



# NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT: <b>IMMIGRATION ENFORCEMENT</b>	GENERAL ORDER NO. <b>19-01</b>
SUPERSEDES: <b>G.O. 13-04 (DATED 5/1/17)</b>	DATED: <b>FEBRUARY 15, 2019</b>

This order consists of the following numbered sections:

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW**
- V. AGREEMENTS WITH THE FEDERAL GOVERNMENT**
- VI. REQUESTS FOR T AND U NONIMMIGRANT STATUS CERTIFICATIONS**
- VII. REPORTING REQUIREMENTS**
- VIII. TRAINING**
- IX. EFFECT OF THIS ORDER**



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## I. PURPOSE

In compliance with Attorney General Law Enforcement Directive No. 2018-6, aimed at strengthening trust between the Newark Police Division (NPD) and immigrant communities, the NPD acknowledges that the enforcement of federal immigration law is the duty of the United States Bureau of Immigration and Customs Enforcement (ICE), which has primary jurisdiction to enforce immigration, nationality and lawful presence in the United States (Title 8 of the U.S. Code). Additionally, the NPD relies on the cooperation of its community, including immigrants, to ensure success in preventing and solving crime. It is not the mission of the NPD to enforce civil immigration laws; furthermore, the Division does not have the resources nor the authority to enforce civil immigration laws.

The purpose of this order is to clearly state the position of the NPD in protecting the safety, rights and property of every person within the City of Newark, regardless of their immigration status. Additionally, any person who violates New Jersey's criminal laws can and will be held accountable for their actions, no matter their immigration status.

## II. POLICY

It shall be the policy of the NPD to treat all persons in an equal, fair and respectful manner, regardless of their race, gender, religion, sexual orientation, gender identity, age, occupation, national origin, or immigration status. This shall be the case regardless of whether the person is a crime victim, suspect, witness, or simply a person in need of police services. Skin color, language, accent, or other individual traits shall not be considered an element in building reasonable suspicion or probable cause, unless these descriptions are pertinent in developing a suspect, such as when we rely on witness or victim recollection of a suspect, and they use such descriptions of skin color, language, accent or other individual trait. NPD personnel will not use skin color, language, accent, or other individual traits as a basis for disparate treatment. A person's right to file a report, participate in police-community activities, or otherwise benefit from police services shall not be contingent upon citizenship or immigration status.

## III. DEFINITIONS

- 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). It 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.
- B. JUDICIAL WARRANT: an official court document, usually with the designation of a specific court, signed by a judge. This means that there has been due process backed by probable cause. These warrants pass constitutional muster.



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- C. IMMIGRATION WARRANT: also known as an I.C.E. Detainer or an I.C.E. Warrant, is a request, written by federal immigration officers that a local jail or other law enforcement agency detain an individual for an additional 48 hours (excluding weekends and holidays) after his or her release date in order to provide ICE agents extra time to decide whether to take the individual into federal custody for removal purposes.
- D. A VIOLENT OR SERIOUS OFFENSE: for the purposes of this general order 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 Table No. 1; 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.

Table No. 1: *Additional Violent & Serious Offenses*

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



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## **IV. ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW**

- A. Except pursuant to Sections IV.C and V below, NPD personnel shall not:
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:
    - 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 are listed as follows. Except pursuant to Sections IV.C and V below, NPD personnel shall not 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.
  3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the 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.



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5. Providing notice of a detained individual's upcoming release from custody, 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; or
  - 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 that has been 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; or
  - 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 that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

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. Notifications to detained individuals.

Division members 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. (See § IV.B.4.)
2. To be notified of the detainee's upcoming release from custody. (See § IV.B.5.)
3. To continue detaining the detainee past the time he or she would otherwise be eligible for release. (See § IV.B.6.)

When providing such notification, Division members shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.



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- D. Exceptions and exclusions. Nothing in Sections IV.A or IV.B shall be construed to restrict, prohibit, or in any way prevent NPD personnel 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;
  6. asking an arrested individual for information necessary to complete the required fields of 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 preliminary arrest report (DP1: 2036) and making risk-based classification assignments in Municipal Holding;
  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.

## V. AGREEMENTS WITH THE FEDERAL GOVERNMENT

- A. Immigration And Nationality Act - Section 287(G): Delegation of Immigration Authority Agreements.

The NPD will not 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:

1. The Attorney General grants written approval; or



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2. 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.

NPD personnel shall not otherwise exercise federal civil immigration authority outside the context of Section 287(g).

- B. Nothing in Section IV of this Order shall apply to current Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

### VI. REQUESTS FOR T AND U NON-IMMIGRANT STATUS CERTIFICATIONS

The relationship between police and immigrant communities is often a strained one. Immigrant's mistrust of law enforcement could originate from their experience with the police in their native countries, existing language barriers, and cultural differences. When victimized, they often do not report crimes, as they are afraid that they will be deported. The federal government developed a program that allows victims to feel safe when reporting a crime, which is called the U-Visa Certification program. Federal law allows, under certain circumstances, temporary immigration benefits, to victims and witnesses of certain qualifying crimes, referenced in Table No. 2. Similar immigration protection, known as a T-Visa, is available for certain qualifying victims of human trafficking.

Table No. 2: Qualifying Crimes

Qualifying Crime listed in U.S. Code	Equivalent NJ Statute
Abduction	2C:13-1
Abusive Sexual Contact	2C:14-2
Blackmail/Extortion	2C:20-5
Domestic Violence	2C:25-19
False Imprisonment	2C:13-3
Female Genital Mutilation	2C:24-10
Felonious Assault	2C:12-1
Fraud in Foreign Labor Contracting	2C:41-2
Hostage	2C:13-1
Incest	2C:14-2
Involuntary Servitude	2C:13-2
Kidnapping	2C:13-1
Manslaughter	2C:11-4
Murder	2C:11-3
Obstruction of Justice	2C:29-1
Peonage	2C:13-5
Perjury	2C:28-1
Prostitution	2C:34-1
Rape	2C:14-2
Sexual Assault	2C:14-2
Sexual Exploitation	2C:14-2
Slave Trade	2C:13-8
Stalking	2C:12-10
Torture	2C:5-1/2C:11-3
Trafficking	2C:13-8
Witness Tampering	2C:28-5
Unlawful Criminal Restraint	2C:13-2
Other Related Crimes	**

\*\* Includes attempt, conspiracy, or solicitation to commit any of the listed and other related crimes, as well as any similar activity where the elements of the crime are substantially similar.

“Substantially similar” typically refers to a crime detected, investigated or prosecuted by a qualified certifying official that contains the same key elements as a qualifying criminal activity.

For example, a simple robbery would not typically be a qualifying criminal activity. However, if the statute cited for the detection, investigation, or prosecution is **armed** robbery, this may be a qualifying criminal activity. In most jurisdictions, armed robbery contains the elements of felonious assault as delineated in the federal criminal statutes, therefore armed robbery may be “substantially similar” to the qualifying crime of felonious assault.





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- A. Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigative Division Commander (i.e. Major Crimes, Special Victims or his/her designee, assigned to oversee the handling of any related case.

The Investigative Division Commander shall:

1. Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
  2. Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
  3. Address the request and complete the certification or declaration, if appropriate, in a timely manner.
    - a. The instructions for completing certification and declaration forms can be found on the [U.S. Department of Homeland Security \(DHS\) website](#).
    - b. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
  4. Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- B. Detectives and their supervisors who are assigned to investigate a case of human trafficking as defined N.J.S.A. 2C:13-8 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, **regardless** of whether it is requested by the victim. Detectives and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.
- C. T-visa certifications. For T-visa certification requests, Detectives shall determine 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





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2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.
- D. U-visa certifications. For U-visa certification requests, Detectives shall determine whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:
1. Is a victim of a qualifying criminal activity; and
  2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.
- E. Inquiry into and disclosure of immigration status. Notwithstanding any provision in Section II, Division members may ask any questions necessary to complete a T- or U-visa certification. 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. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a Division members 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.

## VII. REPORTING REQUIREMENTS

- A. When federal immigration authorities request assistance, a supervisor shall review the purposes of the operation and confirm that it involves the enforcement of criminal laws before Division members may participate. Division members are prohibited from participating in ICE operations when those operations primarily involve federal civil immigration law enforcement and the ICE agents do not have judicial issued authorization for the enforcement activity.

Supervisors shall submit an administrative report (DP1:1001) indicating any instance in which assistance has been provided to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections IV.B.1 to IV.B.6. to their respective Commander.

- B. Commanders shall forward all administrative reports detailing any assistance provided to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections IV.B.1 to IV.B.6. to the Office of the Chief of Police.
- C. On an annual basis, the Office of the Chief of Police shall report any instances in which the Newark Police Division provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections IV.B.1 to IV.B.6. during the prior calendar year to the County Prosecutor detailing such assistance.



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## VIII. TRAINING

The Commander of the Training Division shall be responsible for training all division personnel in the tenets of Attorney General Law Enforcement Directive No. 2018-6. Training Division personnel shall work in collaboration with the Power DMS Unit personnel to ensure all Division members are trained.

## IX. EFFECT OF THIS ORDER

All previous Division orders and memoranda governing immigration enforcement, which are inconsistent or in conflict with this order are hereby rescinded. This order shall become effective immediately.

BY ORDER OF

A blue ink signature, appearing to be "AA", is written over a horizontal line.

ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA:BO/lc