

GUIDANCE CONCERNING IMMIGRATION ENFORCEMENT



Washington State Office
of the Attorney General
BOB FERGUSON
April 2017

Originally Published April 2017

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Vision: The Office of the Attorney General will be the best public law office in the United States.

Values: All staff in the Office of the Attorney General are guided by the following core values:

- We will deliver high quality legal services and remember that we serve the people of Washington.
- We will conduct ourselves with integrity, professionalism, civility, and transparency.
- We will promote a collegial, inclusive, and diverse workplace that values, respects and supports our employees.

Disclaimer

The information in this guide is provided as a resource for general education purposes and is not provided for the purpose of giving legal advice of any kind. This guide does not represent the legal opinions of the Attorney General's Office. Readers should not rely on information in this guide regarding specific applications of the laws without seeking private legal counsel or legal assistance.

The purpose of this guidance is to describe for local government agencies and other entities in Washington State key elements of the legal landscape governing immigration enforcement.¹

The United States Supreme Court recognized in *Arizona v. United States*, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.”² In addition, noncitizens—like other Washingtonians—are afforded certain rights by the Washington and United States Constitutions. As explained in more detail below, local government agencies retain significant discretion regarding whether and how to participate in federal immigration enforcement. Local agencies nonetheless must adhere to the requirements and prohibitions of the Washington and United States Constitutions and federal and state laws in serving the public, regardless of whether an individual is lawfully present in the United States.

In light of concerns expressed by many local governments and other entities about protecting immigrants’ rights and appropriately responding to federal authorities, **Appendix A and Appendix B of this guidance offer samples and model language that can be used to enact laws and policies on how local government entities can and should respond to federal requests for assistance with immigration enforcement.** The Office of the Attorney General believes that effective implementation of the policies set forth in this guidance can help foster a relationship of trust between local agencies and immigrants that will promote public safety for all Washingtonians.

The purpose of this guidance is to provide general information about limitations on federal immigration enforcement power and the authority of local government agencies related to immigration. This guidance is based on current law, which may be rapidly changing, and it is not legal advice. As always, local agencies and other entities are encouraged to discuss all legal issues and questions with their attorneys.

Appendix C provides resources that local government entities can provide to individuals who might be impacted by increased levels of immigration enforcement.

Appendices D, E, and F provide additional information and sample forms.

¹The New York Attorney General’s Office has published similar guidance and we are grateful to that Office for allowing us to adapt their work to Washington State. We are also grateful for resources created by Washington’s Municipal Resource Services Center.

²132 S. Ct. 2492, 2505 (2012).

Dear Washingtonians:

Washington strives to be a welcoming place for immigrants and refugees. Recent changes in federal immigration policies and practices have caused needless fear and uncertainty in our communities. Non-citizens—like other Washingtonians—are afforded certain rights by the Washington and United States constitutions and by federal and state laws that protect privacy and access to services in many settings.

Questions have been raised by local governments and other entities endeavoring to protect immigrants' rights while appropriately responding to federal authorities. This guidance seeks to answer questions local agencies—such as schools and law enforcement agencies—may have about the impacts of changes to immigration laws and their discretion regarding participation in federal immigration enforcement. Each section includes best practices that agencies can implement and identifies additional resources.

Effective implementation of the principles set forth in this guidance can help foster a relationship of trust between local agencies and immigrants that will protect the rights of all Washingtonians.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is written in a cursive style with a long, sweeping underline.

Bob Ferguson
Washington State Attorney General

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PART I: GENERAL RULES GOVERNING INTERACTIONS BETWEEN LOCAL JURISDICTIONS AND FEDERAL IMMIGRATION AUTHORITIES

Many states and local governments have long viewed a positive and trusting relationship with their communities as critical to public safety and effective government. This has often meant that state and local governments have limited the use of local law enforcement and other resources to enforce federal immigration law. State and local agencies have also adopted policies that protect the rights and trust of their residents by refusing to inappropriately disclose immigration information to federal immigration authorities.

These policies are supported by the Tenth Amendment to the U.S. Constitution.¹ The Tenth Amendment’s anti-commandeering doctrine limits the federal government’s ability to mandate particular action by states and localities, including in the area of federal immigration law enforcement and investigations. The federal government cannot “compel the States to enact or administer a federal regulatory program,”² or compel state employees to participate in the administration of a federally enacted regulatory scheme.³ Importantly, these Tenth Amendment protections extend not only to states but to localities and their officers.⁴ *Voluntary* cooperation with a federal scheme does not present Tenth Amendment issues.

The Washington Constitution also supports such policies. Article XI, section 11 provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” In the absence of state law to the contrary, local governments generally have the discretion to decide to what extent they will assist the federal government (as permitted by federal law) in the enforcement of federal laws, including federal immigration laws.

Federal law, however, limits the ability of state and local governments to enact an outright ban on sharing certain types of information with federal immigration authorities. Specifically, 8 U.S.C. § 1373 provides that state and local governments *cannot prohibit* government officials or entities “from sending to, or receiving from, [federal immigration authorities] information regarding *the citizenship or immigration status*, lawful or unlawful, of any individual.”⁵ In addition, federal law bars restrictions on “exchanging” information regarding “*immigration status*” with “any other Federal, State, or local government entity” or on “maintaining” such information.⁶ By their own language, these restrictions apply only to information regarding an individual’s “citizenship or immigration status.”⁷

The effect of 8 U.S.C. § 1373 on a local government’s ability to adopt appropriate policies is limited in three significant ways:

- First, this law does not *require* an agency to share information about anyone’s citizenship or immigration status with federal authorities. Instead, this law simply provides that localities may not forbid or restrict their officials from sharing information regarding an individual’s “citizenship or immigration status.” Thus, state and local agencies can adopt a policy affirming that their employees are not required to share immigration information absent a separate legal requirement.
- Second, this law does not require an agency *to collect* information about citizenship or immigration status. Thus, local governments can adopt policies prohibiting their officers and employees from inquiring about a person’s immigration status except where required by law.
- Third, this law applies only to the sharing of information about citizenship or immigration status. It does not prohibit agencies from adopting a privacy policy of non-disclosure of *other types of information* (such as a person’s address, place of birth, household members, the types of benefits or services received, or the person’s next court date) to federal immigration authorities.

In certain circumstances, the application of 8 U.S.C. § 1373 may be further constrained. For example, the Second Circuit Court of Appeals has suggested that a local government might be able to challenge the application of § 1373 where (1) citizenship or immigration status is “essential to the performance” of state or local government functions and (2) the information would “be difficult or impossible” to obtain “if some expectation of confidentiality is not preserved.”⁸

Washington State and several Washington counties and municipalities have enacted laws and policies to address the involvement of state and local law enforcement agencies with federal immigration enforcement. See Appendix A for examples.

President Trump issued Executive Order 13768 entitled Enhancing Public Safety in the Interior of the United States on January 25, 2017 (Interior Executive Order). On the same day, he also issued a second Executive Order 13767 entitled Border Security and Immigration Enforcement Improvements (Border Security Executive Order). The Department of Homeland Security has since published two memoranda implementing the Interior Executive Order and the Border Security Executive Order.

The Interior Executive Order and the corresponding Department of Homeland Security memorandum seek to increase the number of deportations by, among other things, prioritizing the deportation of “removable aliens” who have engaged in any criminal activity, including individuals who have not been charged with or convicted of a crime.⁹ The Interior Executive Order also prioritizes the deportation of “removable aliens” who “[i]n the judgment of an immigration officer, otherwise pose a risk to public safety or national security.”¹⁰ The Border Security Executive Order directs Homeland Security to detain aliens apprehended for immigration violations to the extent permitted by law, which will likely lead to a greater number of detentions.¹¹

Both the Interior and Border Security Executive Orders and the Department of Homeland Security memoranda explain that the federal government will seek increased cooperation from state and local governments in pursuit of these goals.¹² The Interior Executive Order also threatens consequences for state and local governments that do not comply with 8 U.S.C. § 1373.¹³

The Interior Executive Order uses the term “sanctuary jurisdictions” to describe “jurisdictions that willfully refuse to comply with 8 U.S.C. [§] 1373,” and sets federal executive branch policy to ensure that states and localities fully comply with 8 U.S.C. § 1373.¹⁴ The Interior Executive Order grants the Secretary of the Department of Homeland Security the authority to designate localities as “sanctuary jurisdictions.” The Interior Executive Order also grants the U.S. Attorney General the authority to ensure that jurisdictions so designated are ineligible for federal grants, “except as deemed necessary for law enforcement purposes.”¹⁵ The Interior Executive Order does not rely on a jurisdiction’s self-identification as a “sanctuary” jurisdiction for purposes of imposing the consequences purportedly authorized by the order. Similarly, a jurisdiction’s self-identification as a “sanctuary” jurisdiction does not typically require or depend on violation of 8 U.S.C. § 1373. As a result, self-identification as a “sanctuary jurisdiction” should not, in our view, affect whether a jurisdiction is designated as a “sanctuary jurisdiction” as defined by the Interior Executive Order.

The Interior Executive Order also requires certain federal agencies to report information about “sanctuary jurisdictions.” Specifically, the Order states that “[t]o better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the [Department of Homeland Security] Secretary shall utilize the Declined Detainer Outcome Report or its equivalent” and publicize weekly “a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.”¹⁶ The report includes criminal charges and convictions. The Order further instructs the Director of the federal Office of Management and Budget (OMB) to “obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.”¹⁷

The Interior Executive Order further directs the U.S. Attorney General to take “appropriate enforcement action” against any jurisdiction that either violates § 1373 or “has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.”¹⁸ Neither the Interior Executive Order nor the corresponding Department of Homeland Security Memorandum lists the federal grants that the federal government may seek to withhold from “sanctuary jurisdictions;” indeed, the language of the Interior Executive Order suggests that all federal grants may be targeted.¹⁹

States and localities are understandably concerned about the possible loss of federal funding if the U.S. Attorney General finds that they have violated 8 U.S.C. § 1373, or have “in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.”²⁰ Indeed, the federal government provides Washington and its localities with numerous grants in areas ranging from education and health care to social services and criminal justice. Each grant is governed by different statutory and regulatory schemes. The requirements and provisions of those schemes may restrict the federal government’s ability to withhold funding and thus should be individually analyzed with your attorney.

In addition, there is significant debate about the constitutionality of this portion of the Interior Executive Order.²¹ For example, although the federal government has wide latitude to condition its funding to states and localities on their fulfillment of certain conditions, the U.S. Supreme Court has established some limitations on that authority. First, the federal government cannot use its spending power “to induce the States to engage in activities that would themselves be unconstitutional;” for example, it cannot condition a grant of federal funds on invidiously discriminatory state action.²² Second, any funding conditions must be reasonably related to the federal interest in the program at issue.²³ Third, the condition must be stated “unambiguously” so that the recipient can “voluntarily and knowingly” decide whether to accept those funds and the associated requirements.²⁴ And finally, the amount of federal funding that a noncomplying State would forfeit cannot be so large that the State would be left with no real option but to accept the condition.²⁵ Depending on the amount and nature of any federal funding cut, states and localities may be able to challenge the defunding on one or more of these grounds.

To date, at least four jurisdictions have challenged the constitutionality of this provision of the Interior Executive Order. For example, the cities of Seattle and San Francisco and Santa Clara County, California have filed lawsuits and are seeking an injunction halting the Interior Executive Order’s implementation.²⁶ The San Francisco and Santa Clara lawsuits claim that the Interior Executive Order is an unconstitutional overreach of presidential power; even if the action were taken by Congress, it exceeds Congress’s spending power under Article I, section 8 of the U.S. Constitution to restrict federal grants in this way; and the Order violates the Fifth and Tenth Amendments to the U.S. Constitution. These lawsuits seek a nationwide ban on implementation.

BEST PRACTICES

- Weigh the benefits of adopting policies to limit the role of local officials in enforcing federal immigration policy. If possible, adopt an ordinance similar to the examples in Appendix A and consider adopting the policies listed in Appendix B.
- Include in the ordinance or policy an affirmation that employees are not generally required to share immigration information absent a separate legal requirement.
- Whenever possible, prohibit officers and employees from inquiring about or collecting information about a person's immigration status, place of birth, or citizenship, except where required by law. Make this policy part of regular employee training.
- Establish that sensitive information such as a person's address, place of birth, household members, the types of benefits or services received, or the person's next court date will not be disclosed to federal immigration authorities absent a warrant signed by a judge or a law requiring disclosure. Consult with your attorney about the application of the Public Records Act.

Even though legal proceedings about the Interior and Border Security Executive Orders will continue, there is already information that may assist state and local entities in determining whether and in what circumstances it is appropriate to provide information or assistance to federal immigration enforcement agents. The remainder of this guidance provides information and best practices for specific types of existing government entities.

Notes

Part I: General Information

¹ The Tenth Amendment to the United States Constitution provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const., amend. X.

² *New York v. United States*, 505 U.S. 144, 188 (1992). The compelled conduct invalidated in *New York v. United States* was a federal statutory requirement that States enact legislation providing for the disposal of their radioactive waste or else take title to that waste. *See id.* at 152-54.

³ *Printz v. United States*, 521 U.S. 898, 935 (1997). The compelled conduct invalidated in *Printz* was the Brady Handgun Violence Prevention Act’s requirement that state and local law enforcement officers perform background checks on prospective firearm purchasers. *See id.* at 903-04.

⁴ *See id.* at 904-05, 919 (allowing county-level law enforcement officials to raise Tenth Amendment claim); see also *Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 847 (9th Cir. 2003) (Tenth Amendment protections “extend to municipalities.”).

⁵ 8 U.S.C. § 1373(a) (emphasis added). See also 8 U.S.C. § 1373(b).

⁶ 8 U.S.C. § 1373(b) (emphasis added).

⁷ Similarly, 8 U.S.C. § 1644 provides: “Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

⁸ *City of New York v. United States*, 179 F.3d 29, 36-37 (2d Cir. 1999); see also *Printz v. United States*, 521 U.S. 898 (1997).

⁹ Interior Executive Order, 82 Fed. Reg. 8799, § 5.

¹⁰ *Id.*

¹¹ Border Security Executive Order, 82 Fed. Reg. 8793, § 6.

¹² *See* Interior Executive Order § 8; Border Security Executive Order § 10; DHS Interior Memorandum § B; DHS Border Security Memorandum § D.

¹³ Interior Executive Order § 9.

¹⁴ *Id.*

¹⁵ *Id.* Immigration and Customs Enforcement (ICE) has issued a report listing jurisdictions that it believes limit cooperation with ICE. https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf. This report does not appear to use the word “sanctuary.” Several Washington State counties are listed.

¹⁶ Interior Executive Order § 9.

¹⁷ *Id.* The Order does not specify to whom the OMB Director is to provide this information.

¹⁸ *Id.* To date, at least four jurisdictions have challenged the constitutionality of this provision of the Interior Executive Order. *See City and County Of San Francisco v. Trump*, No. 17-cv-00485 (N.D. Cal. Jan. 31, 2017); *County of Santa Clara v. Trump*, No. 17-cv-00574 (N.D. Cal. Feb. 3, 2017); *City of Chelsea, City of Lawrence v. Trump*, No. 17-cv-10214 (D. Mass. Feb. 8, 2017).

¹⁹ *See* Interior Executive Order § 9(a) (stating that “[sanctuary jurisdictions] are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the [U.S.] Attorney General or the [DHS] Secretary,” and § 9(c) (directing the OMB Director to provide information “on all Federal grant money that currently is received by any sanctuary jurisdiction”).

²⁰ *See* Interior Executive Order § 9. Some jurisdictions already have filed lawsuits challenging this provision of the Interior Executive Order, arguing that it is unconstitutionally vague in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution. *See supra* note 18.

²¹ <https://www.ilrc.org/nearly-300-law-professors-trump%E2%80%99s-executive-order-%E2%80%9Csanctuary%E2%80%9D-cities-unconstitutional>

²² *South Dakota v. Dole*, 483 U.S. 203, 210 (1987).

²³ In *Dole*, the Supreme Court held that Congress could permissibly withhold 5 percent of certain highway funds from states that failed to raise their drinking age to 21 because raising the drinking age was “directly related to one of the main purposes for which highway funds are expended,” namely “safe interstate travel.” *Id.* at 208-209.

²⁴ *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

²⁵ *See, e.g., Dole*, 483 U.S. at 211.

²⁶ *City and County of San Francisco v. Trump*, No. 3: 17-cv-00485 (N.D. Cal. Jan. 31, 2017); *County of Santa Clara v. Trump*, No. 5: 17-cv-00574 (N.D. Cal. Feb. 3, 2017).

PART II: LOCAL SERVICES

Local governments provide many services that are used by citizens and noncitizens alike, either independently or in cooperation with nonprofit or other nongovernment entities. Public libraries, social services, and local utility services are just three examples of these types of public services. This section identifies best practices related to providing local government services. Some of these best practices may also apply to private organizations that provide social services. This is necessarily general guidance. In adopting specific policies, you should consult with an attorney regarding your agency's or organization's specific circumstances.

A. Collection and Retention of Information About People Receiving Services

In general, a person's citizenship, place of birth, or immigration status is not relevant to the services that local governments provide. When such information is not relevant, local governments should adopt a policy that staff will not ask about a person's citizenship, place of birth, or immigration status and will not accept documentation that reflects the person's citizenship, place of birth, or immigration status.

Adopting such a policy provides local governments with at least two advantages. First, it reassures clients that they can safely participate in the local government's services. Second, it simplifies the local government's responses to requests from federal immigration authorities.

If a local government already has information regarding citizenship, place of birth, or immigration status information, it should carefully review the applicable records retention schedule to determine whether that information needs to be retained and, if so, for how long it must be maintained. The Washington Secretary of State maintains an extensive list of local government retention schedules, which are available online.¹

BEST PRACTICE

Only collect and retain information needed to serve the public, do not collect citizenship or immigration-related information unless required, and ensure nondiscriminatory access to benefits and services. Consider adopting a policy reflecting this practice.

B. Confidential Information

In some instances, privacy laws may prohibit local governments from providing information in response to requests from federal immigration authorities. Numerous federal and state laws make particular types of personal information confidential. These laws are often program-specific. For example, if a local government receives information related to a person's application for federal food assistance, that information is subject to federal confidentiality regulations set out in 7 C.F.R. § 272.1(c). Similarly, if a local government receives information related to a person's receipt of Medicaid, that information may be confidential under applicable privacy laws and regulations.

If the request from federal immigration authorities is a request for records and does not involve a subpoena or other formal legal process, local agencies should be familiar with applicable provisions in the Public Records Act that exempt personal information from disclosure.²

Specific considerations also apply to municipal utilities and public utility districts (PUDs). Under RCW 42.56.335, a law enforcement authority may not obtain "records of any person who belongs to a public utility district or a municipally owned electrical utility" unless the authority states in writing that it "suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true." Generally, it is not a crime for a removable noncitizen to remain present in the United States.³ Municipalities and PUDs should process such requests using a standard form and should ensure that any person who submits the form displays proper identification.⁴ If a law enforcement authority requests a record that is exempt from disclosure under the Public Records Act (e.g., credit card numbers), the utility should require a warrant signed by a judge or subpoena from a court before producing the record.

BEST PRACTICE

If possible, do not collect information about citizenship, place of birth, or immigration status. Be aware of privacy laws that make certain information confidential or otherwise limit the sharing of information. Continue to apply these confidentiality requirements.

C. Discretionary Disclosure of Non-Confidential Information to Federal Immigration Authorities

In some instances, the law will neither require local governments to provide information to federal immigration authorities nor prohibit them from doing so.⁵ In general, local governments are not required to proactively provide information to federal immigration authorities.⁶ (A separate section below addresses situations in which local governments or organizations receive a subpoena or a judicial warrant for this information. Local governments should also consult their attorney with regard to any public records requests.) Local governments should adopt a policy to address when they will elect to release information to federal immigration authorities.

Regardless of the specific programs that a local government administers, it is important to keep 8 U.S.C. § 1373 in mind.⁷ Under that law, a “local government entity or official may not prohibit, or in any way restrict” its officials from sending information about any person’s citizenship or immigration status to federal immigration authorities. Local government entities and officials also may not prohibit or restrict their officials from requesting citizenship or immigration status information from federal immigration authorities.

As explained above, the effect of 8 U.S.C. § 1373 on a local government’s ability to adopt appropriate policies is limited in three significant ways. First, this law does not require an agency to share information about anyone’s citizenship or immigration status with federal immigration authorities. Second, this law does not require an agency to collect information about citizenship or immigration status. Third, this law applies only to the sharing of information about citizenship or immigration status. It does not prohibit agencies from adopting a privacy policy of non-disclosure of other types of information (such as a person’s address, place of birth, household members, or the types of benefits or services received) to federal immigration authorities, so long as it is consistent with other laws.

In certain circumstances, the application of 8 U.S.C. § 1373 may be further constrained. The Second Circuit Court of Appeals has indicated that a local government might be able to challenge the application of the law where (1) the citizenship or immigration status is “essential to the performance” of state or local government functions and (2) the information would “be difficult or impossible” to obtain “if some expectation of confidentiality is not preserved.”⁸

One important component of any policy related to communications with federal officials is to require that staff members verify the requester’s identity. Requests for information made by telephone are particularly suspect. Requests received by mail and e-mail can also be misleading as to the identity of the requester. Requiring verification of the requester’s role and identity does not violate 8 U.S.C. § 1373; it merely ensures that any information that officials choose to provide is actually provided to federal immigration authorities.

In order to ensure consistency, a local government should identify a single person or office to respond to requests for citizenship and immigration status information. Staff members should be directed—and regularly reminded—to refer all such requests to the designated person or office.

All staff members should receive training on the local government’s or organization’s policy and practice in responding to requests from federal immigration authorities. That training should be consistent with 8 U.S.C. § 1373.

Finally, members of the public deserve to know a local government’s policy regarding whether it will disclose information to federal immigration authorities and whether the local government will first notify the person whose information is sought. This allows members of the public to make informed decisions when deciding whether or not to utilize public services. If the local government has policies that appropriately protect personal privacy, this notification will provide reassurance to noncitizens and ensure that they can participate equally in civic life.

BEST PRACTICES

- Do not promise confidentiality if the information may have to be disclosed under the law.
- Adopt a policy relating to the discretionary release of information.
- Establish a single person or office to respond to requests for citizenship and immigration status information.
- Inform the public and prospective clients about your information sharing requirements and policies.

D. Subpoenas and Warrants from Federal Immigration Authorities Seeking Information

Whether you are required to comply with a demand from federal immigration authorities will depend on the circumstances, and you should consult an attorney regarding your obligations.

Some topics that you may wish to discuss with your attorney include the following:

- Did federal immigration authorities properly serve the subpoena or warrant?
- Did a judge issue the warrant or sign the subpoena?
- Does federal law prohibit you from providing the requested information or provide a basis for not providing the information? Consider possible evidentiary privileges that might provide a basis for moving to quash or otherwise declining to comply with a subpoena.⁹
- Are you permitted to object to the subpoena and force the requester to obtain a court order?
- Are you required or permitted to notify the person whose information is requested to provide that person with the opportunity to take legal action to prevent disclosure?

BEST PRACTICE

Develop a policy regarding subpoenas and warrants from federal immigration authorities that requires consultation with the agency or entity's attorney.

E. Federal Immigration Officers' Access to Buildings and Physical Facilities

In general, federal immigration authorities can enter the public areas of a business or other building or facility. Immigration and Customs Enforcement (ICE) must have a warrant signed by a judge to enter non-public areas.¹⁰

ICE routinely presents Department of Homeland Security Forms I-200 and I-205 entitled “warrant for arrest” or “warrant of removal/deportation.” New ICE detainer form 247A recently became effective. These are “administrative” warrants. Only designated agents are authorized to serve and execute these warrants and arrest a person.¹¹ Examples of these forms are at Appendix D1, D3, and D4. While these forms give ICE agents the authority to arrest people, they are *not* signed by a federal magistrate or judge. They do not comply with the warrant requirement for a permissible search of nonpublic areas under the Fourth Amendment. In contrast, Appendix E is an example of an arrest warrant signed by a judge. Any search warrant should also be signed by a judge.

Local governments and private organizations should adopt a policy that addresses when federal immigration authorities will be permitted to access non-public areas. In adopting such a policy, local governments and organizations should be careful to avoid actions that would amount to unlawful harboring or obstruction.¹² If ICE officials present a search warrant, check to ensure that it:

- is signed by a judge,
- properly identifies the agency with authority to search,
- correctly identifies the search location(s), and
- includes the correct date and has not expired.

BEST PRACTICE

Develop a policy regarding access by federal immigration officers to the agency's or entity's physical facilities. Be sure that staff are trained that if a warrant is not signed by a judge, they should consult the entity's attorney before allowing entry.

Notes

Part II: Local Services

¹ <https://www.sos.wa.gov/archives/recordsretentionschedules.aspx>.

² RCW 42.56.230(1) (exemption for “[p]ersonal information in any files maintained for . . . welfare recipients”); RCW 42.56.230(2)(ii), (iii) (exemption for personal information of a child, and, in some circumstances, the child’s family members or guardians, “enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs”); RCW 42.56.310 (exemption for certain library records).

³ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

⁴ The Washington Public Utility District Association offers a sample law enforcement records request form and other data privacy information at <http://www.wpuda.org/data-privacy-resources>.

⁵ Be alert to whether the request seeks records, which may require a response under the Public Records Act, or information, for which a response is *not* required. See *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998).

⁶ See, e.g., *United States v. Driscoll*, 449 F.2d 894, 896 (1st Cir. 1971).

⁷ The plain language of this statute does not apply to private organizations.

⁸ *City of New York v. United States*, 179 F.3d 29, 36-37 (2d Cir. 1999); see also *Printz v. United States*, 521 U.S. 898 (1997).

⁹ Federal courts have recognized a qualified federal privilege based on state confidentiality laws in appropriate circumstances. E.g., *In re Hampers*, 651 F.2d 19, 21-23 (1st Cir. 1981). The “official information” and “required reports” privileges may also apply in appropriate circumstances. E.g., *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1990); *Wiener v. NEC Elecs., Inc.*, 848 F. Supp. 124, 128-29 (N.D. Cal. 1994).

¹⁰ 8 C.F.R. § 287.8(f)(2). An administrative “Warrant for Arrest” (Form I-200) or “Warrant of Removal/Deportation” (Form I-205) generally do *not* authorize federal immigration authorities to enter private premises, as they are not signed by a judge and do not comply with Fourth Amendment warrant requirements.

¹¹ 8 U.S.C. § 1357; 8 C.F.R. § 287.5.

¹² See 8 U.S.C. § 1324(a)(1)(A)(iii); 18 U.S.C. §§ 1505, 1510, 1512.

PART III: LOCAL LAW ENFORCEMENT OFFICERS

The purpose of this section is to provide general information on the constitutional limitations to detention or arrest of a person based on immigration status, ICE detainers, or National Crime Information Center (NCIC) Immigration Violator File information. This guidance is based on current law and is not intended to provide legal advice. As always, law enforcement officers are encouraged to discuss these issues with their local prosecutors and agency legal advisors.

A. General Authority Washington Peace Officers

The Washington State Patrol, the Washington State Department of Fish and Wildlife, county sheriff's offices, and municipal police departments are general authority Washington law enforcement agencies.¹ These general authority law enforcement agencies employ and commission general authority Washington peace officers. A general authority Washington peace officer "is commissioned to enforce the criminal laws of the state of Washington generally."²

Federal laws related to a person's removability from the United States are civil in nature. Being present in the United States without lawful status is a violation of civil law, but is not, on its own, a crime. Under 8 U.S.C. § 1325, it is a federal crime to illegally enter the United States. However, just because someone is in the United States and removable under the federal immigration laws does not mean that person illegally entered the United States. Many individuals legally enter the United States and lose their lawful status by overstaying visas, dropping out of school, working without authorization, or otherwise violating the terms of their status. Unlawful presence in the United States is only a crime when an individual has been removed (deported) previously and then returns to the United States. This is called illegal reentry and it is a federal crime under 8 U.S.C. § 1326. Under 8 U.S.C. § 1253, an individual may also face criminal charges for failing to depart the United States within a certain timeframe after a removal order becomes final.

Federal law and the Interior Executive Order³ authorize the U.S. Attorney General to enter into agreements with state and local governments allowing state and local officers or employees to carry out immigration enforcement functions under certain circumstances “to the extent consistent with State and local law.”⁴ These agreements are often referred to as 287(g) agreements because the statute authorizing them is § 287(g) of the Immigration and Nationality Act (INA). Nothing in the federal statute or the Interior Executive Order *requires* any State or political subdivision to enter into such an agreement. Refusing to enter into a 287(g) agreement should not jeopardize the receipt of federal grants.

Governor Jay Inslee has issued Washington Executive Order 17-01, which directs the Washington State Patrol, the Department of Corrections, and other executive or small cabinet agencies with arrest powers to “act consistently with current federal law and . . . not arrest solely for violation of federal civil immigration laws, except as otherwise required by federal or state law or authorized by the Governor.” Governor Inslee’s Executive Order also directs that “no agency may enter into any agreements with the federal government authorizing such authority under the Immigration and Nationality Act (8 U.S.C. § 1357).” Likewise, certain Washington state municipalities have issued direction to their local law enforcement agencies not to enforce or agree to enforce federal immigration laws.⁵

BEST PRACTICE

Local agencies and other entities should not engage in law enforcement activities solely for the purpose of enforcing federal immigration laws.

B. Searches, Seizures, and Arrests

The protections guaranteed by the U.S. Constitution and Washington Constitution against unreasonable searches and seizures apply to both citizens and noncitizens. Under the Fourth Amendment to the U.S. Constitution and article I, section 7 to the Washington Constitution, warrantless searches and/or seizures are *per se* unreasonable unless the search fits within one of the established exceptions.⁶ The federal and state constitutions therefore permit searches and/or seizures based on: (1) a warrant issued by a neutral and detached magistrate; or (2) a recognized exception to the warrant requirement. Violation of these constitutional rights can lead to civil actions against law enforcement.

A brief investigative detention or “*Terry*” stop is a recognized exception to the warrant requirement.⁷ Officers must have reasonable suspicion that a person has committed a crime to conduct or extend a *Terry* stop. Under *Terry v. Ohio*, an officer may stop a vehicle or briefly detain a person based on a reasonable, articulable suspicion that “criminal activity may be afoot.”⁸ Once the mission of a *Terry* stop has been met (e.g., determination that the person detained does not meet the description of a suspect), an officer may not extend the stop absent reasonable, articulable suspicion of other criminal activity.⁹

The Third Circuit Court of Appeals has found that a civil immigration violation does not provide reasonable suspicion to conduct a *Terry* stop for possible criminal immigration violations.¹⁰ Additionally, a federal district court denied qualified immunity to Minnesota conservation officers for extending a stop (involving potential hunting violations) to contact ICE based on a hunter having a non-resident hunting license and a Mexican national identification document with a Minnesota address.¹¹ The court reasoned “[a]ny number of explanations other than criminal conduct or immigration violations could explain why [the hunter] possessed that combination of documents.”¹² As such, the Minnesota conservation officers lacked reasonable suspicion to detain the hunter while contacting ICE about potential criminal immigration violations, and the detention violated the hunter’s Fourth Amendment rights.

Officers should also keep in mind that information in a NCIC Immigration Violator File may or may not be based on criminal immigration violations. The Third Circuit noted “ICE continues to populate the NCIC database with civil immigration records[.]”¹³ As such, an officer detaining a subject (or extending a completed *Terry* stop) based on information in the NCIC Immigration Violator File may not have reasonable suspicion for the detention. Briefly detaining a person without reasonable suspicion violates that person’s constitutional rights and may subject the officer to civil liability under 42 U.S.C. § 1983. As always, officers are encouraged to discuss these legal issues with their agency legal advisor.

State and local officers must have probable cause that a person has committed a crime to arrest and take that person into custody. Under the Fourth Amendment of the U.S. Constitution and article I, section 7 of the Washington Constitution, an officer must have probable cause that a person is involved in criminal activity to arrest that person.¹⁴ An immigration violation may or may not constitute a crime. “As a general rule, it is not a crime for a removable alien to remain present in the United States.”¹⁵ As such, a state or local officer who stops “someone based on nothing more than possible removability” does not have probable cause to arrest that person.¹⁶ Additionally, a civil immigration violation does not provide probable cause to arrest a person.¹⁷ Accordingly, a person’s immigration status (or being subject to an ICE detainer) does not necessarily provide probable cause for a state or local officer to arrest that person. An officer may arrest a person who is subject to an ICE detainer when there is probable cause that the person has committed another crime, or is the subject of a judicial warrant.

Federal law specifically authorizes state and local officers “whose duty it is to enforce criminal laws” to make arrests for violations of 8 U.S.C. § 1324, prohibiting bringing in or harboring certain noncitizens. In *Gonzales v. City of Peoria*, the Ninth Circuit ruled that nothing in the INA precludes local law enforcement from enforcing the INA’s criminal provisions.¹⁸ There is also a general federal statute which authorizes certain local officials, including peace officers, to make arrests for offenses against the United States.¹⁹ While 8 U.S.C. § 1252c provides that—to the extent permitted by relevant state and local law—state and local law enforcement officers are authorized to arrest and detain an individual who (1) is illegally present in the United States *and* (2) has previously been convicted of a felony in the United States and subsequently removed from the United States, state and local law enforcement officials may do so *only* after obtaining appropriate confirmation from ICE on the status of the individual and only for a period of time necessary for federal officials to take custody of the individual for the purposes of removal. The lawfulness of arrests for violation of federal criminal laws is determined by reference to state law and the Constitution.²⁰ Notably, the Ninth Circuit held in *Gonzales* that an alien’s “inability to produce documentation does not in itself provide probable cause [to arrest].”²¹ Local law enforcement officers should think carefully about whether they have probable cause to arrest someone for a federal immigration crime, particularly when many of these crimes are misdemeanors.²²

Local law enforcement agencies should develop policies and procedures that direct when officers should notify ICE based on probable cause that the subject has committed serious crimes (e.g., terrorism related crimes). Local law enforcement should also be aware that when they provide information to other federal criminal investigative agencies, those agencies will likely also provide relevant information to ICE.

BEST PRACTICES

- Local law enforcement agencies should be sure their employees understand probable cause and reasonable suspicion in the context of suspected immigration-related crimes and interactions with people who may not be citizens.
- Local law enforcement should be aware that a request for assistance from federal immigration authorities does not absolve local authorities of their duty to comply with constitutional principles related to searches and seizures.
- Local law enforcement agencies should develop policies and procedures that direct when officers should notify ICE based on probable cause that the subject has committed serious crimes.
- Recognize that notice to any federal investigative agency may also result in notice to ICE.

C. Federal Law Does Not Require Law Enforcement Officers to Provide Information About An Arrestee To ICE or Other Federal Law Enforcement Agencies Absent a Warrant

Federal law, 8 U.S.C. § 1373, addresses information sharing regarding a person's "citizenship or immigration status." State and local governments cannot prohibit employees or entities "from sending to, or receiving from, [federal immigration authorities] information regarding the *citizenship or immigration status*, lawful or unlawful, of any individual."²³ Additionally, 8 U.S.C. § 1373(b) prohibits restrictions on exchanging information regarding immigration status with "any other Federal, State, or local government entity" or on "maintaining" such information." In addition, RCW 10.70.140 requires some information to be collected and shared with immigration officials if the person has been "committed to" certain publicly-funded institutions, including county jails. Local law enforcement agencies should consider pre-booking and pre-trial diversion practices. In addition to their other benefits, these programs may also decrease the risk of ICE involvement.

A judicial warrant or subpoena presented to a law enforcement agency may require that agency to provide documents or information. In Part II D of this guidance, there is a list of issues that you should consider with your attorney if presented with a subpoena or judicial warrant seeking access to documents or information.

Otherwise, § 1373 does not impose an affirmative mandate to share information. Instead, this law simply provides that localities may not forbid or restrict their officials from sharing information regarding an individual's "citizenship or immigration status."²⁴ Nothing in § 1373 restricts a locality from declining to share other information with ICE or Customs and Border Protection (CBP), such as non-public information about an individual's release, next court date, or address. In addition, § 1373 places no affirmative obligation on local governments to *collect* information about an individual's immigration status.

Law enforcement agencies will want to consider several factors in determining whether to voluntarily share information about a person with ICE or other federal criminal investigative agency. These factors may include whether crime victims may be unwilling to report crimes or speak to law enforcement based on concerns that law enforcement will report their immigration status to ICE.

As always, law enforcement agencies are encouraged to discuss these legal issues with their legal advisors in developing policies and procedures regarding information sharing with ICE or other federal agencies.

BEST PRACTICES

- Recognize the limitations of § 1373, discussed above.
- Absent application of a law requiring collection and disclosure of information, collect only the information necessary to conduct the agency's normal law enforcement activities.
- Develop and publish clear policies and procedures regarding voluntary information sharing with ICE or other federal agencies.
- Develop a policy addressing subpoenas and warrants from federal immigration authorities that requires consultation with the agency or entity's attorney.
- Consider pre-booking and pre-trial procedures, such as LEAD (Law Enforcement Assisted Diversion).

Notes

Part III: Local Law Enforcement

¹ RCW 10.93.020(1).

² RCW 10.93.020(3).

³ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

⁴ 8 U.S.C. § 1357(g)(1).

⁵ See, e.g., Appendix A.3 (Seattle Resolution, § 1.B).

⁶ *Coolidge v. New Hampshire*, 403 U.S. 443, 454 (1971); *York v. Wahkiakum Sch. Dist.* 200, 163 Wn.2d 297, 310, 178 P.3d 995 (2008).

⁷ *State v. Mendez*, 137 Wn.2d 208, 970 P.2d 722 (1999).

⁸ 392 U.S. 1, 30 (1968).

⁹ *Rodriguez v. United States*, 135 S. Ct. 1609, 1614-15 (2015).

¹⁰ *Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013).

¹¹ *Garcia v. Speldrich*, No. 13-cv-3182-PJS/LIB, 2014 WL 3864493 (D. Minn. 2014).

¹² *Id.* at *6.

¹³ *Santos*, 725 F.3d at 468.

¹⁴ *Brown v. Texas*, 443 U.S. 47, 51 (1979).

¹⁵ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

¹⁶ *Id.*

¹⁷ *Santos*, 725 F.3d at 465.

¹⁸ *Gonzales v. City of Peoria*, 722 F.2d 468, 477 (9th Cir. 1983).

¹⁹ See 18 U.S.C. § 3041.

²⁰ *Wartson v. United States*, 400 F.2d 25, 27 (9th Cir. 1968); see also RCW 10.31.100 (“A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of an officer . . .” with certain exceptions).

²¹ *Gonzales*, 722 F.2d at 477.

²² See, eg. 8 U.S.C. §§ 1304, 1306.

²³ 8 U.S.C. § 1373(a) (emphasis added).

²⁴ The U.S. Department of Justice’s Office of the Inspector General, which monitors compliance with various federal grant programs, has interpreted § 1373 to preclude not just express restrictions on information disclosure, but also “actions of local officials” that result in “restrictions on employees providing such information to ICE.” See U.S. Department of Justice, Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients (May 31, 2016), at 7 n.9 <https://oig.justice.gov/reports/2016/1607.pdf>.

PART IV: LOCAL JAILS

Immigration regulation and enforcement are federal functions. The Tenth Amendment prevents the federal government from interfering with the sovereignty and independence of the states. The federal government cannot force states or localities, including local jails, to assist in federal functions, such as immigration enforcement.¹ Immigration officials may not order state and local officials to imprison suspected undocumented noncitizens subject to removal.²

There are two key ways that federal immigration authorities may seek assistance from jails in enforcing federal immigration laws: information sharing and detention. If jail officials provide assistance beyond what is allowed by law, they may expose individuals to serious immigration and safety concerns, and may face civil liability. For that reason, it is important to understand what is required of jails and what is properly left to federal officials.

A. Information Sharing

In Washington State, RCW 10.70.140 provides that:

Whenever any person shall be committed to a state correctional facility, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which the person is a citizen, and the date on which and the port at which the person last entered the United States.

Accordingly, state law requires Washington jails to: (1) inquire into the nationality of those committed to the jail; and (2) inform federal immigration officials of: (a) the date and reason for an alien's admission to the jail, (b) the length of time committed, (c) the individual's country of citizenship, and (d) the date on which and the port at which the person last entered the United States.

This state law is consistent with, and expands slightly upon, two federal laws—8 U.S.C. § 1644 and 8 U.S.C. § 1373—which provide that state and local laws may not prevent or restrict local entities from sending or receiving “information regarding the immigration status, lawful or unlawful, of an alien in the United States.” And, the Supreme Court has found such state notification laws permissible.³ 8 U.S.C. § 1373 directs that no state or local law, or person or agency, may prohibit or restrict a local government entity from maintaining information on individuals' immigration statuses, and exchanging such information with any other federal, state, or local government entity.

Under these federal and state laws, jails are only required to provide federal immigration officials information related to a noncitizen's: (1) date and reason for admission to jail, (2) length of time committed, (3) country of citizenship, (4) date and port of last entry, and (5) immigration status. There is no requirement or authorization to provide any additional information. Providing information beyond what is legally required may subject an individual (and/or family) to increased immigration and safety risks.

In Washington, there are confidentiality concerns that require jails to exercise caution when sharing information with federal immigration authorities. Specifically, RCW 70.48.100 mandates that "the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705." The definition of "criminal justice agencies" relates to agencies whose principal function is to apprehend, prosecute, adjudicate, or rehabilitate "criminal offenders."⁴ Because removability generally is not a "crime," this definition likely does not include ICE. Still, information shared with federal criminal investigative agencies may ultimately be shared with ICE. Jails are also allowed to release jail records to federal agencies, but only for eligibility determinations related to services, such as medical care or veterans' services.⁵

There is no allowance in state law for jail records to be turned over to immigration officials. For this reason, jails should not share information beyond the statutorily-required information mentioned above. Doing so could place individuals at risk and violate state law. When in doubt, consult with legal counsel prior to divulging any information beyond what is clearly required by law. Jails should be particularly careful when handling the following information: home addresses, employment information, tattoo descriptions, suspected or confirmed gang affiliations, medical information, and family members' immigration statuses, whether known or suspected.

Finally, there is no clear requirement to notify immigration officials when an individual is released from jail. Under RCW 10.70.140, jails have an initial duty to advise ICE of "the length of time for which [the alien is] committed." However, there is not a specific requirement to notify ICE of an individual's release. Similarly, there is nothing in federal law or regulation that requires that a jail advise ICE prior to an alien's release.

BEST PRACTICES

- Be aware of, and train staff to comply with, the collection and notification requirements in RCW 10.70.140.
- In order to comply with other state statutes, including RCW 70.48.100, jails should not share information beyond the pieces of information listed in RCW 10.70.140.
- Consider diversion programs that do not require booking in many circumstances.

B. Detention

Federal immigration officials may also ask jails to assist them with detaining individuals. After ICE (or CBP) receives a report of an individual in custody who may be a noncitizen, it will usually issue an immigration detainer by sending a Form I-247A (Appendix D.1.) to the jail. Based on a change in policy under the Interior Executive Order and the corresponding Homeland Security memorandum, we anticipate that immigration detainers will increase.⁶ Unless they include or incorporate an order signed by a judge, immigration detainers are not mandatory and should generally not be used to hold people any longer than the jail would otherwise hold them. Immigration violations are civil violations of law, not crimes, so an immigration detainer is different than detainers related to crimes in other jurisdictions.

Under 8 C.F.R. § 287.7, the detainer is “a request” that the jail advise ICE prior to the alien’s release so that ICE can arrange to assume custody of the individual for immigration proceedings and potential removal. Section (d) of this regulation is entitled “Temporary detention at Department request” and provides that if ICE issues “a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE].” All the federal courts of appeals that have interpreted this regulation and commented on the character of ICE detainers refer to them as “requests,” and have ruled that the mandatory language defines the maximum period of detention (48 hours) but does not require detention at ICE request.⁷

No provision of the Immigration and Nationality Act authorizes federal officials to command local or state officials to detain suspected aliens subject to removal.⁸ Government entities that receive detainer requests are not relieved of their obligation to comply with the Fourth Amendment to the U.S. Constitution and article I, § 7 of the Washington Constitution. And, the Supreme Court of the United States has noted that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns.”⁹ Absent a judicial warrant, a government entity may only hold an individual in custody if the officer has probable cause to believe that the person has committed a crime.

Some courts have shown a willingness to hold local authorities liable for incarcerating an individual pursuant to only an ICE detainer.¹⁰ Accordingly, jails that hold individuals pursuant to only an ICE immigration detainer may be subject to civil liability, including damages, for violating a detainee's constitutional rights, and should avoid this practice. Government entities have the authority to decline a request by ICE or CBP to detain, transfer, or allow access to an individual in their custody for federal immigration enforcement purposes absent a judicial warrant.

BEST PRACTICES

- Absent an order signed by a judge, immigration detainers are not mandatory and should generally not be used to hold people any longer than the jail would otherwise hold them.
- Understand that jails that hold individuals pursuant only to an ICE immigration detainer may be subject to civil liability. Local governments should avoid this practice where possible. This potential liability should inform whether a local law enforcement agency voluntarily agrees to assist ICE by honoring immigration detainers absent an order signed by a judge.
- Jails should limit their compliance with ICE or CBP detainers to circumstances in which (1) ICE or CBP presents a judicial warrant or (2) there is probable cause to believe that (a) the individual has engaged in criminal activity sufficient to support prolonging detention, or (b) another national security or public safety concern justifies notifying federal authorities.

Notes

Part IV: Local Jails

¹ See *Printz v. United States*, 521 U.S. 898, 925 (1997) (“the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs”); *New York v. United States*, 505 U.S. 144 (1992); *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) (“Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government.”).

² *Galarza*, 745 F.3d at 643.

³ *Arizona*, 132 S. Ct. at 2505. (“The federal scheme thus leaves room for a policy requiring state officials to contact ICE as a routine matter.”).

⁴ RCW 43.43.705.

⁵ RCW 70.48.100(2)(f).

⁶ Interior Executive Order § 10; DHS Interior Memorandum § B.

⁷ See, e.g., *Galarza*, 745 F.3d at 640-41; *Ortega v. U.S. Immigration & Customs Enf’t*, 737 F.3d 435, 438 (6th Cir. 2013); *Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 465-66 (4th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Female Juvenile, A.F.S.*, 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992).

⁸ *Galarza*, 745 F.3d at 640. See also RCW 70.48.140, which provides that jails shall house “persons confined or committed thereto by process or order issued under authority of the United States” if the federal government provides “for the support of such persons confined, and for any additional personnel required.” This refers to persons already under an order of *confinement* pursuant to federal law, which would not include individuals subject only to an immigration detainer.

⁹ *Arizona*, 132 S. Ct. at 2509; cf. *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (finding no Fourth Amendment violation where questioning about immigration status did not prolong a stop).

¹⁰ See, e.g., *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *4 (D. Or. Apr. 11, 2014) (unpublished) (finding a violation of Miranda-Olivares’ Fourth Amendment rights and explaining “the federal regulation in question, 8 CFR § 287.7, does not mandate detention by local law enforcement, but only requests compliance in detaining suspected aliens”). The Central District of California recently certified several classes in a class action challenge to the Los Angeles Sheriff Department’s practice of detaining inmates solely on ICE detainers. *Roy v. County of Los Angeles*, No. cv-12-09012-BRO, 2016 WL 5219468, at *1 (C.D. Cal. Sept. 9, 2016).

PART V: COURTS

All individuals, regardless of their immigration status, should feel secure that entering a courthouse or filing documents in state court will not make them vulnerable to deportation. The court system relies on people coming forward in order for it to function. Court programs and services should be equally accessible to all individuals, without regard to immigration status. These principles are vital for equal justice for all. However, there have been examples in other states of ICE agents going into state courthouses or onto court property to detain people who are attending court proceedings.

State and local governments have tools to help them address this significant problem.

First, there is nothing preventing a court from requesting a meeting with or sending a letter to ICE to explain the severity of the implications that their presence in courthouses presents. The Washington Supreme Court has sent a letter to the Department of Homeland Security asking that ICE treat courthouses and court property as sensitive locations.¹ In addition, formal and informal agreements with ICE to stay off court property may be appropriate.

Second, state courthouses are typically the property of local jurisdictions² and the courts can set procedures and policies for daily courthouse operations. For example, the public is generally prevented from bringing firearms into courthouses for safety reasons.³ As a legal and practical matter, a court may be unable to prevent ICE officials and agents from coming onto court property that is generally open to the public, though such activity can be discouraged. County and local courts may establish policies regarding the propriety of immigration enforcement in courtrooms, however. For example, the judges of the King County Superior Court have elected to issue a Policy on Immigration Enforcement in Courtrooms:

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.^{4]}

Third, courts and judges have the power to preserve and enforce order in their presence and over the conduct of judicial proceedings.⁵ Further, they have the power to control, in furtherance of justice, the conduct of their ministerial officers, and of all other persons in any manner connected with their judicial proceedings.⁶ And they may punish for contempt in order to effectually exercise their power.⁷ Thus, to the extent that the actions of ICE agents obstruct judicial proceedings, courts and judges may enforce order in their courtrooms.

Finally, many who work within courthouses such as prosecutors, security, public defenders and most court clerks are part of the executive branch of county government and thus could be subject to their own office policies that address enforcement of federal civil immigration laws.⁸

BEST PRACTICES

- Courts should request that ICE abstain from coming onto court property for the sole purpose of enforcing federal immigration laws and should encourage ICE to treat courthouses as sensitive locations.
- Courts should not inquire into the immigration status of individuals except as necessary to carry out court functions.
- Courts should not provide ICE with access to individuals or honor ICE requests for non-public, sensitive information about an individual unless otherwise required by law.
- Courts should develop ways to increase accessibility to members of the public who may fear physically appearing in court based on ICE presence. For example, courts could allow the use of pseudonyms upon the request of parties and witnesses or use technology that allows for remote appearance by video or telephone in appropriate circumstances. Courts should also consider policies that require announcement of ICE presence in the courthouse.
- Courts should have know-your-rights materials available and on display. Requests for assistance should be forwarded to immigrant legal aid agencies such as the Northwest Immigrant Rights Project. See Appendix C listing select resources.

Notes

Part V: Courts

¹ <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Kelly-JohnDHSICE032217.pdf>.

² *See, e.g.*, RCW 2.28.139.

³ *See, e.g.*, King County District Court General Order 13-05.

⁴ <http://www.kingcounty.gov/~media/courts/superior-court/docs/get-help/general-information/superior-court-policy-on-immigration-enforcement-in-courtrooms.ashx?la=en>.

⁵ *See, e.g.*, RCW 2.28.010, .060.

⁶ RCW 2.28.010, .060.

⁷ RCW 2.28.020, .070, RCW 7.21.010.

⁸ *See, e.g.*, Wash. Exec. Order No. 17-01, ¶ 8 (2017).

PART VI: K-12 AND HIGHER EDUCATION

This section is intended to provide information about current immigration issues that may concern students, parents, school districts, institutions of higher education and others that interact with Washington’s public education system. The following guidance is intended to be a useful starting point for when immigration issues arise on school property. School districts and higher education institutions should consult their attorneys when specific issues arise.

A. Collection of Information

1. K-12 Institutions

Generally, K-12 schools are not required to collect information about student or parent immigration status. Under the U.S. Supreme Court decision *Plyler v. Doe*, 457 U.S. 202 (1982), all children have an equivalent right to attend public primary and secondary schools regardless of their immigration status. Consistent with *Plyler*, K-12 schools are not required by federal law to collect information about student immigration status, and in fact, should refrain from requesting information that may have a chilling effect on student enrollment.

K-12 institutions may retain information that relates to participation in programs or activities that may be associated with an individual’s immigration status. For example, records related to participation in ESL/ELL education may be retained by a K-12 school.

BEST PRACTICE

K-12 entities should ensure that they are aware of student and family information that they collect and retain. Where possible, schools should refrain from requesting or retaining information about immigration status or that may otherwise have a chilling effect on student enrollment.

2. HIGHER EDUCATION

Institutions of higher education have different information collection and reporting requirements. Colleges and universities that participate in the Student and Exchange Visitor Program are required to retain information on individuals with foreign student visa status (F, J and M visas) for the purpose of reporting information to the Student and Exchange Visitor Information System (SEVIS). Institutions participating in the Student and Exchange Visitor Program may be required to release information about students enrolled in the program without their consent. For more information about SEVIS, please refer to <https://www.ice.gov/sevis>.

Colleges and universities are also required to collect some information related to citizenship and immigration status in order to determine whether students qualify for in-state tuition or other public education benefits. Institutions of higher education *are not* required to know whether or not an individual is undocumented, and students/parents should never be required to disclose that information.

Undocumented students who qualify for in-state tuition under RCW 28B.15.012(2)(e) (also referred to as “1079 students”) may have concerns regarding the information retained by their college or university. However, this provision allows *anyone* who meets the requirements to qualify for in-state tuition, regardless of citizenship or state residency. 1079 students should not be required to disclose that they are undocumented.

BEST PRACTICES

- Institutions of higher education are not required to know whether or not an individual is undocumented, and students/parents should never be required to disclose that information.
- 1079 students should not be required to disclose whether they are undocumented.

B. Information Sharing

Institutions of higher education and K-12 schools are generally prohibited from releasing student information or records to other entities, including the federal government, without a warrant. For institutions of higher education and K-12 schools, the most pertinent law restricting the release of information is the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. FERPA prohibits any institution of higher education or K-12 school (public or private) that receives funding from the U.S. Department of Education from releasing students' educational records or personally identifiable information contained in such records without written consent, unless an exception to this general rule exists. FERPA does not contain an exception for federal immigration agencies. Therefore, requests from these agencies to disclose student records or personally identifiable information contained in student records should be denied unless a FERPA exception applies.¹ Notable exceptions include:²

- **Directory Information:** An institution of higher education or K-12 school *may*, but is not required to, release directory information without consent. Each school determines what information, if any, it considers directory information within the limits of 34 C.F.R. § 99.3. Directory information may include name, contact information (which, in the entity's discretion, may include address and date and place of birth), and other general information about a student. Directory information *cannot* include a student's citizenship or immigration status. Schools may also specify that disclosure of directory information will be limited to specific parties for specific purposes.³ Schools must notify students and parents of what information, if any, is subject to release as directory information and provide them with the opportunity to opt-out of having their directory information made available.

- **Release of records or personally identifiable information to comply with a judicial order or lawfully issued subpoena:** Before an institution of higher education or K-12 school complies with a judicial order or subpoena, it must make reasonable efforts to inform the student and/or parents of the judicial order or subpoena well enough in advance to give the student and/or parents time to seek a protective order. This is true unless the judicial order or subpoena specifically orders the school to refrain from such notification.⁴

As a general rule, institutions of higher education and K-12 schools are under no obligation to release other information or records to outside agencies, including the federal government, unless required by public records laws, a warrant, or other judicial order. While federal law generally does not compel release of immigration or citizenship information, 8 U.S.C. § 1373 bars state and local government entities and officials from prohibiting the release of an individual’s citizenship or immigration status to ICE, CBP, or U.S. Citizenship and Immigration Services (USCIS) (collectively “federal immigration agencies”) unless confidentiality is required by another law. It is important to note the following limitations of 8 U.S.C. § 1373:

- Section 1373 does not impose any duty on a state or local entity to act in any way or share information. Rather it simply prohibits these entities from creating policy that prohibits the release or sharing of citizenship or immigration status to federal immigration agencies. Thus, state and local agencies can enact a policy affirming their employees are not required to share immigration information absent a separate legal requirement.
- Section 1373 does not require state or local entities to collect citizenship or immigration status information (although another source of law might, see discussion of SEVIS above). Therefore, where a public institution of higher education or K-12 school does not collect citizenship or immigration status information, 8 U.S.C. § 1373 will not apply.
- Section 1373 only applies to “citizenship or immigration status,” not to any other information a public institution of higher education or K-12 school may maintain concerning an individual.

BEST PRACTICES

- If the institution receives funding from the U.S. Department of Education, do not release to federal immigration authorities students’ educational records or personally identifiable information contained in such records without written consent, unless an exception applies.
- Do not collect information about immigration status unless doing so is required by law.
- Adopt a policy affirming that employees are not required to share immigration information absent a separate legal requirement.
- Be certain that each student and/or parent is provided the opportunity to opt-out of having their directory information (including their address) made available to others.
- Ensure that reasonable efforts are made to inform students and/or parents if there is a judicial order or subpoena seeking student records, well enough in advance to give the student and/or parents time to seek a protective order.

C. Immigration Enforcement on Campus

1. Sensitive Locations

Under a 2011 Department of Homeland Security memorandum, federal immigration enforcement operations are not supposed to occur at schools. Under this memorandum, ICE is directed not to engage in enforcement actions at “sensitive locations”—including schools, hospitals, and churches—unless exigent circumstances exist or there is a prior approval from specified officials. For more information on this Department of Homeland Security policy, please see the memorandum at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

It is unclear whether or not the policy contained in the 2011 memorandum will continue to govern ICE operations into the future. This sensitive locations policy might be rescinded with little public notice at any point in the future. Comprehensive planning for immigration issues should therefore include a discussion of what should be done in the event that ICE attempts to conduct an enforcement operation on campus.

BEST PRACTICE

Do not assume that Homeland Security will maintain its sensitive locations policy.

K-12 schools and institutions of higher education can always discourage ICE from operating on campus. However, as a legal and practical matter, an institution may be unable to prevent ICE officials and agents from coming onto the public portions of a campus without a warrant. Significant portions of virtually every college and university campus—public and private—are open to anyone. Restricted buildings or other areas (such as dormitories and other living spaces) would carry legitimate privacy interests, and therefore it would be appropriate to insist on a judicial warrant for access. The rules are similar for K-12 institutions. An institution will likely be unable to restrict ICE officials from entering areas open to the general public, but it could deny access to those areas not open to the general public absent a warrant signed by a judge. All institutions are encouraged to consult with their legal counsel in making decisions about how to respond to such events.

In all cases where ICE is seeking access to non-public areas of a campus, school officials can ask to see a warrant. If immigration officials do not have a warrant that is signed by a judge, school officials should tell ICE officials that they must wait until designated school administrators and the school's attorney can be consulted, absent an emergency or threat to student safety. If ICE officials present a search warrant, check to ensure that it:

- is signed by a judge,
- properly identifies the agency with authority to search,
- correctly identifies the search location(s),
- includes the correct date and has not expired, and
- references a specific person; if so, allow ICE to contact or question only that person.

K-12 school districts can also adopt a policy that provides that ICE and CBP cannot remove a student from school property or interrogate a student without consent of the student's parent or guardian, except in very limited circumstances, for example when the officers have a warrant signed by a judge.

BEST PRACTICES

- Develop policies calling for consultation with a particular school administrator and the school's attorney if ICE seeks access to campus.
- If ICE seeks access to campus, request that they leave and not re-enter the campus without a judge-signed warrant.
- If ICE officers seek access to non-public portions of a campus, ask to see a warrant. Determine whether the warrant has been signed by a judge.
- If ICE seeks access to non-public areas on campus without a judge-signed warrant, consult the school's designated administrator and the school's attorney.
- Consider adopting a policy that ICE and CBP agents cannot remove a student from school property or interrogate a student except in very limited circumstances.

2. DACA students

The Obama administration's Deferred Action for Childhood Arrivals policy (DACA), provides relief from deportation for specific individuals who apply for and receive DACA status. DACA reflects USCIS's exercise of its prosecutorial discretion to permit approved individuals to stay for two years at a time without fear of deportation. Those granted DACA status also may receive a Social Security number and are eligible for two-year employment authorization documents.

Since DACA is not codified by law or regulation, it can be modified or rescinded at any time. However, no specific plans for ending DACA have been proposed by President Trump to date, and it is unclear whether the new federal administration will alter practices regarding immigration enforcement against DACA students (if DACA were rescinded) or other undocumented students. The February 20, 2017 Department of Homeland Security Memo on Enforcement of Immigration Laws to Serve the National Interest specifically retained the 2012 memo creating DACA and left the program intact. While there has not been a formal policy change, and therefore ICE and CBP should exercise their prosecutorial discretion not to apprehend individuals with DACA status, there has been at least one example in Washington of a DACA recipient being detained under circumstances where the factual reason for detention is in dispute. Schools should provide know-your-rights literature to students, and DACA students should be reminded that they can and should decline to talk with immigration officials before consulting an attorney.

BEST PRACTICE

Provide know-your-rights literature and, whenever possible, make sure DACA students know that if they are detained by ICE, they can and should insist on speaking with a lawyer before providing more than their name to ICE officers.

3. Helping Students and Families

Many students have one or more parents or caregivers who could be subject to detention and deportation. Where possible, schools should encourage families to plan for unexpected detention of a child's parents or caregivers.

Without collecting unnecessary information, schools should distribute and make available the Immigrant Safety Plan for Youth and Children packet to families who might be impacted. The Safety Plan packet is available at <http://www.lcycwa.com/immigration-safety-plan-and-resources/>. Families can often get assistance with completing the packet from a local legal services organization. Contact information for these programs is in Appendix C.

Schools should consider designating a staff member who is trained in what to do in the event that a child's parents or caregivers are unexpectedly detained. The staff member should consider working with other resource-providers in the local community to develop a plan for caring for children whose parents or caregivers are unexpectedly detained while the child is at school.

The student's emergency contact information should be kept up to date so that the school knows who to call in the case of an emergency like the unexpected detention of a parent or caregiver. Schools should encourage parents to include someone who can pick up their child in the event they are unexpectedly detained while the child is at school. This person should be a person with citizenship or legal immigration status if possible. The Safety Plan packet contains a temporary parental consent agreement, along with other documents. Schools should check for a completed parental consent agreement that designates who will be the child's caregiver in the event of detention. Some children will be carrying this document in their backpacks. Schools should reach out to all of the child's emergency contacts and should turn to CPS or local law enforcement only as a last resort.

While it is important to provide information and resources to families who might be impacted by increased immigration enforcement, consider the potential risks of gathering potentially impacted families in one place at an announced date and time. In addition, other than emergency contact information, schools should consider the potential consequences of holding copies of families' safety plans because if immigration officials were able to obtain access to those documents, they may reveal information about the immigration status of some families. Consider providing written information to families on websites or handouts, in multiple languages depending on the community, or in one-on-one meetings. Also consider alternative ways of disseminating information, like providing a recorded message that families can call to listen to key information in their native language.

Finally, under the U.S. Supreme Court decision *Plyler v. Doe*, 457 U.S. 202 (1982), all children have an equivalent right to attend public primary and secondary schools regardless of their immigration status. Schools should refrain from any activity that may have a chilling effect on student attendance or enrollment. School personnel should never threaten to or insinuate that they will report a student or family member to immigration authorities. If there are incidents of bullying using such threats, schools should take action to protect the vulnerable student.

BEST PRACTICES

- Consider alternative ways of disseminating information if gathering families at a preannounced date and time may put some families at risk.
- Through one-on-one contacts with potentially impacted families, encourage families to prepare for unexpected detention.
- Provide easy access to the Immigrant Safety Plan for Youth and Children and contact information for legal services providers who can help families complete the plans.
- Work with local resource providers and have a plan in place for unexpected detention of a child's caregiver.
- Refrain from any activity that may have a chilling effect on student attendance or enrollment.

Notes

Part VI: K-12 and Higher Education

¹ There is not a specific FERPA exception permitting the release of the information covered by 8 U.S.C. § 1373. Whether or not 8 U.S.C. § 1373 supplants FERPA and would permit the release of immigration or citizenship status without written consent or another applicable FERPA exception is an open question. Consult your attorney regarding options should this issue arise.

² <http://familypolicy.ed.gov/content/may-schools-comply-subpoena-or-court-order-education-records-without-consent-parent-or>.

³ 34 C.F.R. § 99.37.

⁴ See 34 C.F.R. §§ 99.30, 99.31(a)(9).

PART VII: EMPLOYERS

Workplace immigration raids could occur at any time. In order to be prepared for a potential raid, employers may want to have know-your-rights resources on-site and know how to contact employees' family members in an emergency.

The Northwest Immigrant Rights Project (NWIRP) has a Rapid Response Team for large-scale immigration raids. In the event of a raid, employers are encouraged to contact NWIRP immediately so that the Rapid Response Team can be notified.¹

BEST PRACTICES

- Employers should provide know-your-rights information for employees. *See Appendix F.*
- Keep employees' emergency contact information up to date.
- In the event of a large-scale immigration raid, contact the Northwest Immigrant Rights Project as soon as possible.

A. Employers' Rights

In the event ICE or CBP contacts an employer, employers have the right to request to see a warrant before allowing ICE officials entry into the non-public areas of a business.² If ICE officials do not have a warrant that is signed by a judge, employers may advise the agents that the employer needs time to consult with legal counsel. If ICE officials present a search warrant, check to ensure that it:

- is signed by a judge,
- properly identifies the agency with authority to search,
- correctly identifies the search location(s), and
- includes the correct date and has not expired.

Employers are entitled to accompany and observe the immigration agents during the raid and can take notes. Generally, individuals have the right to record enforcement actions if they are public; Washington law generally requires consent of all parties being recorded, so individuals who begin recording should announce that they are doing so.

Employers should be aware that under federal law, employers are subject to criminal and civil penalties for hiring or continuing to employ unauthorized noncitizens.³ In addition, federal law makes it illegal to harbor or conceal an undocumented alien.⁴ Do not lie or provide false documents to ICE or CBP. Employers should consult their attorneys if they have questions about these or any other immigration-related employment laws.

BEST PRACTICES

- If ICE or CBP seeks access to a non-public area, ask to see a warrant. Check to make sure that any warrant has been signed by a judge.
- If ICE or CPB does not present a warrant that has been signed by a judge, consult an attorney.
- Consider recording ICE raids, but be sure to first announce that you are recording.
- Be aware of federal laws governing employment of noncitizens.

B. Employees' Rights

Employers may have questions about the rights of their employees in the event that federal immigration enforcement agents come to the workplace. An employee has the right to remain silent, though providing a name will help family or an attorney locate the person if they are being detained. Employees should not lie and they should not carry or provide fraudulent documentation.

Employees can ask if they are free to leave, and if the immigration agent says yes, the employee can choose to leave. Employees have the right to refuse to answer any other questions and can request time to speak to a lawyer. Especially if the employee is unsure about the answer to a question, they can exercise their right to remain silent. Employees should carry contact information for their attorney or a legal services provider at all times. Employees have the right to refuse to sign any documents until they have talked to an attorney.

If detained, an individual has the right to request a bond hearing immediately; doing so may prevent transfer to a detention facility outside of Washington State. A one-page bond hearing request form is available through NWIRP and in Appendix F.2. Employers may want to print hard copies and have them available at their location in case of an ICE raid.

In removal proceedings, ICE has the initial burden of demonstrating that someone is an alien. Individuals do not have to provide or confirm information about where they were born, whether they are citizens, or how they entered the country. If detained, individuals can refuse to discuss their immigration status with anyone except their lawyers.

BEST PRACTICE

- Employers should provide know-your-rights information for employees. *See Appendix F.1.*
- If an ICE raid is a possibility, employers should print bond request forms and provide them to employees in the event of a raid. *See Appendix F.2.*

Notes

Part VII: Employers

¹ Western Washington or Seattle: (206) 587-4009, (800) 445-5771; Granger Office: (509) 854-2100, (888) 756-3641; Wenatchee Office: (509) 570-0054, (866)271-2084.

² In addition to constitutional restrictions on searches, *see also* 8 C.F.R. § 287.8(f) (site inspections) and 8 U.S.C. § 1357(e) (outdoor agricultural operations).

³ *See* 8 U.S.C. § 1324a.

⁴ *See* 8 U.S.C. § 1324.

PART VIII: PUBLIC HOSPITALS

There are a variety of public hospitals in Washington including university hospitals and hospitals owned and operated by public hospital districts. Public hospitals provide health care to all members of the public, including undocumented immigrants. The purpose of this section is to provide general guidance regarding this service as it relates to immigration enforcement. Hospitals should consult with their attorneys about specific issues as they arise.

A. Hospital Regulation

The Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd, requires hospitals that have emergency rooms and receive Medicare funds to ensure public access to emergency services regardless of the patient's ability to pay. The hospital must screen the individual to determine if an emergency medical condition exists and, if it does, staff must stabilize the condition or transfer the patient to a hospital better equipped to stabilize the condition. Hospitals with specialized capabilities or facilities must accept transfer patients if they have the capacity. A hospital may not delay screening or further treatment in order to ask about method of payment or insurance status.

In addition, Washington's charity care statute, RCW 70.170, requires hospitals to provide charity care, which is defined as "necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care[.]"¹ The state Department of Health (DOH) reviews hospitals' charity care policies for approval. WAC 246-453 defines "indigent persons" according to income and ability to pay and establishes uniform procedures for the identification of indigent persons. Legal residency and visa status are not referenced. DOH does not approve charity care policies that exclude charity care to otherwise eligible patients on the basis of legal residency or visa status. Public Hospitals must also comply with the Washington Law Against Discrimination, RCW 49.60, which prohibits discrimination in health care on the basis of race, color, and national origin.

Hospitals must also develop and submit to the Department of Health access-to-care policies that include the element of “nondiscrimination.”² The access-to-care policies are posted on DOH’s website and must be posted on the hospital’s website as well.³ In addition, the hospital must inform each patient of the patient’s rights in advance of furnishing or discontinuing services whenever possible.⁴

Hospital operation is regulated by DOH under RCW 70.41, which defines “hospital” to mean “any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.”⁵ It does not include psychiatric hospitals or other institutions specifically intended to treat mental disorders.

BEST PRACTICES

- Ensure compliance with charity care and antidiscrimination laws.
- Make policies, procedures, and notices regarding access-to-care, nondiscrimination, confidentiality, and charity care available to patients as broadly as possible to help ease any fear of seeking medical treatment.

B. Patient Confidentiality

Patient health care information (PHI) is protected under both federal law, through the Health Information Portability and Accountability Act (HIPAA), and state law, through the Washington State Uniform Health Care Information Act (HCIA), RCW 70.02. HIPAA and the HIPAA Privacy Rule prohibit covered entities from disclosing PHI without the consent of the patient except in specified circumstances.⁶ Similarly, the HCIA prohibits health care providers from disclosing PHI without the patient's written consent unless an exception applies.⁷ The HCIA recognizes that because of the need "to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information."⁸

The HIPAA Privacy Rule preempts contrary state law. However, where the state law relates to the privacy of individually identifiable health information and is more stringent than HIPAA, state law is not preempted.⁹ The Privacy Rule sets a national floor of legal protections.¹⁰ Even when disclosure to law enforcement is *permitted* by the Privacy Rule, the Rule does not *require* covered entities to disclose the information.¹¹ Unless the disclosure is required by some other law, covered entities should apply their own policies and principles to determine whether to disclose PHI.¹²

Under the HIPAA Privacy Rule, a covered entity may disclose PHI for a law enforcement purpose to a law enforcement official in compliance with and as limited by the relevant requirements of a court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; or an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, as long as the information sought is relevant and material to a legitimate law enforcement inquiry, the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and de-identified information could not reasonably be used.¹³ An administrative request may be satisfied by the administrative subpoena or similar process or by a separate written statement that on its face demonstrates that the applicable requirements have been met.¹⁴ Before disclosure in response to subpoenas or other lawful process not accompanied by an order of a court or administrative tribunal, there must be reasonable efforts to notify the patient as described in 45 C.F.R. § 164.512(e)(1).

The covered entity must verify the identity of the person requesting the information and the authority of the person to have access to the information if the identity is not otherwise known to the individual. The covered entity must also obtain any documentation that is a condition of disclosure.¹⁵

Under state law, which must govern where it is more protective, a health care provider may not disclose health care information to any other person without the patient's written consent except as otherwise provided. RCW 70.02.050 and RCW 70.02.200 set forth general exceptions to the prohibition against disclosure without authorization. Some are permissive; some are mandatory. None of the exceptions concern immigration status. Those that may be most relevant to contact by immigration officials are discussed below.

A health care provider must disclose health care information without the patient's authorization "[t]o federal, state, or local law enforcement authorities to the extent the health care provider is required by law" to do so.¹⁶ However, when a discovery request or "compulsory process," like a warrant or subpoena is involved, a health care provider may only disclose health care information when the health care provider and patient receive advance notice of the compulsory process and adequate time to seek a protective order as described in RCW 70.02.060.

The provider must also disclose certain health care information to federal, state, or local law enforcement authorities when the patient is being treated, or has been treated, for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act.¹⁷

In addition, a health care provider may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services, without patient authorization in order to provide directory information unless the patient has instructed the health care provider or health care facility not to make the disclosure.¹⁸ Under RCW 70.02.010, "directory information" is defined as "information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility." A best practice for hospitals is to ask the patient at admittance whether he or she instructs the facility not to make this disclosure.

A health care provider may disclose PHI without patient authorization to an official of a penal or other custodial institution in which the patient is detained.¹⁹ Health care information regarding sexually transmitted diseases and mental health may be disclosed pursuant to a lawful court order.²⁰ Both HIPAA and HCIA contain additional law enforcement exceptions which may or may not be relevant to contact by immigration officials. As a result, an attorney should be consulted if immigration officials seek access to a patient's health care information.

BEST PRACTICES

- Ensure that staff is adequately trained in confidentiality requirements under HIPAA and HCIA to allow them to properly respond to requests for disclosure by immigration enforcement officers, and designate a person or persons to handle all such requests to further ensure that the requests are handled with consistency and to give staff time to consult with an attorney when necessary.
- Consult with an attorney to ensure that your responsibilities under the confidentiality laws are met.
- Consider whether other more restrictive laws apply such as those applicable to mental health records.
- Ask patients at admittance whether the patient instructs the facility not to reveal directory information, including where they can be located during their stay in the hospital.
- If immigration officials seek access to non-public areas of the hospital, ask to see a warrant and check to see if it has been signed by a judge. If it has not, consult with the hospital's attorney before allowing entry.

Notes

Part VIII: Public Hospitals

¹ RCW 70.170.020(4).

² WAC 246-320-141.

³ *Id.*

⁴ 42 C.F.R. § 482.13.

⁵ RCW 70.41.020(7).

⁶ 42 U.S.C. § 1320d-6; 45 C.F.R. Part 164, Subpart E (§§164.501-.534).

⁷ RCW 70.02.020.

⁸ RCW 70.02.005(3). In addition, under WAC 246-320, hospitals must adopt and implement policies and procedures that define each patient's right to confidentiality, privacy, security and communication, among other things. The Centers for Medicare and Medicaid Services also require that hospitals receiving federal funding provide that the patient has a right to the confidentiality of the patient's medical records 42 C.F.R. § 482.13.

⁹ 45 C.F.R. § 160.203.

¹⁰ Lisa M. Boyle, *HIPAA: A Guide to Health Care Privacy and Security Law*, § 6:62.11 (2016).

¹¹ *Id.*

¹² *Id.*

¹³ 45 C.F.R. § 164.512(f).

¹⁴ 45 C.F.R. § 164.514(h)(2)(i)(A).

¹⁵ 45 C.F.R. § 164.514(h)(1).

¹⁶ RCW 70.02.200(2)(a).

¹⁷ RCW 70.02.200(2)(b).

¹⁸ RCW 70.02.200(1)(e).

¹⁹ RCW 70.02.200(1)(i).

²⁰ RCW 70.02.220, .230, .240.

APPENDIX

Appendix A (begins p. 53):

1. Washington State Executive Order 17-01 “Reaffirming Washington’s Commitment to Tolerance, Diversity and Inclusiveness”
2. King County Title 2 Section 15: Citizen and Immigration Status
3. Resolution No. 31730 affirming the City of Seattle as a Welcoming City, adopted January 30, 2017
4. City of Seattle Executive Order 2016-08
5. City of Kirkland Memo: “Sustaining a Safe, Inclusive and Welcoming City” and Ordinance O-4558
6. City of Burien Ordinance No. 651 relating to ascertaining immigration status or religion as it relates to the public health and safety of the residents of the City of Burien

Appendix B (begins p. 85):

Sample Provisions From Other States and Localities

1. Objective: Local government entities should not engage in certain activities solely for the purpose of enforcing federal immigration law.
2. Objective: Local government entities should not inquire about or collect information related to immigration status unless required by law to do so.
3. Objective: Absent a judicial warrant, local government entities should honor ICE or CBP detainer requests only in limited, specified circumstances.
4. Objective: Absent a judicial warrant, local government entities should not honor ICE or CBP requests for certain non-public, sensitive information about an individual unless required to do so by law.
5. Objective: Local government entities should not provide ICE or CBP with access to individuals in their custody for questioning solely for immigration enforcement purposes.
6. Objective: Local government entities should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.
7. Objective: Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.
8. Objective: Local agencies should ensure nondiscriminatory access to benefits and services.
9. Objective: Local government entities should collect and report aggregate data containing no personal identifiers regarding their receipt of ICE and CBP requests, for the sole purpose of monitoring compliance with applicable laws.

Appendix C (begins p. 88):

1. Select Resources for Individuals
2. Statewide Volunteer Lawyer Program Directory

Appendix D (begins p. 91):

1. Form I-247A: Immigration Detainer - Notice of Action
2. Guidance for Completing Form I-247A
3. Form I-200: Warrant for Arrest of Alien
4. Form I-205: Warrant of Removal/Deportation

Appendix E (p. 98):

Example judicial warrant for arrest

Appendix F (begins p. 99):

1. Know Your Rights Information from Northwest Immigrant Rights Project
2. Motion Requesting Bond Hearing

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

EXECUTIVE ORDER 17-01

**REAFFIRMING WASHINGTON'S COMMITMENT
TO TOLERANCE, DIVERSITY, AND INCLUSIVENESS**

WHEREAS, Washington has a proud history of inclusivity, tolerance, and compassion for all residents. The diversity of our people and cultures is a critical part of who we are as a state;

WHEREAS, our state values the unique differences in our residents and protects diversity. Washington law establishes “the right to be free from discrimination because of race, creed, color, national origin,” the right to engage in commerce free from discrimination, including discrimination based on religion, and declares these to be civil rights. RCW 49.60.030;

WHEREAS, nearly one million Washingtonians – one in every seven people in this state – are immigrants. These Washingtonians are an integral part of our communities and workforce;

WHEREAS, Washington's diverse and vibrant economy spans both the east and west sides of our state and encompasses agriculture, aerospace, food processing, timber, construction, health care, technology, tourism, hospitality industries, and the defense sector. As of 2014, immigrants comprised almost 17 percent of Washington's workforce and contributed over \$2.4 billion in state and local taxes. Sixty percent of the Fortune 500 companies based in Washington were founded by immigrants or their children. The contributions of these individuals to our businesses, economy, and community are critical to our success as a state;

WHEREAS, undocumented immigrants comprised approximately 4.9 percent of the state's workforce in 2012 and paid \$301.9 million in state and local taxes. If all undocumented immigrants were removed from the state, the state would lose \$14.5 billion in economic activity, \$6.4 billion in gross revenue, and approximately 71,197 jobs;

WHEREAS, as of 2016, Washington is home to over 17,000 Deferred Action of Childhood Arrival (DACA) recipients. These are young people who came to this country as children and have been here for a significant period of time. DACA recipients are required to be students or in the workforce, and must have no prior felonies or significant misdemeanors. They are contributing members of our community and to our economy. Almost 15,000 DACA young people are employed in this state. If these individuals were removed from our state, our communities would suffer a significant economic loss, estimated at \$1 billion;

WHEREAS, currently 65,000 immigrants serve in our nation's armed forces and since 2002 greater than 100,000 immigrants have become naturalized citizens following honorable service to our nation. Many of these immigrants are Washingtonians. Their personal sacrifice and contribution to our nation's security should be recognized by all Americans.

WHEREAS, Washington State has outstanding higher education institutions and foreign-born students contribute significantly to these institutions through their cultural diversity and economic contributions. In the 2013-2014 academic year, roughly 21,000 international college students made up 6.2 percent of all college students in the state and contributed \$737 million in to our state's economy in tuition, fees, and living expenses.

WHEREAS, Washington immigrants are an important part of the fabric of our state. Immigrants contribute to Washington's rich culture by bringing their arts, heritage, cuisines, rituals, and festivals to share and celebrate. The cultural influences and creative talents of immigrants can be found in every aspect of our society, from the performing arts and education to the innovation and entrepreneurial spirit of our burgeoning industries; and

WHEREAS, we have long tradition of welcoming and supporting those who are the most vulnerable. In 1975, for example, Governor Dan Evans launched a program to settle hundreds of Vietnamese refugees in Washington State. To this day, Washington continues to provide state services to assist those qualified individuals who are most in need of these services, while adhering to state and federal laws and regulations.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, reaffirm my commitment to vigorously support and protect the rights of Washingtonians and to respect diversity and inclusion in our state practices. It is therefore directed that:

1. The state of Washington shall remain a welcoming jurisdiction that embraces diversity with compassion and tolerance and recognizes the value of immigrants;
2. Executive and small cabinet agencies shall continue to provide assistance and services to Washingtonians, regardless of citizenship or legal status, to the extent allowed by law;
3. No executive or small cabinet agency may discriminate against a person based on the person's national origin in violation of RCW 49.60.030;
4. No executive or small cabinet agency may condition provision of services or benefits upon a resident's immigration status, except as required by international, federal or state law;
5. Executive and small cabinet agencies shall ensure their policies comply with Executive Order 16-01, *Privacy Protection and Transparency in State Government*, and that information collected from clients is limited to that necessary to perform agency duties. Policies must ensure that information regarding a person's immigration or citizenship status or place of birth shall not be collected, except as required by federal or state law or state agency policy;
6. No executive or small cabinet agency may inquire into, or request specific documents, in order to ascertain a person's immigration status for the sole purpose of identifying if a person has complied with federal civil immigration laws, including passports, alien registration, or work permits, except as required by federal or state law;
7. No executive or small cabinet agency may use agency or department monies, facilities, property, equipment, or personnel to enforce, or assist in the enforcement or creation of any federal program requiring registration of individuals on the basis of religious affiliation, except as required by federal or state law;

8. No executive or small cabinet agency may use agency or department monies, facilities, property, equipment, or personnel for the purpose of targeting or apprehending persons for violation of federal civil immigration laws, except as required by federal or state law or otherwise authorized by the Governor; and
9. The Washington State Patrol or Department of Corrections, or other executive or small cabinet agency with arrest powers, will act consistently with current federal law and shall not arrest solely for violation of federal civil immigration laws, except as otherwise required by federal or state law or authorized by the Governor. Specifically, no agency may enter into any agreements with the federal government authorizing such authority under the Immigration and Nationality Act (8 U.S.C. §1357).

This Executive Order is not intended to, and does not, create any right or entitlement for any person, nor does it create a cause of action against the state of Washington;

This Executive Order is intended to be consistent with 8 U.S.C. §1373. Should federal or state law change so as to give rise to a conflict with this Executive Order, such provision of this Executive Order shall be inoperative to the sole extent of the conflict.

This order is effective immediately.

Signed and sealed with the official seal of the state of Washington, on this 23rd day of February, 2017, at Olympia, Washington.

By:

/s/

Jay Inslee
Governor

BY THE GOVERNOR:

/s/

Secretary of State

2.15 CITIZEN AND IMMIGRATION STATUS

Sections:

- 2.15.010 Citizenship and immigration status - provision of county services - limitations on use of documentation, police powers - provision of health benefits, opportunities or services - use of documentation - limitations on liability – review of county applications, questionnaires and interview forms.
- 2.15.020 Civil immigration hold requests - county policy - reports.

2.15.010 Citizenship and immigration status - provision of county services - limitations on use of documentation, police powers- provision of health benefits, opportunities or services - use of documentation - limitations on liability - review of county applications, questionnaires and interview forms.

A. Except as provided in this section or when otherwise required by law, a Reverend Doctor Martin Luther King, Jr., County office, department, employee, agency or agent shall not condition the provision of county services on the citizenship or immigration status of any individual.

B.1. Nothing in this section shall be construed to prohibit any King County officer or employee from participating in cross-designation or task force activities with federal law enforcement authorities.

2. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws. The documents include but are not limited to:

- a. passports;
- b. alien registration cards; or
- c. work permits.

3. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel may use documents relating to a person's civil immigration status if the documents are offered by the person upon a general, nonspecific request.

4. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not use stops for minor offenses or requests for voluntary information as a pretext for discovering a person's immigration status.

5. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not initiate any inquiry or enforcement action based solely on a person's:

- a. civil immigration status;
- b. race;
- c. inability to speak English; or
- d. inability to understand the deputy.

C. The Seattle-King County department of public health shall not condition the provision of health benefits, opportunities or services on matters related to citizenship or immigration status. The Seattle-King County department of public health may inquire about or disclose information relating to an individual's citizenship or immigration status for the purpose of determining eligibility for benefits or seeking reimbursement from federal, state or other third-party payers.

D. Except when otherwise required by law, where the county accepts presentation of a state-issued driver's license or identification card as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport or matricula consular, which is a consulate-issued document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a Washington state driver's license or identification card. However, a request for translation of such a document to English shall not be deemed a violation of any provision of this ordinance and any subsequent ordinance. This provision does not apply to documentation required to complete a federal I-9 employment eligibility verification form.

E. This section does not create or form the basis for liability on the part of the county, its officers, employees or agents.

F. Unless permitted by this section or otherwise required by state or federal law or international treaty, all applications, questionnaires and interview forms used in relation to the provision of county benefits, opportunities or services shall be promptly reviewed by each agency, and any question requiring disclosure of information related to citizenship or immigration status shall be, in the agency's best judgment, either deleted in its entirety or revised such that the disclosure is no longer required.

The review and revision shall be completed within one hundred and eighty days of November 29, 2009. (Ord. 16692 § 2, 2009).

2.15.020 Civil immigration hold requests - county policy - reports.

A. It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals that are accompanied by a criminal warrant issued by a U.S. District Court judge or magistrate.

B. The department of adult and juvenile detention shall compile a listing all immigration detainers received by the department, showing detainers received and detainers accompanied by federal judicial warrants. Beginning May 1, 2014, the department shall prepare and transmit to the council a quarterly report showing the number of detainers received and the number of detainers that were accompanied by a federal judicial warrant with descriptive data that includes but is not limited to: the types of offenses that individuals with detainers accompanied by a federal judicial warrant were being held, the reason for release from county custody, the length of stay for each individual before the detainer accompanied by a federal judicial warrant was executed, and the number of individuals that had detainers but were transferred to federal or state department of corrections' custody. The reports called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole, and the law, justice, health and human services committee, or their successors. (Ord. 17886 § 2, 2014: Ord. 17706 § 2, 2013).

CITY OF SEATTLE

RESOLUTION 31730

A RESOLUTION affirming the City of Seattle as a Welcoming City that promotes policies and programs to foster inclusion for all, and serves its residents regardless of their immigration or refugee status, race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, disability, homelessness, low-income or veteran status, and reaffirming the City’s continuing commitment to advocate and support the wellbeing of all residents.

WHEREAS, Seattle fosters a culture and environment that makes it a vibrant, global city where our immigrant and refugee residents can fully participate in and be integrated into the social, civic, and economic fabric of Seattle; and

WHEREAS, nearly one in five Seattle residents is foreign born and 129 languages are spoken in our public schools; and

WHEREAS, Washington is the country’s 8th largest refugee-receiving state and a majority of the estimated 3,000 new arrivals each year are re-settled in Seattle-King County; and

WHEREAS, an estimated 100,000 Muslim residents are proud to call Washington their home and live peacefully as our neighbors, colleagues and friends; and

WHEREAS, more than 28,000 undocumented youth in Washington are the recipients of the Deferred Action for Childhood Arrivals (DACA) program and they deserve an opportunity to have a bright future and to contribute their time and talent to make Seattle a city of innovation and growth; and

WHEREAS, City employees serve all residents and make city services accessible to all, regardless of immigration status, and City agencies and law enforcement cannot withhold services based on ancestry, race, ethnicity, national origin, color, age, sex, sexual

1 orientation, gender identity, marital status, physical or mental disability, immigration
2 status or religion; and

3 WHEREAS, in 2014, to recognize and uphold the 4th Amendment constitutional rights of
4 immigrants to be protected against unreasonable seizures, the Metropolitan King County
5 Council adopted Ordinance 17886 to clarify that the County will only honor U.S.
6 Immigration and Customs Enforcement (ICE) detainer requests that are accompanied by
7 a criminal warrant issued by a federal judge or magistrate; and

8 WHEREAS, the City of Seattle adopted Ordinance 121063 in 2003 to establish policies of the
9 Seattle Police Department to protect immigrants' access to police protection and public
10 services regardless of immigration status, subsequently re-affirmed by Resolution 30672
11 in 2004; and

12 WHEREAS, the City of Seattle adopted Resolution 30851 in 2006, Resolution 31193 in 2010,
13 and Resolution 31490 in 2013 supporting Federal Comprehensive Immigration Reform
14 and fostering family unity with a pathway to citizenship for the undocumented, including
15 students who arrived in the U.S. as children (DREAMers); and

16 WHEREAS, the City of Seattle has previously adopted Resolution 30355 in 2001, honoring
17 Seattle's immigrant community, and Resolution 30796 in 2005, relating to development
18 of an action plan to identify and address issues facing Seattle's immigrant communities;
19 and

20 WHEREAS, the City of Seattle enacted Ordinance 123822 in 2012 to create an Office of
21 Immigrant and Refugee Affairs and renaming the Immigrant and Refugee Advisory
22 Board to the Immigrant and Refugee Commission; and

1 WHEREAS, the City of Seattle adopted Resolution 31724 in 2016 reaffirming Seattle's values of
2 inclusion, respect, and justice, and the City's commitment toward actions to reinforce
3 these values; and calling on President Donald Trump to condemn recent attacks and hate
4 speech that perpetuate religious persecution, racism, sexism, homophobia, transphobia
5 and xenophobia; and

6 WHEREAS, Seattle benefits tremendously from the large number of diverse immigrants and
7 refugees who contribute to the development of a culturally and economically diverse and
8 enriched community; and

9 WHEREAS, the level of anti-immigrant and anti-refugee rhetoric during the 2016 Presidential
10 campaign, racist hate speech toward immigrant and refugee communities, and anti-
11 immigrant and anti-refugee policies proposed by the current Presidential Administration
12 is alarming; and

13 WHEREAS, the City of Seattle is committed to recognizing the dignity of all its residents,
14 including the right of all Seattle residents to live in a City that does not subject them to
15 prejudicial treatment or discrimination; and

16 WHEREAS, Seattle is committed to continue building a welcoming, safe, and hate-free
17 environment in communities, where all immigrants and refugees are welcomed, accepted,
18 and integrated; and to encourage business leaders, civic groups, community institutions,
19 and residents to join in a community-wide effort to adopt policies and practices that
20 promote integration, inclusion, and equity; and

21 WHEREAS, on November 24, 2016, the Mayor signed Executive Order 2016-08 reaffirming
22 Seattle as a welcoming city and establishing an Inclusive and Equitable City Cabinet and

1 confirming the City's intent to protect the civil liberties and civil rights of all Seattle
2 residents; and

3 WHEREAS, Ordinance 121819 authorizes the Chief of Police or designee to "execute for and on
4 behalf of the City of Seattle an interlocal agreement with other police agencies in King
5 County to provide mutual aid to attempt to enhance the safety and protection of the
6 public in Seattle and King County," consistent with chapter 10.93 RCW; and

7 WHEREAS, on January 25, 2017, by *Executive Order: Border Security and Immigration*
8 *Enforcement Improvements*, President Trump declared the policy of the executive branch
9 to secure the southern border of the United States through the immediate construction of
10 a physical wall; to detain individuals apprehended on suspicion of violating Federal or
11 State law, including Federal immigration law, pending further proceedings regarding
12 those violations; to expedite determinations of apprehended individuals' claims of
13 eligibility to remain in the United States; to promptly remove individuals whose legal
14 claims to remain in the United States are rejected; to cooperate fully with States and
15 local law enforcement in enacting Federal-State partnerships to enforce Federal
16 immigration priorities, as well as State monitoring and detention programs that are
17 consistent with Federal law and do not undermine Federal immigration priorities; and to
18 hire an additional 5000 Border Patrol Agents; and

19 WHEREAS, on January 25, 2017, by *Executive Order: Enhancing Public Safety in the Interior*
20 *of the United States*, President Trump declared the policy of the executive branch to
21 ensure faithful execution of United States immigration laws against all removable aliens
22 consistent with Article II, Section 3 of the United States Constitution and 5 U.S.C. 3331;
23 to make use of all available systems and resources to ensure the efficient and faithful

1 execution of the immigration laws of the United States; to ensure that jurisdictions that
2 fail to comply with applicable Federal law do not receive Federal funds, except as
3 mandated by law; to ensure that aliens ordered removed from the United States are
4 promptly removed; to support victims of crimes committed by removable aliens; to hire
5 an additional 10,000 immigration officers; to empower State and local law enforcement
6 agencies to perform the functions of immigration officers; to provide the Secretary of
7 Homeland Security with the authority to designate, in his discretion and to the extent
8 consistent with law, a jurisdiction as a sanctuary jurisdiction; to ensure that jurisdictions
9 that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not
10 eligible to receive Federal grants, except as deemed necessary for law enforcement
11 purposes by the Attorney General or the Secretary of Homeland Security; and

12 WHEREAS, *Executive Order: Enhancing Public Safety in the Interior of the United States*
13 directs the U.S. Attorney General to take appropriate enforcement action against any
14 entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that
15 prevents or hinders the enforcement of Federal law, and further directs the Secretary of
16 Homeland Security to, on a weekly basis, make public a comprehensive list of criminal
17 actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor
18 any detainers with respect to such aliens; and

19 WHEREAS, The City of Seattle recommits its policy to be a Welcoming City to all its residents
20 and to continue building a city of inclusion and participation by all; NOW,

21 THEREFORE,

22 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE**
23 **MAYOR CONCURRING, THAT:**

1 Section 1.

2 A. Seattle will celebrate its diversity by welcoming and supporting immigrants and
3 refugees from all nationalities, religions, and backgrounds with policies and programs that foster
4 inclusion for all. Seattle elected officials and employees shall support the efforts of elected
5 officials and staff in local jurisdictions throughout Washington in developing policies protecting
6 immigrants, refugees, LGBTQ people, women, and other populations whose rights may be
7 abrogated and interests harmed by those hostile to maintaining or expanding protections to these
8 communities and who would unconstitutionally and illegally misuse the power of the federal
9 government to do so.

10 B. The City of Seattle believes that the Seattle Police Department (SPD) should be
11 focused on the safety and security of all our residents regardless of immigration status and
12 refuses to allow its police officers to be compelled into service as de facto immigration officers.
13 As such, the City will reject any offer from the federal government to enter into a Section 287(g)
14 agreement per the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

15 C. The City of Seattle commits to exercising its rights under the Tenth Amendment to the
16 U.S. Constitution to refrain from performing the duties of the Department of Homeland Security
17 for purposes of enforcing the Immigration and Nationality Act. Accordingly, SPD, in
18 consultation with the Law Department, shall, by no later than February 28, 2017, file a report
19 with the Office of the City Clerk with a copy to the Chair of the Gender Equity, Safe
20 Communities and New Americans Committee (GESCNA), for subsequent presentation in
21 GESCNA, that includes the following:

22 1. A copy of all mutual aid agreements between The City of Seattle and other
23 jurisdictions; provided, that where agreements with more than one jurisdiction contain identical

1 terms, only one copy need be provided along with a list of the jurisdictions that have that
2 identical language;

3 2. For all jurisdictions with whom The City of Seattle has mutual aid agreements,
4 identification of those jurisdictions that: (1) have entered into a Section 287(g) agreement with
5 the federal government; (2) have explicitly declared their intent to not enter into a Section 287(g)
6 agreement; (3) have neither entered into a Section 287(g) agreement nor declared their intent to
7 not enter into a Section 287(g) agreement; and (4) fall into none of these categories; and

8 3. Proposed amendments to the City's mutual aid agreements with jurisdictions
9 that have not explicitly rejected offers to enter into a Section 287(g) agreement to be consistent
10 with the SPD and The City of Seattle's position related to focusing its limited law enforcement
11 resources on criminal investigations rather than civil immigration law violations, including an
12 analysis of the impact of the proposed amendments.

13 D. In recognition that immigrants and refugees of all immigration statuses are a
14 contributing and integral part of Seattle, all instances of the word *citizen* will be replaced with
15 the word *resident* in the My.Seattle.Gov Mission Statement. This shall include revising the
16 mission statement to reflect a commitment to provide a 24-hour City Hall for the *residents* of
17 Seattle.

18 E. The City of Seattle will use all legal avenues at its disposal to resist any efforts to
19 impose on the City any immigration, spending or funding policy that violates the U.S.
20 Constitution and the Laws of the United States.

21 F. The City of Seattle will continue to protect the rights guaranteed to the City and its
22 people by the United States Constitution and will challenge any unconstitutional policies that
23 threaten the security of its communities.

1 G. The City of Seattle will not cooperate or assist with any unconstitutional or illegal
2 registration or surveillance programs or any other unconstitutional or illegal laws, rules, or
3 policies targeted at those of the Muslim faith and/or of Middle Eastern descent and rejects any
4 attempts to characterize family, friends, neighbors, and colleagues as enemies of the state.

5 H. Seattle does not tolerate hate speech towards any Seattle resident or visitor. The Office
6 for Civil Rights will conduct an outreach campaign on, develop a hotline for, and continue to
7 work to enforce federal and local laws against illegal discrimination and harassment based on
8 age, religion, national origin, race, sex, sexual orientation, and other protected groups in housing,
9 employment, public accommodations and contracting. The Seattle Police Department and the
10 Office for Civil Rights will work with the community to ensure that the people of Seattle are
11 protected under state and local malicious harassment laws and understand these protections.

12 I. Seattle rejects any effort to criminalize or attack the Black Lives Matter social justice
13 movement or any other social justice movement that seeks to address inequalities, inequities and
14 disparities present in Seattle.

15 J. City employees will defer detainer requests from the U.S. Department of Homeland
16 Security's Immigration and Customs Enforcement (ICE) to King County. Because jails are in
17 King County's jurisdiction and enforcing civil federal immigration violations are in the purview
18 of the U.S. Department of Homeland Security, City department directors are hereby directed to
19 comply with the City's practice to defer to King County on all ICE detainer requests. King
20 County Ordinance 17886 passed in 2014 clarifies that the County will only honor ICE detainer
21 requests that are accompanied by a criminal warrant issued by a federal judge or magistrate.
22 Because City employees do not have legal authority to arrest or detain individuals for civil
23 immigration violations, nor to execute administrative warrants related to civil immigration law

1 violations, City of Seattle employees are hereby directed, unless provided with a criminal
2 warrant issued by a federal judge or magistrate, to not detain or arrest any individual based upon
3 an administrative or civil immigration warrant for a violation of federal civil immigration law,
4 including administrative and civil immigration warrants entered in the National Crime
5 Information Center database.

6 K. City of Seattle employees will continue to serve all residents and make City services
7 accessible to all residents, regardless of immigration status. The City will not withhold services
8 on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation,
9 gender identity, marital status, physical or mental disability, religion, or immigration status.

10 L. City employees will seek to maintain, refine or develop City policies that advocate for
11 and provide support for all immigrants, refugees, Muslims, LGBTQ people, women, and anyone
12 else who may face severe adverse effects of newly adopted federal laws or policies.

13 M. City employees will not require any person seeking or accessing City programs or
14 services to disclose their immigration status. City employees will make no record of any
15 immigration status information that is inadvertently disclosed and will treat such immigration
16 status information as confidential and sensitive information pursuant to the City of Seattle's
17 privacy principles as adopted by Resolution 31570 in 2015.

18 N. The City of Seattle: unequivocally supports full reproductive health care for women,
19 including immigrants and refugees; stands against attacks on the right to organize or labor
20 unions; and supports living wages, expanded benefits like paid sick days and paid parental leave
21 for all, and the push for an end to the fossil fuel economy.

22 Section 2. The Office of Immigrant and Refugee Affairs in coordination with the
23 Department of Education and Early Learning and the Human Services Department shall develop

1 a proposal for assisting children and families associated with Seattle Public Schools affected by
2 federal policies directed at immigrants and refugees.

3 Section 3. City department directors will use tools at their disposal, including meetings
4 and trainings, to direct their staff to comply with the City's and County's policies described
5 above. A communication will be issued by City departments to their staff by February 28, 2017.

6 Section 4. City departments will annually issue and file with the City Clerk a letter to all
7 contractors receiving General Fund dollars to clarify and inform about the policies described
8 above. A communication will be issued and filed with the City Clerk by City departments to
9 their contractors by February 28, 2017. Additionally, language will be added to Requests for
10 Proposals (RFPs) to reflect the commitment to the policies described above.

11 Section 5. An Inclusive and Equitable City Cabinet is hereby established. A Deputy
12 Mayor shall lead and coordinate efforts across City departments and provide oversight and
13 evaluation of outcomes. The City Attorney's Office shall act as legal advisor to the Cabinet.

14 A. The following Departments shall be primary members of the Inclusive and Equitable
15 City Cabinet:

16 * City Budget Office

17 * Department of Neighborhoods

18 * Department of Education and Early Learning

19 * Human Services Department

20 * Office for Civil Rights

21 * Office of Economic Development

22 * Office of Immigrant and Refugee Affairs

23 * Office of Intergovernmental Relations

1 * Office of Labor Standards

2 * Office of the Mayor

3 * Seattle Police Department

4 B. The goal of the Inclusive and Equitable City Cabinet will be to advise the Mayor
5 and/or City on how to best coordinate City efforts to protect the civil liberties and civil rights of
6 all Seattle residents and provide supportive services and information as necessary to
7 communities of color, people with disabilities, women, LGBTQ residents, people who are low-
8 income, immigrants and refugees in light of potential changes in Federal Government policy and
9 operations.

10 Section 6. The Inclusive and Equitable City Cabinet shall advise on how the City may:

11 A. Develop a programmatic investment strategy for \$250,000 in funding included in the
12 4th Quarter Supplemental Budget of 2016 to directly address the needs of children and family
13 members within the Seattle Public Schools system affected by federal policies directed at
14 immigrants and refugees.

15 B. Prioritize investments to partner with community-based organizations to develop
16 sustainable resources, such as online training and tools, to educate and build the capacity of city
17 staff, educators, and administrators to work with immigrant and refugee children and families.

18 C. Institute a Rapid Response Policy Coalition that will bring together City staff, private
19 sector attorneys, non-profit staff, and other policy experts to serve on sub-committees based on
20 issue areas. These teams will offer analyses and action items on federal executive orders and
21 legislation. These analyses will be distributed to the larger coalition and be made available to the
22 general public.

1 D. Develop a comprehensive public awareness effort around anti-hate speech and hate
2 crimes.

3 E. Conduct a comprehensive review of potential implications on City departments –
4 policy or financial – given direction and available information about any new initiatives and
5 intent of the current Presidential administration.

6 F. Collaborate with immigrant and refugee community stakeholders and community
7 based organizations to expand and develop partnership efforts with the City, specifically the
8 Office of Immigrant and Refugee Affairs, to identify community needs and priorities.

9 G. Develop a forum for regional coordination with other cities in King County as well as
10 Pierce and Snohomish Counties to share knowledge and information about the City's efforts.

11 H. Develop a strategy for the creation and funding of a Legal Defense Fund to assist
12 immigrant and refugee individuals and families.

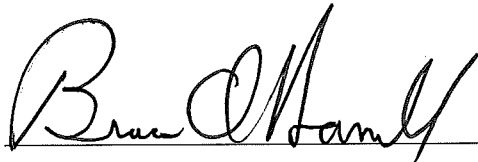
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D. Mendoza/ S. Lee/ M. L. González/P. Lee
LEG Welcoming City RES
D4

1 Adopted by the City Council the 30th day of January, 2017,

2 and signed by me in open session in authentication of its adoption this 30th day of

3 January, 2017.

4 

5 President _____ of the City Council

6 The Mayor concurred the 2nd day of February, 2017.

7 

8 Edward B. Murray, Mayor

9 Filed by me this 2nd day of February, 2017.

10 

11 Monica Martinez Simmons, City Clerk

12 (Seal)



City of Seattle

**Office of the Mayor
City of Seattle
Edward B. Murray, Mayor**

Executive Order 2016-08: An Executive Order reaffirming existing policies and providing guidance to City employees on protecting immigrants' access to police protection and public services and establishing an "Inclusive and Equitable City Cabinet" to coordinate city efforts to protect the civil liberties and civil rights of all Seattle residents.

WHEREAS, Seattle is a welcoming city that serves and protects its residents regardless of their immigration status; and

WHEREAS, in Seattle, all people, including immigrants, are valued contributors and are vital to our shared prosperity; and

WHEREAS, Seattle fosters a culture and policy environment that makes it possible for Seattle to be a vibrant, global city where our immigrant and refugee residents can fully participate in and be integrated into the social, civic, and economic fabric of their adopted city; and

WHEREAS, nearly one in five Seattle residents is an immigrant or refugee and 129 languages are spoken in our public schools; and

WHEREAS, Washington's population grew by 40,000 unauthorized residents between 2009 and 2014, making our state one of just six in the country with a growing unauthorized population during a time when numbers have decreased nationally; and

WHEREAS, Washington is the country's 8th largest refugee-receiving state and a majority of the estimated 3,000 new arrivals each year are re-settled in Seattle-King County; and

WHEREAS, 100,000 Muslim residents are proud to call Washington their home and live peacefully as our neighbors, colleagues, and friends; and

WHEREAS, more than 28,000 unauthorized youth in Washington received temporary status through the Deferred Action for Childhood Arrivals (DACA) program and they deserve an opportunity to have a bright future and to contribute their time and talent to make Seattle a city of innovation and growth;

NOW THEREFORE, I, EDWARD B. MURRAY, Mayor of Seattle, hereby reaffirm the City's commitment to be a welcoming city for all Seattle residents by ordering the following actions:

Section 1. City employees will not ask about immigration status. Seattle Ordinance 121063 passed in 2003 instructs all City employees to refrain from inquiring about the immigration status of any person except police officers where police officers have a reasonable suspicion that a person is committing or has committed a felony criminal-law violation.

Section 2. City employees will serve all residents and city services will be accessible to all residents, regardless of immigration status. Seattle Resolution 30672 passed in 2004 reaffirms Ordinance 121063 and states that City agencies and law enforcement cannot withhold services based on several identities, including ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion.

Section 3. City employees will defer detainer requests from the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) to King County. Because jails are in King County's jurisdiction and enforcing civil federal immigration violations are in the purview of the U.S. Department of Homeland Security, City department directors are hereby directed to comply with the City's practice to defer to King County on all ICE detainer requests. King County Ordinance 17886 passed in 2014 clarifies that the County will only honor ICE detainer requests that are accompanied by a criminal warrant issued by a federal judge or magistrate.

Section 4. City department directors will use tools at their disposal, including meetings and trainings, to direct their staff to comply with the City's and County's policies described above. A communication will be issued by City departments to their staff by January 31, 2017.

Section 5. City departments will issue a letter to all contractors receiving General Fund dollars to clarify and inform about the policies described above. A communication will be issued by City departments to their contractors by January 31, 2017.

Section 6. An "Inclusive and Equitable City Cabinet" is hereby established. Deputy Mayor Hyeok Kim shall lead and coordinate efforts across City departments and provide oversight and evaluation of outcomes.

- a. The following Departments shall be primary members of the "Inclusive and Equitable City Cabinet":

- Seattle Police Department
- Office of Civil Rights
- Office of Immigrant and Refugee Affairs
- Department of Neighborhoods
- Office of Economic Development
- Office of Policy and Innovation
- City Budget Office
- Office of Intergovernmental Relations
- Department of Education and Early Learning
- Seattle Human Services Department
- Office of Labor Standards
- Seattle City Attorney's Office (Ex-Officio)

- b. The goal of the “Inclusive and Equitable City Cabinet” will be to coordinate City efforts to protect the civil liberties and civil rights of all Seattle residents and provide supportive services and information as necessary to communities of color, people with disabilities, women, LGBTQ residents, people who are low-income, immigrants and refugees in light of potential changes in Federal Government policy and operations.

Section 7. The “Inclusive and Equitable City Cabinet” is hereby directed to implement the following:

- a. Develop a programmatic investment strategy for \$250,000 in funding included in the 4th Quarter Supplemental Budget of 2016 to directly address the needs of unauthorized immigrant children and family members within the Seattle Public Schools system.
- b. Develop a comprehensive public awareness effort around anti-hate speech and hate crimes.
- c. Conduct a comprehensive review of potential implications on City Departments – policy or financial – given direction and available information about any new initiatives and intent of the incoming Presidential administration.
- d. Collaborate with immigrant and refugee community stakeholders and community based organizations to identify any new or expanded efforts for partnership with the City and specifically the Office of Immigrant and Refugee Affairs and identification of priority needs.
- e. Develop a forum for regional coordination with other cities in King County as well as Pierce and Snohomish Counties to share knowledge and information about the City’s efforts.
- f. Develop a specific agenda and action plan for the Mayor to take to the West Coast Mayor’s Summit in San Francisco in December and to the US Conference of Mayors in Washington DC in January to build a coalition of inclusive and equitable cities in support of immigrants and their civil rights and civil liberties.

Inquiries by City departments and offices regarding this Executive Order should be directed to Deputy Mayor Hyeok Kim at (206) 684-5360.

Dated this 23rd day of November, 2016



Edward B. Murray
Mayor of Seattle



CITY OF KIRKLAND

City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Kevin Raymond, City Attorney

Date: February 16, 2017

Subject: SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY

RECOMMENDATION:

Council pass the attached ordinance adding a new chapter 3.18 to the Kirkland Municipal Code ("KMC") related to sustaining a safe, inclusive and welcoming city and generally prohibiting City of Kirkland ("City") officers and employees from inquiring into immigration status or collecting information regarding religious affiliation.

BACKGROUND DISCUSSION:

On January 3, 2017, the Mayor, on behalf of the City Council, proclaimed Kirkland a safe, inclusive and welcoming city for all people. The proclamation affirmed the City's commitment to protect and serve everyone who resides in, works in, or visits Kirkland without discrimination, as well its belief in the dignity, equality and constitutional and civil rights of all people. It further proclaimed that the City will not tolerate hate, intolerance, discrimination, harassment or any behavior that creates fear, isolation or intimidation. The Council considered additional steps and initiatives it may undertake to help keep Kirkland a welcoming and inclusive community at its special meeting and retreat on February 3, 2017.

The attached ordinance is grounded in the City's police power authority under Article 11, Section 11 of the Washington Constitution to enact legislation to protect the public health, safety and welfare, and it simply codifies long-standing City policies, including those of the Kirkland Police Department, generally prohibiting City officers and employees from inquiring into the immigration status of, or collecting information regarding religious affiliation from, individuals in Kirkland unless either required by law or provided voluntarily.

It is vitally important to the public health, safety and welfare of Kirkland that all individuals within the city feel safe interacting openly and honestly with City officers and employees, whether that be in connection with a law enforcement investigation, in response to a subpoena to testify at a trial in municipal court, or as part of the sharing of information related to an unsafe roadway condition that the City might not have been aware of.

The attached ordinance is also expressly intended to be consistent with applicable laws, specifically including 8 U.S.C. 1373, which prevents federal, state and local governments and officials from prohibiting or restricting any government entity or official from sending or

receiving information regarding the citizenship or immigration status of any individual either to or from federal immigration officers. Similar limitations are imposed by Section 1373 on prohibiting or restricting the ability to maintain or exchange such information between such entities and officials and federal immigration officers. Guidance from the Department of Justice confirms, however, that Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require states and localities to take specific actions upon obtaining such information.

ORDINANCE O-4558

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY AND ADDING A NEW CHAPTER 3.18 TO THE KIRKLAND MUNICIPAL CODE.

1 WHEREAS, the City of Kirkland wishes sustain the city of Kirkland
2 as a welcoming community, including by fostering trust and cooperation
3 between City personnel and law enforcement officials and immigrant
4 communities to improve crime prevention and public safety; and
5

6 WHEREAS, the City of Kirkland wishes to promote the public
7 health and welfare of its residents and other users of its services.
8

9 NOW, THEREFORE, the City Council of the City of Kirkland do
10 ordain as follows:
11

12 Section 1. There is created a Chapter 3.18 of the Kirkland
13 Municipal Code entitled "Sustaining a Safe, Inclusive and Welcoming
14 City" to read as follows:
15

16 **3.18.010 Findings.**

17 (a) The City of Kirkland is a noncharter code city organized under
18 Chapter 35A RCW and Article 11, Section 10 of the Washington
19 Constitution. Under its police powers, the City may exercise any power
20 and perform any function, unless preempted by state or federal law,
21 relating to its government and affairs, including the power to regulate
22 for the protection and rights of its inhabitants. To this end, the City is
23 dedicated to providing all of its residents and other individuals in the
24 city of Kirkland with fair and equal access to services, opportunities and
25 legal protections.

26 (b) The enforcement of civil immigration laws has historically been
27 a federal government responsibility through the Immigration and
28 Naturalization Service. Since 2002, matters of immigration law have
29 been handled by the Office of Immigration and Customs Enforcement,
30 a branch of the Department of Homeland Security. Requiring local law
31 enforcement agencies, which are not specifically equipped or trained, to
32 enforce civil immigration laws would force local governments to expend
33 their limited resources to perform traditional federal functions.

34 (c) A goal of this ordinance is to foster trust and cooperation
35 between City personnel and law enforcement officials and immigrant
36 communities to improve crime prevention and public safety.

37 (d) A further goal of this ordinance is to promote the public health
38 and welfare of all city of Kirkland residents and other users of City
39 services, including but not limited to police and fire services.

40 (e) This chapter is intended to be consistent with federal laws
41 regarding communications between local jurisdictions and federal
42 immigration authorities, including but not limited to United States Code
43 Title 8, Section 1373.

44 **3.18.020 General Prohibition on Inquiring into Immigration**
45 **Status.**

46 Except as provided in this section or when otherwise required by law, a
47 City office, department, employee, agency or agent shall not condition
48 the provision of City services on the citizenship or immigration status of
49 any individual.

50 (1) Nothing in the chapter shall be construed to prohibit any City
51 officer or employee from participating in cross-designation or task force
52 activities with federal law enforcement authorities.

53 (2) City personnel shall not request specific documents relating to a
54 person's civil immigration status for the sole purpose of determining
55 whether the individual has violated federal civil immigration laws. Such
56 documents include but are not limited to: passports; alien registration
57 cards; or work permits.

58 (3) City personnel may use documents relating to a person's civil
59 immigration status if the documents are offered voluntarily by the
60 person in response to a general request.

61 (4) City personnel shall not initiate any inquiry or enforcement action
62 based solely on a person's:

63 (A) civil immigration status;

64 (B) race;

65 (C) inability to speak English; or

66 (D) inability to understand City personnel or its officers.

67 (5) Except to the extent otherwise required by law, where the City
68 accepts presentation of a state-issued driver's license or identification
69 card as adequate evidence of identity, presentation of a photo identity
70 document issued by the person's nation of origin, such as a driver's
71 license, passport or matricula consular, shall be accepted and shall not
72 subject the person to a higher level of scrutiny or different treatment
73 than if the person had provided a Washington state driver's license or
74 identification card. However, a request for translation of such a
75 document to English shall not be deemed a violation of any provision of
76 this subsection. This subsection does not apply to documentation
77 required to complete a federal 1-9 employment eligibility verification
78 form.

79 (6) This section does not create or form the basis for liability on the
80 part of the City, its officers, employees or agents.

81 (7) Unless permitted by this chapter or otherwise required by state
82 or federal law or international treaty, all applications, questionnaires and
83 interview forms used in relation to the provision of City benefits,
84 opportunities or services shall be promptly reviewed by relevant City
85 personnel, and any question requiring disclosure of information related
86 to citizenship or immigration status shall be, in such City personnel's
87 best judgment, either deleted in its entirety or revised such that the
88 disclosure is no longer required.

89
90 **3.18.030 General Prohibition on Collecting Information**
91 **Regarding Religious Affiliation.**

92 (a) Except to the extent otherwise required by law, no City officer
93 or employee, including any agent or contracted agent, may either collect
94 information or establish or otherwise utilize a registry, database or other
95 compilation classifying persons on the basis of their religious affiliation
96 or conduct any study related to the collection of such information or the

97 establishment or utilization of such a registry, database, or other
98 compilation.

99 (b) Nothing in this section may be construed as prohibiting the
100 collection of information that is voluntarily or anonymously provided,
101 including relating to the decennial census.

102
103 Section 2. If any provision of this ordinance or its application to
104 any person or circumstance is held invalid, the remainder of the
105 ordinance or the application of the provision to other persons or
106 circumstances is not affected.

107
108 Section 3. This ordinance shall be in force and effect five days
109 from and after its passage by the Kirkland City Council and publication
110 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
111 form attached to the original of this ordinance and by this reference
112 approved by the City Council.

113
114 Passed by majority vote of the Kirkland City Council in open
115 meeting this ____ day of _____, 2017.

116
117 Signed in authentication thereof this ____ day of
118 _____, 2017.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4558

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY AND ADDING A NEW CHAPTER 3.18 TO THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Creates a new Chapter 3.86 of the Kirkland Municipal Code entitled "Sustaining a Safe, Inclusive and Welcoming City."

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2017.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 651

**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,
ADDING A CHAPTER 2.26 TO THE BURIEN MUNICIPAL CODE
RELATING TO ASCERTAINING IMMIGRATION STATUS OR
RELIGION AS IT RELATES TO THE PUBLIC HEALTH AND
SAFETY OF THE RESIDENTS OF THE CITY OF BURIEN**

WHEREAS, the City of Burien wishes to foster trust and cooperation between city personnel and law enforcement officials and immigrant communities to heighten crime prevention and public safety; and

WHEREAS, the City of Burien wishes to promote the public health of its residents;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter Created. There is hereby created a Chapter 2.26 of the Burien Municipal Code entitled “Immigration Inquiries Prohibited” which shall read as follows:

Section 2.26.010 Findings. The City of Burien is a code city organized under RCW 35.02 and Article 11 Section 10 of the Washington State Constitution. Under its police powers, the City may exercise any power and perform any function, unless preempted by state or federal law, relating to its government and affairs, including the power to regulate for the protection and rights of its inhabitants. To this end, the City is dedicated to providing all of its residents fair and equal access to services, opportunities and protection.

The enforcement of civil immigration laws have historically been a federal government responsibility through the Immigration and Naturalization Service. Since 2002, matters of immigration law have been handled by the Office of Immigration and Customs Enforcement, a branch of the Department of Homeland Security. Requiring local law enforcement agencies, which are not specifically equipped or trained, to enforce civil immigration laws forces local governments to expend their limited resources to perform traditionally federal functions.

A goal of this legislation is to foster trust and cooperation between city personnel and law enforcement officials and immigrant communities to heighten crime prevention and public safety.

Since 1992, the King County sheriff’s office has embraced this goal and outlined supporting policies in its operations manual, with which this ordinance is consistent.

Another goal of this legislation is to promote the public health of City of Burien residents.

On April 22, 2008, King County Superior Court affirmed the principle that our courts must remain open and accessible for all individuals and families to resolve disputes on the merits by adopting a policy that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the superior court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the superior court courthouses, unless the public's safety is at immediate risk. Shortly after the affirmation's adoption, the King County Executive and Immigration and Customs Enforcement agreed to honor this policy.

This ordinance is intended to be consistent with federal laws regarding communications between local jurisdictions and federal immigration authorities, including but not limited to United States Code Title 8, Section 1373.

Section 2.26.020 Prohibition on Inquiring into Immigration Status. Except as provided in this section or when otherwise required by law, a City office, department, employee, agency or agent shall not condition the provision of City services on the citizenship or immigration status of any individual.

- A. Nothing in this ordinance shall be construed to prohibit any City of Burien officer or employee from participating in cross-designation or task force activities with federal law enforcement authorities.
- B. The City of Burien personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws. The documents include but are not limited to: passports; alien registration cards; or work permits.
- C. The City of Burien personnel may use documents relating to a person's civil immigration status if the documents are offered by the person upon a general, nonspecific request.
- D. The City of Burien personnel shall not initiate any inquiry or enforcement action based solely on a person's:
 - a. civil immigration status;
 - b. race;
 - c. inability to speak English; or
 - d. inability to understand city personnel or its officers .
- E. Except when otherwise required by law, where the City accepts presentation of a state-issued driver's license or identification card as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport or matricula consular, which is a consulate-issued document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person

had provided a Washington state driver's license or identification card. However, a request for translation of such a document to English shall not be deemed a violation of any provision of this ordinance and any subsequent ordinance. This provision does not apply to documentation required to complete a federal 1-9 employment eligibility verification form.

- F. This section does not create or form the basis for liability on the part of the City, its officers, employees or agents.
- G. Unless permitted by this ordinance or otherwise required by state or federal law or international treaty, all applications, questionnaires and interview forms used in relation to the provision of City benefits, opportunities or services shall be promptly reviewed by each agency, and any question requiring disclosure of information related to citizenship or immigration status shall be, in the agency's best judgment, either deleted in its entirety or revised such that the disclosure is no longer required.

Section 2.26.030 Prohibition on Collecting Information Regarding Religious Affiliation.

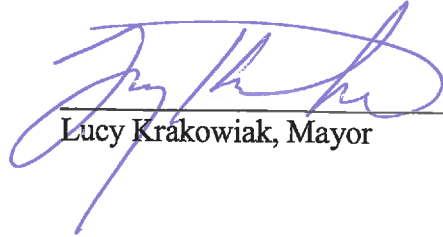
- A. No Burien official, including any agent or contracted agent, may collect information or establish or otherwise utilize a registry, database, or similar for the purpose of classifying any person on the basis of religious affiliation, or conduct any study related to the collection of such information or the establishment or utilization of such a registry, database, or similar.
- B. Rule of construction.—Nothing in this section may be construed as prohibiting the collection of information that is voluntarily provided, including relating to the decennial census.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

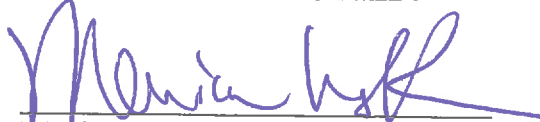
ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 9TH DAY OF JANUARY 2017.

CITY OF BURIEN



Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:



Monica Lusk, City Clerk

Approved as to form:



Lisa Marshall, City Attorney

Filed with the City Clerk: January 9, 2017
Passed by the City Council: January 9, 2017
Ordinance No.: 651
Date of Publication: January 13, 2017

Appendix B

SAMPLE PROVISIONS FROM OTHER STATES AND LOCALITIES

1. Objective: Local government entities should not engage in certain activities solely for the purpose of enforcing federal immigration law.

Illinois Executive Order 2 (2015): “No law enforcement official . . . shall stop, arrest, search, detain, or continue to detain a person solely based on an individual’s citizenship or immigration status or on an administrative immigration warrant entered into [NCIC or similar databases].”

Oregon State Law § 181A.820 (2015): “No [state or local] law enforcement agency shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws,” subject to certain exceptions including where a person is charged with criminal violation of federal immigration laws.

LAPD Special Order 40 (1979): “Officers shall not initiate police action with the objective of discovering the alien status of a person. Officers shall not arrest or book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry).”

2. OBJECTIVE: Local government entities should not inquire about or collect information related to immigration status unless required by law to do so.

N.Y.C. Exec. Order 41 (2003): “Law enforcement officers shall not inquire about a person’s immigration status unless investigating illegal activity other than mere status as an undocumented alien.”

N.Y.C. Exec. Order 41 (2003): It is the “policy of the Police Department not to inquire about the immigration status of crime victims, witnesses or others who call or approach the police seeking assistance.”

Washington D.C. Mayor’s Order 2011-174: Public safety agencies “shall not inquire about a person’s immigration status . . . for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation.”

Washington D.C. Mayor’s Order 2011-174: “It shall be the policy of Public Safety Agencies not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.”

N.Y.C. Exec. Order 41 (2003): “A City officer or employee, other than law enforcement officers, shall not inquire about a person’s immigration status unless: (1) Such person’s immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or (2) Such officer or employee is required by law to inquire about such person’s immigration status.”

3. Objective: Absent a judicial warrant, local government entities should honor ICE or CBP detainer requests only in limited, specified circumstances.

Philadelphia, PA Executive Order No. 5-2016: “No person in the custody of the City who would otherwise be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to 8 C.F.R. Sec. 287.7 . . . unless [a] such person is being released from conviction for a first or second degree felony involving violence and [b] the detainer is supported by a judicial warrant.”

4. Objective: Absent a judicial warrant, local government entities should not honor ICE or CBP requests for certain non-public, sensitive information about an individual unless required by law to do so. Note that Washington law currently requires local jails to communicate some information to immigration authorities.

Illinois Executive Order 2 (2015): LEAs may not “communicat[e] an individual’s release information or contact information” “solely on the basis of an immigration detainer or administrative immigration warrant.”

Philadelphia, PA Executive Order No. 5-2016: Notice of an individual’s “pending release” shall not be provided “unless [a] such person is being released from conviction for a first or second degree felony involving violence and [b] the detainer is supported by a judicial warrant.”

California Values Act, SB No. 54 (Proposed) (2016):

An LEA may not (a) “[r]espond[] to requests for nonpublicly available personal information about an individual,” including, but not limited to, “information about the person’s release date, home address, or work address for immigration enforcement purposes,” or (b) “make agency or department databases available to anyone . . . for the purpose of immigration enforcement or investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, immigration status, or national or ethnic origin.”

An LEA may (a) share information “regarding an individual’s citizenship or immigration status” and (b) respond to requests for “previous criminal arrests and convictions” as permitted under state law or when responding to a “lawful subpoena.”

5. Objective: Local government entities should not provide ICE or CBP with access to individuals in their custody for questioning for solely immigration enforcement purposes.

Vermont Criminal Justice Training Council Policy: “Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency’s] custody.”

Santa Clara, CA Board of Supervisor Resolution No. 2011-504 (2011): ICE “shall not be given access to individuals or be allowed to use County facilities” for investigative interviews or other purposes unless ICE has a judicial warrant or officials have a “legitimate law enforcement purpose” not related to immigration enforcement.

California Values Act, SB No. 54 (Proposed) (2016): LEAs may not “[g]iv[e] federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes.”

6. Objective: Local government entities should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.

Connecticut Department of Correction, Administrative Directive 9.3 (2013): “If a determination has been made to detain the inmate, a copy of Immigration Detainer – Notice of Action DHS Form I-247, and the Notice of ICE Detainer form CN9309 shall be delivered to the inmate.”

7. Objective: Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.

California Values Act, SB No. 54 (Proposed) (2016): State and local law enforcement shall not “[u]se agency or department moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin.”

8. Objective: Local agencies should ensure nondiscriminatory access to benefits and services.

N.Y.C. Exec. Order 41 (2003): “Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.”

9. Objective: Local government entities should collect and report aggregate data containing no personal identifiers regarding their receipt of ICE and CBP requests, for the sole purpose of monitoring compliance with applicable laws. Note: Consult an attorney regarding whether data should be kept and reported regarding the local entity’s response to ICE and CBP requests.

N.Y.C. Local Law Nos. 58-2014 and 59-2014 (N.Y.C. Admin Code § 9-131 and § 14-154) (2014): By October 15 each year, NYPD and NYC DOC “shall post a report on the department’s website” that includes, among other things, the number of detainer requests received, the number of persons held or transferred pursuant to those requests, and the number of requests not honored.

King County (Seattle), WA, Ordinance 17706 (2013): The detention department “shall prepare and transmit to the [county] council a quarterly report showing the number of detainees received and descriptive data,” including the types of offenses of individuals being held, the date for release from custody, and the length of stay before the detainer was executed.

SELECT RESOURCES FOR INDIVIDUALS

Northwest Immigrant Rights Project, <https://www.nwirp.org/>
<https://www.nwirp.org/resources/know-your-rights/> NWIRP’s “Know Your Rights” page compiles several resources to help people understand their rights when interacting with various law enforcement officials and officers. This page also contains a guide for detained immigrants, links to the Immigrant Family Safety Plan, and links to resources for getting legal help.

Northwest Immigrant Rights Project Offices

The Western Washington office serves individuals in Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum & Whatcom counties.

Hours: Monday to Friday 9:30AM - 12:00PM and 1:00PM - 4:00PM

Phone: 206.587.4009

Toll Free: 800.445.5771

Eastern or Central Washington

The Granger Office serves individuals in Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla Whitman & Yakima counties.

Hours: Monday to Friday 8:30AM - 12:00PM and 1:00PM - 4:30PM

Phone: 509.854.2100

Toll Free: 888.756.3641

The Wenatchee Office serves individuals in Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane & Stevens counties.

Hours: Monday to Friday 9:00AM - 5:00PM

Phone: 509.570.0054

Toll Free: 866.271.2084

Northwest Justice Project, <https://nwjustice.org/get-legal-help>

Immigration Law Help, <https://www.immigrationlawhelp.org>

Lists legal services providers by state for legal help for low income people with immigration issues.

Washington Law Help, <http://www.washingtonlawhelp.org/issues/immigration>

Clear and comprehensive legal information on a variety of immigration topics.

Airport Lawyer, airportlawyer.org

If you are an immigrant traveling by plane to the U.S., please consider utilizing this resource that can help you get connected with a free immigration lawyer once you land.

NOTE: You must enter in your travel details before you depart.

Seattle Office of Immigrant and Refugee Affairs, <http://www.seattle.gov/iandraffairs/resources>
 compiles links and resources for immigrants and refugees in the Seattle area.

Statewide Volunteer Lawyer Program Directory

<p>Benton-Franklin Legal Aid Society Barbara Otte, Coordinator 7103 W. Clearwater, Suite C Kennewick, WA 99336 (509) 221-1824 bflegalaid2@ymail.com</p>	<p>Blue Mountain Action Council Volunteer Attorney Program Veaney Martinez, Program Director 1520 Kelly Place, Suite 140 Walla Walla, WA 99362 (509) 529-4980 Ext. 126 (509) 529-4985 (fax) veaneym@bmacww.org</p>	<p>Chelan-Douglas County Volunteer Attorney Services Eloise Barshes, Executive Director 300 Okanogan Avenue, Suite 3-B Wenatchee, WA 98801 (509) 663-2778 (509) 663-2360 (fax) edvas@nwi.net</p>
<p>Clallam-Jefferson County Pro Bono Lawyers Shauna Rogers, Coordinator P.O. Box 901 Port Angeles, WA 98362 (360) 504-2422 probonolawyers@gmail.com</p> <p>Office Location: 228 West 1st St., Suite X</p>	<p>Clark County Volunteer Lawyer Program Elizabeth Fitzgerald, Program Director 1409 Franklin Street, Suite 101 Vancouver, WA 98660 Program Director (360) 823-0423 Intake (360) 695-5313 Fax (360) 823-0621 elizabethf@ccvlp.org</p>	<p>Cowlitz Wahkiakum Legal Aid Lori Bashor-Sarancik, Coordinator 1338 Commerce, Suite C Longview, WA 98632 (360) 425-2579 1-888-234-4665 (fax) cwlap@live.com</p>
<p>Eastside Legal Assistance Program Jerry Kroon, Executive Director 1239 120th Ave NE, Suite J Bellevue, WA 98005 (425) 747-7274 x1 (425) 747-7504 jerry@elap.org</p>	<p>King County Bar Pro Bono Services Threesa Milligan, Director The IBM Building 1200 5th Avenue, Suite 700 Seattle, WA 98101 (206) 267-7100 (206) 267-7099 (fax) ThreesaM@KCBA.org</p>	<p>Kitsap Legal Services Philip Wade, Program Director 920 Park Avenue P.O. Box 1446 Bremerton, WA 98337 (360) 479-6125 Ext. 12 (360) 373-8896 (fax) PhilipW@KitsapLegalServices.org</p>
<p>Legal Assistance by Whatcom (LAW)Advocates Michael Heatherly, Executive Director P.O. Box 937 Bellingham, WA 98248 (360) 671-6079, Ext. 24 (360) 671-6082 (fax) MichaelH@lawadvocates.org</p>	<p>Lewis County Bar Legal Aid Carolyn Hipps, Executive Director 19 SW Cascade Ave. P.O. Box 117 Chehalis, WA 98532 (360) 748-9884 (360) 748-7715 (fax) lclegalaid_cah@localaccess.com</p>	<p>Skagit County Volunteer Lawyer Program Maren Anderson, Coordinator 330 Pacific Place Mt. Vernon, WA 98273 (360) 416-7585 x1156 marena@communityaction-skagit.org</p>

<p>Snohomish County Legal Services Benjamin Haslam, Executive Director P.O. Box 5675 Everett, WA 98206 (425) 258-9283 x11 (425) 259-2906 (fax) benjaminh@snocolegal.org</p>	<p>Spokane County Bar Association Volunteer Lawyer Program Lynn Mounsey, Executive Director Dee Cook, Coordinator 1704 West Broadway Avenue Spokane, WA 99201 (509) 443-3457 (attorney line) (509) 413-2415 (intake) (509) 232-3051 (fax) dcook@spokanebar.org lynn@spokanebar.org</p>	<p>Tacoma-Pierce County Bar Association VLS Program Laurie Davenport, Program Director 621 Tacoma Avenue South, Suite 303 Tacoma, WA 98402 (253) 572-5134 (253) 274-1888 (fax) vls@tacomaprobono.org</p>
<p>Thurston County Volunteer Legal Services Rachael Langen Lundmark, Director PO Box 405 Olympia, WA 98507-0405 (360) 688-1376 (360) 252-6584 (fax) director4vls@gmail.com</p>	<p>Yakima County Volunteer Attorney Services Anita Garcia, Executive Director 311 N 4th St, Suite 201 Yakima, WA 98901 (509) 453-4400 (509) 895-0166 (fax) yakimavas@yakimavas.org</p>	

DEPARTMENT OF HOMELAND SECURITY (DHS)
IMMIGRATION DETAINER – NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (DHS Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2):

- a final order of removal against the alien;
- the pendency of ongoing removal proceedings against the alien;
- biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____; If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
 - **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
 - If the alien is transferred to another law enforcement agency, this detainer is to be relayed to the new agency with custody of the alien.
 - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: Please cancel the detainer related to this alien previously submitted to you on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing, or faxing a copy to _____.
Local Booking/Inmate #: _____ Est. release date/time: _____ Date of latest criminal charge/conviction: _____
Latest offense charged/convicted: _____

This form was served upon the alien on _____, in the following manner:

- in person by inmate mail delivery other (please specify): _____

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención migratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto migratorio durante este período adicional de 48 horas, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia migratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局，表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求，根据对你的刑事起诉或判罪的基础，在本当由州或地方执法当局释放你时，继续拘留你，为期不超过 48 小时。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留，你应该联系你的监管单位 (现在拘留你的执法当局或其他单位)，询问关于你从州或地方执法单位被释放的事宜。如果你相信你是美国公民或犯罪被害人，请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center)，告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

SAMPLE

ICE GUIDANCE FOR COMPLETING FORM I-247A

1. **Form I-247A (Immigration Detainer – Notice of Action).** Effective April 2, 2017, the Department rescinded Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien), and Form I-247X (Request for Voluntary Transfer), and replaced them with a consolidated detainer form, the Form I-247A (Immigration Detainer – Notice of Action). The Form I-247D, Form I-247N, and Form I-247X may not be issued after April 2, 2017. Detainers issued on prior versions of the detainer form remain active and need not be replaced with a Form I-247A.

2. **Form I-247A, Box 1.**
 - 1) When Box 1 is checked, Form I-247A requests that the receiving LEA: (1) notify DHS as early as practicable, at least 48 hours, if possible, before a removable alien is released from criminal custody; and (2) maintain custody of the alien for a period not to exceed 48 hours beyond the time he or she would otherwise have been released to allow DHS to assume custody for removal purposes.
 - 2) Prior to issuing an immigration detainer to an LEA, immigration officers must have probable cause to believe that the individual they seek to detain is a removable alien.
 - 3) The Form I-247A advises that a copy of the form must be served on the alien in order for the detainer to take effect.

3. **Form I-247A, Box 2.**
 - 1) When a federal, state, local, or tribal LEA requests that ICE transfer an alien detained in ICE custody for a proceeding or investigation, the immigration officer will check Box 2 on Form I-247A.
 - 2) If using Box 2, the immigration officer should not complete Box 1.
 - 3) Immigration officers who transfer an alien into the custody of another federal, state, local, or tribal LEA must serve a copy of the completed detainer form on the alien before transfer.
 - 4) When Box 2 is checked, Form I-247A requests that the receiving LEA: (1) notify DHS as early as practicable, at least 48 hours, if possible, before a removable alien is released from criminal custody; and (2) maintain custody of the alien for a period not to exceed 48 hours beyond the time he or she would otherwise have been released to allow DHS to assume custody for removal purposes.

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

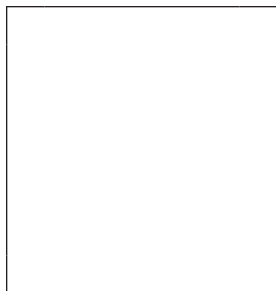
(Signature of immigration officer)

(Title of immigration officer)

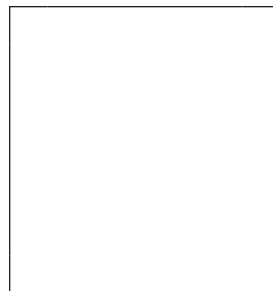
(Date and office location)

To be completed by immigration officer executing the warrant: Name of alien being removed:

Port, date, and manner of removal: _____



Photograph of alien removed



Right index fingerprint of alien removed

(Signature of alien being fingerprinted)

(Signature and title of immigration officer taking print)

Departure witnessed by: _____
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here.

Departure Verified by: _____
(Signature and title of immigration officer)

AO 442 (Rev. 01/09) Arrest Warrant

UNITED STATES DISTRICT COURT

for the
Western District of Washington

CERTIFIED TRUE COPY
ATTEST: WILLIAM M. MCCOOL
Clerk, U.S. District Court
Western District of Washington
By Emily Jansen
Deputy Clerk

United States of America)

v.)

[Redacted Name])

Defendant)

Case No. MJ17- [Redacted]

FILED ENTERED
LODGED RECEIVED

ARREST WARRANT

MAR 15 2017 JMG

To: Any authorized law enforcement officer

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) [Redacted Name]

who is accused of an offense or violation based on the following document filed with the court:

- Indictment
- Superseding Indictment
- Information
- Superseding Information
- Complaint
- Probation Violation Petition
- Supervised Release Violation Petition
- Violation Notice
- Order of the Court

This offense is briefly described as follows:

Illegal Reentry After Deportation

in violation of Title 8 United States Code, Section 1326(a)

Date: 03/14/2017

Mary Alice Theiler
Issuing officer's signature

City and state: Seattle, Washington

MARY ALICE THEILER, U.S. MAGISTRATE JUDGE
Printed name and title

Return

This warrant was received on (date) 3/14/17, and the person was arrested on (date) 3/14/17
at (city and state) Seattle, WA

Date: 3/14/17

Carina G. Benito
Arresting officer's signature
CARINA G. BENITO, D.O.
Printed name and title

KNOW YOUR RIGHTS

- YOU HAVE THE RIGHT TO REMAIN SILENT: DO NOT ANSWER QUESTIONS ABOUT WHERE YOU WERE BORN OR ABOUT YOUR IMMIGRATION STATUS
- IF YOU ARE DETAINED, DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE TALKED TO AN ATTORNEY
- IF YOU ARE AT WORK, ASK THE AGENT IF YOU ARE FREE TO LEAVE, IF HE/SHE SAYS YES, THEN LEAVE

CONOZCA SUS DERECHOS

- USTED TIENE EL DERECHO DE MANTENERSE CALLADO: NO RESPONDA CUALQUIER PREGUNTA ACERCA DE DONDE NACIO O ACERCA DE SU ESTADO MIGRATORIO
- SI LO DETIENEN, NO FIRME NINGUN DOCUMENTO HASTA QUE HAYA HABLADO CON UN ABOGADO
- SI ESTA EN EL TRABAJO, PREGUNTE AL AGENTE SI SE PUEDE IR, Y SI LE DICE QUE SI, YA PUEDE IRSE.

TO OBTAIN LEGAL ASSISTANCE:

- If you are detained by immigration and have a hearing before an immigration judge, you can hire an attorney but the court will not provide you with an attorney
- If you are detained at the Northwest Detention Center in Tacoma and cannot afford a private attorney, you may contact the Northwest Immigrant Rights Project at (253) 383-0519 or by dialing the number for NWIRP on the phones at the detention center
- If you are detained by ICE in another location and you cannot afford a private attorney, you can have someone help find a local nonprofit organization through the National Immigration Legal Services Directory here: www.immigrationadvocates.org/nonprofit/legaldirectory/ or this website: www.justice.gov/eoir/list-pro-bono-legal-service-providers-map

PARA OBTENER ASISTENCIA LEGAL:

- Si usted es detenido por inmigración y tiene una audiencia frente un juez de inmigración, usted podría contratar un abogado pero la corte no le proveerá un abogado si no puede contratar uno
- Si usted está detenido en el centro de detención del noroeste en Tacoma y no puede contratar un abogado privado, puede llamar al Proyecto para los Derechos del Inmigrante del Noroeste al (253) 383-0519 o llamando al número de NWIRP en los teléfonos en el centro de detención.
- Si usted está detenido por inmigración en otro lugar y no puede contratar un abogado privado, usted puede pedirle que alguien le ayude encontrar una organización sin fines de lucro a través de esta páginas web: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/> o www.justice.gov/eoir/list-pro-bono-legal-service-providers-map

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1623 EAST J STREET, SUITE 3
TACOMA, WASHINGTON 98421

In the Matter of

(print your name here)

Respondent.

A _____
(write your A number here)

IN REMOVAL PROCEEDINGS

DETAINED

MOTION REQUESTING HEARING FOR BOND REDETERMINATION

Respondent, through this motion, requests a redetermination of the conditions of detention release pending determination of removability, pursuant to 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1(d).

Respectfully submitted on:

Date

Signature

Respondent, *pro se*

I _____, certify that I mailed a copy of this document to:
(print your name here)

Office of the Chief Counsel
Immigration and Customs Enforcement
1623 East J Street, Suite 2
Tacoma, WA 98421

Signature

Date

Acknowledgments

Thank you to the team of Attorney General's Office employees whose knowledge, skills, and expertise contributed to the development and production of this guide.

Ellen Austin Hall
Haley Beach
Julian Beattie
Nathan Deen
Rebecca Glasgow
Justin Kjolseth
Lilia Lopez
Ohad Lowy
Colleen Melody
Karin Nyrop
Dionne Padilla-Huddleston
Noah Purcell
Wendy Scharber
Karl Smith
Chalia Stallings-Ala'ilima
Paul Weideman
Lana Weinmann
Shelley Williams

Thank you also to:

Andrea Axel, Legal Foundation of Washington
Jorge Barón, Northwest Immigrant Rights Project
Catherine Brown, King County Bar Association
Annie Benson, Washington Defender Association
Lisa Daugaard, Public Defender Association
Chach Duarte White, Legal Counsel for Youth and Children
Vanessa Torres Hernandez, ACLU of Washington
Jonathan Moore, Washington Defender Association

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