

This is a working draft of DIR 0810.20. The Bureau separated the diplomatic and consular immunity-related guidance from existing DIR 0810.10 and incorporated it into a new directive – 0810.20. Submit your comments using the “Provide Feedback Here” link located at the end of the directive.

A redline copy of the updated directive is included in this attachment.

0810.20, Diplomatic and Consular Immunity

Second Universal Review Period: 5/1/2023 - 5/31/2023

Refer:

- U.S. Department of State website: <http://state.gov>
- U.S. Department of State, Bureau of Consular Affairs: <http://travel.state.gov>
- Human Resources Administrative Rule 11.04, Protection of Restricted and Confidential Information
- DIR 0310.70, Dissemination of Information
- DIR 0344.05, Bias-Based Policing/Profiling Prohibited
- DIR 0631.30, Cooperation with Other Agencies
- DIR 0640.37, Communication with Persons Who Have Limited English Proficiency
- DIR 0810.00, Arrest, Persons Exempt
- DIR 0810.10, Bureau Contact with Members of Immigrant Communities
- Detention of Foreign National Checklist (Operations Branch)

Definitions:

- **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.
- **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.
- **Foreign National:** A person who was born outside of the jurisdiction of the U.S., who is subject to the laws of a foreign government, and who has not been naturalized under U.S. law (e.g., refugee, green card holder, etc.). This also includes individuals who were born in the U.S., but later renounce their American citizenship.
- **Honorary Consular Immunity:** A principle of international law that offers limited legal protections to honorary consular officers. Honorary consular officers are distinct from career Consular officers in that they may perform consular services on a part-time basis. They retain immunity only for cases relating to consular functions. They are not protected from arrest or search and seizure.
- **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.

This is a working draft of DIR 0810.20. The Bureau separated the diplomatic and consular immunity-related guidance from existing DIR 0810.10 and incorporated it into a new directive – 0810.20. Submit your comments using the “Provide Feedback Here” link located at the end of the directive.

A redline copy of the updated directive is included in this attachment.

Policy:

1. The directive establishes procedures to guide members in their interactions with persons who have consular or diplomatic immunity.

Procedure:

1. Immigration Status.
 - 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual
 - 1.1.1. Members shall act in accordance with Directive 0810.10, Bureau Contact with Members of Immigrant Communities.
2. Diplomatic and Consular Immunity.
 - 2.1. Categories of persons entitled to privileges and immunities include the following:
 - 2.1.1. Members of Diplomatic Missions;
 - 2.1.2. Members of Consular Posts;
 - 2.1.3. International Organization Personnel and National Missions to Such Organizations (e.g., the United Nations); and
 - 2.1.4. Designated Employees of the Taipei Economic and Culturally Representative Office in the U.S. (TECRO) and of the Taipei Economic and Cultural Offices (TECO).
 - 2.2. 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 person(s). The person(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:
 - 2.2.1. The State Department,
 - 2.2.2. The U.S. Mission to the United Nations, or
 - 2.2.3. The American Institute in Taiwan for the employees of TECRO or TECO.
 - 2.3. 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.
 - 2.4. Members should refer to State Department guidelines for additional information regarding diplomatic and consular immunity.
 - 2.5. Members shall refer to Directive 0810.00, Arrest, Persons Exempt, for guidance regarding the detainment of other persons who are exempt from arrest.
3. Consular Notifications.
 - 3.1. 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

This is a working draft of DIR 0810.20. The Bureau separated the diplomatic and consular immunity-related guidance from existing DIR 0810.10 and incorporated it into a new directive – 0810.20. Submit your comments using the “Provide Feedback Here” link located at the end of the directive.

A redline copy of the updated directive is included in this attachment.

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 person’s country is required.

3.1.1. 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.

3.1.2. If notification is mandatory, members shall:

3.1.2.1. 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;

3.1.2.2. Inform the person that the consulate or embassy has been notified;

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

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

3.1.3. If notification is not mandatory, members shall:

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

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

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

4. Requests for and Release of Citizenship or Immigration Status Information.

4.1. Members shall act in accordance with Directive 0810.10, Bureau Contact with Members of Immigrant Communities, with regard to requests for citizenship or immigration status information from government officials and agencies.

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

Provide Feedback [Here](#).

~~, Bureau Contact with Members of Immigrant Communities and Individuals with 0810.20, Diplomatic and Consular Immunity~~

Refer:

- ~~• Title 8, U.S.C 1357(d) Powers of Immigration Officers and Employees/Detainer of Aliens for Violation of Controlled Substance Laws~~
- ~~• Title 8, U.S.C 1373(a) - (b) Communication Between Government Agencies and the Immigration and Naturalization Service~~
- U.S. Department of State website: <http://state.gov>
- U.S. Department of State, Bureau of Consular Affairs: <http://travel.state.gov>
- ~~• ORS 180.805 Prohibited Involvement of Public Bodies in Federal Immigration Law Enforcement~~
- ~~• ORS 181A.820 Enforcement of Federal Immigration Laws~~
- ~~• Oregon Executive Order 17-04, Renewing Oregon's Commitment to Protecting Its Immigrant, Refugee, and Religious-Minority Residents~~
- ~~• City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All~~
- Human Resources Administrative Rule 11.04, Protection of Restricted and Confidential Information
- DIR [3400310.70](#), Dissemination of Information
- DIR [3440344.05](#), Bias-Based Policing/Profiling Prohibited
- DIR [6340631.30](#), Cooperation with Other Agencies
- DIR [8400640.37](#), [Communication with Persons Who Have Limited English Proficiency](#)
- [DIR 0810.00](#), Arrest, Persons Exempt
- [DIR 0810.10](#), [Bureau Contact with Members of Immigrant Communities](#)
- Detention of Foreign National Checklist (Operations Branch)

Definitions:

- ~~• Administrative Removal Warrant: A document, typically signed by a supervisory level Immigration and Customs Enforcement (ICE) administrator and not a judge, that authorizes ICE officers/Enforcement Removal Operations (ERO) to arrest non-citizens who are alleged or suspected of having committed immigration violations and/or who are alleged to be deportable. Administrative removal warrants are not required to be supported by probable cause. Administrative removal warrants only allow ICE to detain a named person and do not allow ICE to search a premises.~~
- Consular Immunity: A principle of international law that offers similar protections as diplomatic immunity, but with more limitations, given the functional differences between consular and diplomatic officers. Consular officers are not accorded absolute immunity from a host country's criminal jurisdiction and are immune from local jurisdiction only in cases directly relating to consular functions.
- ~~• Detainer Request: For the purposes of this directive, Bureau Contact with Members of Immigrant Communities and Individuals with Diplomatic Immunity, a completed Form I-247A submitted by any federal immigration law enforcement branch of ICE to a law enforcement agency that currently has legal and physical custody of an individual suspected~~

of violating federal immigration law. The form asks the law enforcement agency upon which it is served to contact ICE and agree to secure transfer of the person to ICE's custody prior to

~~their release from custody on state or local criminal charges. Form I-247A is only submitted where the law enforcement agency is holding a person on other criminal charges.~~

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

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

Policy:

- ~~1. The purpose of this directive is to guide members in their interactions with immigrants and immigrant communities, as well as with those who voluntarily disclose their immigration or diplomatic status. Specifically, this directive establishes limitations into inquiries about immigration status and sets forth acceptable uses of immigration status information volunteered by an individual. Additionally, this policy establishes procedures that direct member actions when managing DHS requests for support, assistance, and information.~~
- ~~2. The Portland Police Bureau is committed to protecting, serving and supporting all residents and community members of the City of Portland, regardless of their actual or perceived national origin or immigration status. Accordingly, no Bureau member shall interrogate, detain, arrest, initiate an investigation or take other official police action against an individual solely on the basis of either of these aspects of their identity.~~
- ~~3. When necessary, the Bureau partners with DHS to assist in their efforts of managing emergency situations and combatting a wide array of global criminal threats related to drug and human trafficking, terrorism, and human rights violations. Although the Bureau supports the DHS mission as it relates to confronting these security and human rights threats, the Bureau is steadfast in its commitment to contributing to the City's efforts to create a welcoming environment that encourages diversity and inclusivity.~~
- ~~4. To the extent that the mission of DHS, as communicated to the Bureau, is enforcement of immigration laws, the Bureau will follow the direction of the state statutory law and City ordinances by not enforcing or assisting in the enforcement of federal immigration laws, as that is a federal function. Moreover, the Bureau shall not expend personnel, equipment, monetary, or other resources to enforce or assist in the enforcement of federal immigration laws, unless in a manner that comports with applicable law.~~
1. The directive establishes procedures to guide members in their interactions with persons who have consular or diplomatic immunity.

Procedure:

- ~~1. Member Contact with Individuals Not Suspected of a Crime.~~
1. Immigration Status.
 - 1.1. Members shall not make inquiries regarding the immigration or citizenship status of an individual.
 - ~~1.1. If an individual volunteers their immigration status, or if a member inadvertently ascertains an individual's immigration status through another means (e.g., another party volunteers the information), members shall not document immigration status solely or primarily for the purpose of federal immigration law enforcement.~~

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

~~1.2. 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, U visa, or S 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, U visas, or S visas) shall be submitted to the Chief's Office. The Chief of Police shall designate, in writing, an individual to review and approve or deny these requests.~~

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

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

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

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

~~2. Arrests, Detentions of Immigrants.~~

- ~~2.1. Should members learn about an individual's immigration status either by voluntary statement or other means, members shall not arrest a person for the sole reason that they: 1) are present in the United States illegally; or 2) the subject of an ICE immigration enforcement action of investigation.~~
- ~~2.2. Members shall not assist with the execution of administrative removal warrants issued by CBP, ICE or any other federal agency.~~
- ~~2.3. Members shall not honor or comply with federal agency immigration detainer requests.~~
- ~~2.4. Members shall not arrest, detain or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE.~~
- ~~2.4.1. Members shall only carry out an arrest or detention if directed to do so by way of a judicial warrant or order.~~
- ~~3. Scope of Contact and Coordination with DHS.~~
- ~~3.1. Members shall not assist ICE, CBP or ERO with the enforcement of federal immigration laws.~~
- ~~3.2. In the event that ICE, CBP or ERO requests the Bureau's assistance for pre-planned missions, only the Chief, or a designee, shall determine if the Bureau will provide assistance. The Chief or designee shall consider the following circumstances, which include but are not limited to if:~~
- ~~3.2.1. There is no other possible resource (e.g., a federal law enforcement agency) that can provide the requested assistance;~~
- ~~3.2.2. The assistance requested is limited to auxiliary tasks not directly related to making arrest or detentions, such as traffic control or providing supplemental security; and~~
- ~~3.2.3. The Chief or designee determines that there is a threat to the safety of the public or the potential for damage to property if the request for assistance is denied.~~
- ~~3.3. In circumstances where the Chief authorizes Bureau assistance for pre-planned missions, members shall only provide the level and type of assistance approved by the Chief or designee to ensure the safety of all involved. Members shall not assist DHS staff with the enforcement of federal immigration laws.~~
- ~~3.4. Members are authorized to respond to emergency calls for cover or assistance (e.g., code three cover, injured officer, shots fired) sought by ICE, CBP or ERO. In those instances, members shall limit their involvement to providing emergency law enforcement cover. Members shall not assist in the enforcement of federal immigration laws.~~
- ~~3.5. When necessary and as it pertains to the enforcement of federal immigration laws, members shall grant access to restricted areas in a Bureau facility only if ICE, CBP or ERO agents are acting pursuant to a judicial order.~~
- ~~3.5.1. When their sole purpose is to execute an immigration detainer or administrative warrant, members shall grant agents access only to publicly accessible areas in a Bureau facility.~~

~~3.6. Investigations:~~

~~3.6.1. Consistent with the spirit and purposes of this Directive, members may work in conjunction with HSI or other investigative agencies within DHS to:~~

~~3.6.1.1. Further the investigation of any crime chargeable as a felony, unrelated to federal immigration laws;~~

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

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

~~3.6.1.3.1. Money laundering;~~

~~3.6.1.3.2. Firearm offenses;~~

~~3.6.1.3.3. Child pornography;~~

~~3.6.1.3.4. Human trafficking; and~~

~~3.6.1.3.5. Fraud.~~

~~3.6.2. If assisting HSI or another investigative agency within DHS with a criminal investigation as described above, members shall not engage in the surveillance of a person or group based solely or primarily upon a person or group's actual or perceived national origin or immigration status.~~

1.1.1. Members shall act in accordance with Directive 0810.10, Bureau Contact with Members of Immigrant Communities.

2. Diplomatic and Consular Immunity.

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

2.1.1. Members of Diplomatic Missions;

2.1.2. Members of Consular Posts;

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

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

2.2. 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 person(s). The individual person(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:

2.2.1. The State Department,

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

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

2.3. 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.

2.4. Members should refer to State Department guidelines for additional information

regarding diplomatic and consular immunity.

- 2.5. Members shall refer to Directive [8100810.00](#), Arrest, Persons Exempt, for guidance regarding the detainment of other [individuals](#)~~persons~~ who are exempt from arrest.

3. Consular Notifications.

- 3.1. 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 person's country is required.
 - 3.1.1. 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.
 - 3.1.2. If notification is mandatory, members shall:
 - 3.1.2.1. 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;
 - 3.1.2.2. Inform the individual person that the consulate or embassy has been notified;
 - 3.1.2.3. Complete the "Detention of Foreign Nationals Checklist" and attach the document to their report; and
 - 3.1.2.4. Make arrangements for a courtesy notification (during business hours) to the Oregon State Police to facilitate any international contact through INTERPOL channels.
 - 3.1.3. If notification is not mandatory, members shall:
 - 3.1.3.1. As soon as practicable, inform the individual person of their right to have their home country notified of their detention.
 - 3.1.3.2. If the individual person requests notification, contact the nearest consulate or embassy as soon as practicable and prior to the end of shift.
- 3.2. Members should refer to the website for the State Department's Bureau of Consular Affairs for information regarding countries and jurisdictions with mandatory notifications.

4. Requests for and Release of Citizenship or Immigration Status Information.

- ~~3.7. Federal law prohibits the Bureau from limiting or in any way restricting the exchange of information regarding the citizenship or immigration status, lawful or unlawful, between a government official and an agency responsible for the enforcement of federal immigration laws. However, the Bureau also shall not require members to disclose or otherwise share information regarding an individual's citizenship or immigration status with any federal immigration law enforcement agencies.~~
 - ~~3.7.1. 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.~~

~~3.8. As to any other information sought by a federal immigration law enforcement agency, members shall not disclose any of the following personally identifying information to a federal immigration law enforcement agency for the purpose of enforcing federal immigration laws:~~

~~3.8.1. A person's address;~~

~~3.8.2. A person's place of employment or work hours;~~

~~3.8.3. A person's school or school hours;~~

~~3.8.4. A person's contact information (e.g., phone number, e-mail address, social media information);~~

~~3.8.5. A person's known associates or relatives;~~

~~3.8.6. The date, time, or location of hearings, proceedings, or appointments with a person that are not matters of public record;~~

~~3.8.7. Information pertaining to citizenship status, except as required by state or federal law; and/or~~

~~3.8.8. Information described in Sections 6.2.1. through 6.2.7. with respect to known relatives or associates of the individual.~~

4.1. Members shall act in accordance with Directive 0810.10, Bureau Contact with Members of Immigrant Communities, with regard to requests for citizenship or immigration status information from government officials and agencies.

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

|

|

|

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, January 16, 2022 4:49:53 PM
Last Modified: Sunday, January 16, 2022 4:50:25 PM
Time Spent: 00:00:32

Page 1

Q1

Please provide feedback for this directive

COMMENTS ON MENTAL HEALTH, CUSTODY, IMMIGRATION AND OTHER DIRECTIVES, JANUARY 2022

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

Below are Portland Copwatch's comments on the 13 of the 15 Directives posted for review in January . The "First Universal Review" is particularly challenging, not only because of the very short (15 day) timeline, but because it is difficult to know if the Bureau intends to make any changes to the policies. Because the public is presented with the policies as they currently exist, it is extremely challenging to determine if any changes were made between the last Second Universal Review and the present time. We strongly suggest that the Bureau include both (a) a statement of intent if there is a particular reason a Directive has been chosen and (b) a link to an existing implementation memo which might include a final redline of the previous iteration and the Bureau's reflections on public comments.

The wide variety of topics in this set of Directives is offset for us by the fact that we've made comments on all of them, except for 850.30 on Juveniles, previously. We've tried to indicate where the Bureau has made its (rare) changes reflective of our input. Otherwise, many of these comments are repeats of ones we made between January 2015 and January 2021.

Portland Copwatch (PCW) has chosen again not to comment on 660.32 Informant Processing because of the distasteful nature of such government-sponsored subterfuge, and 630.50 on Medical Aid, to which no changes have been made despite its previous posting in 2016.

We continue to ask that the Bureau add numbers or letters to the Definitions, Policy and Procedure sections to make them easier to reference. Our comments below refer to the Procedure section unless otherwise noted.

DIRECTIVE 810.10 BUREAU CONTACT WITH MEMBERS OF IMMIGRANT COMMUNITIES AND INDIVIDUALS WITH DIPLOMATIC IMMUNITY (last comments May, 2019)

--Split It Up: PCW previously suggested that to have shorter, clearer policies, the issues of Diplomatic Immunity and contacting immigrants should be separated into two Directives.

--Not OK Even if Partly Inappropriate: Referring to the perceived national origin or immigration status, the word "solely" remains unmodified in Policy 2, and in Section 2.4 on detainees (referring to detainer status), even though the phrase "solely or primarily" is used in Section 1.1.

--Do Not Aid and Abet: Section 3 still does not do enough to limit how PPB officers are allowed to assist federal agencies with "pre-planned missions." As we wrote previously, "In theory, this section could include planned missions to enforce immigration laws and is thus in conflict with the prohibitions. Providing traffic control [3.2.2] or 'law enforcement cover' [3.4] to agents trying to deport Portland residents is akin to aiding and abetting people engaged in criminal conduct." We noted how this loophole was used when the PPB blocked traffic to allow federal officers to push protestors out of the ICE facility driveway in SW Portland in June 2018, dismantled the Occupy ICE PDX encampment, then blamed the protestors for the alleged mess that was left behind because they were not given enough time to clear out.

--No Coercion: PCW is still concerned about "Law enforcement cooperation visas" (now in Sections 1.2.1, 1.3.1 and 1.4.1). We wrote twice before: "While we welcome the idea that witnesses and victims of crimes should not be subject to deportation for cooperating in investigations, we hope there are safeguards to keep such visas from being used to leverage immigrants as informants in exchange for paperwork."

0810.10 Directive Feedback (1UR)

--Ensure Safety of Victims: Section 1.4.1.1 says that officers have to document it in a police report if a person volunteers their immigration status. This raises serious issues because witnesses and victims aren't read Miranda rights and don't necessarily know about their right to remain silent. We continue to ask that such a caution be included in this Directive to prevent those who cooperate in prosecuting criminals from becoming criminal suspects. The concept of this documentation now appears to conflict with new sections 1.2 and 2.1 about immigration status.

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

--Better Language: In 2019, the Bureau changed the phrase "individuals who have not lawfully entered the US" to say "individuals who are alleged to be unlawfully present in the US" (Definition of Enforcement and Removal Operations). The question of "lawful" migration across borders is at the root of much of the hostility toward immigrants, we would prefer the phrase "alleged to be present in the US without authorization from the government."

These three changes were recommended by the ACLU, and have not been made yet; PCW supports them:

--No Immigration Warrants: Add a sentence ordering Portland Police to refer warrants to federal law enforcement if the purpose of an arrest is to enforce federal immigration law (2.4.1).

--Don't Share Protected Info: Section 6.1 refers to a federal statute that has been held unconstitutional about requiring the police to share immigration information with federal authorities.

--When Will They Ever Learn?: There should be a Section about how the Bureau will train officers on this policy.

CONCLUSION

We recognize that the Directives development process has evolved since it began, particularly with the addition of redline versions and public comments posted in the Second Universal Review. There is still more to be gained by adding the information suggested in our introduction and holding public meetings to exchange ideas about suggested changes. Several advisory bodies including the Citizen Review Committee, Portland Committee on Community Engaged Policing and Training Advisory Council all have a stake in various Directives, but the first two only meet once a month and the latter only meets every two months, so they can't easily meet the Bureau's deadlines for input.

Many of these policies could help reduce harm against vulnerable parts of our population. However, the incidents of use of deadly force against people in mental health crisis continues unabated, with at least three of eight people shot by the PPB in crisis in 2021. Notably, the last time the Bureau was involved in this many deadly force incidents was 2005. Yet after nine years of oversight by the US Department of Justice, it seems the ideas of de-escalation and other tactics outlined in these policies are thrown out the window because an officer or officers default to pulling firearms, pile on an agitated person, or using so-called "less lethal" weapons. The number one priority should always be respecting the dignity and humanity of the civilian and making sure everyone gets to go home safe at night-- whether or not a suspected mental health issue is at play.

We appreciate being invited to provide input into the Bureau's policies. Our goal at Portland Copwatch is that so long as there is a Police Bureau, its should be free of corruption, brutality and racism. We hope that our suggestions will help lead to such a culture.

--dan handelman (and other members of)

--Portland Copwatch

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name

Portland Copwatch

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, January 16, 2022 6:32:43 PM
Last Modified: Sunday, January 16, 2022 6:35:29 PM
Time Spent: 00:02:46

Page 1

Q1

Please provide feedback for this directive

- Some definitions are a chore to read. I think the bureau's stated intention is to use plain language wherever possible, and I think e.g. Detainer request definition can be written more plainly, e.g. "For the purposes of this directive, a detainer request is any Form I-247A submitted by ICE to any agency with custody of someone suspected of violating immigration law..."

- 1.2 - I'd prefer to see this language strengthened. Immigration status shouldn't be documented at all, especially if a third party volunteers. "solely or primarily for the purpose of federal immigration law enforcement" seems sticky. There may be reasons why documentation of immigration status is necessary, as mentioned in 1.2.1. If so, members should be expected to clearly document the clear purpose and need for the recording of immigration status; if the necessity cannot be explained using objective facts, then the record should not be made.

- Specifically because 6.1 prevents the bureau from impeding disclosure of immigration from federal law enforcement agencies, it would be best to ensure immigration status is never recorded at all

- 3.1 - The list here is good, but maybe add 'or any federal law enforcement entity or group' - just in case we get another DHS shake up

- Throughout the directive, the scope of federal agencies included changes for different restrictions. That might benefit from some explanation, if there's a guiding principle at work. If not, it might be better to come up with a consistent definition and apply it everywhere

- 3.2 - Consider strengthening language. Maybe 3.2.3 should be a condition rather than a consideration.

- 3.6.1.3.3 - I believe "Child Sexual Abuse Material (CSAM)" is the preferred language these days

- 3.6.2 - Recent news stories have reported on FBI's illegal surveillance of mosques and Muslim worshipers. In light of that, should this prohibition include religion, or all protected categories?

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name **Nathan Castle**
