



TOWN OF FAIRFAX

STAFF REPORT

April 5, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Chris Morin, Police Chief

SUBJECT: Accept report on Town's position of non-enforcement of immigration laws

RECOMMENDATION

Accept report on Town's position of non-enforcement of immigration laws.

DISCUSSION

Given the concern expressed by the community regarding the Town's enforcement practices as it pertains to immigration, some Councilmembers thought it would be helpful to the community if we shared the Police Department's position on the matter. Specifically, the Police Chief states as follows:

- We do not enforce immigration laws, nor do we inquire as to immigration status of those we contact/detain or arrest.
- It is not our job to assist federal agencies in rounding up illegal immigrants, that is not our role and we do not do that.
- We do not have a holding facility or jail therefore we do not get inquiries from other governmental agencies upon the arrest of a known or suspected undocumented immigrants.
- We do not engage in Law Enforcement activities based upon someone's immigration status.
- We do not work with ICE or Homeland Security on deportation efforts.
- We would assist and arrest any person (documented or undocumented) if there is a criminal warrant of arrest for that person. This usually involves serious criminal activity.

For your reference, attached is the official policy of the Police Department. This information is also available on the Town website.

FISCAL IMPACT

None

ATTACHMENT

Policy

Immigration Violations

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Fairfax Police Department for investigating and enforcing immigration laws.

428.2 POLICY

It is the policy of the Fairfax Police Department 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 department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

No person shall be contacted, detained, or arrested solely on the basis of his or her immigration status. The Fairfax Police Department will equally enforce the laws and serve the public without regard to immigration status. Except as specifically set forth in this policy, the immigration status of a person, and/or the lack of immigration documentation, should have no bearing on the manner in which officers execute their duties.

428.3 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 without regard to race, color or national origin in any way that would violate the United States or California Constitutions.

428.4 ENFORCEMENT

IMMIGRATION VIOLATION COMPLAINTS

If members of the public contact the Fairfax Police Department to report suspected immigration violations, such persons should be directed to Immigration and Customs Enforcement (ICE).

IMMIGRATION STATUS

Sweeps intended solely to locate and detain undocumented immigrants are not permitted. Officers will not participate in ICE-organized sweeps to locate and detain undocumented aliens. Fairfax Police Officers may, however, provide support services, including traffic control, during an ICE operation, upon specific request from ICE for assistance with approval of the Chief of Police or designee.

ESTABLISHING IDENTITY

Officers should attempt to identify any persons who they detain or arrest. Any person who would otherwise be cited and released, but who is unable to present satisfactory evidence of his or her identity, will be detained for the purpose of establishing his or her identity. A person taken into custody pursuant to CVC 40302(a) may be detained for no more than two hours, regardless of whether or not his or her identity has been verified pursuant to CVC 40307.

428.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Members of this department will not make any arrest notification to immigration and customs enforcement agencies upon the arrest and booking of a known or suspected illegal immigrant. Any such notification should be handled according to jail (MCSO) operation procedures.

428.6 ICE REQUESTS FOR ASSISTANCE

Except for requests for emergency assistance, requests by Immigration and Customs Enforcement, or any other federal agency, for assistance from this department should be directed to the Chief of Police, or designee, for approval.

428.7 IMMIGRATION HOLDS

Detainers and warrants are entirely separate and should not be confused. Duly issued warrants will in all cases be honored.

428.8 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)). A law enforcement certification for a U visa may be completed by an officer 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 (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by an officer in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigation Bureau supervisor assigned to oversee the handling of any related case. The Investigation Bureau supervisor 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.
 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10.

- (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.
- (e) Inform the victim liaison of any requests and their status.

428.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking shall complete the above process and the documents needed for a T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed for a U visa application pursuant to Penal Code § 679.10 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

428.8.2 REPORTING TO LEGISLATURE

The Investigations Section supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

428.9 TRAINING

The Training Manager shall ensure that all appropriate members receive immigration training.