



CHANDLER POLICE DEPARTMENT GENERAL ORDERS

Serving with Courage, Pride, and Dedication

Order

E-17 UNDOCUMENTED PERSONS / FOREIGN NATIONALS

Subject

100 Procedures

Effective

03/16/12

Low Frequency/High Severity

SUMMARY:

[1.1.4] [1.2.5]

This policy establishes procedures for the management of undocumented foreign nationals (UFN) that come in contact with law enforcement officers.

A. POLICY

The Chandler Police Department recognizes and values the diversity of the community it serves. 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 Chandler Police Department 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.

This policy will not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

B. PROCEDURES

The Chandler Police Department provides law enforcement services and enforces the laws of the City of Chandler, 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 Chandler Police Department 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:

1. ARRESTED

Pursuant to ARS 13-3906 and the Vienna Convention of Consular Relations, adults, not including juveniles (unless arrested for a violation 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 officers develop information that the suspect is in the United States unlawfully, the information **shall** be detailed in the OR (Offense Report). The booking facility will automatically contact ICE.

2. CITE AND RELEASE OR LONG FORM

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**
- **Any other facts bearing on the risk of nonappearance or danger to the public**

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. If the officer(s) develops information that the suspect is in the United States unlawfully, the officer(s) shall document it in the OR and shall refer the individual to ICE by completing an ICE Request for Inquiry Form, noting in the remarks section that the person was cited and released, and forwarding the form to the Patrol Administrative Lieutenant.

The Patrol Administrative Lieutenant is responsible for ensuring the notice to ICE (NNLQ) is processed and forwarded. The ICE Request for Inquiry Form, NNLQ and any response from ICE shall be retained in Patrol Administration.

- 3. UNSOLICITED INFORMATION —(No Arrest)** If the officer comes upon unsolicited information during the course of his or her enforcement efforts that the person(s) being investigated is a possible UFN, 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 Patrol Administrative Lieutenant. If completed, the ICE Request for Inquiry Form shall be routed to ICE through the Patrol Administrative Lieutenant.

Consistent with our efforts to protect the safety and well being of the community and to encourage the public to report criminal activity, 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 (to include racial profiling) during consensual contacts, officers should be consistent in asking persons for their identification.

**C. 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.

1. **THIS HOLD IS SIMILAR TO A HIT** from a warrant when a person's information is run through NCIC
2. **IF AN OFFICER RECEIVES A DRO HIT:**
 - a. **The officer shall** call the telephone number on the DRO hit to determine whether the DRO hold is criminal or civil
 - b. **The subject may** be detained for the length of time it takes to determine whether the DRO hold is criminal or civil

D. DRO - CRIMINAL HOLD

1. **BOOK THE SUBJECT** into the county jail on the criminal DRO hold if ICE cannot respond to the scene of the detention
2. **COMPLETE AN OR ENTITLED "Possible Federal Immigration Violation"** containing all relevant information for:
 - a. All arrests and transports to ICE on a criminal DRO hold
 - b. Criminal violations of a federal immigration law
3. **QUESTIONS AND ANSWERS** to the following shall be asked of the party involved and documented thoroughly in the OR:
 - a. What is your country of birth?
 - b. Are you in the United States legally?

E. 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 a FI card and forwarded to the Patrol Administrative Lieutenant.

1. **THE ICE REQUEST FOR INQUIRY FORM** shall be completed and routed to ICE through the Patrol Administrative Lieutenant
2. **ONCE THE ICE REQUEST FORM** has been completed, the subject shall be released, if there are no criminal violations

F. ICE CONTACT FOR DROP HOUSES, HUMAN SMUGGLING AND LOAD VEHICLES

When contact with ICE is deemed necessary, the following steps **shall** be taken:

1. **A PATROL SUPERVISOR SHALL:**
 - a. Be contacted and provided a detailed account of ICE contact for drop houses, human smuggling and load vehicles
 - b. Review the circumstances and decide if the incident warrants a response from ICE or if the incident requires notification of another investigatory detail supervisor
 - c. Document each reported incident along with the response by ICE
2. **OFFICERS SHALL COOPERATE** with ICE agents in ICE law enforcement activities consistent with the mandates of Chandler Police Department policy
3. **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 regard to a smuggling operation/drop house or a load vehicle
4. **THE DUTY SERGEANT** or the affected commander and the duty PIO **shall** be notified as soon as possible for on scene assistance by ICE or other high profile incidents involving undocumented persons

G. COMMUNITY AND VICTIM SERVICES

Officers may contact Communications or Victim Services for information on community services for those in need of such services

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H. U-VISA CERTIFICATION FORMS

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 encourages victims to report crimes and contribute to criminal investigations and prosecutions regardless of immigration status as well as supports law enforcement efforts to investigate and prosecute crimes committed against immigrant victims. The U-Visa provides eligible victims with nonimmigrant status to temporarily remain in the United States while assisting law enforcement. (U-Visa Law Enforcement Certification Resource Guide)

U-Visas are available through Department of Homeland Security, United States Citizenship and Immigration Services for undocumented foreign nationals who are current or former victims of a qualifying criminal activity, and are assisting or have assisted officials in the criminal justice system investigate or prosecute criminal activity.

Note: An agency's decision to provide a certification is entirely discretionary; the agency is under no legal obligation to complete a Form I-918 Supplement B for any undocumented foreign national.

1. **VICTIMS INQUIRING ABOUT APPLYING FOR U-VISA OR REQUESTING** assistance with completing an application should be directed to the Victims Services Unit (X4535)
2. **ALL REQUESTS FOR U NONIMMIGRANT STATUS CERTIFICATION (USCIS) FORM I-918 SUPPLEMENT B (I-918B) SHALL** be forwarded to the Criminal Investigations Bureau (CIB) Persons Crimes Section Lieutenant for review and coordination in processing the request
3. **THE LIEUTENANT WILL:**
 - a. Log the request and coordinate with the investigating officers, the affected prosecuting agency and Victim Services in making the determination to recommend and forward the form I-918B to the CIB commander
 - b. Refer to instructions for the form provided by Department of Homeland Security when making this determination
 - c. Consider forwarding completed request to the CIB commander for review if applicant:
 - 1) Is a victim of a qualifying criminal activity as outlined in form I-918B and the criminal activity is being investigated
 - 2) Possesses information concerning qualifying criminal activity that would assist in the investigation or prosecution
 - 3) Is helpful and assisting with the investigation or prosecution
 - d. Consult with the affected prosecuting agency to determine need for certification regarding cases pending prosecution
 - e. Notify the affected prosecuting agency when a form I-918B has been certified regarding criminal cases submitted for prosecution
 - f. Notify applicant in writing as to the status of certification request
 - g. Log the disposition of each request
 - h. Send written notification to USCIS if a victim unreasonably refuses to assist in the investigation or prosecution of their case after the form I-918B has been certified
 - 1) Send written notice to:
USCIS – Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001
 - 2) Include the victim's name, date of birth, and A-number (if available) on all correspondence
4. **THE CIB COMMANDER SHALL:**
 - a. Determine whether to certify the form I-918B
 - b. Forward written recommendation to the Police Chief through the chain of command
 - c. Inform Persons Investigations Section lieutenant of decision to certify the form I-918B

I. RECORDS MANAGEMENT

The Immigration Status forms forwarded to ICE shall be forwarded to the Records Unit and maintained in RMS

J. COMMANDER NOTIFICATION

NOTIFY THE APPROPRIATE COMMANDER regarding any request for assistance by USCIS / USCBP or any incident/situation that may become high profile. The commander will coordinate all other city, departmental, and/or community notifications as deemed necessary, including notification required under General Order E-16 Planned Special Events / Operations

K. IMMUNITY FROM ARREST

See General Order [E-10.100F](#)

L. MEXICAN NATIONALS FELONY ARREST

Per Vienna Convention on Consular Relations Article 36, it is mandatory for the investigating agency to notify the Mexican Consulate in the case of felony arrest of a Mexican national. The investigating officer will:

1. **NOTIFY THE MEXICAN CONSULATE** during business hours
 - a. Refer to Communications for current phone numbers
 - b. Leave the name, DOB, address, and phone number of the individual
 - c. Leave investigating officer's name and badge number, a brief synopsis of what occurred, and the report number
2. **DOCUMENT** the above notification in the report

M. REQUIRED NOTIFICATION TO FOREIGN CONSULATES

Per the Vienna Convention on Consular Relations, law enforcement officials will notify arrested foreign nationals of their right to contact their consulates, and that, if the **foreign national** requests that a consular official be notified, local officials notify the consulate of the arrest.

1. **OFFICERS MUST ADVISE** arrested or detained foreign nationals of the right to have their consular officials notified. This notification should be given in conjunction with Miranda.
2. **IN SOME CASES**, regardless of the national's wishes, the nearest consular officials **must** be notified on the arrest or detention
3. **CONSULAR OFFICIALS ARE ENTITLED** access to their nationals in detention and to provide consular assistance
4. **WHEN A GUARDIANSHIP OR TRUSTEESHIP** is being considered with respect to a minor or incompetent foreign national, officers must notify consular officials

N. ARREST / DETENTION PROCEDURES

Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.

1. IF THE FOREIGN NATIONAL'S COUNTRY IS NOT on the mandatory notification list:

a. Advise of rights using the following statement:

"As a non-US citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help obtain counsel and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?"

- b. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. If the foreign national asks that consular notification be given, notify the nearest consular official of the foreign national's country without delay using the fax form, "Notification of Consular Office of Arrest or Detention."
- c. Record notification and actions taken in your report
- d. Photographs and fingerprints will be taken if part of the normal booking and investigation process

2. IF THE FOREIGN NATIONAL'S COUNTRY IS on the list of mandatory notification countries below:

a. Advise person arrested or detained of the following:

"Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible."

- b. Notify that country's nearest consular officials within 24 hours of the arrest/detention. This does not mean the investigation must be delayed. Tell the foreign national that you are making this notification.
- c. Record notification and actions taken in your report
- d. Photographs and fingerprints will be taken if part of the normal booking and investigation process

3. CONTACT INFORMATION

- a. **Normal Business Hours:** Contact the assistant legal advisor for consulate affairs at the Department of State.
- b. **After Normal Business Hours:** Contact the Command center of the Bureau of Diplomatic Security, Department of State

c. **Contact Communications** for current phone numbers

4. **MANDATORY NOTIFICATION COUNTRIES AND JURISDICTIONS**

Algeria	Hungary	Seychelles
Antigua and Barbuda	Jamaica	Sierra Leone
Armenia	Kazakhstan	Singapore
Azerbaijan	Kiribati	Slovakia
Bahamas, The	Kuwait	Tajikistan
Barbados	Kyrgyzstan	Tanzania
Belarus	Malaysia	Tonga
Belize	Malta	Trinidad and Tobago
Brunei	Mauritius	Tunisia
Bulgaria	Moldova	Turkmenistan
China ¹	Mongolia	Tuvalu
Costa Rica	Nigeria	Ukraine
Cyprus	Philippines	United Kingdom
Czech Republic	Poland (non- permanent	USSR ³
Dominica	residents only)	Uzbekistan
Fiji	Romania	Zambia
Gambia, The	Russia	Zimbabwe
Georgia	Saint Kitts and Nevis	
Ghana	Saint Lucia	
Grenada	Saint Vincent and the Grenadines	
Guyana		
Hong Kong ²		

FOOTNOTES:

¹ Does not include Republic of China (Taiwan) passport holders.

² Mandatory for nonpermanent residents only.

³ Passports may still be in use.

5. **CONSULAR OFFICIALS ARE ENTITLED** access to their nationals in detention, and are entitled to provide consular assistance. When guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

**O. FOREIGN AIRCRAFT
WRECKS OR CRASHES**

NOTIFY CONSULAR OFFICIALS when a foreign aircraft wrecks or crashes within the department's jurisdiction

P. DEATH OR SERIOUS INJURY

THE INVESTIGATING OFFICER will notify a foreign consulate whenever a foreign national dies or is seriously injured, regardless of the cause (i.e., traffic accident, homicide, suicide, natural, etc.) within the department's jurisdiction

***Q. INSTRUCTION MANUAL
AND FORMS LOCATION***

A copy of the "Consular Notification and Access" instruction manual and notification forms are located in the booking work area in Temporary Detention and by the fax machine in Records. The legal advisors will provide any clarification required.

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NOTIFICATION TO CONSULAR OFFICERS OF ARRESTS OR DETENTIONS



Date: _____

Time: _____

TO: Embassy of _____, Washington, D.C.
or

Consulate of _____, _____, _____
Country City State

FROM: Name: _____
Office: _____
Street Address: _____
City: _____
State: _____
ZIP Code: _____
Telephone: (602) _____
Fax: (602) _____

SUBJECT: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

We arrested/detained the following foreign national, whom we understand to be a national of your country, on _____.

Date

Mr./Ms _____
Date of Birth: _____
Place of Birth: _____
Passport Number: _____
Date of Passport Issuance: _____
Place of Passport Issuance: _____

This national has been arrested/detained for the following crime(s):

To arrange for consular access, please call _____ between the hours of _____ and _____. Please refer to case number _____ when you call.

Comments: