2300 IMMIGRATION POLICY

The Department 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. The Department expressly acknowledges that mere unauthorized presence in the United States is not a criminal offense, and enforcement of such civil violations is reserved for federal authorities. To that end, the Department recognizes and will seek to further the efforts of federal immigration authorities by considering guidelines and policies established by the federal government.

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.

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.

2310 DEFINITIONS

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 to be lawfully present in the United States if the person provides to a law enforcement officer or agency any of the following during a lawful detention or following an arrest:

- A valid Arizona Driver 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--a U.S. Passport or U.S. Permanent Resident (Resident Alien) Card

ICE/CBP-
Refers to Immigration and Customs Enforcement or Customs and Border Protection.

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 specific suspect description. Racial profiling is prohibited.

2320 CONSENSUAL CONTACTS

2321 Officers have discretion to approach a person and seek to engage that person in a voluntary conversation. The person contacted is not required 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 will not make immigration status inquiries during consensual contacts with members of the public. There is generally no obligation on the part of victims and witnesses to cooperate with law enforcement or assist in an investigation, so these encounters should be treated as consensual encounters. Accordingly, officers will not make such inquiries of victims or witnesses, since discouraging cooperation will likely hinder or obstruct investigations and can negatively impact overall community trust and confidence. Immigration status inquiries should only be made when necessary to further an investigation.

2330 PERSONS LAWFULLY STOPPED OR DETAINED

2331 Officers shall not stop or detain a person without reasonable suspicion that the person is, has been, or is about to be engaged in criminal activity. Suspicion of unlawful presence in the United States is not a legal basis for a stop or detention. A vehicle may not be stopped to determine the immigration status of the driver or occupants. Passengers in a lawfully stopped vehicle are not required to provide identification or a true name unless they are suspected of a criminal violation or a violation of Title 28.

Arizona law provides that if, during a lawful stop or detention of a person ("detainee"), an officer subsequently develops reasonable suspicion to believe a detainee 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), unless doing so would not be practicable or would hinder or obstruct the investigation. Officers shall be mindful of discouraging persons to cooperate with law enforcement out of concern regarding their immigration status.

- **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 limited to the investigation for which you have detained the person, but rather overall cooperation with law enforcement). 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 unlawfully present in the U.S., an officer shall not consider the detainee's race, color or national origin, except when it is part of a specific suspect description. An officer may ask about a person's citizenship after arrest for booking purposes.

2333 **If a detainee presents a form of presumptive identification as defined previously, the officer shall presume that the detainee is lawfully present in the U.S.**

No further investigation into the person's status is necessary or appropriate, unless there are additional facts that reasonably cast doubt on the person's lawful presence.

2334 If reasonable suspicion exists to believe a detainee is unlawfully present, and the detainee does not or cannot provide presumptive identification, then the officer will 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 persons,
- In a location known for human smuggling or known smuggling routes,
- Vehicles traveling in tandem,
- Vehicle is overcrowded or rides heavily,
- 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,
- 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 unlawfully present in the U.S. but there are no state or local criminal violations, or any other lawful basis to continue the detention (i.e. completion of a traffic stop), the officer shall release the detainee without delay.

If reasonable suspicion exists to believe a detainee is an unlawfully present person during a valid detention, the officer will attempt to contact ICE/CBP via TPD TWX. If no information concerning the subject is obtained from ICE/CBP by the time that the basis for the detention is concluded, the detainee shall be released without delay.

- 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 any enforcement action to include transport or continued detention.

- If ICE/CBP advises 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 that the detainee only has **federal civil charges**, then the officer shall ask whether ICE/CBP will respond. The detainee shall 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.

- Courts have clearly held that state and local peace officers do not have the authority to transport a person or take any other enforcement action for a civil violation of federal law.

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.

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.

2340 ARRESTS

2341 An officer shall not prolong a field release arrest to make an immigration status inquiry or to request verification of immigration status. If an officer has reasonable suspicion that an arrestee is unlawfully present in the U.S., the officer will make a reasonable attempt to determine the arrestee's immigration status, in the same manner and subject to the same exceptions and presumptions provided under *General Orders 2330* for persons lawfully stopped or detained. If

no information concerning the arrestee is obtained from TWX/ICE/CBP by the time that the field release process has concluded, the arrestee shall be released without delay.

- If an arrestee presents a form of presumptive identification as defined previously, the officer shall presume that the arrestee is lawfully present in the U.S. No further investigation into the person's status is necessary or appropriate, unless there are additional facts that reasonably cast doubt on the person's lawful presence.

- Adult arrestees who are booked into jail will undergo immigration verification by jail personnel.

2342 Officers shall comply with agency policies regarding consular notification per *General Orders 2390* for persons who self-identify as being foreign citizens.

2350 CONTACTING ICE OR CUSTOMS AND BORDER PROTECTION

2351 All contact with ICE/CBP for assistance or response shall be done via TWX to facilitate proper recordkeeping. CBP will provide assistance and response in accordance with federal enforcement priorities.

2352 In most instances, ICE/CBP will not provide immigration status unless they are able to physically verify information about a subject. The fact that an ICE/CBP cannot verify a person's status does not mean a person is unlawfully present in the United States.

2353 Any response by CBP involving a juvenile shall not occur at a school.

2354 CBP shall not be asked to respond solely to provide translation or other similar services.

2355 A case report shall be generated documenting any field response by CBP. A supervisor shall be notified by phone or other similar means if CBP is requested or responds to a scene.

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 criminal or civil in nature. ICE/CBP will generally not disclose whether the hold is criminal or civil, so officers shall not take any action based solely upon a DRO hold unless it is clearly identified as criminal.

2363 Consular notification procedures as provided in *General Orders 2390* shall be followed for any criminal detainee taken into custody pursuant to a DRO hold.

2370 NCIC ICE IMMIGRATION VIOLATOR FILE

2371 ICE keeps a record of unlawfully present persons 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.
- Police officers will not take enforcement action on Administrative Warrants or NSEERS hits, as these are civil or other non-criminal federal matters.

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

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 *Incident 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 *Incident 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. 2119.1* for U and T Visas.