

Immigration Violations

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to employees of the Peoria Police Department for reporting, investigating and enforcing immigration laws.

428.2 POLICY

It is incumbent upon all employees of this department to make a personal and professional commitment to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

428.2.1 DETENTIONS

A detention occurs when an officer intentionally, through words, actions or physical force causes a reasonable individual to believe he/she is being required to restrict his/her movement. Detentions also occur when an officer actually restrains a person's freedom of movement.

428.2.2 CONSENSUAL CONTACTS

A consensual contact occurs when an officer contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Consensual contacts with consenting individuals are encouraged by the Peoria Police Department to strengthen community involvement, community awareness and problem identification. Officers should be consistent about when they ask such consenting individuals for identification in order to avoid the perception of disparate treatment based on race, color or national origin.

428.2.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry or deportation. While it may often be necessary to determine the identity of a victim or witness, employees shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or Arizona Constitution.

428.3 ENFORCEMENT

Officers may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law. Federal authorities shall be notified as soon as possible and the detained individual shall be immediately released if the federal authorities do not want the individual held. Officers should not detain for any length of time any individual for a civil violation of federal immigration laws.

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428.3.1 FEDERAL CIVIL VERSUS CRIMINAL OFFENSES

An individual who enters into the United States illegally has committed a misdemeanor (8 USC § 1325(a)). Generally, an alien who initially made a legal entry into the United States but remains beyond what is a legal period of time has committed a civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize law-abiding citizens, except to the extent permitted by the United States or Arizona Constitution. Instead, the totality of circumstances shall be used to determine reasonable suspicion and include factors weighing for and against reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal violation has occurred may include, but are not limited to:

- An admission or confession that the person is unlawfully present in the United States.
- Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency.
- Proximity to a United States border or known routes used for illegal entry into the United States.
- Other factors based upon training and experience, particularly those identified by Arizona Peace Officer Standards and Training (POST) material.

428.3.2 DETERMINING IMMIGRATION STATUS DURING STOPS AND DETENTIONS

Unless it would hinder an investigation, officers shall, when practicable, make a reasonable attempt to determine the immigration status of any person lawfully stopped or detained in the enforcement of any state or local law or ordinance where reasonable suspicion exists that the person is unlawfully present in the United States (ARS § 11-1051).

Attempts to determine the immigration status of a detained person should not prolong the detention beyond the time it takes to complete the original investigation or other valid enforcement action.

A person is presumed to be lawfully present in the United States if the person provides any of the following (ARS § 11-1051):

- A valid Arizona driver license or a valid Arizona non-operating identification license
- A valid tribal enrollment card or other form of tribal identification
- Any valid federal, state or local government-issued identification where proof of legal presence in the United States was required before issuance

If appropriate documentation has been presented to the officer, no obligation exists to pursue further investigation unless additional reasonable inquiry is warranted.

Circumstances may arise that make reasonable attempts to determine the immigration status of a stopped or detained person impracticable (ARS § 11-1051). Examples of these circumstances include, but are not limited to, time limitations, availability of personnel or other resources, issues of officer safety and communication capabilities. Officers do

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not need a supervisor's approval to forgo such attempts in these circumstances but are expected to make reasonable decisions in good faith and based upon the totality of the circumstances presented at the time. Officers who determine that no inquiry regarding a detained person's immigration status is warranted should notify a supervisor and document the reason for no inquiry or for an incomplete inquiry in an associated dispatch log, Field Interview card or report.

428.3.3 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

- A law enforcement officer who is authorized by the federal government under the Immigration and Nationality Act § 287(g) to verify or ascertain an alien's immigration status (287(g) certified officer)
- Immigration and Customs Enforcement (ICE)
- U.S. Customs and Border Protection (CBP)

The officer shall verify from a 287(g) certified officer, ICE or CBP whether the person's presence in the United States relates to a federal civil violation or a criminal violation.

If the officer has facts that establish probable cause to believe that the detained person has committed a criminal immigration offense, the officer may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, officers should notify a supervisor as soon as practicable.

Officers are encouraged to forgo detentions made solely on the basis of a misdemeanor criminal federal immigration offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

428.3.4 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained a person and established probable cause to believe the person has committed a criminal immigration offense, the supervisor should:

- Confirm that the detained person's immigration status was properly verified.
- Ensure that the detained person is taken into custody when appropriate. Appropriate steps may include, but are not limited to:
 - Transfer to federal authorities.
 - Lawful arrest for a criminal offense or warrant.

428.4 ARRESTS

Any person who is arrested shall have his/her immigration status checked. Unless the arrestee continues to be suspected of some crime for which he/she may be held, custody should not be prolonged for the immigration inquiry. The result of an immigration inquiry should be documented, even if the arrestee has been released (ARS § 11-1051).

428.4.1 INFORMATION SHARING

Unless otherwise dictated by law, it is the policy of the Peoria Police Department that:

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- No employee will prohibit, or in any way restrict, any other employee from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):
 - Sending information to, or requesting or receiving such information from, ICE
 - Maintaining such information in department records
 - Exchanging such information with any other federal, state or local government entity
- Employees will not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law (ARS § 11-1051).

428.5 STATE IMMIGRATION-RELATED ARRESTS AND IMPOUNDS

Supervisor notification is required prior to any arrest or vehicle impound related to or based upon a person's immigration status.

428.6 U-VISA/T-VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U and T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. Department of Homeland Security (DHS) Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Criminal Investigation Section Sergeant assigned to supervise the handling of any related case. The Criminal Investigation Section Sergeant should:

- Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.
- Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.7 PROCEDURES FOR IMMIGRATION COMPLAINTS

Reasonable options when a person reports immigration violations include referrals to ICE and/or the Arizona Attorney General's office if the report relates to employment violations.

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428.8 ICE REQUEST FOR ASSISTANCE

A specific request for assistance from ICE or any other federal agency should be directed to a supervisor. This department may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies.

428.9 TRAINING

The Training Section shall ensure that all applicable employees receive appropriate immigration training supplied by Arizona POST.