



DEPARTMENTAL
GENERAL
ORDER

O-10

Index as:

Immigration and
Customs
Enforcement

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IMMIGRATION AND CUSTOMS ENFORCEMENT

The purpose of this immigration policy is to provide guidance and direction to the sworn police officers of the Oakland Police Department (OPD) on the enforcement and prohibition of Federal, State, and local immigration laws. Members and employees of OPD who are not sworn police officers are reminded to follow the City's Administrative Instruction (AI) 6805, entitled "US Immigration & Customs Enforcement" (28 Jan 26).¹

The responsibility for enforcing immigration laws rests solely with the United States Department of Homeland Security (DHS), including the U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), not with local or state law enforcement agencies. OPD is committed to equal enforcement of the law and equal service to the public regardless of a person's immigration status. This commitment increases our effectiveness in protecting and serving the entire community.

The City of Oakland has reaffirmed its status as a Sanctuary City. It is vital to ensure that immigrant residents participate in civic life and daily activities without fear of being arrested or reported to ICE by OPD (City of Oakland Ordinance 13515).

I. DEFINITIONS:

- A. Immigration and Customs Enforcement (ICE) – any employee, member, agent, or representative of the federal Department of Immigration and Customs Enforcement (City of Oakland Ordinance 13515).
- B. Sanctuary City – a municipality that does not enforce or assist in enforcing civil immigration law (City of Oakland Ordinance 13515).

¹ "All City of Oakland employees, other than sworn police officers, are expected to comply with this policy and the protocols set forth herein. This policy supersedes, rescinds, and displaces any other policy issued by a department or City agency regarding employee interactions with federal immigration enforcement with the exception of those governing sworn police officers." AI 6805 at 1.

II. DUE PROCESS RIGHTS OF ALL PERSONS

- A. OPD shall not provide federal immigration agencies access to individuals solely for immigration enforcement unless required by law.
- B. If OPD receives a federal immigration detainer request for an individual in OPD custody, OPD Officers shall provide the individual with a copy of the request.
- C. Officers shall not inquire or request proof of immigration status or citizenship when providing services or benefits except where the receipt of such benefits or services is contingent upon one's immigration status, such as in the processing of a U visa or T visa.
- D. Individuals with limited English proficiency must be given access to translation or interpretation and must receive documents in their native language if available.

III. FEDERAL LAW

- A. The responsibility for the enforcement of immigration laws rests solely with ICE, under the direction of DHS.
 - 1. Immigration detainers or requests, sometimes called "ICE holds", are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the arrestee. Federal regulations define immigration detainers as "requests" rather than commands.² Courts have also held that ICE detainers are voluntary requests that "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."³ Thus, local agencies are "free to disregard [an] ICE detainer."⁴
 - 2. The mere fact that an individual is unlawfully in the United States is not a criminal offense.⁵ Thus, unlawful presence in the United States, by itself, does not justify continued detention beyond that of an individual's normal release date. This applies even where ICE or United States Customs and Border Protection (CBP) provides an OPD officer with administrative forms that use the terms "probable cause" or "warrant." A lawful detention under the Fourth Amendment must be supported by probable cause that a person has committed a crime.⁶

² 8 C.F.R. § 287.7(a).

³ *Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir. 2014); see also *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF, 2015 WL 756877, at *4 (C.D. Cal. Feb. 23, 2015) ("federal law leaves compliance with immigration holds wholly within the discretion of states and localities").

⁴ *Galarza*, 745 F.3d at 645.

⁵ *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492, 2505 (2012); *Melendres v. Arpaio*, 695 F.3d 990, 998, 1000 (9th Cir. 2012).

⁶ *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975).

IV. CITY POLICY

A. Sworn OPD officers shall not:

1. Enforce or assist in the enforcement of violations of civil immigration laws.
2. Initiate investigations or use personnel or resources where the only objective is to discover whether an individual violates a civil immigration law.
3. Detain individuals for a violation of civil immigration law⁷.
4. If OPD assists in an ICE investigation, detention, arrest, or any other operation, OPD shall explain the facts giving rise to its action in a written report to the Public Safety Committee at the earliest opportunity (City of Oakland Ordinance 13515).

V. REQUEST FOR ASSISTANCE FROM DHS OR ICE

Unless the circumstances present an imminent danger to the officer or to public safety, requests by DHS or ICE for any operational assistance from OPD shall be directed immediately to the watch commander on duty, who shall, in turn, notify the Chief of Police or the Chief's designee and seek approval for operational assistance.

VI. INFORMATION AND RESPONSE GUIDELINES

- A. OPD does not collect any information regarding a person's immigration status, unless the information is gathered specifically for the purpose of completing U visa or T visa documents.

⁷ See November 29, 2016, Oakland City Council "Resolution Denouncing Tactics Used to Intimidate Immigrants Residing in Oakland and Re-affirming the City's Declaration as a City of Refuge" (Resolution No. 86498).

- B. Officers shall not share non-public information about an individual's address, upcoming court date, or release date with ICE or CBP. Officers shall respond to an ICE or CBP request for non-public information only when accompanied by a judicial warrant.
- C. OPD will treat calls for service and complaints about misconduct by ICE as would any other call for service or complaint about misconduct by any law enforcement agency or its officers.
- D. Departmental General Order O-10 will be the guide for all sworn personnel. The professional staff should follow the City's Administrative Instruction [[AI 6805 - US Immigration Customs Enforcement.pdf](#)].

VII. U VISA AND T VISA NON-IMMIGRATION STATUS

- A. Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes. Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking.
- B. Any request for assistance in applying for a U visa or T visa should be forwarded promptly to the Special Victims Section (SVS) Lieutenant for review and endorsement. The SVS Lieutenant may consult with the assigned investigator to confirm that the applicant is cooperative with the investigation.
- C. Chief of Police or their designee shall approve or deny the request and complete the certification or declaration, if appropriate, within the time frame required under Penal Code § 679.10(h).⁸ The instructions for completing certification and declaration forms are available on the U.S. Department of Homeland Security (DHS) website and under Penal Code § 679.10.

⁸ "A certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request." Penal Code § 697.10(h).

- D. The OPD website has information regarding the U visa or T visa application process, as well as a non-profit organization that can assist with the application process.

Approved by

James P. Beere
Chief of Police

Date Signed: _____

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