



Chief of Police
George Gascón

CLARIFICATION IMMIGRATION AND CUSTOMS ENFORCEMENT PROTOCOL

1. STATEMENT OF PURPOSE

The purpose of this protocol is to provide guidelines for the management of undocumented persons that come in contact with law enforcement officers.

2. POLICY

The Mesa Police Department (MPD) is committed to improving the quality of life in our community by implementing strategies to reduce crime whether committed by citizens, visitors, and/or illegal immigrants.

In 1996, the United States Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. 1101, *et. seq* (IIRIRA). IIRIRA made many changes to immigration laws including adding immigration consequences to certain crimes and requiring mandatory detention of illegal immigrants convicted of certain crimes. IIRIRA also addressed the relationship between the federal government and local governments by permitting certain designated officers to perform immigration law enforcement functions provided they receive the appropriate training and agree to function under the supervision of officers from Immigration and Customs Enforcement (ICE) to identify, process, and when appropriate, detain immigration offenders they encounter during their regular, daily law-enforcement activity.

Federal immigration laws are complicated in that they involve both civil and criminal aspects. Federal agencies such as ICE have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Immigration violations are different from the typical criminal offenses that patrol officers face every day, whose law enforcement activities revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters. The immigration status of any particular person can vary greatly and whether they are in violation of the federal immigration regulations, civilly or criminally, can be very difficult to determine without a special expertise.

The MPD is committed to partnering with federal agencies and others to the extent allowable under federal, state and local laws to address criminal activity within 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. PROCEDURES

The MPD provides law enforcement services and enforces the laws of the City of Mesa, the State of Arizona, and the United States Constitution impartially. While the investigation and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to ICE, the MPD commits to cooperating with ICE and others, to the extent permitted by law, on any criminal activity that threatens the safety and well-being of our community.

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.

In order to combat state and local crime effectively the following policies apply:

Arrested

- Adults, not including juveniles, who are arrested for committing a state or local crime **shall** be asked about their immigration status and, if the officers develop probable cause that the suspect is in the United States unlawfully, the probable cause **shall** be detailed in the DR (Department Report). The detention supervisor **shall** contact ICE and **shall** notify the Support Services Lieutenant as soon practical.

Cite and Release Or Long Form

- If the person arrested is being cited and released or a long form complaint is being sought for a state or local crime he or she may be asked about their immigration status, and if the officers develop probable cause that the suspect is in the United State unlawfully, the probable cause **shall** be detailed in the ICE Referral Form and forwarded to the affected District Coordinator/Metro Resources Lieutenant.
- The ICE Referral Form **shall** be routed to ICE through the District Coordinator/Metro Resources Lieutenant for investigation.
- If the officer comes upon unsolicited information during the course of his or her enforcement efforts about undocumented immigration status, of the person(s) being investigated, it may be detailed in the ICE Referral Form and forwarded to the affected District Coordinator/Metro Resources Lieutenant.
- The ICE Referral Form **shall** be routed to ICE through the District Coordinator/Metro Resources Lieutenant for investigation.

NOTE

Consistent with our efforts to protect the safety and well-being of the community and to encourage the public to report criminal activity, department personnel **shall not** ask a person who is:

- a victim of a crime,
- a witness to a crime
- a juvenile,
- stopped and/or cited for a civil traffic violation with a valid driver's license or evidence of identity pursuant to ARS 28-1595(B),
- seeking medical assistance,
- a victim of domestic violence incident, or
- a community volunteer in police service (including but not limited to police service based programs such as neighborhood watch, community forums, or community advisory board; youth programs, Making Every Student Accountable (MESA) Program or the citizens police academy or similar volunteer organization).

about his or her immigration status.

Detention and Removal Order (DRO) Hold

- The Detention and Removal Office is a unit of ICE that has the responsibility of detaining and transporting undocumented 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 **shall** issue a DRO hold, which can be for criminal or civil violations.
- This hold **shall** be similar to a hit from a warrant when a person's information is run through NCIC.
- If an Officer receives a DRO hit, the following **shall** be done:
 - Call the telephone number on the DRO hit to determine whether the DRO hold is criminal or civil.

DRO - Criminal Hold

- Detain and transport for criminal orders, if requested to do so by ICE.
- Complete a DR entitled "Possible Federal Immigration Violation" containing all relevant information.

DRO - 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 DRO hold. If the officers develop probable cause that the suspect is in the United State unlawfully, the probable cause shall be detailed in the DR and forwarded to the affected District Coordinator/Metro Resources Lieutenant.
- The DR **shall** be routed to ICE through the District Coordinator/Metro Resources Lieutenant for investigation and appropriate federal charging.
- The ICE Referral Form¹ **shall** then be completed and the subject released.
- A DR entitled "Possible Federal Immigration Violation" **shall** be completed for all arrests and transports to ICE on a criminal DRO 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 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 contact with ICE is deemed necessary, the following steps **shall** be taken:
 - A patrol supervisor **shall** contact the on duty shift lieutenant and provide a detailed account of ICE Contact for Drop Houses, Human Smuggling and Load Vehicles.
 - The on duty shift lieutenant **shall** review the circumstances and decide if the incident warrants a response from ICE based upon the ICE Criteria Checklist for Response Form², or if the incident requires notification of another investigatory detail supervisor.
 - The on duty shift lieutenant **shall** document each reported incident along with the response by ICE on the Checklist for Response Form³ and maintain a copy of the completed form in a notebook at the station.

¹ Attachment 1 - ICE Referral Form.

² Attachment 2 – ICE Criteria Checklist for Response Form.

³ *Id.*

- 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.
- 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 public information officer (PIO) **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.

U-Visa Certification Forms

- U-Visas are available through United States Citizenship and Immigration Services for immigrants who are current or former victims, witnesses, or affected family who are assisting or have assisted officials in the criminal justice system investigate or prosecute criminal activity.
- If the applicant is requesting a U-Visa based upon past cooperation, the assigned detective may document specific details they believe merit consideration.
 - All requests for U-Visas **shall** be forwarded to the affected Division Commander.
 - The affected division commander **shall** determine if the applicant meets the conditions required on the U-Visa Certification Form in regards to type of crime committed and involvement (for example, the applicant is a victim, witness, or possesses relevant information for a successful resolution to the case).

Records Management

The Immigration Status forms forwarded to ICE **shall** be forwarded to the Records Section and maintained in RMS.

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.