



Watertown Police Department



IMMIGRATION LEGAL ISSUES Chapter 1I

General Order Number: 19-001

Reference:

Accreditation Standards: 1.2.7

Mass. Gen. Law:

Other: Presidential Executive Order No 13768, 8 U.S.C. § 1373, 8 CFR 287.7(a) and 8 CFR 287.7(d)

Effective Date: 5/31/2017

Revised Date: 02/20/2019

I. PURPOSE AND SCOPE

The Watertown Police Department recognizes and values the diversity of the community it serves. Many of its residents have emigrated to this community from other countries, and some may not be citizens or legal residents of the United States. The Town of Watertown and the Watertown Police Department are committed to promoting safety and providing proactive community policing services to all who live, work, or visit our community. In furtherance of the Department's community policing philosophy, all community members and general stakeholders should know that they are encouraged to seek and obtain police assistance and protection regardless of their specific immigration and/or documentation status without fear of status checks.

The Watertown Police Department relies upon the cooperation of all persons located in the Town of Watertown, including citizens, legal residents, and those without a specific documentation status, to achieve our important goals of protecting life and property, investigating and preventing crime, and resolving recurring neighborhood issues. Assistance from the many varied immigrant communities is especially important when an immigrant, whether documented or not, is the victim of or witness to a serious crime. It is absolutely essential that victims do not feel apprehensive or intimidated in any way in coming forward with the requisite information and general firsthand knowledge to aid in investigating a particular crime, and holding those responsible accountable to our criminal justice system. Mutual trust and a spirit of cooperation are absolutely crucial in deterring crime and in solving crime incidents, as well as in maintaining public order, safety, and security in the entire community.

We fully realize that federal immigration enforcement or perceived enforcement by the Watertown Police Department could have a "chilling effect" in our local immigrant community, and could limit cooperation with police by members of the community at large. Because many families with undocumented family members also include legal members, this could drive a potential wedge between the department and large portions of the legal immigrant community as well. When fearing an immigration investigation and possible deportation, many immigrants with critical information might not come forward, even when heinous crimes are committed against them and/or their families. As stated, we depend on the cooperation of all of our residents and stakeholders including immigrants, legal and undocumented, in solving all sorts of crimes and in the maintenance of public order.

We, as duly sworn officers, are responsible for providing effective police services to everyone in the Town of Watertown in an equal, fair, and just manner. The Watertown Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the Town

of Watertown. Thus, detection of criminal behavior is of primary interest and concern in dealing with any individual suspected of violating the law. Race, religion, gender, ethnicity, sexual orientation, gender identity, age, occupation, immigration status, or any other arbitrary characteristic pertaining to any specific individual have absolutely no bearing on any decision for a Watertown Police officer to effectuate a stop, investigation, or detention of an individual or have any impact whatsoever on the decision to make a lawful arrest for a violation of a criminal law.

The specific immigration status (or lack thereof) of an individual or group of individuals in and of itself, is not and shall not be a matter of local police concern or subsequent enforcement action by the Watertown Police Department unless there exists through reliable and credible information a potential threat to public safety. It is incumbent upon all officers and employees of the Watertown Police Department to make an unyielding personal commitment to equal enforcement of the law and equal service to the public regardless of immigration/documentation status. Confidence in this valued commitment will not only protect an individual's rights and freedoms from being adversely affected, but shall also increase the public's confidence in the Watertown Police Department's ability to protect and serve all members of our community.

II. POLICY

The enforcement of the nation's federal immigration laws is the responsibility of the federal government, not the Watertown Police Department. Accordingly, the Watertown Police Department shall not undertake immigration-related investigations. Exceptions may be made under Section III (C) below. Further, the Watertown Police Department shall not enter into any voluntary Federal 287(g) Program that would have local officers trained and sworn to enforce federal civil immigration laws.

This prohibition does not preclude the Watertown Police Department from cooperating with and assisting federal immigration officials from the DHS Immigration and Customs Enforcement (ICE) Agency when formally requested as part of an ongoing *criminal investigation*, or from notifying those federal officials in situations where a threat to public safety is perceived by the Watertown Police Department. {See III (C), (D) below}

Nothing in this policy shall prohibit or restrain any Watertown police officer from sending to, or receiving from, any local, state, or federal agency information regarding citizenship or immigration status, consistent with 8 U.S.C. 1373, or an order from a court of competent jurisdiction.

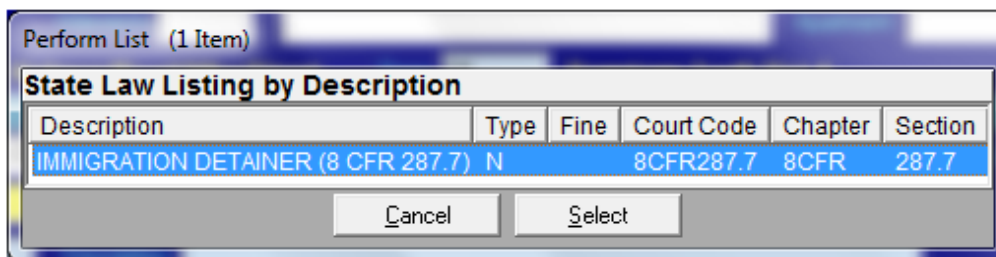
Notwithstanding the foregoing paragraph, no officer or employee of the Watertown Police Department shall be authorized by this statement to collect any information regarding the citizenship or immigration status, lawful or unlawful, of any individual if such information is not required to be collected by the laws of the Commonwealth of Massachusetts, the ordinances of the Town of Watertown, or the policies and regulations of the Watertown Police Department.

A person coming into contact with the Watertown Police Department shall be afforded all of the civil rights, due process, and equal protection safeguards available under the Constitution and laws of the United States of America, the Commonwealth of Massachusetts, the Town of Watertown, and treaties of the United States as applicable, irrespective of the person's immigration and/or documentation status.

III. PROCEDURE

A. Immigration Detainer – Notice of Action

1. The Watertown Police Department recognizes that an immigration detainer request issued by DHS-ICE serves to advise the Department that DHS-ICE seeks custody of an undocumented person presently in police custody for the purpose of arresting and removing that individual. The detainer is a **request** that the Watertown Police Department contact and advise DHS-ICE, prior to the release of the undocumented person. Per *Commonwealth vs. Lunn*, the Watertown Police Department does not have authority to detain an individual based solely on a civil detainer request.
2. Any person who is arrested by the Watertown Police Department shall be booked in accordance with the pre-existing policy (Chapter 72B Booking Process). If, in the course of standard processing procedures, DHS- ICE files an immigration detainer request (Form I-247 – issued 12/12), the arrestee shall be made aware of the detainer and provided a copy. If the arrestee posts bail or is released on his/her own recognizance by the Clerk of Court, the Officer-in-Charge (OIC) shall notify the arrestee that he/she will not be further detained by the Watertown Police Department.
3. While the Watertown Police Department will not detain persons solely on the basis of DHS-ICE immigration detainer requests, it is not prohibited from detaining an arrestee, regardless of immigration status, for any lawful reason, such as a judicial arrest warrant.
4. When an immigration detainer request has been issued in the form of a fax from DHS-ICE for an individual already in police custody, the OIC shall immediately inform the Clerk of Court or Assistant Clerk Magistrate of the existence of the detainer request.
5. It shall be the responsibility of the Clerk of Court to determine whether a monetary bail is established or require release of the arrestee on personal recognizance. No person shall be held in custody by the Watertown Police Department based solely on the existence of a DHS-ICE civil immigration detainer request. The Watertown Police Department shall not routinely give advance notice to DHS-ICE of the lawful release of an arrestee for whom an immigration detainer request has been issued unless information is available to indicate the arrestee poses a threat to public safety.
6. Per Chapter 72B “Booking Process” the department shall keep a record in the IMC report system of all arrestees. If an arrestee is the subject of a DHS-ICE detainer request, the OIC will additionally ensure that the details of the immigration detainer request are documented and attached to the IMC booking report.



7. Further, the OIC shall make a copy of the immigration detainer request for the court prosecutor, and staple the original copy to the police report for records filing.
8. The OIC shall adhere to the Consular Notification Policy if the arrestee is from one of the listed nations.

9. The Chief may issue procedures to implement this policy that shall be included in the department's *Policies and Procedures Manual*, updated as required, and made available to the public on the Department's web site and/or elsewhere.

B. Inquiries into Immigration Status:

1. A person's right to file a police report, serve as a witness to crimes, participate in any police-community activities, or otherwise benefit from general police services shall not be contingent upon the individual providing proof of citizenship or any type of documented immigration status.
2. Consequently, officers shall not question any person about his/her specific citizenship or immigration status, or take any action against that person based solely on his/her real or suspected immigration status, unless that person is reasonably believed to be involved in one or more of the activities identified in Section C. below.
3. Officers shall not request passports, visas, resident alien cards (i.e. "green cards"), or travel documents in lieu of, or in addition to driver's licenses and other standard forms of identification. Such documents shall only be requested when standard forms of identification are unavailable, or when the officer is proceeding under Section C. below. An exception could occur if the operator of a lawfully stopped motor vehicle presents what appears to be a valid Foreign Country's Driver's License which is valid in this state for only one (1) year, and requires the operator to produce proof to the investigating officer of the most recent admission date to the United States, so as to effectively toll the one-year time period (e.g. Form I-94 or Passport with an entry stamp).
4. No funds, resources, facilities, property, equipment or personnel of the Watertown Police Department shall be used for civil immigration-related investigations, detentions or arrests unless there is probable cause to suspect an individual has committed a non-immigration-related criminal offense.
5. If any federal program or statute is created that requires registration of persons based solely on race, gender, sexual orientation, gender identity, religion, national or ethnic origin, political or social beliefs, or immigration status, no police officer or civilian employee of the Watertown Police Department shall make such information in its databases or other record-keeping systems available pursuant to such federal program or statute

C. Notification to Federal Immigration Authorities:

In furtherance of the Watertown Police Department's community policing philosophy and continuing engagement and outreach efforts, officers shall not participate in any federal civil immigration-related investigations of any immigrant or foreign national, except:

1. When probable cause exists to arrest an immigrant or foreign national for any violent felony, including, but not limited to:
 - a) Murder
 - b) Assault with intent to Murder
 - c) Assault & Battery by means of a Dangerous Weapon
 - d) Assault by means of a Dangerous Weapon
 - e) Armed Burglary

- f) Rape (or any Sex Offense)
 - g) Mayhem
 - h) Armed Robbery;
- 2. When probable cause exists to suspect the immigrant or foreign national is involved in any terrorist and/or unlawful subversive activities. The FBI Joint Terrorism Task Force (JTTF) shall also be contacted forthwith;
- 3. When probable cause exists to suspect the immigrant or foreign national is involved in fraudulent assimilation or trafficking of individuals into the United States, or probable cause exists to suspect participation in an organized venture to fraudulently assimilate undocumented foreigners into this country;
- 4. When probable cause exists to suspect the immigrant or foreign national is participating in criminal street gang activity involving violence and/or distribution of illegal drugs/weapons;
- 5. When the immigrant or foreign national is arrested on a criminal warrant from the Massachusetts Warrant Management System (WMS).

Keeping in mind that maintaining the trust of its constituents is of primary importance in successfully serving the community, it is understood that an arrest on any charge is not a conviction. Notwithstanding Chapter 72B “Booking Process”, the Watertown Police Department shall not otherwise notify DHS-ICE and/or other federal authorities of an arrest merely because an arrestee is an undocumented immigrant.

D. Immigration and Customs Enforcement (ICE) Investigations and/or Requests for Assistance:

- 1. The U.S. Bureau of Immigration and Customs Enforcement has primary jurisdiction for enforcement of the provisions of Title 8, U.S. Code, dealing with illegal entry into the U.S. by foreign nationals.
- 2. When notified that an immigration raid is going to take place in Watertown, the OIC will request that all DHS-ICE agents visually identify themselves as DHS-ICE agents and that the lead agent contact the OIC prior to deployment.
- 3. Under no circumstances will any member of the Watertown Police Department provide consent to any DHS-ICE agent to pose as a Watertown police officer.
- 4. Watertown police officers shall not participate in any DHS-ICE tactical operation(s) as part of any detention or arrest team solely for the civil enforcement of federal immigration laws, unless it is in direct response to an emergency call for immediate assistance on a temporary basis when an officer’s (Agent’s) safety is at risk.
- 5. Members of the Watertown Police Department may however, separate and apart from DHS-ICE agents, engage in activities designed to ensure the safety of the public during an immigration raid. Notwithstanding this directive, no member of the department may engage in any of the following activities during an immigration raid for federal civil violations:
 - a. Stop, detain, or arrest any person without probable cause that a criminal offense has occurred, or unless a criminal warrant is in effect.
 - b. Interrogate any person at the request of an ICE agent;

- c. Independently facilitate an immigration raid;
 - d. Facilitate an ICE agent's access or entry into any dwelling, business, or other building;
 - e. Impede the rights of any person engaging in lawful, peaceful protest or assembly.
6. Whenever DHS-ICE has occasion to be in the Town of Watertown, whether looking for a target(s) who is the subject of a criminal warrant (investigatory side, Homeland Security Investigations – HSI) or looking for individuals who have Final Orders of Deportation (civil side, Enforcement and Removal Operations -ERO), the OIC shall send out a Command Staff message to that effect.
- a. In addition, the OIC shall request copies of all relevant warrants or court orders and the specific reason that DHS-ICE intends to place the individual into custody.
 - b. In all cases the OIC shall ensure that a call number is generated on the Dispatch Log by Communications personnel (e.g. Immigration Enforcement).
 - c. The DHS-ICE agent shall be asked to report back to the OIC with results of the investigation (e.g. no warrant served, one in custody, etc.) so that the Dispatch Log can be updated.
 - d. A courtesy booking shall not be required for those placed in custody by DHS-ICE officials solely for civil enforcement reasons.