



CLOSED CASE SUMMARY

ISSUED DATE: JULY 17, 2018

CASE NUMBER: 2018OPA-0075

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.020 - Arrests and Detentions of Foreign Nationals I. Policy Identifying Foreign Nationals	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee reported the subject to federal immigration authorities in potential violation of SPD policy, as well as contrary to City policy and law.

STATEMENT OF FACTS:

On August 10, 2016, SPD officers responded to a call concerning a violation of a domestic violence order of protection. The officers spoke to the victim and memorialized their investigation in a General Offense Report. In that report, the officers recounted that the victim told them that the subject came to his place of employment looking for the victim. The victim stated that this was in violation of the order of protection. The victim further stated that, after the victim did not meet with the subject, the subject walked to his car and sat inside for several minutes prior to leaving the scene. The victim expressed his concern that the subject was more frequently coming to his place of business, even while prohibited by the order of protection, and that the subject’s behavior was escalating. In the report, the officers noted that the subject had been the suspect in multiple domestic violence investigations and had also “been involved in multiple crisis episodes.”

This case was referred to the Department’s Domestic Violence Unit for further investigation and Named Employee #1 (NE#1) was the detective assigned to the case. NE#1 conducted an investigation, which included speaking with the victim and the subject. NE#1 believed that, due to the numerous violations of the order of protection, this was possibly a felony crime. NE#1 recounted that she spoke to a prosecutor who agreed that the conduct rose to the felony level, but it was ultimately charged as a misdemeanor. NE#1 also noted that there was a \$100,000 warrant for the subject’s violation of the order of protection.

NE#1 stated that the victim informed her that the subject was in the country illegally and that he was being sought by U.S. Immigration Control and Enforcement (ICE). NE#1 further engaged in email correspondence with the subject in which he stated the following: “Without my current disability status I would likely have been exited from the US based on the number of documented actions.” Based on the evidence available to OPA, this statement concerning the



subject's immigration status was not solicited by NE#1, and was, instead, affirmatively and unilaterally offered by the subject.

On August 17, 2016, after she learned this information concerning the subject's immigration status, NE#1 contacted "a Deportation Officer with U.S. Immigration and notified him of the [subject's] illegal status in the US." At her OPA interview in this matter, NE#1 stated that she believed that, when she notified ICE concerning the subject's immigration status, she was acting consistent with, or at least not contrary to, SPD policy and City policy and law.

When asked whether she initiated law enforcement action against the subject solely based on his nationality or immigration status, NE#1 stated the following:

No. I just wanted him because of—my Victim was afraid of him and this non-sense of violating the court order, constantly. I mean, my Victim was very afraid, and it was affecting his work—people at work, because he was stalking him. And, that really had nothing to do with it—the immigration status, it was the resources that they could pick him up, because they had more people and more time to do something like this. If I—if this was my only case, that would've been terrific, I could've done the same thing. But, it was not my only case.

NE#1 told OPA that her actions in this case, including notifying ICE, were screened with her chain of command and were approved. OPA interviewed NE#1's sergeant at the time who generally recalled discussing this matter with NE#1. The sergeant stated that she approved NE#1's decision to take this action and that, at the time, she did not believe that such a notification to ICE was inconsistent with policy or law. The sergeant cited the same rationale as NE#1 for the notification to ICE – the victim felt unsafe from the subject who was undocumented. The sergeant appeared to acknowledge that such actions, if taken today instead of in 2016, would no longer be consistent with policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.020 - Arrests and Detentions of Foreign Nationals I. Policy Identifying Foreign Nationals

SPD Policy 6.020(I) concerns the arrests and detentions of foreign nationals, and further specifically discusses the Department's practice concerning identifying foreign nationals who are the subjects of law enforcement activity. In this regard, the policy states that:

Officers will not ask for documents relating to someone's immigration or alien status for the sole purpose of establishing their status but may be presented by the person if this is their only source of identification. Officers may ask the person if they are a foreign national after they are arrested or detained so that the mandatory advisement statement can be made.

The policy further instructs that: "Officers will not initiate police action based solely on an individual's immigration or alien status, nor shall they ask for identification or documents to establish the person's immigration or alien status." (SPD Policy 6.020(I).)



In this case, NE#1 did not initiate police action based solely, or even in part, on the subject's immigration status. Instead, the law enforcement activity was based on the subject's repeated violations of a domestic violence order of protection and the victim's safety concerns regarding what the victim perceived to be the subject's escalating behavior. The eventual notification of ICE was secondary to the criminal investigation and only occurred based on information voluntarily provided to NE#1 by both the victim and the subject. To that end, NE#1 also did not request documentation concerning the subject's immigration status and apparently never even asked any such questions. Instead the subject apparently willingly chose to provide this information.

I find nothing in this policy that precluded NE#1's notification to ICE concerning the subject's immigration status. While I do not believe that it was consistent with the City's and SPD's current posture in this area, it did not violate the policy that was in place at the time of the incident.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that Department employees adhere to laws, City policy, and Department policy. Germane to this case, included in those policies that must be complied with are SPD directives and explicit official direction from the Chief of Police.

There are two City laws that are relevant to this case. The first, SMC 4.18.010 states that: "City officers and employees are directed to cooperate with, and not hinder, enforcement of federal immigration laws." The second, SMC 4.18.015, clarifies that: "Notwithstanding Seattle Municipal Code Section 4.18.010, unless otherwise required by law or by court order, no Seattle City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person."

In addition to SPD Policy 6.020, there are two other SPD rules of conduct that apply to this case. The first, SPD Directive 11-0053, was issued by former Chief of Police John Diaz and was purposed to provide a reminder to Department employees concerning "inquiries into immigration status." The Directive instructed that: "Being an undocumented person in this country, barring any criminal activity, is a federal civil violation not enforced by the municipal police department." It further stated that: specific requests for immigration documentation were not permitted but, if provided by the individual, an officer could rely on such documentation to establish identity. This Directive, like SPD Policy 6.020, provided no explicit or implicit prohibition on notifying federal immigration authorities when an officer learned as part of an investigation and without affirmatively seeking that information that a suspect in a crime was undocumented.

The second relevant SPD rule of conduct came from an email that was sent by the current Chief of Police (Acting Chief of Police at the time) to all SPD employees on February 7, 2018. The Chief prefaced her email by writing: "Local law enforcement has no role in immigration enforcement." The Chief referenced SMC 4.18.010 and stated that this law: "expressly prohibits City employees from inquiring into the immigration status of any person, or engaging in



activities designed to ascertain the immigration status of any person. Simply put: don't ask." The Chief further wrote that the City's federal partners clearly understood that "we do not, and will not, participate in any law enforcement actions that are primarily targeted at an individual's immigration status." The Chief instructed all Department employees that, consistent with a directive issued by the Seattle Mayor's Office on February 6, 2018, any request for action from ICE was to be routed to the officer's chain of command and would be, in turn, screened with the Mayor's Legal Counsel (and the City Attorney's Office).

In determining whether NE#1's conduct in this case violated SPD and City policies or the law, it is important to note that this incident occurred in 2016. At that time, the sole prohibitions in place on officers were that they were not permitted to inquire into the immigration status of an individual or use that individual's immigration status as the reason for taking law enforcement action. As discussed above, NE#1 did neither here.

I note, however, my belief that NE#1's conduct, if it occurred post-February 2018, would be, at least in part, in violation of City and SPD directives. Those directives are clear that any ICE request, including a request that an individual be turned over to ICE custody, would need to be routed through the officer's entire chain of command, the Mayor's Office, and the City Attorney's Office. This clearly did not occur in this case. That being said, these directives do not appear to prohibit or even limit the actual notification to ICE and were not in force in August 2016.

For these reasons, and given the content of the policies, directives, and law in effect at the time of the incident, I do not find that NE#1 engaged in any improper conduct. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**