

Immigration

413.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Richland Police Department relating to immigration laws and interacting with federal immigration officials (RCW 43.10.315).

413.2 DEFINITIONS

Federal Immigration Authority – Definition 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 - Defined "as such status has been established to an individual under the Immigration and Nationality Act."

Personal Information - Definition includes but 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

Court Order or Judicial Warrant - Defined as 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:

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- Judicially Authorized Warrants
- Judicially Enforced Subpoenas

413.3 POLICY

It is the policy of the Richland 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 national origin or immigration status. As a result, members of the Richland Police Department shall not enforce federal immigration laws, i.e. those laws set forth in Title 8 U.S. Code (USC) or in the U.S. Immigration and Nationality Act (INA), except for those offenses that are criminal and serious in nature due to their classification as federal felonies.

413.4 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 not in any way that would violate the United States or Washington constitutions.

413.4.1 DETERMINATION OF IMMIGRANT STATUS

Members shall not request documents relating to a person's civil immigration status or inquire into the immigration status of an individual unless necessary to investigate criminal activity (e.g. harboring, smuggling, terrorism). Members may continue to confirm identity under state law which lists valid forms of identification related to drivers' licenses and permit requirements (RCW 46.20.035).

413.5 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS AND POLICIES PROHIBITED

Federal Immigration Authority Presumption- Agency personnel shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.

Civil Immigration Enforcement Prohibited - Agency personnel shall not in any way engage in or assist in civil immigration enforcement.

Civil Immigration Enforcement with Agency Resources Prohibited - Agency resources, including personal information, shall not be used or shared to assist civil immigration enforcement.

Law Enforcement Action based on Birthplace and Citizenship Prohibited - Agency personnel shall not initiate or participate in law enforcement action based solely on an individual's immigration or citizenship status of place of birth.

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Immigration Inquiries Prohibited - Agency personnel shall not inquire about immigration or citizenship status or place of birth unless directly connected to a violation of state or local law.

Protecting Investigative Information - Agency personnel shall not investigate, interview, or similar within the presence or hearing distance of federal immigration authorities who are not:

- Directly connected to an Agency investigation into the violation of state or local criminal law; and
- Necessary to perform the officer's duties.

Civil Immigration Detention Prohibited - Agency personnel shall not hold any person solely to determine their citizenship or immigration status unless that information is directly connected to the Agency's investigation into a violation of state or local law.

Agency personnel shall not transfer custody of an individual to federal immigration authorities or similar without a judicial warrant or court order. Warrants must be confirmed valid and judicial before the agency takes action to comply. An agency's warrant confirmation process shall include:

- Obtaining a copy of the warrant.
- Identifying the criminal charge and federal law citation.
- Identifying the issuing court.
- Verifying that the warrant includes the correct date and time.
- Confirming the warrant is signed by the correct judicial official
- Personnel shall not disclose the location of an officer or individual until the warrant is confirmed.

Directing Federal Immigration Requests for Assistance - All requests for assistance from federal immigration authorities or similar are directed to the agency executive or designee.

Prior Approval Required for Immigration Enforcement - Agency personnel shall not take part in joint operations, task forces or other activities that support immigration enforcement actions without prior approval in writing from the Law Enforcement agency executive or designee

Exceptions - Nothing in this policy is meant to prevent or deter Richland Police Officers from responding to an emergency situation should a federal immigration authority call for assistance. Once the scene is made safe, officers are expected to reevaluate the need to remain on scene and to notify a supervisor as soon as it is safe to do so.

413.6 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; RCW 2.28.310):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials

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- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

413.7 WASHINGTON STATE IMMIGRATION RESTRICTIONS

Members shall not (RCW 10.93.160):

- (a) Inquire into or collect information about an individual's immigration or citizenship status, or place of birth unless there is a connection between such information and an investigation into a violation of state or local criminal law.
- (b) Provide information pursuant to notification requests from federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.
- (c) Provide nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by state or federal law.
- (d) Give federal immigration authorities access to interview individuals about a noncriminal matter while they are in custody, except as required by state or federal law, a court order, or written consent of the individual.
- (e) Allow a federal immigration authority to conduct an interview regarding federal immigration violations with a person who is in custody if the person has not consented in writing to be interviewed. In order to obtain consent, the person shall be provided with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present. Additionally, both the oral explanation and consent form shall be provided in a language understood by the person or by using an approved language service.
- (f) Detain individuals solely for the purpose of determining their immigration status.
- (g) Take a person into custody or hold a person in custody:
 - 1. Solely for the purposes of determining immigration status
 - 2. Based solely on a civil immigration warrant issued by a federal immigration authority
 - 3. On an immigration hold request

413.7.1 SCHOOL RESOURCE OFFICERS

Members who are school resource officers shall not (RCW 10.93.160):

- (a) Inquire or collect information about an individual's immigration or citizenship status, or place of birth.
- (b) Provide information pursuant to notification requests from federal immigration officials for the purposes of civil immigration enforcement, except as required by law.

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413.8 EQUAL TREATMENT FOR PERSONS IN CUSTODY

Equal Access to Rights and Services - Persons in agency custody shall receive the same rights, services, opportunities, etc., regardless of nationality or immigration status. Rights, etc. shall not be limited based on a request by federal immigration authorities or immigration documentation.

Visitation Information Protected - Agency personnel shall not share visitors' personal information with federal immigration authorities or similar without a court order, judicial warrant, or agency executive approval. The agency shall minimize information collection and not collect immigration or citizenship status from persons visiting individuals in custody.

Social Visitation Protected - The agency shall not limit a person's access to social visitation on the basis of a person's inability to effectively communicate through video visitation.

413.9 CONSULAR NOTIFICATION

Notification of Nondisclosure Right - Within 72 hours of detention, Agency personnel must inform all detained persons, verbally and in writing of:

- The right to refuse to disclose information about status and nationality; and
- That any disclosure may result in civil immigration enforcement.

Facilitating Consular Communication - If aware that a detained person is a foreign national, Agency personnel must provide consular notification advisement as legally required and facilitate access and communication by the foreign consul.

413.10 RESPONDING TO INFORMATION REQUESTS

Personal Information Disclosure Prohibited - Agency personnel shall not disclose personal information or release dates to federal immigration authorities or similar except when required by a court order, judicial warrant, or under the Public Records Act.

Responses shall be processed according to Agency PRA procedures.

Recording Personal Information Disclosures - Any disclosures of personal information or release dates to immigration authorities or similar shall be reported to the agency executive and logged. The disclosure log shall be a public record and made publicly available.

413.11 DATA COLLECTION PROHIBITED

Requesting Immigration Documents Prohibited - Agency personnel shall not request information or documents determining a person's immigration or citizenship status or place of birth unless directly connected to an officer's investigation into a violation of state or local law.

Completing Fingerprint and Biometric System Submissions - Agency personnel processing fingerprint cards or Automated Biometric Identification System submissions shall enter a

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placeholder term such as "Unknown" for fields addressing immigration or citizenship status unless the information is otherwise known.

Crime Victim and Witness Protection - Agency personnel shall not take enforcement action against or use immigration or citizenship status or place of birth against crime victims or witnesses.

Language Services from Federal Immigration Authorities Prohibited - Agency personnel shall use approved language services and shall not accept language services from federal immigration authorities or similar.

413.12 IMMIGRATION ENFORCEMENT CONTRACTS

287(g) Agreements Prohibited - Agency personnel shall not enter into any agreement which would grant federal immigration enforcement authority or powers, including 287(g) agreements.

Inter-Agency Agreement Protections - All agency agreements to participate in multi-jurisdictional activity (ex: task forces) shall include legally binding assurances that all other parties shall not use or share agency resources, personnel, or information with 3rd parties or to support immigration enforcement.

Federal Inter-Agency Agreement Protections - Agency personnel shall not engage in any multi-jurisdictional activity or agreement with federal immigration authorities or similar without legally binding assurances in writing that no agency resources, personnel, or information will be used to support civil immigration enforcement. The agreement must be pre-approved by the local Law Enforcement agency executive.

Approval Required for Activities with Federal Immigration Authorities - Agency personnel shall not assist or participate in any task forces or other activities with any person engaging in immigration enforcement without written pre-approval of the agency executive.

Immigration Detention Agreements Prohibited - The agency shall not enter into a detention agreement with federal immigration authorities or similar.

Database Access Protections - All agreements permitting access to agency databases or information shall include legally binding assurances that all other parties shall not use or share information or database access with any 3rd parties supporting or engaged in immigration enforcement.

413.13 U VISA AND T VISA NONIMMIGRANT 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)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

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

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (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 (RCW 7.98.020).
 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.

413.13.1 U AND T VISA CERTIFICATION (AGO REQUIREMENTS)

U&T Visa Confidentiality - The fact of U&T Visa requests and any submitted personal information shall not be shared outside the agency, agency counsel, and prosecuting attorney without a court order, judicial warrant, agency executive approval, written consent by the subject or their legal guardian, or as required by law.

Compelling Cooperation Prohibited - Agency personnel shall not use U&T Visa certifications to compel cooperation.

Processing Requirements - Agency Officers shall forward U&T Visas certifications to the agency executive or designee without delay. U&T Visa certification requests shall be processed within 90 days of receipt unless circumstances require faster processing. U&T Visa certification requests for persons in federal removal proceedings shall be processed such that they are executed within 14 days of request. U&T Visa certifications will be expedited upon request if a person or their children will reach age 21 before the 90-day processing deadline. The agency shall process the certification such that it is executed 14 days prior to the individual turning 21.

413.13.2 TIME FRAME FOR COMPLETION

The Investigation Division supervisor should ensure that the certification for the U visa or T visa is processed within 90 days of the request, unless the victim is in federal immigration removal proceedings, in which case the certification shall be executed within 14 days after the request is received. The certification may be withdrawn only if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the Department (RCW 7.98.020).

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413.13.3 U VISA AND T VISA DOCUMENTATION AND REPORTING

The Investigation Division supervisor shall keep written documentation regarding the number of certification forms that are (RCW 7.98.020):

- (a) Requested by a victim.
- (b) Signed.
- (c) Denied.
- (d) Withdrawn.

The Investigation Division supervisor or the authorized designee should ensure that the information collected regarding certification forms is reported annually to the Office of Crime Victims Advocacy (RCW 7.98.020).

413.13.4 RELEASE OF INFORMATION

Personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification shall not be disclosed except when allowed by law (RCW 7.98.020). See also the Records Maintenance and Release Policy.

413.14 COMPLIANCE MONITORING & PUBLIC COMMUNICATION

Agency Internal Auditing - Law enforcement conducts audits to document and track instances and outcomes of at least:

- Requests for immigration and citizenship information;
- Requests for assistance with immigration enforcement;
- Requests from federal immigration authorities or similar for access to individuals in agency custody; and
- Requests for and contacts with foreign consuls.

Public Availability of KWW Policies - The Richland Police Department will ensure that these policies are posted on the city's website for public viewing and inquiry. Officers will be available to answer public questions.

413.15 TRAINING

The Training Sergeant should ensure that officers receive annual training on this policy.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration offense has been committed
- (c) Statutory limitations on immigration enforcement.
- (d) U visa and T visa certification training.

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- (e) Appropriate information sharing pursuant to 8 USC § 1373.
- (f) Keep Washington Working (KWW) - specific training
- (g) SROs are trained on their role within school policies and procedures pertaining to the presence of federal immigration authorities at a school.