



Judicial Watch

Because no one is above the law!

VIA FACSIMILE (510) 790-6801
AND U.S. MAIL

August 17, 2009

Craig Steckler, Chief of Police
Police Department, City of Fremont
2000 Stevenson Blvd.
Fremont, CA 94537-5007

Re: Operations Directive: Immigration Violations, Index N-32

Dear Chief Steckler:

Judicial Watch, Inc. is a not-for-profit educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. We recently became aware of the above referenced Operations Directive issued in September 2008 by the City of Fremont Police Department. We are concerned that the directive, a copy of which is enclosed, conflicts with both federal and California law.

The particular provision we are most concerned about is set forth in Section III, Paragraph H, entitled "Notification of Immigration and Customs Enforcement." The provision states:

1. If an officer believes that an individual taken into custody for the below listed qualifying situations is also an undocumented immigrant, after he or she is formally booked and there is no intention to transport to the County Jail, ICE should be informed by the arresting officer, so that they may consider placing an "immigration hold" on the individual.
 - a. Felony charge.
 - b. Serious misdemeanor charges primarily including offenses involving violence, weapons, or driving under the influence.
 - c. Cases in which investigative priorities make it necessary and with the approval of a supervisor.

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2. In the event an individual, who is an undocumented immigrant, is taken to the County Jail for booking for a criminal charge, he/she will be interviewed by an employee from ICE.

FPD Operations Directive N-32(III)(H). Because the provision authorizes officers to report an illegal alien to ICE under very limited circumstances only, and because this is the only provision in the directive addressing notification to ICE, it appears that officers are being prohibited from reporting illegal aliens to ICE in all other circumstances.

At least two federal statutes, Title 8 United States Code Sections 1373 and 1644, create an affirmative duty on the part of state and local governments and state and local government officials to refrain from imposing any type of restriction on officers' ability to share information with federal immigration officials about a person's immigration status:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official ***may not prohibit, or in any way restrict***, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

* * *

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity ***may be prohibited, or in any way restricted***, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

8 U.S.C. §§ 1373(a) and 1644 (emphasis added). The directive appears to be in direct conflict with both of these federal statutes.

In addition, the directive also appears to be in conflict with a longstanding California law that requires an arresting agency to notify federal immigration authorities whenever there is reason to believe a person arrested for certain drug offenses may not be a U.S. citizen:

When there is reason to believe that any person arrested for a violation of Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550, may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

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Health & Safety §11369. The constitutionality of this particular statute was upheld recently in *Fonseca v. Fong* (2008) 167 Cal. App. 4th 922; 84 Cal. Rptr. 3d 567. Because the directive does not appear to allow officers who arrest persons for any of the enumerated drug offenses to notify federal immigration officials of the arrest if the officer has reason to believe that the arrestee is not a citizen, such as if the arrestee produces a "green card" or foreign passport as a means of identification, it appears to conflict with Health & Safety Code Section 11369.

We trust that the City of Fremont Police Department will take appropriate steps to ensure that its policy and procedures conform to the requirements of both federal and California law. If it is not the case that officers are prohibited from reporting illegal aliens to ICE in all but the very limited circumstances set forth in Section III, Paragraph H of the directive, please advise us and all City of Fremont police officers accordingly.

Thank you for your prompt attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read 'Thomas J. Fitton', written over the typed name.

Thomas J. Fitton
President

Enclosure



OPERATIONS DIRECTIVE

Immigration Violations

Originated: 09/12/08

Revised: 00/00/00

Log: 08-02

INDEX: N-32

Immigration Violations
U.S. Immigration – Immigration Violations
Customs Enforcement – Immigration Violations

I. POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry, etc. When assisting ICE at their specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation, based on probable cause originating from activities other than the isolated violations of Title 8, United States Code §§ 1304, 1324, 1325, and 1326, this department may assist in the enforcement of federal immigration laws.

II. PURPOSE

The immigration status of individuals alone is not generally a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigrant status. Confidence in this commitment will increase the effectiveness of the department in protecting and serving the entire community.

III. PROCEDURE

A. Immigration Complaints

1. Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Office of Detention and Removal Operations (DRO) of the ICE has primary jurisdiction for enforcement of Title 8, United States Code.

B. Basis for Contact

1. A person's immigration status alone shall not be the basis for contact, detention, or arrest except under the following circumstances:
 - a. Drop House – A house or building being utilized as a transfer/holding facility for persons engaged in smuggling undocumented persons.
 - b. Load Vehicles – Vehicles engaged in smuggling undocumented persons or contraband.
 - c. Drug/Prostitution House – A house or building being used to facilitate narcotics trafficking or prostitution.
 - d. Homeland Security Interests.
 - e. With approval from a Division Commander or Watch Commander.

C. Sweeps

1. The Fremont Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented immigrants.
2. When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, socioeconomic status, or other group.
3. The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, etc.

D. ICE Request for Assistance

1. If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or keep the peace efforts, during the federal operation.
2. Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety.

Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

E. Identification

1. Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

F. Arrest

1. If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation pursuant to California Vehicle Code § 40302(a) and California Penal Code § 836.

G. Booking

1. If the officer is unable to reasonably establish an arrestee's identity, the individual may be booked into jail, in lieu of a citation/release for the suspected criminal violation and held for bail.
2. If a person is detained pursuant to the authority of California Vehicle Code § 40302(a), for an infraction, that person may be detained for a reasonable period for the purpose of establishing his/her true identity. Upon establishment of the person's identity, he/she shall be released on his/her signature with a promise to appear in court for the California Vehicle Code infraction involved, unless information obtained through this process necessitates the persons continued incarceration.

H. Notification of Immigration and Customs Enforcement

1. If an officer believes that an individual taken into custody for the below listed qualifying situations is also an undocumented immigrant, after he or she is formally booked and there is no intention to transport to the County Jail, ICE should be informed by the arresting officer, so that they may consider placing an "immigration hold" on the individual.
 - a. Felony charge.
 - b. Serious misdemeanor charges primarily including offenses involving violence, weapons, or driving under the influence.

- c. Cases in which investigative priorities make it necessary and with the approval of a supervisor.
 2. In the event an individual, who is an undocumented immigrant, is taken to the County Jail for booking for a criminal charge, he/she will be interviewed by an employee from ICE.
- I. Determination of Immigrant Status
 1. Determination of immigration status is primarily the jurisdiction of the U.S. Immigration and Customs Enforcement. Title 8, United States Code, § 1304(e), provides: "Every alien, 18 – years of age and over, shall at all times carry with him and have in his or her personal possession any certificate of alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than 30 days, or both."
- J. Considerations Prior to Reporting to ICE
 1. The Fremont Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any subject. Race, gender, religion, sexual orientation, age, occupation, or other arbitrary aspects are of no bearing on the decision to arrest.

CRAIG T. STECKLER
CHIEF OF POLICE

– END OF DIRECTIVE –