

No Más Polimigra Campaign

Proposed Improvements to VT's Fair and Impartial Policing Policy

FIPP Model Draft 8/13/21	Why provision fails to protect immigrants and how it should be strengthened	Recommended Language (substantially similar to language already adopted by 8 jurisdictions)
<p>VI.f. [Agency members] shall not propose granting ICE or CBP agents access to individuals in [Agency's] custody, unless agents have a judicially-issued criminal warrant or [Agency members] have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws. [emphasis added]</p>	<p>1) Due Process for Detainees</p> <p>This language was weakened in 2017 to accommodate threats from the Trump administration. It allows federal immigration authorities unrestricted access to individuals in police custody, so long as the request originates with the federal agency. The language should be strengthened to restrict access regardless of who proposes the interrogation. Vermont police stations should not be turned into holding cells for ICE.</p>	<p>[Agency members] shall not grant ICE or CBP agents access to individuals in [Agency's] custody, unless agents have a judicially-issued criminal warrant or [Agency members] have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws. [emphasis added]</p>
<p>V.d.iii. [Agency members] shall not presume that undocumented individuals present a risk of flight when assessing whether to seek continued custody under Vermont Rule of Criminal Procedure 3. Instead, such judgments shall be made on the facts presented in each case.</p> <p>II.c. Personal characteristics shall not be used as a reason to arrest someone instead of citing them, and personal characteristics shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.</p>	<p>3) Non-discrimination in detention discretion</p> <p>Officers deciding whether to arrest or cite an individual suspected of a crime should not base this decision on the person's real or presumed immigration status.</p> <p>The proposed language instructs officers not to presume that an undocumented person is a flight risk, but this suggestion does not provide sufficient protection.</p> <p>Immigration status should not be a factor in a Rule 3 determination. It should be treated the same as personal characteristics such as race and nationality.</p>	<p>Personal characteristics and/or immigration status shall not be used as a reason to arrest someone instead of citing them, and personal characteristics and/or immigration status shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.</p>

<p>VI.h. [Agency members] shall not provide federal immigration authorities any information about an individual other than that regarding their citizenship or immigration status, unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.</p>	<p>4) Restricting instances of collaboration with immigration agents</p> <p>The three carve-outs that allow for information sharing are poorly defined and overly broad. We have seen officers exploit these loopholes time and again to justify collaboration with immigration agents. The policy should hold a much higher standard to justify communication in order to substantially narrow circumstances when collaboration occurs.</p>	<p>No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.</p>
<p>VI. [Agency members] have no legal obligation to communicate with federal immigration authorities. Two federal statutes, 8 U.S.C. §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with federal immigration authorities regarding an individual's citizenship or immigration status.</p> <p>Savings Clause: Pursuant to 8 U.S.C §§ 1373 and 1644, [Agency] may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities' information regarding the citizenship or immigration status, lawful or unlawful, of any individual. [Agency] also may not prohibit, or in any way restrict, the sending, receiving, maintaining, or exchanging information regarding the immigration status of any individuals. Nothing in this policy is intended to violate the lawful requirements of 8 U.S.C §§ 1373 and 1644.</p>	<p>5) Restricting the type of information shared</p> <p>By dividing information into two categories – related or unrelated to citizenship and immigration status – and allowing for unfettered communication regarding the former, the policy loses its consistency and integrity.</p> <p>This division has been in place since 2017 and we have yet to see a documented case where an officer communicates with a federal immigration agent to provide information related to an individual's immigration status and then stops themselves from sharing additional information. The distinction has not worked in practice.</p> <p>So long as the policy opens the door for officers to contact federal agents without restriction, Vermont law enforcement will continue to turn immigrant community members over to ICE and Border Patrol for detention and deportation.</p> <p>This untenable division is also unnecessary. The federal statutes cited are unconstitutional violations of the Tenth Amendment's anti-commandeering clause. Since April, the previous DOJ conditions requiring applicants certain grant funding to certify compliance with the statutes are no longer active. A simple statement of intent with regard to federal law should replace the current language.</p>	<p>Nothing in this policy is intended to violate federal law.</p>

V.b. [Agency members] do, however, have the authority to enforce federal *criminal* immigration law. Unauthorized border crossing may be a *criminal* violation and may be subject to investigation, so long as [agency members] have reasonable suspicion that the crime has occurred (for example, witnessing the unlawful entry).

c. The following do not on their own establish reasonable suspicion of a criminal offense and are not sufficient to warrant an investigation:

- i. Personal characteristics,
- ii. Immigration status,
- iii. Presence in the United States without authorization, and
- iv. Proximity to the border.

These elements in combination with others may contribute to reasonable suspicion. As noted in Section II(b), personal characteristics may be taken into account only where there is credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents and is combined with other identifying information.

2) Closing the Border Crossing Pretext

Though the proposed provision on federal criminal immigration law is a significant improvement on current language, it still leaves immigrant communities at risk.

Some officers looking to get around prohibitions on investigating immigration status may use suspicion of “unlawful entry” as a pretext to engage in the same line of questioning. Other officers may genuinely seek to investigate a criminal offense but due to lack of training and expertise on federal immigration law, they may end up turning immigrants over to ICE for purely civil immigration enforcement purposes.

Rather than ask officers to decipher a complex provision with high risk for error or abuse, the policy should make clear that enforcement of federal criminal immigration law is not a priority for Vermont law enforcement and that officers should use their lawful discretion to only investigate such acts in extremely limited circumstances.

Federal criminal immigration law is not an enforcement priority for [Agency.] Accordingly, [Agency members] shall not expend agency resources on the investigation of “unlawful entry” or “unlawful reentry” offenses unless [Agency member] directly witnesses the commission of the crime. [Agency members] shall not make warrantless arrests, detain individuals, or facilitate the detention of individuals on suspicion of such offenses unless the suspect is apprehended in the process of entering the United States without inspection.