

APPENDIX

**APPENDIX A — OPINION AND ORDER OF THE
STATE OF NEW YORK, COURT OF APPEALS
DATED June 11, 2020**

STATE OF NEW YORK
COURT OF APPEALS

OPINION

No. 47

The People &c.,

Appellant

v.

Limmia Page,

Respondent.

Daniel J. Punch, for appellant.

Robert L. Kemp, for respondent.

FEINMAN, J.:

Using the emergency lights on his unmarked Chevrolet Tahoe, a federal marine interdiction agent with the United States Customs and Border Protection (CBP) stopped the driver of a vehicle in which defendant was a passenger for driving dangerously on a public highway in Erie County. After pulling the driver over, the

agent waited in his truck for members of the Buffalo Police Department who, upon arriving at the scene, searched the vehicle and arrested defendant for criminal possession of a weapon. The question on this appeal is whether the courts below properly relied on our decision in *People v Williams* (4 NY3d 535 [2005]) in granting defendant's motion to suppress the evidence recovered. Because we conclude that *Williams* is inapposite, we reverse.

I.

One June evening in 2017, the on-duty agent had just concluded a "maritime patrol" and was merging his unmarked Tahoe onto Interstate 190 in Erie County on his way to make security checks at the local marinas. The Tahoe was equipped with an emergency radio as well as "red and blue emergency lights in the grille of the front of the truck" and "a little light bar inside the windshield," but did not carry the full complement of lights and sirens typically found on a police vehicle. As the agent was merging, he suddenly noticed a pair of headlights, which belonged to a vehicle occupied by defendant and two others, "coming up from behind in the rearview mirror." The driver of the vehicle rapidly closed in behind the agent, then suddenly hit the brakes to avoid rear-ending the Tahoe. Although the driver pulled back, he started weaving between the right and left lanes and then passed the agent's Tahoe on the left, leading to a second near-collision with another car that was merging from Route 198 onto Interstate 190.

The vehicle continued to drive erratically, leading to a third near-collision, and the agent followed. After attempting to contact the State Police on the radio equipped

in his Tahoe, the agent dialed 911 on his personal phone to report the incident. As he and defendant's vehicle exited the freeway, the agent became increasingly concerned for public safety and "energized" the lights on his Tahoe, prompting the driver to pull over. After relaying their location to the 911 operator, the agent sat in his parked Tahoe and waited roughly five minutes for the police to arrive.

An officer of the Buffalo Police Department arrived and spoke to the agent before approaching defendant's vehicle. As a safety measure, the agent accompanied the lone officer to defendant's car and saw him speaking with the occupants, but he did not speak with defendant or anyone else in the vehicle directly. The agent left the scene when additional Buffalo police officers arrived and told him he was no longer needed. The agent never made any further statements to the Buffalo Police Department regarding recommended charges that should be filed, nor did he issue any traffic tickets in conjunction with his stop. After the agent's departure, the police searched the vehicle and recovered a gun. All three occupants were arrested and defendant was charged with criminal possession of a weapon in the second degree.

Before trial, defendant moved to suppress the gun as stemming from an unlawful seizure. Defendant argued both that the agent was not vested with peace officer powers pursuant to CPL 140.25 and, relying on our decision in *Williams*, that the stop was not a valid citizen's arrest because the agent used his emergency lights to effectuate the stop. Supreme Court granted defendant's motion. The court concluded first that as a "federal agent employed by Customs and Border Protection," the agent and other "immigration and naturalization special agents" pursuant to CPL

2.15 had “the powers of a peace officer” within the meaning of CPL 140.25 to make a warrantless arrest. However, because “[a]t the time of the stop [the agent] was not acting pursuant to his special duties” (see CPL 140.25 [1] [a]), the court reasoned that the stop was not sustainable pursuant to that statute. “The question then becomes,” Supreme Court explained, whether “this stop [is] considered a citizen’s arrest pursuant to CPL 140.30.” The court concluded that suppression was warranted under *Williams* because, by activating his emergency lights to pull the driver of the vehicle over and approaching the car with the Buffalo police officer, the agent “acted under the color of law with all the accouterments of official authority and could not effect a citizen’s arrest.”

Upon the People’s appeal, the Appellate Division unanimously affirmed (166 AD3d 1472 [4th Dept 2018]). A Judge of this Court granted the People’s application seeking leave to appeal (33 NY3d 979 [2019]).

II.

Despite crediting the agent’s testimony that he observed the vehicle driving dangerously, which typically suffices to justify an “arrest by any person” (see CPL 140.30 [1]), Supreme Court nevertheless analogized this case to our decision in *Williams* and held that based on the methods the agent used to pull the vehicle over, the stop was not a valid citizen’s arrest. The Appellate Division employed similar reasoning, relying solely on *Williams* as the basis for suppression despite finding that defendant’s vehicle was “engaging in dangerous maneuvers and allegedly committing several violations of the Vehicle and Traffic Law” (166 AD3d at 1472). Therefore, we

are presented only with the legal question of whether the courts below correctly applied *Williams*.¹

In *Williams*, two officers of the Buffalo Municipal Housing Authority were on patrol in one of that city's housing projects when they saw the defendant allegedly driving without a seatbelt down a street outside the officers' geographical jurisdiction (4 NY3d at 537). Significantly, “[u]niformed housing guards of the Buffalo municipal housing authority” are expressly included in the CPL as “persons designated as peace officers” (CPL 2.10 [17]). The officers stopped the defendant, ordered him to step out of his vehicle, and began questioning him. When “defendant replied in a manner that led the officer to suspect that defendant had an object in his mouth,” the officers asked him to open it, revealing a plastic bag of crack cocaine (*id.*). The defendant shoved one of the officers and fled but was quickly apprehended by them and indicted for criminal possession of a controlled substance (*id.*). Before trial, the defendant moved to dismiss the charges, which motion Supreme Court granted, and the Appellate Division affirmed (*see id.* at 537-538).

On appeal, we affirmed. The People “concede[d] that the alleged traffic infractions and the seizure of defendant occurred outside the geographical

¹ The dissent claims we are instead concluding that “a law enforcement official who is not a police officer or peace officer may impersonate one in order to conduct an arrest” as part of our supposedly broader effort to “justify a questionable stop” (dissenting op at 1-2, 9). However, as the dissent itself notes, the parties do not dispute whether the agent's actions here even meet the criteria of a full arrest, as opposed to a “stop or other lesser detention” (dissenting op at 2). Nor does defendant raise any claims that the agent's conduct violated his state or federal constitutional rights. In this regard, we address only whether *Williams* governed defendant's suppression motion.

jurisdiction of the Buffalo Municipal Housing Authority peace officers” but argued that the stop and warrantless arrest nevertheless “was the equivalent of a citizen’s arrest” under CPL 140.30. In rejecting that claim, we explained that the CPL clearly distinguishes between the warrantless arrest powers of peace officers and private citizens, and that “there are also functional differences” which limit the places and circumstances under which peace officers can use their police powers (*id.* at 538; compare CPL 140.25 and 140.27 with 140.30, 140.35 and 140.40). Thus, “[t]o accept the People’s argument and treat a peace officer as an ordinary citizen would render these purposefully drawn differences—and the plain language chosen by the Legislature—meaningless” (*id.*). In holding that the officers’ law enforcement actions did not constitute a valid citizen’s arrest under CPL 140.30, we clarified that “[t]his, of course, is not to say that an individual employed as a peace officer may never under any circumstances effect a citizen’s arrest” (*id.* at 539 [emphasis added]). Rather, we concluded “only that a peace officer who acts under color of law and with all the accouterments of official authority cannot” (*id.* [emphasis added]).

Thus, because the warrantless arrest powers of peace officers are so clearly delineated in the CPL, our holding in *Williams* was based not only on the housing authority officers’ specific conduct in enforcing a traffic infraction outside of their geographical jurisdiction,² but also on the conclusion that the entire statutory scheme would be frustrated if they could, *as peace officers*, conveniently avail themselves of

² We note that these geographical limitations do not apply to a felony committed in the officer’s presence (CPL 140.25 [4]).

the citizen's arrest statute in lieu of their already-tailored arrest powers (*id.*).³

Although the Appellate Division in this case declined to address this issue directly (*see* 166 AD3d at 1473-1474 [“Even assuming, arguendo, that the agent . . . is not a peace officer and does not possess the powers thereof . . . the court properly determined that the agent did not effect a valid citizen’s arrest”] [emphasis added]), we conclude that whether the federal marine interdiction agent in this case is a peace officer is ultimately critical to determining whether *Williams* applies under the circumstances.

³ Relying heavily on the titles of the relevant provisions rather than their substantive text, the dissent argues that *Williams* turns merely on “whether the individual conducting the stop or arrest conveys the appearance of ‘acting . . . as a police officer or a peace officer’” (dissenting op at 6-7). Of course, “the text of the statute must take precedent over its title,” for “[w]hile a title or heading may help clarify or point the meaning of an imprecise or dubious provision, it may not alter or limit the effect of unambiguous language in the body of the statute itself” (*Squadrito v Griebsch*, 1 NY2d 471, 475 [1956]). In cherry-picking one word (“acting”) from the titles of just two of these provisions (CPL 140.35, 140.40), the dissent misconstrues the scope of our holding in *Williams*, which only noted the distinctions in the statutory headings to broadly conclude that “[t]he Criminal Procedure Law differentiates between the respective powers of arrest possessed by peace officers and private citizens” (4 NY3d at 538 [citations omitted]).

Furthermore, our analysis in *Williams* was framed by the People’s argument that the arresting officers could invoke CPL 140.30 to circumvent their limited arrest powers under CPL 140.25, which the People conceded did not apply because “the seizure of defendant occurred outside the[ir] geographical jurisdiction” (*see id.*). We held that the arresting officers could not invoke section 140.30, because to “treat a peace officer as an ordinary citizen” under the circumstances would render the distinctions drawn by the substantive text of the statutory scheme “meaningless” (*id.* at 539 [emphasis added]). In other words, before determining whether the arresting officers were “acting” as peace officers outside their limited jurisdiction, it was necessary to determine first whether they were, in fact, peace officers.

Whether the agent in this case is a peace officer depends, of course, on whether the CPL defines him as such. “Normally, the designation of ‘peace officer’ is given to a narrowly defined group of individuals who are not necessarily working in general law enforcement but who, when working pursuant to their ‘special duties’ or ‘geographical area of employment,’ have a need for limited police powers” (William C. Donnino, Practice Commentaries, McKinney’s Cons Laws of NY, CPL 140.25). Because these arrest powers are conferred on those whose job is not policing *per se*, the definition of “peace officer” is carefully circumscribed in the CPL: although CPL 2.10 lists roughly 85 different positions that constitute a peace officer, the statute is clear that “only the following persons [listed under the statute] shall have the powers of, and shall be peace officers” (emphasis added).

Unlike the “[u]niformed housing guards of the Buffalo municipal housing authority” from *Williams*, federal agents are not expressly included in the CPL 2.10’s exclusive list of “persons designated as peace officers.” Yet under CPL 2.15, certain “federal law enforcement officers” are accorded limited peace officer powers (see CPL 140.25). We must therefore determine whether CPL 2.15 contemplates marine interdiction agents as “federal law enforcement officers.”

On its face, CPL 2.15 does not include “marine interdiction agents” as among the “federal law enforcement officers” awarded certain peace officer powers under CPL 140.25. The statute does, however, include “United States Customs and Border Protection Officers and United States Customs and Border Protection Border Patrol agents” (CPL 2.15 [7]). Testifying for the People at the underlying suppression

hearing, the agent in this case explained that there are three entities that fall under the umbrella of CBP: border patrol, air and marine operations, and the office of field operations. As a member of air and marine operations, the agent claimed that he “ha[s] both authorities of border patrol and office of field operation[s] but [was] not in the verbiage of the New York State Peace Authority.” Defendant nevertheless argues that, because the agent is generally employed by CBP, his position falls within CPL 2.15 (7).

We reject defendant’s overly expansive interpretation of the statute. “As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself” (*People v Golo*, 26 NY3d 358, 361 [2016], quoting *Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY3d 577, 583 [1998]). In general, CPL 2.10 and 2.15 are exclusive lists, describing with relative precision the positions which meet the statutory definition of “peace officer” and “federal law enforcement officer,” respectively. Subsection (7) of CPL 2.15 itself includes only two positions: CBP “Officers” and “Border Patrol agents.” Meanwhile, other subsections of the statute either broadly describe an agency’s membership (see, e.g., CPL 2.15 [10] [“United States probation officers”]), or are careful to specify which members within an agency are included (see, e.g., CPL 2.15 [14] [“Internal Revenue Service special agents and inspectors”] [emphasis added]). We have consistently interpreted statutes such as these under the maxim *expressio unius est exclusio alterius* such that “where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted

or not included was intended to be omitted or excluded" (McKinney's Cons Laws of NY, Book 1, Statutes § 240; *see Town of Aurora v Village of E. Aurora*, 32 NY3d 366, 372-373 [2018]). Here, if subsection (7) were intended to refer to *all* CBP agents, including those employed with air and marine operations, the Legislature would not have used the term "Border Patrol" as a qualifier in the statutory text, and it would not have clarified that CBP "Officers" are peace officers as well. Although we are not bound by the agent's testimony in our interpretation of the statute, his assessment of CBP's structure nevertheless comports with the plain text of CPL 2.15 (7) and supports our conclusion that his position falls outside the language enacted by the Legislature (*see also* 8 CFR 287.5, 287.8 [setting forth regulations for all immigration officers and separately listing "Border patrol agents," "air and marine agents," and "CBP officers"]).

We acknowledge that, as originally written, CPL 2.15 broadly designated all "United States Customs Service special agents, inspectors and patrol officers" as among the "federal law enforcement officers" with peace officer powers. Then, in 2002, "[t]he Department of Homeland Security was created . . . to re-organize several federal agencies after the 9/11 attacks," including the US Customs Service as well as Immigration and Naturalization Service (Letter of Support, Bill Jacket, L 2014, ch 262 at 6; *see* Div of the Budget Bill Memorandum, Bill Jacket, L 2014, ch 262 at 8). To that end, in 2014 the Legislature made "technical" amendments to CPL 2.15 (3) and (7), relocating certain CBP agents to the provision governing Immigration and Customs Enforcement agents and officers, while modifying the original CBP

provision to its current form, covering only CBP “Officers” and “Border Patrol agents” (L 2014, ch 262). Regardless of whether the omission of air and marine operations from these amendments was intentional, concluding that the Legislature intended to include marine interdiction agents in the statute’s current list of “federal law enforcement officers” would require us to read a specific job title not expressly present in the plain text into a statutory scheme that otherwise precisely delineates which of these federal employees are granted special authority under New York law. Inasmuch as “[w]e must read statutes as they are written,” we decline to construe CPL 2.15 as including more positions than those the Legislature has listed therein (*People v Kupprat*, 6 NY2d 88, 90 [1959]; see *People v Tychanski*, 78 NY2d 909, 911 [1991]).

III.

Because the agent who stopped defendant in this case is not considered a federal law enforcement officer with peace officer powers pursuant to CPL 2.10 and 2.15, he could not have improperly circumvented the jurisdictional limitations on the powers reserved for those members of law enforcement under CPL 140.25, as the peace officers in *Williams* did. In other words, the agent’s conduct here did not violate the Legislature’s prescribed limits on a peace officer’s arrest powers because he is not, in fact, a peace officer.

Defendant nevertheless notes, as the Appellate Division did, that a private citizen may neither “display . . . emergency lights from his or her private vehicle,” nor “falsely express by words or actions that he or she is acting with approval of authority of a public agency or department with the intent to induce another to submit to such

pretended official authority or to otherwise cause another to act in reliance upon that pretense" (166 AD3d at 1474, citing Vehicle and Traffic Law § 375 [41], Penal Law § 190.25 [3]).⁴ But aside from the clear limits as to the justifiable use of physical force that may be applied during an arrest by a private citizen (CPL 35.30 [4]; CPL 140.35 [3]), as well as the requirement that "[s]uch person must inform the person whom he [or she] is arresting of the reason for such arrest unless he [or she] encounters physical resistance, flight or other factors rendering such procedure impractical" (CPL 140.35 [2]), nothing in the citizen's arrest statutes themselves set forth the methods that must be employed when, as here, a crime is committed in the responding citizen's presence (see CPL 140.30, 140.40; *People v Foster*, 10 NY2d 99, 102-103 [1961]).⁵ We reiterate that whether this stop comported with constitutional principles or the express terms of the arrest statutes is simply not before us, as defendant failed to raise any such arguments before the suppression court.

⁴ The dissent appears to be concerned that these statutes are insufficient to dissuade citizens who witness crimes from nevertheless "pretending to be . . . undercover police officer[s]" (dissenting op at 9). Whether these citizens are undeterred by what the dissent views as a "slight risk" (dissenting op at 8) of punishment for a class A misdemeanor is best reserved for the Legislature, which has the power to amend the arrest statutes and place additional constraints on a citizen's ability to effect an arrest. We, however, are mindful that "a court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact" (*Chemical Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 394 [1995] [internal quotation marks and citation omitted]).

⁵ Despite these clear limitations on the circumstances in which a citizen may effect an arrest under CPL 140.30, the dissent reads our holding as an undue "expansion" of the statute and the powers prescribed therein, going so far as to link this case to other incidents involving the use of deadly physical force against unarmed citizens (dissenting op at 7-8). Of course, the circumstances of this encounter are markedly different from those cases, each of which occurred in other states carrying their own unique provisions.

The agent in this case is not a peace officer under the CPL because CPL 2.15 does not include marine interdiction agents. Thus, our decision in *Williams*—on which the courts below relied in granting defendant's suppression motion—is inapposite. Accordingly, the order of the Appellate Division should be reversed, defendant's motion to suppress denied, and the case remitted to Supreme Court for further proceedings in accordance with this opinion.

FAHEY, J. (dissenting):

I dissent. This decision expands the ability of law enforcement officials to effect arrests that they have no authority to make, under the guise of a citizen's arrest. By holding that a law enforcement official who is not a police officer or peace officer may impersonate one in order to conduct an arrest, the majority undermines the rationale of our decision in *People v Williams* (4 NY3d 535 [2005]), that an arrest outside an official's authority cannot be justified by calling it a citizen's arrest. Here, the federal agent who stopped the motor vehicle in which defendant was a passenger acted in the manner of a police officer or peace officer when he activated emergency lights on his sports utility vehicle. For this reason, the agent was not carrying out a citizen's arrest under *Williams* and the fruits of the illegal traffic stop must be suppressed. I would affirm.

I.

As the parties frame the issue, the sole question is whether the federal agent conducted a lawful citizen's arrest under the Criminal Procedure Law. The parties do not dispute that the agent's conduct may be considered an arrest, rather than merely a stop or other lesser detention, for the purposes of determining whether it is a valid citizen's arrest. The parties also do not dispute that the power of a citizen's arrest extends to a citizen who observes a lesser offense such as a traffic violation (see 1980 NY Op [Inf] Atty Gen 187, 1980 NY Op [Inf] Atty Gen 190, citing *People v Nagell*, 23 Misc 2d 452 [1960]; Note, The Law of Citizen's Arrest, 65 Colum L Rev 502, 503 & n

11 [1965]; *Sutton v Evans*, 4 AD2d 580, 581 [1st Dept 1957], *appeal dismissed*, 7 NY2d 741 [1959]). Moreover, although the authority to conduct a citizen's arrest does not authorize an investigative stop, the parties do not raise the issue whether a person may be arrested, following a traffic stop effected by a private citizen, for an offense other than the one that justified the stop.

II.

I would adopt the Appellate Division's rationale and affirm, in accordance with the statutory scheme governing citizen's arrests, as interpreted by this Court. A brief survey of the historical background is necessary.

The right or privilege of a citizen to perform an arrest arose in medieval England, at a time when law enforcement entities were not yet organized or widespread and methods of pursuing fugitive offenders were scarce. Citizens had not only the right to arrest others who committed crimes but the affirmative duty to participate in apprehending a criminal "when the 'hue and cry' was raised" (Ira P. Robbins, *Vilifying the Vigilante: A Narrowed Scope of Citizen's Arrest*, 25 Cornell J L & Pub Pol'y 557 [2016], quoting Statute of Winchester 1285, 13 Edw 1 c 1-6 [1285], reprinted in George Burton Adams & H. Morse Stephens eds., *Select Documents of English Constitutional History* 77-78 [1901]). As the English common law developed in tandem with greater urbanization and the expansion of police forces, distinctions arose between arrests performed by a private citizen and those performed by a police or peace officer. A private citizen was permitted to arrest another for a crime

committed in the citizen's presence but could "be held liable for false imprisonment if no crime was in fact committed" (Robbins, *Vilifying the Vigilante* at 564).

In the United States, some states recognized a common law right of citizen's arrest, Massachusetts doing so in 1850 (*see Rohan v Sawin*, 59 Mass 281 [1850]). Again, clear lines were drawn between the principles authorizing citizen's arrest and those governing arrests by police or peace officers. In Massachusetts, for example, the Supreme Judicial Court has held that a private person may not arrest a suspect for a misdemeanor because that "might . . . encourage vigilantism and anarchistic actions" (*Commonwealth v Grise*, 398 Mass 247, 251, 496 NE2d 162, 165 [1986] [internal quotation marks omitted]). Other states codified the principles. Under California's statutory scheme, for example, a citizen may arrest another for any "public offense committed or attempted in [the citizen's] presence" (Cal Pen Code § 837 [1]) or for a felony under broader circumstances (*see id.* [2], [3]).

In New York, the Criminal Procedure Law permits "any person [to] arrest another person (a) for a felony when the latter has in fact committed such felony, and (b) for any offense when the latter has in fact committed such offense in his presence" (CPL 140.30 [1]). In other words, a private citizen "may arrest for an offense only when the defendant has in fact committed it . . . and for an offense of less than felony grade only when the defendant has in fact committed the offense in his presence" (Commission Staff Notes, CPL 140.30). The statute, enacted in 1970, echoed the prior law (former Code Crim Proc § 183), enacted in 1881 (and revised in the 1960s), which provided that "[a] private person may arrest another, . . . [f]or an offense, committed

or attempted in [that person's] presence" or "[w]hen the person arrested has committed a felony" (former Code Crim Proc § 183 [1967]).¹ A person who made a citizen's arrest for a felony that "had never been committed" or for a misdemeanor that had not been committed or had occurred outside the citizen's presence would be "guilty of a false imprisonment" (*McLoughlin v New York Edison Co.*, 252 NY 202, 205 [1929]).

The context of CPL 140.30 is key to its interpretation. Article 140 of the Criminal Procedure Law, which governs arrests without a warrant, includes several subdivisions governing warrantless arrests "by police officer" or "by peace officer" (see CPL 140.10–140.27); CPL 140.30 itself; and two subdivisions concerning warrantless arrests "by [a] person acting other than as a police officer or a peace officer" (CPL 140.35 [when and how made]; CPL 140.40 [procedure after arrest]).² CPL 140.30, 140.35, and 140.40 govern citizen's arrests.

In *People v Williams*, this Court interpreted this statutory scheme to mean "that the authority to make a citizen's arrest extends only to a 'person acting other than as a police officer or a peace officer'" (*Williams*, 4 NY3d at 538 [emphasis in original] [citations omitted]). We held that two peace officers, employed by a Housing Authority but acting outside their geographical area of employment when they stopped a motor vehicle and questioned the driver, could not justify their actions as

¹ The Commission Staff observed that "[t]he significance of this subdivision attaches not so much to rare arrests by ordinary private citizens as to arrests by police officers in localities where they are not authorized to act as such and, hence, are relegated to private citizen standards" (Commission Staff Notes, CPL 140.30).

² Other provisions, not pertinent here, follow CPL 140.40.

a citizen's arrest. Because the two individuals were acting "as a police officer or a peace officer" (*id.*, quoting CPL 140.35, 140.40) or, as we put it, "act[ing] under color of law and with all the accouterments of official authority" (*id.* at 539), they could not execute a citizen's arrest.

In the appeal before us, the dispositive question is therefore whether the federal agent was acting with the accouterments — the outward characteristics — of a police officer or peace officer within the meaning of *Williams*. Here, an on-duty federal agent, driving an SUV, pursued another driver on an interstate highway and on city streets, and then activated emergency lights to stop the other car. In these circumstances, a reasonable person would think that the individual in the SUV was a police officer or peace officer, not a citizen attempting to make an arrest. The record supports the lower courts' conclusion that the agent acted under color of law and with the outward characteristics of official authority. Indeed, it would strain credulity to reach any other conclusion.

The majority interprets *Williams* to mean that the restriction of citizen's arrests set out in that decision applies only to individuals who actually are peace officers: a convenient but inaccurate conclusion. In *Williams*, this Court relied on the language "acting other than as a police officer or a peace officer," which occurs in the titles of the pertinent statutes, CPL 140.35 (Arrest without a warrant; by person acting other than as a police officer or a peace officer; when and how made) and CPL 140.40 (Arrest without a warrant; by person acting other than as a police officer or a peace officer; procedure after arrest). Notably, the statutes are not headed "Arrest

without a warrant; by person who is not a police officer or a peace officer.” Moreover, the *Williams* Court deliberately selected two phrases — “color of law” and “all the accouterments of official authority” (*Williams*, 4 NY3d at 539) — that denote the outward appearance of authority.

The test, as the *Williams* Court understood it, is whether the individual conducting the stop or arrest conveys the appearance of “acting . . . as a police officer or a peace officer.” Whether the individual is technically a peace officer under the Criminal Procedure Law is not to the point.³ The purpose of the statutory scheme, as interpreted in *Williams*, is to deter vigilantism and ensure that those whom a society has chosen to protect citizens from crime may readily be identified as such. In contrast, a person carrying out a citizen’s arrest must do so without pretense of other authority.

The majority’s reading of *Williams* results in the absurd state of affairs that a law enforcement official, acting outside the official’s geographical area of employment, may not use emergency lights to effect a traffic stop, if the official is considered a peace officer, but is permitted to use emergency lights to effect a traffic stop if the official is not a peace officer. There is no conceivable policy justification for such a mismatch.

³ Given my analysis, I need not say whether I agree with the majority that the federal agent was not a peace officer under CPL 2.15 (7) (see majority op at 8-11).

III.

Our recent national history is fraught with difficulties in race relations, amidst a cultural context in which there is a sharp division over the use of guns. This would surely justify caution in this area, rather than an expansion. Recent years have seen a spate of incidents in which self-proclaimed law enforcement officials, such as neighborhood watch group or homeowners' association members, and similar vigilantes have engaged in aggressive conduct, often with tragic consequences (see *e.g.*, Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, NY Times, July 13, 2013; Richard Fausset, *2 Suspects Charged With Murder in Ahmaud Arbery Shooting*, NY Times, May 8, 2020; Mariel Padilla, *Black Deliveryman Says He Was Blocked and Interrogated by White Driver*, NY Times, May 18, 2020). In some cases, citizen's arrest laws have been invoked as a possible bar to prosecution (see *e.g.*, Frances Robles, *The Citizen's Arrest Law Cited in Arbery's Killing Dates Back to the Civil War*, NY Times, May 13, 2020). The expansion of citizen's arrest jurisprudence to amplify the authority of law enforcement officials who are not police or peace officers is an egregious mistake.

The majority's analysis has another, equally if not more disturbing, natural consequence. According to it, any citizen who is not a police or peace officer, even one who has no law enforcement training or qualification whatsoever, falls outside the *Williams* restrictions. Under this logic, a private citizen who has illegally installed emergency lights in a private vehicle may roam the streets, pulling over drivers for perceived traffic violations. If successful in stopping a driver who is then arrested by

the police, the vigilante may possibly be prosecuted at the discretion of the authorities (the same authorities who have exploited the stop), but the constitutional protections of the Fourth Amendment would not apply.

The majority suggests that such vigilantism will be deterred because a private citizen who activates flashing lights to command the stop of a vehicle violates the law (*see* majority op at 11-12, citing Vehicle and Traffic Law § 375 [41]; Penal Law § 190.25 [3]). Of course, the federal agent in this case was not deterred, even though his conduct could in principle have subjected him to personal criminal liability. Generally, the slight risk of incurring a criminal prosecution for impersonating an officer in order to effect an arrest would not deter a private citizen who is able and inclined to apprehend someone by that method. Indeed, a citizen would likely be encouraged in effecting a citizen's arrest by the thought that pretending to be an undercover police officer would facilitate subduing the arrestee.

In short, it was proper for the *Williams* Court to emphasize the outward characteristics of official authority, rather than the technical definition of peace officers on which the majority now relies, and to provide a more powerful deterrent to vigilantism in the suppression of the fruits of such illegal conduct. In its attempt to justify a questionable stop, the majority has created a dangerous precedent.

IV.

I would reject the People's alternative contention that the physical evidence in this case should not be suppressed even if the stop was illegal.⁴ Suppression is required when the government action violated a statute and "the principal purpose of [that] statute is to protect a constitutional right" (*People v Greene*, 9 NY3d 277, 280 [2007]; *see e.g.*, *People v Taylor*, 73 NY2d 683, 690-691 [1989]; *People v Gallina*, 66 NY2d 52, 59 [1985]). Here, the statute in question is designed to protect a citizen's constitutional right to be free from unreasonable searches and seizures (*see* US Const 4th Amend; NY Const, art I, § 12) by precluding the justification of an otherwise unlawful detention as a citizen's arrest. The People maintain that the statutory scheme governing citizen's arrests does "not serve to protect individuals against government conduct," but rather is designed "to establish the circumstances under which a person may apprehend a person committing an offense." However, the intent to protect an individual's constitutional rights and the intent to set out the circumstances under which a person may detain another are not mutually exclusive. The People point to no reason why the legislature's concerns, in setting out who has the power to arrest, would not have included, as part of the legislature's principal purpose, the intent to ensure that arrests are conducted in a way that is consistent with the constitutional protection against unreasonable searches and seizures.

⁴ Review of this question is not precluded by *People v LaFontaine* (92 NY2d 470 [1998]; *see also* *People v Concepcion*, 17 NY3d 192, 195 [2011]). Consideration of the People's alternative argument by Supreme Court was "a necessary component of [the] suppression ruling adverse to the [appellant]" (*People v Myers*, 303 AD2d 139, 140 [2d Dept 2003], *lv denied* 100 NY2d 585 [2003]).

I would grant defendant's motion to suppress the gun seized by the police as a result of the agent's traffic stop. Accordingly, I dissent.

* * * * *

Order reversed, defendant's motion to suppress denied, and case remitted to Supreme Court, Erie County, for further proceedings in accordance with the opinion herein. Opinion by Judge Feinman. Chief Judge DiFiore and Judges Stein, Garcia and Wilson concur. Judge Fahey dissents and votes to affirm in an opinion in which Judge Rivera concurs.

Decided June 11, 2020

**APPENDIX B — MEMORANDUM AND ORDER
OF THE SUPREME COURT OF NEW YORK,
APPELLATE DIVISION, FOURTH DEPARTMENT,
DATED NOVEMBER 9, 2018**

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department**

878

KA 18-00610

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND
DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK,

APPELLANT,
v.

LIMMIA PAGE,

DEFENDANT-RESPONDENT.

MEMORANDUM AND ORDER

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF
COUNSEL), FOR APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP
OF COUNSEL), FOR DEFENDANT-RESPONDENT

Appeal from an order of the Supreme Court, Erie County (M. William Boller,
A.J.), dated January 22, 2018. The order granted that part of defendant's omnibus
motion seeking to suppress the evidence seized as the result of a traffic stop.

It is hereby ORDERED that the order so appealed from is unanimously affirmed and the indictment against defendant is dismissed.

Memorandum: The People appeal from an order granting that part of defendant's omnibus motion seeking to suppress physical evidence seized as the result of a traffic stop. The evidence at the suppression hearing established that a marine interdiction agent with the U.S. Customs and Border Protection Air and Marine Operations, who was also a deputized task force officer with the Niagara County Sheriff's Department, was traveling on a highway in Erie County in an unmarked truck when he observed a vehicle engaging in dangerous maneuvers and allegedly committing several violations of the Vehicle and Traffic Law. After the agent unsuccessfully attempted to contact the state police via the radio in his truck, he called 911. While the agent's call was being transferred to the Buffalo Police Department (BPD), the vehicle exited the highway. As he followed the vehicle, the agent described his location and the unfolding events to the BPD dispatch and requested that a police unit be sent. Given his prior observations and his concern about the increased risk to public safety if the vehicle continued to drive in the same manner in the city, the agent activated his truck's emergency lights in order to stop the vehicle. The vehicle pulled over, and the agent reported the vehicle's license plate and location to the BPD dispatch. An officer with the BPD arrived shortly thereafter, and the officer and the agent approached the vehicle together for officer safety reasons. The officer spoke to the occupants of the vehicle, which included defendant.

After additional BPD officers arrived at the scene, the agent was told that he was no longer needed, and he departed.

A firearm was seized as a result of the traffic stop, and defendant, along with two codefendants, was subsequently indicted for criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Following the suppression hearing, Supreme Court granted that part of defendant's omnibus motion seeking to suppress physical evidence seized as the result of the traffic stop on the ground that the traffic stop was unlawful. In concluding that the agent unlawfully stopped the vehicle, the court determined that the agent had the powers of a peace officer, but that the traffic stop could not be justified on that basis because the agent was not acting pursuant to his special duties or within his geographical area of employment. The court also determined that the traffic stop could not be justified as a valid citizen's arrest because the agent, who had the powers of a peace officer, activated the emergency lights and approached the stopped vehicle with the BPD officer and therefore acted under color of law and with the accouterments of official authority rather than as a private citizen.

The Criminal Procedure Law provides that "any person may arrest another person . . . for any offense when the latter has in fact committed such offense in his [or her] presence" (CPL 140.30 [1] [b]). As the Court of Appeals has explained, the Criminal Procedure Law "differentiates between the respective powers of arrest possessed by peace officers and private citizens (*compare* CPL 140.25 and 140.27, *with* CPL 140.30, 140.35, and 140.40)" (*People v Williams*, 4 NY3d 535, 538 [2005]).

“In fact, the Legislature has specified that the authority to make a citizen’s arrest extends only to a ‘person acting other than as a police officer or peace officer’ (CPL 140.35, 140.40 [emphasis added])” (*id.*). Thus, the Court of Appeals has held that “a peace officer who acts under color of law and with all the accouterments of official authority” cannot effect a valid citizen’s arrest (*id.* at 539).

The People contend that the agent is not a peace officer and does not possess the powers thereof and, therefore, the court erred in determining that the traffic stop could not be justified as a valid citizen’s arrest. Even assuming, arguendo, that the agent, as a marine interdiction agent with the U.S. Customs and Border Protection Air and Marine Operations and a deputized task force officer with the Niagara County Sheriff’s Office, is not a peace officer and does not possess the powers thereof (*see* CPL 1.20 [33]; 2.10; 2.15, as amended by L 2014, ch 262, § 1; 2.20; *see also* CPL 140.25, 140.27), we conclude that the court properly determined that the agent did not effect a valid citizen’s arrest. The agent, while contemporaneously reporting the incident to the police over the telephone and requesting the presence of a police unit, activated red and blue emergency lights in the grille of his truck and a light bar inside the windshield for the purpose of stopping the vehicle. A private person, however, is not authorized to display such emergency lights from his or her private vehicle (*see* Vehicle and Traffic Law § 375 [41]; *People v Hesselink*, 76 Misc 2d 418, 418-419 [Town of Brighton Just Ct 1973]). Moreover, a private person may not falsely express by words or actions that he or she is acting with approval or authority of a public agency or department with the intent to induce another to submit to such pretended official

authority or to otherwise cause another to act in reliance upon that pretense (*see Penal Law § 190.25 [3]; see generally People v LaFontaine*, 235 AD2d 93, 106 [1st Dept 1997, Tom, J., dissenting], *revd on other grounds* 92 NY2d 470 [1998]). Thus, the agent was not lawfully acting merely as a private person effectuating a citizen's arrest when he activated emergency lights that were affixed to his truck by virtue of his position in law enforcement. Additionally, the agent was not acting merely as a private person when he approached the seized vehicle as backup in cooperation with the officer for safety purposes. Rather, the agent "act[ed] under color of law and with all the accouterments of official authority" (*Williams*, 4 NY3d at 539), causing the driver of the subject vehicle to submit to the agent's apparent official authority and ultimately resulting in the discovery of the evidence forming the basis for the charge against defendant (*see People v Graham*, 192 Misc 2d 528, 531 [Sup Ct, Erie County 2002], *affd* 1 AD3d 1066 [4th Dept 2003], *lv denied* 2 NY3d 762 [2004]). We therefore conclude that, even if the agent is not afforded the status of a peace officer or the powers thereof under state law (*see CPL 2.10; 2.15 [7]*), the traffic stop of the vehicle cannot be validated as a citizen's arrest under these circumstances (*see generally CPL 140.30, 140.35, 140.40; Williams*, 4 NY3d at 539).

The People further contend that, even if the seizure of defendant was not lawful under the citizen's arrest statute, suppression of the resulting physical evidence is not warranted because that statute does not implicate a constitutional right. We reject that contention. "[T]he violation of a statute may warrant imposing the sanction of suppression [but] . . . only where a constitutionally protected right [is]

implicated" (*People v Patterson*, 78 NY2d 711, 717 [1991]). Even if a violation of the citizen's arrest statute is not necessarily a violation of a constitutional right, we conclude that adherence to the requirements of the statute implicates the constitutional right to be free from unreasonable searches and seizures (*see* US Const 4th Amend; NY Const, art I, § 12) by precluding a person who "act[ed] under color of law and with all the accouterments of official authority" from justifying an unlawful search or seizure as a citizen's arrest (*Williams*, 4 NY3d at 539; *see* CPL 140.30, 140.35, 140.40; *cf. People v Sampson*, 73 NY2d 908, 909-910 [1989]; *People v Walls*, 35 NY2d 419, 424 [1974], *cert denied sub nom. Junco v New York*, 421 US 951 [1975]; *see also LaFontaine*, 235 AD2d at 107-109 [Tom, J., dissenting]; *see generally People v Greene*, 9 NY3d 277, 280-281 [2007]), and that suppression is warranted where, as here, the purported private person is cloaked with official authority and acts with the participation and knowledge of the police in furtherance of a law enforcement objective (*see generally People v Ray*, 65 NY2d 282, 286-287 [1985]; *People v Jones*, 47 NY2d 528, 533-534 [1979]).

In light of our determination, the indictment against defendant must be dismissed inasmuch as "the unsuccessful appeal by the People precludes all further prosecution of defendant for the charge[] contained in the accusatory instrument" (*People v Rodas*, 145 AD3d 1452, 1454 [4th Dept 2016] [internal quotation marks omitted]).

Entered: November 9, 2018

Mark W. Bennett
Clerk of the Court

**APPENDIX C — DECISION AND ORDER OF THE SUPREME COURT
OF NEW YORK, IN THE COUNTY OF ERIE,
GRANTING MOTION TO SUPPRESS
DATED JANUARY 22, 2018**

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

vs.

INDICTMENT NO. 01186-2017

LIMMIA PAGE,

Defendant

John J. Flynn
District Attorney, Erie County
Raymond C. Herman , A.D.A
for the people

Parker R McKay, Esq.
for defendant

DECISION AND ORDER

M. WILLIAM BOLLER, A.J.S.C.

Defendant moves to suppress the evidence seized from his vehicle based upon the lack of lawful authority of a federal agent to stop defendant's vehicle. After hearing I now make the following findings of fact and conclusions of law.

On June 3, 2017, at approximately 10:30 p.m., federal agent Robert Canazzi of the Customs and Border Protection Agency, was traveling on the Interstate 190. At that time he observed defendant's vehicle approached his car from behind at a high rate of speed, almost hitting his vehicle before applying his brakes. Canazzi then

observed defendant retreat to a safe distance behind him. Through his rearview mirror, Canazzi then observed defendant weave between the two lanes of traffic. Defendant then passed Canazzi in the left lane. While continuing on Interstate 190 Canazzi observed defendant traveling at a high rate of speed and almost colliding with a vehicle attempting to merge onto Interstate 190 at the Route 198 entrance ramp.

While continuing to follow defendant, Canazzi observed defendant swerving and almost colliding with another vehicle when he attempted to merge into the right lane. At this point Canazzi contacted New York State police to inform them of what he observed and his location. Canazzi was told that he would be transferred to the Buffalo Police Department (BPD) dispatcher. While waiting to be transferred, defendant exited Interstate 190 at the Seneca Street exit. Canazzi followed defendant and informed BPD of what he observed and where he was. Concerned for public safety Canazzi then activated the emergency lights of his unmarked vehicle in the hope that defendant would pull over. These emergency lights consisted of red and blue lights in the grill of the vehicle and a small light bar inside the windshield.

In response to the emergency lights defendant pulled over. Canazzi then informed BPD of his location and waited in his vehicle. Approximately five minutes later BPD arrived. When BPD Officer Baker arrived, Canazzi explained what he observed and approached the vehicle with Officer Baker. While Baker spoke with defendant, Canazzi waited there until more officers arrived. When the other officers arrived Canazzi was told he was no longer needed and left the scene.

Canazzi is a federal agent employed by Customs and Border Protection, Marine Interdiction Unit. He is also deputized by the Niagara County Sheriff's Department as a drug task force agent. At the time of this stop Canazzi was working in his capacity as a federal agent and was on his way to do marina checks.

Pursuant to CPL §§ 2.15-3 & 2.20-1(a), immigration and naturalization special agents shall have the powers of a peace officer designated in CPL §§ 140.25-1(a) & 3(a).

These sections allow such federal agents to make an arrest for any offence when he has reasonable cause to believe that such offence has been committed in his presence. When he is acting pursuant to his special duties he may make such arrest anywhere in the state. When he is not acting within his special duties he may make the arrest only within the geographical area of his employment. At the time of the stop Canazzi was not acting pursuant to his special duties and was not within his geographical area of employment as a Niagara County Drug Task Force officer. Therefore, this stop is not sustainable under Canazzi's duties as a peace officer.

The question then becomes is the stop considered a citizen's arrest pursuant to CPL § 140.30. This section authorizes a citizen's arrest, by a person acting other than as a police or peace officer, for an offense committed in his presence.

In People v. Williams, 4 N.Y.3d 535, municipal housing officers stopped the defendant's vehicle for an offense committed in their presence, outside their geographical area of employment. The officers were on duty at the time, thus one can assume they were in uniform and in a marked patrol vehicle. In Williams, the people

conceded that the stop was outside the geographical area of their employment as peace officers and asserted that the officers stop of the vehicle was equivalent to a citizen's arrest.

The court held that a peace officer acting outside the parameters of his peace officer status cannot make a citizen's arrest for an offense committed in their presence, when doing so "under color of law and with all the accoutrements of official authority." But the court did note that it was not saying "that an individual employed as a peace officer may never under any circumstances effect a citizen's arrest". Supra at 539.

This case is similar to Williams, in that Canazzi was on duty performing his duties as a federal agent. He was not acting within his special duties as a peace officer with the Niagara County Sheriff's Department, when he effectuated the stop outside the geographical area of his employment, i.e., Niagara County.

The stop of defendant's vehicle was made with an unmarked police vehicle. Canazzi initiated the stop by activating his emergency lights and light bar, such devices that are only allowed on police vehicles. Further, Canazzi accompanied Officer Baker to the vehicle as would any other police officer. A citizen would not be allowed to approach defendant's car with Officer Baker.

Therefore, I find that when Agent Canazzi stopped defendant's vehicle, he acted under the color of law with all the accoutrements of official authority and could not affect a citizen's arrest.

Accordingly, defendant's motion to suppress all contraband seized from defendant's vehicle as fruits of the poisonous tree is GRANTED.

/s/

HONORABLE M. WILLIAM BOLLER
ACTING SUPREME COURT JUSTICE

DATED: JANUARY 22, 2018
BUFFALO, NEW YORK

APPENDIX D — STATUTORY ADDENDUM

8 C.F.R. § 287.5 Exercise of Power by immigration officers

(a) Power and authority to interrogate and administer oaths. Any immigration officer is hereby authorized and designated to exercise anywhere in or outside the United States the power conferred by:

- (1) Section 287(a)(1) of the Act to interrogate, without warrant, any alien or person believed to be an alien concerning his or her right to be, or to remain, in the United States, and
- (2) Section 287(b) of the Act 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 the Act and the administration of the immigration and naturalization functions of the Department.

(b) Power and authority to patrol the border. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

- (1) Border patrol agents;
- (2) Air and marine agents;
- (3) Special agents;
- (4) CBP officers;
- (5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary/Director of ICE.

(c) Power and authority to arrest-

(1) Arrests of aliens under section 287(a)(2) of the Act for immigration violations. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with 8 CFR 287.8(c) :

- (i) Border patrol agents;

- (ii) Air and marine agents;
- (iii) Special agents;
- (iv) Deportation officers;
- (v) CBP officers;
- (vi) Immigration enforcement agents;
- (vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (viii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of the USCIS.

(2) Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(4) of the Act and in accordance with 8 CFR 287.8(c):

- (i) Border patrol agents;
- (ii) Air and marine agents;
- (iii) Special agents;
- (iv) Deportation officers;
- (v) CBP officers;
- (vi) Immigration enforcement agents;
- (vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (viii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of the USCIS.

(3) Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act and in accordance with 8 CFR 287.8(c):

- (i) Border patrol agents;
- (ii) Air and marine agents;
- (iii) Special agents;
- (iv) Deportation officers;

- (v) CBP officers;
- (vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary/Director of ICE.

(4) Arrests of persons under section 287(a)(5)(B) of the Act for any felony.

- (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:
 - (A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;
 - (B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;
 - (C) There is a likelihood of the person escaping before a warrant can be obtained for his or her arrest; and
 - (D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the immigration enforcement activities of the Department as defined in 8 CFR 287.8.
- (ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with 8 CFR 287.8(c):
 - (A) Border patrol agents;
 - (B) Air and marine agents;
 - (C) Special agents;
 - (D) Deportation officers;
 - (E) CBP officers;
 - (F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified as successfully completing a training course encompassing such arrests and the standards for enforcement activities are defined in 8 CFR 287.8. Such certification will be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner of CBP or the Assistant Secretary/Director of ICE, or their respective designees, for just cause.

(5) Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.

(i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in 8 CFR 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

- (A) Border patrol agents;
- (B) Air and marine agents;
- (C) Special agents;
- (D) Deportation officers;
- (E) CBP officers;
- (F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated,

individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(6) Custody and transportation of previously arrested persons. In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(3)(iv) of this section, detention enforcement officers and immigration enforcement agents who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) Power and authority to conduct searches. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

- (1) Border patrol agents;
- (2) Air and marine agents;
- (3) Special agents;
- (4) Deportation officers;
- (5) CBP officers;
- (6) Immigration enforcement agents;
- (7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (8) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(e) Power and authority to execute warrants-

(1) Search warrants. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

- (i) Border patrol agents;
- (ii) Air and marine agents;
- (iii) CBP officers;
- (iv) Special agents;
- (v) Deportation officers;
- (vi) Immigration enforcement agents;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(2) Issuance of arrest warrants for immigration violations. A warrant of arrest may be issued by any of the following immigration officials who have been authorized or delegated such authority:

- (i) District directors (except foreign);
- (ii) Deputy district directors (except foreign);
- (iii) Assistant district directors for investigations;
- (iv) Deputy assistant district directors for investigations;
- (v) Assistant district directors for deportation;
- (vi) Deputy assistant district directors for deportation;
- (vii) Assistant district directors for examinations;
- (viii) Deputy assistant district directors for examinations;
- (ix) Officers in charge (except foreign);
- (x) Assistant officers in charge (except foreign);
- (xi) Chief patrol agents;
- (xii) Deputy chief patrol agents;
- (xiii) Division chiefs;
- (xiv) Assistant chief patrol agents;
- (xv) Patrol agents in charge;
- (xvi) Deputy patrol agents in charge;
- (xvii) Border Patrol watch commanders;
- (xviii) Special operations supervisors;
- (xix) Supervisory border patrol agents;
- (xx) Directors of air operations;
- (xxi) Directors of marine operations;
- (xxii) Supervisory air and marine interdiction agents;
- (xxiii) Executive Associate Director of Homeland Security Investigations;
- (xxiv) Institutional Hearing Program directors;
- (xxv) Director, Field Operations;
- (xxvi) Assistant Director, Field Operations;
- (xxvii) Port directors;
- (xxviii) Assistant port directors;
- (xxix) Field operations watch commanders;
- (xxx) Field operations chiefs;
- (xxxi) Supervisory deportation officers;

- (xxxii) Supervisory detention and deportation officers;
- (xxxiii) Group Supervisors;
- (xxxiv) Director, Office of Detention and Removal Operations;
- (xxxv) Special Agents in Charge;
- (xxxvi) Deputy Special Agents in Charge;
- (xxxvii) Associate Special Agents in Charge;
- (xxxviii) Assistant Special Agents in Charge;
- (xxxix) Field Office Directors;
- (xl) Deputy Field Office Directors;
- (xli) District Field Officers;
- (xlii) Supervisory immigration services officers;
- (xliii) Supervisory immigration officers;
- (xliv) Supervisory asylum officers;
- (xlv) Supervisory special agents;
- (xlvi) Director of investigations;
- (xlvii) Directors or officers in charge of detention facilities;
- (xlviii) Directors of field operations;
- (xlix) Deputy or assistant directors of field operations;
- (l) Unit Chief, Law Enforcement Support Center;
- (li) Section Chief, Law Enforcement Support Center;
- (lii) Immigration Enforcement Agents; or
- (liii) Other duly authorized officers or employees of the Department of Homeland Security or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue warrants of arrest, and who have successfully completed any required immigration law enforcement training.

(3) Service of warrant of arrests for immigration violations. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:

- (i) Border patrol agents;
- (ii) Air and marine agents;
- (iii) Special agents;
- (iv) Deportation officers;
- (v) Detention enforcement officers or immigration enforcement agents (warrants of arrest for administrative immigration violations only);
- (vi) CBP officers;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(4) Service of warrant of arrests for non-immigration violations. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:

(i) Border patrol agents;
(ii) Air and marine agents;
(iii) CBP officers
(iv) Special agents;
(v) Deportation officers;
(vi) Immigration enforcement agents;
(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(viii) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(f) Power and authority to carry firearms. The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in 8 CFR 287.8(a):

(1) Border patrol agents;
(2) Air and marine agents;
(3) Special agents;
(4) Deportation officers;
(5) Detention enforcement officers or immigration enforcement agents;
(6) CBP officers;
(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

8 C.F.R. § 287.8
Standards for enforcement activities

The following standards for enforcement activities contained in this section must be adhered to by every immigration officer involved in enforcement activities. Any violation of this section shall be reported to the Office of the Inspector General or such other entity as may be provided for in 8 CFR 287.10.

(a) Use of force-

(1) Non-deadly force.

(i) Non-deadly force is any use of force other than that which is considered deadly force as defined in paragraph (a)(2) of this section.

(ii) Non-deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(1)(iv) of this section, has reasonable grounds to believe that such force is necessary.

(iii) A designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

(iv) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use non-deadly force should circumstances warrant it:

- (A) Border patrol agents;
- (B) Air and marine agents;
- (C) Special agents;
- (D) Deportation officers;
- (E) Detention enforcement officers or immigration enforcement agents;
- (F) CBP officers;
- (G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (H) Immigration officers who need the authority to use non-deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated,

individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(2) Deadly force.

(i) Deadly force is any use of force that is likely to cause death or serious physical injury.

(ii) Deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(2)(iii) of this section, has reasonable grounds to believe that such force is necessary to protect the designated immigration officer or other persons from the imminent danger of death or serious physical injury.

(iii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use deadly force should circumstances warrant it:

- (A) Border patrol agents;
- (B) Air and marine agents;
- (C) Special agents
- (D) Deportation officers;
- (E) Detention enforcement officers or immigration enforcement agents;
- (F) CBP officers;
- (G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
- (H) Immigration officers who need the authority to use deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(b) Interrogation and detention not amounting to arrest.

(1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.

(2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the

United States, the immigration officer may briefly detain the person for questioning.

(3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer, as listed in 8 CFR 287.5(c). The conduct of arrests is specified in paragraph (c) of this section.

(c) Conduct of arrests-

(1) Authority. Only designated immigration officers are authorized to make an arrest. The list of designated immigration officers may vary depending on the type of arrest as listed in §287.5(c)(1) through (c)(5).

(2) General procedures.

(i) An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.

(ii) A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

(iii) At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so:

(A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and

(B) State that the person is under arrest and the reason for the arrest.

(iv) With respect to an alien arrested and administratively charged with being in the United States in violation of law, the arresting officer shall adhere to the procedures set forth in 8 CFR 287.3 if the arrest is made without a warrant.

(v) With respect to a person arrested and charged with a criminal violation of the laws of the United States, the arresting officer shall advise the person of the appropriate rights as required by law at the time of the arrest, or as soon thereafter as practicable. It is the duty of the immigration officer to assure that the warnings are given in a

language the subject understands, and that the subject acknowledges that the warnings are understood. The fact that a person has been advised of his or her rights shall be documented on appropriate Department forms and made a part of the arrest record.

(vi) Every person arrested and charged with a criminal violation of the laws of the United States shall be brought without unnecessary delay before a United States magistrate judge, a United States district judge or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with such crimes. Accordingly, the immigration officer shall contact an Assistant United States Attorney to arrange for an initial appearance.

(vii) The use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited.

(d) Transportation-

(1) Vehicle transportation. All persons will be transported in a manner that ensures the safety of the persons being transported. When persons arrested or detained are being transported by vehicle, each person will be searched as thoroughly as circumstances permit before being placed in the vehicle. The person being transported shall not be handcuffed to the frame or any part of the moving vehicle or an object in the moving vehicle. The person being transported shall not be left unattended during transport unless the immigration officer needs to perform a law enforcement function.

(2) Airline transportation. Escorting officers must abide by all Federal Aviation Administration, Transportation Security Administration, and airline carrier rules and regulations pertaining to weapons and the transportation of prisoners.

(e) Vehicular pursuit.

(1) A vehicular pursuit is an active attempt by a designated immigration officer, as listed in paragraph (e)(2) of this section, in a designated pursuit vehicle to apprehend fleeing suspects who are attempting to avoid apprehension. A designated pursuit vehicle is defined as a vehicle equipped with emergency lights and siren, placed in or on the vehicle, that emit audible and visual signals in order to warn others that emergency law enforcement activities are in progress.

(2) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to initiate a vehicular pursuit:

- (i) Border patrol agents;
- (ii) Air and marine agents;
- (iii) CBP officers;
- (iv) Supervisory personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
- (v) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual mission and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary/Director of ICE.

(f) Site inspections.

(1) Site inspections are Border and Transportation Security Directorate enforcement activities undertaken to locate and identify aliens illegally in the United States, or aliens engaged in unauthorized employment, at locations where there is a reasonable suspicion, based on articulable facts, that such aliens are present.

(2) An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

(3) Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located.

(4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

(g) Guidelines. The criminal law enforcement authorities authorized under this part will be exercised in a manner consistent with all applicable guidelines and policies of the Department of Justice and the Department of Homeland Security.

8 U.S.C. § 1357
Powers of immigration officers and employees

(a) Powers without warrant

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) Administration of oath; taking of evidence

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 chapter 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) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28) 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 of title 18.

(c) Search without warrant

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 chapter which would be disclosed by such search.

(d) Detainer of aliens for violation of controlled substances laws

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) Restriction on warrantless entry in case of outdoor agricultural operations

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) Fingerprinting and photographing of certain aliens

(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 1229a of this title.

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

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, 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 the 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 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (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) Protecting abused juveniles

An alien described in section 1101(a)(27)(J) of this title 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 1101(a)(27)(J)(iii)(I) of this title.

N.Y. Crim. Proc. § 2.15
Federal law enforcement officers; powers

The following federal law enforcement officers shall have the powers set forth in paragraphs (a) (with the exception of the powers provided by paragraph (b) of subdivision one and paragraph (b) of subdivision three of section 140.25 of this chapter), (b), (c) and (h) of subdivision one of section 2.20 of this article:

1. Federal Bureau of Investigation special agents.
2. United States Secret Service special agents.
3. Immigration and Customs Enforcement special agents, deportation officers, and detention and deportation officers.
4. United States Marshals and Marshals Service deputies.
5. Drug Enforcement Administration special agents.
6. Federal Protective Officers, including law enforcement security officers, criminal investigators and police officers of the Federal Protective Service.
7. United States Customs and Border Protection Officers and United States Customs and Border Protection Border Patrol agents.
8. United States Postal Service police officers and inspectors.
9. United States park police; provided, however that, notwithstanding any provision of this section to the contrary, such park police shall also have the powers set forth in paragraph (b) of subdivision one of section 140.25 of this chapter and the powers set forth in paragraphs (d), (e) and (g) of subdivision one of section 2.20 of this article.
10. United States probation officers.
11. United States General Services Administration special agents.
12. United States Department of Agriculture special agents.
13. Bureau of Alcohol, Tobacco and Firearms special agents.
14. Internal Revenue Service special agents and inspectors.
15. Officers of the United States bureau of prisons.
16. United States Fish and Wildlife special agents.
17. United States Naval Investigative Service special agents.
18. United States Department of State special agents.

19. Special agents of the defense criminal investigative service of the United States department of defense.
20. United States Department of Commerce, Office of Export Enforcement, special agents.
21. United States Department of Veterans Administration police officers employed at the Veterans Administration Medical Center in Batavia.
22. Federal Reserve law enforcement officers.
23. Federal air marshal program special agents.
24. [As added by L.2004, c. 110. See, also, subd. 24, below.] United States department of transportation federal police officers and police supervisors assigned to the United States Merchant Marine Academy in Kings Point, New York; provided, however that, notwithstanding any provision of this section to the contrary, such police shall also have the powers set forth in paragraph (b) of subdivision one of section 140.25 of this chapter and the powers set forth in paragraphs (d), (e) and (g) of subdivision one of section 2.20 of this article when acting pursuant to their special duties within the geographical area of their employment or within one hundred yards of such geographical area.
24. [As added by L.2004, c. 720. See, also, subd. 24, above.] United States Coast Guard Investigative Service special agents.
25. United States Department of Commerce, special agents and enforcement officers of the National Oceanic and Atmospheric Administration's Fisheries Office for Law Enforcement.
26. Department of the Army special agents, detectives and police officers.
27. United States Department of Interior, park rangers with law enforcement authority.
28. United States Environmental Protection Agency special agents with law enforcement authority.
29. United States mint police.

N.Y. Crim. Proc. § 2.20
Powers of peace officers

1. The persons designated in section 2.10 of this article shall have the following powers:

- (a) The power to make warrantless arrests pursuant to section 140.25 of this chapter.
- (b) The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to section 35.30 of the penal law.
- (c) The power to carry out warrantless searches whenever such searches are constitutionally permissible and acting pursuant to their special duties.
- (d) The power to issue appearance tickets pursuant to subdivision three of section 150.20 of this chapter, when acting pursuant to their special duties. New York city special patrolmen shall have the power to issue an appearance ticket only when it is pursuant to rules and regulations of the police commissioner of the city of New York.
- (e) The power to issue uniform appearance tickets pursuant to article twenty-seven of the parks, recreation and historic preservation law and to issue simplified traffic informations pursuant to section 100.25 of this chapter and section two hundred seven of the vehicle and traffic law whenever acting pursuant to their special duties.
- (f) The power to issue a uniform navigation summons and/or complaint pursuant to section nineteen of the navigation law whenever acting pursuant to their special duties.
- (g) The power to issue uniform appearance tickets pursuant to article seventy-one of the environmental conservation law, whenever acting pursuant to their special duties.
- (h) The power to possess and take custody of firearms not owned by the peace officer, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer.
- (i) Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

- (j) Uniformed court officers shall have the power to issue traffic summonses and complaints for parking, standing, or stopping violations pursuant to the vehicle and traffic law whenever acting pursuant to their special duties.
- 2. For the purposes of this section a peace officer acts pursuant to his special duties when he performs the duties of his office, pursuant to the specialized nature of his particular employment, whereby he is required or authorized to enforce any general, special or local law or charter, rule, regulation, judgment or order.
- 3. A peace officer, whether or not acting pursuant to his special duties, who lawfully exercises any of the powers conferred upon him pursuant to this section, shall be deemed to be acting within the scope of his public employment for purposes of defense and indemnification rights and benefits that he may be otherwise entitled to under the provisions of section fifty-k of the general municipal law, section seventeen or eighteen of the public officers law, or any other applicable section of law.

N.Y. Crim. Proc. § 140.25
Arrest without a warrant; by peace officer

1. A peace officer, acting pursuant to his special duties, may arrest a person for:

- (a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence; and
- (b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.

2. A peace officer acts “pursuant to his special duties” in making an arrest only when the arrest is for:

- (a) An offense defined by a statute which such peace officer, by reason of the specialized nature of his particular employment or by express provision of law, is required or authorized to enforce; or
- (b) An offense committed or reasonably believed by him to have been committed in such manner or place as to render arrest of the offender by such peace officer under the particular circumstances an integral part of his specialized duties.

3. A peace officer, whether or not he is acting pursuant to his special duties, may arrest a person for an offense committed or believed by him to have been committed within the geographical area of such peace officer’s employment, as follows:

- (a) He may arrest such person for any offense when such person has in fact committed such offense in his presence; and
- (b) He may arrest such person for a felony when he has reasonable cause to believe that such person has committed such felony, whether in his presence or otherwise.

4. A peace officer, when outside the geographical area of his employment, may, anywhere in the state, arrest a person for a felony when he has reasonable cause to believe that such person has there committed such felony in his presence, provided that such arrest is made during or immediately after the allegedly criminal conduct or during the alleged perpetrator’s immediate flight therefrom.

5. For the purposes of this section, the “geographical area of employment” of a peace officer is as follows:

- (a) The “geographical area of employment” of any peace officer employed as such by any agency of the state consists of the entire state;
- (b) The “geographical area of employment” of any peace officer employed as such by an agency of a county, city, town or village consists of (i) such county, city, town or village, as the case may be, and (ii) any other place where he is, at a particular time, acting in the course of his particular duties or employment;
- (c) The “geographical area of employment” of any peace officer employed as such by any private organization consists of any place in the state where he is, at a particular time, acting in the course of his particular duties or employment.

N.Y. Crim. Proc. § 140.30

Arrest without a warrant; by any person; when and where authorized

1. Subject to the provisions of subdivision two, any person may arrest another person
 - (a) for a felony when the latter has in fact committed such felony, and
 - (b) for any offense when the latter has in fact committed such offense in his presence.
2. Such an arrest, if for a felony, may be made anywhere in the state. If the arrest is for an offense other than a felony, it may be made only in the county in which such offense was committed.