

# CLINTON TOWNSHIP POLICE DEPARTMENT

## DEPARTMENTAL RULES AND REGULATIONS/POLICIES AND PROCEDURES

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SUBJECT: <b>FEDERAL IMMIGRATION MATTERS</b>			<u>Standard</u> N/A	
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CROSS REFERENCE #: <i>New Jersey Attorney General's Directive 2018-6</i> <b>Volume 7, Chapter 18</b> <b>Volume 7, Chapter 1</b>	POLICE DEPARTMENT: <b>CLINTON TOWNSHIP</b>			

### POLICY

The federal government has increasingly relied upon state and local law enforcement agencies to enforce federal civil immigration law. This trend presents significant challenges to New Jersey's law enforcement officers, who have worked hard to build trust with our state's large and diverse immigrant communities. Any breakdown in trust between law enforcement authorities and citizens makes it more difficult for officers to solve crimes and bring suspects to justice. This in-turn puts all New Jerseyans at risk.

It is therefore crucial that the State of New Jersey makes very clear to our immigrant communities that there is a difference between: 1) state, county, and local law enforcement officers who are responsible for enforcing *state criminal law*, on the one hand, and 2) federal immigration authorities, who enforce *federal civil immigration law*, on the other hand. Simply stated, New Jersey's law enforcement officers protect the public by investigating state criminal offenses and enforcing state criminal laws. They are not responsible for enforcing civil immigration violations except in narrowly defined circumstances. Such responsibilities instead fall to the federal government and those operating under its authority.

Although state, county, and local law enforcement officers should assist federal immigration authorities when required to do so by law, they should recognize that providing assistance above and beyond those requirements threatens to blur the distinctions between federal immigration law and state criminal law, thereby undermining the trust we have built with the public. Through Directive 2018-6, the New Jersey Attorney General seeks to ensure effective policing, protect the safety of all New Jersey residents, and ensure that state, county, and local law enforcement resources are directed towards enforcing the criminal laws of New Jersey.

To be clear, nothing in AG Directive 2018-6 is intended to provide "sanctuary" to those who commit crimes. Anyone who violates New Jersey's criminal laws will be held accountable for their actions, no matter their immigration status. Similarly, nothing in Directive 2018-6 restricts New Jersey law enforcement agencies or officers from complying with the requirements of federal law or valid court orders—including *judicially*-issued arrest warrants—regardless of immigration status.

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However, nothing in Directive 2018-6 prohibits state, county and local law enforcement agencies from imposing additional restrictions on providing assistance to federal immigration authorities, so long as those restrictions do not violate federal or state law or impede the enforcement of state criminal law. Stated differently, Directive 2018-6 does not *mandate* that law enforcement officials provide assistance in any particular circumstance, even when, by the terms of the Directive, they are *permitted* to do so.

**I. DEFINITIONS**

- A. Judicial warrant—for the purposes of this general order, a judicial warrant is a warrant that is issued by a federal or state judge. A judicial warrant is not the same as an “immigration detainer”—sometimes referred to as an “Immigration and Customs Enforcement (ICE) detainer”—or an “administrative warrant,” both of which are currently issued by federal immigration *officers*, not by *judges*. (see, e.g., U.S. Immigration and Customs Enforcement Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers (Effective Apr. 2, 2017)). Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or detainers issued by federal immigration *officers* rather than federal or state *judges*.
- B. Officer-In-Charge—a sworn member of the police department appointed by the Appropriate Authority to be the highest commanding officer of the police department in the absence of a Chief of Police.
- C. Serious or violent offense—for the purposes of this general order, a “violent or serious offense” is defined as: any first or second degree offense as defined in N.J.S.A. 2C:43-1; any indictable domestic violence offense defined in N.J.S.A. 2C:25-19; any other indictable offense listed in the chart in Appendix A; *or* any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described above.

**II. ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW**

A. Use of immigration status in law enforcement activities

Except as provided for below, no state, county, or local law enforcement agency or official shall:

- 1. Stop, question, arrest, search, or detain any individual based solely on:
  - a. actual or suspected citizenship or immigration status; *or*
  - b. actual or suspected violations of federal civil immigration law.
- 2. Inquire about the immigration status of any individual, unless doing so is:

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- a. necessary to the ongoing investigation of an indictable offense by that individual; *and*
  - b. relevant to the offense under investigation.
- B. Limitations on assisting federal immigration authorities in enforcing federal civil immigration law

Except as provided for below, no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

1. Participating in civil immigration enforcement operations.
2. Providing any non-public personally identifying information regarding any individual.
  - a. Non-public, personally identifying information includes a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number of any person (*see* N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a)).
  - b. Non-public, personally identifying information may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.
3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.
4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
  - a. the purpose of the interview;
  - b. that the interview is voluntary;
  - c. that the individual may decline to be interviewed; and
  - d. that the individual may choose to be interviewed only with his or her legal counsel present.
5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:

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- a. is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined herein;
  - b. in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
  - c. is subject to a '*Final Order of Removal*' signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
6. 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:
- a. is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense;
  - b. in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
  - c. is subject to a '*Final Order of Removal*' signed by a federal judge and lodged with the county jail or state prison where the detainee is held.
  - d. Any such detention may last only until 11:59 pm on the calendar day on which the person would otherwise have been eligible for release.

C. Exceptions and exclusions

Nothing stated above shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from:

1. Enforcing the criminal laws of this state,
2. Complying with all applicable federal, state, and local laws,
3. 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,
4. Participating with federal authorities in a joint law enforcement taskforce, the primary purpose of which is unrelated to federal civil immigration enforcement,
5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention,

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6. Asking an arrestee for information necessary to complete fields required by the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee's place of birth and country of citizenship,
7. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities,
8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it,
9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources, and
10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual (*see* 8 U.S.C. §§ 1373, 1644).

**III. AGREEMENTS WITH FEDERAL GOVERNMENT**

A. Section 287(g) agreements

1. No state, county, or local law enforcement authority shall enter into, modify, renew, or extend any agreement to exercise federal immigration authority pursuant to Section 287(g) of the *Immigration and Nationality Act*, 8 U.S.C. § 1357(g), unless:
  - a. The Attorney General grants written approval; *or*
  - b. The agreement is necessary to address threats to the public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.
2. No state, county, or local law enforcement officer shall otherwise exercise federal civil immigration authority outside the context of Section 287(g). Nothing herein shall apply to law enforcement agencies that are party to an agreement to exercise federal immigration authority pursuant to Section 287(g) when they are acting pursuant to such agreement.

B. Inter-governmental Service Agreements

Nothing herein shall apply to law enforcement agencies that are currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

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**IV. PROCEDURES FOR PROCESSING REQUESTS FOR “T” AND “U” NONIMMIGRANT STATUS CERTIFICATIONS (see 8 U.S.C. §§ 1101(a)(15)(T) and 1101(a)(15)(U))**

A. T-visa certifications

For T-visa certification requests, each agency’s certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:

1. Is or has been a victim of a severe form of trafficking in persons; *and*
2. has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.

B. U-visa certifications

1. Law enforcement, prosecutors, judges or government officials can certify a U visa based on past, present, or the likelihood of future helpfulness of a victim.
2. A current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification.
3. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to, when the perpetrator has fled or is otherwise no longer in the jurisdiction, the perpetrator cannot be identified, or federal law enforcement officials have deported the perpetrator.
4. For U-visa certification requests, each agency’s procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:

- a. Is a victim of a qualifying criminal activity; *and*
- b. Was, is, or likely will be helpful in the investigation or prosecution of the activity.

C. The Clinton Township Police Department’s Investigative Division Commander shall review all U and T Visa requests for compliance with the above criteria.

D. Required forms for T and U Visa requests are typically found on-line

E. Upon reviewing each request, the Investigative Division Commander shall make a recommendation—directly on the certification—to the Officer-In-Charge.

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- F. The Clinton Township Police Department’s Officer-In-Charge shall ultimately make a determination as to whether to certify T and U Visa certification requests.
- G. All T and U Visa requests shall be processed within one hundred and twenty (120) days.
- H. The Clinton Township Police Department shall post information about its U and T Visa certification procedures on its website, or, if the department does not have its own website, then on the municipality’s website when feasible.
- I. Inquiry into and disclosure of immigration status
  - 1. Notwithstanding any provision herein, state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification.
  - 2. They may generally not disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant.
  - 3. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual (See 8 U.S.C. §§ 1373, 1644).

**V. NOTIFICATION AND RECORDKEEPING**

A. Notifications to detained individuals

State, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when 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 otherwise be eligible for release.
- 4. When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.

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B. Annual reporting by law enforcement agencies

On an annual basis, each state, county, and local law enforcement agency shall report, in a manner to be prescribed by the Attorney General, any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described herein. Each year:

1. Any local or county law enforcement agency that provided assistance described in herein during the prior calendar year shall submit a report to the Hunterdon County Prosecutor detailing such assistance.
2. The Hunterdon County Prosecutor shall compile any such reports submitted by local or county law enforcement agencies and submit a consolidated report to the Attorney General detailing the agencies' assistance.
3. The New Jersey State Police and all other state law enforcement agencies that provided assistance described herein during the prior calendar year shall submit a report to the Attorney General detailing such assistance.
4. The Attorney General shall post online a consolidated report detailing all instances of assistance by all state, county, and local law enforcement agencies, as submitted to the Attorney General, during the prior calendar year.

**All police procedures heretofore employed by the Clinton Township Police Department which conflict with this order are hereby rescinded. Supervisors shall be held accountable for the enforcement and application of this order. All members of the Clinton Township Police Department are required to follow this order as applicable. Violations of this order subject members of this agency to disciplinary action.**



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**APPENDIX A**

Chart of Additional Violent & Serious Offenses referenced in the definition above

<b>Statute</b>	<b>Description</b>
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