

Public Testimony of Teresa Venkatachalapathy

Good morning. My name is Teresa Venkatachalapathy, and I'm a member of a local People Power group that has been advocating for non-cooperation between the Portland Police Bureau and ICE. We were so happy to see a number of excellent improvements to Police Directive 810.10 in February, and we thank you enthusiastically for them.

We've kept working with some advocacy groups to make sure our city code on this is clear and strong. Especially after recent news coverage on the ICE Council's Cease and Desist letter, it seems essential that we sharpen our definition for what kinds of assistance we can provide to federal agents who have life or safety needs, while maintaining our determination not to spend local resources on the enforcement of federal immigration law.

With 810.10 up for Universal Review again, we'd like to point out a few areas that could be improved. I've included a copy of 810.10 with my testimony for you to refer to.

1. The second sentence in section 2.2 implies that our officers can detain someone or even go out and arrest someone for ICE if they can present a judicial warrant. However, the federal government cannot force local law enforcement agencies to effectuate their warrants without violating the 10th amendment. So even if our officers technically have the *authority* to arrest or detain someone on the basis of a judicial warrant, we don't believe they are obligated to do so. In that case, can we prohibit our police force from responding to judicial warrants when they pertain to immigration law? Or can we at least clarify in 810.10 that our police officers don't *have* to respond to those warrants? We ask the city council to look into these possibilities.
2. Section 3.2 says the PPB can provide cover or assistance for ICE operations. But we hate the thought of our officers conducting traffic control for ICE raids in our city. We worry they would find themselves in a position where they are basically enabling ICE agents to do unethical things, like kicking down doors, and forcibly separating family members.

This scenario seems increasingly likely today, and it would absolutely devastate community relationships with our police.

3. Section 6.1.1 suggests that our officers might help ICE with criminal investigations when they are unrelated to immigration law. However, immigration violations are increasingly being criminalized, and immigrants are increasingly being profiled as terrorists. We think this section needs some additional clarifications so that it won't get used as a loophole.
4. Lastly, section 6.2 only restricts officers from sharing the types of personal information that are itemized between 6.2.1 and 6.2.7, and only when it would be shared for the expressed purposes of enforcing federal immigration law. This list does not cover all kinds of identifying information, for example license plate numbers are not included. And the intended purposes of information sharing are not always known. We think 6.2 should prohibit the sharing of personal information *including but not limited to* the items listed there, and regardless of the stated intent for using that information.

We've enclosed a number of additional recommendations from the ACLU of Oregon and from the Innovation Law Lab. During this Universal Review period, please work with them, with Causa, and with the Portland Immigrant Rights Coalition to make this code as strong as possible.

Recommendations from the Innovation Law Lab

- Section 3.5 may provide too broad a scope of investigative work between HSI and the police. While we recognize the potential need for cooperation and collaboration between agencies, the scope of investigative work and information sharing must be consistent with the policies and guidelines as a whole; “investigation” should not be a loophole for evading the inclusivity principles embodied in the directive.
- Section 6.1 appears to reference the federal statute 8 U.S.C. § 1373, which prohibits state and local government from restricting information sharing with immigration authorities. However, it is not clear that this statute is good law. The Supreme Court has repeatedly affirmed that under the Tenth Amendment of the United States Constitution, the federal government may not force local officers to engage in federal law enforcement objectives.¹ At least one federal court has recently held that 8 U.S.C. § 1373 is unconstitutional for this very reason.² We recommend removing section 6.1 and adding “information pertaining to immigration status” and “information pertaining to citizenship status” to the list of personal information in section 6.2 that will not be disclosed “[e]xcept as required by state or federal law.”
- Section 6.1.1 suggests that our officers might help ICE with criminal investigations when they are unrelated to immigration law. However, immigration violations are increasingly criminalized, and immigrants are increasingly being profiled as terrorists or criminals when they have committed no crime. We would like to see some additional clarifications in this section so that it cannot be used as a loophole.

¹ See, e.g., *Printz v. United States*, 521 U.S. 898 (1997); *Murphy v. National Collegiate Athletic Ass'n*, 138 S.Ct. 1461 (2018).

² *City of Philadelphia v. Sessions*, 2018 WL 2725503 (E.D. Pa. 2018).

Additional Recommendations from the North Portland Mt. Tabor People Power group

- The current title, “Immigration Enforcement and Diplomatic Immunity” seems to imply the police directive has information on when and how police officers can help to enforce immigration law. But based on the actual content of the directive, that we will not spend any resources enforcing federal immigration law, this title seems misleading. We wonder whether the title might need to be revised.

Recommendations for Police Directive 810.10 from the ACLU or Oregon

- **Directive 810.10 Title**

The title of the directive, "Immigration Enforcement and Diplomatic Immunity", makes it seem as though there is an area of immigration law enforcement that the PPB can be a part of. Furthermore, the community can perceive this in a negative way and deter them from communicating with the department should they find themselves a victim of a crime.

- **Definition of "Foreign National"**

The current definition of Foreign National in the directive fails to accurately depict who a foreign national may be. Not everyone born outside the United States must go through a naturalization process.

- **Additional Criteria for "Undocumented Immigrant"**

The classification of "undocumented immigrant" creates an additional classification that further separates the immigrant community and fosters bias. These distinctions could create stereotypes that would affect an officer's interaction with a community member. Moreover, it gives the perception that that PPB has a role to play in enforcing immigration law against undocumented immigrants. This is simply false.

- **Section 2.2**

This section states that PPB "shall be presented with a judicial warrant prior to the arrest or detention of an individual at the request of ICE". The main purpose of ICE is to enforce immigration laws. It is their responsibility to prioritize such judicial warrants and use their capacity to carry out such order, not PPB. Should the department be presented with such warrant involving the arrest of an individual due to their immigration status, it should be referred to ICE.

- **Section 2.3**

There are multiple federal sub-agencies within DHS and DOJ (US Marshals) that enforce immigration law. 2.3 should be amended to read, "at the request of DHS and DOJ".

- **Section 3.2**

This section outlines activities that are explicitly prohibited by state law (ORS 181A.820). PPB is not permitted to exhaust resources, including personnel, in the enforcement of immigration law and may not use any capacity to do so, including traffic control. This section of the directive must be eliminated.

- **Section 3.5.1.2**

The state of Oregon made a decision to de-criminalize the consumption of marijuana and lower the punitive consequences of the possession of certain drugs. By doing so, Oregon has shifted its resources outside punitive measures. Assisting the enforcement of immigration law in a case of drug possession would directly contradict the stance Oregon has taken on such substances.

- **Section 6.2**

This section introduces a set of data that the department is prohibited from sharing. However, the directive presents this list as limited set of information that cannot be shared. We recommend that language, such as "including, but not limited to, " should be added so that officers do not perceive this list to be exhaustive.

Police Bureau

Sworn to protect. Dedicated to serve.



Phone: 503-823-0000 Fax: 503-823-0342 Non-Emergency: 503-823-3333
1111 S.W. 2nd Avenue, Portland, OR 97204

0810.10 Immigration Enforcement and Diplomatic Immunity

810.10, Immigration Enforcement and Diplomatic Immunity

Refer:

Title 8, U.S. Code 1357(d) Detainer of Aliens for Violation of Controlled Substance Laws

Title 8, U.S. Code 1373(a)(b) Communication Between Government Agencies and the Immigration and Naturalization Service

U.S. Department of State website: <http://state.gov>

U.S. Department of State, Bureau of Consular Affairs: <http://travel.state.gov>

ORS §181A.820 Enforcement of Federal Immigration Laws

Oregon House Bill 3464

Oregon Executive Order 17-04, Renewing Oregon's Commitment to Protecting Its Immigrant, Refugee, and Religious-Minority Residents

City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All

Human Resources Administrative Rule 11.04, Protection of Restricted and Confidential Information

DIR 310.70 Dissemination of Information

DIR 344.05 Bias-Based Policing/Profiling Prohibited

DIR 631.30 Cooperation with Other Agencies

DIR 810.00 Arrest, Persons Exempt

Detention of Foreign National Checklist (Operations Branch)

Definitions:

Administrative Removal Warrant: A document, typically signed by a supervisory level Immigration and Customs Enforcement (ICE) administrator and not a judge, that authorizes ICE officers/Enforcement Removal Operations (ERO) to arrest non-citizens who have committed immigration violations and/or who have been previously determined to be deportable. An administrative removal warrant allows only the detention of a named person and does not allow for a search of a premises.

Consular Immunity: A principle of international law that offers similar protections as diplomatic immunity, but with more limitations, given the functional differences between consular and diplomatic officers. Consular officers are not accorded absolute immunity from a host country's criminal jurisdiction and are immune from local jurisdiction only in cases directly relating to consular functions.

Detainer Request: For the purposes of this directive, 810.10, Immigration Enforcement and Diplomatic Immunity, a completed Form I-247A submitted by any federal immigration law enforcement branch of ICE to a law enforcement agency that currently has legal and physical custody of a suspected undocumented immigrant. The form asks the law enforcement agency upon which it is served to contact ICE and agree to secure transfer of the person to ICE's custody prior to their release from custody on state or local criminal charges. Form I-247A is only submitted where the law enforcement agency is holding a person on other criminal charges.

Diplomatic Immunity: A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. In addition to being immune from prosecution, individuals with diplomatic immunity are also exempt from search and seizure.

Enforcement and Removal Operations (ERO): The immigration law enforcement branch ICE, under the Department of Homeland Security (DHS). ERO focuses on identifying, detaining and removing individuals who have not lawfully entered the U.S.

Foreign National: A person who was born outside of the jurisdiction of the U.S., who is subject to the laws of a foreign government, and who has not been naturalized under U.S. law (e.g., refugee, green card holder, etc.).

Honorary Consular Immunity: A principle of international law that offers limited legal protections to honorary consular officers. Honorary consular officers are distinct from career Consular officers in that they may perform consular services on a part-time basis. They retain immunity only for cases relating to consular functions. They are not protected from arrest or search and seizure.

Homeland Security Investigations (HSI): The investigative branch of the Department of Homeland Security (DHS). HSI focuses on combating criminal organizations illegally exploiting America's travel, trade, financial, and immigration systems. HSI is authorized to investigate criminal activities related to human, drug and weapons trafficking; cybercrime; transnational gang activity; human rights violations; and other cross-border criminal activity.

Judicial Warrant: A warrant signed by a federal district court or magistrate judge, or an Oregon state or county judge, that must be executed by law enforcement as a judicial order based on probable cause and full vetting by a neutral judge. These warrants generally allow for a complete search of a premises or parts of a premises, as specifically described in the warrant, and allow for the seizure of either or both persons or evidence, as described in the warrant.

Nonimmigrant Visitor: A foreign-born person, having a permanent residence abroad, who seeks temporary entry into the United States for a specific duration and purpose with the intention to leave the United States upon completion of that purpose and at the end of the specified timeframe.

Undocumented Immigrant: A foreign-born person residing in the United States who has not obtained a visa, possesses an expired or otherwise invalid visa, or who, regardless of their intent to permanently reside in the U.S., overstayed a lawful entry or otherwise violated the terms of their visa status and thus has not been granted the right to be legally present in the U.S. A person's undocumented status is determined by DHS.

U.S. Customs and Border Protection (CBP): The federal law enforcement agency under DHS responsible for the management of border security, regulation and facilitation of trade and travel, and the enforcement of federal laws governing trade, customs and immigration.

U.S. Department of Homeland Security (DHS): The federal government agency, comprised of various departments and sub-agencies, responsible for enforcing and administering customs and immigration laws, managing natural and man-made disaster events, combatting terrorism and other threats to national security, and regulating trade and travel.

U.S. Immigration and Customs Enforcement (ICE): The federal law enforcement agency under DHS responsible for the enforcement of federal laws governing border control, customs, trade and immigration.

Policy.

1. The purpose of this Directive is to provide guidance for member contact and interaction with undocumented immigrants, nonimmigrant visitors, and foreign nationals. Additionally, this policy establishes procedures that direct member actions when managing DHS requests for support, assistance, and information.

2. The Portland Police Bureau is committed to protecting, serving and supporting all residents and community members of the City of Portland, regardless of their national origin or immigration status. Accordingly, no Bureau

member shall interrogate, detain, arrest, initiate an investigation or take other official police action against an individual solely on the basis of either of these aspects of their identity.

3. When necessary, the Bureau partners with DHS to assist in their efforts of managing emergency situations and combatting a wide array of global criminal threats related to drug and human trafficking, terrorism, and human rights violations. Although the Bureau supports the DHS mission as it relates to confronting these security and human rights threats, the Bureau is steadfast in its commitment to contributing to the City's efforts to create a welcoming environment that encourages diversity and inclusivity.

4. To the extent that the mission of DHS, as communicated to the Bureau, is enforcement of immigration laws, the Bureau will follow the direction of the state statutory law and City ordinances by not enforcing or assisting in the enforcement of federal immigration laws, as that is a federal function. Moreover, the Bureau shall not expend personnel, equipment, monetary, or other resources to enforce or assist in the enforcement of federal immigration laws, unless in a manner that comports with applicable law.

Procedure.

1. Bureau Contact with Undocumented Immigrants Who Are Not Suspected of a Crime.

1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual or document immigration status solely or primarily for the purpose of federal immigration law enforcement.

1.1.1. Members may need to inquire about an individual's status where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a federal immigration law, or where required by state or federal law to verify eligibility for a law enforcement cooperation visa or deferred action request.

1.2. A member shall not ask for a victim's immigration status when investigating a crime unless relevant to an element of the crime. If the individual's immigration status is relevant to the investigation (e.g., human trafficking, hate crime, etc.), the member shall explain to the individual why they are documenting the individual's immigration status and its relevance to the investigation.

1.2.1. An exception to this rule exists if it appears a victim or witness might qualify for a visa or other immigration protections based on cooperation with law enforcement in an investigation of a crime.

1.3. Temporary Immigration Benefits and Protections.

1.3.1. In limited circumstances, an individual who is a victim of or witness to specific qualifying crimes and are helpful to the investigation may be eligible for certain immigration benefits or protections, such as law enforcement cooperation visas (i.e., T visa and U visa), continued presence status, deferred action status, or other federal resources that provide temporary immigration protections.

1.3.1.1. Although a member is under no duty to affirmatively request or inquire about an individual's immigration status, if the person requesting temporary immigration benefits or protections volunteers the information, the member is under the same duty to document relevant facts of the case as they would in any police report.

1.3.1.2. All requests initiated by a victim/witness who is seeking member assistance with enforcement cooperation visas (T visas and U visas) shall be submitted to the Chief's Office. The Chief of Police shall designate, in writing, an individual to review and approve or deny these requests.

1.3.1.3. Deferred action or continued presence requests initiated by an investigator shall be submitted to the Chief of Police or a designee for approval or denial.

1.3.1.4. Bureau members authorizing these requests may consult the City Attorney's Office for guidance.

1.3.1.4.1. Upon approval, the member-initiated certification paperwork should be submitted to the appropriate federal authority and victim/witness-initiated certification paperwork should be provided to the requester to complete the necessary nonimmigrant visa application.

1.4. If communication appears to be a barrier, the individual has the right to request translation, interpretation, or other communication aids (e.g., sign language interpreter). The Bureau shall provide the appropriate communication aid at no expense to the individual.

2. Arrests, Detentions of Undocumented Immigrants.

2.1. Members shall not arrest a person for the sole reason that they are an undocumented immigrant.

2.2. Members shall not assist ICE, CBP or ERO with the execution of administrative removal warrants. The Bureau shall require a judicial warrant prior to the arrest or detention of an individual at the request of ICE, CBP or ERO.

2.3. Members shall not honor or comply with federal immigration detainer requests issued by ICE, CBP, or ERO.

2.4. Members shall not arrest, detain or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE, CBP or ERO.

2.4.1. Members shall only carry out an arrest or detention if directed to do so by way of a judicial warrant or order.

3. Scope of Contact and Coordination with DHS.

3.1. Members shall not assist ICE, CBP or ERO as it pertains to the enforcement of federal immigration laws.

3.2. ICE, CBP or ERO may request the Bureau's assistance for pre-planned missions. In these circumstances, members shall only provide cover or assistance (e.g., traffic control) to ensure the safety of all involved. Members shall not assist in the enforcement of federal immigration laws.

3.2.1. The Chief or a designee shall consider the request and authorize approval to provide such assistance only in those rare circumstances where other cover resources (i.e., another federal law enforcement agency) are unavailable.

3.3. Members are authorized to respond to emergency calls for cover or assistance (e.g., code three cover, injured officer, shots fired) sought by ICE, CBP or ERO. In those instances, members shall limit their involvement to providing emergency law enforcement cover. Members shall not assist in the enforcement of federal immigration laws.

3.4. When necessary, members shall grant access to restricted areas in a Bureau facility only if ICE, CBP or ERO agents are acting pursuant to a judicial order.

3.4.1. When their sole purpose is to execute an immigration detainer or administrative warrant, members shall grant agents access only to publicly accessible areas in a Bureau facility.

3.5. Investigations.

3.5.1. Members may work in conjunction with HSI or other investigative agencies within DHS to:

3.5.1.1. Further the investigation of any felony, unrelated to federal immigration laws, that has been committed, and/or

3.5.1.2. Investigate and make arrests for any controlled substance offense.

3.5.2. If assisting HSI or another investigative agency within DHS with a criminal investigation as described above, members shall not engage in the surveillance of a person or group based solely or primarily upon a person or group's actual or perceived national origin or immigration status.

4. Diplomatic and Consular Immunity.

4.1. Categories of persons entitled to privileges and immunities include the following:

4.1.1. Members of Diplomatic Missions;

4.1.2. Members of Consular Posts;

4.1.3. International Organization Personnel and National Missions to Such Organizations (e.g., the United Nations); and

4.1.4. Designated Employees of the Taipei Economic and Culturally Representative Office in the U.S. (TECRO) and of the Taipei Economic and Cultural Offices (TECO).

4.2. If a person asserts diplomatic or consular immunity or exemption at the time of police contact, the burden of proof for establishing their identity and immunity rests with the individual(s). The individual(s) must produce to the member U.S. Department of State ("State Department")-authenticated proof of identity in the form of an identity card issued by:

4.2.1. The State Department,

4.2.2. The U.S. Mission to the United Nations, or

4.2.3. The American Institute in Taiwan for the employees of TECRO or TECO.

4.2.4. The member may, if necessary, take the person to a location (i.e., a precinct or another facility with the necessary research tools or resources) to establish identity and immunity.

4.2.5. Members should refer to State Department guidelines for additional information regarding diplomatic and consular immunity.

4.2.6. Members shall refer to Directive 810.00, Arrest, Persons Exempt, for guidance regarding the detainment of other individuals who are exempt from arrest.

5. Consular Notifications.

5.1. When any foreign national (e.g., a nonimmigrant visitor who has volunteered their immigration status, or a person claiming diplomatic, consular or honorary consular immunity) is taken into custody or otherwise could be taken into custody, the arresting member or their supervisor shall refer to State Department’s Bureau of Consular Affairs guidelines pertaining to mandatory consular notification countries to determine if providing notification to the individual’s country is required.

5.1.1. It is the opinion of the State Department that stops for routine traffic violations and resultant citations are not arrests or detention for the purposes of notification.

5.1.2. If notification is mandatory, members shall:

5.1.2.1. Contact the nearest consulate or embassy as soon as practicable and prior to the end of shift. Members should be aware that foreign consular officials have the right to visit their arrested/detained nationals, subject to local laws and regulations regarding access to detained persons;

5.1.2.2. Inform the individual that the consulate or embassy has been notified;

5.1.2.3. Complete the “Detention of Foreign Nationals Checklist” and attach the document to their report; and

5.1.2.4. Make arrangements for a courtesy notification (during business hours) to the Oregon State Police to facilitate any international contact through INTERPOL channels.

5.1.3. If notification is not mandatory, members shall:

5.1.3.1. As soon as practicable, inform the individual of their right to have their home country notified of their detention.

5.1.3.2. If the individual requests notification, contact the nearest consulate or embassy as soon as practicable and prior to the end of shift.

5.2. Members should refer to the website for the State Department’s Bureau of Consular Affairs for information regarding countries and jurisdictions with mandatory notifications.

6. Requests for and Release of Information.

6.1. Federal law prohibits the Bureau from limiting or in any way restricting the exchange of information regarding the citizenship or immigration status, lawful or unlawful, between a government official and an agency responsible for the enforcement of federal immigration laws. However, the Bureau shall not require members to disclose or otherwise share information regarding an individual’s immigration status with any federal immigration law enforcement agencies.

3.

6.1.1. Where necessary to further the investigation of a federal, state or local crime unrelated to the enforcement of federal immigration laws, members may exchange information with investigative branches of DHS (e.g., HSI) or the federal government. Members shall consult with their supervisor to determine whether the information sought by the immigration law enforcement agency is for a criminal investigative purpose.

4.

6.2. Except as required by state or federal law, members shall not disclose any of the following personal information to a federal immigration law enforcement agency for the purpose of enforcing federal immigration

laws:

- 6.2.1. A person's address;
- 6.2.2. A person's place of employment or work hours;
- 6.2.3. A person's school or school hours;
- 6.2.4. A person's contact information (e.g., phone number, e-mail address, social media information);
- 6.2.5. A person's known associates or relatives;
- 6.2.6. The date, time, or location of hearings, proceedings, or appointments with a person that are not matters of public record; and/or
- 6.2.7. Information described in Sections 6.2.1. through 6.2.6. with respect to known relatives or associates of the individual.

6.3. Members shall act in accordance with Bureau policies and applicable City Human Resources Administrative Rules (HRARs) regarding the handling of confidential information.

History:

Originating Directive Date: 09/06/01

Last Revision Signed: 02/01/18

Effective Date: 02/01/18

Next Review Date: 08/01/18

Parsons, Susan

Resched to 8/8

From: teresa.d.schmidt@gmail.com on behalf of Teresa Venkatachalapathy
<teresa.d.venkat@gmail.com>
Sent: Friday, June 1, 2018 8:00 AM
To: Parsons, Susan
Subject: Requesting Public Testimony on August 1

Hi Susan,

Can I reserve a place to give a public testimony on August 1st?

My topic will be Universal Review of Police Directive 810.10.

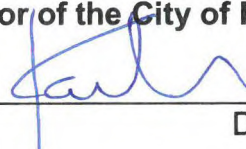
Thanks very much,
Teresa Venkatachalapathy

Request of Teresa Venktachalopathy to address Council regarding universal review of Police Directive 810.10 (Communication)

AUG 08 2018
CLERK OF COURTS

Filed JUL 31 2018

MARY HULL CABALLERO
Auditor of the City of Portland

By  Deputy

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Eudaly		
Wheeler		