

12.9 ENFORCEMENT OF IMMIGRATION LAWS – INQUIRIES INTO CITIZENSHIP STATUS- ADMINISTRATIVE DETAINERS AND WARRANTS

The purpose of this policy is to establish guidelines for sworn personnel regarding the enforcement of immigration laws.

The enforcement of the nation's immigration laws is primarily the responsibility of the federal government. Accordingly, the Everett Police Department shall not undertake immigration-related investigations and shall not inquire into the immigration status of persons encountered during police operations *except as described below*. This prohibition does not preclude working with federal immigration officials when:

- all parties comply with this policy, or
- providing assistance to ICE in cases involving emergencies, threats to public safety, or responding to requests to help an officer (officer safety).

Inquiries Into Immigration Status:

A person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon citizenship or immigration status. Consequently, officers shall not question any person about his or her citizenship or immigration status or notify federal immigration authorities of the whereabouts or behavior of any immigrant or foreign visitor, unless that person:

1. Has been arrested and booked for, or convicted of, any felony "serious offense" (RCW 9.41.010(28), or convicted of Assault 3;
2. Is reasonably suspected of involvement in terrorism and/or subversive activities;
3. Is reasonably suspected of participating in human trafficking or in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country;
4. Is reasonably suspected of participating in criminal street gang activity; or
5. Is involved in a serious public safety incident or situation and it has been determined that there is a potential threat to the public.

Under these exceptions any notification to federal immigration authorities will first be reviewed and approved by the office of the Chief of Police.

Officers shall not request passports, visas, "green cards," or travel documents in lieu of, or in addition to, driver's licenses and similar standard forms of identifications. Such documents shall only be requested when standard forms of identification are unavailable, or when the officer is proceeding under the conditions described above.

Physical Arrest and Booking:

No person shall be physically arrested and booked for the purpose of determining their legal status in the country. Additionally, no person, including a victim or other person reporting a crime, or any witness to a crime, shall be questioned regarding their status in this country absent a lawful physical arrest for a crime and booking of such person under circumstances that would

normally warrant or require booking, or for one of the conditions enumerated above (“Inquiries Into Immigration Status” section).

When any person is physically arrested and will be booked, their country of citizenship should be ascertained as required by the Vienna Convention and entered into the “U.S. Citizen?” data field of the Snohomish County Superform. If the person who has been arrested is a foreign national (someone who is not a citizen of the United States), the Vienna Convention is triggered and officers are required to follow procedures for Arrest of Foreign Nationals (Procedure 2.09). Further inquiries into and notifications made regarding the arrestee’s immigration status shall only be permitted as authorized by this policy and approved by the Chief of Police.

Immigration and Customs Enforcement (ICE) Detainers and Warrants- Unlawful Seizure

ICE issues a number of detainers and administrative warrants, to include:

- I-247 Immigration Detainer
- I-200 Warrant for Arrest of Alien
- I-205 Warrant of Removal/Deportation

ICE detainers and administrative warrants are issued by border patrol agents, deportation officers, immigration enforcement officers, other employees or officers of the Department of Homeland Security (DHS), and other Federal officers delegated by the Secretary of Homeland Security. These are “administrative” or “civil” detainers and warrants that are not reviewed or approved by the courts. They can only be served by authorized federal agents, and they are limited to being served in locations where a subject does not have a reasonable expectation of privacy.

I-247 Immigration Detainers are issued under authority of 8 C.F.R. § 236 and § 287 by any authorized Immigration Officer and serves to advise another law enforcement agency that ICE seeks custody of an undocumented foreign national presently in the custody of that agency. The detainer is a request such agency advise ICE, prior to release of the undocumented foreign national, in order for ICE to assume custody. I-247 Immigration Detainers do not establish or communicate probable cause to detain or arrest the named individual, and probable cause is required to detain or arrest under the Fourth Amendment: “Immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal (*Galarza v. Szalczynk*, 745 F.3d 634, 645 (3d Cir. 2014).”

Since 2016 ICE began issuing either an I-200 warrant or an I-205 warrant for every I-247 detainer because of a court ruling stating that ICE could not arrest on detainers unless they had reason to believe the person would escape before a warrant was obtained (*Moreno v. Napolitano*, F.Supp.3d 2016 WL).

- **I-200 Warrant for Arrest of Alien**, “... may only be issued by immigration officers listed in 8 C.F.R. § 287.5(e)(2) ... and may be served only by those immigration officers listed in 8 C.F.R. § 287.5(e)(3).” (8 C.F.R. § 236.1(b)(1)). *Note that I-200 administrative warrants are routinely entered into NCIC even though local law enforcement may not arrest based on an I-200 warrant.*
- **I-205 Warrant of Removal/Deportation**, “Execution of warrant of removal. Any officer authorized by 8 C.F.R. § 287.5(e)(3) to execute administrative warrants of arrest

may execute a warrant of removal.” (8 C.F.R. § 241.2(b)). *Note that I-205 administrative warrants are routinely entered into NCIC even though local law enforcement may not arrest based on an I-205 warrant.*

Summary: ICE detainers and administrative warrants may not be used by Everett officers as a basis to seize, detain, or arrest any individual. Local law enforcement officers do not have the authority to enforce detainers or administrative warrants. This has been confirmed by the courts as a violation of both the U.S. Constitution and the Washington State Constitution:

- “Defendant’s arrest constituted an obvious violation of his Fourth Amendment rights (United States v. Toledo, 615 F. Supp. 2d 453 (S.D.W. Va 2009).”
- Immigration laws and regulations do not authorize state or local law enforcement agencies to serve or execute administrative detainers or warrants (Arizona v. United States, 132 S.Ct. 2492, 2505 (2012)).
- “Article 1 Section 7 of the Washington State Constitution prohibits local law enforcement officers from prolonging an otherwise lawful detention to question those they have stopped about their country of origin, immigration status, or citizenship status. (Ramirez –Rangle v. Kitsap County, 12-2-09594-4).”

Since 2002, ICE has been entering detainers and administrative warrants into NCIC. In some cases a “hit” for an ICE administrative warrant has been mistaken by officers for an actual criminal warrant. The NCIC detainer and administrative warrant “hits” DO NOT authorize local law enforcement to detain, hold, arrest, or otherwise seize the named individual.