

Spokane Police Department

Spokane Police Department Policy Manual

Immigration Laws and U-Visa/T-Visa

POLICY 423 - Spokane Police Department

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423.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for members of the Spokane Police Department relating to immigration laws, interactions with federal immigration officials, and contact with individuals who may be immigrants.

423.2 POLICY

It is the policy of the Spokane Police Department that all members make personal and professional commitments 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, recognizing the dignity of all persons, regardless of their national origin or immigration status. It is the policy of the Department that Department members shall not ask about immigration status of any individual unless it is directly related to a crime being investigated involving that individual.

Department members shall not inquire into, collect, record, or maintain information regarding an individual's immigration status, citizenship status, nationality, or place of birth unless such information is directly connected to an investigation of a violation of state or local criminal law.

Department members shall not inquire of an individual who is under arrest regarding his/her immigration or citizenship status to comply with consular notification. If a Department member becomes aware of the individual's immigration or citizenship status, the Department member shall comply with consular notification.

Unless immigration status is relevant to a criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being foreign-born and not lawfully in the United States shall not be the basis for contact, detention or arrest.

423.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the Department of Homeland Security (DHS). SPD staff shall not call DHS on their behalf. DHS has primary jurisdiction for enforcement of such immigration violations under Title 8, U.S.C.

423.4 VICTIMS AND WITNESSES

When reporting crime and cooperating in an investigation of criminal activity, Department members shall not inquire of the reporting victim or witness' immigration status. 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, ethnicity, immigration status, or national origin in any way

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that would violate the United States or Washington constitutions. If the immigration status of a victim or witness somehow becomes known to a Department member, the member shall not take enforcement action against the victim or witness based upon it.

423.5 KEEP WASHINGTON WORKING ACT (KWWA) COMPLIANCE

423.5.1 PURPOSE

The Spokane Police Department recognizes that enforcement of federal civil immigration law is the responsibility of the federal government. Unauthorized presence in the United States, standing alone, is not a violation of state or local law and is not a matter for police action.

423.5.2 DEFINITIONS

Court Order or Judicial Warrant: a directive issued by a judge or magistrate under Article III of the US Constitution or Article IV of the Washington Constitution. These include, but are not limited to:

- Judicially Authorized Warrants
- Judicially Enforced Subpoenas

Federal Immigration Authority: encompasses any on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement. "Federal immigration authority" includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

Immigration and Citizenship Status: such status has been established to an individual under the Immigration and Nationality Act.

Personal Information: Excludes Immigration and Citizenship Status. Includes but is not limited to:

- Names
- Dates of Birth
- Addresses
- GPS Locations
- Telephone Numbers
- Email Addresses
- Social Media Handles
- Social Security Numbers
- Driver's License Numbers
- Parents' or Affiliates' Names
- Biometric Data
- Other Personally Identifiable Information.

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423.5.3 FEDERAL IMMIGRATION AUTHORITY PRESUMPTION

Department members shall presume that any federal immigration authority acting in an official capacity is engaged in immigration enforcement unless clearly established otherwise.

423.5.4 PROHIBITED ACTIVITIES RELATED TO IMMIGRATION ENFORCEMENT

Department members shall not:

- (a) Engage in, assist, or participate in civil immigration enforcement activities.
 - 1. Requests for assistance: If a request for assistance is made by federal immigration authorities, such request must be approved by the Chief of Police or designee with the exception to render aid in the result of an emergency as outlined in 423.8.
- (b) Conduct investigations, interviews, questioning, surveillance, or enforcement actions solely for the purpose of enforcing federal civil immigration laws.
- (c) Arrest, detain, prolong detention, or otherwise hold an individual solely to determine immigration status.
- (d) Arrest, detain, prolong detention, or otherwise hold an individual solely on the basis of:
 - 1. A civil immigration warrant;
 - 2. An ICE administrative warrant;
 - 3. An immigration detainer;
 - 4. A notification request; or
 - 5. Any other civil immigration enforcement request.
- (e) Transfer custody of an individual to a federal immigration authority absent a judicial warrant or court order signed by a judge or magistrate.
 - 1. Department members shall not transfer custody to federal immigration authorities. Members shall transport any individual with such judicial warrant or court order to the Spokane County Detention Facility and book them on the warrant or order.
 - 2. Department members shall not disclose the location of a member or individual in custody to federal immigration authorities. Any such disclosure to the federal immigration authorities shall be made by the Spokane County Detention Facility.
 - 3. Any transfer to federal custody would be facilitated after a Department member has relinquished custody to the Detention Facility.
- (f) Participate in immigration sweeps or concentrated enforcement operations targeting individuals based on actual or perceived immigration status.
- (g) Investigate, interview, or conduct police activities within the presence or hearing distance of federal immigration authorities who are not:
 - 1. Directly connected to the Department's investigation into violations of state or local criminal laws.
 - 2. Necessary to perform the Department member's duties.
- (h) Share any U & T visa requests or any submissions of personnel information outside of the prosecuting authority without a court order, judicial warrant, or agency executive approval, written, consent by the individual or his/her legal guardian, or as required by law.

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423.5.5 USE OF DEPARTMENT RESOURCES PROHIBITED

Department resources shall not be used or shared to support or assist civil immigration enforcement. Department resources include, but are not limited to:

- (a) Personnel;
- (b) Vehicles;
- (c) Equipment;
- (d) Databases;
- (e) Records;
- (f) Communications systems;
- (g) Intelligence products; and
- (h) Personal information obtained through official duties.

423.5.6 INVESTIGATIVE AND PERSONAL INFORMATION

Department members shall not provide investigative or personal information, nor release dates if known to federal immigration authorities for purposes of civil immigration enforcement except as required by judicial warrant, court order, or valid public records request.

Investigative information includes:

- (a) Police reports;
- (b) Witness statements;
- (c) Victim information;
- (d) Intelligence products;
- (e) Surveillance information;
- (f) Body-worn camera recordings;
- (g) Photographs; and
- (h) Any non-public criminal justice information.

If any personal information or release dates are disclosed to federal immigration authorities the Chief of Police shall be notified. Such disclosures shall be logged pursuant to 423.5.12 and made publicly available.

423.5.7 PRIOR WRITTEN APPROVAL TASK FORCES AND INTERAGENCY AGREEMENTS

Department members shall not participate in any operation, task force activity, investigation, information-sharing effort, or criminal enforcement activity involving federal authorities who support immigration enforcement actions without prior written approval from the Chief of Police or designee. Approval shall be documented and maintained in accordance with Department retention records requirements.

Data Sharing Restrictions: All agreements involving external access to Department information, systems, or resources shall include provisions prohibiting the use of Spokane Police Department information for civil immigration enforcement purposes. Such provisions shall be approved by the Chief of Police or designee.

423.5.8 PROHIBITION AGAINST 287(g) AGREEMENTS:

Neither the Spokane Police Department nor its employees shall enter into, participate in, or operate under any agreement authorized by 8 U.S.C. § 1357(g), commonly referred to as a "287(g) Agreement."

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423.5.9 ACCESS TO PERSONS IN CUSTODY

Federal immigration authorities shall not be granted access to interview any individual in Department custody concerning immigration matters unless:

- (a) A judicial warrant or court order authorizes such access; or
- (b) The individual voluntarily provides informed written consent.

To establish consent, the individual shall be provided:

- An oral explanation in a language understood by the individual;
- A written consent form in a language understood by the individual;
- Notice that the interview is voluntary;
- Notice that refusal will not result in punishment or retaliation; and
- Notice that the individual may request legal counsel.
 - 1. If the individual is booked into jail, no interview shall occur until after a first appearance in court and an attorney has been appointed or the person has chosen to proceed pro se.
 - 2. If the individual is released and not booked into jail, the Department member shall not notify federal immigration authorities in advance of the release.

423.5.10 CONSULAR NOTIFICATION

While Department members shall not inquire as to an arrestee's immigration or citizenship status, should a Department member become aware of an arrestee's immigration or citizenship status, the Department member will comply with consular notification as outlined below in Policy 422.7.1. Within seventy-two (72) hours of detention, the arrestee shall be advised verbally and in writing:

- (a) They have the right not to disclose nationality, citizenship, or immigration status; and
- (b) Disclosure of such information may result in civil or criminal immigration enforcement.

423.5.11 LANGUAGE SERVICES

Department members shall not obtain translation, interpretation, language training, or language services from federal immigration authorities. Approved language service providers shall be utilized whenever interpretation or translation services are required as outlined in Policy 370.8.

423.5.12 DISCLOSURE LOG

The Department shall maintain a record of:

- (a) Requests for immigration or citizenship information;
- (b) Requests from federal immigration authorities for assistance;
- (c) Requests for access to individuals in custody;
- (d) Disclosures of immigration-related information; and
- (e) Consular notification requests and contacts.

Records shall be maintained in accordance with applicable public records laws.

423.5.13 COMPLIANCE AUDITS

The Professional Standards Unit shall conduct periodic audits to ensure compliance with this policy.

Audits shall review:

- (a) Requests for assistance from federal immigration authorities;
- (b) Request for immigration and citizenship information by federal immigration authorities;
- (c) Requests for in-custody access by federal immigration authorities;
- (d) Consular notifications;
- (e) U-Visa and T-Visa certifications

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423.6 IMMIGRATION SWEEPS

The Spokane Police Department does not conduct sweeps or other concentrated efforts to detain individuals suspected of being foreign-born and not lawfully in the United States.

423.7 FEDERAL AGENCY REQUESTS FOR EMERGENCY ASSISTANCE

The Department will respond to requests for emergency assistance when necessary to protect life and public safety, regardless of the requesting agency. Such assistance may include responding to assaultive behavior, threats of violence, medical emergencies, significant public disorder, or other circumstances presenting an immediate threat to the safety of community members, officers, or other persons. Such assistance shall not constitute participation in federal immigration enforcement. Department personnel shall not assist in immigration enforcement activities, and no request for emergency assistance shall be used as a basis to initiate or facilitate immigration enforcement. A supervisor shall respond and ensure Department personnel are released as soon as the emergent public-safety need has ended.

423.8 POLICE CONTACTS WITH INDIVIDUALS FROM FOREIGN COUNTRIES FOR CRIMINAL VIOLATIONS

423.8.1 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.

423.8.2 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.

423.8.3 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.

423.9 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

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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.

Pursuant 7.98.020, the Spokane Police Department is required to sign and complete a U-Visa certification when a crime victim, or their certified representative, requests one; is a victim of a criminal activity; and has been, is being, or is likely to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity or a form I-914 (T-Visa) if the victim is or has been the victim of trafficking and if over the age of eighteen, when the victim has complied with any reasonable requests from law enforcement in any related investigation or prosecution for acts of trafficking. The Department shall not use this process to compel cooperation from a victim.

In addition, the Spokane Police Department is required to process the certification within ninety (90) days of the request. Under the following circumstances, the process must be expedited:

- (a) If the individual is subject to federal removal proceedings, the request shall be processed within fourteen (14) days of receipt.
- (b) If the individual or his/her child(ren) will reach the age of twenty-one (21) before the ninety (90) day processing deadline, the request shall be processed such that it is executed fourteen (14) days prior to the individual turning twenty-one (21).

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded immediately 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.
- (a) 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. No further dissemination of the request and any personal information submitted shall be made beyond the prosecutor.
- (e) The Chief of Police is the only certifying official for the Spokane Police Department.

IF YOU HAVE A QUESTION ABOUT THIS POLICY, CONTACT DIRECTOR J. MacCONNELL AT 509-625-4109.