

Immigration Violations

428.1 PURPOSE AND SCOPE

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Officers shall not contact, question, delay, detain or arrest an individual because s/he is suspected of violating immigration laws. Officers should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them due to that immigration status. Undocumented presence, in and of itself, is not a criminal violation.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state, or local government entity (Title 8 U.S.C. § 1373 and 8 U.S.C. § 1644).

The immigration status of individuals is generally not a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 DEPARTMENT POLICY

The Department of Homeland Security has primary jurisdiction for enforcement of the provisions of Title 8, United States Code (U.S.C.) dealing with illegal entry. When assisting DHS at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, U.S.C., §§ 1304, 1324, 1325 and 1326, this department may assist in the enforcement of federal immigration laws.

However, a request from DHS does not provide legal basis to stop or detain an individual, or to prolong the detention of an individual. Officers must have an independent legal basis to stop or detain any individual. It is the policy of this department that we do not ask about immigration status unless it is directly related to the crime being investigated.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). SPD staff should not call ICE on their behalf. The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of such immigration violations under Title 8, U.S.C.

428.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the basis for contact, detention or arrest.

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428.3.2 SWEEPS

The Spokane Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, sex (including pregnancy, gender identity, and sexual orientation), age (40 or older), religion, creed, color, national origin, ancestry, disability, marital status, familial status, genetic information, veteran or military status.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, sex (including pregnancy, gender identity, and sexual orientation), age (40 or older), religion, creed, color, national origin, ancestry, disability, marital status, familial status, genetic information, veteran or military status.

428.3.3 DEPARTMENT OF HOMELAND SECURITY (DHS) REQUEST FOR ASSISTANCE

If a specific request is made by DHS or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

428.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

428.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (RCW 10.31.100). A field supervisor shall approve all such arrests.

428.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

Any person detained for an infraction pursuant to the authority of RCW 46.61.021, may be detained, upon approval of a supervisor, for a reasonable period for the purpose of determining the person's true identity.

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428.4 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U and T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services must be completed on the appropriate U.S. Department of Homeland Security (DHS) Form I-918B or I-914B by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the investigations sergeant assigned to supervise the handling of any related case. The investigations sergeant should do the following:

- A. Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- B. Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918B/I-914B can be found on the U.S. DHS web site at <http://www.uscis.gov/portal/site/uscis>.
- C. Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- D. Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- E. Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.