

	WEST ORANGE POLICE DEPARTMENT WRITTEN DIRECTIVE SYSTEM	7:19-6
	IMMIGRATION ENFORCEMENT	
	Effective Date: 02/25/19	Supersedes: 05/31/17

7:19-6a PURPOSE

The purpose of this directive is to bring this department into comportment with the N.J. Attorney General Law Enforcement Directive 2018-6, known as the “Immigrant Trust Directive”, regarding the types of assistance that WOPD personnel may provide to federal immigration authorities. The West Orange Police Department’s overriding mission is to enforce state and local criminal laws and to serve and protect the community it serves. The mission is not to enforce federal immigration laws.

It should be noted that AG Directive 2018-6 repeals and supersedes the provisions of AG Directive 2007-3.

7:19-6b PROCEDURES

I. Attorney General Directive 2018-6: limits the types of voluntary assistance that NJ law enforcement officers may provide to federal immigration authorities, and provides guidelines for NJ law enforcement officers during interactions with the public.

- a. During interactions with the public, law enforcement officers cannot stop, question, arrest, search or detain any individual based solely on actual or suspected immigration status, or actual or suspected violations of federal civil immigration law.
- b. When an officer makes an arrest, the arresting officer, as part of the booking process, may universally inquire about the arrestee’s citizenship and nationality. Officers may **not** ask the immigration status of any individual, unless doing so is necessary to the ongoing investigation of an indictable offense and relevant to the offense under investigation.

II. Limitations on Assisting Federal Immigration Authorities

No officer shall provide the following types of assistance when the sole purpose of that assistance is to enforce civil immigration law:

- a. Participating in civil immigration enforcement operations
- b. Providing any non-public personally identifying information regarding any individual (ex. SSN, DL #, Plate Number, addresses, etc)

- c. Providing access to any LE equipment, office space, database, or property not available to the general public
- d. Providing access to any detained individual for an interview, unless the detainee signs a written consent form (in a language that the individual can understand) that explains:
 - 1. The purpose of the interview
 - 2. That the interview is voluntary
 - 3. That the individual may decline to be interviewed, and
 - 4. That the individual may choose to be interviewed only with his or her legal counsel present.
- e. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
 - 1. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, (defined in Appendix A);
 - 2. In the past five years, has been convicted of an indictable crime other than offenses listed in Appendix A; or
 - 3. 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.
- f. 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. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, (defined in Appendix A);
 - 2. In the past five years, has been convicted of an indictable crime other than offenses listed in Appendix A; or
 - 3. 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.
 - 4. NOTE: Any such detention may only last until 2359hours on the calendar day on which the person would otherwise have been eligible for release.
- g. WOPD personnel shall promptly notify a detained individual, in writing and in a language the individual can understand, whenever federal civil immigration authorities request:
 - 1. To interview the detainee

2. To be notified of the detainee's upcoming release from custody
3. To continue detaining the detainee past the time he or she would be eligible for release.

III. Exceptions and Exclusions

Nothing in the AG Guideline or this directive shall be construed to restrict or prevent a NJ law enforcement officer from:

- a. Enforcing the laws of the State of NJ
- b. Complying with all applicable federal, state, and local laws
- c. 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
- d. Participating with federal authorities in a joint law enforcement taskforce, the primary purpose of which is unrelated to federal civil immigration enforcement (ex DEA, HIDTA, etc)
- e. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention
- f. Asking an individual for necessary information to complete the required fields of the LIVESCAN database or the WOPD Booking Form, including information about the arrestee's place of birth and country of citizenship
- g. Providing federal immigration authorities with information that is publicly available.
- h. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment or resources.
- i. Sending to, maintaining, or receiving from federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

IV. NCIC/SCIC Immigration Hits

Officers shall not arrest or unlawfully detain persons who are entered in the NCIC/SCIC system by U.S. Immigration and Customs Enforcement (I.C.E.) unless the entry is for a properly issued judicial criminal arrest warrant and only after the "Hit" confirmation process has been completed. A NCIC/SCIC

immigration status warning "Hit" is not an arrest warrant and as such, officers have no authority to and shall not unlawfully detain or arrest on the basis of an immigration status warning only.

V. Detainer vs. Warrant

It is important for Supervisors, Officers, and Dispatchers to discern between an I.C.E. Detainer (DHS I-247) and a properly issued judicial criminal Arrest Warrant. New Jersey State law does NOT authorize local police to detain persons for immigration violations unless the NCIC Alert is supported by a properly issued judicial criminal Arrest Warrant.

1. DHS I-247 Detainer

Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer Notice of Action, to any Federal, State or Local law enforcement agency or correctional facility. A detainer serves to advise another law enforcement agency that I.C.E. seeks custody of the individual in the custody of that agency for the purpose of further investigation or for actual removal of that person. It should be noted that ICE administrative warrants, on their own, are civil in nature. A DHS I-247 detainer MAY or MAY NOT be supported by a criminal Arrest Warrant. A detainer is a ***request*** from I.C.E. and not a court issued order if it is not supported by a properly issued judicial criminal Arrest Warrant. Officers shall not unlawfully detain individuals based upon a DHS Detainer only.

2. Arrest Warrant

An Arrest Warrant is a legal order issued by a court that directs all sworn law enforcement officers to deliver a specific individual by means of arrest before the appropriate court. Police Officers have no discretion in deciding whether to arrest said individual and must take the named person into custody on a validly issued Arrest Warrant.

7-19-6c GENERAL MATTERS

1. Additionally, no officer shall inquire about **and/or** investigate the immigration status of any victim, witness or potential witness unless the County Prosecutor or Director of Criminal Justice determines otherwise in writing, or such inquiry is legally required.

2. No individual under any circumstances shall ever be questioned about their immigration status by any member of the West Orange Police Department unless doing so is necessary to the ongoing investigation of an indictable offense and *relevant* to the offense under investigation or upon being directed to do so by an attorney of the NJ Attorney General or Essex County Prosecutor's Office.
3. No member of the West Orange Police Dept. shall consider a person's **race, ethnicity or speech pattern** as a factor in drawing **any** inference or conclusion that the person may be an undocumented immigrant. All personnel shall abide by the procedures and standards set forth in *Directive 1:9 Profiling & Discriminatory Practices*.
4. In order to show respect for all individuals during encounters, WOPD personnel shall accept municipal IDs, foreign IDs/passports and other forms of valid identification without subjecting the carrier to additional scrutiny whenever plausible. This shall not seek to circumvent the traditional investigatory steps while investigating any offense committed. However, officers should not take the fact that an individual only has one of these identifications as the sole basis for a stop or for furthering the encounter. This does not pertain to investigating unlicensed drivers.
5. The Chief of Police or the Chief's designee must be notified as soon as reasonably practical any time the assistance of ICE has been requested for any reason whatsoever and barring an emergent situation prior to rendering any such assistance.
6. Any instances of agency members providing any assistance which is listed under this Directive 7:19-6b(II) shall notify the Office of Professional Responsibility through a memorandum, email or in person. The Office of Professional Responsibility is responsible for submitting an annual report, as prescribed by the Attorney General, to the County Prosecutor each year detailing any such assistance.
7. West Orange Police personnel shall be knowledgeable regarding the parameters and situations regarding U-Visas and T-Visas. All personnel shall abide by the procedures and standards set forth in *Directive 7:48 Victims of Trafficking and Protection Act*.

APPENDIX A

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;
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
(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: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)	Hindering Apprehension of Another Using Force or Intimidation
2C:29-3B(2)	Hindering Apprehension of Oneself Using Force or Intimidation
2C:29-9	Criminal Contempt (Violation of Restraining Orders, Domestic Violence Orders, Etc.)
2C:40-3B	Aggravated Hazing