

 Cambridge Police Department	POLICY & PROCEDURES		No. 668.1
	Subject/Title: Secure Communities & ICE Detainers		
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References/ Attachments:	Accreditation Standards: 1.2.7 & 42.2.8 (a)		

I. PURPOSE AND SCOPE:

The Cambridge 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 City and the Cambridge 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 Cambridge 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 uncomfortable 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 cooperation is absolutely crucial in preventing and solving crime incidents, as well as maintaining public order, safety and security in the entire community.

As duly sworn police officers, members of this department are responsible for providing effective police services to everyone in the City of Cambridge in an equal, fair, and just manner. The Cambridge Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the City of Cambridge. 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 independently on any

decision for a Cambridge 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 Cambridge 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. **FEDERAL SECURE COMMUNITIES [S-Comm] PROGRAM:**

The Commonwealth of Massachusetts officially became part of the **Federal Secure Communities Program** on May 15, 2012. Under the *Federal Secure Communities Program*, fingerprints of persons arrested by state and local law enforcement agencies, in which those agencies (including the Cambridge Police Department) routinely submit these electronic prints to the FBI (via the State Police) for criminal justice database checks, and as part of that process are automatically shared with the Department of Homeland Security (DHS-ICE). Immigration and Customs Enforcement (ICE) then checks the local arrestee's (currently being detained) personal information against the DHS-ICE immigration databases. If ICE determines that it has an actionable interest in the local arrestee, the agency then determines what specific enforcement action, if any, to take based on DHS enforcement priorities (outlined below). If the local arrestee appears to have violated the federal immigration laws and the arrestee is deemed to fall within any of the enforcement priorities, ICE decides whether to issue what is known as a Detainer for the arrested individual. 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

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).

A. DHS Enforcement Priorities: According to DHS: “[They] *must ensure its limited immigration enforcement resources are focused on the removal of those*

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.

who constitute [what they consider to be] the highest priorities, specifically individuals:

- a. Who pose a threat to public safety such as criminal aliens **and**
- b. National security threats **as well as**
- c. Repeat immigration law violators **and**
- d. Recent border entrants.²

Note: According to DHS, “the expenditure of resources on any cases that fall outside the enforcement priorities hinders [their] public safety mission by clogging immigration court dockets and diverting resources [...]”.³

- B. S-Comm and Potential Impacts on Local Community Policing Efforts:** DHS-ICE and the Federal Secure Communities Program does 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 have an adverse impact on 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 ICE, Secure Communities only entails the sharing of information known as “*interoperability*” between local law enforcement, the FBI and DHS. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the Secure Communities 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 Secure Communities 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 transferring custody of the arrestee) the actual information sharing of biometrics that defines the process takes place. While ICE has distinguished between Secure Communities’ “*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, the Secure Communities Program is commonly viewed and perceived by many as the entire process that 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 Cambridge, local law enforcement agencies participating in the Secure Communities Program run the risk of being viewed by many as immigration agents, regardless of the actual limited role that they play in the process.

² <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

³ *Id.*

Therefore, it is imperative that the local community is informed and educated at the 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:⁴

The enforcement of the nation's civil immigration laws are the primary responsibility of the federal government. Accordingly, the Cambridge 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 Cambridge 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. (refer to **Section IV. B.** of this directive).

Further, as of May 15, 2012, the Commonwealth of Massachusetts became an official participant of the Federal DHS-ICE Secure Communities Program. Therefore, whenever any Shift Commander is made aware of an ICE detainer (a.k.a. an "ICE Hold" or "Immigration Detainer") in the form of a fax from DHS-ICE pursuant to 8 CFR 287.7(a) and 8 CFR 287.7(d), the Shift Commander shall immediately inform the bailing Clerk or Assistant Clerk Magistrate of the existence of the federal ICE detainer. If the Clerk sets bail for the offense for which the individual was arrested, and that bail is likely to be satisfied by the arrested individual, the Department will evaluate on a case-by-case basis whether to maintain custody of the individual, pursuant to the ICE detainer, pending transportation to the Cambridge District Court for arraignment. However, federal law provides that the individual cannot be held on an ICE detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the ICE detainer shall expire forthwith.

IV. PROCEDURES:

- A. Inquiries into Immigration Status:** Consistent with the long-standing policy of this department and the City's position with respect to immigration status, officers will observe the following guidelines:

⁴ CALEA Std. 1.2.7 – *A written directive governs the use of discretion by sworn officers.*

1. A person's right to file a police report; participate in any police-community activities (i.e., community meetings, Sergeant Neighborhood Meetings, 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.⁵
2. Consequently, officers shall not question any person about his/her specific citizenship or immigration status unless that person is reasonably believed to be involved in one or more of the activities as identified in **Section IV. B.** of this directive.
3. 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 **Section IV. B.** of this directive.

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).

B. Notification to Federal Immigration Authorities: In furtherance of the department's Community Policing philosophy, Cambridge 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.⁶

1. Is arrested for any violent felony 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 Sexual Assault-based Offense)
 - Mayhem, or
 - Armed Robbery;
2. When a Cambridge Police Officer acquires reliable information that the individual in police custody has been convicted in a court of competent jurisdiction of any violent felony;
3. Is arrested for any terrorism-related offense, or is otherwise *reasonably suspected* of involvement in any terrorist and/or subversive activities;

⁵ CALEA Std. **42.2.8** – *The agency has a written directive concerning identity crime and procedures for:*
a. Taking identity crime reports;

⁶ Also refer to Policy #561 – *Foreign Nationals and Officials* for further procedural requirements.

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.**⁷

C. Immigration and Customs Enforcement (ICE) Requests for Assistance:

1. The U.S. Bureau of Immigrations and Customs Enforcement (ICE) 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. Cambridge 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 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 Warrant (WMS) that remains in full force and effect at the time of the request.
3. Any detention by a member of the Cambridge 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.

D. Processing of an ICE Detainer: Once an ICE detainer has been transmitted to the department via ECC following the submission of the fingerprints to the NCIC database, the following procedures will be observed with respect to the processing of the ICE detainer:

1. *Responsibilities of the Booking Officer:* Once the Booking Officer secures the faxed copy of the ICE detainer from ECC, the officer will:
 - a. Immediately confirm that the individual in custody (detainee) matches the individual named in the detainer.

⁷ A “criminal street gang” is a formal or informal organization, association, or group, consisting of three or more individuals, whose members or associates, individually or collectively, engage in or have engaged in the commission, attempted commission, facilitation or solicitation of criminal activity. A “gang member” is an individual who law enforcement assigns a total score of ten (10) points or more by utilizing the uniform “10 Point Assessment System” (see attached appendix). A “gang associate” is an individual who law enforcement assigns a total score of two (2) points or more by utilizing the uniform “10 Point Assessment System.”

- b. Immediately notify the Shift Commander of the receipt of the detainer, and whether the identity of the detainee matches the individual named in the detainer.
 - c. Reflect the fact that an ICE detainer was received in response to the submission of the detainee's fingerprints in the "RIGHTS" dropdown section of the booking system. This entry must include a "YES" that there is an ICE detainer in effect and must include pertinent information regarding the reason for the detainer, the date and number of the detainer, as well as any other relevant information.⁸
 - d. The detailed information relative to the ICE detainer is to be entered into the "DETAILS" space within the "RIGHTS" section of the booking form.
 - e. A copy of the ICE detainer will be made part of the booking package and be retained as part of the department's official record. To that end, the Booking Officer will ensure that a copy of the ICE detainer is provided to the Records Management Unit to be stored in a secure file.
 - e. The Booking Officer will also provide a copy of the ICE detainer to the Shift Commander.
 - f. Ensure that a copy of the ICE detainer accompanies the paperwork that is transmitted with the reports that are sent to the Cambridge District Court.
 - g. The Booking Officer shall promptly provide a copy of the ICE detainer to the individual being detained to allow that individual the opportunity to review the ICE detention process. The ICE detainer contains a "Notice to the Detainee" about the detention process in six different languages. If the individual speaks a different language from those provided on the notice, the Booking Officer shall utilize the AT&T Language Line to ensure that the individual receives the required notice in a language that the individual fully understands.
2. *Responsibilities of the Shift Commander:* Upon being notified that an ICE detainer has been sent in response to the submission of a detainee's fingerprints into the NCIC database, it will be the responsibility of the Shift Commander to:
- a. Verify with the Booking Officer that the identity of the individual named in the ICE detainer matches the identity of the detainee.
 - b. When notifying the Bail Commissioner, advise the Bail Commissioner of the existence of an ICE detainer.
 - c. Notify the Command Staff and the other Shift Commanders via the Shift Ops Briefing that an ICE detainer was received.
 - d. Forward a copy of the ICE detainer to the oncoming Shift Commanders until the individual being detained is released from department custody. The Shift Commander who had last oversight and upon release of the

⁸ The Booking Officer will not enter the ICE detainer as a charge within the QED Booking System.

detainee shall forward to the Professional Standards Unit a packet of information that includes a copy of the detainer, the booking sheet and the incident report. A file will subsequently be maintained by the Professional Standards Unit on all ICE detainers received in response to an arrest made by this department.

- e. If it appears that an arrestee is subject to being held solely on an ICE detainer (i.e., bail is set and likely to be posted), the Shift Commander, in consultation with the Duty Chief or the on duty Deputy Superintendent or Superintendent, will evaluate on a case-by-case basis the grounds for detention before the ICE detainer is actually honored. Where appropriate, the Shift Commander will also consult with the ICE agent seeking detention to clarify any factual issues.
- f. The following guidelines will be adhered to when evaluating whether an ICE detainer will be honored:
 - i. An ICE detainer based on a warrant of arrest for removal proceedings or an order of deportation or removal from the United States will be honored by the Department.
 - ii. An ICE detainer based on a conviction for illegal entry, illegal re-entry after a previous removal or return, or a documented finding of immigration fraud will also be honored.
 - iii. An ICE detainer based on a prior felony charge or conviction will be honored if the documented charge or conviction demonstrates a significant risk to public safety. This would include, but is not limited to, crimes of violence, sexual assault and/or abuse, the unlawful possession and/or use of a firearm, and the distribution and trafficking of a controlled substance.
 - iv. The Department will also honor an ICE detainer based on a documented, significant risk to national security, border security or public safety.
 - v. The Department, however, will not honor an ICE detainer based solely on misdemeanor charges and/or convictions or for the initiation of removal proceedings where the arrestee has been previously served (i.e., before arrest) with a notice to appear beyond the date of arrest for which the arrestee is in the Department's custody.
3. *Responsibilities of the Police Prosecution Unit:* It will be the responsibility of the Police Prosecution Unit to notify the Court Clerk's Office of the existence of an ICE detainer as part of the initial notification to the court on any detainees appearing before the court.
4. *Responsibilities of the Professional Standards Unit:* The Professional Standards Unit will prepare an audit report on a semi-annual basis, indentifying the number of incidents when an ICE detainer was received in

response to an arrest that was made by this department. The audit report will include the following data at a minimum:

- a. Total number of incidents that involved an ICE detainer being received in connection with an arrest over the six-month period under review.
- b. A brief summary of each case involving an ICE detainer being received.
- c. A review as to whether each of the incidents was in accordance with this directive.
- d. Any recommendations or suggestions in terms of any procedural changes that should be made as a result of the audit/review.

- E. ICE Detainers Not Involving Other Criminal Charges:** When a member of this department, through an encounter, becomes aware of the existence of an ICE detainer when no other criminal charges exist for an individual, the officer is to immediately notify his/her supervisor, and adhere to the following guidelines:
1. If the reason for the detainer is of sufficient severity (refer to **Section III. B.** of this directive) to constitute a felony, the supervisor may decide to detain the individual.
 2. In such circumstances, the confirmation and notification procedures described in this directive will be followed.
 3. If the reason does not rise to this level, the supervisor must instruct the officer to gather as much information as possible from the individual, including the current address, work address, and other relevant information.
 4. The officer will complete a QED incident report of the encounter.
 5. Under no circumstances, is the officer to seek out and detain an individual who is wanted on an ICE detainer without prior approval from the Shift Commander.