



Massachusetts Chiefs of Police Association

Legal Advisory

Legal Guidance for Massachusetts Chiefs of Police

Cooperation with Immigration Officials

This document provides clear, practical guidance to Massachusetts police chiefs regarding their role in federal immigration enforcement. It incorporates the Massachusetts Supreme Judicial Court decision in Commonwealth v. Lunn, federal statutory obligations, constitutional considerations, and frequent issues that arise in local-federal cooperation.

This guidance is designed to ensure that **all Massachusetts police chiefs operate consistently with state and federal law** while also recognizing the practical realities and policy differences that may exist across municipalities and campuses.

Legal Framework Governing Local Law Enforcement & Immigration

Understanding the legal framework surrounding local and campus law enforcement's role in immigration is essential for ensuring that police departments operate within the boundaries of both state and federal law.

The Lunn Decision (2017)

In Commonwealth v. Lunn, the SJC 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.

Key Takeaway: If ICE provides only a civil detainer (without a judicial warrant), municipal and campus law enforcement in Massachusetts do not have the legal authority to detain the individual.

Federal Laws Affecting Local Law Enforcement's Role in Immigration

While immigration enforcement is primarily a federal responsibility, several federal statutes impact how local and campus law enforcement interact with federal immigration

authorities.

Locals Officers Cannot Obstruct or Interfere with ICE Operations

This is supported generally by the following federal statutes:

- 18 U.S.C. § 371 (Conspiracy to commit offense or defraud the U.S.)
- 18 U.S.C. § 111 (Assaulting, resisting, or impeding federal officers)
- 18 U.S.C. § 1505 (Obstruction of proceedings before federal agencies)

As a result:

- Officers **cannot actively interfere with federal immigration enforcement operations.**
- Officers should not obstruct ICE agents in their lawful duties (e.g., executing a valid federal arrest warrant).
- 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.**

Local & State Officers Cannot Be Forced to Enforce Federal Law

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. As a result, while Massachusetts law enforcement agencies **may choose to cooperate** with federal authorities in certain circumstances, they cannot be required to participate in federal immigration enforcement efforts or dedicate local resources to enforcing federal law.

Key Takeaway: While departments may choose to cooperate with ICE to a certain extent, they generally cannot be required to enforce federal immigration policy.

Distinguishing Between Civil & Criminal Immigration Detainers

One of the most critical distinctions to understand is the difference between civil immigration violations and criminal immigration offenses. Federal immigration law classifies many immigration-related matters as civil infractions rather than crimes, meaning that Massachusetts police officers have no authority to enforce them unless explicitly authorized by law. 8 U.S.C. § 1252c provides limited authority for local officers to arrest certain noncitizens who have previously been deported following a felony conviction, while 8 U.S.C. § 1324 imposes criminal penalties for offenses such as smuggling or harboring undocumented individuals. However, most immigration enforcement actions—including ICE detainers—are civil in nature,

which is why the Lunn decision prohibits local law enforcement from making arrests solely on the basis of civil immigration violations.

When Can Massachusetts Law Enforcement Act?

- If ICE presents a **judicially-issued federal arrest warrant**, law enforcement agencies 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.
- If ICE only presents a **civil detainer**, local law enforcement has no authority under Massachusetts law to hold the individual beyond their legal release date.

Key Takeaway: Massachusetts officers can cooperate with ICE on criminal matters but have no authority to detain individuals solely on civil immigration violations.

Practical Guidance for Massachusetts Police Chiefs

With the complex legal landscape surrounding immigration enforcement, it is essential for Massachusetts police chiefs to have clear, actionable guidance on how to navigate interactions with federal immigration authorities while remaining compliant with state and federal law.

Handling ICE Warrants & Requests for Assistance

- **Judicial Warrants:** Treat them like any other valid warrant. If an ICE warrant is issued by a judge, it should be enforced like any warrant from the FBI, ATF, or DEA.
- **Civil ICE Detainers:** These do not provide legal authority to detain individuals under Massachusetts law (Lunn). Officers should **not** hold individuals beyond their lawful release time unless a judicial warrant is provided.
- **Transfer of Custody:** If ICE requests that an individual be held for transfer to federal custody, officers should verify whether a **judicial warrant or valid federal criminal charge** exists before complying.

Information Sharing with ICE

- **Cooperation Permitted:** Departments **may** share information with ICE to the same extent they would with any other federal agency. Departments **must**, however, provide at least that level of information would be provided in response to a request under the Public Records Law.
- **Not Required to Collect Immigration Status:** Local police **are not required** to collect or maintain immigration status information.
- **Limits of 8 U.S.C. § 1373:** This statute **only** prohibits policies that restrict communication about immigration status; it does **not** require local departments to

actively report or enforce federal immigration laws.

Considerations for Sanctuary Cities

- **Sanctuary policies are legal under federal and state law** as long as they do not actively prohibit officers from communicating with ICE about immigration status.
 - **Departments should ensure that their policies align with Massachusetts law** and avoid practices that could lead to unlawful detention ([Lunn](#)).
 - **Local officials should be aware of potential federal scrutiny** of sanctuary policies but remain grounded in state law and constitutional protections.
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Key Takeaways for Massachusetts Police Chiefs

1. Massachusetts officers cannot hold individuals solely based on a civil immigration detainer ([Lunn](#)).
2. Federal law prohibits interfering with ICE operations, but Massachusetts officers are not required to participate in immigration enforcement.
3. Massachusetts police must distinguish between civil and criminal immigration matters.
4. Judicially-issued federal warrants should be treated the same as those from any federal agency.
5. Information sharing with ICE is allowed, and at the least, must align with the Public Records Law.
6. The Tenth Amendment generally protects Massachusetts law enforcement from being forced to enforce federal immigration laws.

Massachusetts police chiefs must ensure their agencies operate within the law while balancing local policies, community relations, and federal directives. By understanding the legal framework, departments can maintain consistency, protect officers from legal risk, and uphold public safety.

Special Considerations for Campus Law Enforcement Under FERPA

Campus police departments must carefully navigate the requirements of the Family Educational Rights and Privacy Act (FERPA), as well as state and institutional policies, when responding to requests for information from ICE. Below is a breakdown of what can and cannot be shared with ICE under FERPA.

What May Be Provided Consistent with FERPA

- **Law Enforcement Unit Records:** Records created and maintained by campus police for law enforcement purposes are not considered "education records" under FERPA. Examples include:
 - Police incident reports
 - Arrest records
 - Records of investigations conducted by the campus police

- Parking citations or records related to campus safety enforcement

These records may be disclosed to ICE without violating FERPA unless additional state laws or institutional policies impose restrictions.

- **Directory Information (If Not Opted Out):** Public colleges may disclose "directory information" without consent if:
 - The institution has designated certain categories of information as directory information (e.g., name, dates of attendance, enrollment status, major, degrees awarded).
 - The student has **not** opted out of directory information disclosures.

Before releasing this information, ensure compliance with the institution's directory information policy.

- **Responses to Criminal Warrants or Subpoenas:** FERPA allows the disclosure of personally identifiable information (PII) if required by a judicial order or lawfully issued subpoena.

Best Practice: Verify the warrant or subpoena is valid and document all disclosures made.

- **Health and Safety Emergencies:** If there is an articulable and significant threat to the health or safety of students or others, FERPA permits disclosures to appropriate parties (including ICE) without consent.

Example: If ICE provides credible evidence of an immediate threat, such as a planned violent act, information relevant to the emergency may be shared.

What May NOT Be Provided Consistent with FERPA

- **Education Records Without Consent or a Valid Exception:** Any information directly related to a student that is maintained by the institution, including:
 - Class schedules
 - Grades, transcripts, or academic performance data
 - Disciplinary records (unless the disciplinary case relates to a crime of violence or non-forcible sex offense and specific disclosure conditions are met)
 - Any other non-directory education record

This is not an exhaustive list as FERPA defines "education records" broadly.

- **Directory Information If the Student Opted Out:** If a student has opted out of directory information disclosures, the institution is prohibited from sharing even basic directory details (e.g., name, enrollment status) with ICE.

Directory information must be explicitly designated as such in the institution's FERPA policy. Institutions must have provided students the opportunity to opt out

of directory information disclosures.

- **Responses to Civil Immigration Detainers:** Under the Lunn v. Commonwealth decision in Massachusetts, campus police are not authorized to detain individuals solely on the basis of a civil immigration detainer.

ICE requests for detention or cooperation based on civil matters must be denied absent a criminal warrant.

- **Employment Records Related to Student Status:** FERPA covers employment records if the employment is contingent on the individual being a student (e.g., graduate teaching assistants, resident assistants).

These records are protected unless one of the FERPA exceptions applies.

Summary Table of FERPA-Compliant Information Sharing

Information Type	May Provide	May NOT Provide
Law Enforcement Records	Incident reports, arrests, and other records created by campus police	N/A
Directory Information	Name, enrollment status, major, etc., if student has not opted out	If the student has opted out
Education Records	Only with valid judicial order, subpoena, or health/safety emergency	Class schedules, grades, academic data, disciplinary records
Employment Records (non-student employees)	Non-confidential public records	Confidential employment details
Employment Records (student employees)	Only if directory information exception or other FERPA exception applies	Protected under FERPA if tied to student status
Civil Detainers	N/A	Campus police cannot act on civil detainers under <u>Lunn v. Commonwealth</u>

Conclusion

Navigating the intersection of local law enforcement and federal immigration enforcement requires a careful balance between legal compliance, operational clarity, and community trust. The Lunn decision makes it clear that Massachusetts police officers **do not have the authority to detain individuals solely based on ICE civil detainees**, while the **Tenth Amendment's anti-commandeering doctrine protects local agencies from being forced to enforce federal immigration laws**. At the same time, federal law prohibits **obstructing or interfering with ICE operations**, and Massachusetts law enforcement agencies may, at their discretion, **share information and cooperate with federal authorities to the extent permitted by law**.

Ultimately, each police department must develop policies that align with Massachusetts law, constitutional protections, and local priorities while ensuring **consistent and legally sound practices**. By distinguishing between **civil and criminal immigration matters**, properly handling **judicial warrants**, and ensuring that officers understand their **legal responsibilities and limitations**, Massachusetts law enforcement agencies can **protect public safety while minimizing legal risk**. Police chiefs are encouraged to consult with legal counsel regularly, stay informed about evolving legal standards, and prioritize transparency and consistency in their approach to federal immigration enforcement. Ensuring **lawful, fair, and practical policies** will help departments maintain both public confidence and operational integrity in an ever-changing legal and political landscape.

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