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Policy Statement

The Framingham Police Department recognizes and values the diversity of the community it serves. Many residents have immigrated to Framingham from other countries and some may not be citizens or legal residents of the United States. The City of Framingham and its 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.

Enforcing federal immigration law not is the mission of the Framingham Police Department. Accordingly, it is not appropriate for a member of the Department to inquire about, or investigate a non-citizen’s immigration or travel status if the sole purpose is to determine an individual’s immigration status or whether the person is in the country lawfully, or to facilitate a person’s detention or deportation by U.S.

Immigration & Customs Enforcement (ICE).

The Framingham 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 crimes 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 of 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 the investigation of a particular crime. This type of mutual trust and spirit of cooperation is absolutely crucial in preventing and solving crimes, as well as maintaining public order, safety and security of the entire community.

The Police Department is responsible for providing effective police services to everyone in the City of Framingham in an equal, fair, and just manner. The Framingham Police Department is primarily concerned with the safety and welfare of all individuals within our jurisdiction. Thus, the detection of criminal behavior is of primary concern when dealing with any person suspected of violating laws that Framingham Police Officers are sworn to enforce.

Race, religion, gender, sexual orientation, age, occupation, immigration status or any other arbitrary characteristic pertaining to a specific individual should have no bearing on any decision of a Framingham Police Officer to effectuate a stop or detention of an individual or to affect an arrest—the exception to this is when the characteristics of a person fit the specific description of a criminal suspect.

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 employees of the Framingham 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, but shall also increase the public's confidence in the police department's effectiveness and efficiency in protecting and serving all of the members of the community.

The Framingham Police Department is committed to aggressively investigating any extortion, domestic violence, witness tampering, or other crimes that seeks to take advantage of a person's fear about his or her immigration status. The Department seeks to protect all victims of crime, and especially those who are most vulnerable.

References

None

Special Terms

<u>Bail Magistrate</u>	A person authorized to admit to bail out of court, including a clerk-magistrate or assistant clerk of the Superior Court, District Court, or Boston Municipal Court who has registered with the Office of Bail Administration, a bail commissioner inside or outside of Suffolk County, or, if appointed by the Governor in accordance with G.L. c. 221, § 53 or G.L. c. 218, § 36, a master in chancery or a justice of the peace, respectively.
<u>Detainer</u>	DHS Form 247A, entitled "Immigration Detainer - Notice of Action." It states that the DHS has determined that probable cause exists to believe that the subject is a removable alien, and requires the immigration officer completing the form to indicate, by checking one or more boxes, the basis on which that determination was made. It also states that "[t]he alien must be served with a copy of this form for the detainer to take effect," and it provides blank spaces, to be filled in by the custodian, indicating the date and manner of service. It requests that the custodian notify DHS as early as possible (at least 48 hours, if possible) before the alien is released from custody, and "[m]aintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from [the custodian's] custody to allow [the department] to assume custody."
<u>DHS</u>	Department of Homeland Security
<u>ERO</u>	Enforcement and Removal Operations
<u>ICE</u>	Immigration and Customs Enforcement (ICE), a federal agency, is charged with border and immigration control. ICE is responsible for the enforcement of immigration laws. Its agents issue detainers based on information about potential undocumented individuals gathered by its own officers and, when available, from information from state and local police and corrections institutions collected upon intake.
<u>LESC</u>	The Law Enforcement Support Center (LESC) is a national enforcement operations facility administered by U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security (DHS). LESG is a single national point of contact that provides timely customs information and immigration status and identity information and real-time

assistance to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity. Located in Williston, Vermont, LESC operates 24 hours a day, 7 days a week, 365 days a year.

S-Comm

The DHS Secure Communities Program allows ICE to execute its enforcement priorities for those aliens detained in the custody of state or local law enforcement agencies. Under S-Comm, the FBI automatically sends arrestee fingerprints to DHS to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable, ICE takes enforcement action, based on its priorities. **ICE, not the Framingham Police, determines what immigration enforcement action, if any, is appropriate.** This program was re-activated on January 25, 2017, through Executive Order No. 13768, entitled Enhancing Public Safety in the Interior of the United States.

Policy

I. Federal Secure Communities (“S-Comm”) Program

Under the Federal Secure Communities Program, fingerprints of all persons arrested by the Framingham Police Department are automatically shared with the Department of Homeland Security Immigrations and Customs Enforcement (DHS-ICE). This mandatory sharing happens automatically and requires no specific action by the Framingham Police Department.

Immigration and Customs Enforcement (ICE) personnel will use the fingerprints to check the local arrestee’s personal biographical information against the active DHS-ICE immigration databases. If ICE determines that it has what was deemed to be an “actionable interest” in the local arrestee based on a hit (match) on that database with the submitted fingerprints, ICE will then determine what specific enforcement action, if any, to take based on their DHS Enforcement Priorities and available personnel resources in existence at the time of the hit.

II. Request for an Immigration Detainer by ICE

If the local arrestee appears to have violated the federal immigration laws and the arrestee is deemed to fall within any of the applicable enforcement priorities established by DHS, ICE will decide whether or not to issue what is known as an Immigration Detainer for the arrested individual currently held in local police custody.¹ An Immigration Detainer, which is faxed after an initial phone call is

made to the local police department's OIC / Shift Commander, is an official request from DHS-ICE directed to the specific state or local law enforcement agency to hold the individual for a period not to exceed 48 hours so that ICE has the opportunity to arrange for the potential transfer of the individual into federal custody in situations when gaining immediate custody is either impracticable or impossible.^{2,3}

DHS Secure Communities ("S-Comm")

DHS-ICE and the DHS Secure Communities 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 may 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, S-Comm only entails the sharing of information known as "interoperability" between local and federal law enforcement. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the S-Comm 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 S-Comm 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 potentially transferring custody of the arrestee) the actual sharing of biometrics takes place. While ICE has distinguished between S-Comm'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.

The S-Comm Program does not make Framingham Police Officers immigration agents, although it may cause them to be falsely viewed and misperceived as such. The S-Comm is merely the automatic sharing of an arrestee's fingerprints which occurs automatically "behind the scenes" at the federal level.

It is imperative that the local community is informed and educated as to the specifics of the Department's extremely limited 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.

¹ 8 C.F.R. § 287.7(b) authorizes all "deportation officers" and "immigration enforcement agents," among others, to issue detainers.

² 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.**

³ **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).

III. Immigration Enforcement Policy

The enforcement of the nation's federal civil immigration laws are the primary responsibility of the federal government. Accordingly, the Framingham Police Department will not initiate immigration-related investigations and shall not routinely inquire into the specific immigration status of any person(s) encountered during normal police operations. Exceptions may be made as specifically set forth below. Further, the Framingham Police Department will not enter into any voluntary Federal 287(g) Program that would have local officers trained and sworn to enforce federal civil immigration laws.

This prohibition does not preclude the Framingham 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.

Being present in the country illegally is not by itself a crime. Illegal presence without more is only a civil violation of the Immigration and Nationality Act that subjects the individual to possible removal. 8 U.S.C. § 1227(a)(1)(B).

IV. Procedure

A. INS Immigration Alien (IAQ)

Whenever a foreign born person is arrested, the Shift Commander / Officer in Charge will ensure that an INS Immigration Alien (IAQ) query is conducted via the National Law Enforcement Telecommunication System (NLETS).

The IAQ is received at the LESC and manual searches of the Interstate Identification Index (III) and eight ICE service databases are conducted. When the manual searches are complete the LESC will send a response to the Department and to the local ICE office. Information received from LESC may advise that the subject has been previously deported, appears to be in the U.S. legally or illegally, is wanted by ICE for removal or appears to be deportable but not currently wanted.

B. Immigration Detainer – Notice of Action

- Whenever any Officer in Charge (OIC) or Shift Commander of the Framingham Police Department receives either an Immigration Detainer (Form I-247 – issued 12/12) from DHS-ICE, the OIC / Shift Commander shall notify the bail magistrate of the existence of the Federal ICE Detainer

when he or she responds to Framingham Police Headquarters to make the bail determination.

- It shall be decision of the bail magistrate to determine whether to set a monetary bail, release on personal recognizance or order that the arrestee be held in police custody. However, **no person shall be held solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from custody.** See Commonwealth v. Sreynuon Lunn, SJC-12276 (July 24, 2017).
- The OIC / Shift Commander shall ensure that the following procedures are followed when an Immigration Detainer is received:
 1. Forward a copy of the immigration detainer to the Chief of Police;
 2. Attach the immigration detainer to the arrest / booking sheet;
 3. Provide the arrestee a copy of the immigration detainer;
 4. Add the immigration detainer as a charge, for tracking purposes, to the booking record (LCR code 0506, 8 CFR 287.7);
 5. Note the existence of the detainer in the Shift Commander's Shift Report;
 6. If a decision is made to bail the arrestee DHS-ICE: the OIC / Shift Commander shall notify ERO of the bail determination.
- Federal law provides that the 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 shall expire forthwith.
- **No person will be arrested or held by the Framingham Police solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from custody.** See Commonwealth v. Sreynuon Lunn, SJC-12276 (July 24, 2017).

C. Inquiries into Immigration Status

1. A person's right to file a police report; participate in any police-community activities (i.e., Community Meetings, National Night Out, Citizen's Police Academy, 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.
2. 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 criminal activities identified below.

Officers shall not interrogate, arrest, detain or take other law enforcement action against an individual based on that individual's perceived race, national origin, sexual orientation, religion, language, or immigration status unless such personal characteristics link a specific individual to a particular criminal event or activity. Detention based on Immigration Detainers shall be based on this policy.

3. Officers shall not request passports, visas, work authorizations, 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 the below-listed exception.⁴

D. Notification to Federal Immigration Authorities

In furtherance of the department's community policing philosophy and continued engagement and outreach efforts, Framingham 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:⁵

1. is under arrest 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 Sex Offense)
 - Mayhem
 - Armed Robbery
2. When the FPD acquires reliable information that the individual in Framingham Police custody has been convicted in a court of competent jurisdiction of any violent felony

⁴ **Note:** An exception to the above could occur if an operator of a law fully 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).

⁵ Please See FPD Consular Notification & Access Policy for further procedural requirements.

3. When an individual(s) is arrested by FPD Personnel for any terrorism-related offense, or is otherwise *reasonably suspected* of involvement in any terrorist and/or subversive activities⁶
 4. When an individual(s) 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. When an individual(s) 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/weapons.
- E. Immigration and Customs Enforcement (ICE) Investigations and/or Requests for Assistance:
1. 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.
 2. Framingham Police Officers shall not directly participate in any such ICE tactical operation(s) 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 (emergency) 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 Criminal Arrest Warrant.
 3. Whenever ICE has occasion to be in the City of Framingham, whether looking for a target(s) who is the subject of a criminal warrant (usually the criminal investigatory side of ICE - Homeland Security Investigations (HSI) or looking for individuals who have Final Orders of Deportation (Civil side –Enforcement & Removal Operations-ERO) the OIC / Shift Commander shall notify the Chief of Police and other Command Staff Personnel, as directed.
 - The OIC / Shift Commander shall ascertain from the notifying ICE Agent or Supervisory Agent who called the OIC

⁶ **Note:** The FBI Joint Terrorism Task Force (JTTF) shall also be contacted forthwith.

- pursuant to national de-confliction protocol to alert the presence in the City at a specific address - the specific "reason" that they are looking to place the wanted individual into federal custody.

- If it is for a Massachusetts Criminal Warrant or other State Warrant⁷ for which we as duly sworn Framingham Police Officers have the right of arrest then we may assist.
 - If it is for civil reasons only then we shall stand down and not respond and only assist if a situation rises where an officer's (Agent's) safety is at risk where there is an emergency call for assistance.
 - In all cases the OIC / Shift Commander shall ensure that a CAD entry is made documenting the incident.
 - The ICE Agent shall be asked to report back with the results of the investigation (e.g., no service, one in custody, etc.) so that the CAD system can be updated.
 - For those individuals placed in custody by ICE Officials for solely for civil enforcement reasons a courtesy booking shall not be required.
4. Any detention by a member of the Framingham 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 or is wanted and subject to arrest based on a criminal arrest warrant. Except as specifically provided herein, **Framingham Police Officers shall not arrest, detain, or investigate an individual solely based on an alleged civil violation of federal immigration laws.**

E. Policing Practices and Considerations

1. The Framingham Police Department will uphold the Constitutional and civil rights of all persons regardless of their immigration status.
2. The decision to arrest or not arrest a person who violates state law shall be made without regard to the suspect's immigration status. Massachusetts law does not authorize arrest for civil immigration violations.
3. The Framingham Police Department will protect crime victims and witnesses regardless of their immigration status, and encourages all

victims and witnesses to report crimes, regardless of their immigration status.

⁷ See G.L. Chapter 276 Sections 10(a)(b) for authorization for arrests from Fugitives from Justice from other States.