



IMMIGRATION ENFORCEMENT		
✓ new: rescinds: ✓ amends: All previous	cross-reference: County Resolution 2017-21, People V. DeMarco, NYS DMV Standard Security Clause accreditation standards: NYSLEAP Standard(s):	
effective date: February, 2019	amend date: June, 2020	

I. PURPOSE

This policy details the Tompkins County Sheriff's Office rules for responding to requests from Federal immigration officials, enforcement actions and community interactions.

II. DEFINITIONS

Civil Immigration Detainer: (also called a "civil immigration warrant") means a detainer issued pursuant to 8 C.F.R. ~ 287.7 or any similar request from ICE or CPB for detention of a person suspected of violating civil immigration law. See DHS Form I-247D ("Immigration Detainer—Request for Voluntary Action") (5/15), available at <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF>

Judicial Warrant: means a warrant based on probable cause and issued by an Article III federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant. A judicial warrant does not include a civil immigration warrant, administrative warrant, or other document signed only by ICE or CBP officials.

Probable Cause: means more than mere suspicion or that something is at least more probable than not. "Probable cause" and "reasonable cause," as that latter term is used in the New York State criminal procedure code, are equivalent standards.

Local Law Enforcement Agencies: or "LEAs" include, among others, local police personnel, sheriffs' department personnel, local corrections and probation.

CBP: Customs and Border Patrol, a Division of the U.S. Department of Homeland Security (<https://www.cbp.gov/>)

ICE: U.S. Immigrations and Customs Enforcement, a Division of the U.S. Department of Homeland Security (<https://www.ice.gov/>)

III. POLICY

Enforcement Actions and Community Interactions

- A. Sheriff's Office personnel shall not stop, question, interrogate, investigate, or arrest an individual based solely on any of the following:
1. Actual or suspected immigration or citizenship status: or
 2. A "civil immigration warrant," administrative warrant, or an immigration detainer in the individual's name, including those identified in the National Crime Information Center (NCIC) database.
- B. Sheriff's Office personnel shall not inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance, unless necessary to investigate criminal activity by that individual.
1. If such inquiry is made, to investigate criminal activity by that individual, Sheriff's Office personnel shall document that inquiry in their report. If ICE is contacted, Sheriff's Office personnel shall document that communication with ICE in their report.
- C. Sheriff's Office personnel shall not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law-whether pursuant to Section 1357(g) of Title 8 of the United States Code or under any other law, regulation, or policy.
- D. Sheriff's Office personnel shall not use DMV records or information for civil immigration purposes or disclose such records or information to any agency that primarily enforces immigration law, such as U.S. immigration and customs enforcement and U.S. customs and border protection, or to any employee or agent of any such agency unless such disclose is pursuant to a cooperative arrangement between city, state, and federal agencies which does not enforce immigration law and which disclosure is limited to the specific records or information being sought pursuant to such arrangement. In addition to the requirements of 18 USC 2721(c), the Office shall keep for a period of five years records of all uses and identifying each person or entity that primarily enforces immigration law that received office records or information from such certifying person or entity. The Office shall maintain the records in a manner and form prescribed by the commissioner, and the Office shall make them available for inspection upon the Commissioner's request. [See Attachment C.](#)

Updated 03/2020

Section 1. Subdivision of 12 of section 201 of the vehicle and traffic law, as added by Chapter 37, is amended to read as follows:

12. (b) The commissioner shall require any person or entity that receives or has access to records or information from the department to certify to the commissioner, before such receipt or access, that such person or entity shall not (i) use such records or information for civil immigration purposes or (ii) disclose such records or information to any agency that primarily enforces immigration law or to any employee or agent of any such agency unless such disclosure is pursuant to a cooperative arrangement between city, state and federal agencies which arrangement does not enforce immigration law and which

disclosure is limited to the specific records or information being sought pursuant to such arrangement. Violation of such certification shall be a class E felony. In addition to any records required to be kept pursuant to subdivision (c) of section 2721 of title 18 of the United States code, any person or entity certifying pursuant to this paragraph shall keep for a period of five years records of all uses and identifying each person or entity that primarily enforces immigration law that received department records or information from such certifying person or entity. Such records shall be maintained in a manner and form prescribed by the commissioner and shall be available for inspection by the commissioner or his or her designee upon his or her request.

(c) For purposes of this subdivision, the term “agency that primarily enforces immigration law” shall include, but not be limited to, United States immigration and customs enforcement and United States customs and border protection, and any successor agencies having similar duties. Failure to maintain records as required by this subdivision shall be a class E felony.

Updated 06/2020

ICE or CBP Detainer Requests

- A. Sheriff’s Office personnel shall not honor detainer requests from federal agents in compliance with *People v. DeMarco*.

ICE or CBP Requests for Certain Non-Public, Sensitive Information or CBP Detainer Requests

- A. Sheriff’s Office personnel may respond affirmatively to an ICE or CBP request for non-public information about an individual- including but not limited to non-public information about an individual’s release, home address, or work address *ONLY IF* the request is accompanied by a judicial subpoena or judicial warrant:

- B. *EXCEPT THAT* nothing in this policy prohibits Sheriff’s Office personnel from:

1. Sending to or receiving from local, state, or federal agency-as per 8 U.S.C. § 1373--(i) information regarding an individual’s country of citizenship or (ii) a statement of the individual’s immigration status; or
2. Disclosing information about an individual's criminal arrests or convictions, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order; or
3. Disclosing information about an individual's juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order.
4. Sheriff’s Office personnel shall limit the information collected from individuals concerning immigration or citizenship status to that necessary to perform agency duties and shall prohibit the use or disclosure of such information in any manner that violates federal, state, or local law.

5. Sheriff's Office personnel shall document in their report affirmative responses described in subsection (A) above and information sent or received as described in subsection (B) above.

Access to Individuals in Tompkins County Sheriff Custody

- A. Absent a lawfully issued judicial warrant, Sheriff's Office personnel shall not provide ICE or CBP with access to an individual in their custody or the use of office facilities to question or interview such individuals if ICE or CBP's sole purpose is enforcement of federal immigration law.

Collection of Immigration Related Information and Nondiscriminatory Access to Services

- A. Sheriff's Office personnel shall not inquire about or request proof of immigration status or citizenship when providing services or benefits, except where the receipt of such services or benefits are contingent upon one's immigration or citizenship status where inquiries are otherwise lawfully required by federal, state, or local laws.

Recordkeeping

- A. Sheriff's Office shall record, solely to create the reports described in subsection (B) below, the following for each immigration detainer, notification, and transfer, interview, or interrogation request received from ICE or CBP:
 - The subject individual's race, gender, and place of birth;
 - Date and time that the subject individual was taken into Tompkins County Sheriff custody;
 - The location where the individual was held and the arrest charges;
 - Date and time of the receipt of the request;
 - The requesting agency;
 - Immigration or criminal history indicated on the request form, if any;
 - Whether the request was accompanied any documentation regarding immigration status or proceeding, e.g. a judicial warrant;
 - Whether a copy of the request was provided to the individual and, if yes, the date and time of notification;
 - Whether the individual consented to the request;
 - Whether the individual requested to confer with counsel regarding the request;
 - Sheriff's Office personnel response to the request, including a decision not to fulfill the request;
 - If applicable, the date and time that ICE or CBP took custody of, or was otherwise given access to, the individual; and
 - The date and time of the individual's release from Tompkins County Sheriff custody.

- B. The Sheriff's Office shall provide annual reports to the County Legislature and County Clerk regarding the information collected in subsection (A) above in an aggregated form that is stripped of all personal identifiers in order that compliance with all applicable law may be monitored.

Due Process Rights

- A. The Sheriff's Office shall protect the due process rights of persons about whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice in a language that they will understand, and:
1. Ensuring that bail and/or release from custody upon posting of bail shall not be delayed solely because of (1) an individual's citizenship or immigration status, (2) a civil immigration warrant, or (3) a federal agency request, for the purposes of immigration enforcement, requests notification about, transfer of, detention of, or an interview or interrogation of that individual;
 2. Upon receipt of a federal detainer, transfer, notification, interview, or interrogation request, providing a copy of that request to the individual named therein and informing the individual whether the request will be honored before communicating a response to the requesting agency;
 3. Subjecting individuals in custody to the same booking, processing, release, and transfer procedures, policies and practices, regardless of actual or suspected citizenship or immigration status.
 4. Ensuring that they understand their Miranda rights and that they are applicable when interacting with federal agents as well.

Attachment:

- A. [Resolution 2017-21](#)
B. [People v. DeMarco](#)
C. [NYS DMV Standard Security Clauses \(Appendix A\)](#)

By Order Of



Derek Osborne
Sheriff