

## Immigration Violations

### PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Washington State Master Police Department for investigating and enforcing immigration laws.

### POLICY

It is the policy of the Washington State Master Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

### VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or Washington Constitutions.

### ENFORCEMENT

An officer may detain an individual when there are facts supporting a reasonable suspicion that the individual entered into the United States in violation of a federal criminal law. Federal authorities shall be notified as soon as possible and the detained individual shall be immediately released if the federal authorities do not want the person held. An officer should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant.

### CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who enters into the United States illegally has committed a misdemeanor (8 USC § 1325(a)). Generally, an alien who initially made a legal entry into the United States but has remained beyond what is a legal period of time has committed a federal civil offense.

Reasonable suspicion that a criminal immigration violation has occurred shall not be based on race, color, national origin or any other generalization that would cast suspicion on or stigmatize any person, except to the extent permitted by the United States or Washington Constitutions. Instead, the totality of circumstances shall be used to determine reasonable suspicion, and shall include factors weighing for and against reasonable suspicion.

Factors that may be considered in determining reasonable suspicion that a criminal immigration violation has occurred may include, but are not limited to:

- (a) An admission that the person entered the United States illegally.

**Commented [EH1]:** 1) It is an open question whether or not local police officers have the authority to enforce federal criminal immigration laws, or whether they are preempted from doing so. The US Supreme Court explicitly left that question open in *Arizona v. U.S.*, 132 S.Ct. 2492, 2509 (2012). Moreover, the Court noted: "Detaining individuals solely to verify their immigration status would raise constitutional concerns." *Id.*  
2) How would an officer obtain these facts without engaging in an inquiry regarding person's immigration status? Such inquiries violate Article 1, Section 7 of the WA Constitution. See *Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4 (Wash. Sup. ct., Aug. 16, 2013).

**Commented [EH2]:** 1) It will be unclear to most local law enforcement what constitutes a federal civil offense (which they have no authority to enforce) or a federal criminal offense (which they may not have authority to enforce). The US Supreme Court has said that local officers lack authority to arrest individuals suspected of civil immigration violations. *Arizona v. U.S.*, 132 S.Ct. at 2505-07. As stated above, it's also unclear whether local police have the authority to enforce federal criminal immigration laws without a warrant.  
2) This is confusing and suggests that police can make arrests based on a suspected violation of the federal misdemeanor 8 USC 1325. Under WA law, police officers do not have the authority for warrantless arrest for state or federal misdemeanors. see RCW 10.31.100. Even federal immigration agents have limited authority for warrantless arrests of noncitizens. See *Arizona v. US*, 132 S.Ct. at 2506.  
3) There are more than a dozen immigration-related federal criminal offenses. Officers have no training or expertise in what constitutes a federal criminal immigration offense and risk improperly enforcing the law.

Police Department  
Policy Manual

Immigration Violations

- (b) Reason to suspect that the person possesses immigration documentation that is forged, altered or otherwise indicative that the person is not legally present in the United States.
- (c) While a lack of English proficiency may be considered, it should not be the sole factor in establishing reasonable suspicion. When practicable, reasonable effort should be made to accommodate persons with limited English proficiency.
- (d) Information received from Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) that the person has committed a criminal immigration violation.
- (e) Other factors based upon training and experience.

**IMMIGRATION CHECKS**

Absent reasonable suspicion, officers will not inquire into the immigration status of any person except when the person is suspected of committing any felony, any sex offense, any misdemeanor involving a weapon, identity theft, or any offense or conduct that poses a danger to the community.

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer)
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

An officer shall verify from a 287(g) certified officer, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, the officer should notify a supervisor as soon as practicable. No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

An officer is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

**SUPERVISOR RESPONSIBILITIES**

When notified that an officer has detained a person and established probable cause to believe the person has violated a criminal immigration offense, the supervisor should:

- (a) Confirm that the detained person's immigration status was properly verified.
- (b) Ensure that the detained person is taken into custody when appropriate. Take any additional steps necessary that may include, but are not limited to:
  - 1. Transfer to federal authorities.
  - 2. Lawful arrest for a criminal offense or warrant.

**Commented [EH3]:** Local LEAs do not have the training or capacity to make determinations about what is a valid immigration documentation and what is not. An officer risks detaining someone who does have lawful documents or status based on an erroneous NCIC database hit.

**Commented [EH4]:** 1) In *Arizona v. US*, the Court also found that it is not a crime to be undocumented, and that arresting someone based on possible deportability does not meet the 4<sup>th</sup> amendment requirements of probable cause. *Id.* at 2505. Therefore this section risks encouraging officers to make warrantless arrests lacking probable cause. 2) While an officer may learn that someone is undocumented through a database (eg. NCIC), this information is insufficient to establish probable cause because the database is known to be inaccurate and is populated with mostly civil immigration information. See AGO's Guidance, p. 19-20; see also, *Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 465, 468 (4th Cir. 2013).

**Commented [EH5]:** The WA Constitution, in particular Article 1, section 7, affords greater privacy protections than the 4<sup>th</sup> Amendment of the US Constitution. One WA court has already found that prolonging a detention to inquire into immigration status violates the WA Constitution. See *Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4 (Wash. Sup. ct., Aug. 16, 2013).

**Commented [EH6]:** This section is confusing because there is not a single jurisdiction in WA that has entered into a 287(g) agreement. See: <https://www.ice.gov/factsheets/287g>. Thus this does not apply to any officer in WA. Moreover, WA Governor Inslee issued an Executive Order (17-01, section 9) on February 23, 2017, prohibiting WA state agencies from entering into 287(g) agreements. [http://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_17-01.pdf](http://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf)

**Commented [EH7]:** 1) Under the WA constitution, an officer may not inquire into one's immigration status. *Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4 (Wash. Sup. ct., Aug. 16, 2013). 2) Even if the officer learns of someone's status through a hit on the NCIC database, that alone is insufficient to establish probable cause for a federal criminal offense. Courts have found that the NCIC database is inaccurate and includes mostly information about civil immigration violations. See AGO's Guidance p. 19, and *Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 465, 468 (4th Cir. 2013).

Police Department  
Policy Manual

*Immigration Violations*

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**ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT** Generally, an officer will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges. Notification will be handled according to jail operation procedures. No individual who is otherwise ready to be released should continue to be detained solely for the purpose of notification.

**ICE REQUEST FOR ASSISTANCE**

Requests by ICE, or any other federal agency, for assistance from this department should be directed to a supervisor. The Department may provide available support services, such as traffic control or peacekeeping efforts, to ICE or other federal agencies.

**INFORMATION SHARING**

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):

- (a) Sending information to, or requesting or receiving such information from ICE
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state or local government entity

**IMMIGRATION HOLDS**

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.

**U VISA AND T VISA NON-IMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a visa may be completed by an officer in order for a U visa to be issued.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by an officer in order for a T visa to be issued.

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigation Unit supervisor assigned to oversee the handling of any related case. The Investigation Unit supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.

**Commented [EH8]:** A judicial warrant is the only accompanying documentation that satisfies the requirements of the 4th Amendment. Administrative warrants (eg. I-200) are not reviewed by a neutral magistrate. A prior order of deportation may indicate a civil immigration offense, but is insufficient to establish probable cause for a federal crime. See [ILRC's Advisory on ICE Warrants](#). See AGO's guidance p. 15.

**Commented [EH9]:** This is confusing - the completion of a certification does not directly lead to the grant of immigration status. A certification does not result in U non-immigrant status. A certification only confirms that a survivor was the victim of a crime and reasonably cooperated in the investigation. USCIS decides whether the application for U non-immigrant status will be granted and may disagree with the certifying agency. In other words, a certifying agency is not responsible for granting someone immigration status.

**Commented [EH10]:** This is also confusing. The request is not for assistance in applying for a U/T visa; the request is for the certification that will be part of an application requesting U/T non-immigrant status from USCIS. The police would not assist an immigrant in applying for a U/T visa.

## Police Department

Policy Manual

### *Immigration Violations*

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- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
  - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

#### **TRAINING**

The Training Manager shall ensure that all appropriate members receive immigration training.