



DEPARTMENT MANUAL

Section 111.08

CHAPTER: Arrests			
SUBJECT: IMMIGRATION STATUS CONCERNS			
ISSUE DATE: 4/19/2018	EFFECTIVE DATE: 4/19/2018 Issue	REVISES/SUPERSEDES: 3/1/2017 Issue	PAGE: 1 of 3

PURPOSE:

To establish procedures to be followed by Sworn Members when encountering persons who actually or are suspected to have entered or remained in the United States unlawfully and ensure compliance with Westchester County Act No. 2018-19.

POLICY:

Sworn Members shall not engage in enforcement activities solely for the purpose of enforcing federal immigration law nor detain persons based solely upon the suspicion that such persons have entered or remained in the United States unlawfully except as provided for herein and, otherwise, comply with the requirements of Westchester County Act No. 2018-19.

PROCEDURE:

INVESTIGATIONS

1. Except as otherwise provided herein, Sworn Members shall not stop, question, interrogate, investigate, or arrest an individual based solely on any one or more of the following:
 - a. actual or suspected immigration. citizenship status or country of birth; or
 - b. a civil immigration warrant, administrative warrant, or an immigration detainer (collectively, "Immigration Detainers") in the individual's name, including those identified in the National Crime Information Center (NCIC) database.

NOTE: Immigration Detainers are not criminal warrants issued by a judge and may not provide sufficient basis to detain an individual or to prolong the detention of an individual detained for other reasons.

2. Employees shall not inquire about or investigate the citizenship, immigration status, country of birth or place of birth of an individual, unless same is:
 - a. required by law;
 - b. related to the investigation of a non-immigration related crime; or
 - c. done after voluntary and informed consent has been obtained from the individual.

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3. Employees shall not threaten to contact Federal Immigration Authorities or to transmit any information about any individual's Citizenship or Immigration Status to Federal Immigration Authorities.

ARREST PROCESSING AND CUSTODY

4. Sworn Members shall not delay an individual's release from custody because of any one or more of the following:
 - a. an individual's actual or suspected Citizenship or Immigration Status, place of birth, or country of birth; or
 - b. a Civil Immigration Detainer/Hold Request; or
 - c. a request from Federal Immigration Authorities for Notification about, transfer of, detention of, or interview of an individual.
5. Sworn Members shall not Detain or Transfer an individual based upon a Civil Immigration Detainer/Hold or Transfer Request from Federal Immigration Authorities, unless accompanied by a Judicial Warrant.
6. Sworn Members shall utilize the same booking, processing, release, and transfer procedures, policies, and practices for all individuals, regardless of any individual's actual or suspected Citizenship or Immigration Status, place of birth, or country of birth.
7. Upon receipt of a Civil Immigration Detainer/Hold Request, Notification Request, Transfer Request, or an interview request from Federal Immigration Authorities for an individual in Department custody, the receiving Sworn Member shall provide the individual named therein with written notification, in such form as may be provided by the Department, that the request has been made and a copy of that request.

INTERACTION WITH FEDERAL IMMIGRATION AUTHORITIES

8. Employees shall not shall not communicate with Federal Immigration Authorities about an individual, except to send or receive information regarding only citizenship or immigration status of an individual, unless:
 - a. required to do so by law; or

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NOTE: Title 8, Section 1324 of the United States Code provides that it is unlawful, among other things, to knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation. It is therefore a requirement of law that Employees, when contacted by Federal Immigration Authorities seeking to locate an undocumented immigrant, not withhold from such Federal Immigration Authorities relevant information which is known to the Employee.

- b. such communication is related to the investigation of a possible non-immigration related crime; or
 - c. there is probable cause to believe that an individual has illegally re-entered the country after a previous order of removal or return as defined by 8 U.S.C. § 1326, and the individual has been convicted at any time of a felony under New York State Penal Law, or federal crime or crime under the law of another state, either of which would constitute a Penal Law felony in the State of New York; or
 - d. there is probable cause to believe that the individual has or is engaged in terrorist activity.
9. Employees shall not permit Federal Immigration Authorities to interview an individual in custody, for the sole purpose of enforcing federal immigration laws, without a Judicial Warrant or the voluntary and informed consent of the individual, and if any such interview shall take place, the individual shall be provided with the opportunity to have legal counsel present.

NOTE: The Department will provide written materials with which to advise individuals in custody that any such interviews with Federal Immigration Authorities are voluntary, and that the individual may decline to be interviewed or choose to be interviewed only with legal counsel present.

10. Employees shall not permit Federal Immigration Authorities to interview an individual in County custody relating to criminal matters without providing the individual in County custody with the opportunity to have legal counsel present.

RELATED PROVISIONS:

111.06 Foreign Nationals