

WESTBOROUGH POLICE DEPARTMENT		Department Manual: Policy No.
Subject: The Specific Role and Impact on the WPD in the Enforcement of Federal Immigration Law By the Department of Homeland Security (DHS-ICE) With the <u>2015 Priority Enforcement Program</u>		
		GENERAL ORDER 2017-01
Effective Date: January 1, 2017	Issuing Authority Alan Gordon Chief of Police	

I. PURPOSE AND SCOPE

The Westborough Police Department recognizes and values the diversity of the community it serves. Many of its residents have emigrated to this community from other countries and some may not be citizens or legal residents of the United States. The Town and the Westborough Police Department are committed to promoting safety and providing proactive community policing services to all who are located in our community. In furtherance of the department's Community Policing philosophy, all community members and stakeholders should know that they are encouraged to seek and obtain police assistance and protection regardless of their specific immigration and/or documentation status.

The Westborough Police Department relies upon the cooperation of all persons, documented citizens and 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 crime. It is absolutely essential that these individuals do not feel apprehensive or intimidated in coming forward with the requisite information and general firsthand knowledge to aid in investigating a particular crime. This type of 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.

Note: The U-Visa protection provides a specific avenue through which immigrant crime victims and witnesses who cooperate with law enforcement can obtain lawful immigration status and protection against deportation. See policy link: [U-Visa Policy No.2.06](#)

We as duly sworn police officers are responsible for providing effective police services to everyone in the Town of Westborough in an equal, fair, and just manner. The Westborough Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the Town of Westborough. Thus, detection of criminal behavior is of primary interest and concern in dealing with any subject 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 Westborough Police Officer to effectuate a stop or detention of an individual or affect an arrest.**

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 police concern or subsequent enforcement action. It is incumbent upon all officers and employees of the Westborough Police Department to make an unyielding personal commitment to equal enforcement of the law and equal service to the public regardless of 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 community.

II. DHS PRIORITY ENFORCEMENT PROGRAM ("PEP")

The Commonwealth of Massachusetts officially became part of what was previously known as the **Federal Secure Communities Program** on May 15, 2012. Under the former *Federal Secure Communities Program*, fingerprints of persons arrested by state and local law enforcement agencies, in which those agencies (including the Westborough Police Department) routinely submit these electronic prints to the FBI (via the State Police) for criminal justice database checks, are automatically shared with the Department of Homeland Security (DHS-ICE). Immigration and Customs Enforcement (ICE) would then check the local arrestee's (currently being detained) personal information against the DHS-ICE immigration databases. If ICE had determined that it had what was deemed to be an "actionable interest" in the local arrestee, the agency would then determine what specific enforcement action, if any, to take based on DHS enforcement priorities in existence at the time. Previously if the local arrestee appeared to have violated the federal immigration laws and the arrestee is deemed to fall within any of the enforcement priorities, ICE would decide whether to issue what is known as a **Request for a Detainer** for the arrested individual. A Request for a Detainer, which is sent via fax, is an official request from DHS-ICE directed to the state or local law enforcement agency to notify ICE before it releases an individual arrestee so that ICE has the opportunity to arrange for the immediate transfer of the individual to federal custody in situations when gaining immediate custody is either impracticable or impossible.¹

¹ 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.

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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).

However, on November 20, 2014 the Federal Secure Communities Program was officially “discontinued” at the direction of the Secretary of Homeland Security Jeh Johnson. The Secretary believed that the “*overarching goal of Secure Communities remains [...] valid and [an] important law enforcement objective, but a fresh start and a new program [is] necessary.*” He directed that S-Comm be discontinued and that put in its place a program known as the **Priority Enforcement Program** (“PEP”) which shall continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies to the Federal Bureau of Investigation for criminal background checks. However ICE should only seek the transfer of an undocumented individual in the custody of state or local law enforcement through this new PEP Program when the undocumented individual has been **convicted of an offense** based on the **NEW Priority Schedule** as outlined below:

Note: Secretary Johnson has directed that the previous language that referred to “Requests for Detention” be replaced with “**Requests for Notification**” (form I-247N) meaning that local law enforcement notify ICE of a pending release during the time that person is otherwise in custody under state or local authority.

(1) **DHS Enforcement Priorities:**

[From [DHS Priority Enforcement Program Memo 1-5-2015](#)]

According to DHS: “[They] *must ensure its limited immigration enforcement resources are focused on the removal of those who constitute [what they consider to be] the highest priorities, specifically individuals*

PRIORITY 1: (Threats to National Security, Border Security, & Public Safety)

Undocumented individuals described in this priority represent the **highest priority** to which enforcement DHS resources should be directed:

- (a) Undocumented individuals engaged in or suspected of **terrorism** or espionage, or who otherwise **pose a danger to national security**;
- (b) Undocumented individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States;
- (c) Undocumented individuals **convicted of an offense** for which an element was **active participation in a criminal street gang**, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;

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- (d) Undocumented individuals **convicted of an offense classified as a felony** in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and
- (e) Undocumented individuals convicted of an "**aggravated felony**," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act* at the time of the conviction.

PRIORITY 2: (Misdemeanants and New Immigration Violators)

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. DHS Resources should be dedicated accordingly to the removal of the following:

- (a) **Undocumented individuals convicted of three or more misdemeanor offenses**, other than minor traffic offenses or state or local offenses for which an essential element was the alien's immigration status, provided the offenses arise out of three separate incidents;
- (b) Undocumented individuals convicted of a "**significant misdemeanor**," which for these purposes is:

Note: Five (5) of these offenses are in fact **Felonies** in Massachusetts;

- An offense of **Domestic Violence**; (**Felony** – 2nd Offense in MA)
- **Sexual Abuse** or exploitation; (**Felony** in Massachusetts)
- **Burglary**; (**Felony** in Massachusetts)
- Unlawful possession or use of a **Firearm**; (**Felony** in Massachusetts)
- **Drug Distribution/Trafficking**; (**Felony** in Massachusetts)
- **Driving under the influence**;
- Or if not an offense listed above, one for which the individual was **sentenced to time in custody of 90 days or more** (the sentence must involve time to be served in custody, and does not include a suspended sentence).

(2) **DHS Priority Enforcement Program (“PEP”) and Potential Impacts on Local Community Policing Efforts:**

DHS-ICE and the DHS Priority Enforcement Program (“PEP”) like the S-Comm predecessor 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, PEP only entails the sharing of information known as “*interoperability*” between local law enforcement, the FBI

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and DHS. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the PEP 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 PEP Program.

However, with this in mind, it is important to note that much of the criticisms of the former S-Comm Program and presumably the new PEP Program relate to the enforcement activities before (with the local police making an arrest) and after (with ICE Officials transferring custody of the arrestee) the actual information sharing of biometrics which defines the process takes place. While ICE has distinguished between PEP'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 potentially the PEP Program, like S-Comm before that, may be commonly viewed and perceived by many as the entire process which begins with an arrest by the local law enforcement agency and ends often times in deportation of the arrestee. To the community at large, especially urban inner-city, immigrant communities such as the city of Chelsea, local law enforcement agencies participating in the PEP Program run the risk of being viewed by many as immigration agents, regardless of the actual limited role that they play in the process. 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 PEP 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 civil immigration laws are the primary responsibility of the federal government. Accordingly, the Westborough 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.

This prohibition does not preclude the Westborough 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 §§ III (B), (C) below].

Further, as of November 20th 2014 the Federal Secure Communities Program was declared discontinued by the Department of Homeland Security Secretary Jeh Johnson and replaced with what is hereafter known as the Priority Enforcement Program ("PEP").

Therefore, whenever any Officer in Charge (OIC) of the Westborough Police Department receives either a **Request for Detention** (form I-247D) in the form of a fax from DHS-ICE, the OIC shall

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immediately inform the bailing Clerk or Assistant Clerk Magistrate of the existence of the Federal ICE Detainer. If the Clerk orders the arrestee to be held at Police Headquarters pending the transfer to federal custody, federal law provides that the individual cannot be held on a Detainer for longer than 48 hours, (now) **including** weekends and holidays. At the end of the 48 hour period, the Detainer shall expire forthwith.

If the OIC receives a **Request for Notification** (form I-247N), the OIC of their designee shall notify ICE of the circumstances regarding the pending release of the arrestee in police custody.

In both circumstances the **arrestee SHALL be afforded a copy** of the applicable ICE Form.

Further, “*Requests for Detention*” have been replaced with “*Requests for Notification*” meaning that the law enforcement only notify ICE of a pending release during the time that person is otherwise in custody under state or local authority.

III. PROCEDURE

(1) **Inquiries into Immigration Status:**

- (a) 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. **42.2.8 a**
- (b) 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 III (B) below.
- (c) 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 III (B) below.

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).

(2) **Notification to Federal Immigration Authorities:**

In furtherance of the department’s community policing philosophy and continued engagement and outreach efforts, Westborough Police Officers shall not participate in any

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federal civil immigration related investigations of any immigrant or foreign national, **except** when the **immigrant or foreign national**:

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

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

- (d) 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**
 - (e) 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.**
- (3) **Immigration and Customs Enforcement (ICE) Requests for Assistance:**
- (a) 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.
 - (b) Westborough Police Officers **shall not directly participate in any such ICE tactical operations 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

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- 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.
- (c) Any detention by a member of the Westborough 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.