

## RINGWOOD BOROUGH POLICE DEPARTMENT

### POLICY AND PROCEDURE

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<b>SUBJECT: IMMIGRATION AND CUSTOMS ENFORCEMENT (I.C.E.) – GUIDELINES &amp; PROCEDURES</b>				
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 A.G. DIRECTIVES #2005-1 & #2018-6*

***SUBJECT: IMMIGRATION AND CUSTOMS ENFORCEMENT (I.C.E.) – GUIDELINES & PROCEDURES***

A. ***STATEMENT OF PURPOSE:*** In recent years, the federal government has increasingly relied on state and local law enforcement agencies to enforce civil immigration law. This trend presents significant challenges to New Jersey law enforcement officers, who have worked hard to build trust with our state’s large and diverse immigrant communities.

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It is well established that individuals are less likely to report crime if they fear that the responding officer will turn them over to immigration authorities. This fear makes it more difficult for officers to solve crimes and bring suspects to justice, putting all citizens of the state at risk.

Therefore, it is crucial that New Jersey law enforcement makes very clear to our immigrant communities: there is a difference between state, county and local law enforcement officers, who are responsible for enforcing state criminal law, and federal immigration authorities who enforce federal civil immigration law.

While New Jersey's law enforcement officers are not responsible for enforcing civil immigration violations except in narrowly defined circumstances, they should assist federal immigration authorities when required to do so by law. Furthermore, any person who violates New Jersey criminal statutes can and will be held accountable for their actions, no matter what their immigration status is.

**B. DEFINITIONS/ACRONYMS:**

1. *ADMINISTRATIVE WARRANT*: A civil warrant that is issued by federal immigration officers.
2. *ICE*: Immigration & Customs Enforcement.
3. *IGSA* – Inter-Governmental Service Agreements
4. *IMMIGRATION DETAINER (aka, ICE Detainer)*: A civil request to detain an individual issued by federal immigration officers.
5. *SECTION 287(g)*: As used in this Directive, this term means a state, county or municipal law enforcement agency that is a signatory to a written agreement with *ICE* authorized by Section 287(g) of the *Immigration and Nationality Act, 8 U.S.C. 1357(g)*.
6. *SECTION 287(g) OFFICER*: This term means a law enforcement officer employed by a *Section 287(g)* agency who has received the training required by *Section 287(g)* and is authorized by *ICE* to act as a federal immigration officer.
7. *VIOLENT OR SERIOUS OFFENSE*: for the purposes of Sections E 2 e & E 2 f of this Directive, this term is defined as follows:
  - a. Any first or second degree offense, as defined in N.J.S.A. 2C:43-1;
  - b. Any indictable domestic violence offense, as defined in N.J.S.A. 2C:25-19;
  - c. Any other indictable offense listed in the chart below; or
  - d. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described within this definition.

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<b>Statute</b>	<b>Description</b>	<b>Statute</b>	<b>Description</b>
2C:12-1	Assault	2C:18-2	Burglary of a Dwelling
2C:12-1.1	Knowingly Leaving the Scene of MVA Involving Serious Bodily Injury	2C:24-4	Endangering the Welfare of Children
2C:12-10	Stalking	2C: 28-5	Witness Tampering & Retaliation
2C: 12-13	Throwing Bodily Fluids at Officers	2C:29-2B	Eluding a Law Enforcement Officer
2C:14-3	Criminal Sexual Contact	2C:29-3A(5)	Hindering Apprehension of Another Using Force or Intimidation
2C:16-1	Bias Intimidation	2C:29-B(2)	Hindering Apprehension of Oneself Using Force or Intimidation
2C:17-1	Arson	2C:29-9	Criminal Contempt (Violation of Retraining Orders, DV Orders, etc.)
2C:17-2	Causing Widespread Injury or Damage	2C:40-3B	Aggravated Hazing

**C. DISCLAIMERS:**

1. Under both federal and state law, local law enforcement agencies are not required to enforce *civil administrative warrants* or *detainers* issued by federal immigration officers rather than federal or state judges.
2. When, by the terms and conditions delineated in this Directive law enforcement is authorized to provide assistance, this Directive does not mandate that such assistance be provided. However, other applicable laws, policies and standards may mandate that certain assistance be provided, and law enforcement should comply with those laws, policies and standards, as appropriate.

**D. PROHIBITION OF RACIALLY-INFLUENCED POLICING:**

No law enforcement officer shall at any time engage in conduct constituting racially-influenced policing, as defined in Attorney General Law Enforcement Directive #2005-1. An officer or employee of a police agency in this State acting either under the authority of the laws of New Jersey or pursuant to an agreement authorized by *Section 287(g)* shall not consider a person’s race or ethnicity as a factor in drawing an inference or conclusion that the person may be an undocumented immigrant.

**ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW:**

1. **USE OF IMMIGRATION STATUS IN LAW ENFORCEMENT ACTIVITIES:** Except as specified in Section E 3 of this Directive, no state, county or local law enforcement agency or official shall:
  - a. Stop, question, arrest, search, or detain any individual based solely on:
    - 1) Actual or suspected citizenship or immigration status; or
    - 2) Actual or suspected violations of federal civil immigration law.
  - b. Inquire about the immigration status of any individual, unless doing so is:
    - 1) Necessary to the ongoing investigation of an indicatable offense by that individual; and
    - 2) Relevant to the offense under investigation.
2. **LIMITATIONS ON ASSISTING FEDERAL IMMIGRATION AUTHORITIES IN ENFORCING FEDERAL CIVIL IMMIGRATION LAW:** Except as specified in Section E 3 of this Directive, no state, county or local law enforcement agency or official shall provide the following types of

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assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

- a. Participating in civil immigration enforcement operations;
- b. Providing any non-public personally identifying information, such as a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number, regarding any individual;
- c. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public;
- d. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
  - 1) The purpose of the interview;
  - 2) That the interview is voluntary;
  - 3) That the individual may decline to be interviewed; and
  - 4) That the individual may choose to be interviewed only with his/her legal counsel present.
- e. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
  - 1) is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as described herein;
  - 2) in the past five (5) years, has been convicted of an indictable crime other than a violent or serious offense; or
  - 3) is the subject to a *Final Order of Removal* that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
- f. Continuing the detention of an individual past the time he/she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:
  - 1) is currently charged with, has ever been convicted of, or has ever been adjudicated for a violent or serious offense as that term is described herein;
  - 2) in the past five (5) years, has been convicted of an indictable crime other than a violent or serious offense; or
  - 3) is the subject to a *Final Order of Removal* that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

Any such detention may last only until 11:59 p.m. on the calendar day on which the person would otherwise have been eligible for release.

3. **EXCEPTIONS & EXCLUSIONS:** Nothing noted in Sections E 1 or E 2 of this Directive shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency from:
  - a. Enforcing the criminal laws of New Jersey;
  - b. Complying with all applicable federal, state and local laws;
  - c. Complying with a valid judicial warrant or other court order, or responding to any request authorized by a valid judicial warrant or other court order;
  - d. Participating with federal authorities in a joint law enforcement task force whose primary purpose is unrelated to federal civil immigration enforcement;
  - e. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention;

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- f. Asking an arrested individual for information necessary to complete required fields of the LIVESCAN database (or other law enforcement fingerprint database), including information about the arrestee's place of birth and country of citizenship;
- g. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities;
- h. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it;
- i. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including but not limited to access to non-public information, equipment, or resources, or coming to the aid of federal immigration authorities whose lives may be in jeopardy or are at imminent risk of being assaulted or are being assaulted;
- j. Sending to, maintaining, or receiving from federal immigration authorities' information regarding the citizenship or immigration status, lawful, or unlawful, of any individual (see U.S.C. 1373, 1644).

### E. **AGREEMENTS WITH THE FEDERAL GOVERNMENT:**

1. **SECTION 287(g) AGREEMENTS:** No state, county or local law enforcement authority shall enter into, renew, or extend any agreement to exercise federal immigration authority pursuant to *Section 287(g)* of the *Immigration and Nationality Act, 8 U.S.C. 1357(g)*, unless:
  - a. The Attorney General grants written approval; or
  - b. The agreement is necessary to address threats to the public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.

No state, county or local law enforcement officer shall otherwise exercise federal civil immigration authority outside the contact of *Section 287(g)*. Nothing in Section E of this Directive shall apply to law enforcement agencies that are party to an agreement to exercise federal immigration authority pursuant to *Section 287(g)* when they are acting pursuant to such agreement.

2. **INTERGOVERNMENTAL SERVICE AGREEMENTS (IGSA):** Nothing in Section E of this Directive shall apply to law enforcement agencies that are currently party to an *IGSA* to detain individuals for civil immigration purposes when they are acting pursuant to such an agreement.

### F. **LIMITATIONS ON NEW JERSEY LAW ENFORCEMENT:** the New Jersey Attorney General Directive No. 2018-6 established that New Jersey Law Enforcement:

- Cannot stop, question, arrest, search or detain any individual based solely on actual or suspected immigration status.
- Cannot ask the immigration status of any individual, unless doing so is necessary to the ongoing investigation or a serious offense and relevant to the offense under investigation.
- Cannot participate in ICE's civil immigration enforcement operations.
- Cannot provide ICE with access to state or local law enforcement resources, including equipment, office space, databases, or property.

### G. **U-VISA CERTIFICATIONS AND T-VISA DECLARATIONS:** - Refer to PCPO Directive titled "*U-Visa's & T-Visa's – Application Procedures & Requirements*" for specifics regarding these topics.

H. ***INQUIRY INTO & DISCLOSURE OF IMMIGRATION STATUS:*** Notwithstanding any provision in Section E of this Directive, state, county and local law enforcement agencies and officials may ask any questions to complete a *U-Visa* certification and *T-Visa* declaration. They may generally not disclose the immigration status of a person requesting a *U-Visa* certification and *T-Visa* declaration except to comply with state or federal law or legal process, if authorized by the visa applicant. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county or local law enforcement agency or official from sending to, maintaining, or receiving information from federal immigration authorities regarding the citizenship or immigration status, lawful or unlawful, of any individual (see U.S.C. 1373, 1644).

I. ***CONSIDERATION FOR PROSECUTORS:***

1. ***INITIAL COURT APPEARANCES:*** At a defendant's initial court appearances before a judge, the prosecutor shall confirm that the defendant has been advised on the record that:
  - a. Potential charges and convictions may carry immigration consequences; (*Padilla v. Kentucky*, 559 U.S. 356 (2010)); and
  - b. The defendant may have rights to consular notification pursuant to the *Vienna Convention on Consular Relations* in accordance with federal and other applicable law.
2. ***PRETRIAL DETENTION:*** Prosecutors cannot seek pretrial detention of an individual based solely on his/her immigration status. In assessing whether to seek pretrial detention of an arrestee under N.J.S.A. 2A:162-15 to 25, the prosecutor shall make an individualized assessment based on the specific facts presented in each case and shall not simply assume that a non-citizen presents a risk of flight.
3. ***ADMISSIBILITY OF IMMIGRATION EVIDENCE:*** Prosecutors cannot attack a witness's credibility at trial based on his/her immigration status. In most instances, evidence of a defendant's immigration status is not relevant to the crime charged or to a witness's credibility and therefore may not be presented to a jury (*State v. Sanchez-Medina*, 231 N.J. 452 (2018)). In the rare cases where proof of a person's immigration status is relevant and admissible at trial, the prosecutor should not seek to admit such evidence without first raising the issue with the Court outside of a jury's presence, under *N.J.R.E. 104*, and requesting that the Court give an appropriate limiting instruction.
4. ***CHARGING, RESOLVING, AND SENTENCING CASES:*** As in all cases, the prosecutor should be mindful of potential collateral consequences and consider such consequences in attempting to reach a just resolution of the case. Nothing in this Directive shall be construed to require any charge or sentence, to limit prosecutorial discretion in reaching a just resolution of the case, or to prevent the prosecutor from making any argument at sentencing.

J. ***NOTIFICATIONS AND RECORDKEEPING:***

1. ***NOTIFICATIONS TO DETAINED INDIVIDUALS:*** State, county and local law enforcement agencies shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:
  - a. To interview the detainee (see Section E 2 d of this Directive);
  - b. To be notified of the detainee's upcoming release from custody (see Section E 2 e);

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- c. To continue detaining the detainee past the time he/she would otherwise be eligible for release (see Section E 2 f of this Directive).

When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request. Furthermore, law enforcement officials are directed to include in their agency Records Management System (*RMS*) a record of all such notifications made and copies of all documents supplied to the detainee.

- 2. *ANNUAL REPORTING BY LAW ENFORCEMENT AGENCIES*: On an annual basis, each state, county and local law enforcement agency shall report to the Attorney General any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Section E 2 of this Directive.
  - a. Each year any local or county law enforcement agency that provided assistance described in Section E 2 of this Directive during the prior calendar year shall submit a report to the County Prosecutor detailing such assistance.
  - b. Each year the County Prosecutor shall compile any reports submitted by local or county law enforcement agencies pursuant to Section G 1 (*U – and T-Visa's*) of this Directive and submit a consolidated report to the Attorney General detailing the agencies assistance and post a consolidation report on-line detailing the information delineated above.