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|  | SAN MARCOS POLICE DEPARTMENT | |
| | Policy 7.21 Immigration Enforcement Issues | |
| | Effective Date: May 3, 2019 | Replaces: |
| | Approved: _____ <div style="text-align: center;">  Chief of Police </div> | |
| | Reference: | |

I. POLICY

It is the policy of this department that our officers and civilian employees shall comply with all applicable state and federal laws regarding immigration enforcement issues and constitutional limitations on that authority.

II. DEFINITIONS

- A. Department Employee: Collectively means sworn officers and civilian employees of the department.
- B. Detainer Request: A 48-hour hold issued by Immigration & Customs Enforcement based upon probable cause that a person has violated immigration restrictions and is civil in nature.
- C. Lawful Arrest: An arrest based upon probable cause that the arrestee has committed a criminal offense other than an immigration violation.
- D. Lawful Detention: A detention based upon reasonable suspicion that the detainee has committed, is committing or is about to commit a criminal offense other than an immigration violation. For purposes of this directive the term “lawful detention” shall not include a detention of a person who is a victim or witness of an offense.
- E. Officer: Sworn peace officer under the laws of the state of Texas.
- F. Proof of Residency: Includes a government issued photographic identification card or a document issued by a state or federal government indicating current legal immigrant status. It shall include, for these limited purposes, expired, revoked or suspended driver’s licenses.

III. COMPLIANCE WITH POLICY MANDATORY

All employees shall comply with this directive. It shall be the duty of all supervisors to monitor employee activities to insure compliance. A violation of this directive may result in discipline up to and including termination.

IV. INQUIRIES REGARDING IMMIGRATION STATUS

Officers shall follow these guidelines when inquiring about immigration status. Nothing in this section is intended to prohibit an officer’s sending or receiving information to or from any federal agency charged with enforcing immigration issues or any local agency or campus police agency.

- A. During a lawful detention officers may inquire about the detainee's immigration status. Officers should be mindful that if the detainee has provided proof of residency further inquiries about immigration status are not necessary.
- B. During a lawful detention officers may make inquiries via Texas Crime Information Center (TCIC)/National Crime Information Center (NCIC) to determine if the detainee is the subject of any Immigration & Customs Enforcement (ICE) warrants or detainer requests. Officers shall not take the detainee into custody based solely upon an ICE detainer request.
- C. During a lawful detention officers may make inquiries via the local ICE agent or representative. Officers shall be mindful that a person cannot be detained for an extended period of time to await the response of an ICE agent or representative. Officers shall not take the person into custody solely for an ICE detainer. An ICE agent must respond to the officer's location to take charge of the individual. If the person is not arrested for a separate criminal charge the officer shall not transport the individual to any facility to await the arrival of an ICE agent.
- D. Officers are reminded that a person who is lawfully detained is not obligated to respond to questions, including questions about identity and immigration status. Officers shall not compel a detained person to provide identification. Officers shall not arrest a person who refuses to identify himself or herself during a lawful detention, unless such a refusal violates state law or the officer develops probable cause and has the statutory authority to make a warrantless arrest. Officers may arrest a lawfully detained person if the person lies (is untruthful) about his or her identity.
- E. Officers detaining a foreign national shall notify the appropriate consular official upon request or when the detention exceeds two hours. The communications division will maintain a current telephone list of foreign embassies and consulates and a list of mandatory notice countries.
NOTE: Officers shall document in the narrative of the appropriate incident report the date and time Communications was notified of the foreign national's detention and his claimed nationality.
- F. During a lawful arrest officers may inquire about the arrestee's immigration status. Officers should be mindful that if the arrestee has provided proof of residency, further inquiries about immigration status are not necessary. If no investigative need exists to ask for immigration status information, arresting officers may elect to refrain from asking these questions.
- G. During a lawful detention officers may make inquiries via TCIC/NCIC to determine if the detainee is the subject of any ICE warrants or detainer requests.
- H. Officers are reminded that a person under arrest is not required to answer any questions except to provide his or her name, residence and date of birth.
- I. Officers will not inquire into the immigration status of a person who is the victim of a crime or a witness to a crime, except under the following conditions, or for the following reasons:
 - 1. The officer is investigating a criminal offense and the officer reasonably believes that the inquiry will provide evidence or information pertinent to the investigation;

2. The inquiry will allow the officer to provide a victim or witness, who is assisting law enforcement, information about federal visas designed to protect victims; or
3. The officer has probable cause to believe a victim or witness has engaged in specific conduct constituting a separate criminal offense.

V. ENFORCEMENT COOPERATION

Employees are authorized to assist immigration officials in enforcement actions pursuant to the following rules.

- A. Employees shall cooperate with immigration officials who are investigating immigration matters.
- B. Employees will not interfere with a request from ICE to interview an arrested person.
- C. Employees staff shall not assist or cooperate with immigration authorities if the enforcement action is to take place at a place of worship.
- D. Any employee who receives a request to assist in an ICE enforcement action shall immediately contact the supervisor on duty and relay the request. The supervisor will then determine whether there is sufficient personnel to assist ICE.