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## CITY AND COUNTY OF DENVER

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### MEMORANDUM

**TO:** Michael F. Bennet, Chief of Staff

**FROM:** Cole Finegan, City Attorney

**DATE:** Wednesday, May 11, 2005

**SUBJECT:** Denver's Policies Regarding Cooperation with Federal Officials on Immigration Matters

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Denver's policies comport with federal law and do not "prevent" Denver law enforcement officers from cooperating with federal officials on immigration matters. There are no executive orders, regulations, or ordinances that establish a "sanctuary policy" in Denver. Congressman Tom Tancredo's statements are inaccurate.

In 2003, the Colorado General Assembly passed the Secure & Verifiable Document Identity Act (the "Act"), prohibiting public entities from accepting identification that is not issued by a "state or federal jurisdiction or recognized by the United States government..." See C.R.S. § 24-72.1-101 et seq. The Colorado General Assembly carved out an important exception in the Act, allowing law enforcement officials to accept other identification documents. This exception allows law enforcement officials to accept other forms of identification, such as foreign issued drivers' licenses.

A. Traffic Tickets Received by Raul Garcia-Gomez

In the past 7 months, Raul Garcia-Gomez received three traffic tickets:

B053127 was issued October 20, 2004, for no driver's license, no insurance, and speeding. On December 20, 2004, he presented a valid Mexican driver's license in court. Other charges were dismissed for lack of probable cause.

B087926 was issued March 7, 2005, for no driver's license and no insurance. He was the victim in a traffic accident. On April 18, 2005, he presented a valid Mexican driver's license in court and the no driver's license charge was dismissed. The case was continued for him to produce proof of "after acquired" insurance. It is currently set for May 19, 2005.

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B068028 was issued April 18, 2005, for disobedience to a traffic signal. At the time of the stop he produced a valid Mexican driver's license. He paid the ticket on April 19, 2005.

None of the cases would have been treated any differently had he produced a valid driver's license from any state or foreign country.

Pursuant to Denver Police Department ("DPD") Operations Manual section 204.05(2)(a), "[n]o individual will be jailed on misdemeanor traffic charges, including D.U.I., unless one of the following criteria is met:

1. The identification of the subject cannot be reasonably verified.
2. The suspect has demonstrated combative behavior resulting in additional charges.
3. The suspect is wanted on an outstanding warrant.
4. The behavior of the suspect was willful or deliberate and threatened or created risk to public safety."

Colorado state law exempts non-residents who possess a valid driver's license "issued to such nonresident by his or her state or country of residence" from the requirement that they have a Colorado driver's license. See C.R.S. § 42-2-102(1)(c).

Colorado state law defines "resident" as "any person who owns or operates any business in this state or any person who has resided within this state continuously for a period of ninety days or has obtained gainful employment within this state, whichever occurs first." See C.R.S. § 42-1-102(81).

The penalty for no driver's license (set by state statute) is a \$35.00 fine and a \$5.20 surcharge.

**B. The Denver Police Department Operations Manual:**

The Denver Police Department Operations Manual, Section 104.52 entitled "Arrest/Detention of Foreign Nationals", is intended to address procedures when a foreign national is arrested or detained by Denver Police. According to the Denver Police Department, it has been in effect for at least the past 20 years. It is our understanding that similar policies and procedures are used by law enforcement agencies around the country. As is standard and legal procedure by law enforcement personnel, an officer must have a "reasonable suspicion" that a crime has been committed in order to stop an individual. An individual's foreign status is not in and of itself "reasonable suspicion" and thus cannot be used as a basis to detain and/or arrest an individual. Additionally, Section 104.52 has never been used or relied on to create a "sanctuary" for any foreign national. Furthermore, in accordance with Section 287 (g) of the Immigration and Nationality Act, in order for a state or local law enforcement organization to have the ability to enforce the federal law as set forth in the Immigration and Nationality Act, that organization

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must enter into an agreement with the United States Attorney General and, among other requirements, agree to provide training regarding relevant federal and immigration laws to its personnel.

Finally, within the Denver Sheriff's Department, there is no practice for detaining a foreign national solely on the basis of their foreign status.

C. Denver's Executive Orders

We are perplexed by Congressman Tancredo's claims that Denver has a "sanctuary policy." There simply is no basis for such a claim. Denver has two executive orders concerning foreign nationals, Executive Order 116 & 119. Denver's executive orders do not compromise law enforcement and do not conflict with federal or state law.

- Executive Order 116 states that "the City will not tolerate unlawful discrimination in any form, and that the City remains firmly committed to the delivery of services to all of its residents." Executive Order 116, issued in 1998 following changes to welfare law, establishes a policy against unlawful discrimination in the City's delivery of services to foreign nationals. Executive Order 116 does not relate to local law enforcement.

Executive Order 116 does nothing to suggest that Denver has a "sanctuary policy" and is irrelevant to this matter.

- Executive Order 119, issued in 2002, establishes the City's policy regarding acceptance of Mexican Consular cards and those of other foreign consulates. Executive Order 119 allowed Denver departments and agencies to accept consular identification cards, including specifically the Mexican Consulate's Matricula Card, for identification purposes only, but also stated that state or federal law could require the City "to obtain different requirements." The Secure and Verifiable Document Identity Act, described above, greatly restricted the application of this Executive Order. Denver enforces its Executive Order 119 consistent with state law.

cc: Denver City Council