

BOLTON POLICE DEPARTMENT		Department Manual: Policy No.
Subject: The Specific Role and Impact of the BPD in the Enforcement of Federal Civil Immigration Law By the Department of Homeland Security (DHS-ICE-ERO) With the <u>Secure Communities Program</u>		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <u>Presidential Executive Order No 13768 (1/25/17)</u>		GENERAL ORDER 2017-01
Effective Date: March 30, 2017	Issuing Authority <i>Warren E. Nelson, Jr.</i> Warren E. Nelson, Jr. Chief of Police	

I. PURPOSE AND SCOPE

The Bolton Police Department recognizes and values the diversity of the community it serves. The Bolton Police Department is committed to promoting safety and providing proactive community policing services to all who live, work or visit our community. In furtherance of the adherence to 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 Bolton Police Department relies upon the cooperation of all persons located in the Town of Bolton including citizens, legal 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 serious crime including the intimate partner issue of domestic violence. It is absolutely essential that these 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. This type of essential mutual trust and spirit of cooperation is absolutely crucial in preventing and solving crime incidents, as well as maintaining public order, safety and security in the entire community.

We fully realize that federal civil immigration enforcement or perceived enforcement by the Bolton 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. 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. Without assurances that they will not be subjected to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them and/or their families.¹ Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between the Bolton Police and huge portions of the legal immigrant community as well.

We as duly sworn police officers are responsible for providing effective police services to everyone in the Town of Bolton in an equal, fair, and just manner. The Bolton Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the Town of Bolton. Thus, detection of criminal behavior is of primary interest and concern in dealing with any individual 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 on any decision for a Bolton Police Officer to effectuate a stop 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 BPD unless there exists through reliable and credible information a potential threat to public safety and/or national security. It is incumbent upon all officers and employees of the Bolton 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 police department’s effectiveness and efficiency in protecting and serving the members of the entire Town of Bolton community.

II. DHS renews ICE *Secure Communities Program* (“S-Comm”) via Presidential Executive Order 13768

1. Procedural Background:

The Commonwealth of Massachusetts officially became part of what was previously known as the Federal *Secure Communities Program* on May 15th, 2012. The Federal Program was operational nationwide until it was ordered discontinued on November 20th, 2014 by then Secretary of Homeland Security Jeh Johnson and replaced by what was known as the *Priority Enforcement Program* (“PEP”) which was in effect from January 1st of 2015 –

¹ **Note:** The U-Visa protection provides a specific avenue through which immigrant crime victims and witnesses who cooperate with law enforcement can obtain temporary lawful immigration status and protection against deportation.

January 25th of 2017 which allowed for a more focused approach regarding enforcement priorities for those undocumented individuals who were either previously convicted of felonies, 3 or more serious misdemeanors or were considered recent border crossers and/or were subjected to final orders of deportation.

However on January 25th of 2017 the President of the United States issued Executive Order No. 13768 titled *Enhancing Public Safety in the Interior of the United States* which revoked the *Priority Enforcement Program* and restored the former *Secure Communities Program* (“S-Comm”).

2. **S-Comm online 1/25/17: Biometric Fingerprint Submissions:**

Under the newly reinstated Federal *Secure Communities Program*, the fingerprints of all persons arrested by state and local law enforcement agencies, in which those agencies routinely submit these electronic biometric prints to the FBI (via the Massachusetts State Police server) for criminal justice database checks, are also automatically shared with the Department of Homeland Security (DHS-ICE). During that electronic submission Immigration and Customs Enforcement (ICE) personnel will check the local arrestee’s (currently being held in a police lock-up by the local or State PD) personal biographical information against the active DHS-ICE immigration databases. If ICE determines that it has what was deemed to be an “actionable interest” in the local arrestee based on a hit (match) on that database with the submitted fingerprints, ICE will then determine what specific enforcement action, if any, to take based on their DHS Enforcement Priorities and available personnel resources in existence at the time of the hit.

3. **Request for an Immigration Detainer by ICE:**

If the local arrestee appears to have violated the federal immigration laws and the arrestee is deemed to fall within any of the applicable enforcement priorities listed below (II-4), ICE will decide whether or not to issue what is known as a **Request for an Immigration Detainer** form for the arrested individual currently held in local police custody. A Request for a Detainer form, which is sent via a fax after an initial phone call is made to the local police department’s OIC, is an official *request* from DHS-ICE directed to the specific state or local law enforcement agency to hold the individual for a period not to exceed 48 hours so that ICE has the opportunity to arrange for the potential transfer of the individual into federal custody in situations when gaining immediate custody is either impracticable or impossible.²

4. **ICE’s Enforcement Priorities:**

In a Memo dated 2/20/17 from DHS Secretary John Kelly to federal law enforcement agencies that these enforcement priorities are now more wide ranging than under the previous PEP including not just felony convictions (as was previously the case under PEP):

- but all convictions on the arrestee’s BOP of “any crime” including misdemeanors,
- as well as those arrestees currently being charged with an offense without a conviction record,

² 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.**

- those alleged to have committed acts of fraud,
- abuses of any benefit program,
- subject of final orders of deportation
- or those who commit acts that constitute threats to national security or public safety in general. See DHS Memo dated 2/20/17 from DHS Secretary John Kelly.

If the local arrestee appears to have violated the federal immigration laws (e.g., overstayed a visa, crossed the border without inspection) and the arrestee is deemed to fall within any of the aforementioned enforcement priorities, ICE will now decide whether to issue the **Request for a Detainer** for the arrested individual.³

5. **DHS Secure Communities (“S-Comm”) and Potential Impacts on Local Community Policing Efforts:**

DHS-ICE and the DHS *Secure Communities Program* do 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 adversely impact 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 DHS, S-Comm only entails the sharing of information known as “*interoperability*” between local law enforcement MSP and the FBI and DHS. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the S-Comm 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 S-Comm 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 potentially transferring custody of the arrestee) the actual information sharing of biometrics which defines the process takes place. While ICE has distinguished between S-Comm’s “*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, we anticipate that the reinstatement of the S-Comm Program may be commonly viewed and perceived by many as the entire process which begins with an initial arrest by the local law enforcement agency and often times ends in deportation of the local arrestee. To the community at large, especially urban inner-Town, immigrant communities such as the Town of Bolton, local law enforcement agencies participating in the S-Comm Program run the risk of being viewed by many as immigration agents, regardless of the actual limited role that they play in the process.

³ **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).

Therefore, it is imperative that the local community is informed and educated at 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

The enforcement of the nation's federal civil immigration laws are the primary responsibility of the federal government. Accordingly, the Bolton 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. Exceptions may be made under Section IV (C) below. Further, the Bolton 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 Bolton 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. [See §§ IV (C), (D) below].

IV. PROCEDURE

A. **Immigration Detainer – Notice of Action**

- Whenever any Officer in Charge (OIC) of the Bolton Police Department receives either an ***Immigration Detainer*** (Form I-247 – issued 12/12) in the form of a fax from DHS-ICE, the OIC shall immediately upon arrival at Headquarters inform the bailing Clerk or Assistant Clerk Magistrate of the existence of the Federal ICE Detainer when contacted to make the decision of setting bail on those currently in custody.
- It shall be decision of the bailing Clerk of Court to decide whether to set a monetary bail, release on personal recognizance or order that the arrestee be held in police custody via the Immigration Detainer until court is next in session.
- The OIC shall ensure that the arresting Officer adheres to the following procedure when an Immigration Detainer is received:
 - Although the issuance of a Detainer by ICE is not a criminal charge please add the "Description" above under charges so that we can accurately track each Detainer that is received.
 - If a decision is made to bail the arrestee DHS-ICE: ERO shall be notified by the OIC.

- The **arrestee SHALL always be afforded a copy** of the applicable ICE Immigration Detainer Form.
- A copy of the ICE Detainer Form shall be placed in the arrestee's arrest folder.
- Federal law provides that the 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 shall expire forthwith.

B. Inquiries into Immigration Status:

- (i) A person's right to file a police report; participate in any police-community activities (i.e., Community Action Team Meetings, Neighborhood Watch, 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.
- (ii) Consequently, officers **shall not** question any person about his or her specific citizenship or immigration status **unless** that person is reasonably believed to be involved in one or more of the activities identified in **Subsection IV (C)** below.
- (iii) 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 **Subsection IV (C)** below.⁴

C. Notification to Federal Immigration Authorities:

In furtherance of the department's community policing philosophy and continued engagement and outreach efforts, Bolton 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:**⁵

1. is **arrested** for any **violent felony** by BPD Personnel 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,

⁴ **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).

⁵ Please See [BPD Policy No. 4.36, titled Consular Notification and Access](#) for further procedural requirements.

- ❖ Armed Burglary,
 - ❖ Rape, (or any Sex Offense)
 - ❖ Mayhem, or
 - ❖ Armed Robbery;
2. When the BPD acquires reliable information that the individual in Bolton Police custody has been **convicted** in a court of competent jurisdiction of **any violent felony**;
 3. is **arrested** by BPD Personnel for any **terrorism-related offense**, or is otherwise *reasonably suspected* of involvement in any terrorist and/or subversive activities;⁶
 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/weapons**.

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

1. The U.S. Bureau of Immigrations and Customs Enforcement 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. Bolton Police Officers **shall not** directly participate in any such ICE tactical operation(s) 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 immediate 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 Criminal Warrant (WMS) which remains in full force and effect at the time of the request.
3. Whenever ICE has occasion to be in the Town of Bolton, whether looking for a individual(s) who is the subject of a **criminal warrant** (usually the criminal investigatory side of ICE - *Homeland Security Investigations* (HSI) or looking for individuals who have **Final Orders of Deportation** (Civil side – *Enforcement & Removal Operations-ERO*) the OIC shall contact **forthwith the Chief of Police and other Command Staff Personnel**.

⁶ **Note:** The FBI Joint Terrorism Task Force (JTTF) shall also be contacted forthwith.

- In addition the OIC shall ascertain from the notifying ICE Agent or Supervisory Agent who called the OIC - pursuant to national de-confliction protocol to alert of their presence in the Town at a specific address - the specific “reason” that they are looking to place the wanted individual into federal custody.
 - If it is for a Massachusetts Criminal Warrant or other State Warrant⁷ for which we as duly sworn Bolton Police Officers have the right of arrest then we may assist.
 - If it is for **civil reasons only** then we shall stand down and not respond and only assist if a situation rises where an officer’s (Agent’s) safety is at risk where there is an emergency call for assistance.
 - In all cases the OIC shall ensure that a call number is generated on the Dispatch Log by emergency Communications (e.g., Call type Immigration Enforcement).
 - The ICE Agent shall be asked to call back the OIC with the results of the investigation (e.g., no service, one in custody, etc.) so that the Dispatch Log can be updated.
 - For those individuals placed in custody by ICE Officials solely for civil enforcement reasons a courtesy booking shall not be required.
4. Any detention by a member of the Bolton 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.

E. Tracking Sheet Maintained by the Crime Reporting and Analysis Unit

- An electronic tracking sheet listing all ICE Detainers shall be maintained by the Crime Reporting and Analysis unit.
- The Tracking Sheet shall list the Case #, Date, Arrestee’s Name, ICE Official Name sending the Detainer, Arrest Location, Offense(s), Detainer #, Reason for Detainer, Criminal History (Y/N), Held Overnight (Y/N), and Weekend (Y/N).
- The CRAU shall conduct periodic follow-ups with ICE to determine if an arrestee that was taken into federal custody by ICE was in fact deported. The information shall be added to the Tracking Sheet as well.
- The Tracking Sheet shall have restricted access on the department’s shared drive.
- The Crime Analysis and Reporting Unit shall send out quarterly reports to the Chief of Police and the Command Staff including but not limited to the following charts printed below for illustrative purposes:

⁷ See G.L. Chapter 276 Sections 10(a)(b) for authorization for arrests from Fugitives from Justice from other States.

