your immigration lawyer present during any questioning. You should tell ICE to contact your attorney (if you have one) before the interview.

By checking the box and signing below, you are indicating whether or not you agree to an interview with ICE. The jail or police officer will inform ICE of your decision. The jail is only allowed to bring you to an ICE interview if you agree.

Name: _____

Booking #: _____

Signature: _____



TRANSFERS TO IMMIGRATION AUTHORITIES

- Transfer is authorized by a judicial warrant or judicial probable cause determination.
- The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- The individual is a current registrant on the California Sex and Arson Registry.
- 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.



FOREIGN NATIONAL DEATH MEXICO

- Policy requires local officials notify, within 24 hours, the nearest Mexican Consular official in the event of the death or serious injury to a Mexican National via phone.
 - Notification of an Undocumented Person's or Foreign National's Serious Injury or Death:
 - The Investigations Division will be responsible for notification in the event of serious injury through non-traffic causes.
 - The Traffic Division will be responsible for notification in the event of serious injury through traffic causes.
 - The Office of the County Coroner will make notification in the event of death.



ARREST OF A FOREIGN NATIONAL

Every peace officer upon arrest and booking or detention for more than two hours of a known or suspected foreign national to advise the individual of his or her right to contact an official from the consulate of the individual's country. If the individual asks to exercise that right, the arresting agency shall make the appropriate notification to the foreign national's consulate.



MATRICULA CONSULAR ID CARD

It is the policy of the National City Police Department that its members will accept these cards as official forms of identification. The Matricula Consular will not be accepted in lieu of a driver's license when required by law. Possession of this card does not imply immigration status.



QUESTIONS