

**Proposed Vote of the Board of Selectmen
As of February 28, 2017**

Question of Approving a Policy on Immigration and Customs Enforcement Detainers and Related Immigration Enforcement Actions by the Federal Government.

The Board of Selectmen of the Town of Brookline, in consultation with the Police Chief and pursuant to authority granted under Massachusetts General Laws, c. 41, §97,ⁱ hereby adopts the following policies relative to the Brookline Police Department and the enforcement of federal immigration laws.

I. Special Order #2012-6.

Brookline Police Department Special Order #2012-6, to the extent that it is still in effect, is hereby rescinded, effective immediately.

II. Use of Town Resources for Immigration Enforcement.

No Brookline Police Officer or other Brookline Police Department personnel shall be authorized to perform any federal immigration law enforcement functions, including those specified in section 287(a) of the Immigration and Naturalization Act (INA); the Department and the Town of Brookline shall not enter into any memorandum of understanding or other agreement, written or oral, under section 287(g) of the INA, with the U.S. Attorney General, Immigration and Customs Enforcement, or any other federal agency for the performance by local law enforcement or other personnel of federal immigration law enforcement functions, including those specified in section 287(a) of the INA.ⁱⁱ

III. General Orders. The following policies shall be embodied in the General Orders of the Brookline Police Department, effective immediately:

1. All persons arrested shall be informed that if they are a foreign national they have the right to request the Department to contact their consulate. No person arrested shall be asked their immigration status unless the question pertains to a criminal investigation and the person has been read their Miranda rights.
2. No person shall be held in custody by the Department based on the existence of an Immigration and Customs Enforcement (“I.C.E.”) detainer. The Department shall adhere to General Order 3.0 pertaining to the arrest of persons.
3. Any person who is arrested by the Brookline Police Department shall be booked in accordance with pre-existing policy. If, after transmitting an arrestee’s fingerprints to the Massachusetts State Police Identification Unit, who transmits said fingerprints to the Federal Bureau of Investigation, I.C.E. files an immigration detainer, the arrestee shall be

made aware of the detainer and provided a copy. The arrestee shall also be made aware that the Brookline Police Department will not hold them in custody on the I.C.E. detainer if they post bail or are released on their own recognizance.

4. While the Department is prohibited from detaining persons on I.C.E. detainers, it is not prohibited from detaining an arrestee, regardless of their immigration status, for any lawful reason such as an arrest warrant.
5. The Department shall keep a record of all arrestees who have been the subject of an I.C.E. detainer after arrest by the Brookline Police Department. Included in the record shall be the following:
 - a. The person's name.
 - b. The charges or other grounds on which the person was arrested.
 - c. The bail set by the bail commissioner after arrest.
 - d. Whether the person was released from the Department after booking or whether they were transferred to court.
6. The Department, though not required to do so, is not prohibited or restricted, from sending to, or receiving from I.C.E., (formerly known as the Immigration and Naturalization Service), information regarding the citizenship or immigration status, documented or undocumented, of any person, as required by law.ⁱⁱⁱ
7. The Department shall provide a copy of the General Order pertaining to this policy and training on the procedures related to such General Order, to all police officers employed by the Brookline Police Department.

ⁱ **MA Gen. Laws, Chapter 41, Section 97: Police departments; establishment**

Section 97. In towns which accept this section or have accepted corresponding provisions of earlier laws there shall be a police department established under the direction of the selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation in an amount not in the aggregate exceeding the annual appropriation therefor. In any such town in which such appointments are not subject to chapter thirty-one, they shall be made annually or for a term of years not exceeding three years, as the selectmen shall determine, and the selectmen may remove such chief or other officers for cause at any time during such appointment after a hearing. The selectmen may make suitable regulations governing the police department and the officers thereof. The chief of police shall be in immediate control of all town property used by the department, and of the police officers, who shall obey his orders.

ⁱⁱ **INA: ACT 287 - POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES**
Sec. 287. [8 U.S.C. 1357]

→(a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant-

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and

(5) to make arrests-

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make

arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code), under the provisions of this Act, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28, United States Code) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code.

(c) Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this Act which would be disclosed by such search.

[implicates 8 USC, § 1373] →(d) In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)-

- (1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,
- (2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and
- (3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

(e) Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(f) (1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 240.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

→(g) (1) 1/ Notwithstanding section 1342 of title 31, United States Code, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to,

Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, (relating to compensation for injury) and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State-

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(h) 2/ 3/ An alien described in section 101(a)(27)(J) of the Immigration and Nationality Act who has been battered, abused, neglected, or abandoned, shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under section 101(a)(27)(J)(iii)(I) of such Act.

FOOTNOTES FOR SECTION 287

FN 1 Added by § 133 of IIRIRA , effective on the date of enactment.

FN 2 Section 826 of Public Law 109-162, dated January 5, 2006, added paragraph (i) to the Immigration and Nationality Act. Note: There is no paragraph (h).

FN 3 Section 6(g) of Public Law 109-271, dated August 12, 2006, redesignated section 287(i) as (h).

ⁱⁱⁱ 8 U.S. Code § 1373 - Communication between government agencies and the Immigration and Naturalization Service

→(a) In general. Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

→(b) Additional authority of government entities. Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government

entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries. The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104–208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009–707.)