



MAYOR & COUNCIL MEMORANDUM

November 13, 2013

Subject: Senate Bill 1070 and Related Enforcement and Administrative Issues, Including Review of U-Visa Applications (City Wide)

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Issue – This item has been scheduled at the request of Council Member Romero, through her Memorandum dated October 9, 2013; and at the request of Council Member Uhlich, through her subsequent Memorandum dated October 22, 2013. Both of these Memoranda are attached for your reference.

City Manager's Office Recommendation – The City Manager has arranged for appropriate staff, including Chief Villaseñor, to be present and to provide information to the Mayor and Council regarding the enforcement practices and policies of the Tucson Police Department relating to undocumented persons or foreign nationals; arrests of undocumented persons in light of Senate Bill (SB) 1070; and the processing of U-Visa applications. This Memorandum identifies potential additional actions relating to immigration policies for the consideration of the Mayor and Council.

Background – SB 1070 [as amended by House Bill (HB) 2162], was adopted by the Arizona Legislature and signed by Governor Brewer in April, 2010. On May 4, 2010, the Mayor and Council authorized the City Attorney to challenge the law. Pursuant to that direction, the City challenged the constitutionality of SB 1070 as part of its defense of a lawsuit brought by a TPD officer; and participated in the various legal actions that followed, culminating in the *Arizona v. United States* case that was decided by the United States Supreme Court on June 25, 2012.

In the wake of *Arizona v. United States* and other related litigation, certain portions of SB 1070 remain in effect, while others have been struck down because the courts have determined that they are preempted by federal law under the Supremacy Clause of the Constitution. Rather than attempt a comprehensive review of the litigation in this memorandum, the City Attorney offers the following summary of the status of the key provisions of the statutes.

The following statutory provisions remain in effect following the Supreme Court's decision:

A.R.S. § 11-1051(A): prohibiting Arizona officials, agencies, and political subdivisions from limiting enforcement of federal immigration laws.

A.R.S. § 11-1051(B): requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States.

A.R.S. § 11-1051(B): requiring verification of the immigration status of any person arrested prior to releasing that person.

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A.R.S. § 11-1051(C)-(F): requiring that state officials work with federal officials with regard to unlawfully present aliens.

A.R.S. § 11-1051(G)-(K): allowing legal residents to sue any state official, agency, or political subdivision for adopting a policy of restricting enforcement of federal immigration laws to less than the full extent permitted by federal law.

The following statutory provisions have been struck down as violating the Supremacy Clause:

A.R.S. § 13-1509: creating a crime for the failure to apply for or carry alien registration papers.

A.R.S. § 13-2928(C): creating a crime for an unauthorized alien to solicit, apply for, or perform work.

A.R.S. § 13-2929: creating a separate crime for a person in violation of a criminal offense to transport or harbor an unlawfully present alien or encourage or induce an unlawfully present alien to come to or live in Arizona.

A.R.S. § 13-3883(A)(5): authorizing the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.

On June 25, 2012, the U.S. Supreme Court issued a ruling in the case *Arizona v. United States*. The court determined by a 5–3 majority that Sections 3, 5(C), and 6 of SB 1070 [A.R.S. Sections 13-1509; 13-2928(C); and 13-3883(A)(5), described above] are preempted by federal law. However, all of the justices upheld the provisions of A.R.S. § 11-1051(B), requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States; and requiring verification of the immigration status of any person arrested prior to releasing that person. Importantly, however, the majority opinion cautioned that a practice of detaining or prolonging a detention of individuals solely to verify immigration status raises constitutional concerns; and that the Court’s decision did not prevent future legal challenges (on preemption or other constitutional grounds) based on the actual implementation of the laws.

TPD General Orders:

The Tucson Police Department operates under the direction of the General Orders issued by the Chief of Police, who pursuant to Chapter X., Section 7 of the Tucson Charter “shall have full control of the police force of the City.” By definition, the Chief’s General Orders (G.O.s) are the compilation of all TPD operating policies and procedures. The Chief of Police, with the benefit of the review and advice of the City Attorney, has incorporated into the G.O.s the requirements of the provisions of SB 1070 that remain in effect. Specifically, G.O. 2119 and G.O. 2300 articulate TPD’s policies and procedures relating to undocumented persons and immigration enforcement. These G.O.s are attached to this Memorandum for your information.

G.O. 2300 sets out TPD's Immigration Policy. The introduction to the policy emphasizes that all TPD enforcement activities shall be consistent with federal and state laws, and will protect the civil rights, privileges and immunities of all persons. As dictated by A.R.S. § 11-1051(A), the policy does not limit or restrict the enforcement of federal immigration laws.

G.O. 2310 establishes definitions, including definitions of probable cause, reasonable suspicion of unlawful presence, and presumptive identification (the forms of identification that establish a presumption that a person is not unlawfully present in the United States). G.O. 2320 governs addresses consensual contacts, and emphasizes that during such contacts, the person contacted is not required to answer questions or produce identification or other documentation. It also directs officers to be consistent in their actions during consensual contacts or contacts with witnesses and victims in order to avoid perceptions of bias based policing, to include racial profiling.

G.O. 2320 addresses lawful stops and detentions, and situations where the officer develops reasonable suspicion to believe a detainee is unlawfully present. This G.O. includes the statutory requirement that the officer make a reasonable attempt to determine the person's immigration status; but also identifies and explains the exceptions to this requirement, namely when it is not practicable to do so and/or when the determination may hinder or obstruct an investigation. The G.O. expressly prohibits consideration of a detainee's race, color or national origin, except that an officer may ask about a person's citizenship after arrest or in other appropriate circumstances, such as when race is part of a suspect's description. This policy explains that if the detainee provides presumptive identification, no further investigation is necessary absent additional facts that cast doubt on the person's lawful presence. This G.O. further describes what constitutes reasonable suspicion.

G.O. 2335 sets out the procedures for contacting ICE/CBP, and states that if the officer cannot obtain information from ICE/CBP, then the officer shall release the detainee without delay. If ICE/CBP advises that the detainee has federal criminal charges, the officer shall determine whether ICE/CBP will respond to take the person into custody. If ICE/CBP advises that the detainee has only federal civil charges, the officer will ask whether ICE/CBP will respond; and the officer may not detain the person any longer than necessary to complete the initial reason for the stop or detention, and shall not extend the detention to wait for ICE/CBP to respond.

G.O. 2340 applies to arrests, and incorporates the requirement of A.R.S. § 11-1051(A) that all arrested persons shall have their immigration status verified by ICE/CBP prior to release of the arrestee.

G.O. 2119 further establishes the arrest policies as they relate to undocumented persons or foreign nationals. This policy emphasizes that officers have no inherent authority to stop or detain a person solely on suspicion that the person is unlawfully present, and that during contact with suspected undocumented persons, officers shall follow the same procedures as when contacting or stopping any person. The policy states that following a request to CBP to respond, an officer shall not detain a person longer than necessary to conduct the investigation necessary to complete the original stop. G.O. 2119.1 addresses cite and release situations as well, and again states that if an officer is awaiting ICE/CBP response, the arrestee shall only be detained for a reasonable period of time, and that if CBP is unable to respond within a reasonable time, the person shall be cited and released.

G.O. 2119.2 sets out the policies and procedures relating to U-Visas, which establish an avenue to legal status for victims of crime. The policy designates the Investigative Services Bureau Chief as the department's certifying official; with the Chief as the final authority regarding certification.

Additional U-Visa Information

In addition to the G.O. provisions described above, both TPD and the City Attorney's Office have developed procedures for the processing of applications. In addition, the Chief of Police has engaged in meetings with representatives of Southern Arizona Legal Aid and other interested parties to review the U-Visa process and to address issues of ongoing concern related to this process. The City Attorney's Office has certified 12 applications thus far in 2013, with another 5 awaiting additional paperwork; while 3 requests have been declined for certification. Information describing the disposition of applications submitted to TPD is attached for your review.

Immigrant Welcoming City Policy

On August 7, 2012, the Mayor and Council adopted Resolution No. 21994, establishing the City as an Immigrant Welcoming City. As a product of that direction, the City Manager's Office has created the Welcome Tucson Web Portal, which is a resource directory for immigrants of all backgrounds. This resource is available online at:

<http://cms3.tucsonaz.gov/welcometucson>

Potential Additional Actions relating to Immigration Policies

In a letter dated September 25, 2012, the American Civil Liberties Union (ACLU) offered various suggestions to incorporate into the City's policies relating to immigration and enforcement. In response to this document and other input that has been received through the City's ongoing dialogue with the community on these issues, the City Attorney and Chief of Police believe that certain additional actions can be taken to further the City's position as an Immigrant Welcoming City while maintaining the City's compliance with state and federal law and protecting the City from legal exposure. These actions include:

1) Possible revisions to the TPD General Orders to:

a) emphasize further that in the context of criminal investigations and arrests, the officer will focus on the suspect/arrestee in the investigation of the underlying reason for the stop and/or detention, rather than on the immigration status of witnesses or victims. This direction would be consistent with existing provisions of the G.O.s that provide that the operational needs of the agency and the overall safety of the community necessarily take priority when deciding how best to use limited department resources; and that recognize the need for victim and witness cooperation in investigations;

b) state that in instances where the impound of a vehicle is discretionary, rather than mandatory, the officer will use reasonable efforts to allow the vehicle to be removed by another person to avoid impound;

c) add to procedures relating to the investigation of juvenile offenders, and express that when an officer detains a juvenile and the officer has reasonable suspicion to believe the juvenile is unlawfully present, the officer will not question juveniles regarding their immigration status without the presence of an attorney or guardian;

2) Examining examples of other cities' immigrant welcoming policies for possible incorporation into the City of Tucson policy previously approved by the Mayor and Council (for example, the City of Chicago's policies recognizing the positive economic impact of immigration on the city, incorporated into "the Chicago New Americans Plan");

3) Continue to engage in community outreach on issues relating to immigration through the Immigrant Welcoming Task Force, and continue with TPD's participation in meetings relating to U-Visa applications.

Present Consideration – Staff will be present to provide Mayor and Council with information regarding TPD's policies relating to SB 1070; and regarding the processing of U-Visa applications by TPD and the City Attorney's Office.

Financial Considerations – None.

Legal Considerations – The City Attorney will be present during the Study Session to address the legal considerations associated with this item. As noted above, TPD's General Orders currently incorporate the requirements of state and federal law, and have been developed by the Chief of Police with the advice of the City Attorney to ensure compliance with the law and protect the City against liability exposure, while protecting the civil rights of all persons in our community. If the Mayor and Council choose to support the additional actions described in this memorandum, the City Attorney will work with the Chief of Police and City Manager to implement those actions.

Respectfully submitted,



For Richard Miranda
City Manager

RM/MR/dg
City Attorney

Attachments: Council Member Romero's Memorandum dated October 9, 2013
Council Member Uhlich's Memorandum dated October 22, 2013
TPD General Orders 2119 and 2300
TPD U-Visa Information