

## **Policies for Handling and Responding to Immigration Enforcement Action Involving Members of the Public**

### **413.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines to members of the California Department of State Hospitals (DSH) Office of Protective Services (OPS) for handling and responding to immigration enforcement actions on DSH property involving members of the public. The immigration status of individuals is generally not a matter for police enforcement action. It is incumbent upon all OPS employees to commit to equal enforcement of the law regardless of immigration status.

In addition to criminal and investigative responsibilities dealing with visitors and staff, OPS assists DSH to ensure the safe treatment and transfer of DSH patients. Therefore, OPS officers may be presented with immigration enforcement requests in a number of different capacities involving staff and DSH patients, and OPS officers should consult with appropriate DSH guidance on these respective populations.

### **413.2 DEPARTMENT POLICY**

It is the policy of DSH that all employees are committed to equal enforcement of the law. This commitment increases the effectiveness of DSH in protecting and serving the State, while recognizing the dignity of all persons, regardless of their immigration status.

### **413.3 OPS ENFORCEMENT**

OPS duties generally require officers to provide safety, service, and security to patients, employees, and the public in and around each hospital.

Detection of criminal activity should be the primary interest of OPS officers in dealing with the public on DSH property. The decision to arrest shall be based upon those factors that establish probable cause of the criminal offenses within the jurisdiction of

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the department and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, gender identity, national origin, citizenship and immigration status, disability, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

California law generally prohibits law enforcement agencies from “inquiring into an individual’s immigration status.” (Cal.Gov.Code § 7284.6). U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcing the provisions of Title 8, United States Code dealing with illegal entry and immigration violations.

However, if an OPS officer, during an unrelated law enforcement activity, has reasonable suspicion to believe that an individual is in violation of 8 U.S.C. § 1326(a) that may be subject to the enhancement specified in 8 U.S.C. § 1326(b)(2), the OPS officer may investigate, enforce, or

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detain the individual for violation of that federal immigration law or arrest the individual based on probable cause. (Gov. Code, § 7284.6(b)(1)). This exception applies only to an individual who has been convicted of an aggravated felony as described in the INA and has been denied admission, excluded, deported, removed, or has departed with such an order outstanding, and is now unlawfully present in the United States.

#### **413.4 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 communicating with law enforcement, such as OPS officers, will not lead to an immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, OPS officers shall treat all individuals equally and without regard to race, ethnicity, or national origin in any way that would violate the United States or California constitutions. All individuals, regardless of their immigration status, must feel secure that contacting OPS officers will not make them vulnerable to immigration enforcement action.

OPS officers shall not ask any person about his or her immigration status for immigration enforcement purposes, including victims and witnesses of crime. (Gov. Code § 7284.6(a)(1) (A)). For that reason, OPS officers should not generally be in possession of immigration status information. However, if OPS officers happen to come into possession of a person's immigration status, OPS officers are not prohibited from responding to requests by immigration authorities for a person's immigration status. (Gov. Code § 7284.6(e)).

As discussed in greater detail below, OPS officers may make inquiries into information necessary to certify a victim or witness of crime for a T or U visa pursuant to Section 1101(a)(15)(T) or 1101(a) (15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code. (Gov. Code § 7284.6(b)(4)).

#### **413.5 SHARING OF INFORMATION WITH IMMIGRATION AUTHORTIES**

Nothing in this policy is intended to restrict OPS officers from exchanging information regarding a person's immigration status with any federal, state or local governmental entity, maintaining information regarding a person's immigration status, or exchanging information regarding a person's citizenship status with federal immigration authorities (Title 8 U.S.C. § 1373). (Gov. Code § 7284.6(e)). OPS officers may respond to requests from immigration authorities for information about a person's criminal history. OPS officers may also exchange confidential information, subject to applicable HIPAA restrictions, with other law enforcement agencies for purposes of task force investigations, so long as the conditions in Government Code § 7284.6(b)(3) are met.

Exchange of confidential information is permitted when:

- The primary purpose of the joint law enforcement task force is not immigration enforcement as defined in Gov. Code § 7284.4(f);
- The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement; and
- Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.

OPS officers may not otherwise provide personal information, as defined in Civil Code § 1798.3, about a person for immigration enforcement purposes unless that information is available to the public. (Gov. Code § 7284.6(a)(1)(D)).

#### **413.6 RESPONDING TO IMMIGRATION ENFORCEMENT REQUEST**

There are several foreseeable scenarios in which immigration officers might attempt to gain entry to DSH facilities which are typically not accessible to the public. Regardless of the scenario, OPS officers should first ask to see the immigration officer's credentials and the written authority for the request. It is important to review what the immigration officer provides as the authority.

OPS officers should not participate in federal operations as part of any detention team for immigration enforcement purposes. OPS officers may not make, or intentionally participate in, arrests based on civil immigration warrants. OPS officers also may not perform the functions of an immigration officer. (Gov. Code § 7284.6(a)(1)(E)-(G)). OPS officers may not be placed under the supervision of federal agencies, or deputized as special federal officers or deputies for purposes of immigration enforcement. (Gov. Code § 7284.6(a)(2)). OPS officers also shall not use immigration authorities as interpreters for law enforcement matters relating to individuals in department custody. (Gov. Code § 7284.6(a)(3)).

If a specific request is made by ICE or any other federal agency for immigration enforcement purposes, OPS officers may only provide support for immigration enforcement purposes if the activity is permitted under Government Code § 7284.6, as

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follows: OPS officers shall not detain an individual on the sole basis of a hold request by an immigration authority.(Gov. Code § 7284.6(a) (1)(B)). Any detention by an OPS officer should be based upon the reasonable belief that an individual (1) has violated state criminal laws, (2) has violated non-immigration federal criminal laws (not in title 8 of the United States Code), or (3) as discussed above, is in violation of 8 U.S.C.

§ 1326(a) subject to the enhancement specified in 8 U.S.C. § 1326(b)(2), if this is detected during an unrelated law enforcement activity.

OPS officers may only transfer an individual to immigration authorities if provided with a judicial warrant or judicial probable cause determination for a violation of federal criminal immigration law, or the person is eligible for a transfer to immigration authorities under Government Code § 7282.5(a)(1)-(6). (Gov. Code § 7284.6(a)(4)). Such transfers pursuant to Gov. Code § 7284.5(a), include but are not limited to, individuals who have been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code (§ 7284.5(a)(1)); convicted of a felony punishable by imprisonment in the state prison (§ 7284.5(a)(2)); or are current registrants on the California Sex and Arson Registry (§ 7284.5(a)(4)).

OPS officers are never required to, but may provide immigration authorities with advance notice of a person's release from custody only if the person falls under the criteria under Government Code

§ 7282.5(a)(1)-(6) and (b), or the information is available to the public. (Gov. Code § 7284.6(a)(1) (C)). OPS officers shall first consult with their designated DSH supervisor, and appropriate notice shall be given to the facility Chief of Police and the Chief of Law Enforcement.

Additionally, as employees of a public agency, OPS shall not provide voluntary consent to access nonpublic areas of the hospital to a law enforcement officer seeking to enforce the immigration laws unless presented with a judicial warrant. (Gov. Code § 7285.1(a)). Notwithstanding any of the above, OPS officers are not restricted from working with any agency, including immigration authorities, on criminal law enforcement matters that do not involve immigration enforcement.

#### **413.7 DISTINGUISHING "ICE WARRANTS." "HOLDS" AND NTA'S FROM JUDICIAL WARRANTS, SUBPOENAS, AND COURT ORDERS**

##### **413.7.1 ICE ADMINISTRATIVE "WARRANT"**

An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment to the U.S. Constitution because it is not supported by a showing of probable cause of a criminal offense and is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel OPS personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to nonpublic areas of DSH. An ICE warrant alone does not allow an immigration enforcement officer to search DSH or OPS records.

OPS officers should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, an OPS officer is not required to assist with the apprehension of a person identified in an ICE administrative warrant. As a public employer, DSH personnel, may not provide voluntary consent to an immigration enforcement agent seeking access to a nonpublic area when presented with an ICE warrant. Gov. Code, § 7285.1.

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The facility Chief of Police and the Chief of Law Enforcement shall be notified should OPS officers receive an ICE administrative warrant.

#### 413.7.2 NOTICE TO APPEAR

A notice to appear (NTA) is a charging document issued by ICE, CBP, or USCIS seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date.

An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.

An NTA does not require an OPS officer to take any action or grant an officer engaged in immigration enforcement any special power to compel the department to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the department. An NTA does not legally require OPS staff to allow authorities to search DSH or OPS records. The facility Chief of Police and the Chief of Law Enforcement shall be notified should OPS officers receive an NTA.

#### 413.7.3 FEDERAL COURT WARRANT

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court, based on a finding of probable cause. A federal court warrant may authorize the search or seizure of property, the entry into a nonpublic place to arrest a person named in an arrest warrant, or the arrest of a named person.



There are two types of federal court warrants: search-and-seizure warrants and arrest warrants.

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant.
- A federal arrest warrant allows an officer to arrest the individual named in the warrant.

OPS officers should act in consultation with the DSH's legal counsel, when presented with a federal court warrant. The facility Chief of Police and the Chief of Law Enforcement shall be notified should OPS officers receive a federal court warrant.

#### 413.7.4 ADMINISTRATIVE (NON-JUDICIAL) SUBPOENA

An administrative subpoena is a document that requests production of documents or other evidence, and, in the immigration enforcement context, is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the officer(s).

OPS officers generally do not need to immediately comply with an administrative subpoena. If an immigration officer arrives with an administrative subpoena, DSH may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. OPS officers should immediately contact a designated administrator or the DSH's legal counsel upon receipt of a subpoena.

The facility Chief of Police and the Chief of Law Enforcement shall be notified should OPS officers receive an administrative subpoena.

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#### 413.7.5 FEDERAL JUDICIAL SUBPOENA

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and it may require attendance at a specific time and location and the production of prescribed records.

As with issuance of administrative subpoenas, noted above, OPS officers generally do not need to comply immediately with the federal judicial subpoena. DSH may challenge a federal judicial subpoena in a U.S. district court. OPS officers should therefore immediately contact a designated department official upon the receipt of a subpoena.

The facility Chief of Police and the Chief of Law Enforcement shall be notified if OPS officers receive a federal judicial subpoena.

#### 413.7.6 FEDERAL COURT ORDERS

If an immigration officer arrives with a federal court order, which is an order signed by a federal judge or magistrate, the department supervisor or designated personnel should review the order with the department's legal counsel or other designated official.

The facility Chief of Police and the Chief of Law Enforcement shall be notified if OPS officers receive a federal court order.

#### **413.8 REPORTING REQUIREMENTS**

If DSH-OPS participates in a joint law enforcement task force, and dedicates personnel or resources on an ongoing basis, DSH-OPS is required to submit an annual report to the California Department of Justice and report the following information (Gov. Code § 7284.6(c)(1)):

- The purpose of the task force.
  - The federal, state, and local law enforcement agencies involved.
  - Total number or arrests made during the reporting period.
  - The number of people arrested for immigration enforcement purposes.
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The Investigations supervisor shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code section 7484.6, subdivision (a)(4), and the offense that allows for the transfer, is collected and provided to the Records Manager for required reporting to the California Department of Justice. (Gov. Code § 7284.6(c)(2)).

#### **413.9 U-VISA NONIMMIGRANT STATUS**

Under certain circumstances, federal law allows for the issuance of a temporary, non-immigrant status to allow victims and witnesses of certain qualifying crimes to remain in the United States (8 U.S.C. § 1101(a)(15)(U and T). A declaration/certification for a U-Visa or T-Visa from U.S. Citizenship and Immigration Services must 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 or T-Visa to be issued.

Any request for assistance in applying for U-Visa or T-Visa status should be forwarded in a timely fashion to the investigation supervisor assigned to oversee the handling of any related case. The Investigation Supervisor shall:

- Consult with the assigned agent to determine the current status of any related case and whether a supplemental report is warranted.
- 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
- 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.

- Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- 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.

In accordance with Penal Code § 679.10, the Investigation supervisor must certify a requested U- Visa application if enumerated conditions are met.

#### **413.10 HUMAN TRAFFICKING T-VISA**

Investigation supervisors who are assigned to investigate a case of human trafficking shall complete the above process for a T-Visa application. Supervisors should submit the letter needed for a T-Visa application within 15 business days of the first encounter with the victim, whether or not it is requested by the victim (Penal Code § 236.5). In accordance with Penal Code § 679.11, a supervisor must certify a requested T-Visa application if enumerated conditions are met. The facility Chief of Police and the Chief of Law Enforcement shall be notified prior to OPS staff initiating either U-Visa or a T-Visa.