# APPENDIX O

## Sample Police Department Policies on Immigration Enforcement

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403.02 GENERAL RULES ON ARRESTS AND SEARCHES

(Title Effective 11-01-97)

A. Probable Cause Required. Arrest or search made without probable cause violates the Fourth Amendment to the U.S. Constitution and Art. 1. Sec. 9 of the Texas Constitution. (Re-numbered and Revised 11-01-97)

1. Probable cause for arrest exists when an officer has reason to believe that a person has committed an offense, although precisely what offense is not known, or that a person has committed a particular offense, the method of which is uncertain. (Re-numbered and Revised 11-01-97)
   • There is no difference in the amount of probable cause required to make an arrest without warrant, an arrest pursuant to warrant, or an arrest that ordinarily would require a warrant but because of exigent circumstances can be made without warrant.
   • The only difference in the three situations, from a probable cause standpoint, is the timing of the judicial scrutiny that will be given to the situation.
   • In the case of an arrest without warrant, a magistrate will review the arrest after-the-fact, and if the magistrate does not find that sufficient probable cause existed to make the arrest, the arrested person will be released and the officer may be subject to penalty for false arrest.
   • In the case of an arrest under warrant, a magistrate will review the affidavit to support issuance of the warrant, and if the magistrate finds that there is sufficient probable cause to justify the arrest, the magistrate will issue an arrest warrant.

2. Probable cause exists for a search when an officer has reason to believe that a person possesses seizable items or a place contains seizable items. (Re-numbered and Revised 11-01-97)

3. All facts and circumstances used to determine probable cause must be fully documented in writing. (Re-numbered 11-01-97)

a. An officer shall employ the officer’s training, skills, and experience as a peace officer in determining whether probable cause exists. (Re-numbered 11-01-97)

b. All lawfully acquired information available at the moment of the arrest or search may be considered, regardless of its admissibility at trial. (Re-numbered 11-01-97)

c. Mere suspicion, speculation, or reasonable suspicion, or generally suspicious conduct that does not suggest any specific kind of criminal conduct, is not probable cause but may be grounds for further investigation. (Re-numbered and Revised 11-01-97)

d. Good faith, in the absence of probable cause, will not justify an invalid arrest or search. (Re-numbered 11-01-97)

e. Probable cause for arrest requires only enough evidence to reasonably show that a particular person probably or most likely committed an offense. Probable cause for search requires only enough evidence to reasonably show that a particular person or place probably or most likely possesses or contains seizable items. It is not necessary to have sufficient evidence to prove these facts beyond a reasonable doubt. (Re-numbered 11-01-97)

f. When probable cause is based on information from an informant, reliability of the informant, the underlying circumstances that form the basis for the informant’s belief, and verification of the informant’s information must be established. In most cases, all three are necessary. In some cases, informant reliability and verifying details together may be strong enough to overcome weak underlying circumstances that form the basis for the informant’s belief. Similarly, strong underlying circumstances and observed details together may overcome weak or unestablished informant reliability. (Re-numbered and Revised 11-01-97)
g. Victim or witness information must be confirmed. Their ability to observe and remember what happened must be determined. Directly observable results of an offense can serve as partial confirmation of an offense. In cases of doubt, officers must investigate further. The more doubt an officer has about the victim or witness's veracity, sincerity, or ability to perceive, the more confirmation is needed. Particularly in cases of a citizen who is claiming to have made a citizen's arrest or security personnel or officers of other agencies who have taken a suspected violator into custody, officers will conduct an independent investigation to assure that sufficient probable cause exists for arrest and taking of the person into police custody. (Re-numbered and Revised 11-01-97)

h. An officer making an arrest at the request of another officer does not have to have probable cause as long as the requesting officer had probable cause. Where officers from another agency have made off-duty arrests, Arlington officers will not take the arrested person into Arlington police custody unless they are satisfied that sufficient probable cause for arrest exists and that the arrest is in the public interest and not just in furtherance of the off-duty officer’s business. If officers do not believe the arrest was justified and in the public interest, they will tell the other agency officer, out of the hearing of the arrestee, that the other agency officer, must arrange transport to the Tarrant County Jail if they desire the person to be jailed. Where sufficient probable cause exists for the arrest, Arlington officers will take custody of persons arrested by off-duty officers from other agencies, transport the person to jail, and file appropriate charges, listing the other agency officer as a witness. (Revised 11-01-97)

B. Arrest Awareness and Warnings. Arrested persons must be made aware that they are being arrested. Unless in uniform, an officer must display badge and identification and state the officer’s name and status as an officer with the Arlington Police Department, unless circumstances prohibit it. Persons will be told of the officer’s intention to take them into custody and the reason for arrest unless they are in the act of committing the offense, are fleeing from the scene of the crime, the officer is endangered, or the arrest would be imperiled. An unconscious, insane, or injured person may be arrested even though the person is incapable of understanding that they are under arrest. If an arrest is pursuant to warrant, officers will so advise the arrestee and will exhibit the arrest warrant. If officers do not possess the warrant and the arrestee asks for a copy, officers will provide a copy of the arrest warrant confirmation as soon as possible. All arrested persons will be given standard Miranda warnings before questioning. (Re-numbered and Revised 11-01-97)

C. Mistaken Identity/Alibi Claims. At the time of arrest or thereafter, if an arrestee asserts mistaken identity or plausible alibi, mistake, or defense, a reasonable investigation will be made to clarify, confirm, or refute it. (Re-numbered 11-01-97)

D. Prohibitions. An officer shall not make an arrest: (Re-numbered 11-01-97)

- for conduct which the officer has provoked;
- when the department has administratively ruled that certain criminal laws will not be enforced. These will be specified in writing;
- based on the race, gender, religion, ethnicity, national original, or sexual preference or any other arbitrary classification of the offender or victim; or
- for investigation.

E. Jurisdiction Limitations (Re-numbered 11-01-97) (A 74.03.01)

1. Arrest without Warrant. An Arlington officer’s authority to arrest without warrant is limited by department policy to Tarrant County unless the officer is in fresh pursuit or a felony or breach of peace has been committed in the officer’s presence or view. See also directive on Off-duty Enforcement for off-duty enforcement limits. (Revised 11-01-97)
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Arlington, Texas Police Department General Orders

2. **Warrant Execution** is limited as follows:
   
   - Traffic or Class C misdemeanor arrest warrants may be executed anywhere in Tarrant County or adjoining counties. Execution elsewhere requires prior supervisor approval. *(Re-numbered and Revised 11-01-97)*
   
   - Search warrant executions are limited to Arlington except when a direct link of criminal activity can be demonstrated between the suspect and the Arlington community.
   
   - Arlington officers will not execute an arrest or search warrant outside Arlington without notifying authorities in the other jurisdiction. If resistance is anticipated or other high risk factors exist on any arrest warrant execution, and on all search warrant executions outside the City of Arlington, an officer of the jurisdiction where the arrest or search occurs is to accompany Arlington officers. *(Re-numbered and Revised 11-01-97)*

F. **Arraignments:** Code of Criminal Procedure Art. 15.18 requires that persons arrested under a warrant issued in a county other than the one in which the person is arrested are to be taken to a magistrate of the county where the arrest takes place. However, Art. 15.18 also provides that, if necessary to provide more expeditious magistrate’s warnings, the arrested person may be taken before a magistrate in any county in the state in accordance with CCP Art. 15.17. *(Re-numbered and Revised 11-01-97) (Revised 12-18-06)*

G. **Immigration and Military Offenses**

1. **Aliens.** Texas Peace Officers have no authority to arrest individuals without a warrant for the federal misdemeanor of first offense illegal entry into the United States unless the officer observes the illegal entry. *(Re-numbered 11-01-97)*

2. **Federal Military.** Peace officers have no authority to arrest individuals without a warrant for federal military AWOL even if listed on NCIC. Peace officers may arrest those listed on NCIC as federal military deserters. *(Re-numbered 11-01-97)*

3. **State Military.** Peace officers may arrest state military deserters for whom an apprehension order or arrest warrant has been issued by proper state military authority. A sheriff or constable is the only authority permitted to arrest persons for state military AWOL or other non-desertion type offenses pursuant to an arrest warrant issued by proper state military authorities. *(Re-numbered 11-01-97)*
315.00 ARRESTS REQUIRING SPECIAL HANDLING

315.02 Arrests Made on NCIC, TCIC, and NCTCIC Checks

A. Arrests made on NCIC, TCIC, and NCTCIC (Regional) Hits will be in accordance with Communications Section, Detention Services Section, General Investigations Section, and Records Section Standard Operating Procedures.

B. No arrest or confiscation of property without a warrant will be made solely on an NCIC, TCIC, or NCTCIC hit on a computer or radio check. In all cases, the name of the confirming individual from the originating agency must be included in the report.

C. An NCIC or TCIC hit alone is not probable cause to arrest. A hit indicates a warrant has been issued and the date of the warrant. A hit is only one fact that an officer must add to other facts in arriving at sufficient legal grounds for probable cause to arrest. It is imperative that officers compare sufficient identifiers to verify that the person in custody is the same person named in the warrant.

1. To verify a person's identity, consider the following possible identifiers:
   a. Name.
   b. Race.
   c. Sex.
   d. Date of birth (DOB).
   e. Place of birth.
   f. Driver's License number (DL).
   g. Social Security number (SSN).
   h. Address.
   i. Complete physical description to include height, weight, hair, eye color, scars, marks, and tattoos.

2. Every effort must be made to verify an arrested person's identity prior to incarceration. When there is a doubt that an individual is the wanted subject, he/she will be fingerprinted prior to incarceration.

3. In instances where there is less than substantial evidence to identify the person in custody, a field supervisor must be contacted to make the final determination. An arrest will not be made if the field supervisor determines there are not enough significant identifiers to connect the individual to the warrant.

4. If a field release is made, comply with General Order 313.08 (Release of Erroneously Arrested Persons in the Field).

315.04 Illegal Immigrants

A. The U.S. Immigration Code denies us the authority to enforce its provisions; therefore, we do not enforce immigration laws. All other laws apply to illegal immigrants.

B. Officers will not stop or contact citizens for the sole purpose of determining immigration status.

C. Arrest reports will contain arrest elements only and not refer to immigration status.

D. INS agents have the sole responsibility for determining the immigration status of incarcerated persons.

E. The INS must confirm outstanding NCIC detainer hits for INS violations. Confirmed hits will be booked as Hold for INS.

F. Detention Services Supervisors will release city charges when requested by INS.

NOTE: Only relevant sections of General Order 315 are included by the Police Foundation for this publication.
SUBJECT: SOLICITATION OF IMMIGRATION INFORMATION BY POLICE DEPARTMENT PERSONNEL

The Detroit City Council has enacted an ordinance concerning the solicitation of immigration status by public servants and several provisions pertain directly to police officers. This Training Directive provides an explanation of the ordinance. The full text of the ordinance has been placed on the DPD Intranet.

BACKGROUND: The responsibility for enforcement of immigration laws rests with the federal government. Federal immigration laws are extremely complicated as there are several immigration status classifications and depending on the particular circumstances, the matter can be a criminal offense or a non-criminal matter handled through a civil deportation process. Under Michigan law, an officer's arrest powers do not extend to non-criminal offenses. Proper enforcement in this complex area requires specialized training beyond the training of members of this agency and improper enforcement could result in officers exceeding their authority and exposure to civil liability.

Additionally, persons whose immigration status prohibits their lawful presence in the country are nevertheless a significant part of the population that need police protection and service. Cooperation and assistance to the police in reporting crimes or coming forward with information to solve crimes require confidence and trust which can be undermined by unnecessary solicitation of immigration status, particularly if the only basis for inquiry is a person's surname or language fluency. It is with this background that Sections 27-9-1 through 27-9-7 of the Detroit City Code has been enacted.

1. What does the ordinance prohibit?

It prohibits an officer from soliciting information concerning immigration status in certain circumstances. The circumstances where solicitation of immigration information is prohibited are:

- If the solicitation of information concerning immigration status is for the purpose of ascertaining a person's compliance with federal immigration law.

- If the person from whom the immigration information is solicited is:
  1. A victim
  2. A witness
  3. A person who is seeking police services
Training Directive: SOLICITATION OF IMMIGRATION INFORMATION
Number: 07-04
Date: July 10, 2007

2. Under what circumstances does the ordinance permit police officers to solicit information concerning immigration status?

There are three circumstances in which the ordinance expressly authorizes the solicitation of information concerning immigration status. These are:

- A police officer is authorized to solicit information concerning immigration status if the officer is performing public safety functions while assisting federal law enforcement in the investigation of a criminal offense.

- A police officer is authorized to solicit information concerning immigration status from the subject of an investigation only when relevant to the investigation or prosecution of a criminal offense.

- A police officer is authorized to solicit information concerning immigration status when processing an arrested person.

3. What is the purpose of this ordinance?

As previously mentioned, the job responsibilities of a Detroit police officer do not include enforcement of federal immigration laws because, among other reasons, not all immigration violations are criminal offenses and police officers do not have the statutory authority to arrest or detain an individual in a non-criminal immigration matter. Further, the ordinance reflects the recognition that victims and witnesses may avoid contact with the police if they believe the consequence of cooperation is deportation. On the other hand, the ordinance recognizes that police officers at times have valid reasons for inquiring into immigration status and permits such inquiries.

4. What is an example where immigration status can be solicited from the subject of a criminal investigation?

During a proper investigative detention supported by reasonable suspicion (Terry v. Ohio), officers may properly make inquiries into a person’s identity and run a name check in the LEIN system to determine if the person is wanted. In response to a possible hit, officers ask follow-up questions about his identity and the person claims that he is not the person named in the arrest warrant because he only recently came to the country. Because immigration status is relevant to the officer’s investigation into whether the person is wanted, the officer is not prohibited from asking questions in that regard.
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5. Can a person be asked about immigration status during arrest processing?

Yes. The ordinance specifically permits questioning concerning immigration status during the processing of an arrestee. Members are reminded that federal law and department policy impose a duty to inform foreign nationals who are arrested, without delay, of their right to have a consular officer from their country notified of their detention. Furthermore, with regard to certain countries that are known as "Mandatory Notification Countries," the consular office must be notified by the law enforcement agency regardless of the wishes of the foreign national. This policy is delineated in Section 202.6 - 7 of the Detroit Police Manual. For purposes of consular notification, a "foreign national" is any person who is not a United States citizen, and includes lawful permanent resident aliens ("green card" holders) as well as persons in the country in violation of immigration laws.

6. Does the ordinance prohibit contacting or requesting assistance from federal agencies, such as Immigration & Customs Enforcement (I.C.E.) (formerly known as Border Patrol); concerning suspected violations of federal immigration laws or other law enforcement matters?

No. The ordinance only addresses the solicitation of immigration status and does not prohibit reporting suspected violations of immigration laws to appropriate federal agencies.

7. Should officers routinely ask that I.C.E. officers respond to the scene to translate when an individual does not speak English?

No. Members are advised that department policy is not to routinely request response by I.C.E. personnel solely to provide translation assistance. This policy does not prohibit the use of any law enforcement personnel already at the scene to assist in translating nor does it apply in emergency or serious situations requiring immediate action. Members requiring translation services should notify Communications for assistance.

8. Does the ordinance apply to city employees who are not police officers?

Yes. However, solicitation of immigration status by public servants is permitted if required by law as a condition of eligibility for a government program, for completing legally mandated employment forms, and with regard to the issuance of subpoenas.

Questions concerning the content of this Training Directive may be directed to Legal Affairs at 596-2161.
APPENDIX A

FocusGroup Summary

1. Is it true that immigrants should now be afraid of reporting any crimes to HPD because if they do, they may be turned over to Immigration and Customs Enforcement (ICE)?

   No. We hope and encourage immigrant communities to continue to call us when they need assistance from the police. Immigrants who are victims of crime or have information regarding criminal activity should contact the police. They should not fear that HPD will call federal immigration agents on them. HPD will contact ICE when the person is confirmed to have a deportation warrant or a notice that they are a previously deported felon.

2. Will HPD officers detain me simply because they think I am here illegally?

   No. HPD officers are not authorized to arrest or detain a person solely on a belief that the person is in the country illegally. Officers are authorized to arrest and detain persons they have reasonable basis to believe have committed a criminal violation.

3. Is it true that HPD officers are going to ask all people they encounter for proof of legal residence/status?

   No. Once a person has been arrested and taken to a jail facility, HPD jail personnel will then ask the person for his/her legal status. Jail personnel will ask the arrested person if they are a citizen of the United States or if they were born in the U.S.

4. Is it true that HPD will arrest any foreign person?

   No. Officers are not authorized to detain or arrest a person solely on the basis of their nationality or ethnicity. Officers are authorized to arrest and detain persons they have a reasonable basis to believe have committed a criminal violation.

5. Is it true that HPD will run a background check on all people they encounter?

   No. Officers will check the wanted status of all persons who are ticketed, arrested, or who have been jailed. Officers also have the discretion to check the wanted status of all persons they have legally detained.

6. Is it true that HPD will call ICE on all people they encounter?

   No. ICE will be contacted if during a check of their wanted status, the person is confirmed to have a deportation warrant or a notice that they are a previously deported felon or have other criminal warrants issued by ICE.

7. If I am arrested or taken to jail by HPD will ICE be called?

   HPD will contact ICE when a person is arrested and taken to jail and the person is confirmed to have a deportation warrant, a notice that they are a previously deported felon or any other criminal warrant with ICE. ICE officials will be allowed full access to HPD jail facilities.

8. If I am driving without a license and get stopped by HPD, will I get arrested? Will ICE be called?

   If a person drives without a license and is stopped by HPD, that person will be asked to provide valid identification. If the person cannot provide valid identification and the HPD officer cannot verify their identity, the person will be taken to jail for driving without a license so the person can be positively identified and fingerprinted. ICE will be contacted only if the person is confirmed to have a deportation warrant, a notice that they are a previously deported felon or any other criminal warrant with ICE.
9. What forms of identification will HPD officers accept?

Officers will accept driver’s licenses and identification cards issued by any state of the United States of America. Also, the officers will accept most other forms of government ID like a military ID, passport, etc. Additionally, officers are advised that a matricula consular card issued by the Mexican government is presumed valid unless the totality of the circumstances calls the validity of the card into question.

10. If I am a suspect in a crime or the HPD officer believes that I may be involved in a criminal episode, can he/she ask me for identification?

Yes. The officer is authorized to ask a person who the officer has a reasonable basis to believe has committed or was involved in a criminal episode for identification.

11. If I do not have identification, can I be arrested?

No. Not unless you have been suspected of committing a crime. If you have committed a crime or a traffic violation and cannot provide identification to the officer and the officer cannot verify your identity, the officer has the authority to take you into custody for the criminal violation and so that you can be identified and fingerprinted by AFIS (Automated Fingerprinting Identification System). For safety reasons, the HPD officer needs to know whom he/she is dealing with at the time.

12. If the officer stops me for a minor traffic violation, will I be arrested?

An officer has the discretion to arrest you if the officers cannot verify your identity. You will be arrested if it is confirmed that you have an NCIC and/or SETCIC warrant hit. Officers will check the wanted status of all persons arrested, ticketed or jailed. Officers have the discretion to check the wanted status of anyone legally detained, including persons detained on minor traffic violations.

13. If the officer stops me for a minor traffic violation, will I be deported?

If the officer’s computer check verifies you have a deportation warrant or a notice that you are a previously deported felon, the officer will take you to a city jail facility and ICE will be contacted accordingly. The federal immigration authorities will determine whether or not you will be deported. HPD does not make decisions on deportation.

14. If I am found to have city warrants (like unpaid traffic tickets), will I eventually be deported?

If you have city warrants you are subject to arrest for those warrants. If during such arrest, you are also confirmed to have a deportation warrant, a notice that you are a previously deported felon or any other criminal warrant with ICE, the officer will take you to a city jail and ICE will be contacted. Only ICE will make decisions on deportation matters.

15. If I am an illegal immigrant in possession of a firearm, can I be arrested and deported?

Yes! Illegal immigrants are prohibited from possessing a firearm and are subject to arrest by HPD officers. If during such arrest, you are also confirmed to have a deportation warrant or are a previously deported felon, the officer will take you to a city jail and ICE will be contacted. ICE will decide on deportation matters. More importantly, you can be charged federally with a felony that carries a sentence of up to 10 years in prison and subject to deportation after serving that sentence. Should you return to the U.S. after being convicted of the felony of being in possession of a firearm, the federal authorities can prosecute you for illegal re-entry with a penalty of up to 20 years in prison. The Harris County District Attorney’s Office has agreed to refer all cases of an illegal immigrant in possession of a firearm to the U.S. Attorney’s Office for federal prosecution.
264.50 ENFORCEMENT OF UNITED STATES IMMIGRATION LAWS. Officers shall not initiate police action where the objective is to discover the alien status of a person. Officers shall neither arrest nor book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry).

675.35 PLACEMENT AND DISPOSITION OF ILLEGAL ENTRY HOLDS. Supplemental holds charging illegal entry against persons in the custody of this Department for an unrelated criminal offense shall only be authorized by officers of the United States Immigration and Naturalization Service (INS). Arrestees against whom the INS has placed a hold shall be released to the custody of INS within 24 hours after:

- All local charges are dismissed; or,
- Bail is deposited on the local charges; or,
- The arrestee is determined to be eligible for release on his/her own recognizance on the local charges.

Note: Under no circumstances shall any person be held longer than 24 hours when an illegal entry hold is the only remaining charge. There is no extension of the 24 hour detention limit because of an intervening holiday or weekend period. Procedures governing the booking and detention of prisoners held enroute are unaffected by this section.

390. UNDOCUMENTED ALIENS. Undocumented alien status in itself is not a matter for police action. It is, therefore, incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public regardless of alien status. In addition, the Department will provide special assistance to persons, groups, communities and businesses who, by the nature of the crimes being committed upon them, require individualized services. Since undocumented aliens, because of their status, are often more vulnerable to victimization, crime prevention assistance will be offered to assist them in safeguarding their property and to lessen their potential to be crime victims.

Police service will be readily available to all persons, including the undocumented alien, to ensure a safe and tranquil environment. Participation and involvement of the undocumented alien community in police activities will increase the Department's ability to protect and to serve the entire community.
IMMIGRATION AND CUSTOMS ENFORCEMENT PROTOCOL

1. STATEMENT OF PURPOSE

The purpose of this protocol is to provide guidelines for the management of undocumented foreign nationals (UFN) that come in contact with law enforcement officers.

Where the contents of this special order conflict with earlier department statements, policies, procedures or rules, this order will control.

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 undocumented foreign nationals.

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 UFNs 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 UFNs 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 - Booked**

- Adults, not including juveniles (unless chargeable for a crime covered in ARS 13-501A 1-5, Persons under eighteen years of age; felony charging) who are arrested for committing a state or local crime shall be asked about their immigration status and, if the officer(s) develop information that the suspect is in the United States unlawfully, the information shall be detailed in the DR (Department Report). 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 as soon practical. A copy of the NLLQ and any ICE response shall be forwarded to the Support Services Lieutenant.

**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 officer(s) develop 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 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/Metro Resources Lieutenant. The District Coordinator/Metro Resources Lieutenant is responsible for ensuring the notice to ICE (NLLQ)
is completed. The ICE Request for Inquiry Form, NLLQ and any response from ICE shall be kept at the affected district.

**NOTE:** If an officer develops information that the individual is in the United States illegally without asking about his/her immigration status, the officer **may** complete the ICE Request for Inquiry Form and the District Coordination **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, and length of residence, prior criminal activity, and any other facts bearing on the risk of nonappearance or danger to the public.

**Unsolicited Information**

- If the officer comes upon unsolicited information during the course of his or her enforcement efforts about a UFNs immigration status, of the person(s) being investigated, it **shall** be documented in a Field Interview Card (FI) and it **may** be detailed in the ICE Request for Inquiry Form and forwarded to the affected District Coordinator/Metro Resources Lieutenant.
- The ICE Request for Inquiry 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 about his or her immigration status who is:

- a victim of a crime,
- a witness to a crime,
- a juvenile, unless chargeable for a crime covered in ARS 13-501A 1-5, Persons under eighteen years of age; felony charging;
- 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).
Detention and Removal Order (DRO) Hold

The Detention and Removal Office is a unit of ICE that has the responsibility of detaining and transporting UFNs 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 a DRO 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 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.
  - If an Officer receives a DRO hit, the subject may be detained for the length of time it takes to determine whether the DRO hold is criminal or civil.

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 Information that the suspect is in the United States unlawfully, the information shall be detailed in the FI and forwarded to the affected District Coordinator/Metro Resources Lieutenant.
- The ICE Request for Inquiry Form shall be completed and routed to ICE through the District Coordinator/Metro Resources Lieutenant.
- Once the ICE Request for Inquiry Form has been completed, the subject may be released.
- An FI shall be completed containing all of the relevant information.

DRO - Criminal Hold

- Detain and transport for criminal DRO 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 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 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 to advise of the 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.

- 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.
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).

- The affected division commander shall forward his or her written recommendation to the Chief of Police through the chain of command.

4. 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.
APPENDIX A

Focus Group Summary

130.25 RACIAL PROFILING POLICY
A. DEFINITION
Racial profiling is any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

B. POLICY
It shall be the policy of the Milwaukee Police Department that police members, during the performance of their duties, shall not engage in the practice of racial profiling. Police members shall not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search. Police members may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.

130.30 IMMIGRATION ENFORCEMENT
A. POLICY
It shall be the policy of the Milwaukee Police Department to implement an immigration enforcement strategy that is consistent with the mission of reducing the levels of crime, fear, and disorder in the City of Milwaukee. However, this strategy must also be in balance with the jurisdictional responsibilities of the federal government and the corresponding jurisdictional limitations of local law enforcement. The following procedures not only achieve that balance but also comply with the Wisconsin Attorney General’s law enforcement guide to immigration enforcement.

With a policing philosophy that is community-based, problem-oriented, and data-driven, we are committed to ridding the city’s streets of violent offenders regardless of whether such offenders are in the United States legally or illegally. We are also committed to facilitating safe, sustainable communities where citizens are encouraged to report crime and provide the police with useful information and intelligence. However, proactive immigration enforcement by local police is inherently detrimental to our mission and policing philosophy when doing so ultimately deters some citizens from participating in their civic obligation to assist the police. It is therefore expected that each police member follow the procedures set forth below regardless of one’s personal opinion or political ideology on the issue of immigration.

B. Enforcement of the nation's immigration laws is the responsibility of the federal government, particularly the United States Bureau of Immigrations and Customs Enforcement (ICE). Accordingly, the Milwaukee Police Department shall not unilaterally undertake immigration-related investigations and shall not routinely inquire into the immigration status of persons encountered during police operations. This prohibition does not preclude the Department from cooperating with federal immigration officials when requested, or from notifying those officials in serious situations where a potential threat to the public is perceived.

Note: Most immigration violations are civil and fall under the jurisdiction of the federal government. As such, local law enforcement officers have no right of arrest in these matters.
Focus Group Summary

MILWAUKEE, WISCONSIN, POLICE DEPARTMENT

C. A person’s right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon their immigration status. Consequently, Department members shall not question any person about his or her immigration status unless that person is reasonably believed to be involved in one or more of the activities identified in (F) below.

D. Department members shall not request passports, visas, "green cards," or other documents relating to one’s immigration status in lieu of, or in addition to, standard forms of identification such as a driver’s license, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable, or when the member is proceeding under (F) below.

E. Police members shall not contact, detain, or arrest a person solely for a suspected immigration violation unless such contact, detention, or arrest is in cooperation with and at the direction of federal immigration officials.

F. Police members shall not inform federal immigration officials of the whereabouts or behavior of any suspected illegal immigrant or foreign visitor, except when the immigrant or foreign visitor:

1. Is arrested for a felony
2. Is arrested for a misdemeanor involving the possession or use of a dangerous weapon
3. Is arrested for a terrorism-related offense, or is otherwise reasonably suspected of involvement in terrorism and/or subversive activities
4. Is arrested for any offense involving the entry or fraudulent assimilation of undocumented foreigners into the country, or is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country
5. Is a previously deported felon
6. Is reasonably suspected of participating in criminal street gang activity

G. In the event a police member needs to contact ICE, they shall first attempt to contact the local office at (414) 297-1571. If the local office is closed or if an agent is unavailable, the police member shall contact the ICE Law Enforcement Support Center (LESC) at 1-802-872-6050.

H. Only federal immigration officials can determine a person’s immigration status; therefore, citizens wishing to report immigration violations shall be referred to the local office of ICE at (414) 287-6326, fax (414) 287-6344.

EDWARD A. FLYNN
CHIEF OF POLICE
APPENDIX O

Sample Police Department Policies on Immigration Enforcement

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON NJ 08625-0080

JON S. CORZINE
Governor

ANNE MELGRAM
Attorney General

ATTORNEY GENERAL
LAW ENFORCEMENT DIRECTIVE NO. 2007-3

These guidelines shall establish the manner in which local, county, and State law enforcement agencies and officers shall interact with federal immigration authorities.

While enforcement of immigration laws is primarily a federal responsibility, State, county, and local law enforcement agencies necessarily and appropriately should inquire about a person’s immigration status under certain circumstances. Specifically, after an individual has been arrested for a serious violation of State criminal law, the individual’s immigration status is relevant to his or her ties to the community, the likelihood that he or she will appear at future court proceedings to answer State law charges, and the interest of the federal government in considering immigration enforcement proceedings against an individual whom the State has arrested for commission of a serious criminal offense. When there is reason to believe that the arrestee may be an undocumented immigrant, the arresting agency is responsible for alerting federal immigration officials, the prosecuting agency, and the judiciary.

The overriding mission of law enforcement officers in this State is to enforce the State’s criminal laws and to protect the community that they serve. This requires the cooperation of, and positive relationships with, all members of the community. Public safety suffers if individuals believe that they cannot come forward to report a crime or cooperate with law enforcement. Moreover, Article 1, Paragraph 22 of the New Jersey Constitution mandates that “a victim of a crime shall be treated with fairness, compassion and respect by the Criminal Justice System.” Consistent with that constitutional mandate, as well as basic
principles of effective policing, victims, as well as witnesses and other persons requesting police assistance, should not be discouraged from approaching police officers out of fear of inquiry into their immigration status.

In 1996, Congress authorized federal authorities to delegate civil and criminal immigration enforcement authority to local, county and State agencies that enter into a written agreement with Immigration and Customs Enforcement (ICE).\(^1\) Regardless of any additional enforcement powers granted pursuant to an agreement with ICE, however, the primary function of local, county and State agencies must be to enforce State law and to ensure public safety in the community. The exercise of federal immigration enforcement authority by State, county or local law enforcement officers must therefore be consistent with, and in support of, their State law enforcement mission. In addition, unlike federal task forces, to which participating officers are assigned on a full-time basis and are under direct and constant federal supervision, Section 287(g) officers need not obtain federal approval before taking enforcement actions in the name of the federal government.

To further the priorities of strong relationships between law enforcement and all members of the community, as well as other fundamental principles of equal protection and civil rights, New Jersey has taken a leadership position in eliminating racially-influenced policing, or racial profiling. In 2005, the Attorney General issued Attorney General Law Enforcement Directive 2005-1, which prohibits law enforcement officers from engaging in racially-influenced policing. In that directive, the Attorney General formalized and mandated the great advances that have been made in the State in eliminating racially-influenced policing practices. Additionally, the Legislature has affirmed that it is against the policy of this State for law enforcement officers to use race or ethnicity as a basis for initiating an investigation. See N.J.S.A. 2C:30-5. Consistent with public policy, statute, and Attorney General Directive, law enforcement agencies must refrain from any law enforcement strategies that risk undermining – or which create the impression of undermining – the prohibitions on racially-influenced policing.

Accordingly, by virtue of the authority vested in me by the Constitution and the Laws of this State, and in furtherance of securing

\(^1\) See Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g).
the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, N.J.S.A. 52:17B-97 et. seq., I do hereby promulgate the following directives:

I. Arrest of Undocumented Immigrants for Indictable Offenses and Driving While Intoxicated (Applicable to all Agencies and Officers)

1. When a local, county, or State law enforcement officer makes an arrest for any indictable crime, or for driving while intoxicated, the arresting officer or a designated officer, as part of the booking process, shall inquire about the arrestee’s citizenship, nationality and immigration status. If the officer has reason to believe that the person may not be lawfully present in the United States, the officer shall notify Immigration and Customs Enforcement (ICE) during the arrest booking process. The only exception to this requirement shall be if the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to refrain from notifying ICE during the arrest booking process.

2. Notification to ICE may be made telephonically, by facsimile transmission, or by such other means as ICE may provide. The officer shall document when and by what means notification to ICE was made and the factual basis for believing that the person may be an undocumented immigrant.

3. Whenever a law enforcement officer notifies ICE about a suspected undocumented immigrant, notification shall also be made to the prosecuting authority that will handle the matter (e.g., the County Prosecutor in the case of an indictable charge), and to any court officer setting bail or conditions of pretrial release.

4. County Prosecutors shall on an annual basis report to the Director of the Division of Criminal Justice on the total number of notifications made pursuant to this Directive and the Director shall make the aggregate data public on an annual basis.
II. Prohibition on Immigration Status Inquiries of Victims and Witnesses (Applicable to all Agencies and Officers)

5. No State, county, or local law enforcement officer shall inquire about or investigate the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance. An exception to this requirement shall exist if: (a) the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to inquire about or investigate the person’s immigration status; (b) the person has been arrested for an indictable offense or for driving while intoxicated as set forth in Section 1 above; or, (c) as may be constitutionally or otherwise legally required during the criminal litigation discovery process.

III. Standards for Agencies and Officers Who Enter Agreements to Exercise Federal Immigration Authority Pursuant to Section 287(g) (Applicable only to Section 287(g) Agencies and Officers)

Directives 6 through 12 apply only to those local, county, and State law enforcement agencies and officers performing functions of a federal immigration officer pursuant to an agreement with federal authorities under 8 U.S.C. § 1357(g). As used in this Directive, the term “Section 287(g) agency” means a State, county or municipal law enforcement agency that is a signatory to a written agreement with Immigration and Customs Enforcement (ICE) authorized by Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g). The term “Section 287(g) officer” means a law enforcement officer employed by a Section 287(g) agency who has received the training required by Section 287(g) and is authorized by ICE to act as a federal immigration officer.

A. Provisions Applicable to Section 287(g) Officers in Detention Facilities

6. A Section 287(g) officer may invoke or exercise federal authority under Section 287(g) with respect to any undocumented immigrant who is being detained in a county jail or State detention facility.
B. Provisions Applicable to All Other Section 287(g) Officers

7. A Section 287(g) officer may not exercise federal law enforcement authority under Section 287(g) unless and until the officer has arrested an individual(s) for violation of an indictable offense, or for driving while intoxicated, under State law.

8. Any law enforcement officer making inquiry or investigation into the immigration status of an individual arrested for an indictable offense, or for driving while intoxicated, shall document and report the inquiry to the officer's supervisor during the arrest booking process. The report shall include the individual's name, address, gender, date of birth, country/place of birth, race, ethnicity, location encountered, and shall specify the criminal offense that formed the basis for the arrest, the outcome of inquiry and investigation into immigration status, and indicate whether the individual was taken into custody or otherwise ordered detained based on immigration status. The officer shall attach the arrest report to the reporting document.

9. A Section 287(g) agency shall submit on a monthly basis to the Director of the Division of Criminal Justice all reports (with arrest report attached) produced pursuant to No. 8 of this Directive to ensure that immigration enforcement efforts are being performed in compliance with all applicable State laws, directives, and guidelines. The Director shall compile the information and shall make the aggregate data public on an annual basis.

10. A Section 287(g) agency shall enter into a written agreement with an appropriate ICE-approved detention facility or facilities to ensure that there is adequate space to hold potential federal detainees in addition to local, county, or State detainees. The agreement shall set forth the procedures established to ensure that the
detention of any individual solely on the basis of immigration charges comports with the requirements of 8 C.F.R. § 287.7. No agency shall exercise the authority granted by Section 287(g) prior to reaching agreement with a detention facility that meets the requirements set forth in this paragraph.

11. Nothing in this Directive shall limit the ability of local, county, or State law enforcement agencies to enter into written agreements authorized by Section 287(g) that impose greater restrictions on the agency’s performance of functions under that agreement.

12. Directives 6 through 12 inclusive shall not apply to any officer who has been detailed on a full-time basis to a federal law enforcement agency or to a task force operated under the direct supervision of a federal law enforcement agency, provided that the officer is acting exclusively under the authority of federal law.

IV. General Matters

13. No law enforcement officer shall at any time engage in conduct constituting racially-influenced policing, as defined in Attorney General Law Enforcement Directive No. 2005-1. An officer or employee of a police agency in this State acting either under the authority of the laws of the State of New Jersey or pursuant to an agreement authorized by Section 287(g) shall not consider a person’s race or ethnicity as a factor in drawing an inference or conclusion that the person may be an undocumented immigrant.

14. All questions concerning the interpretation, implementation or enforcement of this Directive shall be addressed to the Director of the Division of Criminal Justice, or his designee.
15. This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended or superseded by Order of the Attorney General.

Anne Milgram
Attorney General

ATTEST:

John Michael Vazquez
First Assistant Attorney General

Dated: August 22, 2007