

# HUNTERDON COUNTY PROSECUTOR'S OFFICE

## STANDARD OPERATING PROCEDURES



SUBJECT: INTERACTING WITH THE IMMIGRANT COMMUNITY

EFFECTIVE DATE:

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ACCREDITATION STANDARDS: N/A

BY THE ORDER OF:  
County Prosecutor

**PURPOSE** The purpose of this standard operating procedure is to maintain procedures for interacting with the immigrant community in compliance with *New Jersey Attorney General Directive 2018-6*.

**POLICY** It is the policy of the Hunterdon County Prosecutor's Office to interact with the immigrant community in compliance with *New Jersey Attorney General Directive 2018-6*.

Immigrants are less likely to report a crime if they fear that the responding law enforcement officials will turn them over to immigration authorities. This fear makes it more difficult for detectives to solve crimes and bring suspects to justice.

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 detectives should assist federal immigration authorities when required to do so by law, they should also be mindful that assisting above and beyond those requirements threatens to blur the distinctions between state and federal actors and between federal immigration law and state criminal law. It also risks undermining the trust between the law enforcement community and the public.

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this SOP, the following terms are defined:

1. Judicial warrant – is a warrant issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but, by federal immigration officers.
2. 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. 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.
3. Violent or serious offense – is defined as:
  - a. Any 1<sup>st</sup> or 2<sup>nd</sup> degree offense, as defined in N.J.S.A. 2C:43-1.
  - b. Any domestic violence crime defined in N.J.S.A. 2C:25-19.
  - c. N.J.S.A. 2C:12-1 – Assault.
  - d. N.J.S.A. 2C:12-1.1 – Knowingly Leaving the Scene of a Motor Vehicle Accident Involving Serious Bodily Injury.
  - e. N.J.S.A. 2C:12-10 – Stalking.
  - f. N.J.S.A. 2C:12-13 – Throwing Bodily Fluids at Officers.
  - g. N.J.S.A. 2C:14-3 – Criminal Sexual Contact.
  - h. N.J.S.A. 2C:16-1 – Bias Intimidation.
  - i. N.J.S.A. 2C:17-1 – Arson.
  - j. N.J.S.A. 2C:17-2 – Causing Widespread Injury or Damage.
  - k. N.J.S.A. 2C:18-2 – Burglary of a Dwelling.
  - l. N.J.S.A. 2C:24-4 – Endangering the Welfare of Children.
  - m. N.J.S.A. 2C:28-5 – Witness Tampering and retaliation.
  - n. N.J.S.A. 2C:29-2b – Eluding a Law Enforcement Officer.
  - o. N.J.S.A. 2C:29-3a(5) – Hindering Apprehension of Another Using Force or Intimidation.

- p. N.J.S.A. 2C:29-3b(2) – *Hindering Apprehension of Oneself Using Force or Intimidation*.
- q. N.J.S.A. 2C:29-9 – *Criminal Contempt* (violation of restraining orders, domestic violence orders, etc.).
- r. N.J.S.A. 2C:40-3B – *Aggravated Hazing*.
- s. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in this section.

B. The following terms are also defined for T visas and U visas:

- 1. Alien – Any person not a citizen or national of the United States.
- 2. Asylee – An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his/her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion
- 3. Certifying agency – includes all authorities responsible for the investigation, prosecution, conviction or sentencing of a person meeting the qualifying criminal activity including, but not limited to:
  - a. Federal, state, and local law enforcement agencies.
  - b. Federal, state, and local prosecutors' offices.
  - c. Federal, state, and local judges.
  - d. Federal, state, and local family protective services.
  - e. Federal and state departments of labor.
  - f. Equal Employment Opportunity Commission.
- 4. Helpful in the investigation or prosecution – means victim were, are, or are likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which they are victims.
  - a. This includes being helpful and assisting when reasonably requested.
  - b. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement remains even after a U visa is granted, and those victims who unreasonably refuse to assist after the U visa has been granted may have the visa revoked by the United States Citizenship and Immigration Services (USCIS).

- c. Detectives should contact and inform USCIS of a victim's unreasonable refusal to assist in the investigation or prosecution should this occur.
  - d. A current investigation, filing of charges, a prosecution, and/or a conviction are not required to sign the law enforcement certification. Many instances may occur when the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to:
    - 1) When the actor has fled or is otherwise no longer in the jurisdiction.
    - 2) The actor cannot be identified.
    - 3) Federal law enforcement officials have deported the actor.
  - e. There is no statute of limitations on signing the law enforcement certification. A law enforcement certification can even be submitted for a victim in a closed case
5. Nonimmigrant – An alien who is admitted to the United States for a specific temporary time. There are clear conditions on their stay. There are a large variety of nonimmigrant categories, each exists for a specific purpose and has specific terms and conditions. Nonimmigrant classifications include, but are not limited to:
- a. Foreign government officials.
  - b. Visitors for business and for pleasure.
  - c. Aliens in transit through the United States.
  - d. Treaty traders and investors.
  - e. Students.
  - f. International representatives.
  - g. Temporary workers and trainees.
  - h. Representatives of foreign information media.
  - i. Exchange visitors.
  - j. Fiancé(s) of U.S. citizens.
  - k. Intra-company transferees.
  - l. NATO officials.
  - m. Religious workers.

- n. NOTE: most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.
6. Permanent Resident Card (Form I-551) – Also known as a ‘green card’ or ‘alien registration card’, this card is issued by USCIS to aliens as evidence of their lawful permanent resident status in the United States. For Form I-9, it is acceptable as proof of both identity and employment authorization. Although some permanent resident cards contain no expiration date, most are valid for 10 years. Cards held by individuals with conditional permanent resident status are valid for two years.
7. Qualifying crime – (NOTE: the below list is taken from the *Victims of Trafficking and Violence Protection Act (VTVPA)* of 2000 and applies to all 50 states and U.S. territories. Some qualifying crimes are not defined in New Jersey statutes but, the closest equivalent crime in New Jersey shall apply. Qualifying crime also includes attempt, conspiracy, or solicitation to commit any of the below, and other related, crimes):
- a. Abduction.
  - b. Aggravated assault.
  - c. Aggravated sexual assault.
  - d. Criminal sexual contact.
  - e. Criminal coercion (blackmail).
  - f. Criminal restraint.
  - g. Domestic violence related crimes.
  - h. Extortion.
  - i. False imprisonment.
  - j. Female genital mutilation.
  - k. Human trafficking.
  - l. Kidnapping.
  - m. Incest.
  - n. Manslaughter.
  - o. Murder.
  - p. Obstruction of justice.
  - q. Perjury.
  - r. Prostitution.

- s. Sexual assault.
  - t. Sexual exploitation.
  - u. Torture.
  - v. Witness tampering.
8. Trafficking:
- a. Sex trafficking – When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or
  - b. Labor trafficking – the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, using force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
9. T visa – is an immigration benefit that can be sought by victims who:
- a. Is or has been a victim of a severe form of trafficking in persons (which may include sex or labor trafficking); and
  - b. Is in the United States due to trafficking; and
  - c. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking; and
  - d. Would suffer extreme hardship involving unusual and severe harm if removed from the United States.
10. U visa – is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.
- a. A U visa provides eligible victims with nonimmigrant status to temporarily remain in the United States while assisting law enforcement.
  - b. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status. Congress has capped the number of available U visas to 10,000 per fiscal year.

11. Visa – A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification (e.g., student (F), visitor (B), temporary worker (H)). A visa does not grant the bearer the right to enter the United States. The Department of State (DOS) is responsible for visa adjudication at U.S. Embassies and Consulates outside of the U.S. The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) immigration inspectors determine admission into, length of stay and conditions of stay in, the U.S. at a port of entry. The information on a nonimmigrant visa only relates to when an individual may apply for entry into the U.S.

## II. GENERAL

- A. Nothing in this SOP or *New Jersey Attorney General Directive 2018-6* limits detectives from enforcing state law and nothing in this SOP or *New Jersey Attorney General Directive 2018-6* should be construed to imply that the State of New Jersey provides sanctuary to those who commit crimes in this state. Any person who violates New Jersey's criminal laws can and will be held accountable for their actions, no matter of their immigration status.
- B. Nothing in this SOP or *New Jersey Attorney General Directive 2018-6* restricts detectives from complying with the requirements of federal law or valid court orders, including judicially issued arrest warrants for individuals, regardless of immigration status.
- C. Nothing in *New Jersey Attorney General Directive 2018-6* prohibits this agency from imposing its own additional restrictions on assisting federal immigration authorities, provided those restrictions do not violate federal or state law or impede the enforcement of state criminal law. This SOP or *New Jersey Attorney General Directive 2018-6* does not *mandate* that detectives assist in any circumstance, even when, by the terms of *New Jersey Attorney General Directive 2018-6*, they are *permitted* to do so.
- D. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.
- E. Annually, each county and local law enforcement agency in Hunterdon County shall submit to the HCPO statistics, as prescribed by the Attorney General, detailing any instances when the agency assisted federal civil immigration authorities in enforcing federal civil immigration law.
- F. Annually, the Prosecutor or his/her designee shall report to the New Jersey Attorney General, in a manner to be prescribed by the New Jersey Attorney General, any instances in which any law enforcement agency in Hunterdon County assisted federal civil immigration authorities for the purpose of enforcing federal civil immigration law in the previous calendar year

## III. ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW

- A. Except pursuant to subsections III.C and III.D below, no detective 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:
    - a. Necessary to the ongoing investigation of an indictable offense by that individual; *and*
    - b. Relevant to the offense under investigation; or
    - c. Necessary to comply with the requirements of the *Vienna Convention on Consular Relations* (see this agency's SOP on *Consular Notification and Access*).
- B. Except pursuant to subsections III.C and III.D below, no detective 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 (see definitions) 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; and
    - b. That the interview is voluntary; and
    - c. That the individual can decline to be interviewed; and
    - d. That the individual can choose to be interviewed only with his/her legal counsel present.
  - 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, as that term is defined in subsection I.A.3 of this SOP; 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, as that term is defined in subsection I.A.3 of this SOP; 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.
  - d. Any such detention can last only until 2359hrs on the calendar day on which the person would otherwise have been eligible for release.
7. Detectives must notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:
- a. To interview the detainee (use an *Immigration and Customs Enforcement Interview Request Consent Form*).
  - b. To be notified of the detainee's upcoming release from custody (use a Notification to Detained Individual of Actions by *Immigration and Customs Enforcement Form*).
  - c. To continue detaining the detainee past the time he or she would otherwise be eligible for release.
  - d. When providing such notification, detectives shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.
- C. Nothing in subsections III.A or III.B shall be construed to restrict, prohibit, or in any way prevent a detective 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 an arrest or when legally justified during an investigative stop or detention.
  - 6. Asking an arrestee 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. Providing federal immigration authorities with information that is publicly or readily available to the public in the method the public can obtain it.
  8. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.
  9. 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).
- D. This agency shall not enter in, 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 New Jersey Attorney General grants written approval; or
  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.
  3. This agency shall not otherwise exercise federal civil immigration authority outside the context of Section 287(g).
  4. Nothing in this SOP or *New Jersey Attorney General Directive 2018-6* shall apply if this agency is party to an agreement to exercise federal immigration authority pursuant to Section 287(g) when they are acting pursuant to such agreement.
  5. Nothing in this SOP or *New Jersey Attorney General Directive 2018-6* shall apply if this agency is 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.

#### **IV. U VISAS AND T VISAS**

- A. Notwithstanding any provision in section III of this SOP, detectives can ask any questions necessary to complete a T Visa or U Visa certification.
1. Generally, detectives cannot 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.
  2. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent detectives from sending to, maintaining, or receiving from federal immigration authorities any information regarding the citizenship or immigration status, lawful or unlawful, of any individual (see 8 U.S.C. §§ 1373, 1644).

- B. Non-citizens may be eligible for a U visa if:
1. They are the victims of qualifying criminal activity.
  2. They have suffered substantial physical or mental abuse because of having been a victim of criminal activity.
  3. They have information about the criminal activity.
  4. They were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime.
  5. The crime occurred in the United States or violated U.S. laws.
  6. The person is admissible to the United States. If not admissible, an individual may apply for a waiver on a *Form I-192, Application for Advance Permission to Enter as a Non-Immigrant*.
  7. If the person is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or friend may assist law enforcement on your behalf.
  8. NOTE: Given the complexity of U visa petitions, petitioners often work with a legal representative or a victim advocate.
- C. If an individual believes he/she may qualify for a U visa, then the person or the person's representative will complete a *USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918)* and submit it to U.S. Citizenship and Immigration Services (USCIS) with all relevant documentation, including a *USCIS Form I-918B U Visa Law Enforcement Certification (Form I-918B)*.
- D. This agency's responsibilities are limited to certifying that an alien, who is or was the victim of a qualifying crime in Hunterdon County, is, has, or will cooperate with the investigation and/or prosecution of such crime.
- E. Aliens or their representatives seeking certification for a U visa shall be referred to the Chief of Detectives or his/her designee. The assigned detective will cause an inquiry into the matter to determine if the alien has been:
1. A victim of a qualifying crime under the jurisdiction of this agency; and
  2. Has specific knowledge and details of crime; and
  3. Has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying crime
- F. Aliens or their representatives seeking certification for crimes occurring outside the jurisdiction of Hunterdon County shall be referred to the county prosecutor's office in which the crime occurred.
- G. The detective shall assign the inquiry a case number in InfoShare.

- H. Upon determining that the alien has satisfied the above requirements, the detective shall execute [Form I-918, Supplement B, U Nonimmigrant Status Certification](#).
- I. The completed form shall be forwarded to the Chief of Detectives or his/her designee for signature.
1. The original fully executed form shall be returned to the applicant or their representative; and
  2. The detective shall forward a copy to be maintained in the case file.
- J. The Chief of Detectives or his/her designee may withdraw or disavow a Form I-918B at any time if a victim stops cooperating. The detective must notify the USCIS Vermont Service Center in writing (including as an email attachment) at:
- [LawEnforcement\\_UTVAWA.vsc@uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.vsc@uscis.dhs.gov); or mail to
- USCIS—Vermont Service Center  
ATTN: Division 6  
75 Lower Welden Street  
St. Albans, VT 05479
- K. If the detective or the Chief of Detectives determines that USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history or his/her involvement in the crime.
- L. Such written notification regarding withdrawal or disavowal must include:
1. This agency's name and contact information (if not included in the letterhead); and
  2. The name and date of birth of the individual certified; and
  3. The name of the individual who signed the certification and the date it was signed; and
  4. The reason the agency is withdrawing/disavowing the certification including information describing how the victim's refusal to cooperate in the case is unreasonable; and
  5. The signature and title of the official who is withdrawing/ disavowing the certification; and
  6. A copy of the signed initial certification.
- M. Non-citizens may be eligible for a T Visas if:
1. Is or has been a victim of a severe form of trafficking in persons (which may include sex or labor trafficking); and
  2. Is in the United States due to trafficking; and

3. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking; and
  4. Would suffer extreme hardship involving unusual and severe harm if removed from the United States.
- N. The T visa declaration is supplementary evidence of a victim's assistance to law enforcement that an official can complete for a T visa applicant. The declaration must be provided on Form I-914, Supplement B, and instructions are available on the USCIS website at <https://www.uscis.gov/i-914>.
- O. Detectives will process T Visas in the same way as U Visas.

## **V. CONSIDERATIONS FOR PROSECUTORS**

- A. At a defendant's initial court appearance, the prosecutor shall confirm that the defendant is or has been advised on the record that potential charges and convictions may carry immigration consequences, and that defendant may have rights to consular notification pursuant to the *Vienna Convention on Consular Relations*. Directive 2018-6 sec. V A; *Padilla v. Kentucky*, 559 U.S. 356 (2010); see *State v. Gaitan*, 209 N.J. 339 (2012); *State v. Blake*, 444 N.J. Super.285 (App. Div.), certif.denied, 226 N.J. 213 (2016).
- B. The prosecutor shall make an individualized assessment based on each case's specific facts when determining whether to seek pretrial detention and shall not assume that a non-citizen presents a flight risk. Directive 2018-6 sec. V 8.
- C. Evidence of a defendant's immigration status is typically irrelevant to the crime charged or to a witness' credibility. Directive 2018-6 sec. V C; *State v. Sanchez-Medina*, 231 N.J. 452 (2018).
- D. Prosecutors should consider potential collateral consequences when reaching a just resolution in a case. Nothing in Directive 2018-6 shall be construed to limit prosecutorial discretion to require any charge or sentence, or to prevent any argument at sentencing. Directive 2018-6 sec. V.D.