

Offered by Councilor Josh Zakim

Jackson, LaMattina, Flaherty, McCarthy, Murphy, O'Malley, Yancey, Pressley, Baker, Linehan and Wu

CITY OF BOSTON



IN THE YEAR TWO THOUSAND FOURTEEN

AN ORDINANCE ESTABLISHING A BOSTON TRUST ACT

- WHEREAS*, The City of Boston seeks to ensure that all immigrants are able to fully participate in the civic and economic life of their neighborhoods and nurture and grow the spirit of unity in our City; and
- WHEREAS*, The City of Boston desires to provide opportunity, access, and equality for immigrants, and highlight the essential role immigrants have played and continue to play in moving Boston forward; and
- WHEREAS*, The federal government's Immigration and Customs Enforcement ("ICE") Secure Communities program uses local law enforcement data to identify suspected "criminal aliens" in local custody; and
- WHEREAS*, ICE issues civil immigration detainer requests which allow for prolonged detention during which ICE investigates the immigration status of suspected "criminal aliens" in local custody; and
- WHEREAS*, In other jurisdictions, honoring civil immigration detainer requests based on less than probable cause has been ruled a violation of the Fourth Amendment, exposing local law enforcement agencies to liability under 42 U.S.C. § 1983; and
- WHEREAS*, When local law enforcement officials indiscriminately honor all ICE civil immigration detainer requests, including those that target non-criminal aliens, immigrant residents are less likely to cooperate and public trust erodes, hindering the ability and effectiveness of Boston's police force; and
- WHEREAS*, A local Trust Act is necessary to establish the City's policy for responding to ICE's civil immigration detainer requests;

NOW THEREFORE,

Be it ordained by the City Council of Boston, as follows:

Section 1.

Definitions.

- (a) "Civil immigration detainer request" means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations to a local law enforcement official to maintain custody of an individual for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, and advise the authorized federal immigration officer prior to the release of that individual.
- (b) "Convicted" means a state of having been proved guilty in a judicial proceeding, unless the conviction has been expunged or vacated pursuant to applicable law.
- (c) "Eligible for release from custody" means that the individual may be released from custody because any of the following conditions has occurred:
- (1) All criminal charges against the individual have been dropped or dismissed;
 - (2) The individual has been acquitted of all criminal charges filed against him or her;
 - (3) The individual has served all the time required for his or her sentence;
 - (4) The individual has posted a bond, or has been released on his or her own recognizance;
 - (5) The individual has been referred to pre-trial diversion services;
 - (6) The individual is otherwise eligible for release under state or local law.
- (d) "Law enforcement official" means any City of Boston department, or officer or employee of a City of Boston department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

Section 2.

- (a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer request after that individual becomes eligible for release from custody.
- (b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer request for up to forty-eight (48) hours after that individual becomes eligible for release from custody, excluding Saturdays, Sundays, and holidays, if the individual meets any of the following criteria:
- (1) ICE has a criminal warrant for the individual;
 - (2) The individual has ever been convicted of a violent crime as defined in Massachusetts General Laws Chapter 140, Section 121;
 - (3) In the past ten (10) years, the individual has been convicted of a felony as defined in Massachusetts General Laws Chapter 274, Section 1;
 - (4) The individual is a current registrant on the Massachusetts Sex Offender Registry;
 - (5) The individual is identified in the federal government's consolidated Terrorist Watchlist.
- (c) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual pursuant to this Section.

Section 3.

Reporting.

Beginning no later than December 31, 2015, and no later than December 31 of each subsequent year, the Boston Police Commissioner shall submit a report to the Clerk of the City of Boston, and the Clerk shall forward the report to the Mayor of the City of Boston and shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City

Council. The report shall include the following information for the preceding twelve (12) month period:

- (a) A statistical breakdown of the total number of civil immigration detainer requests lodged with the City's law enforcement officials, organized by the reason(s) given for the request;
- (b) A statistical breakdown of the total number of individuals that City law enforcement officials detained pursuant to Section 2(b), organized by the reason(s) supporting the detention;
- (c) The total number of individuals transferred to ICE custody; and
- (d) A statistical breakdown of the total cost reimbursements received from the federal government pursuant to Section 2(c), organized by individual case.

Section 4.

The provisions of this ordinance shall be effective immediately upon passage.

Filed in Council: June 27, 2014



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

EXECUTIVE ORDER

May 22, 2014

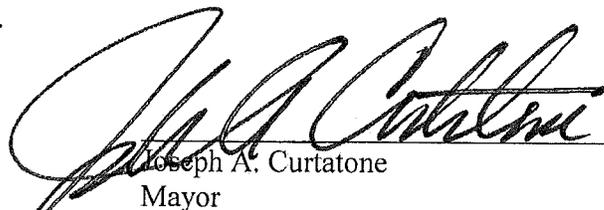
By the power vested in me as Mayor of the City of Somerville, it is hereby ordered the following Executive Policy be implemented immediately:

Executive Policy for Responding to ICE detainers.

The Somerville Police Department has the discretion to honor an ICE detainer request. A request will be honored only if one or more of the following instances are met and if detaining the person would not violate any federal, state, or local law or local policy:

- ICE has a criminal warrant,
- Somerville officials have a law enforcement or public safety purpose that is not related to the enforcement of civil immigration law,
- The individual:
 - has ever been convicted of:
 - a serious crime or violent felony as defined in Massachusetts General Laws
 - a felony punishable by imprisonment in state prison
 - is arrested and taken before a magistrate on a charge involving
 - a serious or violent felony as defined in Massachusetts General Laws
 - a felony punishable by imprisonment in state prisonand the magistrate finds probable cause to believe that the individual is guilty of a violent felony,
- is a current registrant on the Massachusetts Sex Offender Registry.

This Order shall take effect immediately.


Joseph A. Curtatone
Mayor



City of Cambridge Policy Order Resolution
June 2, 2014

- WHEREAS: The City of Cambridge, like the United States itself, has been enriched and built by generations of immigrants; and
- WHEREAS: The City of Cambridge has a proud history as a Sanctuary City, as declared on April 8, 1985, when large numbers of refugees fleeing the war in El Salvador arrived in Cambridge and were threatened with deportation; and
- WHEREAS: The City of Cambridge reaffirmed its status as a Sanctuary City on May 8, 2006, and formally adopted the language "undocumented" when referring to those who do not have federally recognized resident status and "immigrant" to refer to those who have migrated to the US from another country; and
- WHEREAS: The federal Secure Communities program is currently being used to identify undocumented immigrants in the custody of local agencies; and
- WHEREAS: Immigration and Customs Enforcement (ICE) is part of the United States Department of Homeland Security; ICE issues "detainer requests" pursuant to Title 8 U.S.C. Section 1226, and Title 8 U.S.C. Section 1357(d), which asks local authorities to hold individuals who have been ordered released from custody for up to 48 hours (after they have been ordered released), so that they can be taken into federal custody; and
- WHEREAS: There is no legal authority upon which the federal government may compel an expenditure of City resources to comply with an ICE detainer request; and
- WHEREAS: The Transparency and Responsibility Using State Tools (TRUST) Act, versions of which are pending before state and federal legislatures, aims to keep immigrants who pose no risk to society safe in their communities and with their families while also promoting trust between the immigrant community and local law enforcement; and
- WHEREAS: According to the Massachusetts TRUST Act Coalition, which includes State Senator Jamie Eldridge and former State Representative Carl Sciortino, ICE issued more than 5,000 detainers in Massachusetts from 2008 through 2011, and more than 75% of these detainers were placed on individuals who had no criminal conviction or history; several were issued on children under the age of eighteen; and
- WHEREAS: In April, 2014, a federal judge ruled that it is a violation of constitutional rights to hold an individual for immigration authorities without probable cause; and
- WHEREAS: As a result of this ruling, cities and counties nationwide are beginning to revise their policies regarding voluntary cooperation with ICE detainer requests; now therefore be it
- ORDERED: That the City Manager be and hereby is requested to work with the Police Commissioner to ensure that only in cases where immigration agents have a criminal warrant, or Cambridge officials have a legitimate law enforcement purpose not related

to immigration, will Cambridge Police comply with federal ICE detainer requests to hold persons solely for immigration purposes; and be it further

ORDERED: That the City Manager be and hereby is requested to report back to the council on this matter; and be it further

ORDERED: That the City Council does hereby go on record in joining the national TRUST Act movement to no longer hold immigrants in detention for the sole purpose of deportation; and be it further

ORDERED: That the City Council does hereby go on record in supporting the Massachusetts TRUST Act bill currently before the state legislature; and be it further

ORDERED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to the Cambridge state legislative and Congressional legislative delegations.

 Cambridge Police Department	POLICY & PROCEDURES		No. 668.1	
	Subject/Title: Secure Communities & ICE Detainers			
	Issuing Authority: 	Review Date: June 9, 2014	Issue Date: July 18, 2014	Effective Date: July 28, 2014
	Robert C. Haas Police Commissioner	Rescinds: G.O. #12-4 (revised)		
References/ Attachments:		Accreditation Standards:		
		1.2.7 & 42.2.8 (a)		

I. PURPOSE AND SCOPE:

The Cambridge 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 City and the Cambridge Police Department are committed to promoting safety and providing proactive community policing services to all who are located in our community. In furtherance of the department's Community Policing philosophy, all community members and stakeholders should know that they are encouraged to seek and obtain police assistance and protection regardless of their specific immigration and/or documentation status.

The Cambridge Police Department relies upon the cooperation of all persons, documented citizens and residents as well as those without a specific documentation status, to achieve our important goals of protecting life and property, investigating and preventing crime, as well as resolving recurring neighborhood issues. Assistance from the many various immigrant populations is especially important when an immigrant, whether documented or not, is the victim or witness to a crime. It is absolutely essential that these individuals do not feel uncomfortable or intimidated in coming forward with the requisite information and general firsthand knowledge to aid in investigating a particular crime. This type of mutual trust and cooperation is absolutely crucial in preventing and solving crime incidents, as well as maintaining public order, safety and security in the entire community.

As duly sworn police officers, members of this department are responsible for providing effective police services to everyone in the City of Cambridge in an equal, fair, and just manner. The Cambridge Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the City of Cambridge. Thus, detection of criminal behavior is of primary interest and concern in dealing with any subject suspected of violating the law. Race, religion, gender, sexual orientation, age, occupation, immigration status or any other arbitrary characteristic pertaining to any specific individual have absolutely no bearing independently on any

decision for a Cambridge Police Officer to effectuate a stop or detention of an individual or affect an arrest.

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 police concern or subsequent enforcement action. It is incumbent upon all officers and employees of the Cambridge Police Department to make an unyielding personal commitment to equal enforcement of the law and equal service to the public regardless of 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 police department's effectiveness and efficiency in protecting and serving the members of the entire community.

II. FEDERAL SECURE COMMUNITIES [S-Comm] PROGRAM:

The Commonwealth of Massachusetts officially became part of the **Federal Secure Communities Program** on May 15, 2012. Under the *Federal Secure Communities Program*, fingerprints of persons arrested by state and local law enforcement agencies, in which those agencies (including the Cambridge Police Department) routinely submit these electronic prints to the FBI (via the State Police) for criminal justice database checks, and as part of that process are automatically shared with the Department of Homeland Security (DHS-ICE). Immigration and Customs Enforcement (ICE) then checks the local arrestee's (currently being detained) personal information against the DHS-ICE immigration databases. If ICE determines that it has an actionable interest in the local arrestee, the agency then determines what specific enforcement action, if any, to take based on DHS enforcement priorities (outlined below). If the local arrestee appears to have violated the federal immigration laws and the arrestee is deemed to fall within any of the enforcement priorities, ICE decides whether to issue what is known as a Detainer for the arrested individual. A Detainer, which is sent via fax, is an official request from DHS-ICE directed to the state or local law enforcement agency to notify ICE before it releases an individual arrestee so that ICE has the opportunity to arrange for the immediate transfer of the individual to federal custody in situations when gaining immediate custody is either impracticable or impossible.¹

Note: Once a state or local law enforcement agency voluntarily submits fingerprint data of an arrestee for the purposes of a record check to the federal government, no specific agreement or MOU with the individual state is legally necessary for one agency of the federal government (e.g., FBI) to share the data with another federal agency (e.g., DHS-ICE).

- A. **DHS Enforcement Priorities:** According to DHS: “[They] *must ensure its limited immigration enforcement resources are focused on the removal of those*

¹ 8 CFR 287.7(a) and 8 CFR 287.7(d). Federal law provides that an individual cannot be held on a detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the detainer expires.

who constitute [what they consider to be] the highest priorities, specifically individuals:

- a. Who pose a threat to public safety such as criminal aliens and
- b. National security threats as well as
- c. Repeat immigration law violators and
- d. Recent border entrants.²

Note: According to DHS, “the expenditure of resources on any cases that fall outside the enforcement priorities hinders [their] public safety mission by clogging immigration court dockets and diverting resources [...]”³

- B. S-Comm and Potential Impacts on Local Community Policing Efforts:** DHS-ICE and the Federal Secure Communities Program does not operate in a vacuum and local law enforcement must always be mindful that the resulting enforcement actions that are undertaken by ICE can run the risk that these actions can potentially have an adverse impact on the local police agencies and the long standing relationships that they have with their respective communities in what some stakeholders may conclude is a negative fashion. According to ICE, Secure Communities only entails the sharing of information known as “interoperability” between local law enforcement, the FBI and DHS. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the Secure Communities Program, but instead is the result of an independent determination by ICE Enforcement and Removal Operations (ERO). Similarly, any action taken by the local law enforcement agency at the time of the arrest and prior to booking and submission of fingerprints to the federal databases is not part of the Secure Communities Program.

However, with this in mind, it is important to note that much of the criticisms of the S-Comm Program relate to the enforcement activities before (with the local police making an arrest) and after (with ICE Officials transferring custody of the arrestee) the actual information sharing of biometrics that defines the process takes place. While ICE has distinguished between Secure Communities’ “interoperability” function and the subsequent detention and/or removal of an individual via the ERO process, the distinction is often times lost on many community stakeholders, advocates and even some law enforcement officials. As a result, the Secure Communities Program is commonly viewed and perceived by many as the entire process that begins with an arrest by the local law enforcement agency and ends, often times, in deportation of the arrestee. To the community at large, especially urban inner-city, immigrant communities such as the city of Cambridge, local law enforcement agencies participating in the Secure Communities Program run the risk of being viewed by many as immigration agents, regardless of the actual limited role that they play in the process.

² <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

³ *Id.*

Therefore, it is imperative that the local community is informed and educated at the appropriate venues and community forums, at appropriate intervals, as to the specifics of the local law enforcement agencies' actual role in the S-Comm process so as not to jeopardize the trust, confidence and spirit of cooperation that the police department and the community at large have formed over the course of several years.

III. POLICY:⁴

The enforcement of the nation's civil immigration laws are the primary responsibility of the federal government. Accordingly, the Cambridge Police Department shall not undertake immigration-related investigations and shall not routinely inquire into the specific immigration status of any person(s) encountered during normal police operations.

This prohibition does not preclude the Cambridge Police Department from cooperating and assisting with federal immigration officials from the DHS Immigration and Customs Enforcement (ICE) Agency when formally requested as part of an on-going criminal investigation, or from notifying those federal officials in serious situations where a potential threat to public safety or national security is perceived. (refer to **Section IV. B.** of this directive).

Further, as of May 15, 2012, the Commonwealth of Massachusetts became an official participant of the Federal DHS-ICE Secure Communities Program. Therefore, whenever any Shift Commander is made aware of an ICE detainer (a.k.a. an "ICE Hold" or "Immigration Detainer") in the form of a fax from DHS-ICE pursuant to 8 CFR 287.7(a) and 8 CFR 287.7(d), the Shift Commander shall immediately inform the bailing Clerk or Assistant Clerk Magistrate of the existence of the federal ICE detainer. If the Clerk sets bail for the offense for which the individual was arrested, and that bail is likely to be satisfied by the arrested individual, the Department will evaluate on a case-by-case basis whether to maintain custody of the individual, pursuant to the ICE detainer, pending transportation to the Cambridge District Court for arraignment. However, federal law provides that the individual cannot be held on an ICE detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the ICE detainer shall expire forthwith.

IV. PROCEDURES:

- A. Inquiries into Immigration Status:** Consistent with the long-standing policy of this department and the City's position with respect to immigration status, officers will observe the following guidelines:

⁴ CALEA Std. 1.2.7 – *A written directive governs the use of discretion by sworn officers.*

1. A person's right to file a police report; participate in any police-community activities (i.e., community meetings, Sergeant Neighborhood Meetings, National Night Out, etc); 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.⁵
2. Consequently, officers shall not question any person about his/her specific citizenship or immigration status unless that person is reasonably believed to be involved in one or more of the activities as identified in **Section IV. B.** of this directive.
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 IV. B.** of this directive.

Note: An exception to the above could occur if an operator of a lawfully stopped motor vehicle presents what appears to be a valid Foreign Country's Driver's License in which the license 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 the entry stamp).

B. Notification to Federal Immigration Authorities: In furtherance of the department's Community Policing philosophy, Cambridge Police Officers shall not participate in any federal civil immigration related investigations of any immigrant or foreign national, except when the immigrant or foreign national.⁶

1. Is **arrested** for any **violent felony** including but not limited to:
 - Murder,
 - Assault with intent to Murder,
 - Assault & Battery by means of a Dangerous Weapon,
 - Assault by means of a Dangerous Weapon,
 - Armed Burglary,
 - Rape, (or any Sexual Assault-based Offense)
 - Mayhem, or
 - Armed Robbery;
2. When a Cambridge Police Officer acquires reliable information that the individual in police custody has been **convicted** in a court of competent jurisdiction of **any violent felony**;
3. Is **arrested** for any **terrorism-related offense**, or is otherwise *reasonably suspected* of involvement in any terrorist and/or subversive activities;

⁵ CALEA Std. 42.2.8 – The agency has a written directive concerning identity crime and procedures for:
a. Taking identity crime reports;

⁶ Also refer to Policy #561 – Foreign Nationals and Officials for further procedural requirements.

4. Is **arrested** for any offense involving the entry or fraudulent assimilation or **trafficking of individuals** into the United States, or is reasonably suspected of participating in an *organized venture* to bring or fraudulently assimilate undocumented foreigners in this country; **OR**
5. Is **suspected** based upon the legal standard of **probable cause** (basis of knowledge and veracity) of **participating in criminal street gang activity involving violence and/or distribution of illegal drugs.**⁷

C. Immigration and Customs Enforcement (ICE) Requests for Assistance:

1. The U.S. Bureau of Immigrations and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions to Title 8, U.S. Code dealing with illegal entry into the United States by foreign nationals.
2. Cambridge Police Officers shall not directly participate in any such ICE tactical operations solely for the civil enforcement of federal immigration laws as part of any Detention or Arrest Team unless:
 - It is in direct response to a request for assistance on a temporary basis for “Officer Safety” purposes; or
 - For the assistance in the apprehension of any individual who is also wanted on a Massachusetts issued Warrant Management System Warrant (WMS) that remains in full force and effect at the time of the request.
3. Any detention by a member of the Cambridge Police Department during the request for assistance by ICE should be based upon a reasonable belief that the detained individual is either involved in criminal activity other than a civil violation of federal immigration laws or is wanted by the Commonwealth of Massachusetts on a WMS Active Warrant.

D. Processing of an ICE Detainer: Once an ICE detainer has been transmitted to the department via ECC following the submission of the fingerprints to the NCIC database, the following procedures will be observed with respect to the processing of the ICE detainer:

1. *Responsibilities of the Booking Officer:* Once the Booking Officer secures the faxed copy of the ICE detainer from ECC, the officer will:
 - a. Immediately confirm that the individual in custody (detainee) matches the individual named in the detainer.

⁷ A “criminal street gang” is a formal or informal organization, association, or group, consisting of three or more individuals, whose members or associates, individually or collectively, engage in or have engaged in the commission, attempted commission, facilitation or solicitation of criminal activity. A “gang member” is an individual who law enforcement assigns a total score of ten (10) points or more by utilizing the uniform “10 Point Assessment System” (see attached appendix). A “gang associate” is an individual who law enforcement assigns a total score of two (2) points or more by utilizing the uniform “10 Point Assessment System.”

- b. Immediately notify the Shift Commander of the receipt of the detainer, and whether the identity of the detainee matches the individual named in the detainer.
 - c. Reflect the fact that an ICE detainer was received in response to the submission of the detainee's fingerprints in the "RIGHTS" dropdown section of the booking system. This entry must include a "YES" that there is an ICE detainer in effect and must include pertinent information regarding the reason for the detainer, the date and number of the detainer, as well as any other relevant information.⁸
 - d. The detailed information relative to the ICE detainer is to be entered into the "DETAILS" space within the "RIGHTS" section of the booking form.
 - e. A copy of the ICE detainer will be made part of the booking package and be retained as part of the department's official record. To that end, the Booking Officer will ensure that a copy of the ICE detainer is provided to the Records Management Unit to be stored in a secure file.
 - e. The Booking Officer will also provide a copy of the ICE detainer to the Shift Commander.
 - f. Ensure that a copy of the ICE detainer accompanies the paperwork that is transmitted with the reports that are sent to the Cambridge District Court.
 - g. The Booking Officer shall promptly provide a copy of the ICE detainer to the individual being detained to allow that individual the opportunity to review the ICE detention process. The ICE detainer contains a "Notice to the Detainee" about the detention process in six different languages. If the individual speaks a different language from those provided on the notice, the Booking Officer shall utilize the AT&T Language Line to ensure that the individual receives the required notice in a language that the individual fully understands.
2. *Responsibilities of the Shift Commander:* Upon being notified that an ICE detainer has been sent in response to the submission of a detainee's fingerprints into the NCIC database, it will be the responsibility of the Shift Commander to:
- a. Verify with the Booking Officer that the identity of the individual named in the ICE detainer matches the identity of the detainee.
 - b. When notifying the Bail Commissioner, advise the Bail Commissioner of the existence of an ICE detainer.
 - c. Notify the Command Staff and the other Shift Commanders via the Shift Ops Briefing that an ICE detainer was received.
 - d. Forward a copy of the ICE detainer to the oncoming Shift Commanders until the individual being detained is released from department custody. The Shift Commander who had last oversight and upon release of the

⁸ The Booking Officer will not enter the ICE detainer as a charge within the QED Booking System.

detainee shall forward to the Professional Standards Unit a packet of information that includes a copy of the detainer, the booking sheet and the incident report. A file will subsequently be maintained by the Professional Standards Unit on all ICE detainers received in response to an arrest made by this department.

- e. If it appears that an arrestee is subject to being held solely on an ICE detainer (i.e., bail is set and likely to be posted), the Shift Commander, in consultation with the Duty Chief or the on duty Deputy Superintendent or Superintendent, will evaluate on a case-by-case basis the grounds for detention before the ICE detainer is actually honored. Where appropriate, the Shift Commander will also consult with the ICE agent seeking detention to clarify any factual issues.
 - f. The following guidelines will be adhered to when evaluating whether an ICE detainer will be honored:
 - i. An ICE detainer based on a warrant of arrest for removal proceedings or an order of deportation or removal from the United States will be honored by the Department.
 - ii. An ICE detainer based on a conviction for illegal entry, illegal re-entry after a previous removal or return, or a documented finding of immigration fraud will also be honored.
 - iii. An ICE detainer based on a prior felony charge or conviction will be honored if the documented charge or conviction demonstrates a significant risk to public safety. This would include, but is not limited to, crimes of violence, sexual assault and/or abuse, the unlawful possession and/or use of a firearm, and the distribution and trafficking of a controlled substance.
 - iv. The Department will also honor an ICE detainer based on a documented, significant risk to national security, border security or public safety.
 - v. The Department, however, will not honor an ICE detainer based solely on misdemeanor charges and/or convictions or for the initiation of removal proceedings where the arrestee has been previously served (i.e., before arrest) with a notice to appear beyond the date of arrest for which the arrestee is in the Department's custody.
3. *Responsibilities of the Police Prosecution Unit:* It will be the responsibility of the Police Prosecution Unit to notify the Court Clerk's Office of the existence of an ICE detainer as part of the initial notification to the court on any detainees appearing before the court.
 4. *Responsibilities of the Professional Standards Unit:* The Professional Standards Unit will prepare an audit report on a semi-annual basis, indentifying the number of incidents when an ICE detainer was received in

response to an arrest that was made by this department. The audit report will include the following data at a minimum:

- a. Total number of incidents that involved an ICE detainer being received in connection with an arrest over the six-month period under review.
- b. A brief summary of each case involving an ICE detainer being received.
- c. A review as to whether each of the incidents was in accordance with this directive.
- d. Any recommendations or suggestions in terms of any procedural changes that should be made as a result of the audit/review.

E. ICE Detainers Not Involving Other Criminal Charges: When a member of this department, through an encounter, becomes aware of the existence of an ICE detainer when no other criminal charges exist for an individual, the officer is to immediately notify his/her supervisor, and adhere to the following guidelines:

1. If the reason for the detainer is of sufficient severity (refer to **Section III. B.** of this directive) to constitute a felony, the supervisor may decide to detain the individual.
2. In such circumstances, the confirmation and notification procedures described in this directive will be followed.
3. If the reason does not rise to this level, the supervisor must instruct the officer to gather as much information as possible from the individual, including the current address, work address, and other relevant information.
4. The officer will complete a QED incident report of the encounter.
5. Under no circumstances, is the officer to seek out and detain an individual who is wanted on an ICE detainer without prior approval from the Shift Commander.

ARTICLE V.
HUMAN RIGHTS COMMISSION AND ADVISORY COUNCIL

Sec. 12-50. Policy of the city.

(a) It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, disability, ancestry, sexual orientation, or gender identity or expression, shall have equal opportunity in or access to employment, housing, education, and public accommodations; to assure that each person shall have equal access to and benefit from all public services and licensing; to protect each person in the enjoyment of his/her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the city by the elimination of unlawful discrimination.

(b) *Policy of the city regarding housing practices:*

- (1) It is the policy of the city to follow all of the provisions set forth in M.G. L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, *et. seq.* (the Federal Fair Housing Act, as amended) regarding non-discrimination in housing practices.” (Rev. Ords. 1973, § 2-282; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05; Ord. No. X-201, 04-03-06; Ord. No. A-44, 09-15-14)

(c) *Policy of the city regarding immigration status:*

- (1) Newton is a welcoming and inclusive city for all. Immigration status shall have no bearing on a person’s treatment by officials and employees of the city. There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.
- (2) Interactions with federal immigration authorities by the Newton Police Department will be in accordance with the *One Newton: Foundational Guidelines for Community Policing to Promote Safety for All*.

One Newton: Foundational Guidelines for Community Policing to Promote Safety for All

One Newton is a policy that affirms the City of Newton as a welcoming and inclusive community for all. An important component to make that pledge a reality is our commitment to "community policing". The Newton Police Department has and will continue to operate without consideration of race, ethnicity, national origin, immigration status, religion, sex, age, disability, sexual orientation, gender identity or expression in the decision to pursue a case. The decision to search, arrest or charge an individual rests on reasonable suspicion of unlawful behavior. In order for police to best protect the community, the channels of communication must be open so that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime. Trust, understanding of each other, and open two-way communication are essential elements of both community policing and maintaining Newton as a safe city for all. While there is no clear legal definition of "Sanctuary City", our current police practices are in keeping with those of a number of surrounding communities that have designated themselves as such.

The Newton Police Oath of Office that is taken upon a recruit officer's entry into the ranks swears definitively three things:

1. That the new officer, "... will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof."
2. That the new officer will, "... faithfully and impartially discharge and perform all the duties incumbent upon me as a Police Officer in the City of Newton, agreeably to the rules and regulations of the constitution and laws of this commonwealth."
3. That the new officer, "... solemnly swear that I will support the constitution of the United States."

To that end, the Newton Police Department's priority has always been to establish and maintain the peace as it serves its residents and guests by enforcing the laws of the Commonwealth of Massachusetts and upholding the rights of all as delineated in the United States Constitution. The Department reaffirms these principles in General Order #406 the subject of which is, *Commitment to Unbiased Policing*. The policy outlined in this order reads in part; *It is the policy of the Newton Police Department that all police-initiated actions, which includes all investigative detentions, traffic stops, arrests, seizures of persons and/or property, will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution, Article 14 of the Massachusetts Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions, which support probable cause or reasonable suspicion. Officers shall not consider race, ethnicity, national origin, religion, age, gender, gender identity or sexual orientation as the only criteria in establishing either reasonable suspicion, probable cause, or as a basis for requesting consent to search.*

Officers may take into account the reported race, ethnicity or national origin of a specific suspect or suspects in the same way they would use specific information regarding age, height, weight, etc. about specific suspects relating to specific unlawful incidents. Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

The decision to detain an individual is based on the nature of the suspected offense. Individuals are not stopped by the Newton Police Department to ask them about their immigration status. Individuals are not held by the Newton Police Department only because of their immigration status. Civil infractions do not lead to detention, regardless of an individual's immigration status. The Newton Police Department may detain an individual in cooperation with Immigration & Customs Enforcement (ICE) if the individual was suspected of terrorism activity, of committing a felony, or of posing a safety risk to the public.

The Newton Police Department policy protects the safety of all residents in our community regardless of immigration status through sound policing. To add additional transparency and accountability, the Police Department will produce a yearly report documenting the number of individuals, if any, detained on an ICE hold or administrative warrant or transferred to ICE custody.

The City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing. We urge subsequent city officials to affirm these guidelines.

Amherst, MA

Related policies:
#01: Arrest
#90: Consular Notification

GENERAL ORDER
INDEX III
NUMBER: #92
AUGUST 30, 2011

IMMIGRANT COMMUNITY MEMBERS

I. POLICY PURPOSE

The Amherst Police Department acknowledges that the enforcement of federal immigration laws is the duty of the United States Bureau of Immigration and Customs Enforcement (ICE) which has primary jurisdiction to enforce Title 8 of the U.S. Code dealing with lawful presence in the United States. Immigration issues have recently been a very contentious topic within this country. There are factions within the country which believe that immigration laws should be enforced fully by local law enforcement, and others which believe that local law enforcement and local governments should not be involved in immigration enforcement. The Amherst Police Department does not have the resources nor the authority to enforce immigration laws. It is not within the mission of this department to enforce immigration laws. This policy is designed to clearly state the position of Amherst Police Department in protecting the safety, rights and property of every person within the town of Amherst, regardless of their immigration status.

II. POLICY STATEMENT

The Amherst Police Department shall treat all persons in an equal, fair and respectful manner, regardless of their race, gender, religion, sexual orientation, age, occupation, national origin, or immigration status. This shall be the case regardless of whether the person is a crime victim, suspect, witness, or simply a person in need of police services. Skin color, language, accent, or other individual traits shall not be considered an element in building reasonable suspicion or probable cause, unless these descriptions are pertinent in developing a suspect, such as when we rely on witness or victim recollection of a suspect, and they use such descriptions of skin color, language, accent or other individual trait. Skin color, language, accent, or other individual traits will not be used as a basis for disparate treatment by individual sworn or unsworn personnel of the police department. A person's right to file a report, participate in police-community activities, or otherwise benefit from police services shall not be contingent upon citizenship or immigration status. We value the diversity of our community, and strive to maintain partnerships and positive relationships with the community to improve the quality of life of all persons who visit or call the town of Amherst home.

III. POLICY

The Amherst Police Department does not have the authority to enforce federal immigration laws, unless it is granted by the federal government, which it currently is not. If ICE or another federal agency come into our community to effect an arrest warrant on an individual, and request our assistance, the shift

commander will may authorize this assistance, which would be limited to locating an address, keeping the peace and traffic if necessary. Such assistance will be fully documented in a CAD entry.

In regards to sweeps or concentrated efforts, the Amherst Police Department will assist the ICE, or any other federal law enforcement agency, upon specific request of that agency and upon the approval of the Chief of Police or, in their absence, a Captain. Such assistance will be limited to support services such as traffic control and efforts to keep the peace in specific areas impacted by federal operations. The Amherst Police Department will not independently conduct sweeps or other concentrated efforts to detain or identify suspected undocumented aliens. Such assistance will be documented in an incident report.

A. **INQUIRIES OF IMMIGRATION STATUS:** We rely on the cooperation of our community to ensure our success in preventing and solving crime. To that end, Amherst Police personnel will not make an inquiry into the immigration status of crime victims, witnesses or others who request our assistance. We do not use the threat of immigration status/deportation as leverage with victims, witnesses or suspects. Amherst Police personnel will only make inquiries regarding immigration status of a person when that person is:

1. a viable suspect in a serious criminal incident (felonies or misdemeanor physical batteries) and criminal charges are imminent and this information will be needed for court complaint documentation or
2. an arrest has already taken place and the individual is at the police station being booked for a crime where the officer has jurisdiction and probable cause to arrest for a Massachusetts Statute or Town of Amherst by law violation. The Amherst Police Department booking process shall include inquiries regarding place of birth and citizenship status for all persons under arrest. All individuals arrested and processed at the Amherst Police Department shall have their identification information queried against the National Crime Information Center (NCIC) as well as Massachusetts Warrant Management System (WMS). Should an ICE warrant, criminal deportation order or detainer be indicated, the officer in charge of the shift shall contact ICE. This responsibility shall not be delegated. Note that an Immigration Detainer is not an arrest warrant and does not provide probable cause for arrest. An Immigration Detainer is an official request from Immigration and Customs Enforcement to another law enforcement agency (LEA)—that the LEA notify ICE prior to releasing an individual from local custody so that ICE can arrange to take over custody. Detainers are requests, not commands. When someone is in custody, and an Immigration Detainer is within the NCIC system, ICE shall be notified. However this does not mitigate our responsibility to allow for bail or consulate notifications as per existing policy and law.
3. Exceptions to this rule shall only be allowed where an officer is investigating violations of specific criminal statutes and has reached the point of reasonable suspicion as to the true identity of the suspect.

B. **ICE NOTIFICATION OF IMMIGRANT CRIMINALS:** To ensure the overall safety of our community, it is important that we use all resources to prevent crime and combat crime and disorder in our community. We also want to maintain the strong and positive relationships that our personnel have built with immigrant community members within their sectors. Therefore, it is important to understand that notification to ICE is a tool that is only used for undocumented alien criminals. We rely on the

Massachusetts Department of Corrections to notify ICE of undocumented immigrants who have been convicted of felonies under the existing agreement between the Commonwealth of Massachusetts and the Department of Homeland Security under their 285(g) agreement.

C. PROCEDURES FOR IMMIGRATION COMPLAINTS: Citizens wishing to report immigration violations shall be referred to the U.S. Immigration and Customs Enforcement public toll free tip hotline at 1 866 DHS-2-ICE, (1 866 347 2423). They should be notified that the Amherst Police Department does not have the authority to enforce federal immigration laws.

D. BASIS FOR POLICE CONTACT: Persons suspected of only being an undocumented alien alone shall not be the basis for police contact, investigation, detention, or arrest. Detention based on the belief of illegal presence or a civil immigration violation is prohibited. As we are mandated by law to act upon any arrest warrant, we will make a lawful custody of a confirmed and legal criminal deportation order or ICE warrant that is entered into the NCIC database system, and the appropriate ICE office will be notified. An Immigration Detainer is not a warrant and does not have probable cause for arrest.

important

E. IDENTIFICATION REQUESTS: Officers investigating persons for violations of Massachusetts Criminal or Town of Amherst Laws may request driver's licenses and other pieces of standard identification, such as a Commonwealth of Massachusetts Identification Card or valid college identification card. Unless the person being investigated for a violation of MGL or Amherst law cannot produce the above mentioned acceptable forms of identification, an officer shall not request passports, visas, or travel documents. What is important to understand is that passports, visas, or travel documents will not be requested in the field in lieu of, or in addition to, those acceptable forms of identification listed above when the acceptable forms of identification can be produced. However, it is recognized that in the town of Amherst both foreign and out of state resident students rely on their passport or visa to prove age and identity, and they will often carry these documents on their person and provide them when a request for identification is made. Officers will not be in violation of this policy if a passport or visa is produced in such circumstances. An exception to this is when an officer is investigating violations of specific criminal statutes such as document forgery and has reached the point of reasonable suspicion as to the true identity of the suspect, a request for passports, visas or travel documents can be made.

F. CERTIFICATE OF ALIEN REGISTRATION: Section 1304 (e), Title 8, U.S. Code provides: "Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or 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 \$100.00 or be imprisoned not more than thirty days, or both." This Federal Statute shall not be enforced by the Amherst Police Department.

G. CONTACT DISPOSITION: The disposition of each police contact such as warning, citation, or arrest, shall not be affected by immigration status.

H. PASSPORT SEIZURE: Passports may only be seized if they are contraband, the fruits or instrumentalities of a crime, evidence of a violation of state criminal law (such as forgery of a passport).

or identity theft), evidence of federal criminal law (such as forgery of a passport or human trafficking), or illegally possessed. Passports seized for these purposes should be processed like any evidence in conformance with the department's policy entitled // 48 Property and Evidence. Once the case has been adjudicated, the passport should be forwarded to the originally intended owner, or the Department of State, Lost or Stolen Passport Section, 1111 19th Street NW, Room 500, Washington, DC 20522-1705.

I. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NOTIFICATION: The Law Enforcement Support Center for ICE is located at 188 Harvest Lane Williston, VT 05495 and may be contacted via phone at 802 872 6020 or via NLETS at VTINS07SO. The Boston ICE Field Office can be reached at 617 565 3100. Additionally, the Duty Agent for Massachusetts can be contacted at the 24-hour ICE Dispatch Line of 800-973-2867.

J. NOTIFICATION OF FOREIGN NATIONAL'S DETENTION OR ARREST: We will adhere to those mandates regarding consular notifications as detailed in policy #90, Consular Notifications.

K. PRISONER TRANSFERS: Other agency officers taking custody of persons arrested by the Amherst Police Department such as when being picked up by another police department, or being temporarily housed by the Hampshire County Jail, shall be informed of any known or suspected citizenship status violations as well as any steps taken by the Amherst Police Department up to the time of the transfer.

IV. VICTIMIZATION AND U-VISA CERTIFICATION:

The relationship between police and immigrant communities is often a strained one. Immigrant's mistrust of law enforcement is based on their experience with the police in their native country, existing language barriers, and cultural differences. It is also known that undocumented immigrants are vulnerable to criminals as many undocumented immigrants cannot open up bank accounts without proper identification, thus they tend to have large sums of cash at their homes and on their person. When victimized, they often do not report crimes as they are afraid that they will be deported. The federal government developed a program that allows for victims to feel safe when reporting a crime, which is called the U-Visa Certification program. The U-Visa program grants temporary four year legal status to immigrant victims. The U-Visa Certification program was introduced as part of the Victims of Trafficking and Violence Prevention Act of 2000 and its intent was to:

1. strengthen the ability of law enforcement to detect, investigate and prosecute cases of domestic violence, sexual assault, human trafficking and other crimes and
2. offer protection to victims of such crimes.

A. ELIGIBILITY: To be eligible for a U-visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity. The law requires that a person who is eligible for a U-visa must:

1. have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;
2. possess information concerning such criminal activity;

3. have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
4. have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.

The U-visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity. The Chief of Police of the Amherst Police Department may, under very strict U-Visa guidelines and after consultation with the District Attorney's Office, certify as part of a U-Visa Application an immigrant victim's cooperation with the Amherst Police Department. Law enforcement officials who sign certifications do not confer any immigration status upon the victim, but rather enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Only DHS has the discretion to grant or deny U-visa status to the victim.

A victim who received certification and was granted a U-visa has an ongoing obligation to provide assistance. Law enforcement officials may notify the United States Citizen and Immigration Services directly for cases in which victims are no longer helpful. However, such notification is appropriate only when the victim's lack of cooperation is not reasonable.

As a victim's cooperation is essential to detect, investigate and prosecute crimes, Amherst police officers should be aware of its availability and applicability within this community. Please see appendix #1, *UVISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS* for helpful information.

B. OUTREACH AND COMMUNITY NOTIFICATION: It is important that the immigrant community know that this agency is a resource for assistance, not deportation. It is also important that the community understand that the Amherst Police Department has no authority to enforce immigration laws, so as to not be unjustly accused of a dereliction of our duty. To accomplish this notification, officers will be encouraged to discuss this policy with community members within their sectors. The Administrative Division will make this policy available through Community Policing/Outreach Events, the Records Department, and by posting it on the department website and other online resources.

APPENDIX 1

U-VISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS

Purpose of the U-visa

• The U-visa facilitates the reporting of crimes to law enforcement officials by immigrant victims of crime, including domestic violence, sexual assault, human trafficking and other crimes listed in the U-visa statute.

Benefits of the U-visa

• This type of visa strengthens law enforcement agencies' ability to detect, investigate, and prosecute crime while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.

Who is eligible for a U-visa?

To be eligible for a U-visa

- an individual must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities;
- the individual must possess information concerning the criminal activity;
- the individual must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local official in the detection, investigation, or prosecution of the criminal activity; and
- the criminal activity must have occurred in the United States or its territories and possessions or violated U.S. laws.

U-visa Qualifying Criminal Activity

• U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.

• The term *any similar activity* accounts for the wide variety of state and federal criminal laws that may have names different from the criminal activity listed in the statute but are comparable in nature and elements to the enumerated criminal activity.

Status of Crime Perpetrator

• A victim may qualify for a U-visa certification regardless of whether there is any familial relationship between the victim and the perpetrator. The perpetrator may have any immigration or citizenship status such as U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.

Certification Requirements

- A certifying official must complete U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B. A certifying official is the head of a law enforcement agency or a person(s) with supervisory responsibility designated by the head of the agency to provide certifications.
- The certification is necessary to establish eligibility for the U-visa, but by itself does not grant immigration status to the victim. To obtain a U-visa, a victim must meet certain eligibility requirements, in addition to obtaining a U-visa certification. USCIS has sole authority to grant or deny a U-visa.
- The certification should provide specific details about the nature of the crime being detected, investigated, or prosecuted, and describe the petitioner's helpfulness in the case.
- U-visa certification does not require that law enforcement investigate the criminal activity beyond reporting of the crime. The certification attests only to the U-visa petitioner's willingness to be helpful or past or present helpfulness in detection, investigation, prosecution, or investigation efforts.

Assessing the Helpfulness of the U-visa Applicant

- If a U-visa petitioner filed a police report and is willing to assist—or has assisted or cooperated—with detection, investigation, or prosecution of criminal activity, a certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
- Law enforcement officials may issue a certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and identifies a person as a victim of criminal activity. The investigation need not be complete prior to issuing a certification.
- Congress intended to allow victims to obtain U-visa certifications at very early stages of crime detection—during investigations into criminal activity.
- To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance when reasonably requested, as the statute specifies.