

A. **PURPOSE**

The purpose of this policy is to establish guidelines for handling civil immigration issues that arise during stops and detentions. This policy does not limit or restrict the enforcement of federal immigration laws to less than the fullest extent permitted by federal law, nor does it restrict the full enforcement of state laws.

B. **POLICY**

Troopers shall conduct contacts with persons suspected of being unlawfully present in the United States in a manner consistent with federal and state laws regulating immigration and protecting the civil rights, privileges, and immunities of all persons.

Troopers may not stop or detain or unnecessarily prolong a stop or detention solely for the purpose of verifying a person's immigration status, even if the detention for verification purposes is requested by U.S. Customs and Border Protection ("CBP") or Immigration and Customs Enforcement ("ICE").

Troopers may not contact, stop, or detain a person based on race, religion, national origin, gender, sexual orientation, or economic status, except when it is part of a suspect description linking that person to a particular unlawful incident and said description is timely, reliable, and geographically relevant or when otherwise authorized by law.

C. **DEFINITIONS**

Alien

Any person who is not a citizen or national of the United States.

Civil immigration violation

Unlawful presence of an alien in the United States, without more, is not a criminal immigration violation. Examples of civil, as opposed to criminal, immigration violations may include, but are not limited to, an alien whose visa has expired and has not timely filed for a change of status, or an alien who engages in unauthorized employment in violation of the terms of a visa.

Criminal immigration violation

In certain instances, violations of federal immigration laws are criminal in nature. Examples include but are not limited to violations of: 8 USC § 1324 (smuggling or harboring of certain undocumented aliens); 8 USC § 1325(a) (illegal entry of an alien in the presence of an officer); and 8 USC § 1326 (reentry of aliens previously excluded or deported).

CBP

United States Customs and Border Protection

ICE

United States Immigration and Customs Enforcement

Immigration status

Legal standing of an alien's presence in the United States.

Reasonable period of time

The amount of time necessary for a trooper to diligently pursue a means of investigation that is likely to confirm or dispel the trooper's suspicions of criminal activity.

Reasonable suspicion

A particularized and objective basis for suspecting the particular person stopped of criminality. This assessment is to be made in light of the totality of the circumstances. A trooper may stop and investigate a person based on reasonable suspicion alone but may not arrest.

Unlawfully present

Alien whose stay in the United States has not been authorized by the Department of Homeland Security, or a person who entered and remained in the United States without receiving the required authorization from the Department.

D. GENERAL CONTACTS

1. During a consensual contact, a trooper may inquire about a person's immigration status if this inquiry is not based solely on a person's race, national origin, or language capabilities, and is based on reasonable suspicion.
2. The person contacted does not have to answer questions about immigration status or produce any documentation relating to immigration status, but may choose to do so voluntarily.
3. In a consensual contact, a trooper may ask but may not demand that a person produce immigration documents.

E. PERSONS LAWFULLY STOPPED OR DETAINED

1. If, during a lawful stop or detention, a trooper has reasonable suspicion that a person is unlawfully present in the United States, the trooper may make a reasonable attempt to determine the person's immigration status by using all available facts or evidence, including any government issued identification.

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2. A person's race, national origin, or language abilities are not, by themselves, reasons to suspect that a person is unlawfully present in the United States.
3. If, after reviewing all available facts and evidence, the trooper still reasonably suspects the person is unlawfully present in the United States, the trooper may attempt to verify the person's immigration status by contacting ICE or CBP.
4. A trooper may not stop or detain a person solely for investigating that person's immigration status.
5. A trooper may not prolong a stop or detention solely for purposes of verifying a person's immigration status. This prohibition applies regardless of whether ICE or CBP has been contacted. If the reasonable time necessary to complete the initial stop or detention has expired and ICE or CBP has not yet verified the person's immigration status, then the person must be released unless the officer has reasonable suspicion of additional or different criminal activity. The trooper may, in any case, refer the person's information to ICE or CBP.
6. If a person is lawfully stopped or detained and the trooper has reasonable suspicion of additional or different criminal activity, then the trooper may continue his or her attempt to verify the person's immigration status during, but not beyond, the investigation of the additional or different criminal activity.

F. **CIVIL IMMIGRATION VIOLATIONS**

1. If a trooper believes or has actual knowledge that a person has committed a civil immigration violation, the trooper may not arrest the person for that violation and may not detain the person longer than necessary to complete the contact, even if requested by ICE or CBP.
2. A trooper may not arrest a person solely because the person lacks proper immigration documentation, or chooses not to answer questions that are directed solely to immigration status and which do not have some otherwise related law enforcement purpose.

G. **DRIVER AND PASSENGER IDENTIFICATION**

Nothing in this policy limits a trooper's authority under Montana Code Annotated § 46-5-401 to demand that a lawfully stopped driver produce his or her driver's license and request that a passenger produce identification.