LOCAL ENFORCEMENT RESPONSE TO ILLEGAL IMMIGRATION:
GENERAL GUIDELINES

A. The purpose of this General Order is to establish a policy for the local participation of the enforcement of immigration laws. It is not intended to limit the Police Department’s authority under the United States or Virginia Constitutions or under any other laws.

The Police Department’s Immigration Enforcement Policy shall be implemented in a fair, lawful, and reasonable manner. The three key focus points are:

- Police officers will focus on Illegal Aliens who commit crimes.
- Police officers will protect victims and witnesses of crime, regardless of their immigration status.
- Racial profiling is expressly prohibited. Police officers will not detain or arrest individuals based on their national origin, race, religion or creed. In addition to being morally wrong, racial profiling is a violation of federal law as well as existing Police Department policy.

B. Although immigration enforcement is vested in the Federal government, within the guidance provided by this General Order and the law, immigration inquiries shall encompass all who, through normal course of business, are arrested for a violation of state or county ordinance where a physical custodial arrest is conducted. The primary focus of police investigative efforts will be those who may be in violation of federal immigration law who are illegal aliens who commit crimes as defined in Section F.

C. An officer may inquire into immigration status prior to a physical custodial arrest if he has reasonable articulable suspicion as part of initial identification inquiry to acquire an understanding of the facts which may lead to the discovery of additional facts that would lawfully support an extension of the initial detention for further investigation. However, subsequent and incident to any lawful arrest for violation of state law or county ordinance, where a physical custodial arrest occurs, officers shall inquire into the citizenship or immigration status by following the procedures set out in this General Order. As previously stated, this General Order is not intended to limit the Police Department’s authority under the Fourth Amendment of the United States Constitution.

D. Racial profiling, the practice of stopping, detaining, or searching a person based solely on factors such as their race, color, or ethnicity, is prohibited and in fact, illegal. Race, color, ethnicity, or other non-criminal traits are not, in and of themselves, sufficient to constitute reasonable suspicion or probable cause to justify stopping, detaining, or searching a person (see General Order 2.09 Rules and Regulations: Fair and Impartial Policing). No person shall be subject to a physical custodial arrest in order to inquire into their citizenship or immigration status.
E. Public safety is enhanced when victims and witnesses report incidents to the police. Therefore, absent a physical custodial arrest, victims and essential witnesses will not be subject to immigration inquiries as a matter of routine.

F. Description of Frequently Used Terms:

1. **Alien** – A person who is not a citizen of the United States.

2. **Alien Absconders** – A fugitive remaining in the United States after an immigration judge has ordered them deported.

3. **Foreign National** – A person who is not a permanent United States resident.

4. **Illegal Alien** – A person who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).

5. **Illegal Aliens Who Commit Crimes** – Aliens who have committed crimes that make them eligible to be removed from the United States.

6. **Undocumented Immigrant** – Any person of another country who has entered or remained in the United States without permission and without legal status.


9. **National Crime Information Center (NCIC) Wanted Status (Hits)** – At this time there are two types of Hits:
   
   a. **"OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL"** – This NCIC hit pertains to an ICE Federal civil process. This language in NCIC means that the individual has been ordered to leave the Country but has not complied with the order.
   
   b. **"PREVIOUSLY DEPORTED FELON"** – A type of NCIC hit that pertains to an ICE Federal Criminal Felony.

10. **Permanent Resident Alien** – Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.

11. **Legal Presence** – A person who is legally present is either a U.S. citizen or is legally authorized to be in the United States. Legal presence may be substantiated using a U.S. birth certificate or U.S. passport. It may also be substantiated using a variety of other government issued documents such as a Certificate of Citizenship or Naturalization, Resident Alien Card or a valid foreign passport with a visa, I-94 or an I-94W with a participating country.
Documents presented as potential evidence of legal presence must show the full legal name and date of birth. Virginia’s legal presence law took effect on January 1, 2004. A list of accepted documents under that law is available at: https://www.dmv.virginia.gov/webdoc/pdf/dmv141.pdf

G. Verification of Legal Presence.

For purposes of this policy, the Department shall be guided by §46.2-328.1 Code of Virginia in determining what forms of identification are sufficient to establish legal presence.

Generally, a valid Virginia Driver’s License or Special Identification Card (Adult ID card, Child ID card, or Hearing Impaired Photo ID card – commonly referred to as a “Walker’s ID”), with an ORIGINAL issued date of January 1, 2004 or later, shall serve as potential evidence of legal presence, as noted in §46.2-328.1 Code of Virginia (Virginia’s legal presence law took effect on January 1, 2004).

Legal presence may be determined by checking nationwide databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC).

H. Legal Authority for Enforcement of Immigration Laws (see General Order 45.02).

Warrants and detainers issued by ICE may be criminal or civil. Whether ICE is proceeding criminally or civilly against the subject controls the response of local law enforcement.

1. POLICE MAY ARREST under any of the following conditions:

a. The requirements of §19.2-81.6 Code of Virginia are satisfied.

§19.2-81.6 Code of Virginia – All law enforcement officers enumerated in §19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law enforcement officer enumerated in §19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to §19.2-82.

b. An NCIC Immigration Violator File (IVF) hit reads “PREVIOUSLY DEPORTED FELON,” a hit confirmation is received, AND a Criminal Detainer from ICE is received and/or issued.

c. An NCIC IVF hit reads “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL” (such NCIC warrants are considered civil in nature), AND the officer has
charged the person for a separate Class 1 or Class 2 misdemeanor or a traffic infraction, for which the law requires the person to be released on a summons in accordance with §19.2-74 Code of Virginia or §46.2-940 Code of Virginia, the NCIC IVF hit, absent extenuating circumstances, shall be considered as a strong factor to proceed under §19.2-82 Code of Virginia (Arrest without warrant), in determining whether the person is likely to disregard the summons.

2. **POLICE MAY NOT ARREST** under the following conditions:

   a. Solely because a person is an illegal alien. This is because the Police Department has no legal authority to independently enforce Federal Immigration Law. When probable cause exists to believe a person may be an illegal alien, the Mandatory Arrest Information form shall be completed. The Intel Unit shall in turn forward the information to the ICE LESC.

   b. Solely based upon an NCIC IVF hit which reads "OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL." These are considered civil in nature. Officers have no authority to arrest based solely on CIVIL administrative warrants or detainers for immigration issues. The Mandatory Arrest Info form shall be completed whenever possible. The Intel Unit shall in turn forward the information to the ICE LESC.
A. Officer Response:

1. Officers shall investigate the citizenship or immigration status of all persons who are arrested for a violation of a state law or county ordinance when such arrest results in a physical custodial arrest being conducted.

2. There may be circumstances under which the Fourth Amendment authorizes an earlier inquiry and officers may use their discretion in accordance with their experience and training to investigate immigration status at an earlier stage.

Officers must remain cognizant at all times of the legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

Officers are reminded there is no law compelling a person to identify himself or herself to a law enforcement officer in all instances. However, presenting false identification to a law enforcement officer is a violation of State law under §19.2-82.1 Code of Virginia.

3. If the officer has conducted a physical custodial arrest, the officer shall inquire as to the legal presence of the person by asking the mandatory inquiry on physical custodial arrest questions (What is your place of Birth? What country are you a citizen and/or national of? Are you legally present in the United States?). Officers shall screen every physical custodial arrestee by requesting the information found on the Mandatory Arrest Information Form. The mandatory immigration status inquiry shall be conducted regardless of whether a person presents a Virginia Driver’s License or other form of documentation to establish legal presence. Officers shall conduct a Query Wanted (QW) through NCIC. This QW automatically searches the Immigration Violator File (IVF) contained in NCIC. The U.S. Department of Homeland Security’s Bureau of Immigration and Customs Enforcement (ICE) is the only agency authorized to enter and maintain records in the IVF. The inquiry may also include checking nationwide databases maintained by ICE or by contacting the ICE Law Enforcement Support Center (LESC) at 802-872-6050.

4. When the arrestee is brought before the magistrate, if the officer has probable cause to believe the arrestee is an illegal alien that information shall be provided to the magistrate. If the arrestee is committed to the Adult Detention Center (ADC), the illegal alien immigration status shall be relayed to the ADC booking personnel, which has established policies and practices in place to coordinate with ICE. In all cases, the arresting officer shall be responsible to convey this information to the ADC staff. If the arrestee is likely to be
transported to the ADC by another officer, the arresting officer shall telephone the ADC and inform the staff of the suspected illegal immigration status of the arrestee. The arresting officer shall, in all cases, complete the Mandatory Arrest Information Form for custodial arrests and submit the printed form to the PST or ADC staff for processing.

5. When a physical custodial arrest occurs and the arrestee is released on a summons for a misdemeanor criminal offense, the officer shall inquire as to the legal presence of the person by asking the mandatory inquiry on physical custodial arrest questions (What is your place of Birth? What country are you a citizen and/or national of? Are you legally present in the United States?) and fill the responses in on page 2 (records copy) of the VUS. In addition, the Mandatory Arrest Information Form needs completed when the arrestee is a suspected criminal illegal alien.

6. Generally, a person may provide potential evidence of legal presence by producing a Virginia Operator’s License or Special Identification Card (Adult ID card, Child ID card, or Hearing Impaired Photo ID card – commonly referred to as a “Walker’s ID”), with an ORIGINAL issued date of January 1, 2004 or later, as noted in §46.2-328.1 Code of Virginia (Virginia’s legal presence law took effect on January 1, 2004). A birth certificate from any U.S. State or Territory, or any of the documents identified by the Virginia Department of Motor Vehicles, as referenced in General Order 45.01 Illegal Immigration: General Guidelines, F-11, will also serve as potential evidence of legal presence. Understanding that while a Virginia Driver’s License or Special Identification Card issued after January 1, 2004 is generally reliable evidence of a person’s status, the immigration status inquiry is still mandatory whenever this form of identification is presented.

7. Whenever an officer runs a wanted check on an individual through NCIC, the IVF database is automatically checked and a “hit” may be received. It has been the policy of the Department to serve the criminal warrants from NCIC wanted queries. Similar to other law enforcement agencies, criminal warrants obtained by ICE agents are entered into the NCIC wanted persons file. However, ICE hits for deported felons and alien absconders are based on administrative warrants and are entered in the NCIC IVF file.

8. Officers who receive a NCIC “hit” on an Immigration Violator File shall carefully read the IVF hit received through NCIC. There are only two (2) possible responses that will appear. Several lines from the top of the response will be the words “PREVIOUSLY DEPORTED FELON” or “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL.”

a. “PREVIOUSLY DEPORTED FELONS’

1) The officer shall request a hit confirmation and Criminal Immigration Detainer, as outlined below in B-3.

2) If a hit confirmation and a Criminal Immigration Detainer from ICE is received and/or issued, absent other charges which require the subject be taken before the magistrate, the suspect will be brought forthwith to the Adult Detention Center (ADC) which has established policies in place with ICE. An Incident Report titled “Criminal Immigration Arrest” shall be completed.
3) If the officer has reasonable suspicion to believe a person has committed or is committing a crime, absent probable cause to arrest for that crime, if a hit confirmation is received from ICE, the officer shall take the individual forthwith before a magistrate and obtain an arrest warrant for violation of §19.2-81.6 Code of Virginia. Recurrent applications for a warrant under this subsection are not permitted within a six month period, as enumerated in §19.2-82 Code of Virginia.

If reasonable suspicion does not exist that the arrested person has committed or is committing a separate offense, officers may act solely on the confirmation and detainer issued by the LESC for a “Previously Deported Felon” and the arrested person shall be transported to the ADC as outlined in section 2) above.

4) Absent independent lawful authority to detain, such as other charges that justify detention or physical arrest, if an NCIC hit is made and confirmation of a Criminal Immigration Detainer is not received or issued within a reasonable period of time, the person must be released. Officers will document the detained person's identification information on a Mandatory Arrest Information Form.

b. “OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL”

1) The majority of these ICE warrants represent civil administrative procedures and this hit typically refers to persons who have failed to appear for a hearing or failed to leave the United States after having been ordered to do so.

2) Officers shall not confirm and shall not request automatic issuance of a detaining order from the database because such detaining order will be invalid on this type of IVF hit and shall not take the individual into custody, unless such person is lawfully detained for another violation of the law. Officers will document the detained person’s identification information on a Mandatory Arrest Information Form. The subject must be released.

3) While officers may not automatically arrest a person based solely on this hit, officers shall, absent extenuating circumstances, consider this type of NCIC IVF hit as a strong factor in deciding whether or not to release on a summons for a separate violation of the law. This section only applies when an individual is being arrested for another offense for which the law indicates the person be released on a summons unless certain factors are present.

Officers may proceed under §19.2-82 Code of Virginia (Arrest without warrant), only if the provisions of §19.2-74 Code of Virginia or §46.2-940 Code of Virginia, are satisfied and the NCIC IVF hit is confirmed.

If the officer takes the suspect before a magistrate, the officer shall request a copy of the hit confirmation. A copy of the NCIC IVF hit confirmation shall be presented to the magistrate. The illegal immigration status shall be relayed to ADC booking personnel, which has established policies and practices in place with ICE. If the magistrate orders the suspect to be released officers shall document the suspect’s identification information on a Mandatory Arrest Information Form.
c. NCIC hits are factors which may provide legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

9. Any time an officer has probable cause to believe a person is in violation of federal immigration law and the officer is NOT making a custodial arrest, the Mandatory Arrest Information Form shall be completed with as much information as possible. The Intel Unit shall forward the information to ICE. However, whenever a police offense report is written either for a “Criminal Immigration Arrest” or for any other offense, if there is probable cause to believe a subject identified in the police report is in violation of federal immigration laws the officer shall complete the Mandatory Arrest Information Form and submit the printed form to the PST or ADC staff after processing.

10. Officers shall provide to federal immigration authorities information about the immigration status of any person as permitted or required by law.

B. Office of Public Safety Communications (OPSC) Response:

1. When a QW (Query Wanted) transaction is conducted through NCIC, the Immigration Violator File (IVF) is automatically searched for records on criminal illegal aliens who have been deported for serious crimes. It also contains records of civil immigration violations or persons who have violated some section of the Immigration and Nationality Act.

2. OPSC shall, as requested, perform initial inquiries between the Department and the ICE LESC. Upon request, OPSC will perform an IAQ (Illegal Alien Query) through NLETS.

3. OPSC will assist members in the confirmation of criminal alien arrest warrants, in accordance with General Order 26.01 Jurisdiction and Arrest Procedures: General Guidelines (NCIC Hits). Once the identity of the person and the warrant or detainer is confirmed, the ICE LESC will be contacted for acceptance of a criminal hold on the suspect.

4. Requests for confirmation of active Prince William County warrants shall follow established policy, regardless of immigration status. Any suspected illegal immigration status shall be relayed to the arresting officer.

5. Citizens wishing to make a routine complaint of the illegal immigration status of an individual will be referred to the ICE public tip line (866-347-2423). The Police Department will not routinely document or follow-up on such information.

C. Prince William County Criminal Justice Academy (Academy) Responsibility:

1. The Academy’s role with regard to this General Order is to provide training to members in the Department’s Enforcement of Immigration Laws policy.

2. New recruits will receive initial training as a component of local training.
3. All sworn members will receive mandatory initial training. In-service training will be provided to members as deemed necessary.

D. Intelligence Unit’s Responsibility:

1. The Intel Unit will collect and store information pertaining to Suspected Illegal Aliens submitted on the Mandatory Arrest Information Form.

2. The Intel Unit will forward the Suspected Illegal Alien information to ICE.