



2300 IMMIGRATION POLICY [CALEA 1.2.9 A-D]

This agency shall conduct all immigration enforcement activities in a manner consistent with federal and state laws regulating immigration and protecting the civil rights, privileges and immunities of all persons. This policy will not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

Officers should be aware that the enforcement of state and federal laws related to immigration is a complex effort requiring the cooperation of multiple agencies and the consideration of multiple facts and circumstances. Officers are encouraged to contact supervisors when necessary. If at any time, in the sound judgment of an officer, the officer believes that deviation from this policy is appropriate, the officer should contact a supervisor.

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. Supervisors and commanders may direct law enforcement resources as the needs of the agency, or particular situations dictate, based upon existing circumstances.

The need for community trust and cooperation is an essential component of effective policing and public safety. In furtherance of this principle, victims and witnesses of crime should not be the focus of immigration inquiries and should be encouraged to cooperate in the reporting and investigation of crime.

2310 DEFINITIONS

Certified 287(g) officer-

State or local officer trained, certified and authorized by the federal government to enforce all aspects of federal immigration law.

Consensual Contact-

Voluntary interaction with a person where a reasonable person would clearly understand they are free to leave or decline the officer's request.

Presumptive Identification-

A person is presumed not to be an illegal alien who is unlawfully present in the United States if the person provides to a law enforcement officer or agency any of the following:

- A valid Arizona Driver's License
- A valid Arizona non-operating Identification License
- A valid Tribal Enrollment Card or other form of tribal identification
- If the entity requires proof of legal presence in the United States before issuance; any valid United States (U.S.) federal, state, or local government issued identification. Example-- Valid U.S. Passport.

Presumptive identification is allowed for persons stopped or detained pursuant to reasonable suspicion, and is not sufficient to determine the status of arrested persons.



ICE/CBP-

Immigration and Customs Enforcement or Customs and Border Protection.

Probable Cause-

Facts and circumstances, and any rational inferences there from, that would lead a reasonable and prudent officer to believe a crime has been or is being committed, and the subject to be arrested committed the crime; an officer may arrest based on probable cause.

Racial Profiling-

The reliance on race, skin color, and/or ethnicity as an indication of criminality, including reasonable suspicion or probable cause, except when part of a suspect description.

Reasonable Suspicion of unlawful presence-

When an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion. The requirement of particularized suspicion encompasses two elements. First, the assessment must be based upon the totality of the circumstances. Second, that assessment must create a reasonable suspicion that the particular person is unlawfully present in the United States.

2320 CONSENSUAL CONTACTS

2321 State laws related to immigration enforcement neither expand nor limit an officer's ability to approach a person and engage that person in a voluntary conversation. During that conversation, the officer may inquire about any subject matter. The person contacted does not have to answer questions or produce any identification or other documentation, but may choose to do so voluntarily. If during the contact, the officer develops reasonable suspicion that the person has committed, is committing or is about to commit a crime, then the officer should proceed as directed in *General Order 2330*.

2322 Officers should exercise discretion in making immigration status inquiries during consensual contacts or with juveniles, victims and witnesses of crime. Officers are strongly advised to refrain from making such inquiries of victims or witnesses, as discouraging cooperation is likely to hinder or obstruct the investigation and can negatively impact overall community trust and confidence. Immigration status inquiries should only be made when necessary to further an investigation. In order to avoid perceptions of bias based policing (including racial profiling) during consensual contacts, officers should be consistent in when asking for identification.

2330 PERSONS LAWFULLY STOPPED OR DETAINED

2331 If, during the course of a lawful stop or detention of a person ("detainee"), an officer subsequently develops reasonable suspicion to believe a detainee is an alien who is unlawfully present in the U.S., the officer must make a reasonable attempt to determine the immigration status of the detainee with either ICE/CBP). There are two exceptions to this requirement:



▪ **When it is not practicable-**

In determining whether it is practicable, officers should consider things such as workload, criticality of incident and of other present duties, available personnel on scene, location, available back up, ability to contact ICE/CBP and availability of ICE/CBP.

▪ **When the determination may hinder or obstruct an investigation-**

The officer should consider when or whether to investigate immigration status in light of the need for suspect, victim and witness cooperation in an investigation (this consideration is not necessarily limited to the investigation for which you have detained the person). For example, domestic violence situations or complex investigations of money laundering, human trafficking and drug smuggling may require significant cooperation of those involved.

2332 In establishing whether there is reasonable suspicion to believe a person is an alien and unlawfully present in the U.S., an officer shall not consider the 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 it is part of a suspect description.

2333 If the detainee presents one of the following types of identification, it is presumed that the detainee is lawfully present in the U.S. No further investigation into the person's status is necessary, unless there are additional facts that cast doubt on the person's lawful presence:

- A valid Arizona driver license,
- A valid Arizona non-operating identification license,
- A valid tribal enrollment card or other form of tribal identification, or
- If the entity requires proof of legal presence in the U.S. before issuance, any valid U.S. federal, state or local government issued identification. Ex: Valid U.S. Passport

2334 If the detainee does not present presumptive identification, then based on articulable facts and circumstances the officer shall determine whether reasonable suspicion exists that the person is an alien and here unlawfully. If reasonable suspicion exists to believe the person is unlawfully present, the officer shall make a reasonable attempt to determine the person's immigration status. In determining whether reasonable suspicion of unlawful presence exists, officers should consider all possible relevant factors, including, but not limited to:

- Lack of or false identification (if otherwise required by law),
- Possession of foreign identification,
- Flight and/or preparation for flight, engaging in evasive maneuvers, in vehicle, on foot, etc.
- Voluntary statements by the person regarding their citizenship or lawful presence
 - **Note that if the person is in custody for purposes of *Miranda*, s/he may not be questioned about immigration status until after the reading and waiver of *Miranda* rights.**
- Foreign vehicle registration,
- Counter-surveillance or lookout activity,
- In company of other unlawfully present aliens,



- Location, including for example:
 - A place where unlawfully present aliens are known to congregate looking for work,
 - A location known for human smuggling or known smuggling routes,
- Vehicles traveling in tandem,
- Vehicle is overcrowded or rides heavily,
- Passengers in vehicle attempt to hide or avoid detection,
- Prior information about the person,
- Inability to provide their residential address,
- Claim of not knowing others in same vehicle or at same location,
- Providing inconsistent or illogical information,
- Dress,
 - Dress has been recognized by the courts as a valid factor, but can be difficult to articulate,
- Demeanor, e.g., unusual or unexplained nervousness, erratic behavior, refusal to make eye contact, and
- Significant difficulty speaking English

Except for admissions that a person is unlawfully present, no single factor constitutes reasonable suspicion and all factors must be viewed in their totality.

2335 When reasonable suspicion exists to believe a detainee is an alien and present in the U.S. unlawfully but there are no state or local criminal violations, the officer shall attempt to contact ICE/CBP via TPD TWX.

- If the officer is **unable to obtain information about the person's immigration status** from ICE/CBP, then the officer shall release the detainee without delay. Documentation is accomplished by the TWX transmittal.
- The fact that ICE/CBP cannot verify a person's status does not mean a person is lawfully or unlawfully present in the United States and provides no basis for enforcement action.
- If ICE/CBP advises the officer that there are **federal criminal charges** against the detainee, then the officer shall determine whether ICE/CBP will respond to take the person into custody or whether the officer should arrest the detainee and transport to the CBP Detention Facility. If an officer decides that transport is not feasible for operational reasons, such a determination shall be approved by a supervisor.
- If ICE/CBP advises the officer that the detainee only has **federal civil charges**, then the officer shall ask whether ICE/CBP will respond. The detainee may not be detained any longer than necessary to complete the officer's initial reason for the stop or detention. The officer shall not extend the detention to wait for ICE/CBP to respond
- The Ninth Circuit Court of Appeals has held that Arizona officers do not have the authority to transport a person solely for a federal civil violation.

2336 Juveniles who are detained based upon reasonable suspicion to believe they are involved in criminal activity shall not be asked about immigration status without the presence of a parent, guardian or attorney. Officers may ask for presumptive identification if appropriate, and may



consider statements offered by the juvenile in determining whether reasonable suspicion exists to believe the juvenile detainee is unlawfully present in the U.S.

- 2337 School Resource Officers (SROs) shall remain mindful of their unique position as liaisons between the Department and one of the most vulnerable and impressionable segments of the community, school children. SROs shall seek to foster a sense of trust, cooperation and safety among the students with whom they interact. SROs shall not compromise the ability of students to interact and cooperate with an SRO without fear of repercussion based upon their immigration status. Accordingly, when interacting with minors, School Resource Officers shall refrain from asking about immigration status except when it may be directly relevant to an investigation, and only with the permission or in the presence of a parent, guardian or attorney.

2340 ARRESTS

- 2341 All arrested persons shall have their immigration status verified by ICE/CBP prior to the arrestee being released. Presentation by the arrestee of presumptive identification and/or agency identification processes does not meet this requirement.

- All adult arrestees who are going to be booked will have the verification of immigration status required above done by jail personnel.
- All other arrestees, including all juveniles, will require /TWX contact with ICE/CBP.
 - If ICE/CBP is unable to provide a determination of the arrestee's status, then the officer will proceed in accordance with the General Order concerning cite and release.
 - If ICE/CBP verifies that the person is unlawfully present or ICE/CBP has a warrant or probable cause to arrest for a federal criminal violation, arrangements may be made for transport to CBP or the Pima County Jail.
- If verification is made by this agency, the fact that verification was made and by whom will be documented in the case report.

- 2342 PCJCC juvenile detention rules

All arrests of juveniles regardless of a physical detention or paper referral will have their immigration status determined by the arresting officer. Immigration status will be determined in the same manner as adults via TPD TWX.

Any response by CBP involving a juvenile should occur at a substation or other place away from a school.

- 2343 All arrested persons shall be asked the following question, with the answer documented in the case report:

- What is your country of citizenship?
 - If other than the United States, officers will ask if they have dual citizenship.



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Issued

- Officers may not ask incriminating follow-up questions until Miranda warnings have been given (if a juvenile, use appropriate *Miranda* warnings) and the person waives their rights.
- Officers must comply with agency policies regarding consular notification for persons who self identify as being foreign citizens.

2344 Arrests that result in booking a suspect, or referring a juvenile, will be processed in accordance with applicable department policies.

2350 CONTACTING I.C.E.OR CUSTOMS AND BORDER PROTECTION

2351 Once verification of immigration status is completed, the person is eligible to be released, subject to other legal requirements (such as an arrested person seeing a magistrate or signing a citation in lieu of detention).

2354 The fact that an ICE/CBP cannot verify a person's status does not mean a person is unlawfully present in the United States.

2360 DETENTION AND REMOVAL ORDER (DRO) HOLDS (usually an NCIC hit)

2361 The Detention and Removal Office is a unit of ICE that has the responsibility of detaining and transporting undocumented persons apprehended by ICE, CBP and local law enforcement.

2362 Once a person has been identified as being in the United States unlawfully, ICE will issue a DRO hold, which can be for criminal or civil violations.

- This hold will be similar to a warrant notification when a person's information is run through NCIC.

2363 If an officer receives a DRO notification from ICE, the following will be done:

- Call the phone number on the DRO notification to determine whether the DRO hold is criminal or civil.
- Detain and transport for criminal orders, if requested to do so by ICE.
- Complete a [agency form name/number] containing all relevant information.

2364 Officers will not transport for civil violations or continue to detain if the only violation is a civil DRO hold.

2365 Consular notification procedures shall be followed.



2370 NCIC ICE IMMIGRATION VIOLATOR FILE

2371 ICE keeps a record of aliens who have been convicted of a felony crime in the United States and have since been deported to their country of citizenship. This record is known as the Deported Felon File, which is located in the NCIC Immigration Violator File.

2372 The Immigration Violator File contains the following additional categories:

- The ICE Absconder category, which contains the records for individuals with an outstanding administrative warrant of removal from the United States who have unlawfully remained in the United States.
- The ICE National Security Entry/Exit Registration System (NSEERS) category, which contains the records for individuals whom the Department of Homeland Security (DHS) and ICE have determined have violated registration requirements for entry into the United States.
- ICE enters this information into the NCIC Immigration Violator File.
- Police officers will not take enforcement action on Administrative Warrants or NSEERS hits, as these are civil or other non-criminal federal matters.
- The NCIC query results will advise whether the information displayed is an Administrative Warrant hit or a Deported Felon File hit.

2373 If an officer runs a person who is the subject of a Deported Felon File notification, and there are no local charges, the following steps will be taken:

- Verify through physical description (scars, marks, tattoos, etc.), admission, or other available information, that the person on the notification is the same person.
- Contact the ICE Law Enforcement Service Center in Vermont through the communications dispatcher or call directly using the phone number listed for immediate notification confirmation.
- Once the hit has been confirmed, officers will positively identify the subject through LiveScan, or fingerprint the individual and fax the fingerprints to ICE.
- After the subject has been positively identified, CBP may be for pick-up and disposition of the subject.

2380 DOCUMENTATION

Officers are reminded of their responsibility to thoroughly document all facts and circumstances supporting their decisions in the application of these statutes.



2390 CONSULAR NOTIFICATION UPON ARREST OF FOREIGN NATIONALS

[CALEA 1.1.4]

The United States is obligated under international treaties to notify foreign Consular Officials when foreign nationals of their country are arrested or otherwise detained for an extended period in the United States. These obligations include:

- Immediately informing the foreign national of the right to have their government notified concerning the arrest/detention.
- Informing the appropriate Consulate without delay if the foreign national asks that such notification be made.
- In the case of certain countries, making such notification without delay, regardless of whether the arrestee/detainee wishes to have the notification made.

Due to variations in treaties, consular notification is voluntary in some situations (up to the arrestee), and mandatory in others (notification must be made whether the arrestee requests it or not). Whenever a foreign national from a country, other than Mexico, is arrested or detained for an extended period of time, the arresting officer shall contact Communications to determine whether notification is mandatory or voluntary. Communications has a list of countries that require mandatory notification as well as a list of fax numbers for Embassies and Consulates around the United States.

- A *Consular Notification Form and Fax Sheet* (TPD#3208) shall be completed each time a foreign national is arrested or detained for an extended period of time.
- The primary case officer is responsible for ensuring that the appropriate box is checked regarding the Voluntary or Mandatory notification status of the country and if Voluntary notification is declined.

2391 Voluntary Notification

Mexico is a voluntary notification country. If a Mexican national is taken into custody, or any other national from a country where consular notification is voluntary, the arresting officer must read statement number one on the back of the *Consular Notification Form and Fax Sheet* to the arrestee. The officer will then document that the statement was read as well as the arrestee's indication of understanding and whether or not the arrestee wished for the Consular Officials to be notified in the *Multi-Purpose Report*.

- If the arrestee indicates that they wish for their Consulate to be notified, the officer shall fax the completed *Consular Notification Form and Fax Sheet* to the local Mexican Consulate, or the appropriate consular or embassy office, should the arrestee be from another voluntary notification country.
- Submit the original copy of the *Consular Notification Form and Fax Sheet* and the fax receipt to Records.



2392 Mandatory Notification

If the arrestee is from a country that requires mandatory notification of Consular Officials, then the arresting officer must read statement number two on the back of *Consular Notification Form and Fax Sheet* to the arrestee. The officer will then document that the statement was read as well as the arrestee's indication of understanding in the *Multi-Purpose Report*.

- The officer shall fax the completed *Consular Notification Form and Fax Notification Sheet* to the appropriate Consulate or Embassy office
- Submit the original copy of the *Consular Notification Form and Fax Sheet* and the fax receipt to Records.

2393 Notification Response

Once notification of the appropriate Consulate or Embassy has been made it is not necessary to wait for a reply before continuing with the investigation. If the Consulate does contact the officer and asks to talk with the suspect, the Consulate is entitled to reasonable, private access. That access does not take priority over the investigation. The Consulate may not act as an attorney and may not invoke any of the suspect's rights on the suspect's behalf.

See G.O. 2119.2 for U and T Visas.