

Immigration Violations

415.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Montgomery County Sheriff's Office for investigating and enforcing immigration laws.

Deputies **are not** authorized to enforce immigration laws unless they are specifically assigned to work with U S Immigration/Customs Enforcement.

415.2 POLICY

It is the policy of the Montgomery County Sheriff's Office that all deputies 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 office in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

415.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, should be made to feel comfortable and secure in interacting with members of law enforcement. Although it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or North Carolina Constitutions.

415.4 ENFORCEMENT

If a deputy is not designated under federal law to perform the functions as an immigration officer, then the deputy does not have the authority to detain or arrest a person subject to a civil immigration warrant.

If this office is operating under a Memorandum of Agreement (MOA) with Immigrations and Customs Enforcement (ICE) and has authorized deputies to perform functions pursuant to, the Office should follow the terms and conditions of the MOA with regard to ICE and detention operations. Refer to the terms of the agreement for additional detail.

415.4.1 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who enters into the United States illegally has committed a crime. Generally, an alien who initially made a legal entry into the United States but has remained beyond what is a legal period has committed a federal civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize

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any person, except to the extent permitted by the United States or North Carolina Constitutions. Instead, the totality of circumstances shall be used to determine reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal immigration violation has occurred may include, but are not limited to:

- (a) An admission that the person entered the United States illegally.
- (b) Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- (c) While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency (see Limited English Proficiency Policy).
- (d) Other factors based upon training and experience.

415.4.2 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

A deputy shall verify from, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

415.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, a deputy will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges. 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.

415.6 ICE REQUEST FOR ASSISTANCE

Requests by ICE, or any other federal agency, for assistance from this office should be directed to a supervisor. The Office may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies.

415.7 INFORMATION SHARING

No member of this 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:

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- (a) Sending information to, or requesting or receiving such information from ICE
- (b) Maintaining such information in office records
- (c) Exchanging such information with any other federal, State or local government entity

415.7.1 IMMIGRATION HOLDS

No individual should be held based solely on a federal immigration detainer 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.

415.8 U VISA AND T VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes. A law enforcement certification for a U visa may be completed by a deputy in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking. A law enforcement declaration for a T visa may be completed by a deputy in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status shall be forwarded in a timely manner to the Field Services Director assigned to oversee the handling of any related case. Who shall:

- (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.

