



**Bureau of Police**

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**Directive 810.10, Bureau Contact with Members of Immigrant Communities and Individuals with Diplomatic Immunity (formerly, “Immigration Enforcement and Diplomatic Immunity”)  
Executive Summary**

Introduction

The Bureau conducted a comprehensive review of Directive 810.10, Immigration Enforcement and Diplomatic Immunity (former title) in the fall of 2017 that led to considerable revisions of the previous iteration of the policy. The Bureau re-opened the review process six months after enacting the new policy both in an attempt to assess the impact of implementing the substantially revised policy and to allow for more immediate feedback from various stakeholders who participated in the fall 2017 review process. The revised directive addresses community concerns raised during recent public comment periods; however, the Bureau did not modify the policy in any way that conflicts with Oregon law or the City of Portland’s official position on this issue.

Public Comments

The Bureau received a few comments from community members and other stakeholders during both universal review and public comment periods. There were several comments that reaffirmed community concern about the Bureau’s role when assisting the Department of Homeland Security (DHS), as well as the constitutionality of the federal law that pertains to the exchange of personal identifying information. The Bureau also received comments regarding the appropriateness and messaging of the directive’s title; the necessity of language in the policy regarding the Bureau’s involvement with various branches of DHS; member documentation of an individual’s immigration status when the information is volunteered; and the enforceability and management of warrants or immigration detainer requests.

*Directive Title*

Several responders recommended that the Bureau revise the title of the directive, expressing concern that the previous title, “Immigration Enforcement and Diplomatic Immunity,” implied the Bureau played a role in enforcing federal immigration law. The Bureau acknowledges that the previous title did not effectively convey the purpose of the policy. As the directive states, the Bureau shall not enforce or assist in the enforcement of federal immigration laws. The Bureau modified the title to clarify its actual practice and the intended purpose of the directive—to provide clear direction to Bureau members with regard to their interactions with members of immigrant communities, the handling of immigration-related requests from immigration law enforcement entities, and the intended role of the Bureau when assisting those entities outside of an immigration enforcement context.

*Partnering with Non-Immigration Law Enforcement DHS Entities*

The Bureau routinely partners with several DHS agencies to prevent and investigate various local threats that often have a regional, national or international reach or impact. The Bureau briefly describes these collaborative professional relationships in the policy in an effort to both distinguish between the Bureau’s work in partnership with DHS agencies outside of its immigration enforcement

branches and to reiterate that the Bureau does not work with federal law enforcement entities for the purpose of enforcing immigration laws. Commenters questioned the inclusion of this language in the policy, submitting that it serves no practical function as it relates to the purpose of the directive. While there is merit to the recommendation, Bureau directives serve a dual purpose—establishing procedural guidelines and rules for Bureau members and informing community members of the Bureau’s policies and practices. With that in mind, the Bureau kept the language intact to make clear the circumstances under which its members work with non-immigration law enforcement agencies within DHS.

#### *Documenting Voluntary Disclosures of an Individual’s Immigration Status*

One commenter suggested that the Bureau exercise caution in circumstances that warrant documenting an individual’s immigration status. More specifically, the commenter recommended that members inform individuals that they do not need to disclose their immigration status, in the same vein of administering Miranda warnings to inform criminal suspects of their right to silence when in custody or during a custodial interrogation.

The directive makes clear that Bureau members are prohibited from inquiring about an individual’s immigration status, unless that information is critical to an investigation. However, the directive also contemplates the management and documentation of immigration status-related information when it is volunteered to ensure that Bureau members are aware of how to appropriately handle that information, should such an occasion arise. A Supreme Court decision resulted in the establishment of the legal standard for advising criminal suspect of their rights. The commenter’s recommendation conflates these two concepts, as no such advisement standard exists in the context of the disclosure of an individual’s immigration status. The Bureau’s direction to its members is to avoid broaching the subject of immigration status when interacting with an individual, unless it is relevant to the investigation of a crime. This provision also comports with the Bureau’s general reporting requirements.

#### *Warrant Referral*

The Bureau fielded a recommendation that it refer warrants to federal law enforcement entities when the purpose of the warrant is to make an arrest on the basis of enforcing federal immigration law. Although the directive includes language that definitively prohibits members from arresting an individual solely for being an undocumented immigrant, a judicial warrant may require a Bureau member to carry out that act. If such instruction is in the form of a judicial warrant directed at the Bureau, the Bureau legally must execute the action as ordered by a judge. Referral is not possible under this legal framework. However, if the instruction comes at the request of an immigration law enforcement official in the form of an administrative warrant, the Bureau is under no legal obligation to execute the order, and it is the policy of the Bureau to prohibit such action.

#### *Bureau Assistance with Pre-Planned Missions*

Several commenters again recommended that the Bureau expressly prohibit its members from assisting immigration law enforcement agencies in any capacity. The Bureau has preserved, in policy, its commitment to supporting the City’s efforts to create an environment that promotes inclusivity. But, the Bureau also has a duty to safeguard the public. For example, Bureau members may need to provide traffic control around the perimeter of a large scale federal immigration enforcement operation to ensure community members do not unwittingly find themselves in a dangerous situation. In an attempt to balance the perception and gravity of the potential implications of assisting an immigration law

enforcement agency, the Bureau incorporated language in the policy to emphasize that the Chief will only authorize such assistance in a limited scope and if specific criteria are met. Because the Bureau has a legal obligation to respond to calls in certain circumstances, it is imperative that the Bureau provide appropriate guidance to its members to clearly define those circumstances.

#### *Legal Validity of Title 8, U.S.C 1373*

Community members and advocates reiterated their concern about the inclusion of the section in the policy that references federal statutory language regarding the prohibition imposed on a government entity (the Bureau) from limiting or restricting the exchange of citizenship or immigration status information between a government official (a Bureau member) and a federal immigration law enforcement agency. Several commenters recommended the removal of this reference on the grounds that recent court cases have challenged its constitutionality.

The Bureau acknowledges the incongruity between what is legally permissible under federal statute and the Bureau's policy and practice; however, the Bureau has a responsibility to its members to inform them of both the expectations of the Bureau and what is allowable under the law. Although there have been legal challenges to the validity of the federal statute, it has not been formally rescinded. The Bureau kept the language intact in the directive, given the outright legal restriction placed upon it as a government entity. However, as the directive states, the Bureau does not require its members to disclose citizenship or immigration status information when prompted by an immigration law enforcement agency. The Bureau believes the directive language strikes an appropriate balance between the Bureau's position on the matter and the current federal legal standard.

We thank every individual who took the time to provide feedback on this directive. All comments received during both review periods are attached at the end of this document. We have removed all personal information to protect the privacy of commenters.

#### The Bureau's Revised Policy

The revised policy maintains the Bureau's commitment to serving all members of the Portland community, as well as its emphasis on aligning practices with state and local law. During the review process, the Policy Development Team considered all of the comments received during both public comment periods and, where operationally feasible, adopted certain recommendations for clarification.

The most significant changes appear in the section offering guidance on the scope of the Bureau's contact and coordination with DHS. Recognizing the magnitude of the impact that assisting an immigration law enforcement agency could potentially have on the community, the Bureau added criteria to more clearly prescribe the circumstances under which the Chief would authorize Bureau members to assist those entities with pre-planned missions.

The Bureau believes that the revised directive provides more clarity and enhanced guidance to its members; however, any suggestions to further improve this policy are welcome during its next review.

This directive will become effective on July 31, 2019

Published on 7/1/19

## **810.10, Bureau Contact with Members of Immigrant Communities and Individuals with Diplomatic Immunity**

### **Refer:**

- Title 8, U.S.C 1357(d) Powers of Immigration Officers and Employees/Detainer of Aliens for Violation of Controlled Substance Laws
- Title 8, U.S.C 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 180.805 Prohibited Involvement of Public Bodies in Federal Immigration Law Enforcement
- ORS 181A.820 Enforcement of Federal Immigration Laws
- 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 are alleged or suspected of having committed immigration violations and/or who are alleged to be deportable. Administrative removal warrants are not required to be supported by probable cause. Administrative removal warrants only allow ICE to detain a named person and do not allow ICE to search 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, Bureau Contact with Members of Immigrant Communities and Individuals with 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 an individual suspected of violating federal immigration law. 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 of ICE, under the Department of Homeland Security (DHS). ERO focuses on identifying, detaining and removing individuals who are alleged to be unlawfully present in 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.). This also includes individuals who were born in the U.S., but later renounce their American citizenship.
- **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.
- **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 guide members in their interactions with immigrants and immigrant communities, as well as with those who voluntarily disclose their immigration or diplomatic status. Specifically, this directive establishes limitations into inquiries about immigration status and sets forth acceptable uses of immigration status information volunteered by an individual. 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 actual or perceived 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. Member Contact with Individuals Not Suspected of a Crime.
  - 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual.
  - 1.2. If an individual volunteers their immigration status, or if a member inadvertently ascertains an individual’s immigration status through another means (e.g., another party volunteers the information), members shall not document immigration status solely or primarily for the purpose of federal immigration law enforcement.

- 1.2.1. Members may need to inquire about or document an individual's immigration 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.
  - 1.3. 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.
    - 1.3.1. 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.
  - 1.4. Temporary Immigration Benefits and Protections.
    - 1.4.1. 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, U visa, or S visa), continued presence status, deferred action status, or other federal resources that provide temporary immigration protections.
      - 1.4.1.1. 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.
      - 1.4.1.2. All requests initiated by a victim/witness who is seeking member assistance with enforcement cooperation visas (T visas, U visas, or S 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.
      - 1.4.1.3. 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.
      - 1.4.1.4. Bureau members authorizing these requests may consult the City Attorney's Office for guidance.
        - 1.4.1.4.1. 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.
  - 1.5. 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 Immigrants.

- 2.1. Should members learn about an individual's immigration status either by voluntary statement or other means, members shall not arrest a person for the sole reason that they:  
1) are present in the United States illegally; or 2) the subject of an ICE immigration enforcement action of investigation.
- 2.2. Members shall not assist with the execution of administrative removal warrants issued by CBP, ICE or any other federal agency.
- 2.3. Members shall not honor or comply with federal agency immigration detainer requests.
- 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.
  - 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 with the enforcement of federal immigration laws.
  - 3.2. In the event that ICE, CBP or ERO requests the Bureau's assistance for pre-planned missions, only the Chief, or a designee, shall determine if the Bureau will provide assistance. The Chief or designee shall consider the following circumstances, which include but are not limited to if:
    - 3.2.1. There is no other possible resource (e.g., a federal law enforcement agency) that can provide the requested assistance;
    - 3.2.2. The assistance requested is limited to auxiliary tasks not directly related to making arrest or detentions, such as traffic control or providing supplemental security; and
    - 3.2.3. The Chief or designee determines that there is a threat to the safety of the public or the potential for damage to property if the request for assistance is denied.
  - 3.3. In circumstances where the Chief authorizes Bureau assistance for pre-planned missions, members shall only provide the level and type of assistance approved by the Chief or designee to ensure the safety of all involved. Members shall not assist DHS staff with the enforcement of federal immigration laws.
  - 3.4. 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.
  - 3.5. When necessary and as it pertains to the enforcement of federal immigration laws, 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.
    - 3.5.1. 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.



### 3.6. Investigations.

- 3.6.1. Consistent with the spirit and purposes of this Directive, members may work in conjunction with HSI or other investigative agencies within DHS to:
  - 3.6.1.1. Further the investigation of any crime chargeable as a felony, unrelated to federal immigration laws;
  - 3.6.1.2. Investigate and make arrests for any crime chargeable as a controlled substance offense (except where state law does not criminalize or control the possession of the substance); and/or
  - 3.6.1.3. Investigate and make arrests for other offenses unrelated to the enforcement of federal immigration laws to include, but not limited to the following:
    - 3.6.1.3.1. Money laundering;
    - 3.6.1.3.2. Firearm offenses;
    - 3.6.1.3.3. Child pornography;
    - 3.6.1.3.4. Human trafficking; and
    - 3.6.1.3.5. Fraud.
- 3.6.2. 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 also shall not require members to disclose or otherwise share information regarding an individual's citizenship or immigration status with any federal immigration law enforcement agencies.
    - 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.

- 6.2. As to any other information sought by a federal immigration law enforcement agency, members shall not disclose any of the following personally identifying 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;
  - 6.2.7. Information pertaining to citizenship status, except as required by state or federal law; and/or
  - 6.2.8. Information described in Sections 6.2.1. through 6.2.7. 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: 07/01/19
  - Effective Date: 07/31/19
- Next Review Date: 07/31/21

## **810.10, Immigration Enforcement Bureau Contact with Members of Immigrant Communities and Individuals with Diplomatic Immunity**

### **Refer:**

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- 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~~are alleged or suspected of having committed immigration violations and/or who ~~have been~~previously determinedare alleged to be deportable. ~~An administrative~~Administrative removal ~~warrant allows~~warrants are not required to be supported by probable cause. Administrative removal warrants only ~~the detention of~~allow ICE to detain a named person and ~~does~~do not allow ~~for a~~ICE to 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 Bureau Contact with Members of Immigrant Communities and Individuals with~~ 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 an individual suspected undocumented immigrant of violating federal immigration law. 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.

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- 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. The purpose of this directive is to guide members in their interactions with immigrants and immigrant communities, as well as with those who voluntarily disclose their immigration or diplomatic status. Specifically, this directive establishes limitations into inquiries about immigration status and sets forth acceptable uses of immigration status information volunteered by an individual.~~ 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 actual or perceived 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~~Member Contact with ~~Undocumented Immigrants Who Are~~Individuals Not Suspected of a Crime.

~~1.1.~~ 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual ~~or~~.

~~1.1.1.2.~~ 1.1.1.2. If an individual volunteers their immigration status, or if a member inadvertently ascertains an individual's immigration status through another means (e.g., another party volunteers the information), members shall not document immigration status solely or primarily for the purpose of federal immigration law enforcement.

~~1.1.1.2.1.~~ 1.1.1.2.1. Members may need to inquire about or document an individual's immigration 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.

~~1.2.1.3.~~ 1.2.1.3. 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.

~~1.2.1.3.1.~~ 1.2.1.3.1. 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.

~~1.3.1.4.~~ 1.3.1.4. Temporary Immigration Benefits and Protections.

~~1.3.1.4.1.~~ 1.3.1.4.1. 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, or S visa), continued presence status, deferred action status, or other federal resources that provide temporary immigration protections.

~~1.3.1.4.1.1.~~ 1.3.1.4.1.1. 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.

~~1.3.1.2.1.4.1.2.~~ 1.3.1.2.1.4.1.2. All requests initiated by a victim/witness who is seeking member assistance with enforcement cooperation visas (T visas ~~and~~, U visas, or S 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.

~~1.3.1.3.1.4.1.3.~~ 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.

~~1.3.1.4.1.4.1.4.~~ Bureau members authorizing these requests may consult the City Attorney's Office for guidance.

~~1.3.1.4.1.4.1.4.1.~~ 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.

~~1.4.1.5.~~ 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~~ Should members learn about an individual's immigration status either by voluntary statement or other means, members shall not arrest a person for the sole reason that they: 1) are an undocumented immigrant present in the United States illegally; or 2) the subject of an ICE immigration enforcement action of investigation.

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~~ issued by CBP, ICE, CBP or ERO any other federal agency.

2.3. Members shall not honor or comply with federal agency 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~~ with the enforcement of federal immigration laws.

3.2. In the event that ICE, CBP or ERO may request requests the Bureau's assistance for pre-planned missions. ~~In these, only the Chief, or a designee, shall determine if the Bureau will provide assistance. The Chief or designee shall consider the following~~ circumstances, which include but are not limited to if:

3.2.1. There is no other possible resource (e.g., a federal law enforcement agency) that can provide the requested assistance;

3.2.2. The assistance requested is limited to auxiliary tasks not directly related to making arrest or detentions, such as traffic control or providing supplemental security; and



3.2.3. The Chief or designee determines that there is a threat to the safety of the public or the potential for damage to property if the request for assistance is denied.

3.2.3.3. In circumstances where the Chief authorizes Bureau assistance for pre-planned missions, members shall only provide ~~cover or~~ the level and type of assistance (e.g., ~~traffic control~~) approved by the Chief or designee to ensure the safety of all involved. Members shall not assist ~~in~~ DHS staff with 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.~~

3.3.3.4. 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.

3.4.3.5. When necessary and as it pertains to the enforcement of federal immigration laws, 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.

3.4.1.3.5.1. 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.

3.5.3.6. Investigations.

~~3.5.1.3.6.1. Members~~ Consistent with the spirit and purposes of this Directive, ~~members~~ may work in conjunction with HSI or other investigative agencies within DHS to:

~~3.5.1.1.3.6.1.1. Further the investigation of any~~ crime chargeable as a felony, unrelated to federal immigration laws, ~~that has been committed, and/or;~~

3.6.1.2. Investigate and make arrests for any crime chargeable as a controlled substance offense (except where state law does not criminalize or control the possession of the substance); and/or

3.6.1.3. Investigate and make arrests for other offenses unrelated to the enforcement of federal immigration laws to include, but not limited to the following:

3.6.1.3.1. Money laundering;

3.6.1.3.2. Firearm offenses;

3.6.1.3.3. Child pornography;

3.6.1.3.4. Human trafficking; and

~~3.5.1.1.1.3.6.1.3.5. Fraud.~~

3.5.2.3.6.2. 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 also shall not require members to disclose or otherwise share information regarding an individual’s citizenship or immigration status with any federal immigration law enforcement agencies.
    - 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.
  - 6.2. ~~Except as required~~As to any other information sought by ~~state or a~~ federal immigration law enforcement agency, members shall not disclose any of the following ~~personal~~personally identifying 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 pertaining to citizenship status, except as required by state or federal law; and/or
    - ~~6.2.7-6.2.8.~~ 6.2.8. Information described in Sections 6.2.1. through 6.2.~~67~~. 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.

Directive 810.10 Feedback

1st Universal Review: 8/15/18-8/30/18

#1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, August 16, 2018 12:26:58 PM  
**Last Modified:** Thursday, August 16, 2018 12:28:30 PM  
**Time Spent:** 00:01:32

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Page 1

**Q1** Please provide feedback for this directive

The actions if the PPB must make the operations of ICE concise and efficient for the benefit of America

Shut down our status as a sanctuary city

Remove illegal foreign citizen presence and secure our neighborhoods.

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**Q2** Contact Information (optional)

**Respondent skipped this question**

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#2

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, August 16, 2018 1:11:00 PM  
**Last Modified:** Thursday, August 16, 2018 1:12:47 PM  
**Time Spent:** 00:01:47

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Page 1

**Q1** Please provide feedback for this directive

This is nonsense. Police should be able to assist ICE if necessary. It's ridiculous not to assist in the enforcement of existing immigration laws in the country.

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**Q2** Contact Information (optional)

Name

Email Address

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#3

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Saturday, August 18, 2018 9:13:08 AM  
**Last Modified:** Saturday, August 18, 2018 9:14:18 AM  
**Time Spent:** 00:01:10

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Page 1

**Q1** Please provide feedback for this directive

I would like I.C.E. to NOT receive any assistance or cooperation from the Portland Police.

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**Q2** Contact Information (optional)

Name

Email Address

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# #4

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Sunday, August 19, 2018 5:59:23 PM  
**Last Modified:** Sunday, August 19, 2018 6:01:49 PM  
**Time Spent:** 00:02:25

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Page 1

## Q1 Please provide feedback for this directive

In agreement with the City Council Communications Testimony led by Teresa Venkatachalapathy on August 8th, 2018, we members of the North Portland and Mount Tabor People Power group have five suggestions for improving police directive 810.10. Please work with ACLU of Oregon, the Innovation Law Lab, Causa, and the Portland Immigrant Rights Coalition to make these and other improvements to this essential piece of city code.

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?
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.
5. 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 and might need revision.

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## Q2 Contact Information (optional)

Name

Email Address

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# #5

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Monday, August 20, 2018 12:05:33 PM  
**Last Modified:** Monday, August 20, 2018 12:11:42 PM  
**Time Spent:** 00:06:08

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Page 1

## Q1 Please provide feedback for this directive

In agreement with the City Council Communications Testimony led by Teresa Venkatachalapathy on August 8th, 2018, we members of the North Portland and Mount Tabor People Power group have five suggestions for improving police directive 810.10. These improvements are important for the strength and clarity of 810.10, and will make it significantly more protective of immigrant communities in our city. Please work with ACLU of Oregon, the Innovation Law Lab, Causa, and the Portland Immigrant Rights Coalition to make these and other improvements to this essential piece of city code.

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## Q2 Contact Information (optional)

Name

Email Address

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#6

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, August 28, 2018 12:38:46 AM  
**Last Modified:** Tuesday, August 28, 2018 12:46:39 AM  
**Time Spent:** 00:07:53

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Page 1

**Q1** Please provide feedback for this directive

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Thank you.

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**Q2** Contact Information (optional)

Name

Email Address

Phone Number

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#7

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, August 28, 2018 3:28:17 PM  
**Last Modified:** Tuesday, August 28, 2018 3:28:47 PM  
**Time Spent:** 00:00:30

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Page 1

**Q1** Please provide feedback for this directive

COMMENTS ON IMMIGRATION ENFORCEMENT DIRECTIVE, AUGUST 2018

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Portland Copwatch (PCW) is submitting these comments on Directive 810.10, "Immigration Enforcement and Diplomatic Immunity" . Since most of the comments we made in May, 2017 were not incorporated into the Directive, most of what is written here echoes those comments.

As usual, our references to section numbers are from the Procedure part of the Directive unless otherwise noted.

We continue to appreciate the repeating of the admonition that officers "shall not assist in the enforcement of federal immigration laws" (Policy 4 and Sections 3.2 and 3.3) and the prohibition on complying with detainer requests (2.3), which has been strengthened since the last draft iteration. Previous exceptions for this item-- and the one requiring a judicial order for the PPB to arrest or detain a person-- were cut at the direction of Mayor Wheeler, the Police Commissioner.

We also appreciate that the term "solely" to restrict when PPB assists on immigration enforcement has been changed to "solely or primarily" as PCW suggested in Section 1.1. That said, the word "solely" remains unmodified in Policy 2 and Section 2.4 (on detainers).

As we previously noted, in Section 3 it's stated that the PPB can assist federal agencies with "pre-planned missions." In theory, this section could include planned missions to enforce immigration laws and is thus in conflict with the prohibitions. As we wrote, "Providing traffic control [3.2] or 'law enforcement cover' [3.3] to agents trying to deport Portland residents is akin to aiding and abetting people engaged in criminal conduct." This loophole was clearly illustrated when the PPB blocked traffic to allow federal officers to push protestors out of the ICE facility driveway in SW Portland in late June. The PPB further aided ICE in its efforts by dismantling the Occupy ICE PDX encampment, then blaming them for the alleged mess that was left behind because they were not given enough time to clear out.

Section 3.5.1.2, we still note, allows cooperation with the feds to "investigate and make arrests for any controlled substance offense." The US Department of Justice has made it clear they considers legal Oregon marijuana to be an illegal controlled substance, so the Directive should clearly exempt any federal enforcement on legal Oregon merchandise.

PCW also continues to be concerned about so-called "Law enforcement cooperation visas" (Sections 1.1.1, 1.2.1 and 1.3.1). We wrote: "While we welcome the idea that witnesses and victims of crimes should not be subject to deportation for cooperating in investigations, we hope there are safeguards to keep such visas from being used to leverage immigrants as informants in exchange for paperwork.

"Similarly, Section 1.3.1.1 says that officers have to document in a police report [when] a person volunteers their immigration status-- but that raises serious issues since witnesses and victims aren't read Miranda rights and don't necessarily know about their right to

## Directive 810.10 Feedback

remain silent. Such a caution should be included in this Directive to prevent those who cooperate in prosecuting criminals from becoming criminal suspects."

We are still not clear why Policy Section 3 of a Directive about immigration and diplomats states that "When necessary, the Bureau partners with the DHS to assist in their efforts to manage emergency situations, strengthen domestic security and combat a wide array of global criminal threats related to drug and human trafficking, terrorism and human rights violations." It still seems this is language designed to reassure Homeland Security that Portland is not shutting the door on the feds. We continue to believe this section should be rewritten or removed.

We hope that the City of Portland will work to ensure that Measure 105 does not pass, but even if it does that the PPB will do everything within the law to continue its policy of non-cooperation with immigration enforcement. And as a note to the misinformed people who believe that ORS 181A.820 gives sanctuary to violent criminals, that is not what it says and that is not what we mean. What we mean is that people should not be persecuted because of what country they happened to be born in; certainly violent criminals regardless of their national origin should be brought to justice. In light of the Trump administration's cruel, racist policies around immigration including separation of families, the time is right to make it clear that Portland believes in human rights and dignity.

### CONCLUSION

Once again we appreciate the opportunity to weigh in on Bureau policy, especially one of such importance in our state and our nation at this time. We continue to ask that the Bureau consider extending the time period for all comments to be made to allow for groups who only meet once a month to have meaningful discussions before filing their feedback with the Bureau.

--Portland Copwatch

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### Q2 Contact Information (optional)

Name

Email Address

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# #8

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, August 30, 2018 8:02:32 AM  
**Last Modified:** Thursday, August 30, 2018 8:03:43 AM  
**Time Spent:** 00:01:11

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Page 1

## Q1 Please provide feedback for this directive

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  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.
  5. 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 and might need revised.
- 

## Q2 Contact Information (optional)

Name

Email Address

Phone Number

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#9

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, August 30, 2018 5:25:31 PM  
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**Time Spent:** 00:04:00

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Page 1

**Q1** Please provide feedback for this directive

August 30, 2018

SUBMITTED ONLINE AND HAND DELIVERED

Mayor Ted Wheeler  
1221 SW 4th Ave, Room 340  
Portland, OR 97204

Chief of Police Danielle M. Outlaw  
Portland Bureau of Police  
1111 S.W. 2nd Avenue  
Portland, OR 97204

Dear Mayor Wheeler and Chief Outlaw,

Innovation Law Lab, Causa, and the American Civil Liberties Union of Oregon appreciate your efforts to solicit community feedback on the latest version of Portland Police Directive 810.10. We commend both the purpose and specific provisions of this Directive, an important step in realizing the City of Portland's commitment to inclusive and welcoming communities, and the disentanglement of local police from federal immigration enforcement.

In the context of the Directive's current universal review period, we write to offer our recommendations for strengthening and clarifying its terms. As members from our organizations have noted before, we have significant concerns regarding the proposed Directive and the extent to which it appears to authorize Portland Police to expend local resources enforcing federal immigration law.

Applicable Law and Constitutional Provisions:

There are two important laws governing Portland Police Directive 810.10 and our recommendations aim to bring the Directive into alignment with state law and the federal Constitution. First, Oregon Revised Statutes 181A.820 prohibits state and local law enforcement agencies from using their resources to assist with enforcement of federal immigration laws. Second, the United States District Court for the District of Oregon held in *Miranda-Olivares v. Clackamas County* that it is a violation of the Fourth Amendment's prohibition against unreasonable seizures for local law enforcement to hold a person in custody for a period longer than is allowed under Oregon law. 2014 WL 1414305.

The only federal law that could arguably restrict the City of Portland's ability to ensure local resources are not spent on immigration enforcement is 8 U.S.C. § 1373 ("Section 1373"). That statute, however, is limited in scope and has recently been found facially unconstitutional in federal court. Section 1373 purports to prohibit restrictions by states on sharing "information regarding...citizenship or immigration status." However, a federal district court ruled in June that Section 1373 violates the 10th Amendment to the U.S. Constitution. It is not clear whether Section 1373 is still good law. No other statutes, nor ICE detainer requests, create any mandatory

## Directive 810.10 Feedback

obligations for local law enforcement to expend local resources enforcing immigration law.

We offer below our recommendations to improve 810.10. Our suggestions would both bring PPB practices in line with the applicable law and simplify these rules for PPB officers.

The Title of Directive 810.10 Might Create a Hostile Posture With the Community or Mislead Officers:

- Having a directive titled “immigration enforcement” suggests that PPB officers are engaged in such activity and/or are permitted to do so. That should not be the case as both a matter of law and policy. We recommend changing the title of the directive to reflect the fact that PPB does not permit its officers to assist in the enforcement of federal immigration law in any manner. For example, the title could read “Directive 810.10, Prohibition of Immigration Enforcement...” Better language would send a clear message to the community and officers that PPB is not in the business of immigration enforcement.

Definitions:

- “Administrative warrant”: Administrative warrants are more accurately described as documents allowing immigration officers “to arrest non-citizens who are alleged to be deportable.” Moreover, an “administrative warrant” or “ICE warrant” is not a real warrant – such warrants are not reviewed by a judge or any neutral party to determine whether they are based on probable cause. Accordingly, state and local law enforcement cannot use these documents to make arrests or to search private spaces, including but not limited to dwellings. We recommend that these limitations be made clear in the Directive as follows:

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 are alleged or suspected of having committed immigration violations and/or who of having been previously determined to be deportable. An administrative removal warrant is not necessarily supported by probable cause and allows only ICE the only to detention of a named person and does not allow ICE to for a search of a premises.

- “Enforcement and Removal Operations” and “Homeland Security Investigations”: ICE is made up of two main law enforcement sub-agencies: Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI). At various points, however, the Directive refers to the sub-agencies in ways that are confusing. The Directive refers to, for example “information sought by ICE, CBP or ERO”—a formulation that implies ICE and ERO are different organizations. Further, while the definition of ERO accurately describes it as the “law enforcement branch of ICE,” the definition for HSI defines that sub-agency as the “investigative branch of the Department of Homeland Security.” Because HSI is a component of ICE, and ICE is an agency charged primarily with enforcing federal immigration law, HSI’s position within that agency should be clearly communicated and PPB’s cooperation with HSI should be closely scrutinized to ensure that it does not violate ORS 181A.820.

- “Enforcement and Removal Operations”: We recommend describing ERO’s focus as “identifying, detaining, and removing individuals who are alleged to be unlawfully present in the U.S.”

- “Undocumented immigrant”: We understand that the purpose of the Directive is to disentangle the Bureau from involvement in federal immigration enforcement and to focus on local community safety needs. We recommend removing this definition, as it is unnecessary to the Directive. Additionally, calling out this category may be counterproductive to the Directive’s intent by introducing an additional classification of persons that separates members of the immigrant community and may foster bias. By classifying certain persons as somehow an “other” type of person that members might interact with, the directive reinforces bias and stereotypes that lead to racial profiling and targeting. This directive should be guidance for member contact with all persons. Members cannot know if any person is a citizen unless they inquire into it. It is circular for the policy to require such an inquiry before a member should think about the applicability of the Directive that prohibits inquiry into a person’s immigration status.

Policy:

- ¶ 1: Consistent with our edits throughout, we ask that the Bureau cut the reference to the term “undocumented” in this section. Portland Police should not be investigating, asking, or guessing about the immigration status of the Portland residents with whom they interact. Accordingly, this Directive provides guidance for engaging with anyone, regardless of their actual or perceived national origin or immigration status.

## Directive 810.10 Feedback

- ¶ 2: We recommend strengthening this anti-discrimination mandate by specifying that the Portland Police Bureau serves all community members “regardless of their actual or perceived national origin or immigration status.” This revision would also bring the text in line with the Directive’s phrasing in section 3.5.2.

### Procedure:

The language in sections 2, 3 and 6, as written, appears to sanction using Bureau resources to enforce federal immigration law. These sections create confusion for both the officers and the community by failing to draw a bright line between local criminal law enforcement and federal immigration enforcement. When that line is blurred, public trust and safety are diminished. Crossing that line is also unlawful. The edits below are necessary to make that line clear.

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

- The titles of Sections 1 and 2 refer to police interaction with “Undocumented Immigrants.” Those titles should be revised to refer to “Immigrants,” encompassing all immigrants regardless of their documented or undocumented status.
- Section 1.3.1.2 states that a specific officer will be designated to process U and T visa requests – we commend this development. We suggest that, in consultation with immigration practitioners, the Bureau expand this section to say that it will establish uniform procedures for reviewing U and T visa requests, and that requests will be processed promptly to ensure that crime victims receive appropriate and timely support from police in processing their critical requests.

### Section 2: Arrests, Detentions of Undocumented Immigrants

- Section 2.1 states that police shall not make arrests solely based on an individual’s undocumented status. We recommend amending this sub-point to read “Members shall not arrest a person if their only violation of law is a violation of federal immigration law.” This addition would expand the provision’s scope to disentangle Portland police from all arrests based solely on allegations of immigration violations. It would also more closely align the Directive with the mandate of ORS 181A.820.
- Section 2.2 should be redrafted as follows to ensure its clarity and compliance with ORS 181A.820.  
"Members shall not assist ICE, CBP or ERO with the execution of administrative removal warrants issued by CBP, ICE or any other federal agency. The Bureau shall require a judicial warrant prior to the arrest or detention of an individual at the request of ICE, CBP or ERO a federal agency."
- Section 2.3 correctly directs that police should not honor or comply with federal immigration detainer requests. As these detainer requests may be issued by a variety of sub-agencies within DHS, as well as the U.S. Department of Justice, we recommend amending the text to simply read:  
"Members shall not honor or comply with federal immigration detainer requests. issued by ICE, CBP or ERO"
- Sections 2.4 and 2.4.1 should be edited as follows:

"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, or 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. If the purpose of the ordered arrest or detention is to enforce federal immigration law, the warrant should be referred to a federal law enforcement agency."

### Section 3: Scope of Contact and Coordination with DHS

- Sections 3.2 and 3.2.1 should be cut entirely because they sanction activity explicitly prohibited by ORS 181A.820. We can contemplate no scenario in which providing “cover or assistance,” especially in the context of pre-planned missions of immigration enforcement agencies, is separate from assisting in the enforcement of federal immigration law. Such activities would constitute a direct expenditure of resources in contravention of state law. ICE and CBP had a combined FY2018 budget of \$21.5 billion. It is the role of ICE and CBP to use their resources to enforce immigration law. Local resources should not subsidize that activity.
- Section 3.5 authorizes too broad a scope of investigative work between HSI and the police. While we recognize the potential need for cooperation between agencies, the scope of investigative work and information sharing must be consistent with the policies and



## Directive 810.10 Feedback

cooperation between agencies, the scope of investigative work and information sharing must be consistent with the policies and guidelines as a whole. "Investigation" must not be a loophole for evading the inclusivity principles embodied in the Directive. We thus recommend amending the text of 3.5.1 to begin with the phrase "Consistent with the spirit and purposes of this Directive, members may...".

- Section 3.5.1.2 expands the Bureau's cooperation with HSI to encompass investigations of "any controlled substance offense." The broad scope of this subsection is inconsistent with the state of Oregon's decisions to de-criminalize the consumption of marijuana and lower the punitive consequences of certain controlled substance violations. We recommend eliminating this sub-section, with the understanding that severe controlled substance offenses should be covered by current sub-section 3.5.1.1, which enables the investigation of non-immigration felony offenses. With the removal of sub-section 3.5.1.2, we would further recommend condensing sub-sections 3.5.1. and 3.5.1.1.

### Section 6: Requests for Information

- Section 6.1 may have been drafted in response to 8 U.S.C. § 1373, a federal statute prohibiting state and local governments from restricting information-sharing with immigration authorities. However, this statute's validity has recently come under scrutiny by federal courts. 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. At least one federal court has recently held that 8 U.S.C. § 1373 is unconstitutional for this very reason. Accordingly, we recommend deleting the first sentence of Section 6.1 so it reads as follows:

"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, t 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. 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.

- Section 6.2 In line with the edits above, we also recommend 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." We further recommend revising section 6.2 to clarify that protected information is "including, but not limited to" the types of information delineated.

Finally, in order to ensure the Directive's effectiveness, we suggest adding a concluding section that addresses how the Directive will be communicated to Bureau of Police officers and personnel. We recommend outlining specific actions, including regular training sessions, that the Bureau will undertake to ensure knowledge of and compliance with the Directive.

We thank you for the opportunity to share these recommendations and for your on-going commitment to protecting the diversity and inclusivity of the city.

Sincerely,

Executive Director, Innovation Law Lab

## Directive 810.10 Feedback

Legal Director, American Civil Liberties Union of Oregon

Policy Director,  
Causa

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### **Q2** Contact Information (optional)

Name

Email Address

Phone Number

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## Directive 810.10 Feedback

2nd Universal Review: 4/15/19-5/15/19

# #1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, May 14, 2019 6:32:30 PM  
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Page 1

**Q1** Please provide feedback for this directive

COMMENTS ON IMMIGRANT CONTACT, LAWSUITS AND SEXUAL ASSAULT DIRECTIVES, MAY 2019

To Chief Outlaw, Capt. Parman, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Portland Committee for Community Engaged Policing, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are comments from Portland Copwatch (PCW) on the three Directives posted mid-May for comment (<https://www.portlandoregon.gov/police/73677>). Of the extensive comments we sent in last August on Directive 810.10, now titled in part "Bureau Contact with Members of Immigrant Communities," only one led to meaningful change. It seems as if the comments submitted collectively by the ACLU, Innovation Law Lab and Causa\* had a much higher success rate. We last commented on the Lawsuits Directive (220.40) in September, and, frustratingly, on the Sexual Assault Directive (640.20) in May 2015, but the Bureau's proposed changes were never made so now we're making most of the same comments again.

We've said many times before and repeat here that the Bureau should change the structure of the Directives so that the definitions sections have numbers like all the other sections, and each section has a letter or other designation so there are not multiple sections marked "1." We also continue to believe the Bureau should give a longer time period for comments for those groups, particularly city-run advisory groups, who only meet once a month (or once every two months, like the Training Advisory Council) have time to weigh in.

The references below are to Procedure Sections unless otherwise noted.

DIRECTIVE 810.10 BUREAU CONTACT WITH MEMBERS OF IMMIGRANT COMMUNITIES AND INDIVIDUALS WITH DIPLOMATIC IMMUNITY

The growing unwieldy title of this Directive indicates that perhaps the issues of Diplomatic Immunity and contacting immigrants should be separated into two policies.

As noted above, one of the suggestions PCW made have been incorporated, and we thank the Bureau for adding language to allow for the decriminalization of marijuana and other controlled substances so that immigrants targeted by the federal government for activities protected by Oregon laws will not have local police helping the feds (3.6.1.2). (Naturally, this was also part of the ACLU letter.)

Unfortunately, the Bureau did not fix, or did not adequately fix, these issues we raised:

--The word "solely" remains unmodified in Policy 2 and Section 2.4 (on detainers), even though the phrase "solely or primarily" is used in Section 1.1.

--Section 3, which the Bureau rewrote extensively, still does not do enough to limit how the PPB is allowed assist federal agencies with "pre-planned missions." Last time, we wrote (section numbers updated here): "In theory, this section could include planned missions to

## Directive 810.10 Feedback

enforce immigration laws and is thus in conflict with the prohibitions. Providing traffic control [3.2.2] or 'law enforcement cover' [3.4] to agents trying to deport Portland residents is akin to aiding and abetting people engaged in criminal conduct." We noted how this loophole was used when the PPB blocked traffic to allow federal officers to push protestors out of the ICE facility driveway in SW Portland in June 2018, dismantled the Occupy ICE PDX encampment, then blamed the protestors for the alleged mess that was left behind because they were not given enough time to clear out.

--PCW is still concerned about "Law enforcement cooperation visas" (now in Sections 1.2.1, 1.3.1 and 1.4.1). We wrote twice before: "While we welcome the idea that witnesses and victims of crimes should not be subject to deportation for cooperating in investigations, we hope there are safeguards to keep such visas from being used to leverage immigrants as informants in exchange for paperwork."

--We also wrote how what is now Section 1.4.1.1 says that officers have to document in a police report when a person volunteers their immigration status-- which raises serious issues since witnesses and victims aren't read Miranda rights and don't necessarily know about their right to remain silent. We asked that such a caution be included in this Directive to prevent those who cooperate in prosecuting criminals from becoming criminal suspects. The concept of this documentation now appears to conflict with new sections 1.2 and 2.1 about immigration status.

--We continue to believe Policy Section 3 should be rewritten or removed. Why should a Directive about immigration and diplomats state "When necessary, the Bureau partners with the DHS to assist in their efforts to manage emergency situations, strengthen domestic security and combat a wide array of global criminal threats related to drug and human trafficking, terrorism and human rights violations"? Perhaps this language designed to reassure Homeland Security that Portland is not shutting the door on the feds. The ACLU/Innovation Law Lab/Causa letter also suggested removing most of this Section.

We also noted the Bureau's responses to the ACLU, which we for the most part support. Some of these changes include:

--clarifying administrative warrants are not supported by probable cause (Definition of Administrative Removal Warrant).

--changing the phrase "individuals who have not lawfully entered the US" to say "individuals who are alleged to be unlawfully present in the US." The question of "lawful" migration across borders is at the root of much of the hostility toward immigrants, we would prefer the phrase "alleged to be present in the US without authorization from the government."

--removing the word "undocumented" from the definitions, in Policy 1 and the title of Section 1.

--adding the words "actual or perceived" to the terms "national origin or immigration status" (Policy 2).

--noting that working with federal agencies must be done "consistent with the spirit and purposes of this Directive" (Section 3.6.1).

--requiring information about citizenship status only be shared pursuant to state or federal law (New Section 6.2.7).

However, we also note the Bureau did not:

--add a sentence ordering Portland Police to refer warrants to federal law enforcement if the purpose of an arrest is to enforce federal immigration law (2.4.1).

--remove references to a federal statute that has been held unconstitutional (Section 6.1).

--create a Section about how the Bureau will train officers on this policy.

CONCLUSION

## Directive 810.10 Feedback

As always, we appreciate the opportunity to make comments on Bureau policy. We do wish more of our concerns would be addressed even though we are not a professional organization made up of practicing attorneys. We also hope that the example of the Training Advisory Council needing to consider the Directive on Field Training after the deadline passed will lead to the Bureau giving longer timelines to respond.

--Portland Copwatch

\* Note: we had to obtain an original copy of the three groups' comments since the Bureau's version attached to the new draft confusingly includes "redline" inserts and deletions without markings.

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### Q2 Contact Information (optional)

Name

Email Address

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May 15, 2019

Dear Mayor Wheeler and Chief Outlaw,

We members of the North Portland/Mt. Tabor People Power group thank you for many recent improvements to police directive 810.10, and we draw your attention to a couple areas that still need improvement.

First, we sincerely appreciate the revised title and description of purpose (section 1), which make it much more clear what the policy is about. We also appreciate additions to section 3.6, which reduce the size of loopholes by clarifying that cooperation with federal agencies should occur only when someone is under investigation for a felony and only when cooperation is unrelated to the enforcement of federal immigration law.

However, two areas of 810.10 remain very concerning to us. The first is section 3.2 where PPB continues to offer auxiliary support (e.g., traffic control) for pre-planned ICE missions. Even if it doesn't allow PPB members to directly assist in the enforcement of immigration law, the language is still ambiguous enough to allow coordination of many 'auxiliary tasks' that could enable and empower unethical and unconstitutional ICE raids. With so much left to the discretion of the police chief or designee, this code continues to permit actions that completely undermine Portland's sanctuary city resolution.

The second area of our continued concern is section 6.2, which still needs to be expanded to prohibit disclosure of any personally identifying information *including but not limited to* items 6.2.1 through 6.2.8. There are undoubtedly many types of personally identifying information that are not explicitly listed there, and the current language implies that they are acceptable to disclose even if to assist others in the expressed purpose of enforcing immigration law. We also note that the current exception made in 6.2.6 for 'matters of public record' allows PPB to directly share information with DHS that would ordinarily require a formal public records request. This unnecessary exception should be removed.

Although we appreciate the improvements that we have seen in 810.10, we assert that these remaining revisions are essential to align it with Portland's sanctuary city resolution. As of now, the code still allows a great deal of cooperation with DHS and puts many Portland residents at risk. Please remove language that allows PPB to give auxiliary support for ICE raids. And please prohibit PPB members from sharing any kind of personal information with DHS except as required by state or federal law.

Signed,



May 15, 2019

SUBMITTED ONLINE AND SENT VIA E-MAIL

Mayor Ted Wheeler  
Chief of Police Danielle M. Outlaw  
Portland Bureau of Police  
1111 S.W. 2nd Avenue  
Portland, OR 97204

Dear Mayor Wheeler and Chief Outlaw,

Innovation Law Lab and the American Civil Liberties Union of Oregon appreciate your efforts to review and revise Portland Police Directive 810.10, and to engage with concerned stakeholders in an effort to conform the directive to the spirit and letter of Oregon law—specifically, ORS 181A.820 and ORS 180.805.

We especially want to extend our appreciation for the revisions made to the policy following the First Universal Review and Public Comment Period. The policy, as drafted for the current review period, marks a significant improvement and is an important step toward realizing an equitable and inclusive Portland.

We write now, as part of the Second Universal Review and Public Comment Period, to provide recommendations for issues that remain unresolved by the present revisions.

### **Section 3: Scope of Contact and Coordination with DHS**

Under the current revision, Section 3 states,

#### **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.

**3.2.2.** The assistance requested is limited to auxiliary tasks not directly related to making arrest or detentions, such as traffic control or providing supplemental security; and

**3.2.3.** The Chief or designee determines that there is a threat to the safety of the public or the potential for damage to property if the request for assistance is denied.

**3.3.** In circumstances where the Chief authorizes Bureau assistance for pre-planned missions, members shall only provide the level and type of assistance approved by the Chief or designee to ensure the safety of all involved. Members shall not assist DHS staff with the enforcement of

As we have previously emphasized, it is difficult to contemplate a scenario under which a PPB operation

coordinated with, and in support of, an ICE immigration enforcement action would not violate state law. ORS 181A.820 prohibits law enforcement agencies from using “agency moneys, equipment or personnel *for the purpose* of detecting or apprehending persons” whose only violation of law is unlawful presence. By the plain language of the statute, state law enforcement officers can violate ORS 181A.820 without *directly* enforcing immigration law. Whenever the purpose or end goal of any use of agency resources is to assist the enforcement of federal immigration law, that may violate the law.

We appreciate that the Bureau intends this policy to allow PPB to conduct operations focused on preserving public safety in the event of a large-scale ICE enforcement operation. Nevertheless, the wording of the directive opens the door to state law violations.

Accordingly, we first recommend making Subsection 3.1 plain and clear as to what Oregon law prohibits:

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

Second, we suggest rewriting Subsection 3.2.3. That subsection purports to limit PPB assistance to “auxiliary tasks not directly related to making arrests or detention.” However, as stated above, any “auxiliary task” that serves the purpose of supporting an ICE enforcement operation would violate ORS 181A.820, regardless of whether it directly, or indirectly, facilitates the apprehension or detection of individuals suspected of violating immigration law. We recommend rewriting that subsection as follows:

**3.2.2. PPB resources cannot be used directly or indirectly for the purpose of detecting or apprehending individuals for immigration enforcement. PPB operations therefore must be narrowly focused on public safety, rather than supporting ICE operational goals. The assistance requested is limited to auxiliary tasks not directly related to making arrest or detentions, such as traffic control or providing supplemental security; and**

#### **Section 6: Requests for Information**

In our prior comments, we recommended deleting the first sentence of Subsection 6.1. The current draft does not reflect that change. We write again to elevate our concerns. At the time of our original submission, we emphasized that

“Section 6.1 may have been drafted in response to 8 U.S.C. § 1373, a federal statute prohibiting state and local governments from restricting information-sharing with immigration authorities. However, this statute’s validity has recently come under scrutiny by federal courts. 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.<sup>1</sup>”

We noted in our letter that “at least one federal court has recently held that 8 U.S.C. § 1373 is unconstitutional for this very reason,” and cited a decision by the Eastern District Court of Pennsylvania.<sup>2</sup> Since we submitted our letter, 8 U.S.C. § 1373 has been found to be facially unconstitutional two additional district courts, including here in the Ninth Circuit.<sup>3</sup> Accordingly, we again urge PPB to revise

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

<sup>2</sup> *City of Philadelphia v. Sessions*, 2018 WL 2725503, 2018 U.S. Dist. LEXIS 94709 \*7; \*87-99 (E.D. Pa. Jun. 6, 2018).

<sup>3</sup> *City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 953 (N.D. Cal. 2018), judgment entered *sub nom. California ex rel. Becerra v. Sessions*, No. 3:17-CV-04701-WHO, 2018 WL 6069940 (N.D. Cal. Nov. 20, 2018) (holding that 8 U.S.C. § 1373 “is unconstitutional”); *States of New York v. Dep’t of Justice*, 343 F. Supp. 3d 213, 237 (S.D.N.Y. 2018) (“8 U.S.C. § 1373(a)–(b), insofar as it applies to states and localities, is facially unconstitutional under the anticommandeering doctrine of the Tenth Amendment”).



Section 6.1 as follows:

~~"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, t~~ 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. 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.

Lastly, we repeat our recommendation, made in our original letter, that the Bureau add a concluding section that addresses how the Directive will be communicated to Bureau of Police officers and personnel. We recommend outlining specific actions, including regular training sessions, that the Bureau will undertake to ensure knowledge of and compliance with the Directive.<sup>4</sup>

We thank you for the opportunity to share these recommendations and for your ongoing commitment to protecting the diversity and inclusivity of the city.

Sincerely,



Stephen Manning  
Executive Director, Innovation Law Lab



Mat dos Santos  
Legal Director, American Civil Liberties Union of Oregon

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<sup>4</sup> For more information, please see Recommendation 3 of the Innovation Law Lab's *Belong* report.