

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

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|-----------------------------|---|---------------------------|
| In the Matter of:           | ) |                           |
|                             | ) |                           |
| REPORTING ALIEN CONVICTIONS | ) | Administrative Order      |
|                             | ) | <u>No. 2006-47</u>        |
|                             | ) | (Replacing Administrative |
|                             | ) | Order No. 98-49)          |
| _____                       | ) |                           |

On November 25, 2002, P.L. 107-296 abolished the Immigration and Naturalization Service (INS). Provision was made for INS and successor agencies to continue under the Department of Homeland Security and for references to INS in all statutes and other federal law to apply to the appropriate successor agencies. (See e.g. 6 USCS § 552(d) and 6 USCS § 557).

Receipt of federal drug control and system improvement grants is conditioned upon certain assurances regarding reporting alien convictions. 42 USCS § 3753(a)(11) provides:

An assurance that the State has established a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, notice of conviction of aliens who have been convicted of violating the criminal laws of the State and under which the State will provide the Service with the certified record of such conviction within 30 days of the date of a request by the Service for such record.

The United States Bureau of Customs and Border Protection, including United States Border Patrol is a successor agency of INS continuing under the Department of Homeland Security. As a result of discussions with a representative of the Border Patrol, it has been determined that the above stated statutory obligations can be met through provision of records to the Border Patrol. This Administrative Order does not cover any other successor agencies, as no other agencies have expressed a need for the records.

Now, therefore, pursuant to Article VI Section 3, of the Arizona Constitution,

IT IS ORDERED effective immediately that the Clerks of Court shall provide free of charge upon request by Customs and Border Protection, including United States Border Patrol, documents that were required to be transmitted to INS under Administrative Order No. 98-49.

IT IS FURTHER ORDERED effective July 15, 2006 that the attached Administrative Requirements for Reporting of Alien Convictions are adopted as the State of Arizona plan required by 42 USCS § 3753 (a)(11).

IT IS FURTHER ORDERED effective July 15, 2006 that Administrative Order No. 98-49 is rescinded.

Dated this 13th day of June, 2006.

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RUTH V. MCGREGOR  
Chief Justice

## **ADMINISTRATIVE REQUIREMENTS FOR REPORTING OF ALIEN CONVICTIONS**

### **A. Purpose**

These procedures are implemented for purposes of compliance with the United States Immigration and Nationality Act (INA), as amended December 1991, in Section II, Guidance For Reporting Alien Convictions To The Immigration and Naturalization Services, as a condition for receipt of the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant and to update the administrative order, No. 98-49 because of changes in United States government organizational structure due to the Homeland Security Act of 2002.<sup>1</sup>

As provided in the federal requirements, aliens or suspected aliens are defined as offenders who hold a foreign citizenship or who are foreign born. All aliens or suspected aliens who are sentenced in the superior court for a criminal offense shall be reported to Customs and Border Protection, including United State Border Patrol, as prescribed in these procedures.

### **B. Reporting Procedures**

1. In every case in the superior court where an offender pleads guilty or is found guilty and the case is referred to the adult probation department for a presentence report, the probation officer shall inquire as to the person's citizenship. In every case where the person is an alien or suspected alien, the probation officer shall make an electronic inquiry through the International Justice and Public Safety Information Sharing Network, Inc. (NLETS) via the Arizona Criminal Justice Information System (ACJIS) prior to sentencing. Such inquiry will provide an automatic notification to agencies charged with the enforcement of the United States Immigration and Nationality Act.

2. When the probation department delivers the presentence report to the court, a statement based on the electronic inquiry or copy of the agency's response to the electronic inquiry shall be included in the report, informing the court of known or suspected alien status.

3. In all the cases where the superior court is informed a person is an alien or suspected alien the Court shall make a record to that effect in the Court's minute entry.

4. Upon a request documented in writing,<sup>2</sup> the Clerk of the Court shall provide to Customs and Border Protection including the United States Border Patrol within a reasonable time depending upon the urgency of the request and at no expense and no fee certified copies of:

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<sup>1</sup> The INA is now enforced by three different bureaus Customs and Border Protection, Citizenship and Immigration Services and Immigration and Customs Enforcement.

<sup>2</sup> In the interest of clarity, efficiency and record-keeping, requests made pursuant to this order and these Administrative requirements shall be documented in writing.

- a. the judgment of conviction and sentence and the warrant of authority pursuant to Ariz. R. Crim P. 26.16 (a) and (b);
- b. the original “charging document” to wit: The indictment(s) and/or information(s) relating to the offenses of conviction including amendments.

5. In determining a reasonable amount of time for provision of documents, clerks shall recognize and address the immediate need for records in detainer matters. The clerk’s response to the request shall also take into account the need for the United States Border Patrol to obtain certified court records for persons who are subject to immediate deportation.

6. Upon request of Customs and Border Protection including the United States Border Patrol, documented in writing, the Clerk of Court shall provide at no expense and no fee the above documents for previous convictions.

7. Upon written request of Customs and Border Protection including the United States Border Patrol, the Clerk of Court shall provide to those agencies any of the following: Presentence reports including supplemental information, warrants, probation relocation orders, probation violation notices, and plea agreements. The Clerk of the Court shall provide these documents without fee either in person, by mail or fax to any address or fax number in the United States, or by any other effective means of electronic transmission.

8. The Clerk of Court shall charge for multiple or duplicate copies of documents.

9. The Administrative Director of the Courts, or designee, shall provide any additional procedures, practices, and forms as required by the Order. Further, the Administrative Director of the Courts may implement other administrative practices or procedures not inconsistent with this Order as may be necessary and expedient for the administration of these procedures.