

Immigration Guidelines

317.1 VERSION

Review Date	Effective Date	Approving Authority
10/23/2020	07/09/18	Gabriel Camacho, Interim Chief of Police

317.2 POLICY AND PURPOSE

The purpose of this policy is to establish guidelines for employees of the Harrisonburg Police Department regarding contact with all individuals, in order to ensure equal enforcement of the law and equal service to the public regardless of citizenship or immigration status. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community, to encourage all people to communicate with the Harrisonburg Police Department without fear of inquiry regarding their immigration or documentation status and recognizing the dignity of all persons.

317.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

317.4 DUTIES

- (a) No member of the Harrisonburg Police Department shall:
1. Coerce, threaten with deportation, or engage in verbal abuse with any person based upon the person's, or the person's family members', actual or perceived immigration status or citizenship.
 2. Inquire into a person's immigration status when the person is seeking police services, such as filing a police report or calling 911.
 3. Stop, question, investigate, arrest, search, or detain an individual based solely on:
 - (a) Actual or suspected immigration status
 - (b) Actual or suspected violations of federal civil immigration law, including an immigration detainer, administrative immigration warrant, prior deportation order, or other civil immigration document.
 4. Inquire of any individual about the immigration status of any person, or require any individual to produce any document to prove their immigration status.

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Exceptions may be made for legitimate law enforcement needs. These may include:

- (a) Complying with consular notification requirements
 - (b) Complying with diplomatic or consular immunity requirements.
 - (c) The information is required to be obtained by federal, state, or city law. Examples include background checks and employment requirements.
 - (d) When circumstances or an ongoing criminal investigation make the information relevant to the investigation, and not civil immigration enforcement.
5. Request translation services from federal immigration authorities, barring exigent circumstances.
- (b) Officers may provide assistance to federal immigration authorities when there is an emergency posing an immediate danger to the public safety or to the federal agents.
 - (c) If a non-emergency request is made by federal immigration authorities the department may provide available support services, such as traffic control or peacekeeping efforts, upon approval of the Chief of Police or a Commander.
 - (d) Investigations Division
 1. Employees of the Criminal Investigations Division may cooperate with federal immigration authorities in the following ways:
 - (a) Request information when circumstances of an ongoing criminal investigation make the information relevant to the investigation, and not civil immigration enforcement.
 - (b) Share officer safety information that may be relevant to a federal immigration officer.
 2. All cooperation under this section shall be via the Chief of Police or a Commander.
 - (e) Records Unit
 1. Employees of the Records Unit may respond to a request from immigration authorities for records about a specific person's criminal history, including previous arrests, convictions, or similar criminal history where permitted by state or federal law.
 - (f) Except set forth in this policy, any other cooperation with federal immigration authorities must be approved by the Chief of Police or a Commander.
 - (g) Nothing in this policy shall be construed to restrict or prohibit:
 1. Enforcing the criminal laws of this state.
 2. Complying with all applicable federal, state, and local laws.
 3. Complying with a valid judicial warrant or other court order, or responding to any request authorized by a valid judicial warrant or other court order.

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4. Participating with federal authorities in a joint law enforcement taskforce, the primary purpose of which is unrelated to federal civil immigration enforcement.
5. Sending to, or receiving from, federal immigration authorities information regarding citizenship or immigration status, lawful or unlawful, of any individual. (8 USC 1373, 8 USC 1644).

317.5 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 employees 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, employees shall treat all individuals equally and not in any way that would violate the United States or Virginia constitutions.

317.5.1 INQUIRING INTO IMMIGRATION STATUS OF VICTIMS OR WITNESSES

No officer should, in connection with the report, investigation, or prosecution of a crime, inquire into the immigration status of a victim or witness or a parent or guardian of a victim or witness (Va. Code § 19.2-11.02). However, officers may still inquire into the immigration status of a parent or guardian suspected of committing a crime against a minor victim, as well as enforce or implement the provisions of Va. Code §§ 18.2-59, 18.2-308.09(10), and 18.2-308.2:2(B1) (Va. Code § 19.2-11.02).

317.6 PREVIOUSLY DEPORTED FELONS

“Officers lawfully detaining a person discovered to be an alien illegally present in the United States who was deported or left the United States after the felony conviction should notify a supervisor of the circumstances. The supervisor may approve custody under Va. Code § 19.2-81.6 if federal immigration officials verify the person’s presence in the United States qualifies as a federal criminal act and the federal immigration official indicates a federal criminal hold will be sought. **Note that an NCIC hit which reads “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL” is considered civil in nature, does not require notification of a supervisor, and is insufficient for custody under VA Code §19.2-81.6.**”

317.7 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. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of notification.

317.8 IMMIGRATION HOLDS

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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warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

317.9 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 Commonwealth's Attorney Office assigned to oversee the handling of any related case.

The Commonwealth's Attorney Office will consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.

- (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.