



**produce any identification, but may choose to do so voluntarily.** Officers do not have the authority to demand that a person “show their papers.” 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 provided in Section V below.

- B. Officers shall not make immigration status inquiries during consensual contacts or with victims and witnesses of crime. In order to avoid perceptions of bias based policing (including racial profiling) during consensual contacts, officers should be consistent in asking persons for their identification.
- C. In no event shall race, color or national origin play any role in an officer’s decision to inquire about immigration status in consensual encounters.
- D. Individuals who contact FPD to make citizen complaints on officers will not be asked their immigration status.

**V. PERSONS LAWFULLY STOPPED OR DETAINED**

A. 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 and is unlawfully present in the U.S., the officer must make a reasonable attempt to determine the immigration status of the detainee with ICE/CBP. There are two exceptions to this requirement:

- 1. When it is not practicable

In determining whether it is practicable, officers should consider things such as work load, 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.

- 2. 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, complex investigations of money laundering, human trafficking and drug smuggling may require significant cooperation of those involved.

B. 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 to the extent that an officer may ask about a person’s citizenship.

- C. 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:
1. A valid Arizona driver license,
  2. A valid Arizona non-operating identification license,
  3. A valid tribal enrollment card or other form of tribal identification, or
  4. 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.
- D. If reasonable suspicion exists to believe the person is unlawfully present, and if the detainee does not present presumptive identification or meet one of the exceptions that are listed in section V.(A.) above, 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 relevant factors, including, among others:
1. lack of or false identification (if otherwise required by law)
  2. possession of foreign identification
  3. flight and/or preparation for flight; engaging in evasive maneuvers, in vehicle, on foot, etc.
  4. voluntary statements by the person regarding their citizenship or lawful presence
    - a. 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.
  5. foreign vehicle registration
  6. counter-surveillance or lookout activity
  7. in company of other unlawfully present aliens
  8. location, including for example:

- a. place where unlawfully present aliens are known to congregate looking for work
  - b. a location known for human smuggling or known smuggling routes
9. traveling in tandem
  10. vehicle is overcrowded or rides heavily
  11. passengers in vehicle attempt to hide or avoid detection
  12. prior information about the person
  13. inability to provide their residential address
  14. claim of not knowing others in same vehicle or at same location
  15. providing inconsistent or illogical information
  16. dress<sup>1</sup>
  17. demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact
  18. significant difficulty speaking English
- E. 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 contact ICE/CBP, unless presumptive identification is presented or one of the exceptions in V. (A.) of this order applies.
1. The officer through dispatch shall contact the ICE Law Enforcement Support Center at 1-802-872-6020 to advise the Center that the officer has a person detained and needs to have the person's name, date of birth and alien number (if available) checked in the ICE database.
  2. 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 them to the Coconino County Jail.
  3. 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 officer may not extend the initial lawful stop based upon the federal civil

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<sup>1</sup> Dress has been recognized by the courts as a valid factor, but in practice is very difficult to articulate.

charges. Once the investigation related to the initial lawful stop has been completed, the detainee must be released unless the officer has developed reasonable suspicion or probable cause relating to other criminal activity. Without the person's consent, officers shall not transport the person based solely upon a federal civil violation.

4. If ICE/CBP is **unable to indicate whether the federal charge against the detainee is civil or criminal**, then the officer shall treat the charge as civil pursuant to paragraph (3) above.
5. If ICE/CBP does not answer or if they are unable to immediately verify that the detainee is unlawfully present, ICE/CBP should be asked to re-contact the officer if and when any information is available. The officer may then proceed to process the detainee as the officer would otherwise under our existing procedures. The officer shall not extend the detention solely to wait for ICE/CBP to respond. If the officer obtained relevant information during the lawful stop, the officer shall fill out an ICE referral form. The referral form will be submitted to records with the accompanying documents (Citation, Warning, etc...) The referral report shall be submitted to ICE by records.
6. The U.S. Department of State does not consider it necessary to make consular notification in instances where the detention of a foreign national is for a short period of time. A routine traffic stop or accident investigation generally will not detain the national for more than a brief time, so notification is not necessary.

F. Documentation of reasonable suspicion

1. If you do an Ice inquiry on a stop or FI, and the suspect comes back clear Officers must list their reasonable suspicion in the call notes of the stop or FI (on the MDC).
2. If you don't get a timely return from ICE, the officers will be doing the Ice Referral Form, where they will list the reasonable suspicion.
3. If they get a civil hit, the officers will list their reasonable suspicion in the Ice Referral form.
4. If they get a criminal hit they will list their reasonable suspicion in the report.
5. Detectives will cover how they established reasonable suspicion in their detective supplemental report.

## VI. ARRESTS

- A. Officers are required to verify the immigration status of all arrestees unless it can be verified through one of the forms of presumptive identification as outlined above.
- B. When an officer arrests a person for a misdemeanor and is considering whether to cite and release the person, the officer through dispatch shall contact the ICE Law Enforcement Support Center at 1-802-872-6020 to advise the Center that an officer has a person under arrest and needs to have the person's name, date of birth and alien number (if available) checked in the ICE database.
  - 1. If ICE/CBP does not answer or if ICE/CBP is unable to verify that the arrestee is unlawfully present, then the officer will proceed to handle the arrestee according to agency policy, which may result in the issuance of a citation/referral and the release of the arrestee.
  - 2. If ICE/CBP verifies that the person has federal civil or criminal charges, then the officer may ask the federal agency to transport the person, the officer may transport the person to the agency, or the officer may transport the person to jail for booking on the state charges. FPD officers will not transport persons to jail on federal civil charges alone.
  - 3. If verification is made by the agency, the fact that verification was made and by whom will be documented in the DR.
- C. When an officer arrests a person and is going to book the person into a jail facility, it is **still** necessary for the officer to contact ICE/CBP through dispatch to verify that the arrestee is lawfully present (unless they have presumptive identification). The fact that verification was made and by whom will be documented in the DR. Again if ICE/CBP does not answer or if ICE/CBP is unable to verify that the arrestee is unlawfully present, then the officer will proceed to complete the ICE Referral Form.

As required by Arizona law, all persons who are to be booked into jail shall be asked about their country of citizenship, with the answer/s documented in the departmental report:

- 1. What is your country of citizenship?
- 2. Where were you born?
  - a. If the answer is other than the United States, officers will ask the arrested person if they have dual United States citizenship. Additionally, the following questions should be asked, but only after

*Miranda* warnings have been given (if a juvenile, use appropriate *Miranda* warnings) and a waiver obtained.

- 1) Are you in the United States legally?
  - 2) Do you have any registration documents or other proof of lawful presence?
- D. In situations where a Foreign National is arrested but cited and released a short time later, it is unnecessary to notify their consulate. If, however, the Foreign National is being detained for a significant length of time (whether or not they are under arrest), it becomes necessary to advise the Foreign National of their right to have their consulate notified of their arrest or detention. Booking a Foreign National into jail or detaining them for several hours while questioning would require the officer to make the admonishment and any requested notification. **This applies for the arrest of any Foreign National, whether they are in this country legally or not.**

## VII. DETENTION AND REMOVAL ORDER (DRO) HOLDS (usually a NCIC hit)

- A. 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.
- B. 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.
1. This hold will be similar to a warrant notification when a person's information is run through NCIC.
- C. If an officer or dispatch receives a DRO notification from ICE, the following will be done:
1. Call the phone number on the DRO notification to determine whether the DRO hold is criminal or civil.
  2. Detain and transport for **criminal** orders, if requested to do so by ICE.
  3. Complete a departmental report containing all relevant information.
- D. **Without the person's consent, officers will not transport for civil violations or continue to detain if the only violation is a civil DRO hold.**
- E. Consular notification procedures shall be followed if an arrest and transport is made.

## VIII. NCIC ICE IMMIGRATION VIOLATOR FILE

- A. 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.
- B. The Immigration Violator File contains the following additional categories:
  - 1. 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.
  - 2. 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.
  - 3. ICE enters this information into the NCIC Immigration Violator File.
  - 4. Police officers will not take enforcement action on Administrative Warrants or NSEERS hits, as these are civil or other non-criminal federal matters.
  - 5. The NCIC query results will advise whether the information displayed is an Administrative Warrant hit or a Deported Felon File hit.
- C. 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:
  - 1. Verify through physical description (scars, marks, tattoos, etc.), admission, or other available information, that the person on the notification is the same person.
  - 2. Contact the ICE Law Enforcement Service Center in Vermont through the communications dispatcher or call directly at 802-872-6020.
  - 3. Once the hit has been confirmed, officers will positively identify the subject through LiveScan, or fingerprint the individual and fax the fingerprints to ICE at FAX 602-379-4502.
  - 4. After the subject has been positively identified, CCSO Detention personnel will arrange for pick-up and disposition of the subject.
- D. Officers will complete a departmental report titled "NCIC Immigration Hit" with the following information:
  - 1. Subject's name and personal information.
  - 2. Time, place and reason for contacting the subject.

3. Name and badge number of ICE agent that took custody of subject (if applicable).
- E. If there are local charges along with a Deported Felon notification, there is no need to contact ICE. Follow normal booking procedures.

## **IX. DOCUMENTATION**

Officers are reminded of their responsibility to thoroughly document all facts and circumstances in a DC1, DC2, F.I., or ICE Referral Form (whichever is applicable) supporting their decisions in the application of this statute. They will include hardcopy responses from dispatch with all reports.

## **X. DISPATCH RESPONSIBILITIES**

- A. The Dispatch Center shall conduct all ICE verification for all arrests made by members of the Flagstaff Police Department even when the suspect is booked. Dispatch will be contacted by arresting officers with a request that verification be made through The ICE Law Enforcement Center at 1-802-872-6020 or by NLETS.
- B. When Dispatch completes the NLETS inquiry to verify whether a person is an alien and unlawfully present in the U.S., the inquiry will include the following information:
1. Is there any record that the person has ever completed an alien registration document?
  2. Whether the person has any other authorization from the federal government to remain in the U.S.
  3. Is the violation criminal or civil?
- C. All NLETS requests and returns shall be placed in a box specifically labeled for this purpose and made available for access by patrol officers. These documents shall be included with the officer's reports.

## **XI. RECORDS RESPONSIBILITIES**

- A. Records will receive the ICE referral form via the normal report submission process and will be treated like a DC2 report. The Records Clerk will be responsible to scan a copy of the Ice Referral Form and attach it to the incident. A copy of the form will be forwarded to ICE.