



Department of State Police

General Order

Effective Date

June 2, 2016

Number

INV-17

Subject

Travel/Immigration Status Inquiries and Investigations

Policy

Investigating and enforcing violations of federal immigration law is not a mission of the Massachusetts State Police. Accordingly, it is not appropriate for a member of the State Police to inquire about a non-citizen's immigration or travel status for the sole purpose of facilitating that person's detention or deportation by U.S. Immigration & Customs Enforcement (ICE).

However, a member of the State Police may inquire into a person's immigration or travel status if the inquiry is part of, and reasonably likely to facilitate, the investigation of a violation of state law, federal criminal law (excluding federal immigration law), or conduct independent of immigration status that poses a threat to public safety or order. A member of the State Police may also notify federal authorities of the imminent release of an immigration subject, or may engage in the temporary detention of an immigration subject, at the specific request of federal authorities, consistent with the limits set forth in this General Order.

Definitions

U.S. Immigration and Customs Enforcement (ICE): An agency within the Department of Homeland Security (DHS), its mission is to enforce the nation's immigration and customs laws.

Criminal Justice Information System (CJIS): A computerized system of criminal justice information, available twenty-four (24) hours a day and managed by the Commonwealth's Criminal History Systems Board.

Seizure: To take possession under compulsion of legal authority; to confiscate.

Identification Document: An article/credential that is, or purports to be, issued by a government entity, that is relied upon to record or prove the identity of its bearer. Examples may include:

- A driver's license from any state or country;
- An ICE- issued identity/status card;
- A document issued by the Massachusetts Registry of Motor Vehicles (RMV), or other official governmental motor vehicle organization; and
- A passport issued by the U.S. State Department or any other sovereign nation.

Seizing Documents

Identification Documents may be seized from an individual only if they are:

- Contraband (including stolen, forged, or altered documents)
- The fruits or instrumentalities of a Massachusetts crime;
- Evidence of a Massachusetts crime; or
- Illegally possessed

The seized documents shall be initially processed as required under INV-10 *Evidence Collection and Preservation*. Once the case is adjudicated, seized documents shall be promptly disposed of according to Department Policy and Procedure INV-11A *Property and Contraband*. Stolen passports seized for these purposes should initially be processed like any other evidence according to INV-10 & INV-11A. Once the case is adjudicated, passports should be forwarded to the originally intended holder, or the U.S. Department of State, Passport Services, Consular Lost/Stolen Passport Section, 1111 19th St. NW, Room 500, Washington, DC 20036.

State Residency

Foreign operators may drive in Massachusetts for up to one (1) year with their foreign license if they are a visitor. An operator with an out-of-state license may drive in Massachusetts at any time, provided they do not establish residency within the Commonwealth. However, pursuant to G.L. c. 90, § 8, once a foreign operator or an out-of-state operator becomes a Massachusetts resident, he or she must immediately obtain a Massachusetts driver's license.

A member may question an operator about his/her employment, current residence, and/or tax status, when the member possesses a reasonable suspicion that a person operating on a foreign or out-of-state license has established residency in Massachusetts and the member requires the information to aid in determining if the operator is in compliance with Massachusetts law.

Out-of-State Licenses

An out-of-state license should not be seized by a member unless this document is:

- Contraband;
- A fruit or instrumentality of a crime;
- Evidence of a crime; or
- Illegally possessed.

Seized licenses shall be processed in accordance with INV-10 & INV-11A.

Determining License Status

To determine if the operator has been living in Massachusetts for longer than one year, the following checks may be performed to aid in determining an operator's current status:

- A motor vehicle violations history check (KQ);
- A criminal history check (BOP);
- Utilize the CJIS screen titled "INS" to learn when the operator entered the U.S.;
- A RMV check to determine if the operator has any license status within Commonwealth; or
- The issuance a RMV "A" or "X" number.

Note: Massachusetts RMV issues an "A" number to individuals who are unlicensed within the Commonwealth, but have received a Massachusetts

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motor vehicle citation; an "X" number is issued to individuals who are unlicensed within Massachusetts, but own a Massachusetts registered motor vehicle.

Foreign Licensed Operators

Massachusetts shall only honor valid licenses from countries identified within the current Massachusetts Driver's Manual "A" Appendices: *Parties to the Road Traffic Convention and the 1943 Inter-American Automotive Traffic Convention*.

This publication is available to all members via the Massachusetts Registry of Motor Vehicles web site under:
Forms & Manuals→ Driver's Manual→ Appendices "A".

International Driver's License/ Permit

An international driver's license/permit is simply a translation of an operator's foreign driver's license into English. This document is not required to operate a motor vehicle in Massachusetts.

The international license/permit is not a substitute for a person's actual driver's license issued by their country of origin. An operator who is licensed in another country is required to carry only their valid foreign driver's license.

ICE Detainers

Department members are NOT authorized to stop, arrest and/or take an individual into custody based solely on an ICE detainer.

However, a member of the Department is authorized to detain an individual based on an ICE detainer if the member:

- has arrested an individual for a criminal violation or on the basis of a warrant, **and**
- is informed that the individual is the subject of a valid and confirmed ICE detainer as defined in 8 C.F.R. § 287, **and**
- receives the approval of the Troop Duty Officer, who shall comply with Special Order 16-SO-04, *ICE Detainers and Federal Orders and Warrants*.

An individual for whom there is a valid and confirmed ICE detainer may be detained pursuant to such an ICE detainer for a period **not to exceed 48 hours**. The 48-hour period shall begin when the individual would otherwise be released or transferred from Department custody. Individuals shall NOT, under any circumstances, be detained pursuant to an ICE detainer request beyond the time actually requested or authorized by ICE.

Member Responsibilities

When a Department member conducts a NCIC/DCJIS query of an individual who is **already** in Department custody pursuant to arrest on criminal charges or a warrant and determines that the individual is the subject of an ICE detainer as defined in 8 C.F.R. § 287, the member shall **immediately** notify

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the Troop Duty Officer in order to confirm the validity of the ICE detainer.

NOTE: If an individual is not already in Department custody pursuant to arrest on criminal charges or a warrant, a Department member **shall not** detain that individual even if the member determines that the individual is the subject of an ICE detainer.

Troop Duty Officer Responsibilities

For the purposes of confirming the validity of the ICE detainer, the Troop Duty Officer shall instruct a Troop Dispatcher to contact ICE at (802) 872-6020. In order for the Troop Duty Officer to recognize the existence and validity of an ICE detainer specific to an individual, ICE must provide the Troop Duty Officer with a *Form I-247D DHS Immigration Detainer – Request for Voluntary Action* specific to the individual and one or more of the following documentation specific to the individual:

1. A removal order issued by a court of competent jurisdiction;
2. A warrant issued by a court of competent jurisdiction; or
3. A written statement, affidavit, or other document indicating that ICE has made a probable cause determination and the basis for that determination.

Members of the Department shall NOT detain an individual pursuant to an ICE detainer if ICE does not provide a Form I-247D along with the above additional documentation specific to the individual.

The Troop Duty Officer shall monitor the status of an individual detained pursuant to an ICE detainer and this General Order until the individual is released, transferred, or taken into custody by ICE.

Prior to releasing a person detained pursuant to 8 C.F.R. § 287, the Troop Duty Officer shall contact ICE to confirm its intended action in relation to the specific detainer. If ICE fails to take custody within the requested period or prior to that time confirms or documents that it will take no action on the specific detainer request, the affected individual shall be immediately released/transferred from Department custody. All such actions/inactions, and the reasons for the same, shall be recorded in the appropriate daily administrative journal and/or reports.

Request for Voluntary Notification of Release

In certain circumstances, ICE will request, by providing *Form I-247N Request for Voluntary Notification of Release of Suspected Priority Alien*, that the Department **notify** ICE before an individual is released or transferred from Department custody. After receiving *Form I-247N* from ICE, the Troop Duty Officer shall notify ICE of the individual's impending release as early as possible and shall document the notification in the appropriate daily administrative journal and/or reports. **Under no circumstances will an**

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individual be detained beyond the time s/he would normally be released from Department custody on the basis of *Form I-247N Request for Voluntary Notification of Release of Suspected Priority Alien*.

Transporting Individual to Court

In circumstances where an individual is transferred into the custody of the court system, the officer transporting the individual shall notify the court of the existence of an ICE detainer. This notification shall be documented in the appropriate daily administrative journal and/or reports.

Mandated Consular Reporting

Agreements with certain countries mandate that they be notified when their nationals are confined or detained regardless of the national's request.

When foreign nationals are involved in an incident, members shall consult "Consular Notification and Access" provided by the U. S. State Department, which is available to all members via the State Department website at:

- <http://travel.state.gov/consularnotification>

Seizure Procedures


If this occurs...	Then ...
The operator is arrested for operating under the influence (OUI) of alcohol and fails a breath test, or refuses a breath test.	<ul style="list-style-type: none"> • Process as specified by M.G.L.; and • Seize Massachusetts licenses if appropriate. <p>Note: If the operator is from out-of-state and possesses an out-of-state license, do <u>not</u> seize the license.</p>
The operator has a suspended or revoked Massachusetts Driver's License.	<ul style="list-style-type: none"> • Seize the driver's license; • Complete a RMV Form 21188 – <i>Report and Affidavit of an Operating After Suspension/Revocation Incident</i>; • Forward both the license and Form 21188 to the RMV; and • If the suspended or revoked operator is operating a vehicle registered to them, seize the registration plates and forward the plates to the RMV with Form 21188.

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Seizure Procedures (Continued)	<u>If this occurs...</u> The operator possesses/uses a forged/altered license or any official document from the Massachusetts RMV or from another country or state's department of motor vehicles.	<u>Then...</u> <ul style="list-style-type: none"> • Seize the forged or altered documents; • Notify the State Police Compliance Unit of this violation by utilizing RMV Form #T21193 – <i>Affidavit of Person Obtaining License</i>; and • Process seized documents in accordance with INV-10 & INV-11A. <u>Note:</u> The operator may be charged with G.L. c. 90, §24B, c. 90, §28, or c. 267, §1- (forgery statute).
	A license or official document is illegally possessed from any state within the U.S.	<ul style="list-style-type: none"> • Seize the document as evidence, and process the license according to INV-10 & INV-11A; • Charge the operator with the appropriate offense; • Notify the State Police Compliance Unit of this violation by utilizing RMV Form #T21193 – <i>Affidavit of Person Obtaining License</i>; and • Once the case is adjudicated, return the document to the originating authority or the lawful owner.
	An operator presents a license from a foreign country.	See "Foreign Licensed Operators" Section
	A <u>passenger</u> in a vehicle presents a suspended or revoked Massachusetts license for identification purposes only.	<ul style="list-style-type: none"> • If the suspension/revocation is for OUI alcohol, seize the license and forward it to the RMV or destroy it; however, • If used for identification purposes only, the suspended/revoked license <u>should not</u> be seized.
	The operator presents an out-of-state license, which is suspended, revoked, or expired in the operator's home state.	<ul style="list-style-type: none"> • Do <u>not</u> seize the license; • The operator may be charged with MGL Ch. 90, §10, unlicensed operation of a motor vehicle; and • Obtain the CJIS printout from the operator's home state to verify the suspension or revocation for court purposes.

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References

INV-10 *Evidence Collection and Preservation*
INV-11A *Property and Contraband*
U.S. Department of State Publication; "*Consular Notification and Access*"
8 C.F.R. § 287
Massachusetts Driver's Manual "A" Appendices: *Parties to the Road Traffic Convention and the 1943 Inter-American Automotive Traffic Convention.*
RMV Form 21188 – *Report and Affidavit of an Operating After Suspension/Revocation Incident;*
RMV Form #T21193 – *Affidavit of Person Obtaining License*

Promulgated By: 



Department of State Police

Special Order

Effective Date	June 2, 2016	Number	16-SO-04
Subject	ICE Detainers and Federal Orders and Warrants		

The purpose of this Special Order is to provide Troop Duty Officers and other supervisors with a heightened understanding of the section of General Order INV-17 *Travel/Immigration Status Inquiries and Investigations* that deals with U.S. Immigration and Customs Enforcement (ICE) Detainers and Federal Orders and Warrants. This Special Order will provide guidance and clarification relative to the vetting of ICE detainers and compliance with INV-17.

Members of the State Police shall, when specifically requested to do so by ICE (pursuant to 8 C.F.R. § 287 or upon other lawful request), and upon the approval of the Troop Duty Officer, provide NOTICE to ICE as early as practicable (at least 48 hours in advance, if possible) before an individual in Department custody is released or transferred from Department custody. ICE will document this request on Form I-247N. The date, time, and manner of such notice shall be recorded in the appropriate administrative journal and/or reports.

Members of the State Police shall, when specifically requested to do so by ICE (pursuant to 8 C.F.R. § 287, directly or resulting from an NCIC/DCJIS query), and upon the approval of the Troop Duty Officer, DETAIN an individual for a period not to exceed 48 hours beyond the time when the individual would otherwise be released or transferred from Department custody ONLY when ICE has determined BOTH (i) that there is probable cause to believe that the individual is an alien subject to removal from the country AND (ii) that the alien is an immigration enforcement priority.

ICE will document these determinations on Form I-247D. In order to establish such probable cause, ICE must, with its detainer request, provide the Department with one or more of the following documents specific to the individual:

1. A removal order issued by a court of competent jurisdiction;
2. A warrant issued by a court of competent jurisdiction; or
3. A written statement, affidavit, or other document indicating that ICE has made a probable cause determination and the basis for that determination.

In order to establish that an alien is an immigration enforcement priority, ICE will document on the Form I-247D that the individual falls into one or more of the following six categories:

- (a) he or she has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;
- (b) he or she has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is at least 16 years old and intentionally participated in an organized criminal street gang to further its illegal activities;
- (c) he or she has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the alien's immigration status;
- (d) he or she has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43) at the time of conviction;

- (e) he or she has been convicted of a "significant misdemeanor" as defined under DHS policy ("Significant misdemeanors" are: 1) an offense of Domestic Violence; 2) Sexual Abuse or Exploitation; 3) Burglary; 4) Unlawful Possession/Use of a Firearm; 5) Drug Distribution/Trafficking; 6) Driving Under the Influence; and 7) any other offense for which an individual has been sentenced to time in custody of 90 days or more);
- (f) he or she has been convicted of 3 or more misdemeanors, not including minor traffic offenses and state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.

An individual detained pursuant to 8 C.F.R. § 287 shall be DETAINED no longer than is requested or authorized by ICE. While 8 C.F.R. § 287 authorizes detention up to 48 hours excluding Saturdays, Sundays, and Holidays, ICE will ordinarily request detention of no more than 48 hours beyond the time the person would have otherwise been released or transferred from Department custody. Individuals shall NOT, under any circumstances, be DETAINED pursuant to an ICE detainer request beyond the time actually requested or authorized by ICE.

Prior to releasing a person DETAINED pursuant to 8 C.F.R. § 287, members shall, as early as possible, contact ICE and confirm ICE's intended action(s) in relation to the specific detainer. If ICE fails to take custody within the requested period or prior to that time confirms or documents that it will take no action on the specific detainer request, the affected individual shall be immediately released/transferred from Department custody. All such actions/inactions, and the reasons for the same, shall be recorded in the appropriate administrative journal and/or reports.

Members shall contact ICE by calling the ICE Law Enforcement Support Center at (802) 872-6020.

OFFICIAL:



Richard D. McKeon
Colonel / Superintendent



Department of State Police Special Order

Effective Date June 2, 2016	Number 16-SO-05
Subject Distribution of General Order	

I. DISTRIBUTION OF GENERAL ORDER

Policy and Procedure

INV-17 Travel/Immigration Status Inquiries and Investigations

The requirements for the distribution of the above listed General Order are:

- ✓ Each employee shall follow the instructions within this Special Order.
- ✓ Supervisors shall obtain a signature receipt from each employee acknowledging this General Order has been promulgated and posted on DocuShare.
- ✓ Troop/Station/Section/Unit Commanders shall forward the completed signature receipt forms through channels to their respective Division Commanders on or before: July 8, 2016.
- ✓ Division Commanders shall:
 - Ensure that employees under their command have been notified of this General Order; and
 - Maintain a file of all completed signature receipt forms for their Division.

II. DISTRIBUTION OF GENERAL ORDER INSTRUCTIONS

A. Instructions

Each employee shall acknowledge that the following General Order has been rescinded:

Policy and Procedure

INV-17 Travel/Immigration Status Inquiries and Investigations

Effective Date

8/26/2014

III. DISTRIBUTION OF GENERAL ORDER INSTRUCTIONS

A. Instructions

It is the responsibility of each sworn and civilian employee to read promulgated directives. Sworn and civilian employees shall read and become familiar with the contents of all posted written directives.

Each employee shall acknowledge the following General Order has been promulgated and posted to DocuShare. Each employee is responsible for reading and becoming familiar with the following General Order:

Policy and Procedure

INV-17 Travel/Immigration Status Inquiries and Investigations

Effective Date

6/2/2016

OFFICIAL:

Richard D. McKeon
Colonel/Superintendent