



# FIELD ORDERS

Chapter

**ARREST and SEARCH**

Subject

**Arrest of Foreign Nationals**

## POLICY

1. The City of Scottsdale and the Scottsdale Police Department do not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.
2. The City of Scottsdale and the Scottsdale Police Department respect the civil rights of all individuals.
3. Scottsdale officers are aware that enforcing state and federal laws related to immigration is a complex effort, which requires cooperation from multiple agencies and the consideration of multiple facts and circumstances. Officers are encouraged to contact supervisors when necessary for guidance.

## PURPOSE

To provide guidelines for managing investigations related to immigration enforcement and the arrest of foreign nationals.

## ICE JURISDICTION

Federal immigration law violations, such as a foreign national illegally residing in the United States, is under the jurisdiction of the U.S. Immigration and Customs Enforcement (ICE), an investigative arm of the Department of Homeland Security.

## DEFINITIONS

**Alien:** Person who is not a citizen or national of the United States, including a permanent resident alien.

**Authorized Officer:** Means a member of U.S. Immigration Customs Enforcement (ICE), an Arizona law enforcement officer empowered by the federal government pursuant to the 287(g) Program, or a member of U.S. Customs and Border Protection (CBP) authorized to determine immigration status.

**Civil Immigration Violation:** Violation of a federal civil immigration law. Offenses include, but are not limited to:

- Unlawful presence of an alien in the United States,
- An alien whose visa has expired and has not been renewed, or,
- An alien who seeks or engages in unauthorized employment.

**Consular Official:** Person who displays a driver license issued by the United States Department of State, or who otherwise claims immunities or privileges under Title 22 United States Code.

**Criminal Immigration Violation:** Violation of a federal criminal immigration law. Offenses include, but are not limited to, alien smuggling or crossing the border outside a port of entry.

**Documented Individual:** Person who has proof of U.S. citizenship/nationality or lawful presence such as a valid visa or permanent resident alien card.

**Drop House:** House or building used as a transfer/holding facility by persons engaged in smuggling undocumented persons.

**Foreign Diplomat:** Person who displays a driver license issued by the United States Department of State, or who otherwise claims immunities or privileges under Title 22 United States Code.

**Foreign National:** Person who is not a citizen or national of the United States, including a permanent resident alien.

**Law Enforcement Officer:** Sworn peace officer, police aide (acting as a civilian traffic investigator), or detention officer.

**Load Vehicle:** Vehicle engaged in smuggling undocumented persons.

**Reasonable Suspicion:** Specific, articulable facts that, when considered with objective and reasonable inferences, form a basis for particularized suspicion. The requirement of particularized suspicion encompasses two elements:

1. The assessment must be based upon the totality of the circumstances.
2. The assessment must create a reasonable suspicion that the particular person is unlawfully present in the United States.

**Undocumented Individual/Unauthorized Alien:** Person who is not lawfully present in the United States.

#### **FEDERAL IMMIGRATION WARRANTS and OTHER ICE NOTIFICATIONS**

**ICE Notification** – Notify ICE under the following circumstances. Contact Dispatch or Detention for the phone number.

1. You arrest a person subject to a criminal federal immigration arrest warrant.
2. You locate a drop house or a load vehicle.
3. You need the expertise or assistance of an ICE agent in your investigation.
4. When other sections outlined in this Field Order require notification.

## CONSENSUAL CONTACTS

1. State laws related to immigration enforcement do not expand or limit an officer's ability to approach a person and engage that person in a voluntary conversation.
  - a. During the conversation, you may inquire about any subject matter. The person contacted does not have to answer questions or produce identification, but may choose to do so voluntarily.
  - b. You do not have the authority to demand that a person "show his or her papers" on consensual encounters.
  - c. If, during the contact, you develop reasonable suspicion that the person has committed, is committing, or is about to commit a crime, then proceed as directed below.
2. Exercise appropriate discretion when making immigration status inquiries during consensual contacts or with crime victims and witnesses. Be consistent when asking persons for their identification to avoid perceptions of racial profiling during consensual contacts.



ACLU Model #5

*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 to verify eligibility for a benefit, service, or license conditioned on verification of certain status.*

3. Do not allow race, color, or national origin to play any role in your decision to inquire about immigration status in consensual encounters.

**PERSONS LAWFULLY  
STOPPED or DETAINED**

A. If, during the course of a lawful stop or detention of a person, you subsequently develop reasonable suspicion to believe the person is in the U.S. unlawfully, make a reasonable attempt to determine the person's immigration status with an authorized officer. There are two exceptions to this requirement:

1. When it is not practicable.
  - a. In determining whether it is practicable, consider things such as:
    - Work load and present duties.
    - Criticality of the incident.
    - Safety.
    - Available personnel on scene.
    - Location.
    - Available back-up.
    - Ability to contact an authorized officer.
    - Availability of an authorized officer.

- b. Law enforcement officers have wide discretion when making this determination.
- 2. When the determination may hinder or obstruct an investigation.

- a. Consider whether to investigate immigration status when suspect, victim, or witness cooperation is needed in an investigation.
    - This consideration is not limited to the investigation for which you have stopped or detained the person.
    - For example, complex money laundering, human trafficking, and drug smuggling investigations may require significant cooperation of those involved.
  - b. Law enforcement officers have wide discretion when making this determination.
3. For lawful stops and investigative detentions that do not result in a custodial arrest, only detain individuals beyond the initial stop or detention to the extent authorized by the United States and Arizona constitutions.



ACLU Model #9

**B.** Do not consider race, color, or national origin in establishing whether there is reasonable suspicion to believe a person is unlawfully present in the U.S., except to the extent allowed by the United States or Arizona constitutions.

*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.*

- C.** If a person subject to the stop or detention presents one of the following types of identification, it is presumed that the detainee is lawfully present in the U.S.
- Valid AZ driver license or ID.
  - Valid form of tribal identification.
  - U.S. passport, a valid U.S. Visa, or resident alien card.
  - Valid federal, state, local government, or U.S. territory identification (e.g. Puerto Rico, Guam, etc.) if the issuing agency requires proof of legal presence within the U.S. before issuance.

**D.** If the detainee does not present presumptive identification, then based on articulable facts and circumstances, determine whether reasonable suspicion exists based on the totality of the circumstances that the person is an alien and here unlawfully.



ACLU Model #5 & #6

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

*#5 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 to verify eligibility for a benefit, service, or license conditioned on verification of certain status.*

*#6 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*

2. In determining whether reasonable suspicion of unlawful presence exists, consider all relevant factors. Depending on the factor, the factor by itself, without supporting factors may

or may not constitute reasonable suspicion. Factors include, but are not limited to:

- a. Lack of or false identification (if otherwise required by law).
- b. Possession of foreign identification.
- c. Flight and/or preparing for flight. Engaging in evasive maneuvers in a vehicle, on foot, etc.
- d. Voluntary statements by the person regarding his/her citizenship or lawful presence.

**Note** – If the person is in custody for purposes of *Miranda*, do not question the person about immigration status until after *Miranda* rights have been read and waived.

- e. Foreign vehicle registration.
- f. Counter-surveillance or lookout activity.
- g. In the company of other unlawfully present aliens.
- h. 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.
- i. A vehicle is overcrowded or riding heavily.
- j. Passengers in vehicle attempt to hide or avoid detection.
- k. Reliable prior information about the person.
- l. Inability to provide his or her residential address.
- m. Claim of not knowing others in same vehicle or at same location.
- n. Providing inconsistent or illogical information.
- o. Demeanor. For example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact.
- p. Significant difficulty speaking English.



ACLU Model #7

*No city agency or official shall authorize or engage in the human or technological surveillance of a person or group based solely or primarily upon a person or group's actual or perceived religion, ethnicity, race, or immigration status.*

E. Attempt to contact an authorized officer when reasonable suspicion exists to believe a subject is present in the U.S. unlawfully but there are no state or local criminal violations.

1. Release the subject after filling out an SPD ICE referral form if unable to make contact, or determine the person's immigration status with an authorized officer.

2. If an authorized officer advises there are federal **criminal** charges against the detainee, determine whether ICE/CBP will respond to take the person into custody or whether you will transport the detainee to the county jail or ICE to be booked on the federal criminal violation.

a. The Ninth Circuit Court of Appeals has held that Arizona peace officers have the authority to arrest persons on federal criminal immigration violations.

*City officials shall not arrest, detain, or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE or CBP, without a judicial warrant.*

b. Understand that many federal immigration violations are civil or administrative in nature, not criminal.

3. If an authorized officer advises that the detainee only has federal **civil or administrative** immigration charges, ask whether ICE/CBP will respond.

a. **Detainees may not be detained any longer than necessary to complete the officer's initial reason for the stop or detention.**

b. **Do not extend the detention to wait for ICE/CBP to respond.** Release the detainee after filling out an ICE referral form.

c. Records mails the referral forms to ICE.

d. Do not transport the person based solely on a federal civil violation without the person's consent.

*#2 City officials shall not arrest, detain, or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE or CBP, without a judicial warrant.*

*#6 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.*



ACLU Model #2



ACLU Model #2, #6, #9



*#9 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.*

4. The Ninth Circuit Court of Appeals has held that Arizona peace officers do not have the authority to transport or arrest a person solely for a federal civil or administrative immigration violation.

## **ARRESTS**

### **VERIFY STATUS**

1. All arrested persons will have their immigration status verified by an authorized officer before they are either: booked and released, or cited and released for a misdemeanor in lieu of booking, **UNLESS** the person presents one of the presumptive forms of identification listed in the **PERSONS LAWFULLY STOPPED or DETAINED** section above.

- Document that verification was made or presumptive identification was shown and by whom in either a booking sheet or the Department Report (DR).
2. Ask all arrested persons that are booked the following questions and document the answers in the DR:
    - a. What is your country of citizenship?
    - b. Are you lawfully present in the United States?
    - c. Arrested foreign nationals, regardless of legal status, are entitled to consular notifications so ask whether they want their consulate notified. In some cases, regardless of their request, mandatory consular notification is required. *See* section **CONSULAR NOTIFICATION and FOREIGN DIPLOMATS** below.



ACLU Model #5

3. If an arrested person does not have presumptive identification, contact an authorized officer to verify immigration status. After contact, determine whether ICE is placing an immigration hold on the subject.

*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 to verify eligibility for a benefit, service, or license conditioned on verification of certain status.*

4. If, after contact, an authorized officer does not place an immigration hold on the arrested person, presume the person to be lawfully present and do not place an immigration hold on the person.
  - a. Process the person following normal booking procedure.
  - b. Document that the authorized officer did not place an immigration hold in the DR or booking sheet.



ACLU Model #2

5. Transport persons who are determined to be unlawfully present to the County Jail and place an immigration hold on them.

*City officials shall not arrest, detain, or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE or CBP, without a judicial warrant.*

6. Only an authorized officer may authorize placing an immigration hold on an individual.

7. The fact that an authorized officer cannot verify a person's status does not mean a person is unlawfully present in the United States.
8. Officers and detention officers will not prolong an arrest or detention for an immigration inquiry, including to request or obtain verification of immigration status.

**VICTIMS and WITNESSES**

1. Under state law you are not mandated to make a reasonable

attempt to verify immigration status when it would hinder your investigation. The state law triggering event for making a reasonable attempt to verify immigration status is in the enforcement context of stop, detention, or arrest versus a witness or victim interview.

2. The federal government has a U Visa Program that grants temporary legal status to crime victims under certain circumstances during the course of a criminal investigation and prosecution. Contact the Person Crimes Lieutenant or ICE for further information on this program.

### STATE IMMIGRATION CRIMES

There are also a very limited number of state immigration crimes dealing with smuggling and transporting undocumented aliens that may be applicable to situations involving undocumented aliens. Refer to the appropriate legal update for specifics.

### CONSULAR NOTIFICATION and FOREIGN DIPLOMATS

#### ARREST or EXEMPT from ARREST

1. Except for foreign diplomats or consular officials, foreign nationals may be arrested for criminal offenses.
2. **Foreign Diplomats and Consular Officials** – Depending on actual status, a foreign national claiming to be a foreign diplomat or a consular officer may be exempt from arrest. *See* FIELD Order 4011/Traffic Violations by Foreign Diplomats for traffic violations, including criminal traffic violations such as DUI and reckless driving. An officer contacting a person believed to be a foreign diplomat or consular officer must:
  - Immediately notify a supervisor.
  - Immediately contact the United States Department of State in order to verify the person's status and immunity.

#### FULL IMMUNITY

1. If you determine the individual is entitled to the full immunity of a diplomatic agent, do not arrest the individual, and do not, except in extraordinary circumstances:
  - Handcuff.
  - Detain.
  - Search the individual (includes the individual's vehicle unless it has been reported stolen).
2. Extraordinary circumstances include when the public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed.
3. Record all the information from any identification cards or paperwork and fully document the circumstances of the

incident.

4. The Department of State may take subsequent steps based on the circumstances surrounding the incident. In addition, criminal prosecution may be possible at a later date.

**NOT ENTITLED to FULL IMMUNITY** – If it is determined the individual is not entitled to full immunity, follow normal procedure considering any limitations given by the United States Department of State.

**GOVERNMENT NOTIFICATION** – When arresting foreign nationals, advise them of their right to have their government notified of the arrest.

1. If the foreign national asks for notification, inform the nearest consulate or embassy by telephone or fax. Do not let the notification interfere with the investigation.
2. Note in the DR whether the foreign national did or did not request government notification.
3. Some countries require notification even if declined by the foreign national. These countries are:

Algeria	Antigua and Barbuda	Armenia
Azerbaijan	Bahamas	Barbados
Belarus	Belize	Brunei
Bulgaria	China <sup>1</sup>	Costa Rica
Cyprus	Czech Republic	Dominica
Fiji	Gambia	Georgia
Ghana	Grenada	Guyana
Hong Kong <sup>2</sup>	Hungary	Jamaica
Kazakhstan	Kiribati	Kuwait
Kyrgyzstan	Malaysia	Malta
Mauritius	Moldova	Mongolia
Nigeria	Philippines	Poland (non-permanent residents only)
Romania	Russia	St. Kitts and Nevis
St. Lucia	St. Vincent and the Grenadines	Seychelles
Sierra Leone	Singapore	Slovakia
Tajikistan	Tanzania	Tonga

<sup>1</sup> Notification is not mandatory in the case of persons who carry “Republic of China” passports issued by Taiwan. Inform such persons without delay that the nearest office of the Taipei Economic and Cultural Representative Office can be notified at their request.

<sup>2</sup> Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region. U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports, i.e., immediately, and in any event within four days of the arrest or detention.

Trinidad and Tobago	Tunisia	Turkmenistan
Tuvalu	Ukraine	United Kingdom <sup>3</sup>
U.S.S.R. <sup>4</sup>	Uzbekistan	Zambia
Zimbabwe		

4. Consular officials are entitled to access their nationals in detention, and are entitled to provide consular assistance. Notify consular officials when guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent.
5. Make inquiries concerning contact with foreign governments to the assistant legal advisor for consulate affairs at the Department of State, (202) 647-4415; FAX (202) 736-7559. After normal business hours, contact the command center of the Bureau of Diplomatic Security, Department of State, (202) 647-7277 (24 hours).
6. Notify consular officials when a foreign aircraft wrecks or crashes within department jurisdiction.
7. Notify a foreign consulate whenever a foreign national dies or is seriously injured, regardless of the cause (i.e., traffic collision, homicide, suicide, natural, etc.) within department jurisdiction.



<sup>3</sup> British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

<sup>4</sup> Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification is given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.