

<b>ESCONDIDO POLICE DEPARTMENT INSTRUCTION</b>		DATE: 01-05-18	NO: 4.11 PATROL/TRAFFIC
TO: ALL PERSONNEL	SUBJECT: FOREIGN NATIONALS AND UNDOCUMENTED PERSONS		
ORIGIN: CHIEF OF POLICE	RETAIN: UNTIL FURTHER NOTICE		

This Instruction supersedes Department Instruction 4.11, dated December 9, 2016.

I. PURPOSE

The purpose of this directive is to **(1) provide guidelines for interaction with Foreign Nationals and Undocumented Persons** within the city of Escondido; **(2) outline procedures for the processing of Foreign Nationals, who may or may not be undocumented;** **(3) outline the notification procedure necessary for U.S. law enforcement activity in Mexico; and (4) identify the type of communications and cooperation that are permissible under state law between local law enforcement agencies and federal immigration authorities.**

II. DEFINITIONS

Foreign National - Any person who is not a U.S. citizen.

Undocumented Person – **As used in this Department Instruction, a Foreign National within the United States without the permission of the United States government and in violation of the Immigration and Naturalization Act or other federal law.**

**Permanent Resident - A Foreign National authorized to live and work in the United States on a permanent basis. As proof of authorized status, the federal government issues a permanent resident card, commonly called a "Green Card."**

III. POLICY

**Federal, state and local laws protect everyone from criminal acts on U.S. soil, regardless of their immigration status.** It is the professional duty of all members of the Escondido Police Department to protect all persons in the community regardless of their immigration status.

Members of the Escondido Police Department shall not **investigate, interrogate, detain, or arrest any Foreign National, whether they are undocumented or not, solely because they are perceived to be or are in fact a Foreign National or Undocumented Person.**

Furthermore, it is the policy of the Escondido Police Department **to comply with all federal laws and treaties regarding Foreign Nationals** and to offer assistance and aid to all such individuals within our city. The 1963 Vienna Convention **on Consular Relations Treaty, as further outlined in California Penal Code § 834c, provides that law enforcement agencies, upon making an arrest and booking or detention of a Foreign National, shall advise the Foreign National without delay that he or she has the right to communicate with an official from their national consulate. If the Foreign National chooses to exercise that right, the Department shall notify the appropriate agency as described below.**

#### IV. COMMUNICATION AND CONTACT WITH FOREIGN NATIONALS

- A. Diplomatic officials and Foreign Nationals are entitled by treaty to certain rights.
- B. **Permanent Residents, holding Green Cards, retain their foreign nationality and are considered Foreign Nationals for the purposes of consular notification.**
- C. Current information as to the appropriate office to notify in case of arrest, detention, imprisonment, or death of a Foreign National may be obtained either from the Office of Emergency Services at (858) 565-3490, or the Secretary of State, Office of Special Filings (for death notifications) at (916) 653-3984.
- D. In the event of a contact with a person claiming diplomatic immunity or privilege, contact a supervisor immediately.
- E. California Penal Code § 834c requires every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected Foreign National, to advise the individual of his or her right to contact an official from the consulate of the individual's country. If the individual asks to exercise that right, the arresting agency shall make the appropriate notification to the Foreign National's consulate, and the officer shall document such a request and notification in a report. **Many** countries, listed in Section 834c(d) (**i.e.; Costa Rica and the Philippines**), require mandatory notification when a citizen of the country is arrested regardless of any request by the Foreign National.
- F. Foreign Nationals who have been arrested are entitled to communicate with their consular officers. Such officers have the right to visit these individuals, to converse with them and arrange for legal representation.
- G. According to the Vienna Convention Treaty, Article 36(1)(c), consular officers **must** refrain from taking action on behalf of a Foreign National if the arrested person expressly opposes such action.

V. NOTIFICATION REGARDING DEATH OR SERIOUS INJURY TO FOREIGN NATIONALS

A. Mexican Consulate

A treaty signed by the United States and Mexico in 1943 requires that local officials notify, within 24 hours, the nearest Mexican Consular official in the event of death or serious injury to a Mexican Foreign National. Notification may be made by telephone to any employee of the Mexican Consulate at 1549 India Street, San Diego, at (619) 231-8414 (Monday – Friday, 8:00 a.m. – 1:00 p.m.).

B. All Foreign Nationals

1. The Criminal Investigations Unit will be responsible for **home country** notification in the event of serious non-traffic injury cases.
2. The Traffic Division will be responsible for home country notification in the event of serious traffic injury cases.
3. The Office of the Medical Examiner will normally make **home country** notification in the event of death.

VI. AUTHORIZATION NEEDED FOR U.S. LAW ENFORCEMENT ACTIVITY IN MEXICO

All U.S. law enforcement officers must contact Mexican Immigration **authorities for permission** prior to entering Mexico to conduct any law enforcement activity. The District Attorney's Mexican Liaison Office, Deputy District Attorney Juan Jose Briones at (619) 685-6585, is the Escondido Police Department's point of contact.

This **requirement** applies to all matters including but not limited to interrogations; obtaining declarations; arrests; liaison activities; search and seizures; expulsion/deportation inducement efforts involving Mexican Foreign Nationals or foreign third parties; and any other law enforcement activity.

In addition, all requests for expulsions, deportations or arrests of U.S. fugitives must be made in writing to the headquarters of Servicios Migratorios, via the Regional Delgado. Once the request is approved, the Mexican Immigration Service will coordinate the requested enforcement or liaison action with U.S. authorities in accordance with applicable Mexican law.

Bureau Commander approval is required prior to Escondido Police employees entering the country of Mexico for official purposes. Task force personnel shall follow the directives of the task force to which they are assigned.

Further information on these matters can be obtained by contacting the California Department of Justice, Bureau of Narcotics Enforcement and Investigation, 9425 Chesapeake Drive, San Diego, CA 92123-1302 at (858) 268-5300.

## VII. MATRICULA CONSULAR IDENTIFICATION CARD

The *Matricula Consular* identification card is issued by the Mexican Government to Mexican citizens residing in the United States and other foreign countries to serve as formal identification. In misdemeanor cite and release **circumstances**, if the *Matricula Consular* card is presented as the sole source of identification and officers are unable to verify the arrestee's identity through other means, officers shall transport the individual to the Escondido Police Department and obtain a photograph and fingerprints. Officers shall make every attempt to identify the individual prior to release.

The *Matricula Consular* identification card will not be accepted in lieu of a driver's license when any law or regulation requires a valid driver's license.

If an invalid *Matricula Consular* identification card is found, and it does not need to be retained as evidence for a criminal case, the card should be forwarded to the Mexican Consulate at the below address.

Questions relating to the *Matricula Consular* identification card can be addressed to representatives of the Mexican Consulate located in San Diego at:

1549 India Street  
San Diego CA 92115  
(619) 308-9918 or (619) 308-9921

## VIII. AB 60 CALIFORNIA DRIVER'S LICENSE

In October 2013, Governor Brown signed Assembly Bill 60. AB 60 requires the Department of Motor Vehicles (DMV) to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized by federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the DMV of his or her identity and California residency.

An AB 60 license shall bear the following notice: "This card is not acceptable for official federal purposes." Cal. Veh. Code § 12801.9. Officers shall accept a valid AB 60 license as an acceptable form of identification for the purposes of citations and arrest, whether driving or not.

State and local law enforcement officers are prohibited from using an AB 60 license to consider a subject's citizenship or immigration status as the basis for criminal investigation, detention or arrest. It is a violation of law to discriminate against a person because he or she holds or presents a license issued under Cal. Veh. Code § 12801.9.

IX. **COMMUNICATION AND COOPERATION WITH FEDERAL IMMIGRATION AUTHORITIES REGARDING FOREIGN NATIONALS AND UNDOCUMENTED PERSONS**

It is the policy of the Escondido Police Department to maintain effective working relationships with **all law enforcement agencies, including federal immigration authorities, to the extent permitted by federal and state law and this Department Instruction.**

Effective January 1, 2018, through the enactment of the SB 54, also known as the California Values Act (“Act”), California state law limits the types of communications and cooperation that are permissible between local law enforcement agencies and federal immigration authorities. The Act, at Government Code §§ 7284 through 7284.12, identifies the following as prohibited and permissive conduct:

A. **Prohibited Conduct**

Pursuant to the Act, local law enforcement officers are prohibited from any of the following:

1. Using department personnel and/or resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including:
  - a. Inquiring into an individual’s immigration status;
  - b. Detaining an individual on the basis of a hold request;
  - c. Providing information regarding a person’s release date or responding to requests for notification by providing release dates or other information, *unless* that information is (i) available to the public, or (ii) in response to a notification request from immigration authorities in accordance with Government Code § 7282.5, and then only if the individual: (1) has been convicted of a serious or violent felony (identified in Penal Code § 1192.7(c) or § 667.5(c)); (2) has been convicted of a felony punishable by imprisonment in the state prison; (3) has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, certain specified offenses provided by statute (See Government Code § 7282.5(3)(A)-(AE)); (4) is a current registrant on the California Sex and Arson Registry; or (5) has been convicted of federal crime that is an aggravated felony or has an outstanding federal felony arrest warrant;

- d. **Providing personal information about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public;**
  - e. **Making or intentionally participating in arrests based on civil immigration warrants;**
  - f. **Assisting immigration authorities in the border checkpoint activities described in Section 1357(a)(3) of Title 8 of the United States Code; and**
  - g. **Performing the functions of an immigration officer.**
2. **Placing peace officers under the supervision of federal agencies or employing peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement.**
  3. **Using immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.**
  4. **Transferring an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Penal Code § 7282.5.**
  5. **Providing office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.**
  6. **Contracting with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees.**

**B. Permissive Conduct**

**State law and this Department Instruction do not prohibit the following activities:**

1. **Investigating, enforcing, or detaining an individual upon reasonable suspicion of, or arresting for, a violation of illegal re-entry after conviction for an aggravated felony (8 USC §1326(a), 8 USC §1326(b)(2)) if such crimes are detected during an unrelated law enforcement activity.**
2. **Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.**
3. **Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential**

**information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:**

- a. The primary purpose of the joint law enforcement task force is not immigration enforcement.**
- b. The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.**
- c. Participation in the task force does not violate any local or department policy.**

**Operations by a Joint Law Enforcement Task force require annual reporting of specific information to the California Department of Justice. See Government Code § 7284.6(c). These reports are designated as public records and subject to disclosure under the California Public Records Act. If more than one state or local law enforcement agency is participating in a joint task force, the task force shall designate a particular agency to complete the reporting requirement.**

- 4. Making inquiries into information necessary to certify an individual, who has been identified as a potential crime or trafficking victim, for a T or U Visa pursuant to 8 USC § 1101(a)(15)(T) or § 1101(a)(15)(U), or to comply with 18 USC § 922(d)(5).**
- 5. Giving immigration authorities access to interview an individual in agency or department custody in accordance with Government Code § 7283 (the TRUTH Act).**
- 6. Exchanging information regarding the citizenship or immigration status, lawful or unlawful, of an individual with federal immigration authorities or any other federal, state or local government entity, pursuant to 8 USC §§ 1373 and 1644.**

**Further definitions related to the Act can be found at Government Code §7282.**