
Immigration Violations

428.1 PURPOSE AND SCOPE

It is the policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status. It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 2990. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.2.1 IMMIGRATION "SWEEPS" AND SPECIAL ENFORCEMENT EFFORTS

The Richmond Police Department does not conduct immigration "sweeps" or engage in other concentrated efforts to identify or detain suspected undocumented individuals.

Equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnic group, age group, gender, socioeconomic status, immigration status, or other group when enforcement efforts are increased in any particular area of the city.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, immigration status, etc.

428.2.2 ICE REQUEST FOR ASSISTANCE

If the U.S. Immigration and Customs Enforcement (ICE) requests assistance from this department for support services, such as traffic control or "keep the peace" efforts, authorization must be obtained from the Chief of Police.

RPD officers shall not participate in ICE operations such as immigration "sweeps", or activities related to immigration issues, other than as emergency back up.

428.2.3 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's

Richmond Police Department

Policy Manual

Immigration Violations

identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

428.2.4 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

It is the policy of the City of Richmond and the Richmond Police Department that the Department shall not comply with Immigration and Customs Enforcement (ICE) hold "requests" or ICE detainers. Arrested persons shall not be held for these hold/retainer "requests." ICE has no legal authority to require compliance with these "requests." The Department shall comply with federal arrest warrants or orders signed by a judge.

ICE personnel shall not be allowed access to the Richmond Police Department Detention Unit (Temporary Holding Facility) unless they are there to pick up a prisoner on a federal warrant or order signed by a judge.

Richmond Police Department personnel shall not notify ICE of individuals who are taken into custody. If an arrested person meets Richmond Police Department criteria to be transported and booked into the County Jail, that person may be subject to an ICE hold or detainer "request" once he or she is booked into the county Jail based on the Contra Costa County Sheriff's Department's policy which provides ICE personnel access to the County Jail and shares information with ICE.

ICE personnel shall not be permitted access to any Richmond Police Department records, including booking sheets, booking logs, or police reports unless they have the approval of a Deputy Chief or Chief of Police.

Any deviations from this policy shall require the approval of a Deputy Chief or the Chief of Police.

428.3 U VISA PROGRAM

In October 2000, the United States Congress passed the Victims of Trafficking and Violence Prevention Act. As part of this Act, Congress sought to strengthen the ability of local law enforcement agencies to detect, investigate, and prosecute crimes against nonresident foreigners. In cases in which the victims are nonresident foreigners, their immigration status in the United States can directly affect their ability to cooperate and assist local law enforcement in the investigation and prosecution of these crimes.

Nonresident foreign victims usually need to be in the United States to be accessible to provide information and testimony as part of an investigation or prosecution. Nonresident foreign victims may also need a place of refuge so they can avoid returning to the same environment in another country where they might be exposed to further crimes. For this reason, Congress created a specific avenue for nonresident foreign crime victims to obtain lawful temporary immigrant status. This was accomplished by amending certain sections of the Immigration and Nationality Act (INA) to create the "U Visa." The Richmond Police Department participates in the U Visa Program.

428.3.1 GENERAL U-VISA INFORMATION

- (a) Temporary Visa - allowing the victim to remain in the U.S. for up to four (4) years
- (b) After three (3) years, the victim can apply for permanent residency
- (c) Victim may legally work in the U.S.; and
- (d) Nation-wide, a total of only 10,000 U-Visas are issued annually.

Richmond Police Department

Policy Manual

Immigration Violations

- (e) Except for those cases protected under California Penal Code Section 293, U-Visa information/records are subject to the Public Records Access Act.

428.3.2 QUALIFIERS

In order for a Form I-918, Supplement b to be completed and certified by the Department, the facts of the case under investigation must demonstrate the following:

- (a) The non-resident foreign victim has been, is being, or is likely to be "helpful" to an RPD investigation. For the purposes of this policy, the victim is described as being "helpful" when he/she:
 - 1. Possesses and furnishes vital information about a qualifying crime;
 - 2. Demonstrates continual cooperation during the investigation and/or prosecution;
 - 3. Assists investigators with gathering additional vital information; and
 - 4. Makes him/herself available to investigators.
- (b) The non-resident foreigner was a victim of an actual crime (listed in subpart C. below) which took place in the United States.
 - 1. If there is no Richmond connection (e.g., the Department has not and does not plan to open an investigation), the request shall be returned to the requester with instructions to forward to the appropriate investigating or charging agency.
 - 2. If a prior investigation and related criminal case has been closed and the date of the incident exceeds the statute of limitations, the Department shall not process the request without first consulting with the District Attorney's Office.
- (c) The non-resident foreign victim sustained physical injury or mental abuse and the crime was one of the following:
 - 1. Rape;
 - 2. Torture;
 - 3. Trafficking;
 - 4. Incest;
 - 5. Domestic violence;
 - 6. Sexual assaults;
 - 7. Abusive sexual contact;
 - 8. Prostitution, sexual exploitation;
 - 9. Female genital mutilation;
 - 10. Abduction;
 - 11. Unlawful criminal restraint;
 - 12. False imprisonment;
 - 13. Blackmail;
 - 14. Extortion;
 - 15. Manslaughter;
 - 16. Murder;
 - 17. Felonious assault;
 - 18. Witness tampering;

Richmond Police Department

Policy Manual

Immigration Violations

19. Obstruction of justice;
 20. Perjury or attempt;
 21. Conspiracy; or
 22. Solicitation to commit any of the above mentioned crimes.
- (d) The decision to complete the certification of Form I-918, Supplement B, is based solely on these qualifiers. If the application does not satisfy these criteria, the Form shall be returned to the requester uncompleted and "un-signed."

428.3.3 REQUEST FOR ASSISTANCE

The Richmond Police Department's U-Visa program is managed by the Lieutenant assigned to the Criminal Investigations Section. A petition for a U-Visa from the U.S. Citizenship and Immigrations Services must be completed on DHS Form I-918 by the assigned investigator or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the Investigation Section Sergeant assigned to supervise the handling of any related case. The Investigation Section Sergeant should do the following:

- Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at <http://www.uscis.gov/portal/site/uscis>.
- Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.
- Timely address the request and complete the certification if appropriate.
- Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Richmond Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

Richmond Police Department

Policy Manual

Immigration Violations

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigation Section sergeant assigned to supervise the handling of any related case. The Investigation Section sergeant should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- (b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/certification in the case file.