

## Immigration Violations

### 413.1 PURPOSE AND SCOPE

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

### 413.2 POLICY

It is the policy of the University of Maryland, Baltimore 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.

### 413.3 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 Maryland constitutions.

### 413.4 DETENTIONS

An officer shall not inquire about a person's citizenship, immigration status, or place of birth during a detention, a search, or an arrest unless doing so is material to a criminal investigation or intended to provide the person legal protection under the law and the person is advised any related disclosure on the person's part is voluntary (e.g., diplomatic or consular protections) (Md. Code CP § 5-104).

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 (Md. Code CP § 5-104).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of federal immigration law may detain the person for a reasonable period of time in order to contact federal immigration officials to verify whether an immigration violation is a federal civil violation or a criminal violation. If the violation is a criminal violation, the officer may continue to detain the person for a reasonable period of time if requested by federal immigration officials (8 USC § 1357(g)(10)). 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 committed a criminal immigration offense, the officer may continue the detention

## *Immigration Violations*

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and may request a federal immigration official to respond to the location to take custody of the detained person (8 USC § 1357(g)(10)).

An officer is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety, communication capabilities, or the potential to obstruct a separate investigation outweigh the need for the detention.

An officer should notify a supervisor as soon as practicable whenever an individual is being detained for a criminal immigration violation.

### **413.4.1 SUPERVISOR RESPONSIBILITIES**

When notified that an officer has detained an individual and established reasonable suspicion or probable cause to believe the person has violated a criminal immigration offense, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Lawfully arrest the person for a criminal offense or pursuant to a judicial warrant (see Law Enforcement Authority Policy 100).

### **413.5 SPECIAL ARREST SITUATION**

#### **413.5.1 NON-RESIDENTS (FOREIGN NATIONALS)**

- (a) Upon the arrest of person(s) who are not U.S. citizens, the arresting officer shall request the Shift Supervisor to respond to the scene. The arresting officer shall notify Immigration and Customs Enforcement (ICE) as soon as possible after the arrest. The arresting officer will provide the ICE Investigator with the name of the subject arrested, date of birth, place of birth, charge, complaint number, and date of arrest. The registered Alien File Number (this number appears on the green identification card issued to the alien and should be in their possession) shall also be given to the investigator. If no card is available, the ICE investigator will advise the officer of what action is to be taken.
- (b) The UMBPD officer shall record all of this information in the narrative of the Offense Report. The officer shall also include the name of the ICE Investigator contacted and the date and time contacted.
- (c) The Shift Supervisor shall notify the Shift Commander upon the arrest or detention of any foreign national.

#### **413.5.2 CONSULATE NOTIFICATION**

- (a) All foreign nationals have a right to notify their consular officials, without delay, after being arrested or detained. In some instances, it is mandatory that the arresting or detaining officer make the notification on behalf of the foreign national. A list of telephone numbers is maintained in Communications. A Mandatory Notification List is provided (See Appendix 6.2.1). In cases of mandatory notification, the arresting officer shall complete Appendix 6.2.4 "Statement to Arrested or Detained Foreign Nationals – Mandatory Notification" and Appendix 6.2.2 "Notification of Arrest or Detention of a National of your Country". Appendix 6.2.2 shall be faxed to the appropriate

*Immigration Violations*

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Consulate.

- (b) Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by their government exist in some mandatory notification cases. The notification should still be honored, but it is possible to take precautions regarding the disclosure of information, i.e., it may not be necessary to provide information about why a foreign national was arrested.
- (c) Under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.
- (d) Foreign nationals have the same rights to consular assistance as do legal foreign nationals. There is no reason for purposes of consular notification to inquire into a persons' legal status in the United States. If there is reason to question whether the person arrested or detained is a U.S. citizen, the officer should inquire further about nationality so as to determine whether any consular notification obligations apply, not their legal status.
- (e) In cases where notification to the Consulate of the foreign national is not mandatory, the officer will complete Appendix 6.2.3, "Statements to Arrested or Detained Foreign Nationals – Non-Mandatory" offering the option to have the Consulate notified for the prisoners (arrestees). If the arrestee requests notification to be made, Appendix 6.2.2 shall be completed and faxed to the arrestee's Consulate Regardless of the prisoners (arrestees') decision, the officer will obtain a signature on the form and include the form with the incident report.
- (f) If the foreign national wants consular notification to be made, the officer will do the following:
  - 1. Contact the appropriate and nearest consulate;
  - 2. Note the date and time notification was made;
  - 3. Note the last name of the person to whom you gave notification; and
  - 4. Have the foreign national sign the form.
- (g) If the foreign national waives consular notification, the officer will do the following:
  - 1. Note the date and time of the refusal; and
  - 2. Have the foreign national sign the form

**413.6 FEDERAL REQUEST FOR ASSISTANCE**

Request by federal immigration officials for assistance from this department should be directed to the Shift Supervisor. The department may provide support only in specific situations related to traffic management, peacekeeping, officer safety, or preventing harm. Officers shall not be part of federal immigration detention teams or conduct detentions based solely on immigration status. Any detention by an officer must be based on reasonable belief of criminal activity unrelated to federal immigration violations.

*Immigration Violations*

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**413.7 INFORMATION SHARING**

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):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials.
- (b) Maintaining such information in department records.
- (c) Exchanging such information with any other federal, state, or local government entity.

**413.7.1 IMMIGRATION DETAINERS**

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

**413.8 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)).

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 Investigation Division Supervisor assigned to oversee the handling of any related case. The Investigation 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.
- (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.

*Immigration Violations*

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**413.9 TRAINING**

The E and T Lieutenant should ensure officers receive annual training on this policy.

Training should include:

- (a) Arrest and detention of foreign nationals and consular notifications.
- (b) Identifying civil versus criminal immigration violations.
- (c) Factors that may be considered in determining whether a criminal immigration offense has been committed.