Immigration

417.1 PURPOSE AND SCOPE

The Bellingham Police Department adopts the model policy regarding the Keep Washington Working Act created and published by the Washington Attorney General (RCW 43.10.315).

417.2 DEFINITIONS

Federal Immigrations Authority - Federal Immigration Authority – Definition encompasses any: on-duty officer, employee, or person otherwise paid by or acting as an agent of the United States (U.S.) Department of Homeland Security (DHS) including, but not limited to, its sub-agencies, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and any present or future divisions thereof charged with immigration enforcement.

"Federal immigration authority" includes, but is not limited to, the Enforcement & Removal Operations (ERO) and Homeland Security Investigations (HSI) of ICE, or any person or class of persons authorized to perform the functions of an immigration officer as defined in the Immigration and Nationality Act.

Immigration and Citizenship Status - Defined "as such status has been established to an individual under the Immigration and Nationality Act."

Personal Information - Definition includes but is not limited to:

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

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

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- Judicially Authorized Warrants
- Judicially Enforced Subpoenas

417.3 POLICY

It is the policy of the Bellingham Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status. As a result, members of the Bellingham Police Department shall not enforce federal immigration laws, i.e. those laws set forth in Title 8 U.S. Code (USC) or in the U.S. Immigration and Nationality Act (INA).

417.4 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of city law enforcement will not result in city enforcement of federal civil immigration laws. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to civil immigration status, race, religion, creed, national origin, or lack of proficiency in speaking the English language. Members shall treat all individuals in a manner consistent with the United States and Washington Constitutions.

417.4.1 DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is within the jurisdiction and responsibility of the U.S. Customs and Border Protection (CBP) and/or Immigration and Customs Enforcement (ICE). Members shall not request documents relating to a person's civil immigration status or inquire into the immigration status of an individual. Members may continue to confirm identity under state law which lists valid forms of identification related to drivers' licenses and permit requirements RCW 46.20.035.

417.5 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS AND POLICIES PROHIBITED

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

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

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

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

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

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

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

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

Civil Immigration Documents do not Establish Probable Cause: Civil immigration warrants, holds, and detainers shall not be the basis for any officer to arrest, detain, or otherwise hold a person in custody.

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

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

Directing Federal Immigration Requests for Assistance: All requests for assistance from federal immigration authorities or similar are directed to the Chief or their designee.

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

417.6 ENFORCEMENT

An officer shall not detain any individual, solely for the purpose of determining immigration status. An Officer shall not take any individual into custody or hold an individual in custody solely for the purpose of determining immigration status or based solely on a civil immigration warrant,or an immigration hold request.

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An Officer may detain an individual or take an individual into custody based on a federal warrant only if the warrant is: (a) based on a violation other than those contained in Title 8 U.S.C. as misdemeanor offenses and (b) issued by a judge or judicial magistrate.

Unless immigration status is relevant to another criminal offense or investigation (other than misdemeanor offenses contained in Title 8 U.S.C., the fact that an individual is suspected of being an undocumented person shall not be the sole basis for contacting, stopping, questioning, interrogating, investigating, detaining or arresting the individual.

Officers shall not use any city funds or resources solely to enforce civil or administrative federal immigration laws. Nor shall officers use any city funds or resources solely to enforce misdemeanor offenses contained in Title 8 U.S.C. "Enforce" includes stopping, questioning, interrogating, investigating or arresting an individual and also includes assisting with such activities.

The Bellingham Police Department does not participate in U.S. Immigration and Customs Enforcement (ICE) 287 (g) Program. The Department does not have a Warrant Service Officer (WSO) model agreement with ICE.

417.6.1 SWEEPS AND FAIR/IMPARTIAL POLICING CONSIDERATIONS

The Bellingham Police Department does not conduct sweeps or other concentrated efforts to detain suspected individuals who are in violation of civil federal immigration laws or misdemeanor offenses contained in Title 8 U.S.C.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g. warning, citation, arrest), should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

417.6.2 IDENTIFICATION

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

Arrests, Identifications, and Bookings of persons of questionable immigration status shall be conducted in the same manner as those for any other person and in accordance with Policy 413 (Citation Releases Policy), and without regard to immigration status.

417.6.3 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who is unlawfully present in the United States is not subject to criminal penalties solely for being undocumented. Rather, such offenses are punishable by civil penalties enforced by ICE and Customs and Border Protection. Enforcement regarding improper entry into the United States, which is subject to criminal penalties under section 8 USC § 1325(a) is the responsibility of ICE and Customs and Border Protection.

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417.6.4 IDENTIFICATION CONFIRMATION

If a circumstance requires verification of someone's identity via Department of Homeland Security service forms, for example to investigate a crime or to confirm identity in connection with drivers' licenses and permit requirements, and the individual cannot provide the forms or provided forms need to be confirmed, then identification may be determined through any of the following sources:

(a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an individual's immigration status (sometimes referred to as a 287(g) certified officer). The Bellingham Police Department does not have a current 287 (g) agreement with the Department of Homeland Security.

(b) Immigration and Customs Enforcement (ICE)

(c) U.S. Customs and Border Protection (CBP)

417.7 DATA COLLECTION PROHIBITED

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

Completing Fingerprint and Biometric System Submissions: Agency personnel processing fingerprint cards or Automated Biometric Identification System submissions shall enter a placeholder term such as "Unknown" for fields addressing immigration or citizenship status unless the information is otherwise known.

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

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

417.8 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

The Bellingham Police Department does not operate its own jail but rather uses the Whatcom County jail as its primary correctional facility. The Whatcom County jail determines its notification policies and procedures. Bellingham Police Departments members shall not detain individuals who are otherwise ready to be released solely for the purpose of notification of Customs and Border Protection or ICE. Immigration officials may seek to interview suspected undocumented persons who have been booked into jail on criminal charges.

417.9 ACCESS TO PERSONS IN CUSTODY

Warrantless In-Custody Access Prohibited - Agency personnel shall not permit access to anyone in custody by federal immigration authorities or similar without a judicial warrant, court order, or the held person's prior written consent.

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In-Custody Access Consent Procedure - To obtain written consent agency personnel shall provide the held person with an oral explanation and written consent form (English and Spanish required) that explains:

- The purpose of the interview;
- The interview is voluntary;
- The person will not suffer consequences for declining the interview; and
- The person may choose to be interviewed only if their attorney is present.

In-Custody Access when Attorneys are Required - If the person chooses to be interviewed only if their attorney is present, agency personnel shall not permit access by federal immigration authorities or similar until the person's first court appearance and the person has counsel or proceeds pro se.

In-Custody Consent to be Provided in an Understood Language - Both the oral explanation and consent form shall be provided in a language understood by the person or by using an approved language service.

417.10 EQUAL TREATMENT FOR PERSONS IN CUSTODY

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

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

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

417.11 CONSULAR NOTIFICATION

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

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

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

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417.12 RESPONDING TO INFORMATION REQUESTS

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

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

417.13 ICE REQUEST FOR ASSISTANCE

"Requests" by ICE, or any other federal agency, for assistance from this department shall be directed to a supervisor and the Bellingham Police Department shall comply with the provisions of State Engrossed Second Substitute Senate Bill 5497 (Keep Washington Working Act) which relate to enforcement, cooperation, assistance regarding federal registration and surveillance programs. shall be in compliance with (RCW 10.93.160).

Members of the Bellingham Police Department are prohibited from using agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration status, citizenship status, national origin or ethnic origin.

No section of this policy is intended to limit or prohibit any officer from: (1) sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person or maintaining such information, or exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency, in accordance with 8 U.S.C. Sec 1373; or (2) Complying with any other state or federal law.

Nothing in this policy prohibits the collection, use or disclosure of information that is: (a) required to comply with state or federal law; (b) in response to a lawfully issued court order; (c) necessary to perform departmental duties, functions or other business as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement; (d) required to comply with policies, grants, waivers, or other requirements necessary to maintain funding; or (e) in the form of de-identified or aggregated data, including census data.

If any part of this policy is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the city, the conflicting part of this policy is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of this policy.

417.14 IMMIGRATION ENFORCEMENT CONTRACTS

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

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

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

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

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

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

The Bellingham Police Department shall not be a party ot any agreement to assist or participate in any joint operation, task force, or other multi-jurisdictional activity that lacks assurances by the other parties that they will not disclose to any third parties Bellingham Police Department resources including any individuals' personal information ascertained by the Bellingham Police Department or its personnel or otherwise use them for civil immigration purposes except after the Bellingham Chief of Police or their designee has reviewed the operations's membership, purpose, and what consequences would occur if the Bellingham Police Department did not participate, and approved the Bellingham Police Department participation.

417.15 CERTIFICATIONS FOR U OR T NON-IMMIGRANT STATUS (VISA)

Federal law allows for issuance of U Non-immigrant Status (U Visa), to victims and witnesses of certain qualifying crimes pursuant to Title 8 USC § 1101 (a)(15) (U) and T Non-immigrant Status (T Visa) for certain qualifying victims of human trafficking (pursuant to Title 8 USC § 1101(a)(15)(T).

Consistent with RCW 7.98 and federal law, upon the request of the victim or their representative, a certifying official with the Bellingham Police Department shall:

(a) Make a determination on U.S. Citizenship and Immigration Services from I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or

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(b) make a determination on U.S. Citizenship and Immigration Services from I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable request from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim and

(c) keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the Office for Victims of Crime annually; and

(d) ensure the completion of the certification, if appropriate, occurs within 90 days of the request or 14 days of the request if the victim is in federal immigration removal proceedings or in any case where the victim's children would lose any benefits by virtue of having reached the age of 21 within 90 days of receiving the certification request, no later than 14 days before date the victim or child turn 21, whichever is earlier (requests for expedited certification must be raised by the victim; and

U and T petitions for non-immigrant status, supplemental certification forms, and supporting documents shall be reviewed by the Chief of Police for approval or denial of the certification request consistent with state and federal law. If applicable, the Department's affirmative determination shall provide specific details regarding the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity.

Additional considerations when reviewing a U or T certification request:

- If a certification is denied, the investigations Lieutenant should notify the requestor of the reason(s) for the denial and provide an opportunity for reconsideration to ensure the agency has all pertinent information.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification from a certifying official.
- Consistent with state law, the Bellingham Police Department may only withdraw the certification if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the Department.
- The Department shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims of criminal activity.
- The Department shall reissue any certification within 90 days of receiving a request from the victim, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.
- The Department shall not disclose personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by federal law, a court order, or written authorization from the victim, or if a minor victim, from the victim's

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parent or guardian. This subsection does not apply to the Department's obligation pursuant to *Brady v. Maryland*.

417.15.1 U AND T VISA CERTIFICATIONS (AGO REQUIREMENTS)

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

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

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

417.16 COMPLIANCE MONITORING AND PUBLIC COMMUNICATIONS

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

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

Public Availability of KWW Policies - Agency policies are posted on their public-facing websites, and agency has personnel available to answer public questions.

Community Input on KWW Policies - Agencies included community members in developing their KWW-specific policies. KWW policies were presented at a public forum once adopted.

417.17 TRAINING

The Administrative Services Sergeant shall ensure that all appropriate members receive policy review through training bulletins and annual training in the following:

- Officers shall complete training on the agency's policies around U&T Visas.
- All officers, including SROs, shall receive Keep Washington Working (KWW)-specific training annually.
- The agency will ensure that SROs are trained on their role within school policies and procedures pertaining to the presence of federal immigration authorities at a school.

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