

## CITY COUNCIL REPORT

DATE: 3/25/2016

TO: Mayor and Councilmembers

FROM: Police Chief Kevin Treadway, Deputy Police Chief Dan Musselman

CC: Josh Copley, Shane Dille, Leadership Team

SUBJECT: Immigration Enforcement Policy of the Flagstaff Police Department.

This report is in response to a request for further information on the Flagstaff Police Department's Immigration Policy following the arrest of Francisco Madrid.

### DISCUSSION

On January 22, 2016, Flagstaff Police Department Officers lawfully stopped a vehicle in which one of the passengers was wanted for shoplifting. Francisco (Frankie) Madrid was the front passenger, a wants and warrant check revealed Francisco had an active warrant for a previous shoplifting incident. He was then placed under arrest. Upon booking, Francisco told the arresting officer that he had an immigration hearing coming up. The officer appropriately listed Francisco's place of birth as Mexico on the booking form. After the FPD Officer left the detention facility, jail staff contacted Immigration and the Detention and Removal Office (a unit of ICE that has the responsibility of detaining and transporting undocumented persons). This is consistent with policy on individuals indicating they were born in a foreign country. ICE placed a hold on Francisco on January 23, 2016. Francisco was released to Immigration by the Jail on January 27, 2016.

Our agency conducts 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. Our policy does not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law, nor does it restrict the full enforcement of state laws. I have summarized the main points of our policy here below.

In reference consensual contacts between the police and public, 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, but may choose to do so voluntarily. Officers do not have the authority to demand that a person "show their papers." 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.

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:

- (a) When it is not practicable (due to work load, criticality of incident, available personnel on scene, etc..)
- (b) When the determination may hinder or obstruct an investigation (in light of the need for suspect, victim and witness cooperation in an investigation).

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. If the detainee presents one of the following types of identification, it is presumed that the detainee is lawfully present in the U.S. and 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) A valid Arizona driver license,
- (b) A valid Arizona non-operating identification license,
- (c) A valid tribal enrollment card or other form of tribal identification, or
- (d) 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.

In regards to arrests, 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. 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?

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?

For clarification, I wanted to provide a few notes/reminders regarding the SB1070 immigration policy of the Flagstaff Police Department:

- 1.) Because this is a law, the Flagstaff Police Department is required to enforce this law.
- 2.) This law applies to all contacts (including traffic stops, investigative detentions, etc.).
- 3.) Officers who establish "reasonable suspicion" to believe an individual is not in this country legally, are **required** to contact ICE. This is done through a phone call generally placed by dispatch. There is no local ICE deportation office, so ICE does not respond to the officer's location. Officers will not detain individuals any longer than necessary to complete the original contact, (ie: we will not detain them awaiting a response for ICE). There are two exceptions to the requirement to conduct an immigration inquiry when officers develop reasonable suspicion-a.) If the officer can articulate that the immigration investigation "is not practicable", or b.) if the immigration investigation may hinder or obstruct another investigation.

- 4.) Officers are required to determine nationality of those individuals who are placed under arrest (for a non-immigration related matter). In many cases, it is Federal law that officers make Consular notification of foreigners taken into custody.
- 5.) Citizenship of those being booked is generally determined when completing the booking questionnaire. Individuals stating they are citizens of another country, born in another country, or other admissions suggesting nationality other than the U.S. during the booking process, will trigger follow up by the jail staff. This follow up may include inquiries through ICE to determine if the individual is in the country legally.
- 6.) FPD has held numerous public forums on this policy, and since 2010, we have repeatedly reminded the community that the best way not to be deported in Flagstaff is to not commit another crime that results in your arrest.
- 7.) FPD officers are not 287g certified, do not proactively conduct immigration “sweeps”, and do not join with ICE on immigration “roundups”.

If any of you should have further questions or would like to see FPD policies pertaining to immigration or Consular notification, please let me know. This report is for information only.