

Probation	Rights of Foreign Nationals
8/9/2018	Owner Jim Duque
Reviewers	Penny Stein and Ed Varela
Final Approval	Rocco Pozzi (Commissioner)

POLICY: It shall be the policy of the Department of Probation to ensure that any interactions by and between Immigration Authorities, Probation Officers and Foreign nationals under our charge are consistent with federal, state and local laws. At no time shall a person be denied services, due process, or fair treatment based on Immigration Status, place of birth, or identified Citizenship.

RATIONALE: It is the responsibility of the Department of Probation to investigate individuals and supervise offenders, delinquents, and Persons in Need of Supervision (PINS) in a manner that protects the residents of Westchester County while protecting the rights of the individuals under our charge regardless of race, gender identity, religion, ethnicity, or national origin.

DEFINITIONS:

Citizenship is the Country from which a person identifies, as established by birth or by lawful process, to be a national or subject of said Country

Immigration status is the category, as described in §201 of the Immigration and Nationality ACT, that indicates an individual’s statutory right to reside in or otherwise be present in the United States

Federal Immigration Authority is any agency or individual employed by or acting as an agent of the federal government and whose duties involve the enforcement if the civil provisions of the Immigration and Nationality Act.

Civil Immigration Detainer/Hold Request is a request from Federal Immigration Authorities, issued pursuant to 8 C.F.R. § 287.7, asking an agency to maintain custody of an individual for the purpose of turning over said individual to Federal Immigration Authorities.

Judicial Warrant is a document issued and signed by a judge indicating that an individual can be held or taken into custody. It indicates that some level of due process has been followed and that probable cause has been established. (This should not be confused with an administrative warrant, which is not signed by a judge.)

Confidential Information is any information obtained or maintained by the Department of Probation that has been deemed confidential by, federal or state, or local, statute, regulation, or case law, and /or relating to an individual’s sexual orientation, status as a victim of domestic violence or sexual assault, status as a victim of a crime, status as a witness to a crime, or status as a recipient of public assistance.

Non-Public Information means information not readily accessible within the public domain such as what is kept in government records that are not generally available for public review, included by not limited to an individual’s home address, work address, email, supervision dates, or income tax records.

PROCEDURE: All those employed by the Westchester County Department of Probation shall be required to comport and behave in a manner consistent with this policy, with Act No. 19-2018 as passed by the County Board of Westchester County, and all other relevant local, state, and federal laws as applicable to the treatment of individuals regardless of Citizenship or Immigration Status.

The Department and its employees shall utilize the same intake, assessment, transfer and processing practices and procedures for all individuals regardless of their actual or suspected Citizenship, Immigration Status, or place of birth.

The Department and its employees shall not communicate with Federal Immigration Authorities or inquire /investigate the citizenship or Immigration Status of an individual, unless:

- Required by federal or state statute, regulation, or case law;
 - see §350.6 OPCA General Rules and Regulation
- Permissible, such as where an individual's receipt of services or benefits is contingent upon their Citizenship or Immigration Status;
- Performed in conjunction with the Westchester County Department of Public Safety or other police agencies as related to the investigation of a possible non-immigration related crime;
- Upon the voluntary and informed consent of the individual;
- There is probable cause to believe that an individual has illegally re-entered the United States after a previous order of removal or return as defined by 8 U.S.C. § 1326;
- There is probable cause to believe that the individual has or is engaged in terrorist activity

In Accordance with OPCA Rules and Regulations §350.6, the Department will inquire as to an individual's Citizenship, Immigration Status, and place of birth and will require documentation validating said information for the purpose of Pre-sentence and Pre-disposition investigations/reports, and custody, adoption, visitation, and guardianship investigations.

Recognizing that the Department is required to maintain data regarding Citizenship, Immigration Status, and place of birth, this information shall not be used for the purpose of targeted immigration profiling.

At no time shall an employee threaten to contact or to transmit information about an individual's Citizenship or Immigration Status to Federal Immigration Authorities.

The Department and its employees shall make any and all services available to eligible individuals regardless of their Citizenship, Immigration Status or place of birth. When assessing eligibility for services or benefits, the above will not be taken into account unless the receipt of such services or benefits is contingent upon an individual's Citizenship, Immigration Status, or place of birth.

Upon the Department's receipt of a Civil Immigration Detainer/Hold Request, Notification Request, Transfer Request, or an interview request from Federal Immigration Authorities for an individual under our supervision, the individual shall be provided with a written notification that the request has been made and shall promptly be provided with a copy of said request. The Federal Immigration Agency that made the request will then be notified of decision.

If presented with a Judicial Warrant, Probation Officers and Supervising Probation Officers shall follow protocols and procedures as outlined in the Department Arrest Policy in regards to warrants.

Federal Immigration Authorities may interview individuals under Department supervision upon presentation of a Judicial Warrant or upon the voluntary and informed consent of the individual. If voluntary and informed consent is to be requested, the individual will be given sufficient time to confer with legal counsel and will be informed that they are permitted to have legal representation.

The Department and its employees shall not perform the duties of Federal Immigration Authorities, including:

- Stopping, questioning, interrogating, investigating, or arresting an individual based upon actual or suspected Citizenship, Immigration Status, or place of birth.

Without the existence of a Judicial Warrant, Department facilities, funds, personnel and/or other resources shall not be used for the detention of individuals by Federal Immigration Authorities;

Without the existence of a Judicial Warrant, Federal Immigration Authorities are prohibited from accessing Department equipment or areas not available to the general public;

Department facilities, funds, personnel and/or other resources shall not be used to apprehend individuals solely on the actual or suspected Citizenship, Immigration Status, or place of birth.

RESPONSIBILITY AND ACTION:

Commissioner:

- Approves the policy and reviews adherence to County Board Act No. 19-2018 regarding the treatment of individuals relating to their Citizenship or Immigration Status.
- Notifies Westchester County Board of Legislators as to any substantive changes to this Policy.
- Makes final determination as to disciplinary action when Policy is violated.

Deputy Commissioner:

- Oversees adherence to the policy and procedure.

- Recommends changes to Policy and protocols and reviews practices regarding interactions with Federal Immigration Authorities.
- Recommends disciplinary actions if and when Policy is not followed

Assistant Commissioner:

- Monitors adherence to the policy and procedure.
- Recommends changes to Policy and protocols and reviews practices regarding interactions with Federal Immigration Authorities.
- Recommends disciplinary actions if and when Policy is not followed

SPO:

- Monitors Probation Officer behavior and adherence to Policy by way of audits and case reviews
- Recommends changes to Policy and protocols and reviews practices regarding interactions with Federal Immigration Authorities.
- Recommends disciplinary actions if and when Policy is not followed

PO:

- Adheres to Policy
- Confers with SPO regarding interactions with Federal and Immigration Authorities
- Makes appropriate entries in case management system as to keep a record of any and all interactions with Federal Immigration Authorities.
- Recommends changes to Policy and protocols and reviews practices regarding interactions with Federal Immigration Authorities.