



## CITY OF PORTLAND, OREGON



### Bureau of Police

Ted Wheeler, Mayor

Danielle M. Outlaw, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000

Integrity • Compassion • Accountability • Respect • Excellence • Service

### **Directive 810.10, Immigration Enforcement and Diplomatic Immunity (formerly, “Arrest of Foreign Nationals”)**

At the direction of the Police Commissioner, the Bureau made slight modifications to the previously posted version of Directive 810.10, Immigration Enforcement and Diplomatic Immunity. The Bureau has added the term “detainer request” to the definitions section, modified Section 2.3., and removed Section 2.3.1. and a portion of 2.4.1. A redline copy reflecting these changes is included in the attached summary.

The Chief signed the updated policy on February 1, 2018, and it will take effect immediately.

Published on 2/1/18

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**Directive 810.10, Immigration Enforcement and Diplomatic Immunity (formerly, “Arrest of Foreign Nationals”)  
Executive Summary**

Introduction

On March 22, 2017, the City Council adopted a resolution reaffirming its status as an inclusive city. Although the Bureau’s current practices mirror the “spirit” of the resolution, the existing policy directing member behavior regarding the arrest of foreign nationals and enforcement of immigration laws does not align with the City’s recent assertion. Recognizing the need to be consistent in its policies and practices and to bring its directive into alignment with the City’s position on the matter, the Bureau conducted a review of and made significant revisions to Directive 810.10, Arrest of Foreign Nationals.

Public Comments

The Bureau solicited and received several comments from community members and other stakeholders during the initial universal review and public comment period. The Policy Development Team read all of the comments and identified prevalent policy-related threads across those remarks and recommendations. Many commenters expressed concern that the Bureau’s active policy is incongruous with the City Council’s resolution and inconsistent with other broad city and state mandates. There was also general concern about the Bureau’s cooperation with immigration enforcement arms of the federal government. Finally, some commenters questioned why an individual’s immigration or citizenship status would ever be relevant to a case or other police matter and recommended that the Bureau explicitly prohibit members from asking an individual about their status under any circumstances.

The Bureau made several revisions to the current policy that adopt a more culturally competent tone, parallel the City’s position on the issue and more clearly direct members with regard to the enforcement of federal immigration laws. In light of this overhaul of the directive, the Bureau recognized the need to solicit additional comments on the proposed changes. The Bureau received fewer comments during the second universal review and public comment period, with most responders focusing on specific elements of the draft policy, such as the need to distinguish between administrative and judicial warrants, provide guidance to members when interacting with an individual whose immigration status may be relevant to an investigation, define the scope of Bureau investigations regarding controlled substances, and clarify the role of the Bureau when providing cover or assistance to federal agencies.

*Enforcement of Federal Immigration Laws*

The updated directive includes language prohibiting the use of Bureau personnel, equipment, monetary or other resources for the enforcement of federal immigration laws, unless in conflict with an applicable law. Furthermore, the Bureau restricts members from assisting federal entities with the enforcement of immigration laws. In doing so, the Bureau reinforces its commitment to improving public safety

through positive engagement with all members of the community, including members of immigrant and refugee communities.

### *Immigration Status Inquiries*

Numerous responders requested that the Bureau prohibit its members from asking an individual about their immigration status. The Bureau adopted this recommendation, adding the descriptor “solely or primarily for the purpose of federal immigration law enforcement.” There are certain circumstances under which an individual’s status may be integral to an investigation, for example, if the individual is a victim of human trafficking. In these limited circumstances, members must clearly state to the individual the relevance of their immigration status to the investigation and explain why it is necessary to document that information. The Bureau has made it clear in policy that outside of these situations, members are expressly prohibited from inquiring about an individual’s immigration status.

### *Warrants*

The Bureau has included language in the revised directive that definitively prohibits members from arresting an individual solely for being an undocumented immigrant. However, the issuance of a judicial warrant may affirmatively require a Bureau member to arrest an individual for this reason, as the nature of that type of legal order requires law enforcement officials to execute or comply with the order. On the contrary, administrative warrants do not carry the authority of a judge; therefore, the Bureau is under no obligation to cooperate with the execution of such an order and, as a result, has prohibited its members from executing administrative warrants. Consequently, the updated directive requires a federal immigration law enforcement agency requesting the arrest or detention of an individual on the basis of their immigration status to present a judicial warrant to execute that action.

### *Controlled Substance-Related Investigations and Arrests*

During the second public comment and review period, a few commenters expressed concern that some of the language in the section pertaining to Bureau investigations may suggest that members will investigate and make arrests for legal marijuana use or possession. That has not been the practice of the Bureau, nor is it the intent of the revised policy to direct members to “crack down” or impose sanctions on individuals who legally consume, possess or grow marijuana. There is, of course, an expectation that individuals who use or grow marijuana will comport with legal limits as defined by the State of Oregon, but that section of the policy primarily pertains to investigations of the inter-state trafficking of controlled substances. The inter-state trafficking of marijuana in any amount is illegal, per Oregon State and federal laws. The investigation of such activity captures the primary extent to which the Bureau would work with federal entities in this context.

### *Contact and Coordination with Federal Agencies*

The revised directive makes clear that the Bureau will not enforce or assist in the enforcement of federal immigration laws. However, the Bureau has both a duty to protect the welfare of the public, and a legal obligation to respond to emergency calls for cover. If, over the course of carrying out a mission to arrest or detain an individual, a federal immigration law enforcement agency requests emergency cover from the Bureau, members will provide cover to ensure the safety of the public and all involved, but members will limit their involvement to that task alone. If a federal immigration law enforcement agency requests assistance for a pre-planned mission, the Chief, or a designee, will consider the request if other resources are not available and only authorize members to assist in the

capacity of ensuring the safety of the public (e.g., traffic control). The Bureau reiterates in this section that members will not enforce or assist in the enforcement of federal immigration laws.

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 active directive is not representative of the Bureau's stance on this matter, nor does it reflect the Bureau's intended practice. The Bureau acknowledges the importance of asserting in policy its commitment to protecting and serving the residents of a City that prides itself on being diverse and inclusive, and values the contributions of all members of the community. As a result, the Bureau's Policy Development Team made extensive changes to the current directive, specifically crafting language in the updated directive through the lens of the Portland City Council's Resolution #37277 to ensure the practices of the Bureau comport with City law and that the Bureau's position parallels and supports the City's stance regarding this issue.

During the revision process, we considered all of the comments received during both universal review and public comment periods, reviewed the policies of other jurisdictions that operate in self-identified sanctuary cities, and incorporated many of the American Civil Liberties Union's (ACLU) model state and local law enforcement policies and rules. The updated directive includes language unequivocally stating that Bureau members will not enforce or assist in the enforcement of federal immigration laws. It more clearly directs members in this regard and offers improved guidance on routine member interactions with undocumented immigrants and individuals who are entitled to certain diplomatic privileges. The Policy Development Team added language to more sufficiently direct members in the context of handling an investigation that may warrant documenting an individual's immigration status. Furthermore, the directive plainly delineates the legal requirements of Bureau members under existing law.

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 January 18, 2018.

Published on 12/19/17

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*Please Note\* This version of the directive will become effective immediately on 2/1/18.*

## **810.10, Immigration Enforcement and Diplomatic Immunity**

### **Refer:**

- Title 8, U.S. Code 1357(d) Detainer of Aliens for Violation of Controlled Substance Laws
- Title 8, U.S. Code 1373(a)(b) Communication Between Government Agencies and the Immigration and Naturalization Service
- U.S. Department of State website: <http://state.gov>
- U.S. Department of State, Bureau of Consular Affairs: <http://travel.state.gov>
- ORS §181A.820 Enforcement of Federal Immigration Laws
- Oregon House Bill 3464
- Oregon Executive Order 17-04, Renewing Oregon's Commitment to Protecting Its Immigrant, Refugee, and Religious-Minority Residents
- City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All
- Human Resources Administrative Rule 11.04, Protection of Restricted and Confidential Information
- DIR 310.70 Dissemination of Information
- DIR 344.05 Bias-Based Policing/Profiling Prohibited
- DIR 631.30 Cooperation with Other Agencies
- DIR 810.00 Arrest, Persons Exempt
- Detention of Foreign National Checklist (Operations Branch)

### **Definitions:**

- Administrative Removal Warrant: A document, typically signed by a supervisory level Immigration and Customs Enforcement (ICE) administrator and not a judge, that authorizes ICE officers/Enforcement Removal Operations (ERO) to arrest non-citizens who have committed immigration violations and/or who have been previously determined to be deportable. An administrative removal warrant allows only the detention of a named person and does not allow for a search of a premises.
- Consular Immunity: A principle of international law that offers similar protections as diplomatic immunity, but with more limitations, given the functional differences between consular and diplomatic officers. Consular officers are not accorded absolute immunity from a host country's criminal jurisdiction and are immune from local jurisdiction only in cases directly relating to consular functions.
- Detainer Request: For the purposes of this directive, 810.10, Immigration Enforcement and Diplomatic Immunity, a completed Form I-247A submitted by any federal immigration law enforcement branch of ICE to a law enforcement agency that currently has legal and physical custody of a suspected undocumented immigrant. The form asks the law enforcement agency upon which it is served to contact ICE and agree to secure transfer of the person to ICE's custody prior to their release from custody on state or local criminal charges. Form I-247A is only submitted where the law enforcement agency is holding a person on other criminal charges.

- Diplomatic Immunity: A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. In addition to being immune from prosecution, individuals with diplomatic immunity are also exempt from search and seizure.
- Enforcement and Removal Operations (ERO): The immigration law enforcement branch of ~~the U.S. Immigration and Customs Enforcement (ICE)~~, under the Department of Homeland Security (DHS). ERO focuses on identifying, detaining and removing individuals who have not lawfully entered the U.S.
- Foreign National: A person who was born outside of the jurisdiction of the U.S., who is subject to the laws of a foreign government, and who has not been naturalized under U.S. law (e.g., refugee, green card holder, etc.).
- Honorary Consular Immunity: A principle of international law that offers limited legal protections to honorary consular officers. Honorary consular officers are distinct from career Consular officers in that they may perform consular services on a part-time basis. They retain immunity only for cases relating to consular functions. They are not protected from arrest or search and seizure.
- Homeland Security Investigations (HSI): The investigative branch of the Department of Homeland Security (DHS). HSI focuses on combating criminal organizations illegally exploiting America's travel, trade, financial, and immigration systems. HSI is authorized to investigate criminal activities related to human, drug and weapons trafficking; cybercrime; transnational gang activity; human rights violations; and other cross-border criminal activity.
- Judicial Warrant: A warrant signed by a federal district court or magistrate judge, or an Oregon state or county judge, that must be executed by law enforcement as a judicial order based on probable cause and full vetting by a neutral judge. These warrants generally allow for a complete search of a premises or parts of a premises, as specifically described in the warrant, and allow for the seizure of either or both persons or evidence, as described in the warrant.
- Nonimmigrant Visitor: A foreign-born person, having a permanent residence abroad, who seeks temporary entry into the United States for a specific duration and purpose with the intention to leave the United States upon completion of that purpose and at the end of the specified timeframe.
- Undocumented Immigrant: A foreign-born person residing in the United States who has not obtained a visa, possesses an expired or otherwise invalid visa, or who, regardless of their intent to permanently reside in the U.S., overstayed a lawful entry or otherwise violated the terms of their visa status and thus has not been granted the right to be legally present in the U.S. A person's undocumented status is determined by DHS.

- U.S. Customs and Border Protection (CBP): The federal law enforcement agency under DHS responsible for the management of border security, regulation and facilitation of trade and travel, and the enforcement of federal laws governing trade, customs and immigration.
- U.S. Department of Homeland Security (DHS): The federal government agency, comprised of various departments and sub-agencies, responsible for enforcing and administering customs and immigration laws, managing natural and man-made disaster events, combatting terrorism and other threats to national security, and regulating trade and travel.
- U.S. Immigration and Customs Enforcement (ICE): The federal law enforcement agency under DHS responsible for the enforcement of federal laws governing border control, customs, trade and immigration.

**Policy.**

1. The purpose of this Directive is to provide guidance for member contact and interaction with undocumented immigrants, nonimmigrant visitors, and foreign nationals. Additionally, this policy establishes procedures that direct member actions when managing DHS requests for support, assistance, and information.
2. The Portland Police Bureau is committed to protecting, serving and supporting all residents and community members of the City of Portland, regardless of their national origin or immigration status. Accordingly, no Bureau member shall interrogate, detain, arrest, initiate an investigation or take other official police action against an individual solely on the basis of either of these aspects of their identity.
3. When necessary, the Bureau partners with DHS to assist in their efforts of managing emergency situations and combatting a wide array of global criminal threats related to drug and human trafficking, terrorism, and human rights violations. Although the Bureau supports the DHS mission as it relates to confronting these security and human rights threats, the Bureau is steadfast in its commitment to contributing to the City’s efforts to create a welcoming environment that encourages diversity and inclusivity.
4. To the extent that the mission of DHS, as communicated to the Bureau, is enforcement of immigration laws, the Bureau will follow the direction of the state statutory law and City ordinances by not enforcing or assisting in the enforcement of federal immigration laws, as that is a federal function. Moreover, the Bureau shall not expend personnel, equipment, monetary, or other resources to enforce or assist in the enforcement of federal immigration laws, unless in a manner that comports with applicable law.

**Procedure.**

1. Bureau Contact with Undocumented Immigrants Who Are Not Suspected of a Crime.
  - 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual or document immigration status solely or primarily for the purpose of federal immigration law enforcement.
    - 1.1.1. Members may need to inquire about an individual’s status where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the

enforcement of a federal immigration law, or where required by state or federal law to verify eligibility for a law enforcement cooperation visa or deferred action request.

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

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

1.3. Temporary Immigration Benefits and Protections.

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

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

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

1.3.1.3. Deferred action or continued presence requests initiated by an investigator shall be submitted to ~~their Responsibility Unit (RU) Manager~~ the Chief of Police or a designee for approval or denial.

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

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

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

2. Arrests, Detentions of Undocumented Immigrants.

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

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

2.3. Members shall not honor or comply with federal immigration detainer requests issued by ICE, CBP or ERO, ~~where the detainer is based solely on an immigration violation.~~

~~2.3.1. If the detainer request pertains to a felony, Class A Person misdemeanor, or misdemeanor driving under the influence of intoxicants (DUI) crime, the Bureau shall abide by the request.~~

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, ~~or if the request pertains to a felony, Class A person misdemeanor, or misdemeanor DUI crime.~~

### 3. Scope of Contact and Coordination with DHS.

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

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

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

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

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

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

### 3.5. Investigations.

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

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

- 3.5.1.2. Investigate and make arrests for any controlled substance offense.
  - 3.5.2. If assisting HSI or another investigative agency within DHS with a criminal investigation as described above, members shall not engage in the surveillance of a person or group based solely or primarily upon a person or group's actual or perceived national origin or immigration status.
4. Diplomatic and Consular Immunity.
- 4.1. Categories of persons entitled to privileges and immunities include the following:
    - 4.1.1. Members of Diplomatic Missions;
    - 4.1.2. Members of Consular Posts;
    - 4.1.3. International Organization Personnel and National Missions to Such Organizations (e.g., the United Nations); and
    - 4.1.4. Designated Employees of the Taipei Economic and Culturally Representative Office in the U.S. (TECRO) and of the Taipei Economic and Cultural Offices (TECO).
  - 4.2. If a person asserts diplomatic or consular immunity or exemption at the time of police contact, the burden of proof for establishing their identity and immunity rests with the individual(s). The individual(s) must produce to the member U.S. Department of State ("State Department")-authenticated proof of identity in the form of an identity card issued by:
    - 4.2.1. The State Department,
    - 4.2.2. The U.S. Mission to the United Nations, or
    - 4.2.3. The American Institute in Taiwan for the employees of TECRO or TECO.
    - 4.2.4. The member may, if necessary, take the person to a location (i.e., a precinct or another facility with the necessary research tools or resources) to establish identity and immunity.
    - 4.2.5. Members should refer to State Department guidelines for additional information regarding diplomatic and consular immunity.
    - 4.2.6. Members shall refer to Directive 810.00, Arrest, Persons Exempt, for guidance regarding the detainment of other individuals who are exempt from arrest.
5. Consular Notifications.
- 5.1. When any foreign national (e.g., a nonimmigrant visitor who has volunteered their immigration status, or a person claiming diplomatic, consular or honorary consular immunity) is taken into custody or otherwise could be taken into custody, the arresting member or their supervisor shall refer to State Department's Bureau of Consular Affairs guidelines pertaining to mandatory consular notification countries to determine if providing notification to the individual's country is required.
    - 5.1.1. It is the opinion of the State Department that stops for routine traffic violations and resultant citations are not arrests or detention for the purposes of notification.
    - 5.1.2. If notification is mandatory, members shall:
      - 5.1.2.1. Contact the nearest consulate or embassy as soon as practicable and prior to the end of shift. Members should be aware that foreign consular officials have the right to visit their arrested/detained nationals, subject to local laws and regulations regarding access to detained persons;

- 5.1.2.2. Inform the individual that the consulate or embassy has been notified;
  - 5.1.2.3. Complete the “Detention of Foreign Nationals Checklist” and attach the document to their report; and
  - 5.1.2.4. Make arrangements for a courtesy notification (during business hours) to the Oregon State Police to facilitate any international contact through INTERPOL channels.
  - 5.1.3. If notification is not mandatory, members shall:
    - 5.1.3.1. As soon as practicable, inform the individual of their right to have their home country notified of their detention.
    - 5.1.3.2. If the individual requests notification, contact the nearest consulate or embassy as soon as practicable and prior to the end of shift.
  - 5.2. Members should refer to the website for the State Department’s Bureau of Consular Affairs for information regarding countries and jurisdictions with mandatory notifications.
6. Requests for and Release of Information.
- 6.1. Federal law prohibits the Bureau from limiting or in any way restricting the exchange of information regarding the citizenship or immigration status, lawful or unlawful, between a government official and an agency responsible for the enforcement of federal immigration laws. However, the Bureau shall not require members to disclose or otherwise share information regarding an individual’s immigration status with any federal immigration law enforcement agencies.
    - 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 by state or federal law, members shall not disclose any of the following personal information to a federal immigration law enforcement agency for the purpose of enforcing federal immigration laws:
    - 6.2.1. A person’s address;
    - 6.2.2. A person’s place of employment or work hours;
    - 6.2.3. A person’s school or school hours;
    - 6.2.4. A person’s contact information (e.g., phone number, e-mail address, social media information);
    - 6.2.5. A person’s known associates or relatives;
    - 6.2.6. The date, time, or location of hearings, proceedings, or appointments with a person that are not matters of public record; and/or
    - 6.2.7. Information described in Sections 6.2.1. through 6.2.6. with respect to known relatives or associates of the individual.

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

**History:**

- Originating Directive Date: 09/06/01
- Last Revision Signed: ~~12/19/17~~ 02/01/18
  - Effective Date: ~~01/18/17~~ 02/01/18
- Next Review Date: ~~01/18/20~~ 08/01/18

*The Bureau originally posted this version of the directive on 12/19/17, with a scheduled enactment date of 1/18/18. However, the preceding redline copy (see above), which reflects additional changes to the policy, replaces the 12/19/17 copy and serves as the Bureau's final version for enactment, effective 2/1/18.*

## **810.10, Immigration Enforcement and Diplomatic Immunity**

### **Refer:**

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- DIR 810.00 Arrest, Persons Exempt
- Detention of Foreign National Checklist (Operations Branch)

### **Definitions:**

- **Administrative Removal Warrant:** A document, typically signed by a supervisory level Immigration and Customs Enforcement (ICE) administrator and not a judge, that authorizes ICE officers/Enforcement Removal Operations (ERO) to arrest non-citizens who have committed immigration violations and/or who have been previously determined to be deportable. An administrative removal warrant allows only the detention of a named person and does not allow for a search of a premises.
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2. The Portland Police Bureau is committed to protecting, serving and supporting all residents and community members of the City of Portland, regardless of their national origin or immigration status. Accordingly, no Bureau member shall interrogate, detain, arrest, initiate an investigation or take other official police action against an individual solely on the basis of either of these aspects of their identity.
3. When necessary, the Bureau partners with DHS to assist in their efforts of managing emergency situations and combatting a wide array of global criminal threats related to drug and human trafficking, terrorism, and human rights violations. Although the Bureau supports the DHS mission as it relates to confronting these security and human rights threats, the Bureau is steadfast in its commitment to contributing to the City's efforts to create a welcoming environment that encourages diversity and inclusivity.
4. To the extent that the mission of DHS, as communicated to the Bureau, is enforcement of immigration laws, the Bureau will follow the direction of the state statutory law and City ordinances by not enforcing or assisting in the enforcement of federal immigration laws, as that is a federal function. Moreover, the Bureau shall not expend personnel, equipment, monetary, or other resources to enforce or assist in the enforcement of federal immigration laws, unless in a manner that comports with applicable law.

### **Procedure.**

1. Bureau Contact with Undocumented Immigrants Who Are Not Suspected of a Crime.
  - 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual or document immigration status solely or primarily for the purpose of federal immigration law enforcement.
    - 1.1.1. Members may need to inquire about an individual's status where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a federal immigration law, or where required by state or federal law to verify eligibility for a law enforcement cooperation visa or deferred action request.
  - 1.2. A member shall not ask for a victim's immigration status when investigating a crime unless relevant to an element of the crime. If the individual's immigration status is relevant to the investigation (e.g., human trafficking, hate crime, etc.), the member shall explain to the individual why they are documenting the individual's immigration status and its relevance to the investigation.

- 1.2.1. An exception to this rule exists if it appears a victim or witness might qualify for a visa or other immigration protections based on cooperation with law enforcement in an investigation of a crime.
- 1.3. Temporary Immigration Benefits and Protections.
  - 1.3.1. In limited circumstances, an individual who is a victim of or witness to specific qualifying crimes and are helpful to the investigation may be eligible for certain immigration benefits or protections, such as law enforcement cooperation visas (i.e., T visa and U visa), continued presence status, deferred action status, or other federal resources that provide temporary immigration protections.
    - 1.3.1.1. Although a member is under no duty to affirmatively request or inquire about an individual's immigration status, if the person requesting temporary immigration benefits or protections volunteers the information, the member is under the same duty to document relevant facts of the case as they would in any police report.
    - 1.3.1.2. All requests initiated by a victim/witness who is seeking member assistance with enforcement cooperation visas (T visas and U visas) shall be submitted to the Chief's Office. The Chief of Police shall designate, in writing, an individual to review and approve or deny these requests.
    - 1.3.1.3. Deferred action or continued presence requests initiated by an investigator shall be submitted to their Responsibility Unit (RU) Manager for approval or denial.
    - 1.3.1.4. Bureau members authorizing these requests may consult the City Attorney's Office for guidance.
      - 1.3.1.4.1. Upon approval, the member-initiated certification paperwork should be submitted to the appropriate federal authority and victim/witness-initiated certification paperwork should be provided to the requester to complete the necessary nonimmigrant visa application.
- 1.4. If communication appears to be a barrier, the individual has the right to request translation, interpretation, or other communication aids (e.g., sign language interpreter). The Bureau shall provide the appropriate communication aid at no expense to the individual.
2. Arrests, Detentions of Undocumented Immigrants.
  - 2.1. Members shall not arrest a person for the sole reason that they are an undocumented immigrant.
  - 2.2. Members shall not assist ICE, CBP or ERO with the execution of administrative removal warrants. The Bureau shall require a judicial warrant prior to the arrest or detention of an individual at the request of ICE, CBP or ERO.
  - 2.3. Members shall not honor or comply with federal immigration detainer requests, where the detainer is based solely on an immigration violation.

- 2.3.1. If the detainer request pertains to a felony, Class A-Person misdemeanor, or misdemeanor driving under the influence of intoxicants (DUII) crime, the Bureau shall abide by the request.
  - 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, or if the request pertains to a felony, Class A-person misdemeanor, or misdemeanor DUII crime.
3. Scope of Contact and Coordination with DHS.
  - 3.1. Members shall not assist ICE, CBP or ERO as it pertains to the enforcement of federal immigration laws.
  - 3.2. ICE, CBP or ERO may request the Bureau's assistance for pre-planned missions. In these circumstances, members shall only provide cover or assistance (e.g., traffic control) to ensure the safety of all involved. Members shall not assist in the enforcement of federal immigration laws.
    - 3.2.1. The Chief or a designee shall consider the request and authorize approval to provide such assistance only in those rare circumstances where other cover resources (i.e., another federal law enforcement agency) are unavailable.
  - 3.3. Members are authorized to respond to emergency calls for cover or assistance (e.g., code three cover, injured officer, shots fired) sought by ICE, CBP or ERO. In those instances, members shall limit their involvement to providing emergency law enforcement cover. Members shall not assist in the enforcement of federal immigration laws.
  - 3.4. When necessary, members shall grant access to restricted areas in a Bureau facility only if ICE, CBP or ERO agents are acting pursuant to a judicial order.
    - 3.4.1. When their sole purpose is to execute an immigration detainer or administrative warrant, members shall grant agents access only to publicly accessible areas in a Bureau facility.
  - 3.5. Investigations.
    - 3.5.1. Members may work in conjunction with HSI or other investigative agencies within DHS to:
      - 3.5.1.1. Further the investigation of any felony, unrelated to federal immigration laws, that has been committed, and/or
      - 3.5.1.2. Investigate and make arrests for any controlled substance offense.
    - 3.5.2. If assisting HSI or another investigative agency within DHS with a criminal investigation as described above, members shall not engage in the surveillance of a person or group based solely or primarily upon a person or group's actual or perceived national origin or immigration status.
4. Diplomatic and Consular Immunity.
  - 4.1. Categories of persons entitled to privileges and immunities include the following:

- 4.1.1. Members of Diplomatic Missions;
  - 4.1.2. Members of Consular Posts;
  - 4.1.3. International Organization Personnel and National Missions to Such Organizations (e.g., the United Nations); and
  - 4.1.4. Designated Employees of the Taipei Economic and Culturally Representative Office in the U.S. (TECRO) and of the Taipei Economic and Cultural Offices (TECO).
- 4.2. If a person asserts diplomatic or consular immunity or exemption at the time of police contact, the burden of proof for establishing their identity and immunity rests with the individual(s). The individual(s) must produce to the member U.S. Department of State (“State Department”)-authenticated proof of identity in the form of an identity card issued by:
- 4.2.1. The State Department,
  - 4.2.2. The U.S. Mission to the United Nations, or
  - 4.2.3. The American Institute in Taiwan for the employees of TECRO or TECO.
  - 4.2.4. The member may, if necessary, take the person to a location (i.e., a precinct or another facility with the necessary research tools or resources) to establish identity and immunity.
  - 4.2.5. Members should refer to State Department guidelines for additional information regarding diplomatic and consular immunity.
  - 4.2.6. Members shall refer to Directive 810.00, Arrest, Persons Exempt, for guidance regarding the detainment of other individuals who are exempt from arrest.
5. Consular Notifications.
- 5.1. When any foreign national (e.g., a nonimmigrant visitor who has volunteered their immigration status, or a person claiming diplomatic, consular or honorary consular immunity) is taken into custody or otherwise could be taken into custody, the arresting member or their supervisor shall refer to State Department’s Bureau of Consular Affairs guidelines pertaining to mandatory consular notification countries to determine if providing notification to the individual’s country is required.
- 5.1.1. It is the opinion of the State Department that stops for routine traffic violations and resultant citations are not arrests or detention for the purposes of notification.
  - 5.1.2. If notification is mandatory, members shall:
    - 5.1.2.1. Contact the nearest consulate or embassy as soon as practicable and prior to the end of shift. Members should be aware that foreign consular officials have the right to visit their arrested/detained nationals, subject to local laws and regulations regarding access to detained persons;
    - 5.1.2.2. Inform the individual that the consulate or embassy has been notified;
    - 5.1.2.3. Complete the “Detention of Foreign Nationals Checklist” and attach the document to their report; and
    - 5.1.2.4. Make arrangements for a courtesy notification (during business hours) to the Oregon State Police to facilitate any international contact through INTERPOL channels.
  - 5.1.3. If notification is not mandatory, members shall:

- 5.1.3.1. As soon as practicable, inform the individual of their right to have their home country notified of their detention.
    - 5.1.3.2. If the individual requests notification, contact the nearest consulate or embassy as soon as practicable and prior to the end of shift.
  - 5.2. Members should refer to the website for the State Department's Bureau of Consular Affairs for information regarding countries and jurisdictions with mandatory notifications.
6. Requests for and Release of Information.
  - 6.1. Federal law prohibits the Bureau from limiting or in any way restricting the exchange of information regarding the citizenship or immigration status, lawful or unlawful, between a government official and an agency responsible for the enforcement of federal immigration laws. However, the Bureau shall not require members to disclose or otherwise share information regarding an individual's immigration status with any federal immigration law enforcement agencies.
    - 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 by state or federal law, members shall not disclose any of the following personal information to a federal immigration law enforcement agency for the purpose of enforcing federal immigration laws:
    - 6.2.1. A person's address;
    - 6.2.2. A person's place of employment or work hours;
    - 6.2.3. A person's school or school hours;
    - 6.2.4. A person's contact information (e.g., phone number, e-mail address, social media information);
    - 6.2.5. A person's known associates or relatives;
    - 6.2.6. The date, time, or location of hearings, proceedings, or appointments with a person that are not matters of public record; and/or
    - 6.2.7. Information described in Sections 6.2.1. through 6.2.6. with respect to known relatives or associates of the individual.
  - 6.3. Members shall act in accordance with Bureau policies and applicable City Human Resources Administrative Rules (HRARs) regarding the handling of confidential information.

**History:**

- Originating Directive Date: 09/06/01
- Last Revision Signed: 12/19/17
  - Effective Date: 01/18/18
- Next Review Date: 01/18/20

Directive 810.10 – Website comments 3/8/17-4/6/17 and 5/25/17-6/8/17

Date	Individual	Comment
2 <sup>nd</sup> UR		
6/8/17		<p>Directive 810.10 Immigration Enforcement and Diplomatic Immunity (Originally titled Arrest of Foreign Nationals)</p> <p>The Definitions section of the directive defines Administrative Removal Warrants, but not judicial warrants or orders. Due to the importance of the distinction between the two in the directive and in practice, both should be defined in the directive.</p> <p>Section 1.2 lines 1-2 of the directive states “A member shall not ask for a victim’s immigration status when investigating a crime unless relevant to an element of the crime.” Section 1.2.1 lines 1-3 then states “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.” Clarification should be added in Section 1.2.1 directing PPB members to only collect this information with the consent of the victim or witness after they are notified of the possibility of a visa or other immigration protections. Additionally, before giving consent, the victim or witness should be allowed time to consult with an immigration attorney to assess the possibility of obtaining such visa or immigration protections. Determining whether a victim or witness qualifies for a visa or other immigration protections is a complex matter, and if a PPB member assesses qualification incorrectly, this could result in serious immigration consequences for the witness or victim. As a matter of public safety, witnesses and victims of crime should not fear such consequences when reaching out to or interacting with the police.</p> <p>In Section 1.3.1.1 lines 1-5, the directive states, “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.” Current language does not require that the individual be notified that this documentation is occurring. In order to maintain trust between PPB and the community, the directive should require that when such information is documented, the individual should be notified.</p> <p>Sections 3.5.1 lines 1-2 and 3.5.1.1 lines 1-2 state that members of PPB may work with federal investigative agencies under DHS to, “Further the investigation of any felony that has been committed.” These sections as written leave ambiguity and the possibility for conflict with state law and the 4th policy of the directive, lines 1-4, which states, “the Bureau will follow the direction of the state statutory law (i.e., ORS §181A.820) and City ordinances by not enforcing or assisting in the enforcement of federal immigration laws, as that is a federal function.” In Section 3.5.1.1 line 1 of the directive, the language “any felony” leaves the possibility of PPB members aiding in the investigation</p>

		<p>of someone for a federal crime based on immigration status, such as 8 U.S.C. 1326. The language should be changed to mirror the language of Section 6.1.1 lines 1-3 of the directive; rather than “any felony,” the directive should read “a federal, state or local [felony] unrelated to the enforcement of federal immigration laws.”</p> <p>Section 3.5.1.2 lines 1-2 state that PPB members may work with a federal investigative agency within DHS to “Investigate and make arrests for any controlled substance offense.” Further guidance should be given for both members of PPB and the community regarding this section as it relates to legal marijuana in Oregon. Confusion in this area is not beneficial to public safety or community relations with PPB.</p> <p>Section 5.1.2 line 1 and Section 5.1.2.1 lines 1-2 state “If notification is mandatory, members shall: Contact the nearest consulate or embassy as soon as practicable and prior to the end of shift.” “as soon as practical and before the end of the shift” should be changed to “immediately.” Because the right of a foreign national to have their country/consulate notified can be analogized to other Due Process rights afforded under the Sixth Amendment, this right should be communicated at arrest along with Miranda warnings in order to facilitate the exercise of other Due Process rights. This also applies to the same language in Section 5.1.3.1 line 1 and Section 5.1.3.2 line 2 of the directive.</p>
6/8/17		<p>In general, this revision to the policy is good and is better than the last version, which we commented on. In particular, the changes in procedure for Consular notification are good though there is one more change that we think are important (see below under Procedure 5).</p> <p>There are a few areas where changes or additions are needed:</p> <p>Policy item 3: "When necessary, the Bureau partners with the DHS to assist in their efforts to manage emergency situations..." The word necessary should be changed to "required."</p> <p>Procedure 1.1.1: "or where required by state or federal law to verify eligibility for a law enforcement cooperation visa or deferred action request." should be deleted since it is covered in 1.3.1.</p> <p>Procedure 1.2.1 should be deleted since it is covered in 1.3.1.</p> <p>Procedure 3.4: "Members shall only grant ICE, CBP or ERO agents access to publicly accessible areas in a Bureau facility when their sole purpose is to execute an immigration detainer or administrative warrant." ICE, DBP or ERO should only have access to publicly accessible areas. Therefore, "when their sole purpose is to execute an immigration detainer or administrative warrant."</p>

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		<p>should be deleted.</p> <p>Procedure 5 should be renamed from Mandatory Consular Notification to Consular Notification since it contains both mandatory and non-mandatory sections.</p> <p>Under Procedure 5, Consular notification, there needs to be a procedure added that informs the person of countries that require mandatory notification. The list of countries requiring mandatory notification needs to be read and the need for mandatory notification needs to be communicated. For other countries, individuals shall be informed that their consulates may be optionally notified if requested but there is no requirement to do so.</p> <p>Under Procedure 6 or in the Policy section, I suggest adding a statement that MCSO shall not inform ICE, CBP or ERO of names of arrestees being held by MCSO. This is an issue that has come up before with MCSO. I believe your policy will be not to do this, but a statement to that effect is important to the immigrant and refugee community who feel they are under attack.</p>
6/8/17		<p>Section 6.1 misstates and misunderstands federal law. 8 USC 1373 does not impose a federal duty to share information requested by agencies of the U.S. Dept of Homeland Security. It precludes laws and policies that expressly prohibit the sharing of information only as related to citizenship or immigration status. Section 6.1 gives undue license to share information far outside the scope of 8 USC 1373, and in a manner that unnecessarily tangles up local criminal and federal immigration law enforcement. This would arguably be in violation of ORS 181A.820, as well.</p> <p>Also, there does not appear to be a firm enforcement mechanism for violations of the directive, rendering it toothless and likely ineffective.</p>
6/8/17		<p>From: Portland NAACP Branch 1120</p> <p>Thank you for the opportunity to comment on Director 810.10 Immigration Enforcement and Diplomatic Immunity. We are pleased to see the Directive referencing the State Executive Order and City Resolution, and the updated reference to ORS181A.820, which clarify that Oregon will not expend its law enforcement resources on federal immigration law.</p> <p>Our comments are meant to further strengthen the Directive. They are included below in the relevant sections of the Directive draft.</p>

Policy.

2. The Portland Police Bureau is committed to protecting, serving and supporting all residents and community members of the City of Portland, regardless of their national origin or immigration status. Accordingly, no Bureau member shall interrogate, detain, arrest, initiate an investigation or take other official police action against an individual on the basis of any of these aspects.

\*\*\*This is an excellent and clear statement of policy, a strong platform for the whole Directive. A small detail: if “aspects” refers back to national origin or immigration status, should be “either” rather than “any” of these aspects.\*\*\*

3. 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. 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.

\*\*\*Since this Directive addresses PPB interfaces with immigration enforcement and diplomatic immunity, this section should be deleted. It appears to negate or at least dilute the policy stated in section 2. Strengthening domestic security is overly broad. Our current President believes that illegal immigrants are a threat to domestic security. Theoretically, since ICE is a DHS department, PPB members could be able to or required to assist in any immigration action if it were given the purpose of “strengthening domestic security.” \*\*\*

Procedure.

\*\*\*The Directive should expand the language in Sections 1.1, 2.1, and 2.4 to include “solely and primarily” to align with Section 3.5.2. In other words, procedures should make clear that PPB will not cooperate with investigations that include immigration status, regardless of whether that investigation is based solely or primarily on federal immigration law or on other issues.

Regarding “law enforcement cooperation visas” (Sections 1.1.1, 1.2.1 and 1.3.1): while witnesses and victims of crimes should not be subject to deportation for cooperating in investigations, the Bureau needs safeguards to keep using these visas to leverage immigrants as informants.\*\*\*

\*\*\*Instances which forbid cooperation with investigations that are based "solely" on federal

immigration law (Sections 1.1, 2.1, and 2.4) should be narrowly defined so that members do not cooperate with investigations that violate the spirit but not the letter of the sanctuary law.\*\*\*

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

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

\*\*\*See general comment above under Procedure.\*\*\*

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

\*\*\*Make clear that information about an individual’s immigration status will not be passed on to any DHS agency.\*\*\*

1.2. A member shall not ask for a victim’s immigration status when investigating a crime unless relevant to an element of the crime.

\*\*\*Again, explain how a victim’s immigration status could be relevant to an element of the crime.\*\*\*

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

\*\*\*Is 1.2.1 the only exception to 1.2 rule? If so, state this and take out the clause beginning with “unless”; this clause is vague and open to misinterpretation and misapplication.\*\*\*

1.3. Temporary Immigration Benefits and Protections.

1.3.1.1. Although a member is under no duty to affirmatively request or inquire about an individual’s immigration status, if the person requesting temporary immigration benefits or protections volunteers the information, the member is under the same duty to document relevant facts

of the case as they would in any police report.

\*\*\*This procedure raises concerns. As pointed out by Portland Copwatch in its comments on this Directive, witnesses and victims aren't read Miranda rights and may not know that they have a right to remain silent. Such a caution should be included in this Directive.\*\*\*

2. Arrests, Detentions of Undocumented Immigrants.

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

\*\*\*See general comment above under Procedure.\*\*\*

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.

\*\*\*See general comment above under Procedure.\*\*\*

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.

\*\*\*This should be modified to cover only serious felony warrants, rather than minor charges, such as failure to appear in court for a petty crime.\*\*\*

3. Scope of Contact and Coordination with DHS.

\*\*\*We support the comment from Portland Copwatch, quoted here: "...[ i]n Section 3 it's also stated that the PPB can assist federal agencies with "pre-planned missions." The old draft talked about "mission[s] to enforce federal immigration laws." In theory, this section would include such missions and are thus in conflict with the prohibitions.\*\*\*

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 assistance for pre-planned missions. The RU manager 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 must be crystal clear that such circumstances do not permit PPB to agree to participate in missions that are in violation of this Directive.\*\*\*

3.2.1. 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.

\*\*\*Providing cover or assistance such as traffic control is substantial and should be considered “assistance . . . as it pertains to the enforcement of federal immigration laws” in contradiction of 3.1.\*\*\*

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

\*\*\*Again, the words “emergency” should be tightly defined so that this does not become a loophole through which ICE, CBP or ERO agents call on PPB members to violate the sanctuary law and this Directive; or a confusing policy that leaves PPB members unclear about their legal responsibilities.\*\*\*

3.4. Members shall only grant ICE, CBP or ERO agents access to publicly accessible areas in a Bureau facility when their sole purpose is to execute an immigration detainer or administrative warrant.

\*\*\*This looks like a huge loophole in the purpose of the city’s sanctuary policy. According to the American Immigration Council:

- . . . ICE has issued detainers erroneously. Even U.S. citizens have experienced this when, for example, there was an error in ICE’s database, the person’s claims to citizenship were disregarded or difficult to prove, or the individual’s name was similar to someone else in their database. <https://www.americanimmigrationcouncil.org/research/immigration-detainers-overview>

The AIC points out that:

		<ul style="list-style-type: none"> <li>• Detainers are only requests made by ICE; compliance is voluntary. An LEA has discretion to decide which detainers to honor and under what circumstances. Therefore, 3.4 should be struck from this policy, and PPB should not honor any detainer requests.***</li> </ul> <p>3.5. Investigations.</p> <p>3.5.1. Members may work in conjunction with HSI or other investigative agencies within DHS to:</p> <p>3.5.1.1. Further the investigation of any felony that has been committed, and/or</p> <p>3.5.1.2. Investigate and make arrests for any controlled substance offense.</p> <p>***Should specify that legal Oregon marijuana is not included in 3.5.1.2.***</p> <p>3.5.2. If assisting HSI or another investigative agency within DHS with a criminal investigation as described above, members shall not engage in the surveillance of a person or group based solely or primarily upon a person or group’s actual or perceived national origin or immigration status.</p> <p>***This is good policy. This expanded phrase should be included in other parts of this Directive and be applied to Directive 344.00 on Bias Based Policing.***</p> <p>We forward the comments in the spirit of strengthening Portland’s leadership as a sanctuary city in a sanctuary state. We look forward to working with the Portland Policy Bureau to ensure that these laws sanctuary laws are fully and robustly implemented.</p>
6/6/17		<p>COMMENTS ON IMMIGRATION ENFORCEMENT DIRECTIVE, MAY 2017 VERSION</p> <p>In the interest of timeliness, Portland Copwatch (PCW) is submitting these comments on Directive 810.10, now titled "Immigration Enforcement and Diplomatic Immunity" &lt;<a href="https://www.portlandoregon.gov/police/article/641014">https://www.portlandoregon.gov/police/article/641014</a>&gt;. It almost goes without saying since we've said it so often, but it would be of great help for the Bureau to point out which parts of the Directive have been re-ordered, rewritten, or are new. Our examination of the draft shows that, with very few exceptions other than the new Section 5 on Consular Notifications, most of the proposed policy has been rewritten in its entirety. As usual, our references to section numbers are from the Procedure part of the Directive unless otherwise noted.</p> <p>In general, we are glad to see that many parts of the old Directive which provided loopholes for the PPB to cooperate with federal agencies* have been rewritten to clearly prohibit cooperation in many</p>

circumstances. For example, 2.3 says "Members shall not honor or comply with federal immigration detainer requests." It would be hard to be clearer than that. Sections 3.1, 3.2, 3.2.1, and 3.3 all repeat that the PPB should not assist ICE or other agencies with enforcing federal immigration law. While one goal of the Directives project is to streamline, sometimes repetition is necessary.

However, in Section 3 it's also stated that the PPB can assist federal agencies with "pre-planned missions." The old draft talked about "mission[s] to enforce federal immigration laws." In theory, this section would include such missions and are thus in conflict with the prohibitions. Providing traffic control (3.2.1) or "law enforcement cover" (3.2.2) to agents trying to deport Portland residents is akin to aiding and abetting people engaged in criminal conduct.

Furthermore, Section 3.5.1.2 allows cooperation with the feds to "investigate and make arrests for any controlled substance offense." Since the US Department of Justice considers legal Oregon marijuana to be an illegal controlled substance, this sets up a legal and ethical dilemma for the Bureau. Similarly, an exception to not working with federal agencies is if there is a judicial warrant (2.4.1), as opposed to an administrative warrant. Since deportations, if used at all, should be limited to the most serious felons, we suggest the exception only be for serious felony warrants.

Also, as far as loopholes go, there are too many places in the draft in which the Bureau is told not to cooperate with investigations that are based "solely" on federal immigration law (Sections 1.1, 2.1, and 2.4). In Section 3.5.2, one of the only paragraphs directly addressing the Homeland Security Investigations unit (HSI), the Directive says "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." This is good policy-- it expands the too-narrow "solely" criterion to include "primarily." This expanded phrase should guide the other parts of this Directive and be applied to Directive 344.00 on Bias Based Policing.

One other item of concern is the issue of so-called "Law enforcement cooperation visas" (Sections 1.1.1, 1.2.1 and 1.3.1). 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 if a person volunteers their immigration status-- but that raises serious issues since witnesses and victims aren't read Miranda

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		<p>rights and don't necessarily know about their right to remain silent. Such a caution should be included in this Directive to prevent those who cooperate in prosecuting criminals from becoming criminal suspects.</p> <p>In terms of staying focused on the issues within the scope of this Directive, it's not clear why Policy Section 3 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 seems this is only included to make sure Homeland Security doesn't view Portland as shutting the door on the feds. Since this Directive is about immigration and diplomats, it should likely not be in there, particularly the way it's phrased.</p> <p>We are pleased to see the Directive referencing the State Executive Order and City Resolution, and the updated reference to ORS181A.820 all clarifying that Oregon will not expend its law enforcement resources on federal immigration law.</p> <p><b>CONCLUSION</b></p> <p>As always, we appreciate the ability to weigh in on these important issues. We again ask that the Bureau consider a longer time period for all comments to be made, especially when new drafts like this one are so substantively different from the previous version.</p> <p>PS There is a reference to CIS in Section 6.1 but there is no explanation what that means.</p> <p>*We called attention to this in our March 2017 comments</p>
6/3/17		<p>Thank you for specifying that our local police are a) committed to the diversity of our city and the humanity of all residents, regardless of national origin, and b) not authorized to cooperate with ICE in their increasingly partisan and fear-based requests to apprehend immigrants. Police should be protectors, and that protection includes all peaceful and contributing citizens. Thank you for your work.</p>
5/25/17		<p>We should not be allocating city or state \$ for a program that the citizenry doesn't support. Our grandparents came here to provide better lives for us, and immigrants, nor, legal or not, are doing the</p>

		same. Uphold sanctuary city status. Be a beacon of hope.
1 <sup>st</sup> UR		
4/6/17		<p>Submitted on PPB website</p> <p>Working with Immigration and Customs Enforcement (ICE) (810.10)</p> <p>Member Responsibilities  “Members will not assist ICE unless a crime is committed or in case of an emergency.”</p> <p>“Unless a crime is committed” This section requires well considered review by both City of Portland policy leaders, by a partnership of City attorneys and civil rights attorneys, because it does not address several fundamental differences between Oregon criminal statutes and federal immigration codes. The former is based on an assumption of innocence and an expectation of due process before attributing criminality, the latter does not.</p> <p>So for example: without more, an undocumented foreign national leaving her workplace has not committed an act deemed criminal under Oregon law; or an undocumented foreign national failing a breathalyzer has not yet been adjudicated a drunk driver.</p> <p>“In case of an emergency” Again, this directive requires well considered review by both City of Portland policy leaders, by a partnership of City attorneys and civil rights attorneys, because it lacks specificity as to what constitutes an “emergency.” An emergent situation under circumstances as perceived by federal immigration code enforcement officers -- for example, the potential of allegedly undocumented foreign nationals fleeing an ICE raid on a workplace -- is not an “emergency” under Oregon law.</p> <p>Consistent with City of Portland ordinances, policies, and proclamations on equity and inclusivity, and in conformity with Oregon statutes on limiting use of municipal resources federal immigration code enforcement, and without more clarity on the what constitutes a crime or an emergency under Oregon law, Portland Police Bureau officers should not assist ICE as directed above.</p> <p>a. Investigations: Subject to approval by the RU manager ... members may work jointly with ICE to investigate crimes:</p>

		<p>To further the investigation of any felony that has been committed. Again, under Oregon law only courts determine when a felony has been committed. The Oregon legislative assembly and Oregon courts have not determined that alleged federal immigration code violations are felonies. Without allegations of conduct deemed a felony under state law, Portland Police Bureau officers and investigative staff laws should not assist ICE as directed above</p> <p>In these situations, members will provide only peacekeeping or protective services. Consistent with City of Portland ordinances, policies, and proclamations on equity and inclusivity, and without more open exploration with the public, with impacted newcomer communities, and civil liberty associations, given the probability of the perception of Portland Police Bureau officers consequently being identified as federal immigration code enforcers and deporters of families engaged in the life of this city -- Portland police officers should not assist ICE as directed above.</p>
4/5/17		<p>810.10 Arrest of Foreign Nationals</p> <p>Section 2a lines 1-4, and section 2b lines 1-2 the directive states that in cases of “No mandatory notification: Advise the individual without undue delay of his/her right to have his/her country notified. If requested, inform the nearest consulate (the residence or headquarters of a foreign consul) or embassy (the official residence and offices of an ambassador of a foreign state or sovereign) as soon as practical and before the end of shift. Mandatory notification: Inform the nearest consulate or embassy as soon as practical and before the end of shift. The individual must then be advised that his/her consul was notified.” “Without undue delay” should be changed to “immediately,” and “as soon as practical and before the end of the shift” should also be changed to “immediately.” Because the right of a foreign national to have their country/consulate notified can be analogized to other Due Process rights afforded under the Sixth Amendment, it seems this right is one that should be communicated at arrest along with Miranda warnings in order to facilitate the exercise of other Due Process rights. Moreover, the Vienna Convention on Consular Relations reflects the agreement of the United States and dozens of other nations that consular notification is an international legal right, governed by treaty.</p> <p>In section 3 line 1, the directive states that “Members will not assist ICE unless a crime is committed or in case of an emergency.” “Unless a crime is committed” should be changed to “unless an individual suspected of committing a crime is a foreign national.” Current language leaves open the possibility that officers may assist ICE with locating and/or apprehending individuals on the basis of investigating a crime who may not themselves be suspected of any wrongdoing. In assisting ICE,</p>

officers are subject to the same Fourth Amendment requirements of reasonableness, probable cause, and, if applicable, warrant procedure that would be implicated in the seizure of a U.S. citizen, since alerting ICE to the unlawful presence of an undocumented individual is tantamount to facilitating their arrest. ORS 181.850 states that “No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.” It would be a backdoor violation of this provision for officers to disclose immigration status of witnesses or victims to ICE.

Section 3c lines 1-2 of the directive state that “Information Exchange: Members may exchange information with ICS in order to further the investigation of any federal, state or local crimes (i.e., obtaining suspect information or identifying witnesses/victims of a crime).” Something should be added along the lines of “the citizenship status of witnesses and victims of crime may not be communicated if known, and will only be communicated if an individual is suspected of committing a crime.” This section as written opens the door to officers revealing immigration status information to ICE authorities regarding individuals who have done nothing wrong, and rather are attempting to cooperate with law enforcement in the apprehension of wrongdoers or have themselves been the victims of crime. This sort of exposure is likely to deter members of undocumented communities from coming forward if they have witnessed a crime, or from reporting crimes of which they have been the victims, out of fear that any interaction with law enforcement may jeopardize their ability to remain in this country. This would be detrimental to Portland as a whole because the entire community has a vested interest in encouraging witnesses to come forward and crimes to be reported. ORS 181.850 states that “No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.” It would be a backdoor violation of this provision for officers to disclose immigration status of witnesses or victims to ICE.

Section 5 lines 23-24 of the directive state that, “Arrangements with these countries provide that U.S. authorities will notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.” “Within 72 hours of the arrest or detention” should be changed to “immediately upon detention.” Because the right of a foreign national to have one’s country/consulate notified can be analogized to other Due Process rights afforded under the Sixth Amendment, this right is one that should be communicated at arrest along with Miranda warnings in order to facilitate the exercise of

		<p>other Due Process rights. Again, we point to the Vienna Convention on Consular Relations for the international legal ramifications of failing to notify consular officials.</p> <p>Submitted on behalf of the Portland Chapter of the National Lawyers Guild April 5, 2017</p>
4/5/17		<p>Because current ICE policies do not represent the way the majority of Portland residents view undocumented individuals, I would urge the Mayor and the Portland Police to formulate a policy of NON-COOPERATION with ICE.</p>
4/5/17		<p>After reviewing the policy, I have identified several areas of concern which conflict with or in some way challenge Portland’s Sanctuary and Inclusive City status.</p> <p>The section Working with Immigration and Customs Enforcement (ICE) (810.10) directs PPB to violate ORS 181A.820. Following are examples:</p> <ul style="list-style-type: none"> <li>• Members will not assist ICE unless a crime is committed or in case of an emergency</li> <li>• Investigations: Subject to approval by the RU manager, on a case-by-case basis, members may work jointly with ICE (this may include riding in the same vehicle) to investigate crimes</li> <li>• Request for such services, except in an emergency, must be made through and approved by the appropriate RU manager.</li> <li>• In these situations, members will provide only peacekeeping or protective services to ICE. Peacekeeping means to provide a presence to ensure no offense is committed by others while ICE performs its lawful duties. If possible, members should speak the language of the people being contacted, investigated or detained by ICE.</li> </ul> <p>This part is especially problematic because PPB’s role is to keep peace and protect Portland community members, not ICE. Who then will protect our community from ICE’s offenses and unlawful actions?</p> <ul style="list-style-type: none"> <li>• Information Exchange: Members may exchange information with ICE</li> <li>• must notify the ICE when an individual is arrested for a controlled substance offense</li> <li>• a reasonable belief the arrestee may not have been lawfully admitted into the U.S.</li> </ul> <p>How is this determined? This is text book racial profiling (“reasonable” is entirely subjective).</p> <ul style="list-style-type: none"> <li>• the member will refer the arrestee to ICE</li> <li>• responsibility of the District Attorney</li> </ul> <p>Also a public employee</p> <ul style="list-style-type: none"> <li>• The ICE Referral form and the Custody Report face sheet will be faxed to ICE Portland</li> </ul>

		<p>Who is charged with receiving and processing the sheet? Should still be considered a use of City resources and city employee assistance.</p> <ul style="list-style-type: none"> <li>• members will mark ICE</li> </ul> <p>It would be beneficial for the City to develop an official ICE activities reporting and review program. Currently media accounts, reports to various local immigrant legal defense organizations and advocacy groups or law enforcement, and personal stories reported to or shared directly with the City of Portland’s Human Rights Commission are the only ways that ICE activities are known. The program would collect information about ICE activities in public spaces and courthouses or jails and instances of City employee participation. The program can be developed for on-line reporting by any community member, including City employees, and provide for anonymous submission. Collected data would be regularly reviewed and shared with City elected officials, the PPB and other Bureaus, and the public, and then be used to measure how City employees are meeting their obligation and to inform the direction of future City equity and inclusion policies.</p> <p>Instruction should be given to PPB to publically disclose requests for information or detainment and any direction they receive from ICE.</p> <p>The City should disclose how past SCAAP (State Criminal Alien Assistance Program) awards have been used. The Fiscal Year (FY) 2015 SCAAP Awards List indicates Multnomah County received a final award amount of \$181,918.00, and \$141,340 in FY 2014, \$252,511 in FY 2013, and \$230,003 in FY 2012. Such disclosure should specify if any part of these awards were used to detain undocumented community members or in cooperation with ICE (and FY 2016 should be included too).</p> <p>To further mitigate possible public conflation of ICE and the PPB, a provision should be added that specifically makes it illegal for any PPB law enforcement employee to enter into 287(g) Agreements with ICE.</p>
4/5/17		<p><b>DIRECTIVE 810.10 ARREST OF FOREIGN NATIONALS</b></p> <p>We know that the Bureau is already aware that the content of this Directive, even though citing ORS 181A.820 (formerly 181.850), gives officers leeway to act in violation of state law; City Council has directed the Bureau through its Sanctuary City resolution to fix the policy. The ORS prohibits law enforcement arresting persons whose only crime is a violation of federal immigration law unless there</p>

		<p>is a warrant, and says officers "may" give information to ICE about the immigration status of people who are arrested.</p> <p>The current Directive's section on "Working with Immigration and Customs Enforcement (ICE)," says "Members will not assist ICE unless a crime is committed or in case of an emergency," but doesn't define what such an emergency might be. This ignores that the statute requires that an arrest already be made or a warrant be present. Subsection (a) allows supervisors to approve officers helping ICE --even riding along with them-- on a case by case basis to investigate felonies or controlled substance offenses, again with no prerequisite of an arrest or warrant. Subsection (b) says officers can provide backup assistance to ICE in enforcing immigration laws, with no requirement that there be any felony crime involved or a warrant. Subsection (c) allows sharing of information with "ICS" [sic] to further investigations of crimes, with no definition of the crime or requirement for a warrant.</p> <p>Regardless of all these issues that could be fixed by adding language around felonies, arrests, and warrants, the operative word in the statute is that local law enforcement "may" share information with ICE, and Portland has made a commitment not to do so. We know our local law enforcement officers are aware that if they arrest someone for a seemingly minor crime, that person could end up being deported, and so the immigrant community may cease wishing to associate with the PPB to solve problems.</p> <p>For community safety and consistency, the Directive needs to absolutely narrowly tailor any circumstance in which the PPB helps ICE.</p>
3/30/17		<p>I am proud that Portland is dedicated to being a sanctuary city. I am concerned that as ICE agents become more aggressive about deportations, other crimes will go unreported for fear of being deported. Rates of domestic violence, rape, and violence against women are already much higher in minority communities, and immigrants who fear for their safety and the safety of their families are much less likely to speak out if they are being abused or taken advantage of by an employer. I would like to see Oregon's police take authentic steps towards reaching out to and supporting these communities who are integral to our fabric.</p>
3/28/17		<p>I encourage you to change this policy and align it with state law (ORS.181.850). Portland Police would better serve the community by not assisting ICE and CBP in the absence of criminal violations.</p> <p>The city cannot afford to support the federal government in this way. A recent article in the</p>

Oregonian stated that Clackamas county cost tax payers \$1000,000 in the Maria Miranda-Olivares law suit resolved in 2014. The city has more pressing budget priorities, for example addressing homelessness.

Assisting ICE and CBP also weakens police officers image as allies of the community resulting in a less safe city. We rely on citizens to report crimes, testify, and participate in the criminal process. If officers are seen as agents of ICE and CBP citizens will not come forward.

I encourage you to adopt the ACLU’s “9 Model State and Local Law Enforcement Policies and Rules” (see below). Taking this approach will strengthen our police force, make our city safer, and make Portland a better place to live.

Thank you for your work and for taking public comments on this policy.  
Lisa Lakes

ACLU’s 9 “model” state and local law enforcement policies and rules.

Defend our friends, families and neighbors from Trump’s mass deportation agenda:

#1) The Judicial Warrant Rule: [County/City/State] officials shall require a judicial warrant prior to detaining an individual or in any manner prolonging the detention of an individual at the request of U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).

#2) No Facilitation Rule: [County/City/State] officials 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, without a judicial warrant.

#3) Defined Access/Interview Rule: Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no [County/City/State] official shall permit ICE or CBP agents access to [County/City/State] facilities or any person in [County/City/State] custody for investigative interviews or other investigative purposes.

#4) Clear Identification Rule: To the extent ICE or CBP has been granted access to [County/City/State] facilities, individuals with whom ICE or CBP engages will be notified that they

are speaking with ICE or CBP, and ICE or CBP agents shall be required to wear duty jackets and make their badges visible at all times while in [County/City/State] facilities.

Protect our friends, families and neighbors’ privacy from the Trump administration:

#5) Don’t Ask Rule: [County/City/State] officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where required by state or federal law to verify eligibility for a benefit, service, or license conditioned on verification of certain status.

#6) Privacy Protection Rule: No [County/City/State] official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate’s custody status, release date or home address, or information that may be used to ascertain an individual’s religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.

#7) Discriminatory Surveillance Prohibition Rule: No [County/City/State] agency or official shall authorize or engage in the human or technological surveillance of a person or group based solely or primarily upon a person or group’s actual or perceived religion, ethnicity, race, or immigration status.

Help our friends, families and neighbors get redress when abuses and mistakes occur:

#8) Redress Rule: Any person who alleges a violation of this policy may file a written complaint for investigation with [oversight entity].

Help ensure our friends, families, and neighbors are protected from discrimination:

#9) Fair and Impartial Policing Rule: No [County/City/State] official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual’s perceived race, national origin, religion, language, or immigration status, unless such personal characteristics have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.

Final Note: The Trump Administration has asserted, falsely, that if localities do not help advance Trump’s mass deportation agenda, they are violating federal law. The following rule, which is the only applicable federal law in this area, would help ensure your city, county or town establishes its

Directive 810.10 – Website comments 3/8/17-4/6/17 and 5/25/17-6/8/17

		<p>clear intent not to violate federal law. While not a necessary addition, this rule may be a useful complement to the above policies.</p> <p>1373 Rule: Under 8 U.S.C. § 1373 and 8 U.S.C. § 1644, federal law prohibits [County/City/State] officials from imposing limits on maintaining, exchanging, sending, or receiving information regarding citizenship and immigration status with any Federal, State, or local government entity. Nothing in [County/City/State] policies is intended to violate 8 U.S.C. § 1373 and 8 U.S.C. § 1644.</p>
3/27/17		<p>Portland Police should provide no assistance to ICE at all; they do not need it, and it is a waste of tax dollars and police resources to do so, when so many of the ""suspects"" that ICE is looking for are harmless and in fact contribute to our society through, at the very least, paying taxes. Paying even peacekeeping assistance to ICE does not further the Portland Police's mission to protect our community, when ICE is involved in terrorizing members of our community. The time spent on ICE's behalf would be better spent improving the clearance rate of literally any category of property or violent offense in Portland.</p>
3/27/17		<p>Please adapt the ACLU's 9 points</p>
3/25/17		<p>This is a set of comments regarding PPB Directive 810.10 “Arrest of Foreign Nationals,” which is under universal review from 8 March 2017 through 8 April 2017.</p> <p>The review of 810.00 is very timely, given the executive orders issuing from the White House pressuring local law enforcement to do the bidding of Immigration and Customs Enforcement (ICE), in possible violation of the law. In response, the legislative and executive bodies of the State of Oregon, Multnomah County, and City of Portland have declared their respective jurisdictions to be areas of sanctuary and have declared that law enforcement agencies responsible to them should not obey what they state are illegitimate demands. Because Directive 810.10, as currently written, is inconsistent with the State, County, and—most importantly for these comments—City positions, major revision is in order.</p> <p>In addition to the Oregon and Portland positions, the American Civil Liberties Union (ACLU) has promulgated a set of “model” state and local law enforcement policies and rules (henceforth “ACLU model rules”) that provide guidance to implementing positions such as those taken by Oregon and Portland. I append this document at the end of my own comments.</p>

My purpose in presenting my comments is to recommend changes to Directive 810.10 that are consistent with the Oregon and Portland positions, using the ACLU model rules as a guideline.

Comment #1. Directive 810.10 refers to various Federal, State, and City statutes and directives in its opening. In this list, ORS 181.850 was replaced in 2015 by ORS 181A.820, which is a more appropriate reference. Additionally, reference should be made to the recent State and City positions regarding sanctuary policy.

Comment #2. The revised Directive 810.10 should open with a statement of policy consistent with the Oregon and Portland positions. A good example of such a statement can be found in the three policy statements currently (1-31 March 2017) undergoing stakeholder review for a proposed Multnomah County Sheriff’s Office (MCSO) directive on “Enforcement of ICE Detainers.” In the three paragraphs below, I present a draft modification of the MCSO’s policies that would serve as an opening statement for the PPB Directive 810.10. All of the remainder of 810.10 should be drafted to be consistent with this opening statement.

“The PPB’s primary mission is public safety. It is vital to this mission that community members feel comfortable interacting with members, reporting crimes, entering court, and generally participating as witnesses or victims in our criminal justice system, without fear of local law enforcement enforcing federal immigration law.

“The PPB values the work of the United States Department of Homeland Security (DHS) as a public safety partner, and recognizes the value of its missions, including preventing terrorism, enhancing security, security cyberspace, and ensuring disaster resilience. However, a bright line must be drawn with regard to the work of the ICE, a subset of DHS, and the responsibilities of the PPB. PPB’s mission does not encompass the enforcement of federal immigration law. PPB generally has no enforcement authority or active role in regards to federal immigration law.

“In all of its public safety roles, the PPB follows state and federal law. As a result, the PPB does not use bureau resources or personnel to enforce federal immigration law, nor does the PPB hold people pursuant to ICE detainees.”

Comment #3. The Directive currently states, “It is the policy of the Bureau to investigate allegations of criminal conduct by suspects regardless of race, national origin or citizenship status. In such investigations, the Bureau will work with all federal, state and local law enforcement agencies.” The

first quoted sentence leaves open the meanings of “allegations” and “criminal conduct.” If the undocumented status of a person is defined as criminal conduct and the allegation of that status is made by the ICE or other Federal agency, such an investigation would be inconsistent with Oregon and Portland positions, the policy statement I propose in Comment #2, and ACLU model rules #2 and #5. The second sentence directly contradicts the Oregon and Portland policies, as well as ACLU model rule #7. I urge revision of the first sentence and elimination of the second sentence.

Comment #4. The Directive, with respect to mandatory and voluntary reporting to foreign consulates, states “Whenever any foreign national ... is taken into custody, the arresting member or supervisor will see if notification of the individual’s country is mandatory.” This assumes that the PPB has somehow determined the nationality of the person taken into custody, and therefore is not consistent with ACLU model rule #5. This is not a simple matter because of the mandatory policy rule, which is a protection for the person taken into custody. I propose that the person taken into custody is shown a list of mandatory reporting countries (included in the current Directive 810.10) and is asked whether any of these should be contacted, or if another consulate should be contacted. The revised Directive should state that this information would be kept confidential and not released to any other agency.

Comment #5. The Directive states, “Members will not assist ICE unless a crime is committed or in case of an emergency.” As with Comment #2 above, this leaves open the possibility that a crime is being a person without documentation, and this should explicitly be excluded from the Directive. Moreover, if the crime is being committed is anything else, the ICE does not have jurisdiction and should not take the lead role, as implied in this sentence. Best, perhaps, is just deleting this.

Comment #6. Discussing investigations, Directive 810.10 appears to give Responsible Unit (RU) managers discretion to assign members to work jointly with the ICE. If the RU manager is a precinct commander or person of lesser authority, this is a contradiction of stated policy. The larger statement of the role of the PPB regarding this paragraph in aiding the ICE is contrary to Oregon and Portland positions and ACLU model rule #2. The ICE does not investigate felonies of the nature that PPB investigates; the “bright line” referred to in the MCSO’s proposed policy is a valid one that must be respected. As this section of Directive 810.10 continues, PPB should not provide assistance to ICE as it enforces federal immigration laws; this includes providing protective or peacekeeping services. As is being demonstrated across the country, the more a local law enforcement agency is seen to be working with the ICE, the less trust the community will have in that agency. As a result, crimes will

not be reported and law enforcement services will not be utilized when they should be. PPB members should not exchange information with ICE if that information involves a person’s documentation status or provides a means of locating and possibly detaining that person. Such information exchanges are contrary to ACLU model rules #2, #3, #5, and #6.

Comment #7. “Title 8 of the U.S. Code 1357 (d) mandates that all law enforcement officers/agencies must notify the ICE when an individual is arrested for a controlled substance offense whom they reasonably believe may not have been lawfully admitted into the U.S. This begs the question of what “reasonably believe” means. To inquire during the arrest period violates the recommendation of ACLU model rules #2, #5, and #6. Moreover, if members are viewed as having easily aroused beliefs and therefore quick referrals to the ICE, community trust in the PPB will erode. Similarly, identifying bookings with “ICE” is contrary to the Oregon and Portland positions. This should be carefully edited and perhaps is best eliminated.

Comment #8. The ACLU’s model rules has a final note that they recommend be added to local law enforcement policies. I recommend that their wording, copied in the paragraph immediately below, be included in the revision to the Directive.

“1373 Rule: Under 8 U.S.C. § 1373 and 8 U.S.C. § 1644, federal law prohibits [County/City/State] officials from imposing limits on maintaining, exchanging, sending, or receiving information regarding citizenship and immigration status with any Federal, State, or local government entity. Nothing in [County/City/State] policies is intended to violate 8 U.S.C. § 1373 and 8 U.S.C. § 1644.”

APPENDIX TO COMMENTS: The ACLU’s 9 “model” state and local law enforcement policies and rules.

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Help ensure our friends, families, and neighbors are protected from discrimination:

		<p>#9) Fair and Impartial Policing Rule: No [County/City/State] official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual’s perceived race, national origin, religion, language, or immigration status, unless such personal characteristics have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.</p> <p>Final Note: The Trump Administration has asserted, falsely, that if localities do not help advance Trump’s mass deportation agenda, they are violating federal law. The following rule, which is the only applicable federal law in this area, would help ensure your city, county or town establishes its clear intent not to violate federal law. While not a necessary addition, this rule may be a useful complement to the above policies.</p> <p>1373 Rule: Under 8 U.S.C. § 1373 and 8 U.S.C. § 1644, federal law prohibits [County/City/State] officials from imposing limits on maintaining, exchanging, sending, or receiving information regarding citizenship and immigration status with any Federal, State, or local government entity. Nothing in [County/City/State] policies is intended to violate 8 U.S.C. § 1373 and 8 U.S.C. § 1644.</p>
3/23/17		<p>Greetings. I strongly encourage you to adopt the same policy as the Multnomah County Sheriff has adopted regarding Arrest of Foreign Nationals. Important in this is assessing the relationship with ICE, since your current policy will lead to continued, close work with ICE, a prospect that threatens to drive a wedge between you and the citizens of Portland.</p> <p>You should also consider the guidelines suggested by the ACLU, which I provide here as follows:</p> <p>#1) The Judicial Warrant Rule: [County/City/State] officials shall require a judicial warrant prior to detaining an individual or in any manner prolonging the detention of an individual at the request of U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).</p> <p>#2) No Facilitation Rule: [County/City/State] officials 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, without a judicial warrant.</p> <p>#3) Defined Access/Interview Rule: Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no</p>

[County/City/State] official shall permit ICE or CBP agents access to [County/City/State] facilities or any person in [County/City/State] custody for investigative interviews or other investigative purposes.

#4) Clear Identification Rule: To the extent ICE or CBP has been granted access to [County/City/State] facilities, individuals with whom ICE or CBP engages will be notified that they are speaking with ICE or CBP, and ICE or CBP agents shall be required to wear duty jackets and make their badges visible at all times while in [County/City/State] facilities.

Protect our friends, families and neighbors' privacy from the Trump administration:

#5) Don't Ask Rule: [County/City/State] officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where required by state or federal law to verify eligibility for a benefit, service, or license conditioned on verification of status.

#6) Privacy Protection Rule: No [County/City/State] official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate's custody status, release date or home address, or information that may be used to ascertain an individual's religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.

#7) Discriminatory Surveillance Prohibition Rule: No [County/City/State] agency or official shall authorize or engage in the human or technological surveillance of a person or group based solely or primarily upon a person or group's actual or perceived religion, ethnicity, race, or immigration status.

Help our friends, families and neighbors get redress when abuses and mistakes occur:

#8) Redress Rule: Any person who alleges a violation of this policy may file a written complaint for investigation with [oversight entity].

Help ensure our friends, families, and neighbors are protected from discrimination:

#9) Fair and Impartial Policing Rule: No [County/City/State] official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual's perceived race, national origin, religion, language, or immigration status, unless such personal characteristics

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		<p>have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.</p> <p>I encourage you to seriously consider the position of the Portland Police regarding treatment of Foreign Nationals. This is certainly going to become an even bigger issue in the next months to year.</p>
3/23/17		<p>I do not support this directive. Portland police should not participate nor support ICE agents in any manner. It is not the job of Portland police to be involved with or aide in any way with immigration issues. I do not believe my tax dollars allocated to the Portland Police should go in aiding ICE agents. Portland police are not in the business of immigration.</p>
3/22/17		<p>Portland police should not be allowed to assist ICE in any way. ICE should not have access to police data. Police should not be allowed to provide backup to ICE in any way, even "peacekeeping". Police should not notify ICE when they have arrested someone, even for drug possession.</p>
3/22/17		<p>We should arrest Russian foreign nationals who had ties to tampering with our elections ;)</p>
3/22/17		<p>This is a bad policy and a bad use of our tax dollars. I encourage Portland Police to adopt the Model Cities policies located at:  <a href="https://docs.google.com/document/d/1ATOFq1FupESLiCUX8UPQneXCiFdjHSP3hRxhii5FQZO/edit">https://docs.google.com/document/d/1ATOFq1FupESLiCUX8UPQneXCiFdjHSP3hRxhii5FQZO/edit</a></p> <p>The goals of ICE and those of our police department should not be conflated. Portland Police will lose any trust from the community that they now have, and will sacrifice any opportunity to strengthen relationships with the community. The LAPD has made a statement declaring that they don't care what the color of a person's skin is or where they or their parents were born - they are EVERYONE'S police department. I am urging Portland Police to adopt similar policies.</p>
3/22/17		<p>The values and mission of Portland Police do not include assisting ICE to enforce immigration law. Assisting with "peacekeeping or protective services" uses the department's limited resources outside of the Bureau's stated community goals. If the Federal government wants peacekeeping backup on ICE missions, they should provide their own resources to do this.</p> <p>There is no demonstrated need to work with ICE (including riding in the same vehicle). This commingles the criminal investigation with immigration law which is fraught with potential abuses. These issues should be separate, and can be sorted out after a suspect is booked for a crime rather than at the time of arrest.</p>

		<p>The directive as written will instill fear in foreigners to report actual crimes for fear ICE might also respond with Portland Police or that the victim also becomes a suspect. This creates a public safety issue that should concern all of us.</p> <p>I encourage policymakers to consider adopting Multnomah County Sheriff's new policy "Enforcement of Immigration and Customs Enforcement (ICE) Detainers":  <a href="http://www.mcso.us/profiles/pdf/policy_review/XXX.XX-ICE.pdf">http://www.mcso.us/profiles/pdf/policy_review/XXX.XX-ICE.pdf</a>                  The Multco policy is clear, direct and easy for its members to enforce.</p> <p>Thank you for this opportunity to share my feedback</p>
3/22/17		<p>This is bad policy and if City Council adopts policy to become a "Sanctuary City" 810.10 will also likely be in violation of City policy.</p> <p>First, there is no good reason for Portland Police members to assist ICE to enforce immigration law. Assisting with "peacekeeping or protective services" uses our limited resources in ways Portland City Council has denounced; if the Federal government wants peacekeeping backup on ICE missions they should provide their resources to do this. Further, the policy refers to emergency without defining what that means; as far as I am aware there is no such thing as an immigration law emergency. There might be a criminal law emergency, but that has nothing to do with immigration status.</p> <p>There is no demonstrated need to work with ICE (including riding in the same vehicle). Once again this commingles the criminal investigation with immigration law which is fraught with potential abuses. These things should be separate, and can be sorted out after a suspect is booked for a crime rather than at the time of arrest.</p> <p>At the core, the Portland Police policy will instill fear in people of foreigners to report actual crimes for fear ICE might also respond with Portland Police and then the victim also becomes a suspect. This will cause us all to be less safe. Further, the policy shows cooperation with ICE which is against City of Portland policy; implementing this policy and using it "on a case-by-case basis" WILL take resources that should be 100% dedicated to Portland's law enforcement.</p> <p>Policymakers should consider adopting Multnomah County Sheriff's new policy "Enforcement of Immigration and Customs Enforcement (ICE) Detainers" located at  <a href="http://www.mcso.us/profiles/pdf/policy_review/XXX.XX-ICE.pdf">http://www.mcso.us/profiles/pdf/policy_review/XXX.XX-ICE.pdf</a> The Multco policy is clear, direct</p>

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		<p>and easy for its members to enforce.</p> <p>Additionally, policy makers should review the ACLU's 9 "model state and local law enforcement policies located at <a href="https://docs.google.com/.../1ATOFq1FupESLiCUX8UPQneXCiFd.../edit">https://docs.google.com/.../1ATOFq1FupESLiCUX8UPQneXCiFd.../edit</a></p> <p>I truly hope you will consider adopting the same position as your colleagues in Multnomah County.</p>
3/16/17		<p>"Members will not assist ICE unless a crime is committed or in case of an emergency."</p> <p>I appreciate the caring approach the Police is planning to protect undocumented people if they are law-abiding. Thank you.</p>
3/16/17		<p>Please do not provide support or assistance to ICE in Portland. Please prevent ICE from entering or lurking outside sensitive locations such as the courthouse, churches, or hospitals.</p>
3/15/17		<p>Assistance should ONLY be given to ICE in instances where refusal to cooperate presents a clear and present danger to the people of Oregon.</p>
3/14/17		<p>Assisting ICE: it doesn't sound like PPB will not be assisting ICE in arresting human beings! Lots of Orwellian double-speak! I have to call BS on this!</p>
3/14/17		<p>I object to the police force not being able to notify ICE for lesser crimes and only for felonies. I think ICE should be notified for any crime committed by an illegal.</p>
3/14/17		<p>"Members will not assist ICE unless a crime is committed or in case of an emergency."</p> <p>Good.</p>
3/13/17		<p>In the section Working with Immigration and Customs Enforcement (ICE)</p> <p>section d. part 2: I think all referrals to ICE should be handled through the District Attorney like in part 3. The "reasonable belief" criteria seems like an unstable and potentially problematic wording. Creates unnecessary gray areas.</p>



April 6, 2017

**VIA EMAIL**

The Honorable Ted Wheeler  
Portland City Hall  
MayorWheeler@portlandoregon.gov

Acting Chief Chris Davis  
Portland Police Bureau  
Chris.Davis@portlandoregon.gov

Attn: Ashley Lancaster  
Senior Management Analyst  
[Ashley.Lancaster@portlandoregon.gov](mailto:Ashley.Lancaster@portlandoregon.gov)

**RE: Comments from American Civil Liberties Union of Oregon, Innovation Law Lab,  
and Causa Oregon.  
Portland Police Bureau Directive 0810.10  
Arrest of Foreign Nationals**

Dear Mayor Wheeler and Acting Chief Davis,

We are writing on behalf of the American Civil Liberties Union of Oregon (ACLU), Innovation Law Lab (Law Lab), and Causa Oregon's Immigrant Rights Organization (Causa) to provide feedback on the Portland Police Bureau's (PPB) directive 0810.10, Arrest of Foreign Nationals. Because the PPB directive 0810.10 does not comply with Resolution 37277 and ORS 181A.820, it must be rewritten in its entirety and republished for public comment before taking effect. In the interim, the erroneous statements of law and policy contained in the directive must not be relied on or acted on by the PPB; instead, the PPB must adhere to state and city law and policy to avoid unlawful entanglements with federal immigration enforcement.

On March 22, 2017, Portland City Council passed Resolution 37277, declaring Portland "a welcoming city, a sanctuary city, and an inclusive city for all." Prior to passage, the ACLU testified about the inconsistency of Directive 0810.10 and the proposed ordinance. The testimony, in part, included:

There is a major gap in policy between the proposed inclusivity resolution and Portland Police Directive 810.10 – Arrest of Foreign Nationals. This directive is currently under

review and public comments are due by April 6, 2017. While the ACLU will submit comments through the universal review process we want to bring it to City Council's attention now.

This directive is plainly wrong: it does not follow state law and misstates federal immigration law requirements. It allows PPB to "work jointly" with ICE in investigations, provide "protective services" to ICE, and demands that PPB officers provide information to ICE in cases where the provision is not required by statute.

Until this directive is abandoned or significantly revised, we are concerned that this directive will contradict city policy. How could you prevent Portland Police officers from working with ICE if the directive on point allows it, or in some cases, demands that they do? We urge you to commit to suspending directive 810.10 until the city can address these significant issues.

City Council was receptive to this testimony. Commissioner Eudaly moved to amend the resolution to include: "BE IT FURTHER RESOLVED that in the current universal review process the Council directs the Portland Police Bureau to ensure that directive 810.10 provides that the PPB personnel shall not cooperate with ICE except as expressly required by Federal Law." The amendment was seconded by Commissioner Fritz and approved by City Council.

We affirm the City of Portland's recent commitment to inclusivity. In keeping with the spirit of that commitment, and the letter of the Eudaly amendment, PPB must drastically change directive 0810.10 to conform to Resolution 37277 and ORS 181A.820 – Enforcement of federal immigration laws.

Given that Directive 0810.10 must be completely rewritten in order to conform with city and state law, we request that PPB publish its proposed 0810.10 and allow the public 30 days to comment on the new policy. Nevertheless, we offer the following suggested edits and additions in track changes to Directive 0810.10:

~~a. Members will not assist ICE unless expressly required by federal law. a crime is committed or in case of an emergency.~~

~~a. Investigations: Subject to approval by the RU manager, on a case-by-case basis, members may work jointly with ICE (this may include riding in the same vehicle) to investigate crimes:~~

~~1. To further the investigation of any felony that has been committed.~~

~~2. To investigate and make arrests for any controlled substance offense.~~

**Comments:** The above changes are needed to comply with Resolution 37277 and ORS 181A.820. Assisting ICE with investigation of federal immigration law is prohibited by ORS 181A.820. Allowing ICE to participate with local law enforcement in the investigation of criminal activity similarly facilitates the enforcement of federal immigration law in violation of state law. *Id.* We see no other reason why ICE would participate in a local criminal investigation and can think of no compelling justification for expending local resources in cooperation with ICE. ICE should enforce immigration law separate from PPB. PPB should enforce state and local law separate from ICE. There should be no joint operations.

~~b. Back up or Cover:~~

~~1. ICE may request members provide assistance during a mission to enforce federal immigration laws. Request for such services, except in an emergency, must be made through and approved by the appropriate RU manager.~~

~~2. In these situations, members will provide only peacekeeping or protective services to ICE. Peacekeeping means to provide a presence to ensure no offense is committed by others while ICE performs its lawful duties. If possible, members should speak the language of the people being contacted, investigated or detained by ICE.~~

**Comments:** The above changes are needed to comply with Resolution 37277 and ORS 181A.820. Providing back up or cover for ICE during the enforcement of federal immigration law is prohibited by ORS 181A.820. Back up and cover require PPB officers to actively participate in and assist ICE during the enforcement of federal immigration law. Such cooperation blurs the line between PPB and ICE. If the community cannot distinguish between these two agencies, residents may be fearful of reporting crimes as victims and will further retreat into the shadows. It is notable that ICE actively uses the term “police” in its operations and, intentionally or not, this blurs accountability lines between local operations and federally directed immigration enforcement operations. It also makes little sense for the PPB to expend its limited resources given that ICE is a component of one of the world’s largest law enforcement agencies with vast resources.

~~b.e. Information Exchange: Members may shall not exchange information with ICES unless expressly required by federal law. in order to further the investigation of any~~

~~federal, state or local crimes (i.e., obtaining suspect information or identifying witnesses/victims of a crime).~~

1. Any requests for information made by ICE will be forwarded to the Records Division.

**Comments:** This change is necessary to ensure that PPB is not directly or inadvertently assisting ICE with the enforcement of federal immigration law by providing information to ICE that is not available to the public or is not otherwise required by federal law. PPB staff in the Records Division are most familiar with the legal requirements for a public records request and will ensure that no additional information is inadvertently disclosed beyond that which is expressly required by state or federal law. We also think that moving the request to the Records Division will provide an additional level of scrutiny and consistency that would not be observed if information was provided by PPB staff or officers outside of the Records Division.

~~d. Arrests/Referrals:~~

c. Arrests made for the purpose of assisting ICE or for the purpose of enforcing federal immigration laws are strictly prohibited.

1. PPB officers are prohibited from inquiring into the immigration status of persons stopped, detained or arrested.

d. PPB staff shall not make any referrals of persons to ICE.

~~1. Title 8 of the U.S. Code 1357(d) mandates that all law enforcement officers/agencies must notify the ICE when an individual is arrested for a controlled substance offense whom they reasonably believe may not have been lawfully admitted into the U.S.~~

~~2. When a person is arrested for a felony or a controlled substance offense and there is a reasonable belief the arrestee may not have been lawfully admitted into the U.S., the member will refer the arrestee to ICE by completing an ICE Referral for Further Investigation form (RU managers may assign this referral responsibility to someone other than the arresting member).~~

~~3. Referral to ICE of persons arrested for committing state and local offenses other than felonies or controlled substance offenses will be the responsibility of the District Attorney upon conviction.~~

~~4. The ICE Referral form and the Custody Report face sheet will be faxed to ICE Portland.~~

~~5. Prior to making photocopies for booking purposes, members will mark ICE in large capital letters in the space at the top of the Custody Report. The ICE Referral form will then be attached to the Custody Report and forwarded to Records. Each RU making referrals must create/maintain a file to retain copies of all Custody Reports and Referral forms that are faxed to ICE.~~

~~6. Members completing the ICE Referral for Further Investigation form will make every reasonable attempt to obtain the arrested person's true name, date of birth and other identification numbers such as PPDS, MCL, SID, FBI numbers and INS case number or "A" number by making the appropriate computer inquiries (PPDS, Oregon and FBI Criminal Histories, LEDS and NCIC). SID and/or FBI number(s) should be placed on the Custody Report face sheet in the section marked for other I.D.~~

**Comments:** The above changes are needed to comply with Resolution 37277 and ORS 181A.820. We find no reason why PPB would need to inquire into the immigration status of any person for the purpose of enforcing state or local law. Prohibiting such inquiries will ensure PPB staff and officers do not blur the line between their law enforcement duties and the enforcement of federal immigration law. As originally drafted, the directive plainly misstates the law. Title 8 of the U.S. Code 1357(d) pertains to the ability of ICE to *request* detainers from state and local law enforcement *only if* local law enforcement informs federal immigration authorities of an arrest relating to a controlled substance law. The plain language of this statute is discretionary and contains no mandatory referral by local law enforcement to federal immigration authorities, as incorrectly stated in Directive 0810.10. Any referrals of such persons would be in direct violation of ORS 181A.820.

### ~~Forensic Evidence Division (Forensics) Responsibilities (810.10)~~

~~Forensics will make every attempt to properly identify the arrested person through the Western Identification Network (WIN). Forensics will search all additional AFIS systems as needed in the identification of those subjects whose Custody Report is marked ICE.~~

ACLU of Oregon, Law Lab, Causa  
Comments on PPB Directive 0810.10  
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**Comments:** The above deletion is needed to comply with Resolution 37277 and ORS 181A.820. We find no reason why PPB would need to use different forensic tools for the arrest of foreign nationals than those used during any other arrest. Moreover no “Custody Report” should be “marked ICE.”

In order for this directive to be meaningful, Portland needs PPB to commit to upholding state law, which includes holding PPB employees accountable for their actions. If a PPB employee assists ICE, they must be held accountable quickly and in a meaningful way. This directive simply does not provide any insight into how PPB plans to do this, if at all. Please add a provision regarding the enforcement of the directive.

We look forward to working collaboratively with PPB on revisions to directive 0810.10 - Arrest of Foreign Nationals.

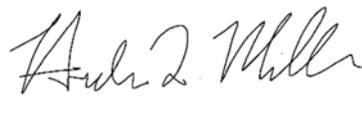
Sincerely,



Mat dos Santos  
Legal Director  
ACLU of Oregon



Stephen Manning  
Director  
Innovation Law Lab



Andrea Williams  
Executive Director  
Causa Oregon