

TOWN OF CLINTON POLICE DEPARTMENT
RULES AND REGULATIONS/POLICIES AND PROCEDURES

VOLUME: 3	CHAPTER: 17	# PAGES: 8	REVISION DATE(s)
SUBJECT: IMMIGRANT TRUST DIRECTIVE			112922 102720
EFFECTIVE DATE 102620	CHIEF OF POLICE J. Cory Kubinak		
CROSS REFERENCE #: Ag 2018-6 V2.0	POLICE DEPARTMENT TOWN OF CLINTON		

PURPOSE

The Town of Clinton Police Department is committed to providing law enforcement services that are fair, effective, and impartially applied. Toward that end, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens in accordance with their legal rights. Officers' adherence to these standards, motivated by a moral and professional obligation to perform their job to the best of their ability, is the ultimate objective of this agency.

PROCEDURE

As directed by the Attorney General, the Immigrant Trust Directive 2018-6 V2.0 will be rightfully instituted and accepted as a policy of the Town of Clinton Police Department. This directive and policy will aid and assist strengthening trust between law enforcement and immigrant communities. All members will adhere to this Directive and Policy so directed by law and this order.

I. 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 No. 2005-1.

II. Enforcement of Federal Civil Immigration Law

A. Use of immigration status in law enforcement activities. Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall:

1. Stop, question, arrest, search, or detain any individual based solely on:
 - a) actual or suspected citizenship or immigration status; or
 - b) actual or suspected violations of federal civil immigration law.

2. Inquire about the immigration status of any individual, unless doing so is:
 - a) necessary to the ongoing investigation of an indictable offense by that individual; and
 - b) relevant to the offense under investigation.

B. Limitations on assisting federal immigration authorities in enforcing federal civil immigration law. Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

1. Participating in civil immigration enforcement operations.
2. Providing any non-public personally identifying information regarding any individual.
3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.
4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
 - a) the purpose of the interview;
 - b) that the interview is voluntary;
 - c) that the individual may decline to be interviewed; and
 - d) that the individual may choose to be interviewed only with his or her legal counsel present.
5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
 - a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense as that term is defined in Appendix A;
 - b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
 - c) is 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.
6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:

1 Non-public personally identifying information includes 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 of any person. See N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a). It may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.

- a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason

of insanity of, a violent or serious offense as that term is defined in Appendix A;
b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
c) is 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 pm on the calendar day on which the person would otherwise have been eligible for release.

C. Exceptions and exclusions. Nothing in Sections II.A or II.B shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from:

1. Enforcing the criminal laws of this state.
2. Complying with all applicable federal, state, and local laws.
3. 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.
4. Participating with federal authorities in a joint law enforcement taskforce the primary purpose of which is unrelated to federal civil immigration enforcement.
5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.
6. Asking an arrested individual for information necessary to complete the required fields of the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee's place of birth and country of citizenship.

2 As noted earlier, a "judicial warrant" is one issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.

7. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities.
8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it.

9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.

10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. See 8 U.S.C. §§ 1373, 1644.

III. Agreements with the Federal Government

- A. **Section 287(g) agreements.** No state, county, or local law enforcement authority shall enter into, modify, 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), and they shall not exercise any law enforcement authority pursuant to a preexisting Section 287(g) agreement.
- B. **Intergovernmental Service Agreements.** Nothing in Section II of this Directive shall apply to law enforcement agencies that are currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

IV. Requests for T and U Nonimmigrant Status Certifications

A. **Establishing certification procedures.** Before March 15, 2019, all state, county, and local law enforcement agencies must put in place a set of procedures for processing requests for T- and U-visa certifications (see 8 U.S.C. §§ 1101(a)(15)(T) and 1101(a)(15)(U)) from potential victims of crime or human trafficking within 120 days of the request being made. Each police department shall post information about its procedures on its website, or, if the department does not have its own website, then on the municipality's website when feasible.

B. **T-visa certifications.** For T-visa certification requests, each agency's certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:

1. Is or has been a victim of a severe form of trafficking in persons; and
2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.

C. **U-visa certifications.** For U-visa certification requests, each agency's procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:

1. Is a victim of a qualifying criminal activity; and
2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.

D. Inquiry into and disclosure of immigration status. Notwithstanding any provision in Section II, state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification. They may generally not disclose the immigration status of a person requesting Tor U-visa certification except to comply with state or federal law or legal process, or 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 from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. See 8 U.S.C. §§ 1373, 1644.

V. Considerations for Prosecutors

A. Initial court appearances. At a defendant's initial court appearance before a judge, the prosecutor shall confirm that the defendant has been advised on the record that:

1. Potential charges and convictions may carry immigration consequences, see *Padilla v. Kentucky*, 559 U.S. 356 (2010); and
2. The defendant may have rights to consular notification pursuant to the Vienna Convention on Consular Relations.

B. Pretrial detention. 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.

C. Admissibility of immigration evidence. 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, 462-63 (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 the jury's presence, under N.J.R.E. 104, and requesting that the Court give an appropriate limiting instruction.

D. 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 particular 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.

VI. Notifications and Recordkeeping

A. Notifications to detained individuals. State, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:

1. To interview the detainee. (See § II.B.4.)
2. To be notified of the detainee's upcoming release from custody. (See § II.B.5.)
3. To continue detaining the detainee past the time he or she would otherwise be eligible for release. (See § II.B.6.)

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.

B. Annual reporting by law enforcement agencies. On an annual basis, each state, county, and local law enforcement agency shall report, in a manner to be prescribed by 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 Sections II.B.1 to II.B.6. Each year:

1. Any local or county law enforcement agency that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the County Prosecutor detailing such assistance.
2. Each County Prosecutor shall compile any reports submitted by local or county law enforcement agencies pursuant to Section VI.B.1 and submit a consolidated report to the Attorney General detailing the agencies' assistance.
3. The New Jersey State Police and all other state law enforcement agencies that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the Attorney General detailing such assistance.
4. The Attorney General shall post online a consolidated report detailing all instances of assistance by all state, county, and local law enforcement agencies, as submitted to the Attorney General pursuant to Sections

VI.B.2 and VI.B.3, during the prior calendar year.

VII. Training

A. **Development of training.** The Division of Criminal Justice, shall, within 30 days of the issuance of this Directive, develop a training program to explain the requirements of this Directive as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.

B. **Training deadline.** All state, county, and local law enforcement agencies shall provide training to all officers regarding the provisions of this Directive before March 15, 2019.

All police procedures heretofore employed by the Town of Clinton Police Department which conflict with this order are hereby rescinded. Supervisors shall be held accountable for the enforcement and application of this order. All members of the Town of Clinton Police Department are required to follow this order as applicable. Violations of this order subject members of this agency to disciplinary action.

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6 v2.0

APPENDIX A

(Issued November 29, 2018)

(Revised September 27, 2019)

For the purposes of Sections II.B.5 and II.B.6, the term “violent or serious offense” is defined as follows:

1. Any first or second degree offense, as defined in N.J.S.A 2C:43-1;
2. Any indictable domestic violence offense defined in N.J.S.A. 2C:25-19, as well as any domestic violence assault defined in N.J.S.A. 2C:25-19A(2);
3. Any other indictable offense listed in the chart below; or
4. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in paragraphs 1-3 above.

Chart of Additional Violent & Serious Offenses

(For indictable offenses as referenced in Paragraph 3 Above)

Statute **Description**

2C:12-1 Assault

2C:12-1.1 Knowingly Leaving Scene of Motor Vehicle Accident Involving Serious Bodily Injury

2C:12-10 Stalking

2C:12-13 Throwing Bodily Fluid at Officers

2C:14-3 Criminal Sexual Contact

2C:14-4B Exposing Genitals to Minors Under the Age of 13 and Other Vulnerable Populations

2C:16-1 Bias Intimidation

2C:17-1 Arson

2C:17-2 Causing Widespread Injury or Damage

2C:18-2 Burglary of a Dwelling

2C:24-4 Endangering the Welfare of Children

2C:28-5 Witness Tampering and Retaliation

2C:29-2B Eluding a Law Enforcement Officer

2C:29-3A(5), 3B(2), 3B(3) Hindering Apprehension or Prosecution

2C:29-9 Criminal Contempt (Violation of Restraining Orders, Domestic Violence Orders, Etc.)

2C:39-3, 2C:39-5, 2C:39-7, 2C:39-9 Manufacture, Transportation, or Possession of Weapons

2C:40-3B Aggravated Hazing