



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION NO.892

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AMENDING THE SAN LUIS ENFORCEMENT POLICIES AND PROCEDURES OF THE SAN LUIS POLICE DEPARTMENT TO PROVIDE FOR IMPLEMENTATION OF IMMIGRATION LAW ENFORCEMENT AS REQUIRED BY SENATE BILL 1070; REPEALING CONFLICTING PROVISIONS, AND PROVIDING FOR SEVERABILITY

WHEREAS, the Arizona State Legislature passed Senate Bill 1070 as amended by House Bill 2162, (hereinafter referred to as 'SB 1070') and said laws are currently scheduled to go into effect on July 29, 2010;

WHEREAS, SB 1070 commands that political subdivisions of the State of Arizona must have policies which enforce federal immigration laws to the full extent permitted by federal law;

WHEREAS, it is desired to amend the San Luis Law Enforcement Policies and Procedures to provide for enforcement of law as provided by SB 1070;

WHEREAS, there are numerous legal challenges to SB 1070 currently pending in the United States District Court in and for the District of Arizona, several of which have asked for the issuance of a preliminary injunction staying enforcement of SB 1070 due to an alleged violation of the Supremacy Clause of the United States Constitution;

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona, as follows:

Section 1: The San Luis Law Enforcement Policies and Procedures of the San Luis Police Department are hereby amended to include the policy for immigration enforcement as attached as Exhibit A hereto, which by this reference is incorporated as though fully set forth again in full.

Section 2: In the event that an order of a court of competent jurisdiction stays the enforcement of SB 1070, or the effective date of SB 1070, or any of the laws adopted by said legislation, the City of San Luis shall obey such orders in any implementation of the policies and procedures approved by this resolution.

Section 3: In the event of a conflict between the provisions of this Resolution and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are hereby repealed, superseded, and replaced, and the provisions of this resolution shall govern.

Section 4: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 11th day of August, 2010.

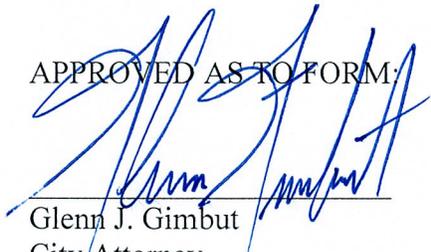

Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn J. Gimbut
City Attorney

SAN LUIS POLICE DEPARTMENT
LAW ENFORCEMENT
Policies and Procedure

Subject: Immigration Enforcement	Policy Number: 4.32
Issue Date:	Revision Date:

IMMIGRATION ENFORCEMENT

- A. Policy - The San Luis Police Department shall conduct all immigration enforcement activities in a manner consistent with Federal and State laws regulating immigration and protecting the civil rights, privileges and immunities of all persons. This policy will not limit the enforcement of federal laws to less than the full extent permitted by the federal law.

Officers should be aware that the enforcement of state and federal laws related to immigration is a complex effort requiring the cooperation of multiple agencies and the consideration of multiple facts and circumstances. Officers are encouraged to contact supervisors when necessary. If at any time, in the sound judgment of an officer, the officer believes that deviation from this policy is appropriate, the officer should contact a supervisor.

- B. Purpose - The purpose of this policy is to provide guidelines and direction for the management of investigations related to immigration enforcement.

- C. General Information

1. The provisions of Arizona Law that address immigration enforcement include the following:
 - a. ARS 11-1051 "Cooperation and assistance in enforcement of the immigration laws; indemnification."
 - b. ARS 13-1307 "Sex trafficking; classification; definitions."
 - c. ARS 13-1308 "Trafficking of persons for forced labor or devices; classification; definitions."
 - d. ARS 13-1509 "Willful failure to complete or carry an alien registration document; assessment; exception; authenticated records; classification."
 - e. ARS 13-2928 "Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment; classification definitions."

- f. ARS 13-2929 “Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exception; classification.”
 - g. ARS 13-2317 “Money laundering; classifications; definitions.”
 - h. ARS 13-2319 “Smuggling; classifications; definitions.”
 - i. ARS 13-2322 “Unlawful transactions involving drop house properties, classifications; definitions.”
 - j. ARS 28-3511 “Removal and immobilization or impound of vehicle.”
2. Officers **will not** arrest, stop, detain or contact an individual based on race, religion, national origin, gender, sexual orientation, or economic status, unless it is part of a suspect description or otherwise authorized by law.

D. Definitions

- 1. Bias-Based Profiling - Selecting a person or persons for enforcement action based on a common trait of the group; this includes, but is not limited to race, ethnic background, cultural group, religion, national origin, gender, age, sexual orientation, or economic status; this includes “racial profiling.”
 - 2. Certified 287(g) Officer - State or local officer trained, certified and authorized by the federal government to enforce all aspects of federal immigration law.
 - 3. Consensual Contact - Voluntary interaction with a person where a reasonable person would clearly understand they are free to leave or decline the officer’s request.
 - 4. ICE/CBP/287(g) - Immigrations and Customs Enforcement, Customs and Border Protection or a 287(g) certified officer.
5. Presumptive Identifications (For persons lawfully stopped or detained/not under arrest) - A person is presumed not to be an illegal alien who is unlawfully present in the Unites States if the person provides to a law enforcement officer or agency any of the
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- a. A valid Arizona Driver's License
 - b. A valid Arizona non-operating Identification License
 - c. A valid Tribal Enrollment Card or other form of tribal identification
 - d. If the entity requires proof of legal presence in the United States before issuance; any valid United States federal, state, or local government issued identification.
6. Probable Cause to Arrest - Facts and circumstances, and any rational inferences therefore, that would lead a reasonable and prudent police officer to believe a crime has been committed, and the subject to be arrested has committed the crime; an officer may arrest based on probable cause.
 7. Racial Profiling - The reliance on race, skin color, and/or ethnicity as an indication of criminality, including reasonable suspicion or probable cause, except when part of a suspect description.
 8. Reasonable Suspicion - Facts and circumstances, and any rational inferences therefore, that would lead a reasonable and prudent police officer to believe crime is/was afoot (has been, is being, or is about to be committed); the officer need not know the exact nature of the crime; an officer may stop or detain a person based on reasonable suspicion but may not arrest or search.
 9. Stop - A temporary detention of a person for investigation (a temporary detention is considered a seizure of a person and is, therefore, governed by the Fourth Amendment); a stop occurs when a reasonable person under the circumstances would believe that he/she is not free to go; a stop must be based on at least reasonable suspicion; a person is stopped when such person submits to a show of authority or physical force.

E. General Immigration Enforcement Procedures

1. Consensual Contacts
 - a. State laws related to immigration enforcement neither expand nor limit an officer's ability to approach a person and engage that person in a voluntary conversation. During that conversation, the officer may inquire about any subject matter. The person contacted does not have to answer questions or produce any identification, but may choose to do so voluntarily. Officers do not have the authority to demand that a person, "show their papers." If during the contact, the officer develops

reasonable suspicion that the person has committed, is committing or is about to commit a crime, then the officer should proceed as directed in Section E.2 of this policy.

- b. Officers should exercise discretion in making immigration status inquiries during consensual contacts or with victims and witnesses of a crime. In order to avoid perceptions of bias based policing (including racial profiling) during consensual contacts, officers should be consistent in asking persons for their identification.
- c. In no event shall race, color or national origin play any role in an officer's decision to inquire about immigration status in consensual encounters.

2. Persons Lawfully Stopped or Detained

- a. If during the course of a lawful stop or detention of a person ("detainee"), an officer subsequently develops reasonable suspicion to believe a detainee is an alien and is unlawfully present in the U.S., the officer shall make a reasonable attempt to determine the immigration status of the detainee with either ICE/CBP/287(g) officer (ARS 11-1051.B).

There are two exceptions to this requirement:

- (1) When it is not practicable - In determining whether it is practicable, officers should consider things such as work load, criticality of incident and other present duties, available personnel on scene, location, available back-up, and ability to contact or availability of ICE/CBP/287(g) officer.
 - (2) When the determination may hinder or obstruct an investigation - The officer should consider when or whether to investigate immigration status in light of the need for suspect, victim and witness cooperation in an investigation (this consideration is not necessarily limited to the investigation for which you have detained the person). For example, domestic violence investigations, complex investigations of money laundering, human trafficking and drug smuggling which may require significant cooperation of those involved.
- b. In establishing whether there is reasonable suspicion to

believe a person is an alien and unlawfully present in the U.S., an officer shall not consider the detainee's race, color, or national origin except to the extent that an officer may ask about a person's citizenship.

c. If the detainee presents one of the following types of identification, it is presumed that the detainee is lawfully present in the U.S. No further investigation into the person's status is necessary, unless there are additional facts that cast doubt on the person's lawful presence.

- (1) A valid Arizona driver's license
- (2) A valid Arizona non-operating identification license
- (3) A valid tribal enrollment card or other form of tribal identification
- (4) If the entity requires proof of legal presence in the U.S. before issuance; any valid U.S. federal, state or local government issued identification

d. If the detainee does not present presumptive identification, then based on articulable facts and circumstances the officer shall determine whether reasonable suspicion exists that the person is an alien and here unlawfully. If reasonable suspicion exists to believe the person is unlawfully present, the officer shall make a reasonable attempt to determine the person's immigration status. In determining whether reasonable suspicion of unlawful presence exists, officers should consider all relevant factors, including among others:

- (1) lack of or false identification (if otherwise required by law)
- (2) possession of foreign identification
- (3) flight and/or preparation for flight; engaging in evasive maneuvers, in vehicle, on foot, etc.
- (4) voluntary statements by the person regarding their citizenship or lawful presence
 - Note: If the person is in custody for purposes of *Miranda*, s/he may not be questioned about immigration status until after the reading and waiver of *Miranda* rights.
- (5) foreign vehicle registration
- (6) counter-surveillance or lookout activity
- (7) in company of other unlawfully present aliens
- (8) location, including for example:

- (a) a place where unlawfully present aliens are known to congregate looking for work
 - (b) a location known for human smuggling or known smuggling routes
 - (9) traveling in tandem
 - (10) vehicle is overcrowded or rides heavily
 - (11) passengers in vehicle attempt to hide or avoid detection
 - (12) prior information about the person
 - (13) inability to provide their residential address
 - (14) claim of not knowing others in same vehicle or at same location
 - (15) providing inconsistent or illogical information
 - (16) dress
 - (17) demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact
 - (18) significant difficulty speaking English
- e. When reasonable suspicion exists to believe a detainee is an alien and present in the U.S. unlawfully, but there are no state or local criminal violations, the officer shall contact ICE/CBP/287(g), unless an exception in Section E.2.(a) applies.
- (1) If ICE/CBP/287(g) does not answer for an unreasonable period of time, or if ICE/CBP/287(g) is unable to determine that the detainee is unlawfully present, then the officer shall release the detainee. The officer shall fill out an ICE referral form with all information available. The report shall be submitted to ICE.
 - (2) If ICE/CBP/287(g) advises the officer there are federal criminal charges against the detainee, then the officer shall determine whether ICE/CBP will respond to take the person into custody or whether the officer should arrest the detainee and transport to ICE/CBP, jail, or a federal facility. An Offense Report titled "Possible Federal Immigration Violation" will be completed for all arrests, whether booking or transporting to ICE on criminal violations of a federal immigration law (See Section 8.(b) for the information needed within the report).
 - (3) If ICE/CBP/287(g) advises the officer that the detainee

only has federal civil charges, then the officer shall ask whether ICE/CBP will respond. The officer may not extend the initial lawful stop based upon the federal civil charges. Once the investigation related to the initial lawful stop has been completed, the detainee must be released unless the officer has developed reasonable suspicion to detain further to investigate a violation of ARS 13-1509 or other criminal activity. The officer shall not extend the detention to wait for ICE/CBP to respond. Without the person's consent, officers shall not transport the person based solely upon a federal civil violation. If the officer obtained relevant information during the lawful stop, the officer shall fill out an ICE referral form. The report shall be submitted to ICE.

(a) The officer shall fill out an ICE referral form with all information available. The report shall be submitted to ICE.

(4) If ICE/CBP/287(g) is unable to indicate whether the federal charge against the detainee is civil or criminal, then the officer shall treat the charge as civil pursuant to paragraph (3) above.

3. Arrests (including Citation in Lieu of Detention)

a. When reasonable suspicion is present to suggest an immigration violation has/is occurring, all arrested persons, including juveniles, shall have their immigration status verified by ICE/CBP/287(g) prior to the arrestee being released. Presentation by the arrestee of presumptive identification and/or agency identification processes does not meet the requirement to verify immigration status.

(1) All arrestees who are booked as with current procedures of the Yuma County Jail, will have the verification of immigration status confirmed by ICE/CBP/287g as is current practice.

(2) For all arrestees not being booked, when reasonable suspicion is present to suggest an immigration violation has/is occurring, the arresting officer/employee will call or otherwise contact (communications, computer, etc.)

ICE/CBP/287g, to verify the arrestee's immigration status.

(a) If ICE/CBP/287g does not answer for an unreasonable period of time, or if ICE/CBP/287g is unable to verify that the arrestee is unlawfully present, then the officer/employee will proceed to handle the arrestee according to agency policy, which may result in the issuance of a citation for the original non-immigration charge and the release of the arrestee. The officer/employee will document the attempt by listing the agency name, phone number and time the attempt was made.

(b) If ICE/CBP/287g verifies that the person has federal civil or criminal charges, including unlawfully present, then the officer may ask the federal agency to transport the person, the officer may transport the person to the agency, or the officer may transport the person to jail for booking on the state charges. The arrestee will be cited and released. ICE/CBP will bear the responsibility for placing a hold on any arrestee booked into jail. If verification is made by this agency, the fact that verification was made and by whom will be documented in the Offense Report.

b. When reasonable suspicion is present to suggest an immigration violation has/is occurring, all arrested persons shall be asked the following questions, with the answers documented in the departmental report:

(1) What is your country of citizenship?

(a) If other than the United States, the next question should be asked, but only after *Miranda* warnings have been given (if a juvenile, use appropriate *Miranda* warnings).

(b) Officers must comply with agency policies regarding consular notification for persons who self identify as being foreign citizens.

- (2) Are you in the United States legally?
 - (3) Do you have any registration documents or other proof of lawful presence?
 - c. Arrests that result in booking a suspect, or referring a juvenile, will be processed in accordance with applicable department policies.
- 4. When contacting I.C.E., Customs and Border Protection, or a certified 287(g) officer
 - a. When an officer/employee contacts ICE/CBP/287(g) to verify whether a person is an alien and unlawfully present in the U.S., and ICE/CBP/287(g) advises that the person is unlawfully present, then the officer/employee should ask both:
 - (1) is there any record that the person has ever completed an alien registration document and
 - (2) does the person have any other authorization from the federal government to remain in the U.S.
 - b. The fact that an ICE/CBP/287(g) cannot verify a person's status does not mean a person is unlawfully or lawfully present in the United States and is not the basis for enforcement action.
 - c. If the person is an alien and has no alien registration documents or other proof of lawful presence, or there is no record that the person has ever registered, the officer may investigate the person for a violation of ARS 13-1509.
 - d. Once verification of immigration status is completed, the person is eligible to be released, subject to other legal requirements (such as an arrested person seeing a magistrate or signing a citation in lieu of detention).
- 5. Detention and Removal Order (DRO) Holds (usually an NCIC hit)
 - a. The Detention and Removal Office (DRO) is a unit of ICE that has the responsibility of detaining and transporting undocumented persons apprehended by ICE, CBP and local law enforcement.
 - b. Once a person has been identified as being in the United

States unlawfully, ICE will issue a DRO hold, which can be for criminal or civil violations.

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

- c. If an officer receives a DRO notification from ICE, the following will be done:
 - (1) Call the phone number on the DRO notification to determine whether the DRO hold is criminal or civil.
 - (2) Detain and transport for criminal orders, if requested to do so by ICE.
 - (3) Complete an Offense Report entitled "Possible Federal Immigration Violation" (See Section 8(b) for the information needed within the report).
 - d. Without the person's consent, officers will not transport for civil violations or continue to detain if the only violation is a civil DRO hold.
 - (1) The ICE Referral Form will be completed and the subject will be released. An Offense Report titled "Possible Federal Immigration Violation" will be completed (See Section 8(b) for the information needed within the report) for all arrests and transports to ICE on a criminal DRO hold or criminal violations of a federal immigration law.
 - (2) The questions and answers to the following will be asked of all parties involved and documented thoroughly in the Offense Report:
 - (a) What is your country of citizenship?
 - (b) What is your place of birth?
 - (c) Are you in the United States legally? (Miranda Required)
 - (d) Document whether consulate was notified.
 - e. Consular notification procedures shall be followed.
6. NCIC ICE Immigration Violator File

- a. ICE keeps a record of aliens who have been convicted of a felony crime in the United States and have since been deported to their country of citizenship. This record is known as the Deported Felon File which is located in the NCIC Immigration Violator File.
- b. The Immigration Violator File contains the following additional categories:
 - (1) The ICE Absconder category, which contains the records for individuals with an outstanding administrative warrant of removal from the United States who have unlawfully remained in the United States.
 - (2) The ICE National Security Entry/Exit Registration System (NSEERS) category, which contains the records for individuals whom the Department of Homeland Security (DHS) and ICE have determined have violated registration requirements for entry into the United States.
 - (3) ICE enters this information into the NCIC Immigration Violator File.
 - (4) Police officers will not take enforcement action on Administrative Warrants or NSEERS hits, as these are civil or other non-criminal federal matters.
 - (5) The NCIC query results will advise whether the information displayed is an Administrative Warrant hit or a Deported Felon File hit.
- c. If an officer runs a person who is the subject of a Deported Felon File notification, and there are no local charges, the following steps will be taken:
 - (1) Verify through physical description (scars, marks, tattoos, etc.), admission, or other available information, that the person on the hit is the same person.
 - (2) Contact the ICE Law Enforcement Service Center in Vermont through the communications dispatcher or call directly using the phone number listed for immediate notification confirmation.

- (3) Once the hit has been confirmed, officers will positively identify the subject through LiveScan, or fingerprint the individual and fax the fingerprints to ICE.
- (4) After the subject has been positively identified, the ICE Law Enforcement Agency Response (LEAR) Unit (or other local ICE office) may be contacted at (local LEAR or ICE phone number) for pick-up and disposition of the subject.
 - (a) Officers may also bring the subject to the ICE Detention and Removal Office for subject turnover to an ICE agent.
 - (b) Officers will call the LEAR unit before transporting a subject.
- (5) Officers will complete an Offense Report titled "Possible Federal Immigration Violation" (See Section 8(b) for the information needed within the report) including:

Whether or not the LEAR unit picked up the subject or if the subject was transported to the ICE center.

- d. If there are local charges along with a Deported Felon notification there is no need to contact ICE. Follow normal booking procedures.
7. Exceptional Circumstances Provision - Officers should be aware that the enforcement of state and federal laws related to immigration is a complex effort requiring the cooperation of multiple agencies and the consideration of multiple facts and circumstances. If at any time, in the sound judgment of an officer, the officer believes that deviation from this policy is required, the officer should contact a supervisor.
 8. Documentation
 - a. Officers are reminded of their responsibility to thoroughly document all facts and circumstances supporting their decisions in the applications of these statutes.
 - b. Officers/employees completing an Offense Report titled "Possible Federal Immigration Violation" will have the following information documented in the departmental report:

- (1) Subject's name and personal information
- (2) Time, place, and reason for contacting the subject
- (3) The agency contacted (ICE/CBP/287(g))
- (4) The type of contact made (phone call, radio, etc.)
- (5) Name and serial number of the person who verified the person's immigration status
- (6) The phone number and time the information was verified
- (7) If applicable, the articulable facts establishing voluntary consent or reasonable suspicion, including consent to be transported to ICE
- (8) If applicable, the name and serial number of ICE agent who took custody of the person

9. ICE Contact Information

- a. 1-800-973-2867 ICE 24 hour contact
- b. 1-802-872-6020 ICE Law Enforcement Support Center (NLETS Inquiry)
- c. 928-341-6607 (radio) Yuma Customs and Border Protection



Rick Flores, Chief of Police

CITY OF SAN LUIS
Police Department

ICE REFERRAL FORM

DATE OF REPORT: _____ TIME OF REPORT: _____ TYPE OF REPORT: _____

REPORTING OFFICER: _____ SERIAL #: _____

LOCATION: _____ GRID: _____ BEAT: _____

ROUTE TO: _____ FOSTERED: Y N

INCIDENT/DR. NUMBER: _____ RADIO CODE: _____ SUPVR SER NO: _____

SUBJECT INFORMATION

NAME: _____ SSN: _____ PH#: _____
 LAST FIRST MIDDLE

RES.ADD: _____ APT#: _____ CITY: _____ ST: _____

DRIVER'S LICENSE: _____ ST: _____ RACE: _____ SEX: _____ WEIGHT: _____

EYES: _____ HAIR: _____ DOB: _____ MISC/CLOTHING: _____

EMPLOYER: _____ ADDRESS: _____ WORK#: _____

GANG AFFILIATION: _____ HAIR LENGTH: _____ STYLE: _____

FACE HAIR: _____ MISC: _____

OTHER: _____

SUBJECT VEHICLE

PLATE NO: _____ YR: _____ ST: _____ VIN: _____ REG.OWNER: _____

VEH YR: _____ MAKE: _____ MODEL: _____ STYLE: _____ COLOR: _____

REASON FOR CONTACT

