

By: Brignoni-Ponce

On July 7th the Eugene Police Department released a Department Command Directive (No. CD25-013) with the subject "Guidance for Requests for Assistance at the Federal Building Involving Immigration." The document, signed by Chief of Police Chris Skinner, is supposed to provide guidance for EPD officers and insight to the public. The Eugene Police Commission met on July 10th and received further comment from Captain Jake Burke. Both the directive itself and Captain Burke's comments raise rather than alleviate concerns.

First, let's look at the relevant sections of Oregon law (ORS 181A.826) which are binding on EPD as well as all other city, county, and state employees.

Public facilities, property, moneys, equipment, technology or personnel may not be used for the purpose of investigating, detecting, apprehending, arresting, detaining or holding individuals for immigration enforcement. ORS 181A.826.

"Supporting or assisting a federal agency in immigration enforcement, including but not limited to... [e]stablishing traffic perimeters for the purpose of supporting or facilitating immigration enforcement." ORS 181A.826(2)(b).

"If a public body receives a communication or request from a federal agency that relates to immigration enforcement, other than a judicial subpoena described in ORS 181A.823 (Prohibitions related to immigration enforcement) (1)(c)(A), the public body shall decline the request and document the communication or request." ORS 181A.826(3)(a).

EPD acknowledges that effectuating or assisting federal law enforcement's abduction of community members is facilitating immigration enforcement in the directive.

"The Watch Commander will assess the situation to determine whether the request for assistance facilitates immigration enforcement, such as the transport of detainees," states the directive. Oregon law is clear on the illegality of providing such assistance.

"Public facilities, property, moneys, equipment, technology or personnel may not be used for the purpose of investigating, detecting, apprehending, arresting, detaining or holding individuals for immigration enforcement." ORS 181A.826. Yet EPD isn't directed to not intervene but rather to only do so after receiving orders from the Patrol Captain.

This can be seen in the section of the directive which reads, "[i]f request for assistance does implicate immigration enforcement, but there is no imminent safety threat, approval from the Patrol Captain is required before any EPD personnel respond or engage further." Captain Burke, in his comments before the Police Commission, said EPD would not engage if the sole purpose of their intervention was to facilitate immigration enforcement. He finds himself on the wrong side of the divide created by this law. His position is that EPD will not act if immigration enforcement is the *only* reason that assistance has been requested. The law, however, defines when public facilities, property, moneys, equipment, technology and personnel may not be used. In other words, EPD can act only if immigration enforcement *is not* a reason their assistance has been requested.

This is made clearer in section (3)(a). The relevant piece here is:

If a public body receives a... request from a federal agency that relates to immigration enforcement... the public body shall decline the request.

Oregon law compels EPD to decline requests relating to immigration enforcement. Not deny them when immigration

enforcement is the sole reason for the request or after consideration by a Watch Commander. Exceptions for judicial subpoenas hold no relevance to protests outside the federal building. EPD are bound by statute to not interfere if doing so assists with immigration enforcement. How EPD plans to crack down on demonstrators without effectuating the transportation of detainees in any way is a logistical nightmare I happily leave to them.

Establishing traffic perimeters is both an explicitly forbidden and non-exhaustive restriction on city, county, and state officials' ability to facilitate immigration enforcement. ORS 181A.826(2)(b). This language is especially relevant to police interacting with a justly angry public. Blocking demonstrators, kettling marches, and restricting access to public spaces are well-worn police tactics for disrupting resistance. EPD has signaled an approach in which they do not intervene if there is not a threat of imminent harm, sort of.

"Requests that involve demonstrations, where there is no imminent threat to public safety, shall be directed to the on-duty Watch Commander or designee." CD25-013. This section, again, creates ambiguity by leaving it up to the Watch Commander or designee to decide if the Eugene Police will act in accordance with Oregon law. By law such requests must be denied. "If low level crimes such as vandalism or trespass are reported, we will take a report and follow up." CD25-103. Trespass is a Class C misdemeanor. ORS 164-245. Obstructing a public way is only a Class B misdemeanor. ORS 166.025. Vandalism is a Class A misdemeanor. ORS 164.354. If it is EPD policy to not provide assistance in the case of a Class A misdemeanor like vandalism one would expect them to be equally hands-off in dealing with a Class B misdemeanor like disorderly conduct in the second degree (obstructing a public way), especially as that is also required by state law.

We will have to wait to see what, if any, effects this new

command directive has on EPD's response to future actions resisting the federal government's ongoing racist attack on our community. Regardless of any official pronouncements I put no faith in police, local or otherwise, restricting themselves to repression only within legal bounds. Readers should contemplate and prepare for repression of protests and targeting of agitators as best they can. While not by any stretch of the imagination a full solution it is worth noting the final sub-section of the law prohibiting the use of public resources for immigration enforcement: "[a]ny person may bring a civil action against a law enforcement agency or public body that violates subsection (1) of this section to enjoin the violation. [2021 c.550 §3]" ORS181A.826(5).

this phrase from command directive 305 makes it a little less ambiguous: Any requests (including records request) from federal immigration officials for assistance relating to immigration enforcement (other than a judicial subpoena) shall be directed to a Records Supervisor or Watch Commander. **The Watch Commander will decline the request,** and the communication or request shall be documented in the department's organizational accountability software (added "By law such requests must be denied." to re-emphasize this)

July 7 Directive

<https://public.powerdms.com/Eug9151/tree/documents/3119043>

ORS 181.820 Enforcement of Federal Immigration Law

https://oregon.public.law/statutes/ors_181a.820

ORS 181A.826 Prohibition on use of public resources for immigration enforcement

https://oregon.public.law/statutes/ors_181a.826

EPD policy 305

<https://public.powerdms.com/Eug9151/tree/documents/2738790>

Eugene Code 2.495 Protection for individuals

<https://eugene.municipal.codes/EC/2.495>

Eugene Code 2.497 Information not to be collected or maintained

<https://eugene.municipal.codes/EC/2.497>

Police Commision Meeting

https://youtu.be/ViP_3mgM3HQ?si=b-mqE8hhRkVLP3tH