

Attachment A

1487 Complaint of Senator John Kavanagh Regarding Phoenix Police Operations Order 4.48: Immigration Enforcement

ARS 11-1051. Cooperation and assistance in enforcement of immigration laws; indemnification (see Attachment B) mandates a high level of police enforcement of federal immigration laws. Specifically, ARS 11-1051 subsection A states,

No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

In addition, subsection B states,

For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation.

Furthermore, Section F goes on to state that,

Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

- 3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act.*

In its totality, ARS11-1051 mandates that all police officers make a reasonable attempt, when practicable, to determine the immigration status of any person when the officer has reasonable suspicion to believe that the person is an alien and is unlawfully present in the United States, except if the determination may hinder or obstruct an investigation. ARS11-1051 goes on to prohibit any official or agency of this state or a county, city, town or other political subdivision of this state from

restricting the enforcement of federal immigration laws *to less than the full extent permitted by federal law*.

Seven sections of Phoenix Police Operations Order 4.48: Immigration Enforcement (see Attachment C) violate the provisions of ARS11-1051 by limiting under what circumstances and where Phoenix police officers can make immigration inquiries in a manner more restrictive than the mandates of ARS11-1051. A list of these violations follows.

1. Phoenix Police Operations Order 4.48 section 1D requires pre-approval of ICE immigration status verification requests.

Phoenix Police Operations Order 4.48: 1D states

- D. If officers need to contact ICE to verify any person's immigration status, a VCB desk sergeant **must first** be contacted, [REDACTED] for approval.
- If the VCB sergeant is not available, officers must contact an on-duty sergeant for approval.
 - Any contact with ICE **must be** documented by VCB desk personnel who will collect immigration related data.
 - A legal advisor will be on-call 24/7 for immigration related questions.

The pre-approval requirement for ICE checks violates ARS11-1051 F, which states,

*Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited **or in any way be restricted** (emphasis mine) from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:*

- 3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act.*

Phoenix police officers are not required to get pre-approval to conduct other routine checks, such as those involving traffic-related issues. Nor are they required to contact a special unit, the Violent Crimes Bureau (VCB,) for such approval. Consequently, the pre-approval for immigration checks is an unnecessary restriction prohibited by ARS11-1051 F.

The pre-approval requirement is also unreasonable, in light of the fact that the courts have ruled that a person undergoing an immigration check may not be held longer than the time needed to accomplish the objectives of the initial stop. This extraordinary approval requirement amounts to a limiting and restricting of *“the enforcement of federal immigration laws to less than the full extent permitted by*

federal law,” which is a violation of ARS11-1051 subsection A both facially and practically applied by “running the clock out” and requiring the release of the suspect before the check can be completed.

In addition, section 1 D is also in violation of 8 U.S.C. section 1373 (see Appendix D,) which prohibits policies that impede cooperation between federal, state, and local officials, when it comes to the sending, requesting, maintaining, or exchanging of information regarding immigration status. Under that provision, any federal, state, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from the federal government, information regarding the citizenship or immigration status, lawful or unlawful, of any individual. A policy that ignores a federal prohibition impeding communication between police and ICE constitutes an action that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law in violation of ARS 11-1051 A.

2. Phoenix Police Operations Order 4:48 section E 2 restricts immigration inquiries to stops or detentions based upon possible criminal activity but ARS11-1051 mandates inquiries based upon stops initiated upon suspicion of *any law or ordinance violation of a county, city or town or this state.*

Phoenix Police Operations Order 4.48: E states,

- E. There are two situations where officers are mandated by [Arizona Revised Statute \(ARS\) 11-1051](#) to contact the federal government [U.S. Immigration and Customs Enforcement (ICE)] to verify a person's immigration status:
- (1) A person is under ARREST based on probable cause (adult or juvenile) (see section 4 of this order for more information).
 - This means ALL persons ARRESTED regardless of lawful status in the United States (U.S.), race, color, national origin, OR presumptive ID; the arrestee shall have their immigration status verified by the federal government prior to release of the arrestee.
 - (2) When a person is lawfully stopped/detained for a state or local crime AND only when the officer develops further reasonable suspicion the detained person is unlawfully present in the U.S. (see section 5 of this order for more information).

Section 1E (2) only allows Phoenix police officers to make immigration inquiries when the stop or detention is based upon suspicion of the violation of the *criminal law*, specifically “a state or local crime.” However, ARS11-1051 B states,

For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state.

Clearly, “of any other law or ordinance of a county, city or town or this state” also encompasses non-criminal violations, including civil transgressions. In fact, U.S. Supreme Court Justice Anthony Kennedy in his opinion finding this section constitutional offered the example of a stop for simple, non-criminal jaywalking . (See 567 U.S. 387 ARIZONA, et al., Petitioners v. UNITED STATES pp12-13.)

3. Phoenix Police Operations Order section 1 H prohibits officers from making any immigration status inquiry during a traffic stop unless the stop is for a criminal law violation.

Section 1 H states,

1. H. Traffic Enforcement (Drivers/Passengers) – Officers **must not** ask immigration related questions or verify immigration status while conducting traffic enforcement unless required by state law as specified above in sections 1.E.(1) and (2) of this order.

Section 1 H restates the illegal restriction on immigration inquiries contained in section 1E (2,) discussed above, and is in violation of ARS11-1051 B for the reasons cited above.

4. Phoenix Police Operations Order section 1 J unlawfully restricts when police may transport an illegal alien to federal authorities.

Section I J only allows police transport to federal authorities of illegal aliens in two circumstances:

- (1) ICE verifies the person is wanted for a **criminal immigration** violation AND there are no state criminal charges.
- (2) The person has a civil immigration violation **only** and **consents** to a transport.

This section contradicts two sections of ARS11-1051:

1. Subsection A states,

No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

2. Subsection D states,

Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal

facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency.

Phoenix Police Operations Order 4.48 1 J unlawfully limits and restricts the enforcement of federal immigration law as mandated in ARS11-1051 A and ARS11-1051's transportation section. When combined, these two sections of ARS11-1051 mandate the transportation to federal authorities of persons verified to be in the United States illegally. No state or federal court ruling *applicable to Arizona* prohibits such action. This section of ARS11-1051 survived U.S. Supreme Court scrutiny.

Finally and perhaps unintentionally, section 1J also prohibits the transportation of a person wanted for a criminal immigration violation who also has state charges pending. For the reasons listed above, this is also a violation of state law.

5. Phoenix Police Operations Order 4.48 section 2 C unlawfully prohibits the police from asking *anyone* on school grounds about their immigration status, although ARS11-1051 requires such an inquiry when the officer has reasonable suspicion that the subject is an illegal alien and it is practicable to do so and will not hinder or impede an investigation.

Section 2 C states,

- C. SROs or any other officers **must not** ask immigration questions or contact ICE for any purposes while on school grounds.

This blanket ban makes schools sanctuary sites, where anyone -child, adult, student, staff member or visitor - in the country illegally, is protected from otherwise lawful immigration inquiries mandated by ARS11-1051 B (see above.) This prohibition is illegal for the same reasons that section E2 is illegal.

In addition, section 2 C's establishment of "sanctuary islands" within Phoenix may violate federal law by preempting the federal government's exclusive regulation of immigration law. In *De Canas v. Bica* (424 U.S. 351) the Supreme Court held that any state law or policy related to immigration will be per se preempted, if it is a regulation of immigration because the "power to regulate immigration is unquestionably exclusively a federal power." Creating areas where persons illegally in the country are safe from enforcement amounts to pre-empting federal law by shielding such persons from detection and prosecution. Clearly, such a policy constitutes an action that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law in violation of ARS 11-1051 A.

6. Phoenix Police Operations Order section 4 A (3) requires pre-approval of ICE immigration status verification requests for adults and juveniles in certain situations.

Section 4 A (3)'s pre-approval requirement is illegal for the same reasons that section 1 D's pre-approval requirement is illegal (see above.)

7. Phoenix Police Operations Order section 5 A restricts immigration inquiries to situations in which a person is detained based upon violation of any law but ARS11-1051 mandates inquiries based upon stops initiated upon suspicion of a violation of any law *or ordinance of a county, city or town or this state.*

Phoenix Police Operations Order 4.48: 5 A states,

- A. If a person is detained for a violation of any law and during this detention an officer develops reasonable suspicion the detained person is unlawfully present in the U.S., the officer shall make a reasonable attempt to contact ICE and verify the person's immigration status (ARS 11-1051.B).

Section 5 A restates part of the restriction on immigration inquiries contained in section 1 E (2) and 1H, discussed above, and is in violation of ARS11-1051 B.

Oddly, 5 A is less restrictive than 1 E (2) and 1 H and actually contradicts them but is still overly and illegally restrictive because it excludes "*or ordinance of a county, city or town or this state.*"

While a case could be made that the term "law" technically includes ordinances of a county, city or town or this state, this wording is not written in a contract, legal brief or other legal document but in an operations order that is instructional in nature with an overwhelmingly non-attorney audience. Consequently, the omission of the statutes full language ("of any *other* (emphasis mine) law or ordinance of a county, city or town or this state") is likely to illegally limit the application of the law through misinterpretation by some officers.