



Agenda

Immigration Committee
March 5, 2013
Councilor's Conference Room
City Hall, 200 Lincoln Avenue
4:15pm to 6:00pm

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes
 - a. February 5, 2013
 - b. May 1, 2012 (Re-adoption with Amendments)
4. Announcements
5. Community Comments
6. Old Business
 - a. Drivers Licenses for immigrants update- Marcela Diaz, Committee Member
 - c. Determination of meeting at 4:15pm on the first Tuesday or Thursday of the month- Alejandra Seluja, Chairperson
 - d. Mayor's Youth Advisory Board update on project – Adrian Salazar, MYAB Chairperson
7. New Business
 - a. Mario Ortiz, USICS Regional Director, Jackie Kraft, USICS San Antonio District Office, Patti Reynolds, USICS Albuquerque Office
8. Communications from Staff
9. Communications from Committee
10. Next Meeting and Adjourn

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**INDEX SUMMARY OF MINUTES
IMMIGRATION COMMITTEE
MARCH 5, 2013**

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Call to Order	Call to Order by Chair, Alejandra Seluja at 4:15 pm, City Councilor's Conference Room.	2
Roll Call	A quorum was declared by roll call, 1 absence.	2
Review and Approval of Agenda Add under Old Business: State Police Report is (a.), (b) Mayor's Youth Advisory Board Update, under 7. New Business: Mr. Ortiz and Ms. Jackie Kraft were unable to attend today's meeting due to sequestration matter, the Chair will report.	<i>Rev. Topple moved to approve the agenda as amended, second by Ms. Maria Cristina Lopez, motion carried by unanimous voice vote.</i>	2
Approval of Minutes February 5, 2013 May 1, 2012 (Re-adoption with Amendments)	<i>Ms. Maria Cristina Lopez moved to approve the minutes of February 5, 2013 as amended, second by Ms. Amparo Guerrero, motion carried by unanimous voice vote.</i> <i>Ms. Hemmer moved to approve the May 1, 2012 (Re-adoption with Amendments), second by Rev. Topple, motion carried by unanimous voice vote.</i>	2-3
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**INDEX SUMMARY OF MINUTES
IMMIGRATION COMMITTEE
MARCH 5, 2013**

<p>Shilling</p> <p>b. Mayor's Youth Advisory Board Update on Project, Adrian Salazar</p> <p>c. Drivers Licenses for Immigrants Update</p> <p>d. Determination of meeting at 4:15 pm on the first Tuesday of the month.</p>	<p><i>Ms. Hemmer moved to continue the meetings on the first Tuesday of the month at 4:15 pm, second by Rev. Topple, motion carried by unanimous voice vote.</i></p>	
<p>New Business</p> <p>a. Mario Ortiz USCIS, District XVII Region Director</p>	<p><i>Not Present</i></p>	<p>13</p>
<p>Communications from Staff and Committee</p>	<p>Informational</p>	<p>13-14</p>
<p>Next Meeting</p>	<p>April 2, 2013, 4:15 pm</p>	<p>14</p>
<p>Adjournment and Signature Page</p>	<p>There being no further business to come before the Immigration Committee, the meeting was adjourned at 6:00 pm.</p>	<p>14</p>

Immigration Committee
MINUTES
March 5, 2013 – 4:15 p.m. – 6:00 pm
City Councilor's Conference Room

1. Roll Call

Present:

Alejandra Seluja, Chair
María Cristina López
Rev. Chester Topple
Cara Esquibel
Jewel Cabeza de Vaca
Elizabeth Hemmer
Amparo Guerrero

Not Present

Marcela Diaz, Excused

Others Present

Terrie Rodriguez, Staff Liaison
Julia Valdez, Santa Fe County
Aric Wheeler, Captain, Santa Fe Police Department
Robert W. Shilling, Chief, New Mexico State Police
Fran Lucero, Stenographer

2. Approval of Agenda

Amendments: Old Business: State Police Report is (a.), (b) Mayor's Youth Advisory Board Update, under 7. New Business: Mr. Ortiz and Ms. Jackie Kraft were unable to attend today's meeting due to sequestration matter, the Chair will report.

Rev. Topple moved to approve the agenda as amended, second by Ms. Maria Cristina Lopez, motion carried by unanimous voice vote.

3. Approval of Minutes

Page 6: ~~Julie~~ Valdez should be Julia Valdez

Ms. Maria Cristina Lopez moved to approve the minutes of February 5, 2013 as amended, second by Ms. Amparo Guerrero, motion carried by unanimous voice vote.

Staff provided an amendment to the May 1, 2012 minutes related to #5 – Community Comments, line number 15 (Exhibit A). Ms. Rodriguez stated that this had come to her attention as a request from Elva Gurule who reported to the committee on May 1, 2012. She wanted to clarify for the record that her position is not a Pharmacist, that she worked

with a Pharmacist and that on page 3 – line 15 under Community Comments, her request was that apparently the pharmacy that she wanted to do did not happen so it is a business issue for her that she wants to have these minutes clarified so she came to the city to clarify these minutes. You will see that I have written what she has requested to have corrected, that she is not a Pharmacist.

Ms. Hemmer moved to approve the May 1, 2012 (Re-adoption with Amendments), second by Rev. Topple, motion carried by unanimous voice vote.

The Stenographer noted for the record that the amendment was created by staff administratively and not by the contracted stenographer.

4. Announcements

All were invited to go to the legislative hearing today for SB521 in Public Affairs. It is on the agenda and we will get word as to when it will be heard.

5. Community Comments

Ms. Maria Cristina Lopez reported on a case that was brought to her attention via a letter that involved a citizen and the Santa Fe City Police Department. The letter was provided to Captain Wheeler after it was read aloud to the committee. This individual has left town but has asked that I present this complaint.

6. Old Business

a. State Police: Chief Robert W. Shilling

The Chair noted that the committee was aware that there was an Executive Order signed by Governor Martinez regarding that the state police would ask about immigration status when you pull over people.

The Chief opened by saying that he would be happy to answer general questions and provided information on himself and expressed the honor it was to attend this meeting. The State Police is a rural agency; our primary responsibility is outside of the city limits. You folks have a unique perspective as you have a metropolitan area and you are dealing with issues that the state police don't continually encounter such as homelessness and human trafficking that you might encounter in a more complying area. I am a Governor appointee; I know about the driver's license issues and the Executive Order and am happy to talk about that. It may put us at odds to a certain degree but I will certainly answer any question. I am a Native New Mexican, was raised on the border of Deming and feel that I have a great understanding of the immigration population, went to school with them, worked with them and have all the reverence in the world for our immigrant population in New Mexico.

The Executive Order, one of the first things that Governor Martinez did was to supersede Governor Richardson's, "you will not ask immigration status." Hers' is very particular in that it is consistent with respect to criminal defendants, if I have you under arrest for a criminal offense that mandates I ask you your immigration

status. The reason that it goes down that road is that there are foreign nations that require Consular notification in the arrest of one of their citizens. So how do we do that and meet the federal law if we don't ask. We do not ask on traffic stops; we do not ask victims, witnesses, third parties. The only person we are allowed to ask is the criminal defendant who is under arrest for a crime in our custody. The Motor Vehicle code poses an interesting question for us initially – a traffic offense under state law is a crime. But, the case law is that you have them under arrest until you have them sign the citation and send them on their way either to appear in court or mail in their fine. We made a decision early on based on historic case law both in the state of New Mexico and elsewhere that our Motor Vehicle Code says it is a crime but the courts have held that you can retain someone for a very short time and is non-obtrusive as opposed to a custodial arrest where I can search your pockets and go through your purse once I have the handcuffs on you. We made an executive decision that as a matter of practice we would not do that, a traffic stop is a traffic stop; you write a ticket and send them on their way. The only time we are inquiring about immigration status is if it is a custodial or it could be a DWI which is a motor vehicle violation. With that being said; if they want their consulate notified we have to know their immigration status. If it is a county that doesn't mandate it, it is up to the individual arrested. If it is a country that mandates consular notification even if the individual arrested says, no don't notify my consular, we are required by law to notify the consulate. I don't have that list of countries, Mexico is an option country, and it is up to the individual arrested.

The Chief noted that Ms. Marcela Diaz from SOMOS and as a member of the Immigration Committee has an open line of communication with our Legal Division of the State Police and has contacted us on various issues in the recent months. In addition to that if an issue comes please contact me. Like the report that was put out, a press release, SOMOS did on whether or not law enforcement was in compliance with the 2009 law. The problem was that law enforcement couldn't get their hands on that report for like 6 months after the press release came out. We didn't know what was in it, how to defend ourselves, I felt a little betrayed, if you will on that because if we got a grade letter B, C, D we would want to have cleared that up. Marcella has a good communication with Sonya Carrasco from our Legal Division and they have addressed several concerns and we welcome questions with open arms. I brought with me and if you want to make it part of the record, I am fine with it — Just as an agency overview, we are an accredited agency, we are accredited by (CALEA) the Commission on Accreditation of Law Enforcement Agencies. As part of that we have model policy and procedures implemented that meet national standards, such as bias based policing complaints (included in packet). Every year we are required to do an analysis, review and a report of any bias based policing complaints made to the agency and the resolution of those complaints. This Policy has been in place for 8 years, shows the treatment of foreign nationals upon arrest, consular notifications, forms that my people out in the streets use when they may place someone under arrest, and they say, yes I was my consular notified we provide them that form

and make it part of that report so that we can show that we are complying with federal law as well as well as notifying consulate. Not know what specific issues or questions anyone might have, I will make this part of the record and leave the documents for you to make copies of. The Chief offered his documents as part of the record as they are public record. (Exhibit B) I stand for any questions or concerns.

Maria Cristina Lopez: Thank you for bringing in this information. What do you define as a crime?

Chief Shilling: Custodial arrest, hand cuffs are on and they are going to jail.

Maria Cristina Lopez: I know but what is it when you said.....

Chief Shilling: It could be a petty misdemeanor, it could be a misdemeanor, and it could be a felony. There are certain criminal law aspects out there that even for a misdemeanor require us to take custody of the person without even writing them a citation. DWI is a classic example, we are not allowed to let them just blow in a machine and write them a ticket and send them on their way.

Maria Cristina Lopez: So DUIs you do have to arrest.

Chie Shilling: Let me reframe that, a better way to phrase it, when we are mandated to make a custodial arrest and we are filling out a booking sheet and lodging someone in jail that potentially doesn't have the money to bond out, no one to contact and no help, we are mandating that status be determined as to whether or not we should notify a consulate. It was noted that the bail bonding doesn't have anything to do with the law enforcement agency; that is between the person and the bail bondsman or the Judge on the criminal side to get out of jail. Here is the way I frame it in my mind; we are taking away someone's freedom, we are lodging them in a detention center, they don't have friends, they don't have family and their only life line may be a consulate notification for legal representation or to make family notification in a country of origin wherever that may be. That is the way our policy is modeled and our Consulate Notification Policy is modeled is when you lodge someone in jail, even a petty misdemeanor or amount of marijuana, could I take you to jail – yes under state law. Do I? Not necessarily when I can write a ticket and send you on your way and that is when officer discretion comes in to play.

Maria Cristina Lopez: So let's say it is a DUI and this person doesn't have anybody so you call the consulate but what interests me is when do you call ICE?

Chief Shilling: We don't call ICE. (Referred to the policy included in Exhibit B). Read verbatim from policy and the Chief said he would do additional research and provide information to the committee.

Maria Cristina Lopez: That is good. I am glad to have that on record.

Cara Esquibel: Have you seen that report (press release) to date and can you comment? Can you highlight any areas that needed improvement or were cited?

Chief Shilling: Yes – finally. The only reason we were given a B and not an A is because there was allegedly an unresolved complaint floating out there from a foreign national that I think at the end of the day ended up being an issue with Farmington police at a check point and didn't even involve our agency. Being a CALEA accredited agency, from a statewide perspective, I know Santa Fe got an A and Socorro County got an A, we got a B and the reason for the B was unclear as an unresolved complaint.

Q: It was asked if this was in English and Spanish. Chief Shilling referred to #5 in procedures: "When you arrest an undocumented immigrant it is necessary for a criminal violation officer shall notify the US Immigration Custody Enforcement.

Cara Esquibel: At that time it has been determined that they are undocumented.

Chief Shilling: Yes.

Cara Esquibel: So you said first that you don't check for their status until they are arrested.

Chief Shilling: Between the time that they are arrested and lodging them in jail we made a determination as to their immigration status. I deal with 33 county jails in the state system and most of the time on the booking sheet there is just a check box, ☐ undocumented and the jails will notify us and Immigration if they want to. Our officers have met their obligation in checking the box on the booking sheet at the jail. Some jails require that as well because they have consular notification obligations and access as well.

Chair Seluja: How do you qualify if they are undocumented, how do you ask? If there was one question that you could ask, what would it be?

Chief Shilling: That is a good question and it boils down to good police work. It is really at the end of the day like for a Border Patrol Agent, it is hours and hours of classroom training, learning what a matricula card looks like, what does a passport look like and asking the right questions, where were you born, what is your nationality, things like that and obviously not everyone in the police force is fluent or bi-lingual or tri-lingual for that matter. It boils down to good police work. If they present a matricula card as an ID and that is the only ID they have, we ask them where they are coming from and where they are going to, where are you a citizen of, and they answer to the best of our ability. But to say we can go in to the court of law and be a legal expert on whether or not we could determine

immigration status, no because we are not a 287G State. We don't want to be a 287G State.

Chair Seluja: So what is the question; do you ask what is your legal status?

Chief Shilling: Don't take me wrong we do have access to people who are bilingual. Let's say I am dealing with a homicide suspect that doesn't speak English, Spanish is his/her main language of course we will get an agent engaged who speaks Spanish and he will be asked directly, "are you here illegally?"

Chair Seluja: That is why I am asking you, what is the question, if there was one question that you asked, what or how would you ask; what is your status or are you here illegally, is it one basic question for everybody.

Chief Shilling: Something that isn't written in policy, it is a good point. If we were a 287G State we would get training from the federal government and they would say, here is what you look for, here are the questions you ask, here is what a customs border buy would ask someone crossing that border. We do the best that we can with what we have and at every opportunity we do our best.

Maria Cristina Lopez: So if you were to ask me, "are you here illegally?" and I said I don't have to answer that question. You are asking me a very hard question to ask and then I say yes and you say you are going to call ICE.

Chief Shilling: We don't use that as a threat as a matter of procedure because at the end of the day based on the Executive Order, based on our policy; we care about the crime, the victim of the crime, a successful prosecution or getting to the bottom of the issue. The policy is to protect the arrestee and if they are here illegally and they want consulate notification that is the primary jest of the population is to determine status and notify the appropriate consulate. Number one if they want and number two is to look on the website and if they claim to come from a country where it is required to report to the consulate, we comply.

Ms. Maria Cristina Lopez: I have no problem with the consulate, I do have a problem with it being reported to ICE. What we have found out in the city which I think extends to the state is that people are afraid, let's say if they are victim of a crime, to report it to the State Police.

Chief Shilling: We do not inquire immigration status on victims, only on arrestee.

Ms. Maria Cristina Lopez: Witnesses?

Chief Shilling: Not on witnesses.

Ms. Maria Cristina Lopez: I am getting it straight. It is something like what I read earlier if it happened in the state where allegedly the person was asked his

immigration status for not having a license, allegedly, but let's say that was the situation, say in the state and something was not working correctly in their car. The state police are not supposed to be asking for immigration status of somebody when it is a traffic violation?

Chief Shilling: As a matter of routine, no. I would have the same questions as Captain Wheeler would have is what are we arresting for that we are lodging him in an hotel under an immigration hold in the first place.

Maria Cristina Lopez: I know that, but allegedly if this is how it happens and it was a simple traffic violation, then you would not call ICE.

Chief Shilling: As a matter of practice I would say we do not condone that. It is a simple traffic infraction and someone is not going to be in cuffs with the exception of those crimes we talked about that require us to lodge them.

Maria Cristina Lopez: Which are misdemeanors like DUI, how about crossing the border?

Chief Shilling: We don't have a crime for crossing the border.

Maria Cristina Lopez: Some people do, and this is why I am asking you.

Chief Shilling: There are instances where and I have worked Narcotics on the border and I have worked patrol on the border and there are issues with trespass, maybe even some breaking and entering, they get access to food and water and maybe closer to the El Paso area. As a matter of routine we follow what the Governor's directive says.

Chair Seluja: So you don't have any joint efforts with the Border Patrol?

Chief Shilling: No. The joint effort that we have with any federal entity, especially along the southwest border, we receive funding called Stone Garden Funding and it is aimed at anti-crime funding along the southwest border. All it does is it allows for overtime for my officers to patrol those areas that do not have police presence. For instance in the western side of the state, once you get out of Deming it is wide open country, there are a few little ranch houses here and there and it allows our guys to provide a safe community. It is a safe community initiative; the Governor's directive clearly states we cooperate with the Feds. But if they called me tomorrow and said, hey we are going to do an immigration raid in Grants, which is not our job; we are not going to do that.

Maria Cristina Lopez: Do they assist you at check points?

Chief Shilling: No, there are pretty stringent case laws in the state of New Mexico with check points and we have to follow that in court. I have worked check

points in Law Cruces and we can't just hang out there and wait for things to happen. They will call us when they encounter criminal activity, drivers with guns, some if they have a warrant, we go and we pick it up, we handle the state charges and away we go, we do not mess with immigration stops.

Chair Seluja: But if you have a check point would the border patrol be involved?

Chief Shilling: No, that is not the purpose of our check points. The courts of New Mexico are very clear about state law enforcement ability at check points, you have advertise them, it has to be an avenue of escape, the detaining time has to be very short. We would be remiss and outside of our authority as state law enforcement to invite Border Patrol or ICE to a DWI check point.

Ms. Hemmer: But you do collaborate when it has to do with Narcotics.

Chief Shilling: That is our strongest part with the Feds and the State, EAA, FBI, HSI (Homeland Security Investigations use to be Customs). On narcotic cases we have strong federal partnerships there.

Chair Seluja: If somebody is pulled over and they don't have a NM license plate or a US issue drivers license do you write them a ticket to go to court.

Chief Shilling: You write them a ticket for the violation and you send them on their way. Matricula card is an ID, Passport is an ID. If the officer is a real stickler they have discretion to ask why they don't have a driver's license.

Maria Cristina Lopez: Sometimes we have heard that when someone has stopped an individual, that the officer has a way to check their name to see if they are undocumented. Sometimes they have the name of a person, I am trying to remember the sources of information that you check and sometimes people's names are there because they haven't committed a crime as we are defining it here but rather they are in there because they have been identified as undocumented and they are on the list of undocumented people.

Chief Shilling: No, we don't have access to a list or data base of anyone who is undocumented.

Maria Cristina Lopez: Or of people who have been accused of immigration violations?

Chief Shilling: If there is an active warrant for their arrest, issued either by the federal government or an immigration violation or a local jurisdiction. What I have seen a lot happen is that within the immigrant communities that I have policed is Uncle Joe will get pulled over by local police and give his brothers information and then he doesn't show up in court so now there is a warrant for the brother and the brother gets stopped somewhere and he didn't even know he had a

warrant out for his arrest for a broken tail light and didn't show up in court. We do not have access to an immigration data base. I have access to wants and warrants where someone is entered as a wanted person, in other words probably cause is already there and has committed a crime and a warrant has been generated and if it is a federal warrant for an immigration violation then you get down in to the weeds of the parameters of extradition. If I stop that person in Raton, it is up to the federal agency that entered that warrant to decide whether or not they want to pick them up. 9 out of 10 times; especially in the northern part of the State, we answer no. Criminal aliens are different where they have been deported because they just did a 10 year stint for drug trafficking and they illegally entered back in to the country, that is a pretty tight warrant and we will normally expedite anywhere in the United States.

Maria Cristina Lopez: So, according to you there is no list or data base?

Chief Shilling: There is no data base that we access. We have access to NCIC which is the National Computer data base for wanted persons, NM Drivers License file, NM Conceal Carry file, NM Consume and Carry file, and to a department of Corrections file that lets you know if they are a probation or parole violator, but no Immigration Data Base.

Chair Seluja: We heard according to the most recent information we have, that Parole officers are to report parolees to ICE; do you know anything about that? Ms. Maria Cristina Lopez said that there was a directive from the Governor's office that parolees were to be reported, do you know anything about that?

Chief Shilling: No, that is a completely different department. If you are on parole and have been convicted of a felony, under current US law you are probably a deportable felon. I don't know if they are doing that in compliance with federal law. I would be remiss to speak on behalf of Corrections. Probation is one thing, you can be on probation for a misdemeanor all the way up to a felony, parole if you have been convicted and done some hard time there is a procedure to follow but I can't answer for the Probation office.

Chief Shilling shared his business card with e-mail and phone numbers and said if anyone had any issues to contact him directly.

Cara Esquibel: How do we find records on arrests that state police have made and find out how many were immigrants?

Chief Shilling said they do not have a data base to seek out the name. Records: Chief will look into see if CAD will pull up those types of files.

Elizabeth Hemmer: If a complaint is against the State Police, how is it lodged?

Chief Shilling: Per our Policy we will take complaints verbally, in writing, over the internet. They are reduced to writing, if a person can't write we will take it verbally and reduce it to writing and it goes to our Professional Standards Bureau and it is vetted from there. Usually an inquiry is conducted; we review the officer from his in car camera depending on the nature of the complaint, his audio tape from his belt recorder. If there is substantive information there then we do an internal affairs investigation. If it can be cleared up through the inquiry we clear it up and file it.

Elizabeth Hemmer: Supposedly I have a complaint, who do I go to?

Chief Shilling: You can go to any district office in the state of New Mexico and request to speak to a Supervisor, preferably a Sergeant, someone who has supervisory command in control. You can go to the DPS website or the NMSP website, there is an online form available there in English and it is a good idea to have it in Spanish. As part of our CREA accreditation we intake all complaints no matter what form they come in, written letter to headquarters, it doesn't matter. If someone cannot get there they can call in by phone.

Thank you.

Captain Wheeler, thank you to Chief Shilling for coming during such a busy time with the NM Legislature going on.

- b. Mayor's Youth Advisory Board Update on Project – Adrian Salazar, MYAB**
Adrian Salazar, Chair for the MYAB reported that Rev. Topple had attended their meeting in January and the Rev. gave an introduction to the Board on the Immigration Committee. We discussed doing something to address the issues for young people. We placed this item on our agenda for February and we decided that it would be nice to do a community mural that would be portable so we could take it down and we could move it around to different locations around the city. We also decided that we need a theme for it; I know we want to address immigration issue and inform our young people what these issues are and make them aware to show there is no prejudice and get our community to work together. That is the progress we made with this and I wanted to come to you and ask what the next step would be as far working together to make this happen.

Ms. Rodriguez said that one of the issues that she has heard said at the MYAB was if they wanted to do something that was an educational piece they need more education. They wanted to have a way to make this meaningful, not only for them but for the students. They want to address younger students and have it come from that perspective. The MYAB is comprised of kids 7-12th grade. From their perspective they would like to see more information that would be meaningful. So they need a little help, possibly in a historical way or a current topic what is going on in kids' lives now or what happened before, where the history really connected, those kinds of issues.

Chair Seluja: We have a presentation at the Guadalupe Credit Union we do for new employees that gives the history of immigration in America. This can be sent to MYAB for review. It shows that there is a commonality.

Maria Cristina Lopez: This is a very sophisticated group of young people but I would like to bring another group of sophisticated people, young immigrants and put them together and have them learn together and have them choose the theme together. That was the purpose of the project was to bring the two communities together and learn from each other, so how do we do it?

Adrian Salazar: Exactly and for those schools who go to this when we do have this mural, if there is a way to educate them somehow, flyers or something, even if it is just an oral presentation. Something to get that across while the project is being done that way those people know also. At the same time we will know as Board members working with the Immigration Committee and other teenagers our age who might be immigrants; that is a good way to educate the young people.

Suggested contacts:

Cara Esquibel: Youth Allies with Earth Care - They have groups focused on sustainability, immigrant issues, they are doing amazing things and they have done murals, they are organized and those students are prepped and presenting on how to take information. There may be someone there who would want to facilitate the two groups.

Maria Cristina Lopez: Suggested Erwin Rivera's daughter, she is an amazing leader.

Terrie Rodriguez proposed Cara Esquibel coming to the next MYAB meeting and asked Adrian in the mean time to look in to some of these mentioned resources. Adrian will also be graduating this year and he has been an important individual on the MYAB and has served since 7th grade. Congratulations on going on to UNM.

It was noted that they are recruiting right now for MYAB – 13 to 18 from all middle and high schools. Ms. Rodriguez will send the application to Cara Esquibel. Right now they have 8 members on the board and the highest we have gone is 10. Ms. Rodriguez clarified that they 7 individuals who are full members and they bring on 3 alternates.

- c. Drivers Licenses for Immigrants Update – Marcela Diaz, Committee Members**
(Ms. Diaz at the NM State Legislature)

d. Determination of meeting at 4:15 pm on the first Tuesday or Thursday of the month – Alejandra Seluja, Chairperson

The Chair sent a message after the meeting last month and the results were that some people could do both date and others have time and date conflicts on Tuesday or Thursday.

Ms. Hemmer moved to continue the meetings on the first Tuesday of the month at 4:15 pm, second by Rev. Topple, motion carried by unanimous voice vote.

7. New Business

a. Mario Ortiz, USCIS Regional Director, Jackie Kraft, USCIS San Antonio District Office, Pattie Reynolds, USICS Albuquerque Office.

The Chair reported that Mario Ortiz, District XVII was called to Washington, Jackie Kraft was going to be here and sequestration happened and travel funds were frozen. The Mayor and the Chair met with Pattie Reynolds, she was here a few months ago. What was most important of that meeting was that we are trying to get some clarification and be ready in the event immigration reform happens. They are trying to reach out to different communities to educate them and again we still have the issue that people are afraid of going to the USCIS office in Albuquerque because they think it is ICE and that they might walk in there and be detained and deported. Another thing that she mentioned is that DACA applications have been successful; I asked for some numbers and when we receive them they will be provided to the committee.

Ms. Esquibel wanted to know if the DACA applications have come across any problems with the schools. Chair Seluja would like to have a list of each of the kids who are encountering problems or concerns. One of things that I have heard is people having an issue proving that they were presently in the country from June till (___). The Chair asked Ms. Reynolds to provide any problems that the kids might have when completing these forms. I would like to have specific issues to send on to them to review. 601A Waiver is to not separate families. There is an issued that people do not want to start immigration proceedings in the fear that they will get separated. It was also noted that hardship waivers are very expensive.

8. Communications from Staff

Ms. Rodriguez asked the committee members to seek out possible candidates for the Immigration Committee. Invite them to come to the meetings and see if they are interested. It was also reminded that they should represent an organization.

9. Communications from the Committee

Thank you to Captain Wheeler for inviting Chief Shilling from the State Police.

Maria Cristina Lopez: Talked about inviting other groups of immigrants, representatives, are we going to have anybody? Ms. Hemmer said that she is coordinating this endeavor. Rev. Topple has also spoke to some people and he will provide that information.

Also, for the future is to involve ourselves with the Citizenship Graduations. (Find out the date.)

Santa Fe County is creating a new Corrections Advisory Committee – Maria Cristina has been nominated to serve by Marcela Diaz.

Chair Seluja: The Mayor conveyed that he would like to see a more invigorated September 16th activity. We have time to get people involved and get to know how we can better plan the event. He liked it at Ragel Park.

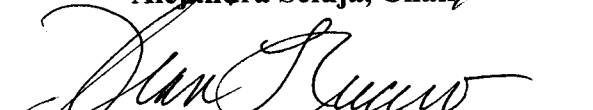
10. Next Meeting - April 2, 2013 – 4:15 pm

11. Adjourn

There being no further business to come before the Immigration Committee, moved to adjourn at 6:00 pm, second by, motion carried by unanimous voice vote.

Signature Page:


Alejandra Seluja, Chair


Fran Lucero, Stenographer

Addendum to May 1, 2012 Minutes

At the request of Elva Gurule, staff proposes the re-adoption of the minutes of the May 1, 2012 meeting of the Immigration Committee, with the following amendments:

5. Community Comments

Line number 15:

methadone. I dictate My pharmacist and I communicate to doctors what their patients should could be taking and why, as a pharmacist I am my pharmacist and I are going to be opening a pharmacy within the next 2 months in the south side of town and I chose the south side of town specifically, even though people were raging on the fact that this is a little Mexico, you are going to get ripped off, they are going to burglarize it, all these judgmental comments.

Approved this 5th day of March, 2013


Alejandra Seluja, Chair

Mar/5/2013
Date



Agenda

CITY CLERK'S OFFICE

DATE 4-25-12 TIME 2:18pm

SERVED BY Laura Lopez

RECEIVED BY [Signature]

Immigration Committee

May 1, 2012 – 4:00 p.m.

Somos Un Pueblo Unido

1804 Espinacitas Street

- I. Roll Call
- II. Approval of Agenda
- III. Approval of Minutes
 - a. April 3, 2011
- IV. Announcements
- V. Community Comments
- VI. Old Business
 - a. Southside update / business meetings / schools and immigrants
 - b. SFCDCD policies regarding ICE update
- VII. New Business
 - a. Santa Fe County representation on this committee
 - b. Immigration families and CYFD
 - c. Education of young people on immigration issues
- VIII. Communications from Staff
- IX. Communications from Committee
- X. Adjourn

Persons with disabilities in need of accommodations, contact the City Clerk's office at (505) 955-6520, five (5) working days prior to meeting date.

Santa Fe Immigration Committee – INDEX – 5/1/12

Cover Page		Page 1
Roll Call	Meeting was called to order at 4:07 pm, roll call constitutes a quorum	Page 1
Approval of Agenda	<i>Ms. Shinas moved to approve the agenda as presented, second by Ms. Cabeza de Vaca, motion carried by unanimous voice vote.</i>	Page 1
Approval of Minutes	<p>Corrections:</p> <p>Page 3 – VII-b – Training has been completed.</p> <p>Page 4 VIII-a 9th line – 40% undocumented – should read: 4% undocumented</p> <p>Page 9: 6th paragraph: I was a witness, there was an individual in their car in the parking lot ICE person and the individual was escorted out approached by ICE Agents and State Police.</p> <p><i>Ms. Shinas moved to approve the minutes of April 3, 2012 as amended, second by Ms. Seluja, motion carried by unanimous voice vote.</i></p>	Page 2-3
Announcements	Informational	Page 3
Community Comments	Informational	Page 3-6
Old Business <ul style="list-style-type: none"> a. Southside update / business meetings / schools and immigrants b. SFCDC Policies regarding ICE Update 	Informational	Page 6-8
New Business <ul style="list-style-type: none"> a. Santa Fe County Representative on the Committee b. Immigration Families and CYFD c. Education of 	<p><i>Ms. Diaz moved to withdraw her motion, second by Ms. Seluja, motion carried by unanimous voice vote.</i></p> <p><i>Ms. Diaz moved that we communicate with the Chairperson of the Santa Fe County Commission and extend an invitation to representative(s) from the County</i></p>	Page 8-9

Santa Fe Immigration Committee – INDEX – 5/1/12

young people on immigration issues	<i>who are interested in attending the Immigration Committee meetings and take back the information from the committee to the County and share with us any information from the County perspective along with a copy of the resolution, second by Ms. Seluja, motion carried by unanimous voice vote.</i> <i>(b-c) - Informational</i>	
Communication from the Committee and Staff	Informational	Page 9-10
Adjourn	Meeting was adjourned at 5:40 pm	Page 10
Signature Page		Page 10

SANTA FE IMMIGRATION COMMITTEE

MINUTES

May 1, 2012

4:00 pm – 5:40 pm

1. The meeting was called to order by Maria Cristina Lopez, Chair of the Immigration Committee at 4:07 pm, at the Somos Un Pueblo Unido Offices, 1804 Espinacitas Street, Santa Fe, NM. Verbal roll call constitutes a quorum.

ROLL CALL

Present:

Maria Cristina Lopez, Chair
Betty Shinas
Alejandra Seluja
Jewel Cabeza de Vaca
Marcela Diaz

Not Present

Elizabeth Hemmer, Excused
Amparo Guerrero, Excused
Miguel Angel Acosta, Excused
Rev. Chester Topple, Excused

Others Present:

Carla Lopez, Staff Liaison
Elva Gurule, Guest
Clara Esquibel, Guest
Captain Aric Wheeler, Santa Fe City Police Department
Anna Serrano for Fran Lucero, Stenographer

2. **APPROVAL OF AGENDA**

Ms. Shinas moved to approve the agenda as presented, second by Ms. Cabeza de Vaca, motion carried by unanimous voice vote.

3. **APPROVAL OF MINUTES – April 3, 2012**

Corrections:

Page 3 – VII-b – Training has been completed.

Page 4 VIII-a 9th line – 40% undocumented – should read: 4% undocumented

Page 9: 6th paragraph: I was a witness, there was an individual in their car in the parking lot ICE person and the individual was escorted-out approached by ICE Agents and State Police.

Ms. Shinas moved to approve the minutes of April 3, 2012 as amended, second by Ms. Seluja, motion carried by unanimous voice vote.

4. **ANNOUNCEMENTS**

Clara Esquibel, Guest at today's meeting is interested in being on the committee. She will observe for the next two meetings. The Chair explained the process on contacting the Mayor by letter and providing interest in serving on the committee.

The Chair informed the committee that tonight is the opening of the Somos Centro Unido – El Dia del Trabajador will be celebrated today, May 1st. The employees of Somos Un Pueblo Unido have made all the arrangements for this great event.

Somos is at the forefront of having Worker's Committees in the workplace.

Ms. Diaz said that they have a part-time attorney opening.

Squeaky Clean Car Wash is not been paying the minimum wage. There are about 15 people affected.

Ms. Shinas commented on the difficulty of starting a Union, CWA has been very supportive of immigrant rights. Ms. Diaz said that the Stakeholder Advisory Committee, Central Labor Council is represented as well as Working America and CWA and they all helped put this event together as a joint event with a lot of the local unions.

5. **COMMUNITY COMMENTS**

Elva Gurule, has lived in Santa Fe forever, born in Mexico, Monterrey, Nuevo Leon. She has been here since the age of 2, all of her family lives here. Recently, for everyone's information, her brothers and sisters are all permanent residents and she is the only citizen. She knows that ICE has been all over Santa Fe and we are kind of in a bind with her family, her brother has been picked up. Now, out of all the years, we took it for granted, my family, not me because I am a citizen, and I can only push and control them so much to become citizens. I have now become aware of all of the ins and outs, ups and downs and circles and the crazy chaotic immigration laws that are in place and not in place. I am here to initiate some sort of representation for immigrants in educating the public as to what we are experiencing, as far as my family is concerned and also possibly to extend a hand to educate. I am opening a pharmacy on the south side of town, Santa Fe Compounding Pharmacy and I am a hormone clinician. I have a practice here on Miguel Chavez Road and so I do consultations for hormone therapy and it is all prescription medication, natural prescription to help people with their hormones and pain management medication to help get people off pain pills that could result in an addition to methadone. I dictate to doctors what their patients should be taking and why, as a pharmacist. I am going to be opening a pharmacy within the next 2 months in the south side of town and I chose the south side of town specifically, even though people were raging on the fact that this is little Mexico, you are going to get ripped off, they are going to burglarize it, all these judgmental comments. I am so proud to do it on that part of town because it allows for some trust and loyalty to our middle class working families, not just immigrants, on that side of town to prove to the community that they are people and that they can learn. I am chemistry major, so I make

medicine from scratch. I want to be able to bring in the Capital High Students, the Santa Fe High students and the middle schools to show them what they can become, what it is that they can do, becoming Doctors, Nurses in that community.

Maria Cristina asked about the case for her brother?

Ms. Gurule said that she would take advice. Her brother was picked up by ICE, he has been a permanent resident for 23 years and has an aggravated felony and he is in the process, more so caught in the system; incomplete starting from the probation office to the DA's office to filing incomplete information at district court. He is not physically doing any prison time, just probation, fulfilling his requirements and then 6 years later than picking him up for an old case. He is in the system somehow, we are trying to figure out how to communicate with the DA and the DA to communicate to the Judge and the United States Attorney to help him out. At this point, they have contacted the attorney and said, what can they work out because they have violated his constitutional rights. They threw him in the system where probably a lot of immigrants are stuck in, they don't have the money, fortunately we all pulled together to hire an attorney. He is in Chaparral, Otero County. He is a single parent, has two children, 6 and 7 years old. Purposely I wanted to see what ICE was going to do about it because they contacted me at the last minute. They don't contact the family, who knows and who is to say what happens to children who don't have family, that they are left behind and stuck in the system and picked up by CYFD or whatever happens. I have these two nieces, I have partial custody of them – nobody ever contacted me as a family member to let me know that they picked him up and left the kids at school. That angers me; it is frustrating to know that ICE went to his place of employment to pick him up.

Chair Lopez: Carla, last month you mentioned, not by name, what happens? Carla said that the charges are awkward and difficult to explain. Carla gave contact numbers and no one responded from ICE. It was very clear at the meeting with ICE that they said they would definitely look in to the situation and they would look in to it, just to call their office. Elva said that they called the ICE Representative, and he never called back. They called Mr. Fierro and Mr. Macias.

Ms. Diaz said that the only way he is going to get released is if he has an attorney and goes before the Judge.

Elva Gurule said that she wanted to give it the benefit of the doubt since they had come to the Immigration Committee and made that plea that they would be willing to help out, i.e., education or explanation. Unsuccessfully to date, they have not returned calls.

Ms. Diaz said that they probably could at least help to get bonds, it doesn't make sense to keep him locked up for 5 years.

Elva Gurule said that they have him under mandatory detention. He is a single parent, he is the leader of the Girl Scouts supporting his two daughters, he does a lot for his community. He holds a job, he has gone to parenting classes because we don't come from the best Mexican family raised. My father was an alcoholic, there were four boys in our family and they followed

along and father was abusive. I am ok to say that, it educates people to know that you can move forward. My brother went through his ups and downs and has been able to turn his life around for his children and for himself. For this to happen to someone who is trying to stay on the right track and do things the right way. Not just that, but the children, what hurts me; he is a grown adult and people make mistakes. You have to pay for them. We are a family to help out but the children are important.

Ms. Diaz asked if there is any documentation that the father was physically abusive. Elva answered yes. Ms. Diaz said she knows of a case of a 25 year old where the father beat him and there was a loop hole. This did not pertain, it pertains to those who are illegally documented and he is a permanent resident. This is a law that needs to be overturned. This law was grandfathered in.

Ms. Diaz asked Elva; you said you would like to share this story publically as it is a great tool to educate the community about these "criminal aliens" that everyone wants to lock up at our local jails. Elva asked how she goes about that. Ms. Diaz said they can help her set this up if she is interested.

Elva Gurule: People in the community need to be educated; specifically I am concerned about my brother. I can try to do as many things as possible and try to write letters to the Representatives, and I will do that, but in the meantime, I think, involvement. I preach it to my kids all the time, in fact the same day my daughter had just gotten back from protesting in Arizona. She attends CU in Boulder, she comes home for spring break, and she learns that her uncle got picked up by ICE.

Ms. Seluja asked if the family has spoken to Rep. Ben Ray Lujan.

Elva Gurule: No, I have not.

Ms. Diaz said that there is a lot of National movement going on right now around these alien operations in secure communities, and it is all related in this effort to track down criminal aliens, either in their homes or through our jails and so I think it might bring this home a little bit.

Elva provided the Immigration Committee with her telephone number and her e-mail address *(taken down by the staff liaison)*.

The Chair and members of the Immigration Committee expressed their thanks for her coming and sharing this information with the Committee.

The Chair said that the last meeting with ICE was a difficult meeting and contradictory to what they were saying and what they actually are doing as follow up to what the committed to do. It takes courage to bring this out publicly and we appreciate your sharing the information with us.

The Chair reminded the committee that the field director had addressed the criminal alien subject and had been very specific about the matter.

Ms. Seluja recently had a case where they needed some guidance. They contacted Representative Ben Ray Lujan's office and Eliza Sultan was very helpful on how they could help and how they could not help. It was a good resource.

6. **OLD BUSINESS**

A. Southside update / business meetings / schools and immigrants

Alejandra Seluja:

South Side Merchants met, an update was not available at this meeting. They are working on establishing their 501C3.

Sunday was el Dia de los Niños and the Branch Manager from the Guadalupe Credit Union Airport office was very supportive and were the sponsors. It was very well attended. These types of gatherings are beneficial to educate them on banking opportunities for them. There were many who helped make this function possible.

B. SFCDC policies regarding ICE update

Marcella Diaz

No new policies have been introduced with the exception of one introduced by Commissioner Anaya that was voted down. In discussion with Mr. Sedillo that comment was that they will notify ICE on holdings. After 48 hours they will be released if ICE does not detain them. No policies have been introduced.

Ms. Diaz extended an invitation to a Somos Working Group to monitor these policies, process and change. Day and time will follow.

Discussion evolved around the work that has been done is going to be under mind. People will be afraid to call the local police. There are signs of that already, victims or folks are afraid despite the police policy and all the work that the Police Department has done and they are afraid that their family member will be deported. The Chair fears this as everyone has worked so hard for years. Ms. Diaz said that nothing is set in stone and there is still time and we should continue to work. We have been here a lot longer doing this work and we don't know who specifically the changes are coming from. Captain Wheeler suggested that a meeting be set with Mr. Sedillo in a more formalized setting and express the concerns and ask why is this change going to take place. Even in conjunction with utilizing the Chief and the Mayor, expressing the progress we have made, and moving forward and getting the Immigrant community to begin to trust us. The whole problem is how does it affect us as an agency, we don't control their policy, they are a county entity, we are a city entity but the end result is who is going to be affected and it is going to be the Citizens of Santa Fe and our police work is going to be affected, we are not going to get the trust from the immigrants. It would be worth our while to have a discussion to ask if they are going to implement other policies that we should be aware of. We should at least ask in preparation for education.

The Chair asked if Captain Wheeler would be a part of this meeting, he responded, yes.

Ms. Diaz said that it isn't just one person making the decisions and maybe there is just a need to have education on the law enforcement side. The jail is not there to promote public safety or to arrest people, the jails job is to hold people for justice.

Captain Wheeler said that in addition, sometimes the Media reports inaccurate information or expects a response from the Police Department. It was also mentioned that with the reorganization of Santa Fe County, Mr. Sedillo's Position as Public Safety Director and assuming the Jail Directorship, there are changes that would be best to hear from Mr. Sedillo.

Historical information was provided on the work that the Immigration Committee has done for the benefit of the visitors attending this meeting.

Ms. Diaz introduced additional information and had questions on a policy from the Santa Fe Police Department. There was a DWI check point with the State Police/Sheriff and the City. An individual came in to Somos and wanted to file a racial profiling complaint, he was Mexican, didn't speak a lot of English. The gentleman said that the State Police were stopping cars in one direction and that he had been stopped and that the question had been directly asked to him, have you been drinking, and he said no, asked the question where are you from, are you from Mexico? The man responded, yes, I am from Mexico, why? State Police said, I want to see are you legally in the country. This was not the City Police but it was the State Police. Ms. Diaz said that it is a violation because basically to change the scope. The Racial Profiling Law from 2009 says that the police cannot change the scope in the interrogation based on the person's national origin or the language they speak, which is exactly what happened in this case. The gentleman spoke Spanish, he said he thought the officer was Chicano, he spoke Spanish well enough to talk to this man. He held him there for about 7 or 8 minutes, he showed him his license and didn't answer any other questions, and he did let him go, he didn't arrest him. He hadn't been drinking so he let him go. Somos is going to assist to file this racial profiling complaint/bias based policing complaint. I was concerned again, because it was a joint operation between the State Police and the City Police that people would confuse those two departments. I know that when the City Police does work with ICE on very important joint investigations, that I believe that the City Police basically says the only way we will do this stop with you is if you abide by some of the rules, I'm not sure if that is clear, but it is a request that the Santa Fe Police has made. In other words, we are not going to be asking about immigration status and we hope that is not an issue for you as well, is there something like this in place with the State Police? Captain Wheeler said that he did not believe so. To be quite frank, in an operation like that you would naturally assume; every law enforcement agency has been educated on bias based profiling and they know that they should not be asking those types of questions. This is a topic that we should talk about when we have those joint types of operations with the State Police. Most officers that are from this area, something about State Police; when we have a road blocks it is usually a grant funded operation. We can bring in officers from anywhere, and a lot of times if you have officers that are here stationed in Santa Fe they understand the dynamics of the community better. The Captain said that he could look in to that piece of it, know that

there is not anything that we educate one another when we do an operation like that. There is usually a briefing that takes place; here are the questions, it should be three basic questions, how are you doing, have you been drinking tonight and if you haven't been drinking tonight and they don't have any blood shot or watery eyes, no odor of alcohol, no open containers, you have to let them go. You can't, you have to be consistent. If he was kept there for a longer period of time and he had no indicators, at least that is what you told me, there was no reason for further investigation. Once he fulfilled the required questions he should have been released.

Ms. Diaz wanted to share this information with the Captain and the committee. The Chair asked if there is a PR person from the State Police that could be invited to a meeting. Captain Wheeler will reach out and see if we can open a dialogue with the State Police. The State Police has never been invited to a meeting.

7. NEW BUSINESS

A. Santa Fe County Representative on this Committee

The Chair informed the committee members that one of the Santa Fe County Commissioners inquired about a seat on the Immigration Committee. This would require a change to the resolution to have a formal place for the County. The Police are not part of the resolution. We could advise them that we have a monthly meeting and invite them to come for exchange of information.

Ms. Diaz moved that we write an official letter to the County from the City or the Immigration Committee explaining what we do and giving information about the resolution and say that we have a liaison from the Santa Fe Police Department who comes to all of our committee meetings, we have other folks who attend. We would love to have a liaison from the County who is not a member and we do not have any vacancies at this time, Second by Ms. Seluja.

Discussion: Captain Wheeler asked where from the County would the Liaison come forward, what would serve the committee best? Law Enforcement is important to this committee, the Sheriff have been very proactive in that sense, is there another portion of the County that you would deal specifically with. It would be important to know who that representative would be.

It was explained that a County Commissioner had written an official letter asking to sit on the Immigration Committee. The Committee felt that an invitation should be extended for them to attend the meetings, take back and bring information to the meeting.

Ms. Diaz moved to withdraw her motion, second by Ms. Seluja, motion carried by unanimous voice vote.

Ms. Diaz moved that we communicate with the Chairperson of the Santa Fe County Commission and extend an invitation to representative(s) from the County who are interested in attending the Immigration Committee meetings and take back the

Information from the committee to the County and share with us any information from the County perspective along with a copy of the resolution, second by Ms. Seluja, motion carried by unanimous voice vote.

B. Immigration families and CYFD

The Chair talked about a recent meeting when Allegra with Victoria Ferrera was very worried, rightly so, that CYFD was going in to people's homes because of problems and asking for documentation and she wanted the committee to do something about it. We talked about inviting a representative from CYFD to come to our meeting so we could find out what their process is and to discuss how they could train their staff. First it is important to find out what their policies are and then discuss training opportunities.

Captain Wheeler will contact their director and extend the invitation. The Captain said that in their defense, in all reality, he has worked crimes involving children and work very closely with CYFD and their investigators are usually asking questions to benefit the child. In his opinion, if he was a CYFD investigator and he was looking for programs that may benefit a child, he might ask similar questions, i.e., where are you from, is Spanish your primary language, things of that nature. You are potentially placing that child in a foster home, in a place where you want that child to feel safe. If he had a child where the primary language is Spanish, do you want to speak them with a family who speaks no Spanish at all? How comfortable is that child going to feel? The Captain has set in numerous of these investigations where a CYFD Social Worker is sitting there, and they are asking questions to insure that they can fit this child in to the best environment. That is what you might find out when you talk to them. Placement of a child is extremely important.

The Chair asked for the Captain to attend that meeting if at all possible. The Committee members expressed their thanks for this valuable information.

Captain Wheeler stressed that the Police Department's job is the criminal aspect of it and CYFD is the well being of the child aspect of it. Most of the times they don't want to take the children away from their families, they want to keep families together as much as possible, this is why they look for wellness resources that will best fit.

C. Education of young people on immigration issues

Chester Topple introduced at the last meeting. He would like to provide information on this topic. (Next meeting topic for Agenda)

8. Communications from the Committee and Staff

Next meeting is June 5th. Marcella and Alejandra are not able to attend. It is important to have a quorum when CYFD representative is invited.

The Chair said that she would like to step down as Chair of the Immigration Committee, she has served in this position for a long time and she would like to see a change in leadership. She provided a date of August, 2012 to have a new Chair who is appointed by the Mayor based on the recommendations from the Committee.

Ms. Diaz asked what additional responsibilities are tied in to being Chair besides conducting the meetings. The Chair said that she would need to write these things down; including the response and updates to the City and how do we keep in touch and reach out to the community, how do we educate our City Council, according to the resolution we have to report to the City Council two times a year. The Agenda for each meeting is a reflection of the Minutes and most important is a commitment to attend the meetings.

Carla will follow up with all members regarding the June meeting.

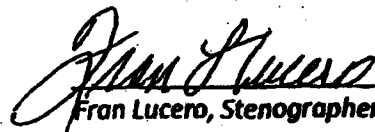
9. **ADJOURN**

There being no further business to come before the Immigration Committee the meeting was adjourned at 5:40 pm.

Signature Page:



Maria Cristina Lopez, Chair



Fran Lucero, Stenographer

Exhibit B



NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

POST OFFICE BOX 1628 • SANTA FE, NEW MEXICO 87504-1628



SUSANA MARTINEZ
GOVERNOR

GORDEN E. EDEN, JR.
CABINET SECRETARY

ROBERT W. SHILLING
INTERIM—STATE POLICE CHIEF

OFFICE OF THE SECRETARY
827-3370

OFFICE OF THE CHIEF
NEW MEXICO STATE POLICE
827-9219

ADMINISTRATIVE SERVICES
827-3332

INFORMATION TECHNOLOGY
827-9262

MOTOR TRANSPORTATION
POLICE DIVISION
476-2457

SPECIAL INVESTIGATIONS
841-8053

TECHNICAL SUPPORT
827-9221

TRAINING AND RECRUITING
827-9251

- CALEA
- DPS LEA-IMMIGRATION AND COUNSULAR NOTIFICATION POLICY
- EXECUTIVE ORDER
- HOUSE BILL
- OPR: 27- CITIZEN ENCOUNTERS/BIASED BASED PROFILING
- 2012/11 BIASED BASED PROFILING REPORTS
- OPR: 28 FOREIGN NATIONALS
- ^A FOREIGN NATIONLS-ATTACHMENTS



CALEA ACCREDITED LAW ENFORCEMENT AGENCY

INDIVIDUAL STANDARD STATUS REPORT (ISSR)

AGENCY: New Mexico State Police

STANDARD NUMBER: 1.2.9

ASSIGNED TO: Multiple

PREPARED BY: Pierce

☐ OFF SITE☒ ON SITE**RESERVED FOR ASSESSOR USE ONLY**☒ COMPLIANCE VERIFIED *DR 4/9/11*☐ NONCOMPLIANCE☐ OTHER STATUS☐ N/A BY SIZE OR FUNCTION☐ WAIVER APPROVAL VERIFIED

Mandatory Standard -- Compliance Page 1

CALEA Standard:

1.2.9 The agency has a written directive governing bias based profiling and, at a minimum, includes the following provisions:

- a. a prohibition against bias based profiling in traffic contacts, field contacts, and in asset seizure and forfeiture efforts;
- b. training agency enforcement personnel in bias based profiling issues including legal aspects;
- c. corrective measures if bias based profiling occurs; and
- d. a documented annual administrative review of agency practices including citizen concerns.

Commentary: Profiling, in itself, can be a useful tool to assist law enforcement officers in carrying out their duties. Bias based profiling, however, is the selection of individuals based solely on a common trait of a group. This includes but is not limited to race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable groups.

Law enforcement agencies should not condone the use of any bias based profiling in its enforcement programs as it may lead to allegations of violations of the constitutional rights of the citizens we serve, undermine legitimate law enforcement efforts, and may lead to claims of civil rights violations. Additionally, bias based profiling alienates citizens, fosters distrust of law enforcement by the community, invites media scrutiny, invites legislative action, and invites judicial intervention.

Law enforcement personnel should focus on a person's conduct or other specific suspect information. They must have reasonable suspicion supported by specific articulated facts that the person contacted regarding their identification, activity or location has been, is, or is about to commit a crime or is currently presenting a threat to the safety of themselves or others. Annually, the agency should include profiling related training that should include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques, cultural diversity, discrimination, and community support. (M M M M)

SLEA ©2006 CALEA

X Written Directive:**Bullet a-d:** OPR:27 (R-3) Citizen Encounters and Bias-Based Profiling**X Written Documentation:****FOR ASSESSOR USE ONLY**

02/10/2011

INDIVIDUAL STANDARD STATUS REPORT (ISSR)

AGENCY: New Mexico State Police

STANDARD NUMBER: 1.2.9

ASSIGNED TO: Multiple

PREPARED BY: Pierce

☐ OFF SITE

☒ ON SITE

RESERVED FOR ASSESSOR USE ONLY

☐ COMPLIANCE VERIFIED

☐ NONCOMPLIANCE

☐ OTHER STATUS

☐ N/A BY SIZE OR FUNCTION

☐ WAIVER APPROVAL VERIFIED

Mandatory Standard -- Compliance Page 2

Bullet a:

~~2010~~-DPS - Recording Device Review Log

~~2009~~-DPS - Recording Device Review Log

~~2008~~-DPS - Recording Device Review Log

Bullet b:

~~2010~~-DPS LEA Profiling - On Line

~~2009~~-DPS Policy/Directive Training Form OPR:27 Citizen Encounters

~~2008~~-DPS Policy/Directive Training Form OPR:27 Bias Based Profiling

Bullet c:

~~2010~~-DPS Complaint Packet

DPS IDC re; Citizen Complaint-Bias Based Citizen Encounters

~~2009~~-Complaint Packet

DPS IDC re; Complaint Inquiry

DPS IDC re; Profiling Complaint

Letter to Governor re; Racial Profiling

~~2008~~-DPS IDC District 11 re; Profiling

Bullet d:

~~2010~~-DPS IDC re; 2010 Bias Based Profiling Analysis Report

~~2009~~-DPS IDC re; 2009 Bias Based Profiling Annual Analysis

~~2008~~-DPS IDC re; 2008 Bias Based Profiling Annual Analysis

Observation Of:

X Interview With:

COMMANDER OF STANDARDS BUREAU - (505) 827-9173

FOR ASSESSOR USE ONLY

02/10/2011

State of New Mexico
Office of the Governor

Susana Martinez
Governor

Contact: Scott Darnell
(505) 819-1398
scott.darnell@state.nm.us

For Immediate Release
January 31, 2011

**GOVERNOR SUSANA MARTINEZ RESCINDS NEW MEXICO
SANCTUARY STATUS**

SANTA FE – Governor Susana Martinez announced today that she has signed an executive order rescinding sanctuary status for illegal immigrants who commit crimes in New Mexico while protecting victims and witnesses of criminal acts. The order signed by Governor Martinez directs law enforcement officers to inquire about the immigration status of those who are arrested for committing crimes.

"This order takes the handcuffs off of New Mexico's law enforcement officers in their mission to keep our communities safe," said Governor Martinez. "The criminal justice system should have the authority to determine the immigration status of all criminals, regardless of race or ethnicity, and report illegal immigrants who commit crimes to federal authorities. Meanwhile, it is important that we safeguard the ability of victims and witnesses to report crimes to law enforcement officers without fear of repercussion."

Full text of the executive order is below:

EXECUTIVE ORDER 2011-009

**RESCINDING AND SUPERSEDING PRIOR EXECUTIVE ORDER PROVIDING
SANCTUARY FOR INDIVIDUALS ARRESTED FOR CRIMES OTHER THAN
VIOLATION OF IMMIGRATION LAWS**

WHEREAS, the State of New Mexico has a diverse population, including legal immigrants from many countries, whose contributions to the community are vital and from which the State of New Mexico greatly benefits; and

WHEREAS, it is essential that victims of, and witnesses to, crime are able to report those crimes and that they be assured access to our criminal justice system without fear of deportation or other immigration consequences; and

WHEREAS, Executive Order 2005-019 established a "sanctuary" policy that prohibited state law enforcement officers from inquiring about a criminal suspect's immigration status; and

WHEREAS, this policy offers a shield to those who are arrested for committing crimes and are in this country illegally; and

WHEREAS, it is not the responsibility of state law enforcement officers to enforce federal immigration laws; however, in compliance with their sworn duties to uphold all laws, state law enforcement officers shall cooperate and communicate with federal authorities; and

WHEREAS, when a person, regardless of race, is arrested for a crime, state law enforcement officers shall inquire into the criminal suspect's immigration status, and report relevant information to federal immigration enforcement authorities;

NOW, THEREFORE, I, Susana Martinez, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby **ORDER and DIRECT**:

1. Executive Order 2005-019 is rescinded and this Executive Order shall supersede it;
2. State law enforcement officers shall not inquire about the immigration status of crime victims, witnesses, or others who call or approach law enforcement seeking assistance or reporting a crime; and
3. State law enforcement officers shall inquire into the criminal suspect's immigration status, and report relevant information to federal immigration enforcement authorities.

THIS ORDER supersedes any other previous orders, proclamations, or directives to the extent they are in conflict. This Executive Order shall take effect immediately.

ATTEST

DIANNA J. DURAN
SECRETARY OF STATE

SIGNED AT THE EXECUTIVE OFFICE THIS 31ST DAY OF JANUARY, 2011.

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO.

SUSANA MARTINEZ
GOVERNOR

###

AN ACT

RELATING TO LAW ENFORCEMENT; PROHIBITING BIAS-BASED PROFILING;
REQUIRING POLICIES AND PROCEDURES TO ELIMINATE PROFILING;
PROVIDING FOR ATTORNEY GENERAL OVERSIGHT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Prohibition of Profiling Practices Act".

Section 2. PROFILING PRACTICES PROHIBITED.--

A. In conducting a routine or spontaneous
investigatory activity, including an interview, a detention, a
traffic stop, a pedestrian stop, a frisk or other type of
bodily search or a search of personal or real property, or in
determining the scope, substance or duration of the routine or
spontaneous investigatory activity, a law enforcement agency
or a law enforcement officer shall not rely on race,
ethnicity, color, national origin, language, gender, gender
identity, sexual orientation, political affiliation, religion,
physical or mental disability or serious medical condition,
except in a specific suspect description related to a criminal
incident or suspected criminal activity, to select a person
for or subject a person to the routine or spontaneous
investigatory activity.

B. In conducting an investigatory activity in
connection with an investigation, a law enforcement agency or

a law enforcement officer shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except to the extent that credible information, relevant to the locality or time frame, links a person with those identifying characteristics to an identified criminal incident or criminal activity.

Section 3. POLICIES AND PROCEDURES--REQUIRED.--

A. A law enforcement agency shall:

(1) maintain written policies and procedures designed to eliminate practices by its law enforcement officers that violate the provisions of Section 2 of the Prohibition of Profiling Practices Act; and

(2) provide training to its law enforcement officers, during orientation and at least once every two years, that the law enforcement agency determines will assist its law enforcement officers in adhering to the applicable provisions of the Prohibition of Profiling Practices Act and to the law enforcement agency's policies and procedures.

B. As part of a law enforcement agency's administrative complaint procedures, the law enforcement agency shall, at a minimum:

(1) investigate a complaint alleging its law enforcement officer violated the provisions of Section 2 of

the Prohibition of Profiling Practices Act;

(2) take appropriate measures to discipline a law enforcement officer, including facilitating mediation or other restorative justice measures, when it is determined that the law enforcement officer violated the provisions of Section 2 of the Prohibition of Profiling Practices Act;

(3) provide appropriate forms for submitting the complaint against its law enforcement officer;

(4) publish the policies and procedures designed to eliminate practices that violate the provisions of Section 2 of the Prohibition of Profiling Practices Act; and

(5) submit a redacted copy of the complaint and the disposition to the attorney general, which shall disclose the nature and disposition of the complaint but shall not disclose personal identifying information of a law enforcement officer or complainant.

C. A law enforcement agency shall establish a time frame within which a complaint alleging a violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act may be made; provided that in no event shall the time frame be less than ninety days or exceed one hundred eighty days after the commission of the alleged violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act. A law enforcement agency shall allow a complaint alleging a violation of the provisions of Section 2

of the Prohibition of Profiling Practices Act by its law enforcement officer to be made:

(1) in person or in writing sent by mail, facsimile or electronic mail and signed by the complainant; or

(2) by telephone, anonymously or by a third party; provided that the law enforcement agency shall determine the complaint to be valid before taking appropriate measures pursuant to Paragraph (2) of Subsection B of this section and shall comply with the provisions of Section 29-14-4 NMSA 1978.

Section 4. INDEPENDENT OVERSIGHT--COMPLAINTS--CONFIDENTIALITY.--The attorney general shall establish independent procedures for receiving, and for maintaining a record of, complaints alleging profiling by a law enforcement officer or agency. The attorney general may initiate an investigation of a complaint alleging a violation, or a systematic pattern of violations, of the provisions of Section 2 of the Prohibition of Profiling Practices Act and take necessary actions as the attorney general deems appropriate. The attorney general may publish a report or summary of the attorney general's findings regarding violations of the provisions of the Prohibition of Profiling Practices Act; provided that personal and identifying information shall not be published or released to the public.

Section 5. EFFECTIVE DATE.--The effective date of the

HJC/HB 428
Page 4

provisions of Sections 3 and 4 of this act is December 31,

2009.

HJC/HB 428
Page 5

Immigration & Consular Notification Policy

We have received many requests for a unified policy for police officers who encounter foreign nationals in New Mexico. The attached copy is a proposed policy, still in the formative stages. We welcome your comments and suggestions.

The policy, as written, **provides a framework for law enforcement agencies in New Mexico** to work with. Modifications can easily be made to suit agency needs.

Please take a moment to complete our online survey so we may continue to develop the model policy to meet the needs of our communities.

Thank you.

New Mexico Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

IMMIGRATION & CONSULAR NOTIFICATION POLICY

Subject: Model Immigration Policy for Law Enforcement Agencies in New Mexico

This is a proposed policy for law enforcement agencies in New Mexico. Agencies are encouraged to modify the model policy to adapt to local needs.

Prepared by: New Mexico Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

1.0 POLICY

- A. It is the policy of the (insert agency name) to follow constitutional guidelines when (insert title: deputies, officers, etc.) encounter or arrest a foreign national.

2.0 PURPOSE

- A. This purpose of this policy is to provide guidance for (insert appropriate title: deputies, officers, etc.) who encounter or arrest a foreign national.

3.0 APPLICABILITY

This policy is applicable to all (insert title: deputies, officers, etc.) of the (insert agency name).

4.0 DEFINITIONS

- A. Arrest – The taking of a person into custody by a legal authority.
- B. Consul or Consular Officer – An official of a foreign country authorized by that country and the United States to provide assistance on behalf of its citizens in the United States.

A consular officer is normally assigned to a consular section of an embassy in Washington, D.C. or to a consulate in another city in the United States. Example: there is a Mexican consulate in Albuquerque, New Mexico.

Consular officers or consuls accredited by the United States Department of State are issued identification cards.

- C. Diplomatic Immunity. Certain foreign government officials (issued special passports) are not subject to the jurisdiction of local courts and authorities.
- D. Foreign National – For purposes of consular notification and access, a foreign national is a person in the United States who is not a U.S. citizen.

- E. Persons indicating they are dual citizens of another country and the United States shall be treated as United States citizens. Consular notification is not required for persons with dual citizenship.
- F. Vienna Convention on Consular Relations (VCCR). A treaty completed in 1963 to coordinate consular practices. When a foreign national is arrested in New Mexico, the rules of the Vienna Convention on Consular Relations apply.

5.0 PROCEDURES FOR OFFICERS PRIOR TO ARREST

During the course of lawful duties, prior to arrest, officers who encounter foreign nationals shall observe the following procedures:

The legal standard to stop and detain someone is reasonable suspicion

- A. Reasonable suspicion of criminal activity is needed to detain someone. A simple, common-sense definition of reasonable suspicion: You have a **suspicion** and it's **reasonable** that a person is about to commit a crime, is involved in a crime, or has committed a crime.
- B. No person, regardless of immigration status, shall be detained unless there is reasonable suspicion of criminal activity.
- C. Generally, a person in the United States illegally has committed a civil violation, not a criminal offense.
- D. Since no criminal offense has been committed, and no reasonable suspicion exists to justify detention, an officer shall not stop or detain a person solely on the grounds he or she may be a foreign national.

Pre-arrest situation that would justify detention of an undocumented illegal alien

- E. An exception that justifies detention of an undocumented illegal alien occurs when there is a NCIC hit or the officer has knowledge of a "previously deported felony." This is a federal criminal violation. An officer shall confirm the status of the NCIC hit with United States Immigration & Customs Enforcement (ICE).

Contacting Homeland Security or ICE for assistance prior to arrest

- F. An investigation may reveal people believed to be foreign nationals are suspects in a criminal investigation. Examples: taking stolen vehicles to another country or possession of fraudulent immigration documents. Coordinating an investigation with Homeland Security or ICE is encouraged.
- G. A traffic stop with a large number of undocumented aliens may indicate human trafficking or smuggling. There are state and federal statutes to assist victims.

- H. Under New Mexico law, a human trafficking victim isn't charged as an accessory to the criminal offense of human trafficking. NMSA 1978, Section 30-52-1.
- I. There may be circumstances during an investigation where ICE can be helpful in establishing the identity of a suspect or offender.
- J. If a person has not been arrested, and an officer is aware of her or his immigration status, nothing in this policy will preclude the officer from notifying ICE of the person's immigration status.

Additional Guidelines for Officers in a Pre-arrest Situation

- K. Officers shall not inquire into the immigration status of persons not arrested unless it will assist a criminal investigation. This includes witnesses and victims. If a report is filed, the reasons for such an inquiry shall be noted.
- L. Officers shall assist undocumented illegal aliens needing assistance.

6.0 PROCEDURES FOR OFFICERS STOPPING A VEHICLE OR PERSON

- A. Reasonable suspicion is required for stopping (detaining) a vehicle or a person.
- B. Officers on a lawful traffic stop shall detain a driver for a reasonable time to complete the purpose of the stop.
- C. No motorist, once cited or warned, shall be detained when there is no reasonable suspicion of further criminal activity.
- D. No person in a vehicle, whether a driver or a passenger, shall be detained for the sole purpose of determining their immigration status.

7.0 ROLE OF OFFICER WHEN A PERSON IS ARRESTED

When a foreign national is arrested, there are two ways to notify ICE:

- The detention center may contact ICE, or
- The officer may contact ICE.

A. When a Detention Center notifies ICE:

This is the preferred method. A detention center has more time and resources than a field officer to determine immigration status and to do consular notification.

- a. If an officer is aware that a person arrested is a foreign national, legal or illegal, he or she shall notify the detention center. This notification will be documented. Example: "Notified detention center of immigration status."

Recommendations for Detention Center

- b. It is recommended that the detention center have a sign posted at booking notifying foreign nationals of their right to contact a foreign consulate.
- c. It is recommended that the detention center check the immigration status of all people arrested. Checking the status of all persons arrested – similar to airport screening – avoids profiling.
- d. It is recommended that the detention center notify the United States Immigration and Customs Enforcement (ICE) Agency of all undocumented illegal aliens in their custody.
- e. Notification to ICE of all undocumented illegal aliens avoids profiling.

Responsibility for notifying the foreign consulate

- f. A detention center is responsible for notifying a foreign consulate when a foreign national has been arrested. Notification is required by the VCCR.
- g. A detention center may rely upon the United States Department of State website (www.state.gov) for assistance regarding consular notification.

To ensure the detention center is notifying ICE of all undocumented illegal aliens, the (insert agency name) shall monitor the detention center on a regular basis.

B. When a law enforcement officer directly notifies ICE:

In some jurisdictions, a detention center does not notify ICE of undocumented illegal aliens in their custody.

In these situations, officers shall notify ICE and observe the following procedures:

Identification of persons being arrested

- a. Officers shall be responsible for inquiring about the current immigration status of all persons arrested or taken into custody. Determining the immigration status of all persons will avoid profiling.

Notifying ICE

- b. When a person who has been arrested is determined to be a foreign national, officers shall notify ICE.
- c. Arresting officers shall document they notified ICE that the person arrested is an undocumented illegal alien. Example: "Notified ICE" with date and time.

The detention center is responsible for consular notification, pursuant to the VCCR. ICE often does consular notification as part of their procedures.

8.0 FOREIGN NATIONALS WITH DIPLOMATIC IMMUNITY

- A. Some foreign nationals have been granted diplomatic immunity and are immune from arrest (cannot be arrested).
- B. A supervisor shall be contacted when a person asserts diplomatic immunity.
- C. Questions regarding diplomatic immunity may be answered by contacting the United States Department of State or its website.
- D. If a person claims immunity when arrested or detained, the burden of proof shall be on the individual to provide proper identification.
- E. Once an individual's status of immunity has been confirmed, he or she shall be released immediately.
- F. Consular notification procedures shall be followed for persons asserting diplomatic immunity.

9.0 SOURCES

- A. United States Department of State guidelines: Consular Notification and Access.
- B. Vienna Convention on Consular Relations.
- C. CALEA (Commission of Accreditation for Law Enforcement Agencies).
- D. State (New Mexico) and federal cases.
- E. Several hundred websites relating to immigration policies were reviewed.

Officers shall become familiar with the Model Profiling Policy for Law Enforcement agencies in New Mexico. It can be found at www.dps.org/training.

10.0 APPROVAL

Approved By: _____ Date: _____

(First published: August, 2011)



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER

OPR:27

**EFFECTIVE
DATE:
05/20/2009**

**ORIGINAL
ISSUED ON:
11/09/2002**

SUBJECT: CITIZEN ENCOUNTERS AND BIAS-BASED PROFILING

REVISION NO:

3

1.0 PURPOSE

The purpose of this policy is to unequivocally state that the New Mexico Department of Public Safety is prohibited in using bias-based profiling. This includes when conducting routine or spontaneous investigatory activity, including any interview, detention, asset seizure and forfeiture, traffic stop, pedestrian stop, frisk or other type of bodily search or a search of personal or real property, or in determining the scope, substance or duration of the routine or spontaneous investigatory activity. DPS shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except in a specific suspect description related to a criminal incident or suspected criminal activity, to select a person for or subject a person to the routine or spontaneous investigatory activity. This policy is intended to provide DPS personnel with guidelines to prevent such occurrences; and to protect commissioned officers/agents, when they act within the dictates of law and policy, from unwarranted accusations.

2.0 POLICY

It is the policy of the Department of Public Safety to actively enforce all laws, while requiring that citizens only be stopped or detained when there exists reasonable suspicion or probable cause.

3.0 APPLICABILITY

This policy is applicable to all commissioned employees of the Department of Public Safety.

4.0 REFERENCES

- A. CALEA Standards CHAPTER 1 – Law Enforcement Role and Authority**
- B. Prohibition of Profiling Practices Act**

5.0 DEFINITIONS

- A. DPS – The New Mexico Department of Public Safety.**
- B. Bias-Based Profiling – Any police initiated action that relies upon the selection of individuals based solely on a common trait of a group. This includes but is not limited to race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable groups.**

6.0 PROCEDURE

A. TRAINING

- 1. DPS training programs shall emphasize the need to respect the rights of all citizens to be free from unreasonable government intrusions or police actions, and create a positive police experience.

2. DPS is committed to the ongoing training and education of its commissioned employees in the topic areas of Community Oriented Policing, Cultural Awareness, Verbal Communications, Ethical/Unethical Behavior, Laws of Arrest, Search and Seizure, and Probable Cause, all of which deal with the issue of bias-based profiling to some degree. Officers/Agents receive annual Legal Update training, which includes the latest statutory requirements and case law relating to reasonable suspicion and probable cause as it pertains to vehicle stops and investigative detention.
3. All officers shall receive training during the academy and at least once every two years thereafter to ensure adherence to this policy and the state Prohibition of Profiling Practices Act.

B. ENFORCEMENT

1. All enforcement action will be accompanied by consistent, ongoing supervisory review to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.
2. Officers/Agents must have reasonable suspicion, supported by specific articulated facts, that the person contacted regarding their identification, activity, or location has been, is, or is about to commit a crime, or is currently presenting a threat to the safety of themselves or others.
3. All investigative detentions, vehicle stops, arrests and searches and seizures must be based on a standard of reasonable suspicion or probable cause as required by the United States and New Mexico Constitutions, statutory authority and prevailing case law. Officers must be able to articulate specific facts, circumstances and conclusions which support probable cause or reasonable suspicion for an arrest, vehicle stop or investigative detention.
4. This policy does not exclude any officer from conducting safety stops, welfare checks or consensual encounters that are done so in the public interest.
5. No motorist, once cited or warned, shall be detained beyond the point where there exists no reasonable suspicion of further criminal activity. No person or vehicle shall be searched in the absence of a warrant unless a legally recognized exception to the warrant requirement exists or the person voluntarily consents. It is recommended that consent searches utilize a written consent form and that the written consent form be offered for signature before the search is conducted. Officers are to document why there was a refusal to sign the voluntary consent form.
6. Any complaint filed in reference to an alleged bias-based profiling incident must be completed within 180 days of the alleged incident.
7. In conducting an investigatory activity in connection with an investigation, officers shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except to the extent that credible information, relevant to the locality or time frame, links a person with those identifying characteristics to an identified criminal incident or criminal activity.

C. SUPERVISORY RESPONSIBILITY

1. Supervisors will randomly review video tapes and audio tapes pursuant to department policy *OPR:19 Use of Recording Equipment*, being particularly alert to any patterns or practices or possible violations of DPS Policies and Procedures.
2. These reviews and any comments associated with the reviews are to be documented on the department's recording review form.
3. In the event a supervisor notices a pattern of conduct or practice which leads the supervisor to suspect an employee may be bias-based profiling, the supervisor shall take immediate and appropriate action to prevent the conduct from continuing.
4. Policy violations shall be handled in accordance with department policy *ADM:04 Internal Investigations*.
5. A redacted copy of the completed inquiry/investigation of any bias-based profiling complaint, including a copy of the complaint and disposition, shall be submitted to the Attorney General's office.

D. ADMINISTRATIVE REVIEW

1. The Standards Bureau will conduct an annual review of issues regarding bias-based profiling and citizen encounters. The review will include, but not be limited to, the following:
 - a. Review of documentation of bias-based-related training conducted at the Law Enforcement Academy and additional training and/or instruction provided in the districts throughout the state.
 - b. Review of documentation of all internal and external complaints relating to bias-based profiling and citizen encounters.
 - c. Review documentation of tort claims relating to bias-based profiling and citizen encounters.
2. The Standards Bureau commander will compile a report on the information reviewed and will provide the report to the Office of the Chief no later than the first day of February following the year being reviewed.
3. The report completed by the Standards Bureau commander should indicate whether policy, training, equipment or disciplinary issues should be addressed.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: s/John Denko
DPS Cabinet Secretary

DATE: May 20, 2009



DEPARTMENT OF PUBLIC SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE



DATE: FEBRUARY 1, 2013

**FROM: MAJOR SCOTT WEAVER, COMMANDER
STANDARDS BUREAU**

TO: CHIEF ROBERT W. SHILLING

SUBJECT: 2012 BIAS BASED PROFILING ANALYSIS REPORT

Per your request, I have reviewed documentation for racial profiling and citizen encounters related to policy, internal complaints, external complaints and Torts Claim Notices, for the reporting period of January 1, 2012, through December 31, 2012.

I have reviewed all case files and complaints reported relating to racial profiling or citizen encounters. During conference calls and district meetings, district commanders have been reminded to send all complaint documentation to the Standards Bureau for entry into the Early Intervention Personnel System (EIPS); therefore, I am confident we have all the complaints related to this matter.

ANALYSIS OF THE CASE

There were two cases that fell within the category of the complaint being based upon racial discrimination. The following is a synopsis of the cases:

Blanca Peraza Complaint on Officer Michael Forgue

On July 5, 2012, Sergeant David Neil received a complaint from Ms. Blanca Peraza in reference to Officer Michael Forgue where he allegedly treated her different because of her accent and because of the way she looks while on a traffic stop. The recorded video stop was inconsistent to the statements given by Ms. Blanca Peraza.

The complaint was unfounded and a copy forwarded to the Attorney General's office, per policy.

James Parrett Complaint on Officer Robert Soule

On April 23, 2012, Captain Glasscock made an inquiry into a complaint where Mr. James Parrett asserts he was stopped and cited for a tail lamp violation because he is a black man. The matter went to trial in Curry County where Mr. Parrett was found guilty of the cited infraction and an inquiry into the allegations of biased based profiling is clearly unfounded as race was clearly not the issue. There is not a pattern of Officer Soule using any race as a bias for police action. The complaint was unfounded and a copy forwarded to the Attorney General's office, per policy.

**INTRA-DEPARTMENTAL CORRESPONDENCE
RE: BIAS BASED PROFILING ANALYSIS REPORT
FEBRUARY 1, 2013
PAGE TWO**

- *Matter of Eutilio Jimenez from Somos Un Pueblo Unido referred to the Farmington Police Department. (7/12/12) NMSP was not involved in the matter*

PATTERNS/TRENDS

There were no patterns/trends generated in 2012.

POLICY/TRAINING NEEDS RECOMMENDATIONS

The policy meets the needs the Prohibition of Profiling Practices Act which became effective December 31, 2009. I do not see any need to significantly change the policy as it is sufficient to handle this new law.

The policy clearly prohibits officers from conducting enforcement action or citizen encounters based upon race, ethnicity, or other protected class status. Clear guidelines are established in policy and training is provided to prevent such occurrence during the recruit schools and during in-service schools. The policy is available to every employee through a hard copy book, and electronically through the Department's website "Insider".

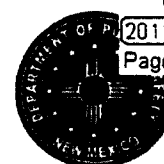
Based on the two complaints reported to the Standards Bureau for the 2012 reporting period, it is obvious our officers are not involved in biased based profiling. I do not have any recommendations regarding this highly sensitive matter.

If you have any questions regarding this or any other matter, please feel free to contact me.

SW



DEPARTMENT OF PUBLIC SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE



DATE: JANUARY 23, 2012

FROM: MAJOR SCOTT WEAVER, COMMANDER
STANDARDS BUREAU

TO: CHIEF ROBERT W. SHILLING
DPS DEPUTY SECRETARY - OPERATIONS

SUBJECT: 2011 BIAS BASED PROFILING ANALYSIS REPORT

Per your request, I have not received any documentation pertaining to racial profiling and citizen encounters related to policy, internal complaints, external complaints and Torts Claim Notices, for the reporting period of January 1, 2011 through December 31, 2011.

During conference calls and quarterly commander's meetings, District Commanders have been reminded to send all complaint documentation to the Standards Bureau for entry into the Early Intervention Personnel System (EIPS); therefore, I am confident we have no complaints related to this matter.

PATTERNS/TRENDS

There were no patterns/trends, due to no cases being generated in 2011.

POLICY/TRAINING NEEDS RECOMMENDATIONS

The policy meets the needs of the Prohibition of Profiling Practices Act which became effective December 31, 2009. I do not see any need to significantly change the policy as it is sufficient to handle this new law.

The policy clearly prohibits officers from conducting enforcement action or citizen encounters based upon race, ethnicity, or other protected class status. Clear guidelines are established in policy and training is provided to prevent such occurrence during the recruit schools and during in-service schools. The policy is available to every employee through a hard copy book, and electronically through the Department's website "Insider".

No complaints were reported to the Standards Bureau for the 2011 reporting period, it is obvious our officers are not involved in biased based profiling. I do not have any recommendations regarding this highly sensitive matter.

If you have any questions regarding this or any other matter, please feel free to contact me.

SW:rad



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER	
OPR: 28	
EFFECTIVE DATE:	ORIGINAL ISSUED ON:
REVISION NO:	
ORIGINAL	
SUBJECT: FOREIGN NATIONALS; CONSULAR NOTIFICATION AND ACCESS	

1.0 PURPOSE

The purpose of this policy is to provide Department of Public Safety commissioned employees with guidelines and procedures regarding consular notifications and access required upon the arrest, detention, or death of foreign nationals.

2.0 POLICY

It is the policy of DPS to adhere to the guidance provided by the United States Department of State concerning consular notification and access based on treaty obligations as outlined in the agreements set forth in the Vienna Convention on Consular Relations (VCCR). Adherence to these obligations assists foreign governments to provide assistance to foreign nationals arrested in the United States and helps the U.S. government protect U.S. citizens abroad. DPS shall ensure that all foreign nationals are treated with respect and provided with immunities under international law where applicable.

3.0 APPLICABILITY

This policy is applicable to all Department of Public Safety commissioned personnel.

4.0 REFERENCES

- A. CALEA Chapter 1 - Section 1- Standard 4 – Consular Notification**
- B. United States Department of State Publication 10969, "Consular Notification and Access", US Department of State, www.travel.state.gov/law/consular/consular_753.html.**

5.0 DEFINITIONS

- A. Arrest** – The taking of a person into custody by legal authority.
- B. Consul or Consular Officer** – A citizen of a foreign country employed by that government and authorized by both the sending and the host countries to provide assistance on behalf of that government to its citizens in another country. Such persons are generally assigned to a consular section of an embassy in Washington D.C. or to a consulate in another U.S. city. Consular officers or consuls who are accredited by the U.S. Department of State bear identification cards indicating that as issued by the U.S. Department of State.
- D. Detainee** – A detainee in this context is a foreign national who is arrested or detained pending investigation or judicial appearance, or both. Brief stops for motor vehicle violations or similar incidents are not considered detentions for purposes of this policy.
- E. Diplomatic Immunity** – A requirement by international law under which certain foreign government officials are not subject to the jurisdiction of local courts and authorities, for both their official and, to a large extent, their personal activities.
- F. Foreign National** – For purposes of consular notification and access, a foreign national is any person who is not a U.S. citizen. Lawful permanent resident aliens who have resident alien registration cards (green cards) retain their foreign nationality and must

FOREIGN NATIONALS; CONSULAR NOTIFICATION AND ACCESS

be considered foreign nationals. The terms foreign national and alien are used interchangeably. Undocumented or illegal aliens are also foreign nationals.

- G. Mandatory Notification** – As identified in this policy, certain foreign nations have entered into specific bilateral agreements with the United States requiring that their consulate or embassy be notified of any arrest or detention of a foreign national of their country regardless of the desires of the arrested or detained foreign national.
- H. Notification at the Foreign Nationals Option** – Foreign nationals from countries that are parties to the VCCR must be provided with the option of having consulate notified of their arrest or detention. If the detainee requests notification, a responsible detaining official must ensure that notification is made.
- I. Vienna Convention on Consular Relations (VCCR)** – A multilateral treaty completed in 1963 to codify consular practices that developed through customary international law, bilateral treaties, and a number of regional treaties, which provides rules for the operation of consulates and the functions of consuls and honorary consuls. Whenever a foreign national is arrested or detained in New Mexico, the rules of the VCCR apply.
- J. Without Delay** – There shall be no “deliberate delay” for notification. Notification shall occur as soon as reasonably possible under the given circumstances. An acceptable time frame is between twenty-four (24) to seventy-two (72) hours after initial contact.

6.0 PROCEDURE

- A. Identification** – In conjunction with law and international treaties, when officers/agents encounter foreign nationals during the course of their lawful duties, they shall comply with the following procedures:
 - 1. Enforcement of immigration laws and the arrest of undocumented foreign nationals resides exclusively with the United States Federal Government.
 - 2. Law enforcement officers may NOT stop, detain and question, arrest or place an immigration or I.C.E. hold on any person NOT suspected of crimes, solely on the grounds that they may be undocumented and deportable foreign nationals. When officers make a lawful stop, they may not ordinarily detain the vehicles occupants beyond a reasonable period of time required for the disposition of the matter that justified the initial stop.
 - 3. Officers shall not request immigration documents but may consider them for purposes of identification. Officers shall accept the Mexican Consular Identification Card (Matricula Consular de Alta Seguridad) as a valid form of identification. The Mexican Consular ID Card is not an indication of a person's immigration status, nor is it sufficient evidence to establish reasonable suspicion of a person's immigration status.
 - 4. Officers shall not inquire about or seek proof of a person's immigration status unless the person is in custody or is a suspect in a criminal investigation for a non-immigration criminal violation.
 - 5. When the arrest of an undocumented immigrant is necessary for a criminal violation, officers shall notify the U.S. Immigration & Customs Enforcement (I.C.E.) immediately so that they may respond appropriately.
 - 6. Officers are not required to notify federal immigration officials and shall not call federal immigration officials to the scene of a stop or investigation except in the case of suspected human trafficking (ie. a traffic stop involving a large amount of undocumented foreign nationals). The officer shall notify a supervisor of the incident

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prior to contacting I.C.E. Officials. The incident shall be properly documented in an offense/incident report.

7. This policy shall not prevent an officer from properly investigating or taking necessary action in a non-immigration criminal violation.

B. Consular Notification Obligations

1. Consular notification obligations are triggered upon any of the following situations:
 - a. The arrest or detention of a foreign national.
 - b. The death or serious injury of a foreign national.
 - c. An injury crash involving a foreign national.
2. In cases where a foreign national is the victim of a serious crime or felony, the officer shall ask the victim whether he or she would like consular notification to be made.
3. Officers who suspect that a person being arrested or detained is not a U.S. citizen shall inquire about his or her nationality in order to determine whether consular notification requirements apply. When such a request is made, the officer shall explain the purpose of the inquiry.
4. If an arrestee or detainee indicates that he or she is a foreign national, the officer shall ask for a passport or green card as identification. The foreign national's country shall be determined using this identification. If no citizenship documentation regarding identification can be provided, the officer shall accept the foreign national's own statement about nationality.
5. Undocumented illegal aliens are also entitled to consular notification and access.
6. Persons who indicate that they are U.S. citizens shall be presumed to be citizens.
7. Persons who indicate that they are dual citizens of another country and the U.S. shall be treated as a U.S. citizen. Consular notification is not required under this circumstance.
8. Refer to Attachment D for an illustration indicating the Consular Notification Process (CNP) as provided by the U.S. Department of State in reference to the arrest of a non-U.S. Citizen.

C. Mandatory versus Optional Consular Notification

1. Foreign nationals shall be informed of the option to communicate with their consular officials whenever they are arrested or detained.
 - a. Foreign nationals shall have the option of deciding whether to have their consular representative notified of the arrest. If the foreign national's country of origin is on the Mandatory Notification Countries and Jurisdictions List, then notification is mandatory. This list can be located on the U.S. Department of State website, www.travel.state.gov/law/consular/consular_753.html.
 - b. The nations on the Mandatory Countries and Jurisdictions List have bilateral treaties with the United States that require authorities to make notifications to consular officials of the arrest or detention of one of their nationals, regardless of the national's wishes.
2. The arresting officer or supervisor shall notify an arrested or detained foreign national when a mandatory notification has been made to his or her consulate or embassy.

FOREIGN NATIONALS; CONSULAR NOTIFICATION AND ACCESS

- a. The individual shall be advised that he or she is not required to accept the consulate assistance, but that the consulate may be able to offer assistance in regards to obtaining legal counsel, contacting family members, and in visiting the individual while detained.
 - b. The reason for the arrest and detention does not have to be disclosed to the consular official. It should only be provided when specifically requested by the official or when it is required under a specific provision as outlined in a bilateral treaty.
 - c. Mandatory notification requirements must be honored, even if the officer has reason to believe that the foreign national may suffer persecution or mistreatment by his or her government. Precautions should be taken to prevent the release of sensitive information regarding the foreign national.
3. Under **NO** circumstances shall any information indicating that a foreign national has applied or is considering applying for asylum be disclosed to a foreign national's government official.

D. How to Notify Consular Officials -

1. When an officer believes that consular notification is required, he or she shall notify a supervisor.
2. The supervisor shall verify the foreign nationals country of origin and determine whether the consular notification is mandatory or optional and at the foreign nationals request.
3. Regarding optional notifications, the supervisor or detaining officer shall ascertain whether the foreign national desires notification be made.
4. Statements shall be provided to foreign nationals for their review and signature as provided in Attachment A. Translations of these statements are available on the US. Department of State website, www.travel.state.gov/law/consular/consular_753.html. A Spanish version of the statements is included in Attachment A. A signed copy of the form shall be retained with the arrest and booking documentation.
5. Notifications to consuls or embassies shall be made by facsimile transmission as soon as reasonably possible and a copy of the completed fax transmission verification sheet retained with the arrest and booking documentation. A list of foreign consulates and embassies with contact information is provided on the U.S. Department of State website, www.travel.state.gov/law/consular/consular_753.html. A suggested Fax Sheet for Notifying Consular Officers of Arrest or Detentions can be found in Attachment B.
6. Consular Officials shall also be notified upon the death or serious injury of a foreign national that comes to the attention of DPS. A list of foreign consulates and embassies with contact information is provided on the U.S. Department of State website, www.travel.state.gov/law/consular/consular_753.html. A suggested Fax Sheet for Notifying Consular Officers of Death/Serious Injuries can be found in Attachment C.
7. Once it is determined that notification shall be made, the notification shall be done **without delay**.
8. Arresting officers shall notify the detention officer/detention facility of the fact that the arrestee is a foreign national and of their right to consular notification.
9. Arresting officers shall ensure that consular notifications are completed.

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10. Arresting officers shall document this notification on the arrest/booking form as well as in the narrative of the offense/incident report or supplemental report.
11. A record of all instances that a consul has been contacted shall be kept to demonstrate that notification requirements have been met as set forth by the U.S. Department of State.

E. Consular Access to Arrested/Detained Foreign Nationals

1. The Department of Public Safety shall provide consular officers with reasonable access to detainees who request such access consistent with DPS policies and procedures regarding visitation of detainees.
2. Authorized personnel shall permit the transmission of communications from foreign nationals to their respective consular official provided that the communication is of reasonable duration and frequency.
3. Consular officials shall not serve as legal counsel for their foreign national constituents and do not have attorney-client privileges. Consular officials may be allowed to converse privately with their constituent (foreign national) if they so request and if the request can be reasonably accommodated.
4. Consular officers may provide the following types of assistance to a detainee under the terms of international agreements, although such services may vary by the capabilities of country representation in the United States.
 - a. They may determine the detainees situation and needs.
 - b. They may arrange for legal counsel and monitor case progress.
 - c. They may contact authorities concerning the conditions of confinement and bring personal items to the detainee as permitted by DPS policy.

F. Dealing with Foreign Nationals with Diplomatic Immunity

1. When a foreign national claims to enjoy diplomatic immunity, officers shall identify and verify the diplomatic status of the detainee in the most efficient manner possible.
2. Certain specified foreign persons are immune from arrest under certain conditions. These include the following:
 - a. Foreign Diplomats, such as Ambassadors and Foreign Ministers, their families, servants and staff are totally immune from arrest for any offense. Any questions of whether an individual is entitled to immunity may be directed to the U.S. Department of State.
 - b. Foreign Consuls, their families, servants, and employees are not immune from arrest, except for the Mexican Consul, which has limited immunity. If any Foreign Consul is involved in an offense a supervisor will be contacted. The supervisor can consult the U.S. Department of State website for further clarification. Supervisors may also contact the U.S. Department of State with any questions.
 - c. Immunity is not extended to the families, servants, or employees of the Consulate. Whenever practical, they will be released on misdemeanor charges in lieu of booking, pending the issuance of a complaint for the offense. A citation in lieu of arrest may be issued if the appropriate criteria are met.
3. Only an identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission to the United Nations may be used as valid identification for diplomats and consular officials.

FOREIGN NATIONALS; CONSULAR NOTIFICATION AND ACCESS

4. Foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, vehicle registration, license plates, and driver licenses should not be used to determine whether an individual enjoys immunity.
5. When legal grounds allow, officers should detain an individual who is unable to produce valid identification but claims diplomatic immunity. He or she shall be informed of the reason for the detention until the U.S. Department of State can confirm the proper identity.
6. If a person claims immunity when arrested or detained, the burden of proof shall be on the individual to provide proper identification. Officers shall contact a supervisor and make all reasonable attempts to verify the individual's claim of immunity.
7. Once the individual's status of immunity has been confirmed, he or she shall be released immediately and the incident shall be fully documented in accordance with this policy.
8. Consular notification procedures shall be followed even if the individual enjoys diplomatic immunity.
9. When an officer makes contact with a foreign national with diplomatic immunity, the U.S. Department of State shall be contacted without delay.

7.0 ATTACHMENTS

- A. Suggested Statements to Foreign Nationals Arrested or Detained (Spanish version included).
- B. Suggested Fax Sheet for Notifying Consular Officers of Arrest or Detention.
- C. Suggested Fax Sheet for Notifying Consular Officers of Death/Serious Injuries.
- D. Illustration of Consular Notification Process (CNP)

8.0 APPROVAL

APPROVED BY: _____
DPS Cabinet Secretary

DATE: _____



TO: Embassy/Consulate of _____ in _____
(Country) (City) (State)

Fax: () (see <http://travel.state.gov/law/consular/consular/753.html> for phone/fax numbers)

Subject: NOTIFICATION OF DEATH/SERIOUS INJURIES OF A NATIONAL OF YOUR COUNTRY

FROM:

h
D
A
C
E

S
E

P



(DATE)

Foreign National Information:

M
B
B
h

Date of Passport Issuance: _____

Place of Passport Issuance: _____

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

(Optional):



DEPARTMENT OF PUBLIC SAFETY
SUGGESTED STATEMENTS TO
FOREIGN NATIONALS ARRESTED or DETAINED



Statement #: 1

When Consular Notification is at the Foreign National's Option:

As a non-U.S. 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 you obtain legal 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?

YES ☐ NO ☐

Name: _____ Signature: _____ Date: _____

Statement #: 2

When Consular Notification is Mandatory:

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.