

# **Oregon Leadership Network Institute**

Salem Convention Center

Keynote address: Oregon Immigrant Student Rights

April 5, 2017

10:45 am

15 minute speech at the spring institute which runs from 8:30-4:00, focus on rights for Oregon immigrant students in light of Trump administration policies.

Oregon Leadership Network is an organization of 40+ school districts, institutes of higher education, and related organizations whose mission is school leadership for equity.

The Governor and the Chair of the State Board of Education will be speaking before the AG. "We are hoping that Ellen will be very specific about legal protections for students, and the legal implications for ICE in sanctuary cities."

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Well, thank you so much for inviting me here today — and for the opportunity to serve as a speaker for your leadership institute in support of equity!

What you are doing today, showing your commitment to equity in education, is vitally important to our state and our nation. I am genuinely energized to be with you — and

especially pleased to help you kick off an important discussion! Collaboration among educators is exactly what we need in order to ensure equity and inclusion are integral to the educational experience for Oregonians, especially in this new national landscape. You know what I'm talking about—the shock and disbelief many of us experience, almost daily, as we watch the national news. These are attacks on the core rights and values printed indelibly into our Constitution and woven securely into the fabric of the laws of our land.

As I have explained when speaking of my office's response to questionable actions by the Trump Administration, what we're doing is seeking to uphold the rule of law. Nothing more. Nothing less. And these legal issues we're talking

about carry with them huge human consequences. While these matters are also being debated in the world of politics, I want to be clear: We are Oregon's Department of Justice are trying to see to it that people living in this state are able to exercise all the rights given them by our Constitution – including in the educational setting — and that makes a significant difference.

Immigrants are an important part of the fabric of our diverse and culturally rich state. I am particularly grateful that I serve alongside people who share my views and values in this area, including our Governor, Kate Brown, and leaders in both houses of the legislature. Our offices coordinate on a regular basis, to ensure we are doing all we can to support

safety, equality and equity in Oregon for our residents in the face of what we consider serious federal overreach.

I have to tell you, I never imagined how important and serious my job would become in my second term in office. I had an inkling we'd face new legal challenges in November, when we learned who would be our President-elect. Even then, few of us could bring ourselves to conceive of the breadth and depth of serious threats to our democracy that have been marched out by the new Administration in its first two months.

Before I go any further, I want to emphasize how fortunate we all are to have on our side the incredible people who work at the Oregon Department of Justice.

Our lawyers have been especially active since January 25, when the President's first Executive Order on border security and immigration was released—including his threats against funding for sanctuary cities—and kicked into high gear after the travel ban order was issued on January 27<sup>th</sup>. As soon as the refugee and travel ban was issued, I joined with AGs from around the country to speak out against the President's illegal action.

My office, the Oregon Department of Justice, filed first an amicus, or "friend of the court," brief in support of the State of Washington's lawsuit, and then a motion to intervene in that case. Now we are a party to that lawsuit against the Trump Administration.

Our motion included declarations from many people in Oregon who were affected by the ban personally and professionally. Here are just a few tidbits from our pleadings that show how these orders might affect our state: Since 2010, more than 8,500 refugees have arrived in Oregon. These people are our neighbors, our students, our coworkers, and the parents of our children's friends. Oregon's companies employ immigrants, refugees and their spouses. As a result, the order we're challenging represents a direct threat to Oregon's business community and could result in serious risks to Oregon's financial investments, our credit rating, and our tax. Thousands of Oregon residents were born in the six affected countries listed in the latest Executive Order on Immigration.

Oregon Health & Sciences University has medical residents from these countries. If they are forced to leave the US, OHSU likely would not be able to replace them. These residents and doctors often are those who are willing to work in Oregon's rural and underserved areas. Losing this resource could adversely affect our state's rural communities and patients.

As educators, many of you like know several stories of families and children who have been personally affected by the President's orders. So you could add to the list of harms our state might suffer from this unconstitutional order.

After that first ban was held clearly unconstitutional by the 9<sup>th</sup> Circuit, the administration had to regroup. It significantly

revised the order—which the President resentfully refers to as a “watered down” version, issued March 6<sup>th</sup>, and effective March 16<sup>th</sup>.

When my colleague in Hawaii, Attorney General Doug Chin, filed a lawsuit challenging that second order and seeking a preliminary injunction, we filed a legal brief in support of Hawaii’s case. I was honored to be with AG Chin in Honolulu, when the news came that the court had granted a preliminary injunction and effectively stopped the Trump administration — once again!

Throughout this process, I have come to believe that these state-level actions are important, because we are representing, at the ground level, our citizens against federal



government overreach, and protecting the civil liberties of our residents and communities in the most personal way.

And nothing is more personal or terrifying to Oregon's children than the random intrusion of ICE detainers and enforcement in our undocumented communities, the real and daily fear of losing your parents and your home.

That is why I'd like to spend the rest of our time together discussing the legal implications of the ICE activity for you as educators and as members of our greater community — as well as the options available to us as Oregonians.

You have some fantastic breakout sessions coming up, where you will be able to take a deep dive into scenarios both real and hypothetical, with folks from the Oregon Law

Center, the Latino Network, and many other experts. For that reason, I will limit my portion of this discussion to the view from 30,000 feet, to help set the stage and lay the ground work for your later small group discussions.

In short, I have three legal takeaways on immigration for you today:

First, I believe Oregon can be in compliance with federal law and still be a sanctuary or welcoming state. (More on that in a minute!)

Second, I want you to understand that ICE must comply with its own policies, including a policy regarding not engaging in

enforcement activities at “sensitive locations.” These “sensitive locations” include schools.

Third, student and family privacy rights still exist — and confidential education information remains protected. ICE cannot access that often sensitive material.

Now, let’s circle back to that first point: Oregon can comply with federal law and still be a sanctuary state. How is that, you ask? Here’s how: The Executive Order threatens to pull federal funding from jurisdictions that do not comply with federal immigration law, in particular 8 USC Section 1373. That law requires that state and local governments not prevent a government entity or official from giving ICE or INS information about an individual’s immigration or

citizenship status, or maintaining, sending or exchanging that information with other officials. And of course, a federal warrant or order signed by a judge must be honored. I am not aware of any Oregon jurisdiction that is in violation of this federal law at the present time.

Yes, there are plenty of jurisdictions that will not honor an ICE hold or detainer. While this is of great frustration to the US Attorney General, Jeff Sessions, nothing in 8 USC Section 1373 requires it. That's because these are just requests from ICE or INS officials to hold or detain someone. They are not court orders. They are not warrants.

In fact, in 2014, the Federal District Court of Oregon, in the Miranda-Oliveras case, held that Clackamas County had

violated a woman's rights by detaining her based solely upon an ICE request, and that the county was liable to her for damages. That is because the US Supreme Court has very clearly ruled that an undocumented person's mere presence in the United States without authorization from the government is not a crime. Yes—it is the civil basis to detain and perhaps to remove. BUT it is not a crime. It follows then that most local law enforcement cannot hold a person on an ICE detainer, because there is not probable cause that a crime occurred.

To parse it further, this federal code section requires that the state or local government not prohibit actions of information sharing or cooperation with ICE, but it does not require them absent a warrant. When you, as an education administrator,

advise your employees or staff, this is an important distinction.

For these reasons, I believe Oregon can be both in compliance with federal law, and be a welcoming state. On that basis, we will fight any threats to our federal funding based upon this theory.

Now to my second point. Schools, hospitals and churches are “sensitive locations” according to ICE’s own policies. (Unfortunately, courthouses, as we have seen, are not.) The “sensitive location” policy and memo, issued in 2011, were designed to ensure that enforcement actions — which are defined as: arrests, interviews, searches and surveillance — do not happen in sensitive locations, with some exceptions.

Although ICE may obtain records and documents or serve subpoenas even at so-called “sensitive locations,” ICE should not be coming into schools and making arrests, conducting interviews or searches. Please note, this covers all levels of educational settings, including preschools all the way up to colleges, universities and vocational and trade schools. I provided a link to the sensitive location memo to your organizers.

My third and final take-away for you is that the executive order does not supersede existing protections for student data or student privacy rights. Your students and their families still enjoy all of the same privacy rights as before, including those guaranteed by IDEA and FERPA, which are

both federal laws, and OSIPA — our newest state student data privacy law. Specifically, FERPA and IDEA permit disclosure of student education records, including personally identifying information, only with parental consent, a judicial order or a lawfully issued subpoena. OSIPA permits disclosure of student data only for educational purposes.

To be clear, an ICE detainer is not a judicial or court order, nor is it a subpoena. It is a federal agency's request for records or information, or to detain a person. So ... a suggestion: If, as a school teacher or administrator, you are handed an ICE detainer or approached by an ICE official, I recommend that you explain to the official you are not denying their request, but you first would like to talk to your



school's attorney before you do anything else. This gives you time to get legal advice and determine your next steps.

At the same time, the current threats are all very real — and downright scary. Just the other day, a DACA recipient — a “dreamer” — Francisco Rodriguez Dominguez — was picked up by ICE agents at his home without a warrant. Francisco arrived in the US when he was 5 years old, and was educated in Oregon public schools and attended Mt Hood Community College. Until his detainer, he was working as a food pantry coordinator for low income families at Reynolds Middle School and coaching an elementary soccer team. He entered a DUII diversion program in December 2016 and was compliant with all terms of that diversion. But because diversion requires an up-front guilty plea even if there is

never a conviction, that was enough for ICE to end his DACA status and seek to detain him.

The bottom line here is that immigrants are a valuable and essential part of the state of Oregon. It is necessary to build, and maintain, a relationship of trust between Oregon's immigrant community and its public bodies. This trust is threatened when public bodies are forced to collude with immigration officials—and it produces fear among the immigrant, and even broader, community.

The breakout sessions coming next are full of opportunities for you to hear from experts working daily with immigrants,

from the Latino Network, Oregon Law Center, the Northwest Regional ESD and leaders in school districts who have implemented strong supportive environments for families. I encourage you to take full advantage of those excellent resources!

I will close with these thoughts and observations: As a judge for 22 years, and your Attorney General for the past five, I believe it is Justice and the Rule of Law that we must turn to as a shield against oppression and a banner for fairness and equality in the face of hatred and hostility. We at the Department of Justice intend do our part to build a united front to protect the well-being of Oregon's citizens and residents for years to come.

Thank you again, for inviting me here to be a part of your institute today. I hope you have a meaningful and rewarding day of collaborating and learning!

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