



New Bedford Police Department Office of the Chief of Police

871 Rockdale Avenue, New Bedford, MA 02740
Phone: 508-991-6300

Jonathan F. Mitchell
Mayor

Jason Thody
Chief of Police

Derek J. Belong
Assistant Deputy Chief

Scott A. Carola
Assistant Deputy Chief

To: All Sworn Personnel

From: Jason Thody
Chief of Police *Jct*

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Subject: Guidance on Police Response to ICE Operations

We have recently experienced an increase in federal law enforcement operations in the city, accompanied by some community pushback. Most notably, Immigration and Customs Enforcement (ICE) operations have drawn local and national attention. This memo serves to inform officers and supervisors of the expectations when encountering these situations and to update everyone on the laws that govern our involvement.

Immigration enforcement authority rests exclusively with the federal government, and Massachusetts law (Lunn v. Commonwealth) guides local law enforcements limitations.

In *Commonwealth v. Lunn* (2017), the Massachusetts Supreme Judicial Court held that Massachusetts law does not provide law enforcement the authority to hold individuals solely based on a federal civil immigration detainer. An ICE civil detainer is not a judicial warrant; it is an administrative request from a federal agency. Holding an individual beyond their lawful release time solely based on an ICE detainer is considered an unlawful arrest under Massachusetts law. This includes final orders of removal Form I-205: Warrant of Removal/Deportation.

Immigration enforcement is not a function performed by local law enforcement authorities. That said, NBPD may be called to respond to locations where ICE is performing federal immigration enforcement activity. We are present to ensure public and agents' safety, provide information when available, de-escalate when possible, enforce state laws when warranted, and ensure order.

If ICE presents a judicially issued federal arrest warrant, officers should treat it the same as any other federal arrest warrant from agencies like the FBI, DEA, or U.S. Marshals. If an individual is suspected of a federal immigration-related crime (e.g., human trafficking under 8 U.S.C. § 1324), Massachusetts law enforcement may cooperate with ICE to the same extent they would cooperate with any other federal criminal investigation.

The Tenth Amendment to the U.S. Constitution establishes the principle of federalism, which protects state and local governments from being compelled to enforce federal laws. This principle, known as the anti-commandeering doctrine, has been reaffirmed by the U.S. Supreme Court in cases such as *Printz v. United States* (1997) and *Murphy v. NCAA* (2018), which held that the federal government cannot mandate state or local officials to administer or enforce federal regulatory programs, including immigration enforcement.

Officers cannot actively interfere with federal immigration enforcement operations or obstruct ICE agents in their lawful duties (18 U.S.C. § 111, 18 U.S.C. § 1505). While Massachusetts law enforcement is not required to participate in federal immigration enforcement, any actions that deliberately impede federal officers could expose officers or departments to legal liability.

While there is no set definition of a “sanctuary city”, New Bedford is not designated as such. The law allows departments to share information with ICE to the same extent they would with any other federal agency. The city has not created additional barriers to communications with ICE consistent with the department’s interaction with other outside law enforcement agencies.

While the mission and function of ICE is currently a contested, politically divided issue, our response and dedication to public safety cannot be. Our community and elected officials have varying opinions on ICE operations; however, as police officers, our role and mission are clear and are outlined below, as well as in the attached material.

Any time NBPD officers are called to respond to a federal immigration operation a supervisor must respond along with the primary units. These calls will most often involve agents in the field who are being surrounded or blocked by protesters. These incidents are happening more frequently and with added intensity.

If protestors are peacefully protesting and/or recording, that is their right. If they block vehicles, create safety hazards, interfere with law enforcement operations, or turn violent, we shall act to restore order, direct traffic, or enforce state law. Officers should prioritize the safety of everyone involved, including agents, protesters, and bystanders, while balancing lawful order with the public’s right to observe and speak.

While every situation could require a different approach, the following are steps for a typical response:

1. A supervisor and at least two officers shall be dispatched to the incident as a priority call. Supervisors shall notify the Chief of Police through the chain of command.

2. Officers and supervisors shall activate their body worn cameras consistent with NBPDPD policy and keep them activated throughout the response.
3. Respond to the scene and establish order. This may include separating individuals or groups, communicating with group leaders, gathering and providing clarifying information, blocking or re-routing traffic, de-escalation techniques, providing translation services, or making arrests.
4. Decisions shall be made based on the facts and circumstances present at the scene. Political and personal positions should never influence decisions or actions taken in an officer's official capacity.
5. Supervisors should meet with agents or supervisory agents to confirm that they are official ICE agents. Due to the varying vehicles, uniforms, masks, and markings (or lack of markings), it is often difficult to visually verify the legitimacy of the operation or agents. Incidents have occurred where ICE agents have been identified and their personal information publicly exposed. We do not need personally identifiable information, just verification that the operation and agents are official.
6. Provide space and opportunity for the public to protest and film, provided actions are lawful and do not interfere with ICE operations.
7. Federal law prohibits officers from actively interfering with or obstructing federal immigration enforcement operations.
8. Officers must fully document each incident, noting if NBPDPD was notified before the operation, who requested assistance, observations when arriving on scene, what actions were taken, and any arrests that occurred. The report should also indicate the time of arrival and the time the scene was cleared.

In preparation, supervisors and officers must be knowledgeable of state laws and limitations BEFORE responding to these incidents. Protestors and others may challenge an officer's authority and ability to take specific actions in order to obtain a sound bite or video clip where an officer is giving an unlawful order or misapplying a statute. Officers must be confident in their knowledge of laws, as well as when and how to apply them. This is critical in protecting our community and officers, as well as maintaining public trust and confidence. Officers are encouraged to consult with their supervisors and/or training staff to ensure they are appropriately prepared. Supervisors have been provided with additional information that will be used as roll-call training in the days that follow.

Our goal is to provide you with the information you need to confidently, safely, and effectively do your job. Please stay tuned for further information as it becomes available.