

TRAINING BULLETIN

Los Angeles Port Police



Thomas E. Gazsi, Chief of Police

Immigration Enforcement: Frequently Asked Questions May 16, 2017

PURPOSE: The Purpose of this training bulletin is to provide answers to some frequently asked questions regarding the involvement of the Los Angeles Port Police in immigration enforcement. This guidance is consistent with and derived from similar guidance issued by the LAPD.

BACKGROUND: The proper role of local law enforcement in enforcing immigration law is an area of great public policy debate and sometimes confusion. This can lead to misconceptions about what Port Police officers may or may not do regarding immigration enforcement as well as what is the City and the Department's relationship to federal law enforcement agencies.

The Port Police is a Charter authorized municipal police agency responsible for enforcing state and local criminal laws and port specific administrative regulations within the jurisdiction of the City of Los Angeles primarily focused within the geographic jurisdiction of the Harbor District.

The Port Police has no authority or responsibility to, enforce federal civil immigration laws which are used to detain and remove undocumented immigrants from the United States. The Port Police will not serve as a civil immigration enforcement agency for the federal government. In some cases Port Police officers may arrest criminal suspects wanted for violating criminal provisions of federal immigration law. The Port Police Department does not perform immigration functions unrelated to investigating and enforcing criminal violations.

Federal agencies, such as U.S. Citizenship and Immigration Service (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE), are responsible for administering and enforcing federal civil and criminal immigration laws. CBP and ICE are responsible for investigating federal criminal violations of immigration laws in coordination with federal prosecutors who seek criminal penalties, including prison terms and fines, in United States District Courts. These federal agencies are also responsible for removing individuals who are not in compliance with federal immigration laws and regulations. The Port Police role in immigration enforcement is defined by the policies and procedures adopted by the Mayor, City Council, the Los Angeles Board of Harbor Commissioners, the Executive Director of the Harbor Department, and the Chief of the Port Police. These policies and procedures are consistent with the limitations of federal, state, and local laws.

ANSWERS TO THE MOST FREQUENTLY ASKED QUESTIONS REGARDING THE PORT POLICE ROLE IN IMMIGRATION

1. Does the Port Police make arrests for or otherwise enforce federal civil immigration violations?

No. Port Police officers do not have the authority or responsibility to enforce Federal civil laws that regulate an immigrant's status in the United States. Whether a person is permitted to be in, work in, or travel in the United States is determined by federal civil and administrative law which does not enable a local law enforcement officer to use his or her criminal investigative authorities to arrest someone who may be undocumented. Immigration status violations are civil in nature and, under Federal law, are within the jurisdiction and responsibility of federal government agencies such as Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

2. Can a Port Police officer stop a person to determine the person's immigration status?

No. Port Police Policy 428.4 restricts officers from stopping, detaining, or questioning a person based solely on the person's suspected immigration status. In addition, federal law restricts a local police officer from stopping an individual based on the perceived immigration status of the person or enforcing federal civil immigration law absent an agreement and delegation of authority by the U.S. Department of Homeland Security. (See Question No. 20 for an explanation of the 287(g) Program).

The LAPD adopted a similar policy when it adopted Special Order 40 over 35 years ago to ensure that immigrants are not afraid to contact the LAPD if they are a victim or witness to a crime. Both Port Police and LAPD policy affirm that the obligation to protect all Angelenos from crime and victimization and that the full cooperation of victims and witnesses, regardless of immigration status, is essential to hold criminals accountable in a court of law.

3. Are there any federal immigration-related laws that make it a crime for someone who is undocumented to be in the United States?

Yes. Although immigration status violations are generally civil in nature there are limited circumstances when an undocumented immigrant may have committed a federal crime for improperly entering or re-entering the United States under federal immigration laws. For example, Title 8, United States Code Section 1325 makes it a federal misdemeanor crime to improperly enter the United States without the permission of the U.S. Attorney General. In addition, it is a felony under Title 8, United States Code Section 1326 if a person is found in the United States and was previously denied admission, excluded, deported, or removed.

Federal immigration authorities have the primary responsibility to investigate and enforce criminal immigration offenses, including violations of Sections 1325 and 1326.

4. Can a Port Police officer arrest someone who has an outstanding arrest warrant for violating a federal criminal immigration offense?

Yes. If a Port Police officer learns that a suspect has an outstanding federal criminal warrant for an immigration-related offense, such as a violation of 8 U.S.C. § 1325 (Improper Entry) or 8 U.S.C. § 1326 (Illegal Re-entry), the officer may detain the suspect and arrest the individual pursuant to the warrant issued by a federal judge. Once the suspect is taken into custody they will be booked into an LAPD jail. The LAPD will transfer the suspect to federal authorities to appear before a federal magistrate judge.

5. Can a Port Police officer make a warrantless arrest of someone who is suspected of entering the country improperly in violation of 8 U.S.C. § 1325 (Improper Entry)?

No, Port Police officers are restricted under Port Police policy and state law from arresting a person for improperly entering the United States in violation of Title 8, United States Code Section 1325.

Section 1325 is a misdemeanor violation of federal immigration law and a person must have improperly entered the United States in the officer's presence to make a warrantless misdemeanor arrest for improper entry.

6. Can a Port Police officer temporarily detain someone who was previously deported and re-entered the United States in violation of 8 U.S.C. § 1326 (Illegal Re-Entry)?

While conducting law enforcement activities unrelated to the purpose of determining a person's immigration status (see Question No. 2), officers may receive a National Crime Information Center Immigration violator's Record stating that a person may have violated federal criminal immigration laws for illegally re-entering the United States after a conviction for a criminal offense. In cases where there is reasonable suspicion to believe that the individual illegally re-entered the United States after being convicted of an "aggravated felony" as defined by federal statute, a violation of Section 1326(a), (b)(2) (Illegal Re-entry after Conviction of an Aggravated Felony), Port Police officers are permitted to continue detaining the individual for a reasonable period not to exceed four hours and contact ICE. (See Question No. 12 regarding notifying ICE).

Port Police officers are only authorized to detain an individual to investigate whether the individual may be in violation of Section 1326(a), (b)(2). If during the investigation officers determine that there is no longer reasonable suspicion to believe that the individual violated Section 1326(a), (b)(2), the individual shall be immediately released from custody unless another lawful basis exists to detain or arrest the individual for an unrelated criminal charge.

7. What is LAPD "Special Order 40"?

Special Order 40 refers to an LAPD policy, adopted by the Los Angeles Board of Police Commissioners in 1979 that restricts an LAPD officer from initiating a police action with the

objective of discovering a person's immigration status. Special Order 40 also prohibits an LAPD officer from arresting a person suspected of improperly entering the United States in violation of Title 8, United States Code Section 1325. Both prohibitions are consistent with state and federal law. Port Police Policy 428 regarding immigration violations is consistent with this long standing LAPD policy.

8. Does Port Police policy 428 or LAPD Special Order 40 limit an officer's ability to arrest a person suspected of committing a crime under state, local, or federal law?

No. Nothing in Port Police policy 428 or LAPD Special Order 40 restricts an officer from lawfully stopping, detaining, questioning or arresting a person for committing a local, state, or federal crime.

9. Does the Port Police interview arrestees to determine their immigration status?

No. The Port Police does not interview arrestees to determine their immigration status but an officer may ask the arrestee for his or her place of birth and nationality. This information is required for booking forms and other documentation to ensure that foreign nationals receive information regarding consular assistance.

10. Does the Port Police notify ICE that they have arrested someone who may be in violation of civil immigration laws?

No. The Port Police does not notify ICE that a person in custody may be in violation of civil immigration laws. (See Question No. 18 regarding how ICE may learn of someone in custody).

11. Does the Port Police notify ICE if a suspect or arrestee has an immigration- related criminal arrest warrant?

Yes. If an officer learns that an arrestee has an outstanding arrest warrant for a criminal violation of federal immigration law, the Port Police will notify ICE or the originating agency to determine whether the agency will take custody of the arrestee for criminal prosecution in federal court.

12. Does the Port Police notify ICE if a suspect or arrestee does not have a warrant but there is reasonable suspicion that the person may have illegally re-entered the United States in violation of 8 U.S.C. § 1326, a felony?

Yes, but only when there is reasonable suspicion to believe that the individual illegally re-entered the United States after being convicted of an "aggravated felony" as defined by federal statute, a violation of Section 1326(a), (b)(2) (Illegal Re-entry after Conviction of an Aggravated Felony). The Port Police will notify ICE's Law Enforcement Support Center that the individual will be held for a reasonable period not to exceed four hours.

13. Does the Port Police or LAPD allow ICE Personnel to interview individuals arrested by the Port Police at Port Police or LAPD jail facilities?

Only if the arrestee provides written consent to the interview. If ICE personnel request an interview of an arrestee, the Port Police will notify the arrestee of the request, and the arrestee has the right to refuse to be interviewed by an ICE agent. This process is consistent with interview requests made by any local, state or federal law enforcement agency. ICE personnel are not present in LAPD jail facilities to screen arrestees for immigration status and must make interview requests on an individual basis.

14. Does the Port Police maintain records of the immigration status of an arrestee, witness or victim?

The Port Police does not routinely request or record the immigration status of victims, witnesses, or arrestees unless it is related to an ongoing criminal investigation or if such information is provided by an outside agency. For example, if an undocumented immigrant was victimized because of his or her immigration status, the person's status would be reflected in investigative records.

Port Police policy 428.9 sets forth a procedure for supporting an undocumented immigrant's application to obtain a Non- Immigrant visa after assisting law enforcement authorities. In this instance the Port Police would maintain documentation indicating the applicant's immigration status. Finally, if another agency such as ICE makes notification of an arrestee's immigration status, that written record is maintained as required by law.

15. What is an "Immigration Detainer Request"?

When the Department of Homeland Security becomes aware that someone in custody may be in violation of federal civil immigration laws, ICE will transmit a form entitled "Immigration Detainer – Notice of Action." (This is usually to the agency running the jail after booking into a jail facility which for the Port Police is routinely LAPD). The form asks the local agency to voluntarily hold an arrestee in jail for an additional 48 hours after the arrestee would otherwise be released so that ICE personnel can assume custody of the arrestee. An immigration detainer request is neither an arrest warrant nor a judicial order requiring the detention of an arrestee.

16. Does the LAPD, or would the Port Police seek to, extend an arrestee's time in jail based solely on an Immigration Detainer Request?

No. An immigration detainer request is not an arrest warrant based on probable cause of a criminal violation issued by a neutral magistrate judge. A detainer simply asks to extend an arrestee's time in custody beyond what is allowed under the law for the underlying state or local crime. Federal courts have ruled that a local agency cannot keep a person in custody without a probable cause determination by a neutral magistrate and that detaining an individual based solely on a civil immigration detainer request violates the Fourth Amendment of the U.S. Constitution. Therefore,

neither the Port Police nor the LAPD will extend an arrestee's time in custody based solely on an immigration detainer request.

17. Will the LAPD, or the Port Police seek to extend an arrestee's time in custody if an Immigration Detainer Request is accompanied by a Form I-200 "Warrant for Arrest of Alien" or Form I-205 "Warrant of Removal/Deportation"?

No. A "Warrant for Arrest of Alien" and "Warrant of Removal/Deportation" are administrative directions to federal immigration officers to take a person into custody for civil immigration proceedings. These documents are not arrest warrants based on probable cause of a criminal violation and are not issued by a neutral magistrate as required under the Fourth Amendment of the U.S. Constitution. Therefore, neither the Port Police, nor LAPD will extend an arrestee's time in custody based on an Immigration Detainer Request accompanied with either document.

18. How does the Department of Homeland Security and ICE know that the Port Police or LAPD has someone in custody if neither agency notifies them?

When an arrestee is booked in an LAPD facility his or her fingerprints are transmitted to the Federal Bureau Investigation to confirm the arrestee's identity and obtain the arrestee's criminal history.

The U.S. Department of Homeland Security and ICE have access to the FBI's database and may be notified when a person is arrested.

19. Does the Port Police or LAPD transfer arrestees to ICE for civil immigration violations?

No. Arrestees are not transferred to ICE custody for civil immigration violations.

However, once released from an LAPD jail facility ICE personnel may take that person into custody when the person is in public.

20. What is the federal "287(g)" Program?

The U.S. Department of Homeland Security's "287(g) Program" refers to Section 287(g) of the Immigration and Nationality Act which allows ICE to delegate its authority to local police agencies that volunteer to take on civil immigration enforcement responsibilities. According to the Department of Homeland Security, only a small number of local law enforcement agencies participate in the 287(g) program.

As of March 10, 2017, there are 41 agencies in 17 states that voluntarily participate in the 287(g) program with DHS. See <https://www.ice.gov/factsheets/287g>. Neither the the Port Police, nor LAPD participate in the 287(g) program and therefore have not obtained any civil immigration enforcement authority through this, or any other, federal program.

21. Does the Port Police assist ICE with civil immigration enforcement operations in Los Angeles?

No. Port Police officers do not participate in or assist ICE personnel during civil immigration enforcement operations. Port Police officers will respond to the location of an immigration operation if there is an emergency, such as a crime in progress or a medical emergency.

22. Does the Port Police work with ICE on criminal investigations unrelated to immigration?

Yes. The Port Police works closely with ICE Special Agents to investigate serious state and federal criminal offenses such as narcotics trafficking, intellectual property theft, human trafficking, child exploitation and terrorism. Port Police officers are also assigned to federal task forces supported by ICE to investigate criminal networks and criminally prosecute offenders. Port Police task force officers, however, are prohibited from participating in any civil immigration enforcement-related operations and must comply with Port Police policies and state law.

23. Do the Port Police or the LAPD have any “Sanctuary City” policies?

“Sanctuary City” or “Sanctuary City Policies” are not terms used by the Port Police or LAPD and are not defined under federal, state, or local law. Some jurisdictions declare themselves as a “sanctuary jurisdiction” while others may be viewed as a “sanctuary jurisdiction” based on the perception that such jurisdiction may not fully cooperate with federal authorities in the enforcement of federal immigration law. Port Police policies and procedures regarding immigration enforcement are in accordance with local, state and federal laws and are designed to promote the Department’s commitment to constitutional policing and public safety.

24. What is City of Los Angeles Executive Directive No. 20?

Executive Directive No. 20 refers to a mayoral order issued on March 21, 2017 setting forth the Mayor’s longstanding commitment to immigrants in Los Angeles.

Among other things, it directs the Chief of Police of the Port Police to maintain policies and procedures consistent with the LAPD’s existing policies and procedures with respect to immigration enforcement, including the policy that originated in Special Order 40, the ICE detainer policy, and the policy against partnering with ICE to perform civil immigration enforcement.