March 31, 2021

Chair Bynum, Vice-chairs Noble and Power, and members of the committee,

During the March 25 hearing on HB 3265, we received the questions below. We appreciate the opportunity to provide clarity on these issues. The answers outlined below are based on what was submitted to legislative counsel for an amendment. As of the time of writing, we have not received that amendment back, so please note that the language below is what was requested. The changes are a result of conversations, input, and advice from law enforcement partners and other stakeholders.

From Rep. Lewis:

1. **If a federal officer enforcing an immigration violation were engaged in an encounter where lives are threatened would Section 4(3)(a) prevent other law enforcement agencies from assisting?**

HB 3265 prohibits state law enforcement only from assisting with or supporting the enforcement of immigration law. It does not prohibit state law enforcement officers from responding to incidents when their purpose is, for example, to investigate or respond to a violation of state criminal law or to protect human life. We understand your question to refer to an emergency situation where an officer's life is at imminent risk because, for example, they are being shot at. Our intent is not to preclude law enforcement responding to protect human life in this example. It is our understanding that law enforcement would not be responding for the purposes of supporting or assisting with the enforcement of immigration law in such a scenario.

However, law enforcement officers, including federal law enforcement agencies, routinely engage in operations that could include life threatening situations. Our proposal, and our response here, should not be read to mean that local law enforcement can participate with immigration agents in their immigration enforcement operations or immigration enforcement activities just because those operations or activities carry some risk. This would create a significant loophole in the very protections we intend to create with this bill.

In consultation with law enforcement stakeholders, we cut the language that would have made reference to "indirectly" assisting immigration enforcement (see below).

The relevant provisions from the bill, with our requested amendment, are as follows.

"From Section 4:

"(1) 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 ~~an individual or individuals of foreign citizenship present in the United States~~.

"(2) ~~The following are considered to be a A~~ctions with a purpose described in subsection (1) of this section include, but are not limited to, the following:

. . . . .

"(b) Supporting or assisting~~, directly or indirectly,~~ a federal agency in immigration enforcement, including but not limited to any of the following:"

2. Does the measure prohibit law enforcement from sharing information with immigration authorities if the person is being detained on criminal charges in Oregon and has a federal warrant?

The measure does not prohibit local law enforcement officers from complying with a judicial warrant, and it specifically creates an exception to make clear that agencies are not prohibited from complying with judicial subpoenas.

The measure only prohibits local law enforcement from sharing information about individuals in their custody if that information is for the purpose of enforcing federal immigration law.

The relevant provisions, with our requested amendments, are as follows:

"SECTION 3. A law enforcement agency or public body may not:

. . . . .

"(3) Provide information about an individual in the custody of the public body or law enforcement agency to a federal immigration authority for the purpose of civil immigration enforcement except (a) as may be required by judicial subpoena or other compulsory court-issued legal process; or (b) to the extent that the information is available to general public and under the same terms and conditions as the information is available to the general public."

From Rep. Morgan:

1. **Where are officers expected to obtain the consular information required to be provided?**

In the proposed amendment, we significantly changed the language relating to consular notification to simplify and clarify our intent, in consultation with law enforcement stakeholders.

The short answer: Jails are already required to comply with consular notification obligations, they already have protocols for consular notification, and routinely notify consulates on behalf of individuals in their custody. Consular information and points of contacts are available through the US Department of State and on the State Department's website, though individual agencies may have other sources for this information as well.
The longer answer: The Vienna Convention on Consular Relations has long required that foreign nationals who are detained in the United States by law enforcement have the right to contact the consular post of their home country. It also requires that any foreign national who has been arrested is notified of that right and the communication to their consular post must be facilitated if requested.[1]

In addition, there are bilateral agreements on consular relations between the United States and individual countries that impose an obligation to notify the consulate directly in the case of the detention of any of its nationals. This is mandatory once the law enforcement agency learns of an individual's country of birth.

It is important to note that neither these treaties nor federal law required law enforcement agencies to *investigate or inquire into* an individual's country of birth or nationality.

Accordingly, we dealt with this in our amendment by cutting all of Section 2 and adopting language directly from Washington State, codified at RCW 10.93.160.

The relevant language that we have requested in our amendment comes directly from Washington's statute RCW 10.93.160, and is as follows:

> "(2) To ensure compliance with all treaty obligations, including consular notification, and state and federal laws, on the commitment or detainment of any individual, state and local law enforcement agencies must explain in writing, with interpretation into another language as requested:
>
> (a) The individual's right to refuse to disclose their nationality, citizenship, or immigration status; and
>
> (b) That disclosure of their nationality, citizenship, or immigration status may result in civil or criminal immigration enforcement, including removal from the United States."

Like in Washington, officers are not allowed to *ask* about nationality, and their notification requirements only kick in if someone voluntarily chooses to disclose that information. The provision above simply ensures that individuals are making an informed choice before they choose whether to disclose their nationality and request consular notification.

Lastly, Washington state's court system has actually shifted these procedures to its courts,

with individuals receiving the information about their rights at arraignment, where the admonishment is on the record and individuals have access to counsel to help them decide whether they wish to assert the right. This is something that works within the language we have proposed and is something we are interested in exploring with stakeholders after session.

[1] Vienna Convention on Consular Relations & Optional Protocol on Disputes, T.I.A.S. No. 6820 (Dec. 14, 1969).

Thank you for the opportunity to clarify these points. Please advise if there is more information we can provide. We will advise the panel once the amendment is available.

Thank you kindly,

Leland Baxter-Neal
Latino Network, Director of Advocacy
leland@latnet.org