

Immigration Violations

414.1 PURPOSE AND SCOPE

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

414.2 POLICY

It is the policy of the Gettysburg 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.

414.3 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 Pennsylvania constitutions.

414.4 DETENTIONS

An officer shall not detain any individual, for any unreasonable length of time while determining if the individual's immigration violation or warrant is civil rather than criminal.

An officer who has a reasonable suspicion that an individual 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)). Reasonable suspicion means information indicating that there exists a judicial warrant to validate the detention. No individual who is otherwise ready to be released should continue to be detained for an unreasonable length of time only because questions about the individual's immigration status are unresolved.

If the officer has information in his/her possession that establishes probable cause to believe that a person lawfully detained has committed a criminal immigration offense (e.g. a judicial warrant), he/she may continue the detention and may request a federal immigration official to respond to the location to take custody of the detained person (8 USC § 1357(g)(10)).

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An officer must not detain individuals who are subject to administrative warrants or similar requests for detention made solely on the basis of a misdemeanor offense or civil immigration violation.

An officer must notify a supervisor as soon as practicable whenever an individual is being detained for a criminal immigration violation or provide a written explanation that justifies why notification to a supervisor was not possible.

An officer shall not continue a detention for immigration violations once they are determined to be civil.

414.4.1 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained an individual, the supervisor shall determine whether there exists a legal basis for the detention. When a legal basis exists for the detention, the supervisor will 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 the Law Enforcement Authority Policy).

414.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, an officer should not notify federal immigration officials when booking arrestees at a jail facility. Any required notification will be handled according to jail operation procedures. A booked individual will be subject to the release procedures of the jail.

414.6 FEDERAL REQUESTS FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department should be directed to a supervisor. The Department may provide available support services, such as traffic control or peacekeeping efforts.

414.7 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

414.7.1 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

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judicial warrant or judicial removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

414.8 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 Section supervisor assigned to oversee the handling of any related case. The Investigation Section 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.

414.8.1 T VISA APPLICATIONS FOR MINORS

A request for assistance by a victim of human trafficking who is a minor or his/her representative with an application for a T visa shall not be denied because the minor is not cooperating with law enforcement (18 Pa.C.S. § 3054).

414.9 TRAINING

The Training Sergeant should ensure officers receive training on this policy.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed.