

Immigration Status of Foreign-Born Clients

508.1 OVERVIEW

This section establishes guidelines for the investigation and supervision of foreign-born clients. Consistent with the provisions of Senate Bill 54 (2017) and with federal immigration law, including Title 8 of the United States Code 1373, this section outlines procedures for documenting the citizenship or immigration status of foreign-born adult clients, and for data sharing with immigration authorities.

508.2 GENERAL GUIDELINES FOR ALL CASES INVOLVING IMMIGRATION ISSUES

508.2.1 DIRECT QUESTIONING REGARDING IMMIGRATION STATUS

Probation officers shall not engage in questioning clients as to their immigration status.

If a client, during a probation interview, whether in or out of custody, designates their place of birth as a foreign country, the interviewing officer should contact the Immigration and Customs Enforcement (ICE) Investigation Division to ascertain the client's true identity and inquire about citizenship status so that the case may be screened for eligibility for the Probation Department's Federal Court Proceedings (FCP) caseload.

508.2.2 I.C.E. COLLABORATION/COMMUNICATION PARAMETERS

SB 54 includes a number of specific prohibitions on communication and collaboration with ICE, codified in Government Code section 7284.6. However, officers may provide non-public information regarding a person's release date to ICE under certain circumstances listed in section 7282.5 of the Government Code, including but not limited to any of the following:

- (a) The individual has 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.
- (b) The individual has been convicted of a felony punishable by imprisonment in the state prison.
- (c) The individual has been convicted within the past 5 years of certain misdemeanors or 15 years of certain felonies.

Prior to providing release dates or engaging in any communication or collaboration with ICE not specifically authorized by this Procedure Manual, officers shall contact a supervisor for approval.

508.2.3 DISCLOSURE OF IMMIGRATION STATUS IN OPEN COURT

Senate Bill 785 (2018) prohibits the disclosure of a person's immigration status in open court by a party unless that party requests an *in camera* (private or in chambers) hearing, and the presiding judge determines that the evidence is admissible.

Officers should be careful not to disclose a person's immigration status in open court. If the Court asks an officer representing the Department in court about a client's immigration status, the officer should request a "sidebar" conference near the judge's bench or another area where the matter can be discussed off the record.

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508.3 INVESTIGATION PROCEDURES

An investigator receiving a new case will not notify ICE that the individual has received a new felony conviction. However, Probation may respond to a request from ICE as to the history of a client under Probation supervision.

508.3.1 DOCUMENTATION

Alien Registration Numbers (A#) – United States Citizenship and Immigration Services (USCIS) assigns Alien Registration Numbers (ARN) to non-U.S. citizens at the time of creating their A-files. These numbers are also known as A-numbers or Alien numbers and are essential for ICE, as each is associated with a documented/undocumented foreign-born citizen.

At any stage during the investigation process, if the probation officer ascertains the client's ARN, the officer must check the Probation Case Management System (PCMS) to determine if this number has been previously entered into the system as required. To enter an Immigration A# in PCMS, the officer will select the plus (+) next to the client's name, click on "Other Agencies," expand the drop-down box and select USCIS, input the A#, and click "Save."

Check Records for True Name - The client may be known to ICE under an alias. If an investigations officer determines the client has different names from the ones reported, the officer shall request new law enforcement record clearances under those names and review PCMS to determine if the client has a pre-existing PCMS record and reconcile any discrepancies, which could require the assistance of professional staff.

508.3.2 OBTAINING INFORMATION

Investigations officers shall not engage in questioning a client about immigration status. However, if the officer becomes aware that a client is foreign born, the officer shall review SDLaw for notification of an ICE Detainer request. If no ICE Detainer request is noted, the officer should contact ICE Investigations in an effort to verify the client's identity and immigration/legal status. The information obtained from ICE is for internal use only. Any request for this information from another agency should be screened with a supervisor.

During the investigation interview, the probation officer should obtain as much information as possible regarding the client's current or potential residence, employment, and family history. When reviewing general probation conditions with the client, the investigating officer should be careful to highlight any immigration-specific conditions. A contact entry should be made in PCMS noting that the immigration-specific conditions and the potential consequences of probation violations were reviewed.

508.3.3 FOREIGN BORN OFFENDERS/STANDARD PROBATION CONDITION/TERMS

Investigators will recommend the following conditions for foreign-born clients on the CRM-21 (Orders Granting Probation) in addition to any other specific conditions the officer may find appropriate:

- Condition 3a: Not enter or be in the United States without proper documentation of lawful presence.

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- Condition 3b: Report to the P.O. within 72 hours of entry, legal or illegal, into the United States.
- Condition 3c: Report any change of immigration status to the P.O. within 72 hours.

Immigration status will not be identified or included in Probation Court Reports.

508.3.4 FCP CASELOAD ELIGIBILITY CRITERIA

As a border county, San Diego has a high number of clients who cross the border on a regular basis, including those who may be deported or live for long periods in Mexico, which would preclude active supervision of those clients. The frequency of this situation warrants a dedicated formal probation caseload for these clients.

During the case transfer process, Investigations officers should screen a case for transfer to the FCP caseload if the client meets the following criteria:

- (a) The client has an active ICE detainer and is in either local or federal custody OR the client is a court-ordered active participant or pending admission within two weeks to the Sheriff's County Parole and Alternatives to Custody Unit (CPAC), Work Furlough or Residential Re-entry Center.
- (b) The client does not have any other pending criminal matters, is not in violation of the terms and conditions of probation and does not have any outstanding warrants.
- (c) For sex offender cases, if it is confirmed that the client has been deported/removed prior to the transfer of the case.
- (d) If the client was released from local custody to ICE following sentencing or at the time of case transfer, the investigations officer must contact ICE regarding the client's physical whereabouts and legal status, and document said status in PCMS.

If any of the above does not apply, the case may not be transferred to the FCP caseload and must be transferred to the appropriate level of supervision.

508.3.5 TRANSFER TO APPROPRIATE LEVEL OF SUPERVISION

- Investigations officers must transfer eligible cases as soon as possible and within 14 days of the probation grant unless otherwise approved by the FCP Unit supervisor.
- Cases with an ICE Detainer request shall be transferred to the Probation's FCP Unit for monitoring regardless of the COMPAS score/level of supervision.
- Transfer cases using the Supervision Assignment Form A-9.
- **The Exception:** cases requiring transfer to the High-Risk Sex Offender Unit (HRSO). The HRSO Unit will monitor ALL the client's immigration status until final determination of the removal/deportation proceedings. The case may then be transferred to the FCP Unit once deportation is confirmed.
- The FCP Unit will monitor cases with ICE Detainers and follow up with the immigration case status while the clients remain in custody. If they are confirmed deported, cases will continue to be monitored within the caseload, and the FCP Unit will take proper action should a client return to the U.S. legally or illegally.

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- Should a client be released on their own recognizance, bond, supervised release with Immigration, and/or granted relief from deportation, the probation officer will prepare the case for transfer to the appropriate level of supervision as the offender will be residing within the community.

508.3.6 REQUIRED TRANSFER DOCUMENTATION

For cases with an ICE Detainer request at the time of transfer, the assigned investigations probation officer will place a copy of the most current booking screen from SDLaw in the file, verify if the client remains in custody, the client's location, and minimum release date. Update the A-9 if needed.

If at the time of transfer, the client has been released to ICE, the investigating officer shall verify this information with ICE to confirm the probationer's current location in federal custody or the date of deportation, country of removal, and the ICE contact person. This information will be documented in PCMS for internal use only. Subsequent to transfer, the supervision officer with the Probation FCP Unit will screen the case and follow up on immigration proceedings.

508.4 SUPERVISION PROCEDURES

508.4.1 SUPERVISING FOREIGN-BORN CLIENTS WITH ICE DETAINER REQUESTS

When a probation officer in a supervision unit receives a case file of a client who has an ICE Detainer or is in custody, the following procedures should be followed:

1. Investigate to determine if the client was deported/removed, or in ICE custody; this should be documented in PCMS contacts, including the client's location in custody, the ICE officer's name, deportation/removal date and country of removal.
2. Once the probation officer confirms the client is in ICE custody or has been deported or removed via an ICE agent, the case file may be transferred to the FCP Unit, contingent upon no outstanding probation violations, warrants/wants or pending criminal cases.
3. If the client is released from ICE to the community on an Order of Supervision, or on bond with ICE, the probation officer will supervise and enforce conditions of probation. If the case is assigned to the FCP Unit, the file is transferred to the appropriate level of supervision after the 72-hour reporting is completed.

Supervision officers may not request an ONS notice for foreign-born clients listing their status.

Probation may arrest clients under Probation supervision who are deported and returned to the U.S. but only if illegal entry is detected during law enforcement activity not related to immigration enforcement.

Probation may contact ICE when a client has an immigration hold in an effort to know whether ICE will deport the individual; however, information shared with Probation may not be directly shared with another agency.

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508.4.2 SUPERVISING FOREIGN-BORN CLIENTS WITHOUT ICE DETAINER REQUESTS

When a supervision officer learns of a client on their caseload who was foreign-born and does not have a hold, Probation may contact ICE as long as the officer did not learn of the client's foreign status through engagement with the client. The following procedures should be followed.

1. Contact ICE either by phone or e-mail, provide the offender's information and request legal status.
2. Continue to supervise as per court orders while a determination is made regarding deportation/removal.
3. Once the client has been removed from the United States, confirmed in ICE custody, and/or deported, the case file may then be transferred to the Probation FCP Unit, contingent upon no outstanding probation violations, warrants/wants or pending criminal cases.

Officers should be aware that because Border Patrol field officers and United States Port of Entry agents do not have access to the Officer Notification System (ONS), they are unable to determine if a detained subject is on probation and under supervision.

508.4.3 CLIENT REPORTS AFTER BEING RELEASED FROM ICE

Occasionally, a client who was formally deported and/or removed will return or attempt to re-enter the United States illegally. If the assigned probation officer, at any level of supervision, discovers a client has re-entered the United States, and proper documentation (i.e. order from an Immigration Judge, current Visa) is obtained substantiating lawful re-entry, the officer shall screen the case with their supervisor to determine the best course of action if the client has in any way violated conditions of probation (re-arrest, schedule an Order to Show Cause (OSC) hearing, etc.).

508.4.4 RE-ARRESTS/WARRANTS

Regardless of the supervision assignment, when a probation officer is notified of a foreign-born client's law enforcement contact or arrest either by another agency or via an automated notification (Supervised Release File, Notice of Arrest, informational notice) the officer should, upon receipt of this information, contact the Department of Homeland Security (DHS) to determine updated immigration status (Clients can be removed from the United States multiple times during the grant of formal probation without any notification to Probation). Additionally, the officer must verify if criminal charges will be or have been filed as a result of the law enforcement contact/arrest. If further action is needed, the officer will then determine if an ex-parte warrant request, probation re-arrest or other course of action is appropriate.

Continuous incarceration, local custody and release to ICE custody due to the instant offense is not considered a probation violation.

Probation Re-arrest - The standard procedures for re-arrests should be followed for most cases involving foreign-born clients. If Probation becomes aware that the client has reentered the country and has failed to report, the assigned officer should submit a warrant.

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Reasons for Warrant Requests - If the probation officer is notified that the client has illegally re-entered the country, has failed to report to Probation within 72 hours, or has committed a new offense, an investigation will be conducted to determine if a warrant will be requested. A warrant request requires supervisor approval.

Federal agencies do not honor Probation Holds (PC1203.2(a)); therefore, a warrant would need to be requested if the client is in federal custody. Factors to consider for warrant requests:

- Client's risk level
- Nature of the instant offense
- Nature of the new charges
- Client's removal type (i.e. formally deported, voluntary removal)

508.4.5 CONVERSION TO PROBATION TO THE COURT

Occasionally, the Court may order the formal probation grant be converted to Felony Probation to the Court upon confirmation of deportation. If the supervision officer is notified that the client has been deported, the officer should review the Court orders to confirm if automatic conversion was ordered and then calendar the appropriate hearing.

508.4.6 ASSIGNMENTS WITHIN THE PROBATION ICE UNIT

This unit is comprised of three caseloads with cases assigned to the unit officer who tracks offenders' immigration status. The FCP Unit Supervisor and/or Senior Probation Officer will screen and assign all incoming cases.

508.5 REFERENCES

[Government Code 7282.5](#)

[Government Code 7284.6](#)