Immigration Violations

413.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Hamilton County Sheriff's Office relating to immigration and interacting with federal immigration officials.

413.2 POLICY

It is the policy of the Hamilton County Sheriff's Office 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 Sheriff's Office 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 not in any way that would violate the United States or Ohio constitutions.

413.4 DETENTIONS

A deputy should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant.

A deputy 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 deputy 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 deputy has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, 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)).

A deputy 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.

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

See Procedures Manual: 413.2.1 Identification

413.4.1 SUPERVISOR RESPONSIBILITIES

When notified that a deputy 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 the Law Enforcement Authority Policy).

413.4.2 FOREIGN NATIONALS

A deputy shall not inquire about a person's citizenship or immigration status. When an arrested or detained person voluntarily gives information or a search yields documentation reflecting that the person is a foreign national, a deputy must advise the arrestee or detainee of the right to have consular officials notified. When a foreign national does not claim immunity, a deputy may arrest that person only when there is a valid judicial arrest warrant issued or there is probable cause to believe that the foreign national has violated a federal criminal law, a state law, or a local ordinance.

In some cases, the foreign national has the option to decide whether to have consular representatives notified of the arrest or detention. In others, notification must be made regardless of the foreign national's wishes.

If a deputy becomes aware of the serious injury or illness of a Foreign National, (e.g. coma or sent to the hospital with a life-threatening injury) the deputy must ensure that the nearest consulate of the person's country is notified.

413.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, a deputy should not notify federal immigration officials when booking arrestees at a jail facility. Any required notification will be handled according to jail operation procedures. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of notification.

413.6 FEDERAL REQUESTS FOR ASSISTANCE

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

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413.7 INFORMATION SHARING

No member of this Sheriff's Office 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 Sheriff's Office 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 Detective Division supervisor assigned to oversee the handling of any related case. The Detective 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.

413.9 TRAINING

The Training Coordinator should ensure deputies receive training on this policy.

Training should include:

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(a) Identifying civil versus criminal immigration violations.

(b) Factors that may be considered in determining whether a criminal immigration offense has been committed.

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