

MESA POLICE Department Policy Manual	Immigration and Customs Enforcement Protocols	DPM 2.4.35 Effective Date 12/01/2015
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1. PURPOSE

This order provides Mesa Police Department (MPD) personnel with guidelines for immigration and customs enforcement.

2. GENERAL GUIDELINES

The Mesa Police Department (MPD) is committed to conducting all immigration enforcement activities consistent with federal and state law and to protecting the civil rights of all persons.

Federal immigration laws are complicated in that they involve both civil and criminal aspects.

The investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP).

MPD is committed to partnering with these federal agencies and others to the extent allowable under federal, state and local laws to address criminal activity that threatens the safety and well-being of our community.

This practice is consistent with our duty to ensure the safety and well-being of all persons, regardless of their immigration status.

3. PRESUMPTIVE IDENTIFICATION

Reasonable Suspicion

Definition: When an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion.

Requirement: 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.

If reasonable suspicion exists to believe the person is unlawfully present, the officer shall make a reasonable attempt(s) to determine the person's immigration status.

Prior to questioning the person about his or her immigration status, the officer shall contact his or her supervisor to ensure that the circumstances justify such action under MPD Policy and receive approval to proceed.

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Determining Reasonable Suspicion:

When determining whether reasonable suspicion of unlawful presence exists, officers should consider all relevant factors, including, among others:

NOTE: All factors should be considered and no one factor alone should determine whether reasonable suspicion exists that the person is unlawfully present.

- Not in possession of identification when required by law.
- Possession of false identification.
- Flight and/or preparation for flight; engaging in evasive maneuvers, in vehicle or on foot.
- Voluntary statements by the person regarding their citizenship or lawful presence.
 - If a person is in custody for purposes of Miranda, he/she **may not** be questioned about immigration status until after the reading and waiving 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.
- 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.
- Provide inconsistent or illogical information.
- Unusual or unexplained nervousness **OR** erratic behavior.

Acceptable Presumptive Identification

If a person presents one of the types of identification listed on **DPM 2.4.35A1 Presumptive Identification List** to the law enforcement officer or agency, it is presumed that he /she is lawfully present in the United States.

No further investigation into the person's status is necessary, unless there is reasonable suspicion to believe the person is unlawfully present in the United States.

No city official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual's perceived race, national origin, religion, language, or immigration status, unless such personal characteristics have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.

No City agency or official may engage in any surveillance that is based, to any extent or degree, upon a person or group's actual or perceived religion, ethnicity, race, national origin, or immigration status, except where doing so is based on a reliable, specific description of a suspect and adheres to appropriate constitutional standards.

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Suspect With Presumptive Identification

If the person **possesses** one of the acceptable forms of presumptive identification listed on **DPM 2.4.35A1, Presumptive Identification List**, there is no further inquiry that needs to be made into the person's immigration status.

Suspects With No Presumptive Identification

If the person **does not present** presumptive identification, where reasonable suspicion exists that the person is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person as provided in this policy, except where the determination of the person's immigration status may hinder or obstruct an investigation.

Prior to questioning the person about his or her immigration status, the officer shall contact his or her supervisor to ensure that the circumstances justify such action under MPD Policy and receive approval to proceed.

When determining whether it is practicable, officers should consider things such as:

- Work load.
- Criticality of incident.
- Other present duties.
- Available personnel on scene
- Location.
- Available back-up.
- The ability to contact and availability of ICE/CBP.

When the determination may hinder or obstruct an investigation, officers should consider:

- When or whether to investigate immigration status in light of the need for suspect's cooperation.
- The victim and/or witness cooperation in the investigation (this cooperation is not necessarily limited to the investigation for which officer detained the person).

NOTE: Source for relevant factors: Arizona Police Officers Standards and Training Board (AZPOST), Implementation of Arizona Immigration laws for Peace Officer, June 2010.

City officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where required by state or federal law including to verify eligibility for a benefit, service, or license conditioned on verification of certain status.

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4. PROCEDURES

In enforcing the laws, officers may legally stop, detain or arrest anyone when reasonable suspicion or probable cause exists that a crime has occurred. Officers, however, shall not engage in bias-based profiling, also referred to as "racial profiling", when conducting stops, detentions, or arrests of any subject.

The duration of any traffic stop shall not be extended beyond the time that it is necessary to address the original purpose for the stop and/or to resolve any apparent criminal violation for which the officer has or acquires reasonable suspicion or probable cause to believe has been committed or is being committed.

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 violation of Title 28.

Arizona law provides that if, during a lawful stop or detention of a person, an officer subsequently develops reasonable suspicion to believe the person is unlawfully present in the U.S., the officer must take a reasonable attempt to determine the immigration status of the person with ICE unless doing so would not be practicable or would hinder or obstruct the investigation.

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 investigation and can negatively impact overall community trust and confidence. Immigration status inquiries should only be made when necessary to further an investigation.

The MPD recognizes that community trust and cooperation is an essential component of effective policing and public safety. Therefore, 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.

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.

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School Resource Officers (SRO) 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 trust, cooperation, and safety among 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, SROs shall refrain from asking about immigration status.

Where questions exist as to what enforcement action should be taken, officers should contact their immediate supervisor for direction.

Arrested - Booked

Adults, not including juveniles (unless chargeable for a crime covered in ARS 13-501A 1-5, **Persons under eighteen (18) years of age; felony charging**) who are arrested and booked for committing a state or local crime shall be asked about their immigration status and, if the officer(s) develops information that the suspect is in the United States unlawfully, the information **shall** be detailed in the Department Report (DR).

- The Detention Supervisor **shall** contact ICE (Law Enforcement Agency Response Team (LEAR), complete an ICE Inquiry (NLLQ) as needed, and **shall** notify the Support Services Lieutenant over the Holding Facility as soon practical.
- A copy of the NLLQ and any ICE response shall be forwarded to the Lieutenant over the Holding Facility.

Cite and Release or Long Form

Where reasonable suspicion exists that the person being cited and released, or for whom a long form complaint is being sought is unlawfully in the United States a reasonable attempt shall be made when practicable to determine his/her immigration status unless the determination hinders or obstructs an investigation.

If the officer(s) develops information that the suspect is in the United States unlawfully, the officer(s) shall document it in a DR and shall refer the individual to ICE by completing an **DPM 2.4.35F2, ICE Request for Inquiry Form**, noting in the remarks sections that the person was cited and released, and forwarding the form to the affected District Coordinator/Designated Lieutenant.

The District Coordinator/Designated Lieutenant is responsible for ensuring the notice to ICE (NLLQ) is completed. The **DPM 2.4.35F2, ICE Request for Inquiry Form**, NLLQ and any response from ICE shall be kept at the affected district.

No City official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate's custody status, release date or home address, or information that may be used to ascertain an individual's religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.

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NOTE: If an officer develops information that the individual is in the United States illegally without asking about his/her immigration status, the officer **shall** complete the **DPM 2.4.35F2, ICE Request Inquiry Form** and the District Coordinator/Designated Lieutenant **shall** refer the information to **ICE**.

The officer should take into consideration the following factors in determining whether to cite and release or arrest:

- Ties to the community, including family ties and relationships.
- Length of residence.
- Prior criminal activity.
- Any other facts bearing on the risk of non-appearance or danger to the public.

Unsolicited Information

If the officer comes upon unsolicited information during the course of his/her enforcement efforts about the immigration status of the person(s) being investigated, it **shall** be documented in a Field Interview Card (FI) and detailed in the **DPM 2.4.35F2, ICE Request for Inquiry Form** and forwarded to the affected District Coordinator/Designated Lieutenant.

The **DPM 2.4.35F2, ICE Request for Inquiry Form** shall be routed to ICE through the District Coordinator/Designated Lieutenant for investigation.

Enforcement and Removal Order (ERO) Hold

The Enforcement and Removal Office is a unit of ICE that has the responsibility of detaining and transporting persons apprehended by ICE, Customs and Border Protection and local law enforcement.

Once a person has been identified as being in the United States illegally, ICE issues an ERO hold, which can be for criminal or civil violations.

- This hold is similar to a hit from a warrant when a person's information is run through NCIC.

If an Officer receives a ERO hit, the following **shall** be done:

- Call the telephone number on the ERO hit to determine whether the ERO hold is criminal or civil.
- The subject may be detained for the length of time it takes to determine whether the ERO hold is criminal or civil.

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ERO - Civil Hold

Arizona law authorizes police officers to enforce provisions of the criminal law. The authorization is limited to criminal and does not include civil. Therefore, officers shall not transport for civil violations or continue to detain if the only violation is a civil ERO hold.

- If the officers develop information that the suspect is in the United States unlawfully, the information shall be detailed in the **DPM 2.8.35F1, Field Interview Card (FI)** and forwarded to the affected District Coordinator/Designated Lieutenant.
- The **DPM 2.4.35F2, ICE Request for Inquiry Form** shall be completed and routed to ICE through the District Coordinator/Designated Lieutenant.
- Once the **DPM 2.4.35F2, ICE Request for Inquiry Form** has been completed, the subject may be released.

ERO - Criminal Hold

Detain and transport for criminal ERO holds, if requested to do so by ICE. A DR entitled "Possible Federal Immigration Violation" shall be completed for all arrests and transports for ICE on a criminal ERO hold or criminal violations of a federal immigration law.

The questions and answers to the following shall be asked of all parties involved and documented thoroughly in the Department Report (DR):

- What is your country of birth?
- Are you in the United States legally?

ICE Contact for Drop Houses, Human Smuggling and Load Vehicles

When dealing with drop houses, human smuggling, and/or load vehicles, the following steps shall be taken:

- A Patrol supervisor shall contact the on duty shift Lieutenant and provide a detailed account of the incident.
- The on duty shift Lieutenant shall contact ICE and advise of circumstances.
- The on duty shift Lieutenant shall document each reported incident along with the response by ICE in a supplement to the DR.
- The on duty shift Lieutenant shall advise the patrol supervisor of a response by ICE and/or other investigative details.
- Officers shall cooperate with ICE agents in ICE law enforcement activities consistent with the mandates of MPD policy.

To the extent ICE or CBP has been granted access to City facilities, individuals with whom ICE or CBP engages will be notified that they are speaking with ICE or CBP, and ICE or CBP agents shall be required to wear duty jackets and make their badges visible at all times while in City facilities

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- Officers may transport ICE prisoners at the request of an on call ICE agent and with the approval of an on duty supervisor when they come in contact with undocumented persons in regards to a smuggling operation/drop house, or a load vehicle.
- The Command Duty Officer (CDO) or the affected Division Commander and the on duty or on call Media Relations Officer (MRO) **shall** be notified as soon as possible for on scene assistance by ICE or other high profile incidents involving undocumented persons.

Community and Victim Services

Officers may refer community members to the Chicanos Por La Causa and/or Friendly House assistance; contact Communications or Victim Services for telephone numbers and locations.

For additional referral services contact:

- Community Information & Referrals at (602) 263-8856.
- ICE 24 hour contact at (800) 973-2867.
- ICE Law Enforcement Support Center at (802) 872-6020.
- Phoenix area duty agent at (602) 379-3116.

U-Visa Certification Form

Refer to DPM 2.4.18 U-Visa I-918 Supplement B Certification Policy.

5. CONCLUSION

MPD recognizes its role in the community to fight crime and the fear of crime by implementing strategies and utilizing all available tools to do so. Our commitment to this mission extends to all persons that engage in criminal activity within our community irrespective of their immigration status.

This policy evidences our intent to cooperate with ICE and others, to the extent permitted by law, on any criminal activity that threatens the safety and well-being of our community.

References:

- [DPM 2.8.35F1, Field Interview Card](#)
- [DPM 2.4.35F1, Consular Notification Form](#)
- [DPM 2.4.35F2, ICE Request For Interview Form](#)
- [DPM 2.4.35A1, Presumptive Identification List](#)

Any person who alleges a violation of this policy may file a written complaint for investigation with the City.

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- [DPM 2.4.18 U-Visa I-918 Supplement B Certification Policy](#)