



**Prohibiting Immigration Status Inquiries  
by Government Employees  
Ordinance Number 121063, Seattle, Washington, 2003  
by Anita Sinha, Staff Attorney, National Immigration Law Center**

### **Overview**

The terrorist attacks on September 11, 2001 significantly transformed U.S. immigration policy and enforcement. As one law professor notes, “[o]n that day, America went from being a nation of immigrants to a nation of suspects.”<sup>1</sup> Before 9/11, the enforcement of civil immigration laws was squarely a federal government responsibility, a power vested in the Immigration and Naturalization Service (INS).<sup>2</sup> Suddenly, the Department of Justice began to encourage state and local police officers to arrest and detain individuals based solely on civil immigration violations. This about-face wreaked havoc among immigrant communities, public service providers including the police, and immigrant rights advocates. In Seattle, Washington, advocates were shocked when the Seattle Police Department’s Bias Crimes Unit would not commit to a policy prohibiting immigration status inquiries of individuals who reported post-9/11 hate crimes. Those working with immigrant crime victims were no longer able to assure their clients that they could seek police protection without fear of being turned over to immigration authorities. Communities of color, especially people with Muslim names or who look Middle Eastern or South Asian, had a newfound fear of ethnic profiling by law enforcement. There was an urgent need to take action locally to scale back blanket targeting of immigrants in the name of anti-terrorism and to restore foreign-born residents’ rights both to equal access to city services and to not be subjected to racial profiling.

### **The Policy**

On January 27, 2003, the Seattle City Council unanimously voted to amend municipal code chapter 4.18 (SMC 4.18), and the mayor signed the bill into law on February 5, 2003. The new law, Ordinance Number 121063, includes sections that:

- Prohibit city officers and employees from inquiring into the immigration status of any person and bars them from engaging in activities designed to ascertain the immigration status of individuals;
- Mandate an annual report from the mayor on actions being taken in support of the policy; and
- Specify that the policy is necessary in part because the 9/11 attacks “have left immigrant communities of color afraid to access benefits to which they are entitled, for fear of being reported to the...INS.”

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<sup>1</sup> April McKenzie, “A Nation of Immigrants or a Nation of Suspects? State and Local Enforcement of Federal Immigration Laws Since 9/11,” 55 Ala. L. Rev. 1149, 1149 (Summer 2004).

<sup>2</sup> On March 1, 2003, the functions of the INS were transferred to the Department of Homeland Security by the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

## Impact

Seattle was the first municipality after 9/11 to pass a law limiting the local enforcement of federal civil immigration laws. The passage of Ordinance Number 121063 was a decisive act by a local government to opt out of federal policies targeting immigrants of color in the wake of 9/11. In fact, during the Seattle City Council hearing when the proposed legislation was unanimously ratified, one council member praised the initiative by stating that “[i]t’s good to see that the City of Seattle is not going to go down the rabbit hole with the federal government.”<sup>3</sup> Another council member at the same hearing voiced his support for the legislation by declaring, “Seattle is not a place where the [Attorney General John] Ashcroft initiative of picking on immigrants is part of the plan.”<sup>4</sup>

The Seattle law and its spirit of commitment to racial justice despite post-9/11 federal policies to the contrary showed that through local action cities can play a proactive role in preserving the basic civil rights of immigrant communities of color. Some public figures sought to downplay the importance of the Seattle legislation by characterizing the law as “largely symbolic.”<sup>5</sup> That view was certainly not shared by those directly affected by the policy who spoke at the city council hearing where the ordinance was passed. One such stakeholder, an immigrant survivor of domestic violence, testified that police had saved her life by protecting her from her abuser years ago, but that she would not have called them if that would have put her in danger of deportation.

## Key Players

The enactment of Ordinance Number 121063 was the product of 13 months of advocacy by a coalition of immigrant rights, racial justice, domestic violence, and civil rights and liberties groups. The immigrant rights groups—Northwest Immigrant Rights Project (NWIRP) and the Hate Free Zone Campaign of Washington (HFZ)—moved the policy agenda forward by advancing legal and policy support for the legislation. Importantly, NWIRP and HFZ, along with local chapters of identity-based groups such as Council on American-Islamic Relations (CAIR) and the National Association for the Advancement of Colored People (NAACP), also emphasized the racial inequities of post-9/11 policies and urged the need for local action to counter discriminatory treatment of immigrant communities of color.

The ACLU of Washington State helped frame concerns about local enforcement of immigration laws in a broader civil liberties context and was also key in bringing in the national picture of the treatment of foreign-born individuals since 9/11. The People’s Coalition for Justice, a leader in the fight against racial profiling and police misconduct in Seattle, and the American Friends Service Committee’s Seattle chapter played a pivotal role in linking local enforcement of immigration laws to racial profiling and other forms of institutionalized racism. Domestic violence groups such as the Washington State Coalition Against Domestic Violence and CHAYA, an organization that serves South Asian women in crisis, were a critical voice for the impact of local officers enforcing immigration laws on immigrant crime victims. Finally, the campaign to enact Ordinance Number 121063 received significant assistance by the leadership of City Council member Nick Licata and his legislative aide Lisa Herbold, as well as by the Seattle Human Rights Commission.

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<sup>3</sup> Chris McGann, “Council Adopts Immigrants’ Rights Ordinance,” *Seattle Post-Intelligencer* (1/28/03).

<sup>4</sup> *Ibid.*

<sup>5</sup> Jim Brunner, “Immigration Status: City Employees Cannot Ask,” *Seattle Times* (1/3/03).

## **Winning the Policy**

Research revealed that Seattle already had a law that addressed broadly the role of city officials in federal immigration enforcement. Passed in 1986 as a reaction against the “sanctuary” movement in Seattle and other U.S. cities, the law was one-sentence long, directing city officials to cooperate with federal authorities in immigration matters. The existence of this statute represented an opportunity for legislative change, because it would be easier to amend an existing law than to push for a brand new statute on the issue.

The legal advocates involved in the coalition effort to advance the policy secured the support of council member Licata in a campaign that required multifaceted advocacy, including individual meetings with city council members, public hearings, and media advocacy. Throughout the entire process, one goal remained central: the enactment of a policy promoting racial equity in opposition to federal policies casting immigrant communities of color as the dangerous “other.”

## **Challenges**

The enactment of Ordinance Number 121063 was a victory that required political compromises that impacted the strength of the final statute. At the eleventh hour, the Mayor’s office made clear that they would not support the law unless there was a section included absolving the city of civil liability should a violation occur. This provision was added, and it could hamper efforts to make the law an effective tool.

Another shortcoming of the ordinance was that it did not create a mechanism for tracking complaints, nor did it establish appropriate action for officers or employees who were found to have violated the ordinance. Consequently, the Mayor instructed that complaints involving law enforcement be handled by the Office of Police Accountability and that the Seattle Office of Civil Rights handle all other complaints. This scheme was far from ideal, because it bifurcated the complaint process and required complaints about police misconduct to go to an entity that lacked transparency.

## **Replicability**

At least 27 cities and two states have passed policies limiting local enforcement of immigration laws since the enactment of Seattle’s Ordinance Number 121063. Importantly, some of these policies go beyond the Seattle law. For example, Maine, Philadelphia, and New York City have passed policies that instruct officials to maintain the confidentiality of certain information—including immigration status—in relation to federal authorities. Moreover, cities like Minneapolis have enacted laws that include a complaint and discipline process, and that subject the locality to liability if there is a violation of the law. Extracting the best language from proposed ordinances and resolutions in 60 cities, Anita Sinha of the National Immigration Law Center has created model policy that could be used in future local and state campaigns.