Immigration Considerations

412.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Raymond Police Department relating to immigration laws and interacting with federal immigration officials. This policy is based on the Washington Attorney General's Model Policies and Training Recommendations for Law Enforcement Agencies regarding the Keep Washington Working Act (RCW 43.10.315).

412.1.1 DEFINITIONS

The following definitions apply to this policy (RWC 43.17.420; RCW 2.28.300; RCW 7.98.010; RCW 19.255.005; RCW 19.270.010; RCW 19.375.010; RCW 42.56.230; RCW 42.56.640):

Civil immigration warrant - Any warrant for a violation of federal civil immigration law issued by a federal immigration authority, including but not limited to administrative warrants entered in the national crime information center database, warrants issued on ICE Form I-200 (Warrant for Arrest of Alien), Form I-205 (ICE Administrative Warrant), or prior or subsequent versions of those forms, which are not court orders.

Court order and **judicial warrant** - Directives issued by a judge or magistrate under the authority of Article III of the United States Constitution or Article IV of the Washington Constitution. A "court order" includes but is not limited to judicially authorized warrants and judicially enforced subpoenas. Such orders and warrants do not include civil immigration warrants or other administrative orders, warrants, or subpoenas that are not signed or enforced by a judge or magistrate.

Federal immigration authority - An 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.

Hold request or **immigration detainer request** - A request from a federal immigration authority, without a court order, that a state or local law enforcement agency maintain custody of an individual beyond the time the individual would otherwise be eligible for release in order to facilitate transfer to a federal immigration authority. A "hold request" or "immigration detainer

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request" includes but is not limited to DHS Form I-247A (Immigration Detainer-Notice of Action) or prior or subsequent versions of form I-247. Detainers issued on ICE Form I-247 are not court orders.

Immigration detention agreement or **IGSA** - A contract, agreement, intergovernmental service agreement, or memorandum of understanding that permits a state or local law enforcement agency to house or detain individuals for federal civil immigration violations.

Immigration or citizenship status - Such status as has been established to such individual under the Immigration and Nationality Act.

Interpretation - Transfer of an oral communication from one language to another.

Language services - Includes but is not limited to translation, interpretation, training, or classes.

Law enforcement agency - Any agency of the state of Washington or any agency of a city, county, special district, or other political subdivision of the state that is a "general authority Washington law enforcement agency," as defined by RCW 10.93.020, or that is authorized to operate jails or maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

Necessary to perform duties - After following appropriate procedures to verify a course of action, no reasonably effective alternative appears to exist that would enable the performance of one's legal duties and obligations.

Notification request - A federal immigration authority's request for affirmative notification from a state or local law enforcement agency of an individual's release from custody. "Notification request" includes but is not limited to oral or written requests, including DHS Form I-247A, Form I-247N, or prior or subsequent versions of those forms.

Personal information - Names, dates of birth, addresses, GPS coordinates or location, telephone numbers, email addresses, social media handles or screen names, Social Security numbers, driver's license numbers, parents' or affiliates' names, biometric data, or other personally identifiable information. "Personal information" does not include immigration or citizenship status.

School resource officer (SRO) - A commissioned law enforcement officer in the state of Washington who has sworn authority to uphold the law and who is assigned by the employing police department or sheriff's office to work in schools to ensure school safety.

T visa - A temporary immigration benefit under 8 U.S.C. § 1101(a)(15)(T), as further defined in RCW 7.98.010(1), that enables victims of a severe form of human trafficking and certain qualifying family members to remain in the United States for four years or longer if they have assisted law enforcement in an investigation or prosecution of human trafficking.

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Translation - Written communication from one language to another while preserving the intent and essential meaning of the original text.

U visa - A temporary immigration benefit under 8 U.S.C. § 1101(a)(15)(U), as further defined in RCW 7.98.010(1), that enables victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity, and certain qualifying family members, to remain in the United States for four years or longer.

412.2 POLICY

The federal government, not the Raymond Police Department, has primary jurisdiction over the enforcement of federal immigration law. The Department recognizes that removal of individuals from the United States, including investigations and arrests made as part of that process, is a civil matter overseen by federal immigration authorities. The Department recognizes that unauthorized presence in the United States, standing alone, is not a violation of state or local law. The immigration or citizenship status of an individual or an individual's presence in, entry or reentry to, or employment in the United States alone is not subject to enforcement by the Department or its members.

412.3 ENFORCEMENT OF FEDERAL IMMIGRATION LAW AND POLICIES PROHIBITED

Department members shall not engage or assist in civil immigration enforcement.

Members shall presume any federal immigration authority acting on official duty to be engaged in immigration enforcement.

Department resources, including any individuals' personal information ascertained by the Department or its members, shall not be used or shared to assist in civil immigration enforcement.

The Department shall review all methods and forms used to communicate with persons engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, or data fields for immigration or citizenship status existing prior to May 21, 2020, and modify them as necessary to be consistent with this policy.

Department members shall not initiate or participate in any law enforcement action based solely on an individual's immigration or citizenship status or place of birth or in any other way attempt to enforce or assist in the enforcement of federal civil immigration laws or policies.

Department members shall not inquire about any person's immigration or citizenship status or place of birth unless the information is directly connected to the department's investigation into a violation of state or local criminal law.

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The department's policy and procedures prohibiting participation or aid in immigration enforcement shall apply for enforcement activity against all persons, including department members.

Departmentofficers shall not conduct investigations, interviews, questioning, take statements, or otherwise engage in similar contact with any individual in the presence, including within hearing distance, of any person engaged, or intending to engage, in immigration enforcement, including a known federal immigration authority, unless the person's presence is directly connected to the department's investigation into a violation of state or local criminal law and necessary to perform the officer's duties.

Departmentofficers shall not arrest, detain, take into custody, or otherwise hold any person solely to determine their citizenship or immigration status unless the information is directly connected to the officer's investigation into a violation of state or local criminal law. Civil immigration warrants, hold requests, and immigration detainer requests do not establish probable cause and shall not be the basis for any officer to arrest, detain, or otherwise hold any person in custody.

All requests for assistance by any person engaged, or intending to engage, in immigration enforcement, including federal immigration authority, whether oral or written, shall be directed to the Chief of Police or the authorized designee to determine an appropriate course of action.

Members shall not assist or participate in any joint operations, task forces, or any other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage in immigration enforcement, including federal immigration authorities, without prior approval in writing from the Chief of Police or the authorized designee.

412.4 DATA COLLECTION PROHIBITED

Department members shall not inquire about or request any documents or information from a person for the purpose of determining the person's immigration or citizenship status or place of birth unless the information is directly connected to an investigation into a violation of state or local criminal law.

Department members processing fingerprint card or Automated Biometric Identification System (ABIS) submissions shall enter "unknown" for fields addressing immigration or citizenship status unless the information is otherwise known.

Department members shall not take enforcement action or otherwise use immigration or citizenship status or place of birth information against crime victims or witnesses.

412.5 CONSULAR NOTIFICATION REQUIREMENTS

Within 72 hours of detention, the Department shall inform, verbally and in writing, all persons taken into custody or otherwise detained, regardless of their known or perceived nationality, citizenship, or immigration status, that:

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a. The person has the right to refuse to disclose information about their nationality, citizenship, or immigration status.
b. Disclosure of such information may result in civil or criminal immigration enforcement against them, including removal from the United States.

Bearing in mind that members may not ask about a person's immigration status or citizenship unless such information is relevant to an investigation of a state or local criminal offense, if a member nonetheless becomes aware that a person in custody is a foreign national, the member shall immediately contact the Chief of Police or the authorized designee to determine the appropriate course of action.

If the person's country is a signatory to the Vienna Convention on Consular Relations or other bilateral agreement regarding consular notifications, the Chief of Police or the authorized designee shall provide the person the appropriate consular notification advisement recommended by the U. S. State Department (i.e., the person has the right to request that their foreign consul be notified of their detention and to communication with their foreign consul, or that the Department is required to notify the person's consular officers if they are a citizen of a mandatory notification country).

The Chief of Police or the authorized designee shall notify the person's foreign consul of their detention without delay if the person is a national of one of the mandatory notification countries or if the person requests their foreign consul be notified.

The Chief of Police or the authorized designee shall permit the foreign consul to access the person and forward any communication from the person to the appropriate consular officers without delay.

For additional guidance regarding consular notification, see the Temporary Custody of Adults Policy.

412.6 RESPONDING TO REQUESTS FOR INFORMATION

Department members shall not share, provide, or disclose personal information about any person to anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without a court order or judicial warrant requiring the information's disclosure, except that the Department shall provide all records as required under the Public Records Act (Chapter 42.56 RCW). Public records requests shall be processed pursuant to department procedures. Any department members receiving a public records request shall forward the request to the Police Clerk and notify the Chief of Police or the authorized designee.

Department members shall not provide or disclose information in response to any notification request or other immigration enforcement-related request for information regarding a person's release date from custody without a court order or judicial warrant, except as required by the Public Records Act.

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If the department receives a court order or judicial warrant that mandates the sharing of information regarding a person's immigration or citizenship status, members shall provide the information as required by the court order or judicial warrant. Any department member who shares or discloses a person's immigration or citizenship status to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, shall immediately notify the Chief of Police or the authorized designee of the information provided, reason for sharing said information, and identity of the person and agency to whom the information was shared, and document said information.

The Chief of Police or the authorized designee shall log all instances of department members sharing any person's immigration or citizenship status with a person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, with the basis for sharing the information. The log shall be a public record and shall be made publicly available except that information may be redacted or withheld as permitted by the Public Records Act.

412.7 ACCESS TO PERSONS DETAINED OR IN CUSTODY

Department members shall not permit anyone engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, to access any person held, detained, or in department custody without obtaining the person's prior consent in writing, unless a court order or judicial warrant requiring such access is presented.

To obtain written consent from a person held, detained, or in custody prior to being interviewed by anyone engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, the member shall provide the person with an oral explanation and a written consent form that explains:

a. The purpose of the interview.
b. That the interview is voluntary.
c. That the person may decline to be interviewed and will not be punished or suffer retaliation for doing so.
d. That the person may choose to be interviewed only with the person's attorney present.

Members shall provide the oral explanation and consent form in a language understood by the person or by using an approved language service if the person is unable to read the form or if the form is not available in a language the person understands. The Department shall maintain copies of the consent form in English, Spanish, and any other language that the Department deems appropriate.

If a person chooses to be interviewed with their attorney present, members shall promptly contact the attorney. Members shall not permit any interview to take place prior to the person's first court appearance and counsel has been retained, appointed, or the person has formally chosen to proceed pro se.

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412.8 EQUAL TREATMENT FOR PERSONS HELD, DETAINED, OR IN CUSTODY

Persons held, detained, or otherwise in the custody of the Department are entitled to, and shall be provided, the same services, benefits, privileges, rights, opportunities, and resources regardless of their nationality, or immigration or citizenship status.

Department members shall not deny or otherwise limit any person held, detained, or otherwise in department custody such services, benefits, privileges, rights, opportunities, or resources based upon any civil immigration warrant, hold request, immigration detainer request, notification request, administrative subpoena, or similar request by a person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, or indication of the person's nationality, immigration, or citizenship status.

The Department shall not deny or otherwise limit any person's social visitation solely on the basis of the person's inability to effectively communicate through video-visitation technology. The Department shall not collect immigration or citizenship status information of persons visiting an individual in department custody and shall minimize collection of visitors' personal information to the extent necessary to perform duties of the Department. Members shall not disclose or otherwise share visitors' personal information with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, absent a court order or judicial warrant for the information or approval by the Chief of Police or the authorized designee.

412.9 TRANSFER OF CUSTODY

Members shall not transfer custody of any person held, detained, or otherwise in the custody of the department to any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, without a court order or judicial warrant. If presented with such an order by a person engaged, or intending to engage, in immigration enforcement, including by a federal immigration authority, to take custody of a person in department custody, members shall immediately contact the Chief of Police or the authorized designee to determine an appropriate course of action.

Before authorizing any transfer of custody, the Chief of Police or the authorized designee shall confirm that the court order was issued and signed by a U.S. District Court judge or magistrate judge and authorizes the holding or detention of the individual by:

a. Obtaining a copy of the court order.
b. Confirming that a U.S. District Court judge or magistrate signed the court order.
c. Confirming that the court order identifies the individual for whom the transfer of custody is sought by name.
d. Verifying that the court order has a valid date or is not otherwise expired or previously executed.

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The Chief of Police or the authorized designee shall not disclose the location of the individual to any person engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, before or during the process of confirming the court order.

412.10 CONTRACTS INVOLVING IMMIGRATION ENFORCEMENT

The Raymond Police Department and its members shall not enter into any contract, agreement, or other arrangement, whether written or oral, that would grant federal immigration enforcement authority or powers to an officer, including but not limited to agreements created under 8 U.S.C. § 1357(g), also known as 287(g) agreements under the Immigration and Naturalization Act.

All agreements to assist or participate in any joint operations, task forces, or other multi-jurisdictional activities shall include legally binding assurances that all other parties to those agreements shall not use or share department members or other resources, including any individuals' personal information ascertained by Raymond Police Department members, with any third parties, or to support or engage in immigration enforcement activities.

The Raymond Police Department and its members shall not be a party to any agreement, joint operation, task force, or other multi-jurisdictional activity with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without legally binding assurances, in writing and pre-approved by the Chief of Police, that no department resources, including any individuals' personal information ascertained by Raymond Police Department members, shall be used to support or assist with civil immigration enforcement in any way.

Members shall not assist or participate in any joint operations, task forces, or other activities that support or constitute immigration enforcement actions with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, without prior approval, in writing, from the Chief of Police or the authorized designee.

The Raymond Police Department and its members shall not be a party to any immigration detention agreement, IGSA, or other arrangement with any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, providing for the detention of any person by officers, or using department resources for immigration enforcement purposes.

The Raymond Police Department and its members shall not be a party to any agreement or contract for language services, including translation, interpretation, training, or classes, from any person engaged, or intending to engage, in immigration enforcement, including federal immigration authorities, nor shall any language services be accepted by department members from any person engaged, or intending to engage, in immigration enforcement, including a federal immigration authority, for free or otherwise.

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All agreements permitting access to Raymond Police Department databases or information shall include legally binding assurances that all other parties to those agreements shall not use or share department information or database access with any third parties supporting or engaged in immigration enforcement activities.

412.11 U AND T VISA CERTIFICATIONS

Members shall forward U and T visa certification requests under the Washington Safety and Access for Immigrant Victims Act, RCW 7.98.020, without delay to the Chief of Police or the authorized designee.

The fact of any request for U or T visa certification and any personal information submitted with such request shall not be disclosed or shared outside of the Department, the City Attorney, or the Prosecuting Attorney without a court order or judicial warrant, or approval by Chief of Police or the authorized designee unless expressly authorized, in writing, by the subject of the request or the subject's guardian, or as otherwise required by law.

The Chief of Police or the authorized designee shall review any U or T visa certification request submitted to the Department in full and verify all information submitted in support of the certification request using existing department records, personal knowledge, or other available evidence. The Chief of Police or the authorized designee may confer with the City Attorney and/or the Prosecuting Attorney to determine whether certification by the Department is proper.

Officers shall not leverage U or T visa certifications as a means to compel any victim or witness to cooperate with their investigations.

The Chief of Police or the authorized designee shall process U and T visa certification requests within 90 days of receipt by the Department, except:

a. Any U or T visa certification request for a person in federal removal proceedings shall be immediately processed by the Chief of Police or the authorized designee such that the certification, if approved, is executed within 14 days of the Department receiving the request.
b. U or T visa certifications shall be expedited upon request for any person who will, or whose child(ren) will, reach age 21 before the 90-day processing deadline date and thus will otherwise lose their benefits. In any such instance, the Chief of Police or the authorized designee shall execute the certification, if approved, no later than 14 days before the person or child turns 21 years old.

412.12 AUDITS

The [agency Head] or authorized designee should conduct audits at least annually to document and track instances and outcomes of:

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- Requests for immigration and citizenship information.
- Requests for assistance with immigration enforcement.
- Requests from persons engaged in, or intending to engage in, immigration enforcement, including federal immigration authorities, for access to individuals in department custody.
- Requests for and contacts with foreign consuls.
- Any additional information the Chief of Police deems appropriate.

The results of each review shall be documented and maintained by the Chief of Police or the authorized designee. The review should include any systemic operational or administrative issues that were identified, including those related to training or policy. Any recommendations for changes to training or policy should be promptly addressed. Such recommendations should be shared with the Washington Association of Sheriffs and Police Chiefs (WASPC).

If this policy is amended as a result of an audit, it should be submitted to the Attorney General's Office.

412.13 POSTING AND PUBLIC PARTICIPATION

The Chief of Police shall designate a member to be responsible for posting this policy and any associated procedures on the department website and refreshing the content when necessary. The designee shall also act as the department subject matter expert on the policy, fielding questions from the public and soliciting feedback on department practices regarding immigration enforcement from community organizations supporting immigrants.

The Chief of Police shall ensure that community members are provided a forum in which to ask questions about this policy and associated procedures after adoption.

The Raymond Police Department will coordinate with WASPC, the Washington Association of Prosecuting Attorneys, and other professional organizations to share feedback, recommendations, and ideas regarding this policy, associated procedures, and training.

412.14 TRAINING

The Raymond Police Department shall provide members with initial and annual refresher training on this policy and the following related topics:

- Arrest and detention protocols
- Identification and recognition of documents used for immigration enforcement
- Working with federal law enforcement agencies
- Consular notification requirements
- Federal immigration law

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- Processing U and T visa certifications
- Information sharing and records management

Officers working as SROs shall be provided training on these additional topics:

- Bias-free policing and cultural competency, including best practices for interacting with students who are English learners or immigrants
- The policies and procedures of the assigned school regarding immigration enforcement

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