

January 22, 2018

**Via Electronic Mail**

**Re: Faulty Lexipol Policy Results in \$49,000 Settlement, Confirming Local Police Cannot Prolong Detention for Immigration Authorities**

Dear Official:

The City of Spokane recently settled a federal lawsuit based on a police officer contacting Customs and Border Protection (CBP) and wrongfully detaining an individual until they arrived. The Northwest Immigrant Rights Project (NWIRP) and the ACLU of Washington represented the individual, Gabriel Gomez, in the lawsuit. The City has agreed to modify its policies to make clear that police officers “shall not contact, question, delay, detain or arrest an individual because s/he is suspected of violating immigration laws.” It has also agreed to train police officers on the new policies, and to pay \$30,000 in damages to Mr. Gomez and an additional \$19,000 in attorneys’ fees. The Settlement Agreement and the Modified Policy language can be found [here](#).

This information can help your jurisdiction avoid similar liability. We are available to consult with you as you refine your policies and practices to comply with the United States and Washington State Constitutions.

**Police Officers in Washington Do Not Have Authority to Enforce Federal Immigration Law.**

The court action stemmed from a traffic accident in which Mr. Gomez’s vehicle was struck by a minivan that failed to yield the right of way. The Spokane City police officer on the scene contacted immigration agents to inquire whether the agency had any interest in Mr. Gomez. The officer continued to detain Mr. Gomez at the scene of the accident until the Border Patrol arrived and took him into custody.

The lawsuit alleged that the police officer unlawfully detained Mr. Gomez for purposes of investigating his immigration status and prolonged his detention to assist federal immigration officers, in violation of the Fourth Amendment, the Washington Constitution, and the Washington Law Against Discrimination.

The U.S. Supreme Court has recognized that local police officers lack authority to arrest or detain individuals suspected of civil immigration violations. *Arizona v. United States*, 567 U.S. 387, 407 (2012). City and county police have no authority to enforce federal civil immigration violations because being undocumented is not a crime, and most



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immigration violations are civil in nature. *Id.* It is also well-established that mere unlawful presence is insufficient to support a finding of probable cause of a federal immigration crime. *Id.* Under federal law, local officers may not perform “a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States.” 8 U.S.C. § 1357(g)(1). Although a local officer may perform such functions where the agency has been trained and certified through a “written agreement” under § 1357(g) (also known as “287(g) agreements”), no jurisdiction in Washington has agreed to participate in such an agreement.<sup>1</sup>

Washington’s constitution also prohibits officers from questioning and detaining individuals based on immigration violations. In 2013, a Superior Court in Washington declared that Article I, Section 7, of the Washington Constitution prohibits local law enforcement officers from prolonging an otherwise lawful detention to question those they have stopped about their country of origin, immigration status, or citizenship status. *See Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4 (Wash. Sup. Ct., Aug. 16, 2013). Other courts have evaluated seizures and prolonged detentions based on perceived immigration violations as warrantless arrests. *See e.g., Lunn v. Commonwealth*, 78 N.E.3d 1143, 1155 (Mass., 2017). Washington law does not provide police officers with authority to effect warrantless arrests for federal civil immigration purposes. *See* RCW §10.31.100. There is simply no authority under Washington law for local police to detain someone based on perceived violations of federal immigration law.

Finally, the lawsuit alleged that the police officer’s actions were discriminatory. Here, the police officer called immigration authorities on Mr. Gomez, a Latino man, and prolonged his detention, but took neither action for the white driver. The Washington Law Against Discrimination protects all people in Washington State from discrimination based on race, color and national origin. Contacting immigration authorities based on one’s perceived national origin, race, or color violates Washington law.

### **Spokane Police Department’s Lexipol Policy Exposed the City to Liability.**

The City of Spokane’s policies were based on a deficient Lexipol model immigration policy that unnecessarily exposed the City to liability.<sup>2</sup> The Lexipol policy incorrectly authorized officers to seize individuals and extend detentions for purposes of investigating and aiding in potential civil

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<sup>1</sup> Studies have shown that 287(g) agreements are ineffective and undermine public safety. *See* Doris Marie Provine et al., *Policing Immigrants, Local Law Enforcement on the Front Lines* (2016).

<sup>2</sup> *See* <https://www.aclu-wa.org/docs/aclu-wa-annotated-lexipol-immigration-policy> and attached annotated Lexipol policy outlining its deficiencies.

immigration enforcement. The problems with the policy are compounded by the indemnity clause in Lexipol contracts, which requires local jurisdictions to pay the costs when the policy is found unlawful.

The Spokane Police Department has now adopted a new policy consistent with the U.S. and Washington Constitutions, and has agreed to train its officers accordingly. We urge your police department to update its policies, trainings, and guidelines to avoid similar liability.

We can be a resource for any additional information you may need on these immigration-related matters. We can also assist in the drafting and development of policies that formalize an appropriate set of rules on these issues (e.g. policies that limit inquiries by police regarding immigration status). Please do not hesitate to contact us if you have any questions. Thank you for your time and consideration.

Sincerely,



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