

	<h2 style="margin: 0;">Ewing Police Department General Order</h2>		Issued Date: <b>9/7/2017</b>
			Order Number: <b>30</b>
Title: <b>Enforcement of Immigration Laws</b>		Section: <b>P</b>	
Issuing Authority:  John P. Stemler III, Chief of Police		Effective Date <b>9/7/2017</b>	
Accreditation Standard:			
References:			
Revision Date ----	Number of Pages <b>5</b>	Distribution	Supersedes

**FOR INTERNAL DEPARTMENTAL USE ONLY**

**I. PURPOSE:**

Local police agencies depend on the cooperation of immigrants in solving all types of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and large portions of the legal immigrant community as well.

**II. POLICY:**

Local police are not charged with the enforcement of federal immigration laws. The federal government and its agencies are the authorities responsible for enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act [I.N.A] that regulate a person's entry into the United States, his or her ability to remain in the country and numerous other aspects of immigration.

**A. Criminal versus Civil Violations:**

1. Immigration laws differ from the criminal laws local police officers deal with most regularly in that immigration laws contain both civil and criminal aspects.
2. Immigration law is extremely complex, and is constantly changing. There are criminal and civil violations of immigration law. **Civil violations** include for example, illegal presence and failure to depart after the expiration of a temporary visa. **Criminal violations** include illegal entry, re-entry after deportation, and failure to depart after an order of removal. To make matters

more complicated, those in this last category are committing a criminal offense only if the government can show that they “willfully” failed to depart; but most removal orders are entered in absentia. If failure to depart is not “willful” (for example if the person was not aware that there was a removal order entered against them), the offense is a civil violation.

3. State and local police have no authority to arrest and detain a person for a civil violation. There are federal agencies specifically charged with the enforcement and application of the complex immigration laws and regulations. These agents do not handle street disorder, robberies, murders, traffic enforcement, and a host of other issues facing state and local officers. These federal agencies are designated and their agents are specifically trained to enforce these immigration laws.

### **III. PROCEDURE:**

#### **A. Limitations on Arrests without Warrant**

1. Local police agencies must comply with the laws of their own municipalities and states as well as the policies imposed by the police agency. State law may not authorize local police to detain persons for immigration violations and this is recognized by the federal agencies as shown by the language of some of the civil detention notices currently being placed on the NCIC system.

2. These NCIC alerts to detain include the qualifiers, “If permitted by state and local law” and “If permitted in your jurisdiction.” Federal immigration officers do not face such restrictions, because the federal immigration laws allow them to detain and interrogate a person as to their right to be or remain in the United States without a warrant.

3. The Ewing Police Department policy mandates that employees of this department will not detain persons pursuant to an ICE Detainer [DHS 1-247 <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>] in situations other than those arising from incidents mandated by the New Jersey Attorney General’s Directive 2007-3 [[http://www.state.nj.us/lps/dcj/agguide/directives/dir-le\\_dir-2007-3.pdf](http://www.state.nj.us/lps/dcj/agguide/directives/dir-le_dir-2007-3.pdf)] and no departmental resources will be expended to comply with these detainers in situations other than those arising from an inquiry mandated in the aforementioned directive.

4. Officers shall not inquire or request information about or otherwise investigate the citizenship or immigration status of any person unless the inquiry is required by law or other legitimate purpose.

5. Officers may accept forms of identification such as a passport, driver’s license, or consular issued document for purposes of identification if said documents are determined to be issued legitimately. Presentation of such documents shall not constitute reasonable suspicion for further investigation solely based on the individual’s immigration status.

B. Possible Effects on Immigrant Cooperation

1. Immigration enforcement by state and local police would have an adverse effect in community policing relations. It is the intention of the Ewing Police Department to maintain positive relations with all members of the Ewing Township Community by providing fair, compassionate, and unbiased police service to all community members regardless of the community members' immigration status.

C. NCIC/SCIC Hits

1. Officers shall not arrest or otherwise detain persons who are entered in the NCIC/SCIC system by U.S. Immigration and Customs Enforcement (I.C.E.) **unless the entry is for an actual criminal arrest warrant and only after the hit confirmation process has been completed. An NCIC/SCIC immigration status warning hit is not an arrest warrant and as such, officers have no authority to detain or arrest on the basis of an immigration status warning.**

2. Officers shall not engage in racial profiling with regard to any enforcement action as stated in Ewing Police Department General Order, Profiling & Discriminatory Practices GO-A-12.

D. Detainer Vs. Warrant

1. It is important for officers to discern between an I.C.E detainer (DHS 1-247) and an arrest warrant.

a. DHS I-247 Detainer

Any authorized immigration officer may at any time issue a Form i-247, Immigration Detainer Notice of Action, to any Federal, State, or Local law enforcement agency. A detainer serves to advise another law enforcement agency that I.C.E. seeks custody of the individual in custody of that agency for the purpose of further investigation or for actual removal of that person. A detainer is a REQUEST from I.C.E. and not a court issued order.

b. Arrest Warrant

An arrest warrant is a legal order issued by a court that directs all sworn law enforcement officers to deliver a specific individual by means of arrest before the appropriate court. **Police Officers have no discretion in deciding whether to arrest said individuals and must take the named person into custody on a validly issued arrest warrant.**

E. Assistance to Federal Immigration Authorities:

1. The Ewing Police Department shall provide the appropriate level of assistance to the federal authorities **when requested.**

2. When an officer receives a request from I.C.E. for police assistance in an arrest raid, the request shall be referred to a shift commander.
3. The shift commander in consultation with his/her superior officer and/or the Chief of Police shall review the request and direct the proper police assistance based on the circumstances and/or the need for assistance. Only **when requested** by I.C.E. for tactical and safety reasons officer(s) will be assigned to accompany the federal agents to the location of the enforcement activity, but **shall not** take an active role in the immigration enforcement plan.
4. Officers shall not enter a structure to arrest or interview or otherwise participate inside of any location during an immigration action, but shall only provide a police presence outside in case of a disturbance or other public safety concern that may arise, as a result of the immigration enforcement action.
5. Upon completion of the detail, the shift commander shall ensure that an Operations Report is completed which shall include, at minimum, the location and target of the I.C.E. action, the names of the I.C.E. Agent(s) involved, and their agency/office phone number.
6. Officers will provide assistance in the form of information, referrals, and any other basic need or social service a resident may require as a result of the action.
7. Requests for information from the public or press shall be directed to the Media Relations Officer of this department.
8. This directive will be reviewed by the Chief of Police at least annually for updating purposes.

F. U VISA PROCEDURES

1. The U nonimmigrant status (U Visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U Non-Immigrant Visa with the passage of the victims of trafficking and violence protection act in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute case of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.
2. For purpose of U Visa certification, "Qualifying criminal activity" means qualifying criminal activity pursuant to 101(a)(15)(U)(iii) of the Immigration and National Act which includes, but is not limited to, the following crimes: Rape, Torture, Trafficking, Incest, Domestic Violence, Sexual Assault, Abusive Sexual Contact, Prostitution, Sexual Exploitation, Stalking, 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, or Fraud in Foreign Labor Contracting (as defined in 18 U.S.C. 1351). “Qualifying criminal activity” or “qualifying crime” includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal offenses described in this Section, and the attempt, conspiracy, or solicitation to commit any of those offenses.

3. After reviewing the relevant investigation related to the U-Visa request and verifying the qualifying criminal activity and the helpfulness and/or cooperation of the victim with the investigation and/or prosecution, the certifying official shall process the Form I-98b as soon as practicably possible. If the request is denied, the department will notify the applicant in writing.