

	<b>MARICOPA COUNTY SHERIFF'S OFFICE</b> <b>POLICY AND PROCEDURES</b>	
	<b>Subject</b> <b>IDENTITY THEFT AND</b> <b>FORGERY FORM I-9</b> <b>DOCUMENT USE</b> <b>LIMITATIONS</b>	<b>Policy Number</b> <b>EE-3</b>
		<b>Effective Date</b> <b>05-26-23</b>
<b>Related Information</b> Various Arizona Revised Statutes EA-11, <i>Arrest Procedures</i> GE-3, <i>Property Management and Evidence Control</i> GF-5, <i>Incident Report Guidelines</i> GJ-3, <i>Search and Seizure</i> GJ-6, <i>Criminal Investigations Organization and Administration</i>	<b>Supersedes</b>  EE-3 (05-19-17)	

## PURPOSE

The purpose of this Office Policy is to provide guidelines and procedures for compliance with the *Immigration Reform and Control Act (IRCA) of 1986* during investigation of identity theft and forgery cases under ARS 13-2002, ARS 13-2008 (A), or ARS 13-2009 (A) (3).

## POLICY

It is the policy of the Office to ensure that all investigations, searches, interrogations, arrests, and submittals to prosecutorial agencies comply with the use limitation expressed in the IRCA.

## DEFINITIONS

**Form I-9 Documents:** This includes the federal Form I-9, located on the Department of Homeland Security website at <https://www.uscis.gov/I-9>, as well as any document an employee submits to demonstrate their authorization to work in the United States. There is a list of documents an employee may submit to demonstrate authorization to work on page 3 of 3 of the Form I-9. Any document contained on that page is a Form I-9 document if it was submitted to comply with the Form I-9 process and for no other purpose.

**Investigation:** This includes all stages of law enforcement activity including, but not limited to, interviewing witnesses and suspects, conducting searches, seizing evidence, preparing written reports and submittal packets, and giving testimony at Grand Jury, a Preliminary Hearing, Evidentiary Hearing, or Trial.

**Use Limitation:** A legal term contained within the provisions of IRCA that prohibits state and local law enforcement agencies from using any Form I-9 or document submitted to comply with the Form I-9 employment verification process for any purpose, such as during an investigation.

## PROCEDURES

1. **Investigatory Procedures:**
  - A. During any investigation for identity theft and/or forgery or any investigation involving the seizure of business employment files and documents, the Office shall designate a supervisor to

review all employment paperwork to determine which, if any, of the information or documents may be utilized during the investigation.

1. The supervisor shall:
    - a. Have been previously trained to identify Form I-9 documents;
    - b. Review all employment documents seized by the deputy and determine which, if any, of the documents may be used in the investigation;
    - c. If there are no Form I-9 documents contained in the employee file, the supervisor shall instruct the deputy to proceed normally with the investigation;
  2. If there are Form I-9 documents contained in the employee file, the deputy shall determine which documents are related to the Form I-9 and forward them to the designated supervisor.
  3. The designated supervisor shall review the documents and determine whether, without the Form I-9 documents, reasonable suspicion exists to continue the investigation including, but not limited to:
    - a. Interviewing a suspect;
    - b. Obtaining additional information from an employer; or
    - c. If probable cause exists to make an arrest.
  4. After making a determination regarding reasonable suspicion and/or probable cause, the supervisor shall instruct the deputy to either suspend or continue the investigation, based on the review.
- B. In determining whether the contents of the employee file are Form I-9 documents, the supervisor shall use the following guidelines:
1. The actual Form I-9 and any information contained on the form shall not be used during the investigation.
  2. Any List A, B, or C documents, as shown on page 3 of 3 of the Form I-9, whether physically attached to the Form I-9 or not, shall not be used unless there is a basis to determine the document was submitted for another purpose.
  3. Employment applications, tax forms such as, the federal withholding W-4 and State of Arizona A-4, and direct deposit information are not Form I-9 documents and therefore may be used.
  4. Information from the employer or the employment application may be used to assist in determining whether a List A, B, or C document was submitted for a non-Form I-9 purpose such as a driver's license may be submitted to show authorization to drive.
  5. If a List A, B, or C document was submitted for a purpose other than complying with the Form I-9, it is not a Form I-9 document and may be used for investigative purposes.

6. The information or circumstances used to determine that a List A, B, or C document was submitted for a non-Form I-9 purpose (i.e., deputy's documented interview with employer or the section of the file the deputy used to identify the non-Form I-9 document) shall be documented in the IR.
- C. When seizing employment paperwork of any kind, the deputy shall follow the seizure and impounding guidelines as specified in Office Policies GJ-3, *Search and Seizure*, GE-3, *Property Management and Evidence Control*, and do the following:
  1. Seize the entire employee file, including any and all loose documents, whether the employer maintains the file in one location or in multiple locations; and
  2. Turn over the employee file to the designated supervisor for review.
- D. When interviewing a suspect, a deputy shall not:
  1. Base the decision to conduct an interview on Form I-9 documents;
  2. Use information obtained from Form I-9 documents to conduct the interview; or
  3. Reference Form I-9 documents during the interview.
- E. During an investigation, generally, a deputy shall not:
  1. Use information contained on Form I-9 documents to generate leads;
  2. Base the decision to continue an investigation or initiate a separate investigation based on Form I-9 documents or information contained therein; or
  3. Use Form I-9 documents or information obtained from Form I-9 documents to obtain a warrant for search or arrest.
2. **Submittal Procedures:** When submitting an identity theft or forgery case to any prosecutorial agency, a deputy shall follow the guidelines as specified in Office Policies GF-5, *Incident Report Guidelines*, and when applicable, EA-11, *Arrest Procedures*, and shall not:
  - A. Reference Form I-9 documents in the Probable Cause statement; and
  - B. List Form I-9 documents as evidence of the commission of a crime. However, a deputy may include the Form I-9 documents in the submittal packet, without referencing or relying upon them.
3. **Post-Submittal Procedures:**
  - A. A deputy who receives a "Further" or request for additional investigation from a prosecutorial agency, must abide by the investigatory procedures, as specified in this Office Policy and GJ-6, *Criminal Investigations Organization and Administration*, including supervisory review of any additional employment materials that are seized or reviewed.
  - B. When testifying at Grand Jury, a Preliminary Hearing, Evidentiary Hearing, or Trial, a deputy shall not:

1. Rely on Form I-9 documents or the information contained therein; or
  2. Reference Form I-9 documents or the information contained therein unless in response to a specific question regarding the document itself.
4. **Discretion:** As in the performance of all official duties, deputies shall use their training and discretion when applying this Office Policy.