Strengthening Oregon’s Disentanglement Statute to
Enhance Public Safety, Protect Fundamental Rights, and Promote Collective Prosperity

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The Innovation Law Lab works to create a rule of law counter-structure that opposes the mass incarceration and mass deportation of immigrant communities of color. We are committed to building a system in which every immigration case that should win, does win, every time, everywhere.

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Executive Summary

It is the policy of this State that Oregon be a jurisdiction that embraces, celebrates, and welcomes its immigrant and refugee residents and recognizes their contributions to the collective prosperity of all Oregonians.

– Oregon Governor Kate Brown, Executive Order 17–04, February 2017

From its inception as a state, Oregon has struggled with exclusionary policies against immigrants and communities of color. In 1977, the unlawful and discriminatory interrogation of long-time Oregon resident Delmiro Trevino led to a lawsuit and culminated in the legislation known today as ORS 181A.820. Though overlooked and underenforced for many years, this “sanctuary” statute is an important and powerful tool in the effort to build a more inclusive Oregon by combating unlawful and discriminatory practices through the disentanglement of state and local police from federal immigration enforcement.

As President Trump’s administration advances a corrosive and divisive deportation policy, ORS 181A.820 is a crucial component of Oregon’s efforts to advance racial and cultural inclusion.

• By building trust across communities, ORS 181A.820 helps local law enforcement keep Oregon safe. Law enforcement agencies in Oregon and across the country support disentanglement policies because they empower state and local police to focus their limited resources on key public safety objectives: preventing, investigating, and punishing crime. Disentanglement policies also improve public safety and effective policing by building trust and encouraging crime reporting at a community level.

• By protecting diverse communities from rights violations, ORS 181A.820 strengthens the rule of law. Oregon’s disentanglement policy is grounded in state powers enshrined by the Tenth Amendment of the United States Constitution. Disentanglement strengthens the rule of law by preventing the illegal and selective administration of federal civil immigration law by state and local officials untrained in immigration proceedings. This clear separation of roles reduces the risk of racial discrimination, profiling, harassment, and other rights violations by Oregon law enforcement agencies. It also promotes the uniform application of immigration law and protects Oregon localities from liability.

By furthering inclusion, ORS 181A.820 improves Oregonians’ collective prosperity. Powerful empirical evidence shows that disentanglement policies not only improve community safety and the rule of law but also enhance civic engagement and raise the level of collective prosperity. These benefits are particularly strong in Oregon, where immigrants are an integral part of the state’s social fabric, history, and economy.

In contrast to the collective benefits of disentanglement, the Trump administration’s racialized agenda of immigration detention and deportation threatens to divide and destabilize Oregon communities. Looking ahead, it is critical that Oregon acts to fortify and expand its inclusionary practices and policies.

To strengthen ORS 181A.820, Oregon should:
- Eliminate the statute’s criminal exception to information sharing with immigration enforcement;
- Enforce the statute against Oregon correctional facilities that maintain unlawful contracts, agreements, or engagements (formal or informal) with Immigration and Customs Enforcement (ICE);
- Provide training and clear guidance to enable state and local officials’ compliance with the statute; and
- Revise the statute to include economic and noneconomic damages as a remedy for any violation of ORS 181A.820.

To uphold the rule of law and improve access to justice, Oregon should:
- Add a due process clause to the Oregon Constitution;
- Provide universal representation to persons in removal proceedings;
- Prevent courthouse arrests;
- Change the evidence code to prevent improper use of immigration status in civil and criminal proceedings;
- Standardize U visa certification procedures for victims of crime;
- Refuse to honor unlawful ICE detainers; and
- Prohibit state or local contracts with private prisons engaging in immigration detention.

To defend Oregonians from discrimination and harassment, Oregon should:
- Delineate essential public service providers as “safe zones”;
- Amend anti-profiling legislation to combat police bias based on real or perceived immigration or citizenship status;
- Revise Oregon’s statute criminalizing provision of false information to a peace officer;
- Amend Oregon anti-discrimination statutes to include perceived immigration status as a protected class and close the loophole allowing the passage of discriminatory laws; and
- Enhance employee protections in the workplace.

To ensure equal access to state privileges, Oregon should:
- Reestablish a driver’s license program accessible to all Oregon residents;
- Establish parity in residency requirements for in-state tuition rates; and
- Extend health coverage to all undocumented adults in Oregon.

Together, Oregonians can and must defend and advance the rule of law in order to protect the safety, rights, and collective prosperity of all.
a. Oregon’s history is intertwined with a legacy of racial exclusion that has included discrimination and violence against immigrant communities.

Oregon is the only state in the United States that began as explicitly “whites only.” In 1844, the territory of Oregon passed the infamous “Lash Law,” ordering all blacks in Oregon to be whipped twice a year until they left the territory. When Oregon became a state in 1859, its constitution banned all blacks and “mulattos” of mixed ethnic heritage from living in the state.

After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments to the US Constitution superseded Oregon’s anti-black laws. However, Oregon itself did not finish ratifying these amendments until nearly a century later: the Fifteenth Amendment, giving blacks the right to vote, was not ratified by Oregon until 1959, and the Fourteenth Amendment, including the Equal Protection Clause, was permanently ratified by Oregon only in 1973.

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4 Brown, supra n. 2. According to the original state Constitution: “No free negro or mulatto, not residing in this State at the time of the adoption of this constitution, shall ever come, reside, or be within this State, or hold any real estate, or make any contract, or maintain any suit therein; and the Legislative Assembly shall provide by penal laws for the removal by public officers of all such free negroes and mulattoes, and for their effectual exclusion from the State, and for the punishment of persons who shall bring them into the State, or employ or harbor them therein.” Id.
Racial discrimination in Oregon continued in the 1920s as Oregon embraced the rise of the Ku Klux Klan. The state had the largest Klan organization west of the Mississippi River and the highest per capita Klan membership in the country. Democratic governor Walter M. Pierce was elected in 1922 with vocal support from the Klan, and many of Portland’s law enforcement and city leaders publicly affiliated themselves with the Klan. By 1923, there were 35,000 members of the Oregon Klan in over sixty local entities.

Throughout the 1920s, the eugenics movement also flourished in Oregon, resulting in severe discrimination and even sterilization of disabled and incarcerated citizens.

Oregon’s history of racial exclusion includes immigrant communities. One of the most brutal attacks against early Chinese immigrants occurred in Oregon in 1887, when over thirty Chinese goldminers were ambushed and murdered along the Snake River. Discriminatory laws in the late 1800s also encompassed Chinese and Hawaiian immigrants. An 1862 law required Chinese and Hawaiian immigrants and black residents to pay an annual tax to the state; if they could not pay, they could be pressed into service maintaining state roads. State laws passed in the 1860s also forbid white residents from marrying black, Chinese, or Hawaiian residents.

Discriminatory treatment extended to Japanese immigrants in the early 1900s. In 1923, the Oregon state legislature passed restrictive laws barring Japanese immigrants from owning land. During World War II, Oregon actively facilitated the “relocation” of Japanese-Americans in Oregon to internment camps on the west coast. Subsequently, many Oregonians protested strongly against the return of Japanese residents and businesses placed “No Japs Allowed” placards in their front windows.

Racism in the midcentury period frequently targeted Oregon’s Latino community:

- During the 1920s and 1930s, Oregon removed Mexican immigrants from the region through “economic rationalization, nativist rhetoric, and coercion,” including hiring policies of “white workers only.”

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6 Id.; Brown, supra n. 2.
7 Semuels, supra n. 5.
9 Id.
12 Id.
15 Id.
When World War II sent many young men to fight overseas in the 1940s, the Oregon state government welcomed Mexican farmworkers through the bracero program. Yet these immigrants faced racism and even violent attacks, particularly following soldiers’ return.

In the 1950s, many of Oregon’s local communities were disrupted by Operation Wetback, a federal military operation that deported a million undocumented Mexicans across the country. By the 1970s, arrests and deportations of immigrants had risen sharply both nationally and in Oregon. Local Oregon police were routinely engaging in racial profiling and discriminatory arrests of Latinos in the name of supporting federal immigration efforts. This context set the scene for the passage of ORS 181A.820.

b. Initiated in response to discriminatory policing, ORS 181A.820 was a step away from Oregon’s history of racial exclusion.

Informed by Oregon’s history of exclusion, ORS 181A.820 arose in the context of continued discrimination against Oregonians who were perceived to be non-white. On January 9, 1977, local resident Delmiro Trevino was at the Hi Ho Restaurant in Independence, Oregon, when he was approached by local police officers who interrogated him about his immigration status. Trevino, a US citizen of Mexican descent, was grabbed by a deputy and forced to stand in the center of the restaurant in front of other customers. He was released only after being identified as a

18 Garcia, supra n. 16; Barilla, supra n. 17.
19 Garcia, supra n. 16.
21 Id.
“long-time resident” of Independence. After this interrogation, Trevino felt “severely humiliated, embarrassed, and angered; he was so upset and nervous, that he was unable to finish his meal and left the restaurant.”

Trevino reported the incident to Attorney Rocky Barilla, which led to Barilla’s discovery that the Polk County police regularly drove through Latino neighborhoods to arrest people of color and hold them for the Immigration and Naturalization Service (INS). As Barilla explained, “Polk County Sheriffs every once in a while would say, ‘Well, we haven’t got anything going, let’s go raid the Mexican part of town.’” Police routinely detained Latino residents at the local jail, sometimes holding them for days until INS agents arrived to confirm their immigration status. As recounted by Larry Kleinman, co-founder of PCUN, Oregon’s farmworkers union:

By enlisting county and city jailers, [ ] the INS could dramatically improve their effort-to-results ratio. Normally, those arrested for traffic or minor criminal charges were quickly released on bond or personal recognizance. In the case of Spanish-speaking detainees, local jailers—encouraged by the INS—frequently asked: “tienes papeles?” (do you have papers?). If detainees said “no,” refused to answer, or responded unconvincingly, the jailers would hold them until an INS agent arrived. INS detention officers developed a circuit, stopping at local jails about weekly to interview and remove detainees they deemed deportable. Hundreds of immigrants fell into this trap every year in Oregon.

Barilla filed a class action lawsuit based on Oregon law enforcement’s racially discriminatory practices, alleging that Trevino and his fellow plaintiffs “have been and will continue to be harassed, involuntarily detained, illegally searched and otherwise denied their constitutional and statutory rights solely because they are Chicano.”

The Trevino lawsuit secured a stipulation that the INS would no longer telephonically encourage local law enforcement to enforce federal immigration law in Oregon. This stipulation provided important guidance for Oregon law enforcement and gave community organizers leverage to respond to incidents of racial profiling by other local police departments.

The Trevino lawsuit also paved the way for the creation of Oregon’s disentanglement statute. In 1986, having become the first Latino elected to the Oregon Legislature, Barilla introduced
HB 2314. By aiming to “codify existing law prohibiting local law enforcement agencies from enforcing immigration laws,” the bill directly addressed the problem of racially discriminatory policing, among other issues. Barilla testified before the Oregon State Legislature that “[t]here are problems when local police try to enforce federal immigration laws,” including “false arrests by local police” and “infringements upon civil rights just because a person looks like an alien.” Additional testimony elaborated upon the “Ramifications of Illegal Enforcement” of immigration laws by local police:

Hispanic and other eth[ne]nic minorities, citizen and non-citizen alike, are detained, interrogated, and harassed by local law enforcement agencies on the basis of skin color, language and dress. This is a violation of one’s right to privacy and equal protection. Hispanics and other minorities are treated as second class citizens.

HB 2314 was passed in 1987 with nearly unanimous bipartisan support, becoming the statute known today as ORS 181A.820. While the success of HB 2314 was a victory for Oregon’s diverse communities, it was passed amid Oregon’s continued struggles with racial discrimination and white supremacist violence. Beginning in the 1980s, Oregon became a focal point for the largest skinhead movement in the country. And in 1988, mere months after ORS 181A.820 became law, white supremacists beat an Ethiopian immigrant to death with a baseball bat on the streets of Portland.

Racial discrimination also continued to be perpetrated by local law enforcement itself. In 1981, the Portland Police Department was investigated when white police officers left dead possums outside a black-owned restaurant in northeast Portland. Four years later, a Portland police officer choked a black former U.S. Marine to death after mistaking him for a robber.

Today, Oregon’s sanctuary statute remains as vital and necessary as it was thirty years ago, as Oregon continues to struggle with both systemic racism and violent acts. Local examples of discrimination abound. A 2010 report to Portland’s Human Rights Commission found that in Multnomah County’s communities of color, there were “alarming disparities across all systems

32 One Oregon, supra n. 25.
33 See Bill Taylor, Staff Measure Analysis of HB 2314 (Feb. 1987).
35 Testimony of Danny Santos, State President of Hispanic Political Action Committee, to Oregon House Judiciary Committee on House Bill 2314 (Feb. 6, 1987).
36 Wilson, supra n. 22.
37 Brown, supra n. 2.
and institutions, with trends worsening through time." An audit conducted in 2010 showed that Portland landlords and leasing agents discriminate against black and Latino tenants. These examples continue today. In March 2018, Ana del Rocío, a Latina elected official, was arrested after a routine TriMet fare check escalated based on a dispute about her name. And in July 2018, a black state legislator canvassing her own Clackamas County district was stopped by police following a 911 call that believed she was “ casing the neighborhood” for a burglary.

Statewide trends are similarly troubling. A 2016 report found that statewide unemployment and poverty rates are higher for Latino that white Oregonians. Latino residents’ per capita income is half the per capita income of white residents. And according to a recent study, in Oregon “people of color are more likely to be arrested, more likely to be charged, less likely to be released on bail, more likely to be convicted, less likely to be put on probation and more likely to be incarcerated than white residents.”

In the context of these continued exclusionary policies and attitudes, ORS 181A.820 remains a critical part of combating racial bias at a systemic level.

c. After years of underenforcement, ORS 181A.820 is helping to forge a path toward a more inclusive Oregon.

Over the past several years, Oregon has moved haltingly toward a more inclusive vision. In 2013, Oregon passed legislation to make driver’s licenses available to undocumented residents; voters suspended the law by ballot measure the following year. In 2015, Portland passed Resolution 37172, declaring the city’s support for its Muslim, immigrant, and refugee communities. Citing the city’s intent “to work toward a more inclusive society,” the resolution condemned bigotry against its Muslim community and reaffirmed its commitment “to be a welcoming city to immigrants and refugees from all parts of the world.” And following an extensive report on racial discrimination in Oregon police stops, the Oregon legislature passed an anti-racial-profiling bill, prohibiting officers from targeting individuals for arrest based solely on characteristics such

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42 Nikole Hannah-Jones, Portland housing audit finds discrimination in 64 percent of tests; city has yet to act against landlords, The Oregonian (May 9, 2011), http://www.oregonlive.com/portland/index.ssf/2011/05/a_portland_housing_audit_finds.html.


46 Id.


49 City of Portland, Resolution No. 37172, Declare support for the city's Muslim community and reaffirm Portland's welcoming nature for all immigrants and refugees (Dec. 16, 2015), http://efiles.portlandoregon.gov/Record/8383439/.
as race, age, national origin, sexual orientation or homelessness.  

At the same time, despite the continued importance of ORS 181A.820, the statute has been consistently underenforced by state and local authorities as “the federal government has placed an ever increasing amount of pressure on state and local officials to become involved in immigration enforcement.”  

51 In 2009, Oregon lawmakers attempted to speed deportation of 175 Oregon inmates for the state’s financial gain; their efforts were impeded by the state constitution.  

52 The Northern Oregon Regional Correctional Facilities in The Dalles (NORCOR) has an active contract with ICE to detain immigrants alongside pre-trial criminal inmates in a corrections environment.  

53 During the 2016–17 period, NORCOR received nearly $800,000 from ICE to detain immigrants.  

54 Until June 2018, local law enforcement agencies also contracted with ICE to detain immigrants in the Josephine County and Springfield Municipal Jails.  

55 In many cases, Oregon law enforcement agencies have honored ICE detainers and engaged in strategies that violate constitutional and statutory due process rights.  

56 NORCOR honored unlawful ICE detainers until they purportedly stopped this year, following a $40,000
Oregon’s complicity in the Secure Communities program illustrates the dangerous potential of unlawful local involvement in federal immigration enforcement. Begun in 2008, Secure Communities sought to leverage the resources of local law enforcement agencies for federal immigration authorities, particularly through electronic data sharing and prolonged detention of arrestees in pre-trial custody. While Secure Communities claimed to focus on “criminal” immigrants convicted of the most serious types of crime, this asserted basis for enforcement was disingenuous: in practice, the vast majority of those targeted had either no criminal record or had convictions only for traffic or other minor offenses.

Despite the disentanglement mandate of ORS 181A.820, Oregon police frequently facilitated the Secure Communities program. In Portland, for example, city government began receiving calls from local residents whose family members were placed in deportation proceedings following a minor traffic violation or court appearance. The program’s effects were felt disproportionately by communities of color. Nationwide, 93% of individuals arrested under Secure Communities were Latino; in Multnomah County, 73% of the population impacted was Latin American, Asian, or African.

In the context of this unlawful involvement by Oregon’s state and local law enforcement, Oregon resident Maria Miranda-Olivares sued Clackamas County for prolonging her detention without probable cause in order to turn her over to ICE. In April 2014 a federal judge ruled in her favor in Miranda-Olivares v. Clackamas County, finding that Oregon law enforcement was liable for damages for violating her Fourth Amendment rights. The case resulted in a $30,000 settlement and a wave of resistance to Secure Communities detainers across Oregon.

The landmark decision in Miranda-Olivares demonstrates how the rule of law can be successfully used to push back against destructive policies. Following widespread resistance, President Obama discontinued Secure Communities by November 2014.

President Trump reinstated the Secure Communities program in January 2017. In its first year of reactivation, the program was responsible for the deportation of at least 43,300 individuals.

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1 See Aarti Kohli, Peter Markowitz, & Lisa Chavez, Secure Communities by the Numbers: An Analysis of Demographics and Due Process, Warren Institute, University of California, Berkeley School of Law, 1–2 (Oct. 2011); Steve Mayes, Woman at center of landmark immigration case settles suit that changed jail holds in state, nation, The Oregonian (May 18, 2015), https://www.oregonlive.com/clackamascounty/index.ssf/2015/05/woman_at_center_of_landmark_im.html.
3 Portland HRC, supra n. 2.
4 Kohli, supra n. 1 at 2; Portland HRC, supra n. 2.
5 Mayes, supra n. 1; Miranda-Olivares v. Clackamas County, 2014 WL 1414305 (D. Or. 2014).
7 Mayes, supra n. 1.
8 Id.
settlement with an Oregon resident who was transferred from the state facility to ICE custody in violation of his constitutional rights. Among local jails that do not honor ICE detainers, many still proactively share foreign-born individuals’ booking and release information with immigration officials. The Oregon State Department of Corrections goes as far as to arrange inmates’ transfer of custody to ICE at the completion of their criminal sentences.

Resisting Oregon’s entanglement with federal immigration enforcement is particularly important at this moment in American history. Since taking office in early 2017, President Trump’s administration has engaged in an aggressive anti-immigrant campaign, promoting discriminatory policies, directing cruel enforcement efforts, and disregarding federal and international law. President Trump’s exclusionary narrative, begun during his presidential campaign, has emboldened white nationalists and right-wing extremists and resulted in a surge in bigotry, hate crimes, and racially-motivated violence across the country. Immigration detention and deportation have also intensified. In FY 2018, ICE reported a daily average of nearly 40,000 detained immigrants across the country, an all-time high.

Oregonians have strongly felt the consequences of these trends, including brutal incidents of racially-motivated violence across the state. In August 2016, a white supremacist prison gang member faced hate crime charges after murdering black teenager Larnell Bruce outside a 7-Eleven in Gresham. In May 2017, white supremacist Jeremy Joseph Christian attacked three bystanders on a Portland MAX train, stabbing two to death, after they defended young women of color from his racist and anti-Muslim slurs.

Oregonians have also witnessed the inhumanity of Trump’s immigration policies firsthand. In June 2018, the Trump administration transferred over one hundred asylum-seekers to the Federal Correctional Institution in Sheridan, Oregon. After arriving in Oregon, these individuals – nearly

59 Bernstein, How others in Oregon handle ICE requests for inmate information, supra n. 58.
60 City of Portland Human Rights Commission, Human Rights Commission Letter to Council Re: Request for Clarification and Accountability for the City of Portland’s “Sanctuary City” Status; Racial Profiling Notification; and Request for a Religious Registry Involvement Ban (Feb. 15, 2017), https://www.portlandoregon.gov/oehr/article/629053; Lindsay Pérez Huber, “Make America Great Again!”: Donald Trump, Racist Nativism and the Virulent Adherence to White Supremacy Amid U.S. Demographic Change, 10 Charleston L. Rev. 215 (Fall 2016).
all of whom arrived in the United States fleeing persecution and violence in their home countries – were denied access to attorneys in violation of their constitutional, statutory, and regulatory rights for nearly a month until local advocates obtained a judicial order. Many were transferred to Sheridan after the government forcibly tore them from their children in violation of their basic human rights and international standards.

In response to these dangerous national developments, Oregon has issued inclusive policies in support of its immigrant communities and communities of color. In December 2016, Multnomah County passed a resolution declaring itself a “sanctuary county,” affirming that all residents would have access to County resources and services “regardless of their immigration status.” Many other localities have passed similar resolutions. In February 2017, Governor Kate Brown issued Oregon Executive Order 17-04, underscoring Oregon’s commitment to enforcing ORS 181A.820 as part of the state’s wider efforts at inclusion. In addition to expanding the scope of ORS 181A.820 to include all state agencies, EO 17-04 established an explicit policy of non-discrimination based upon a resident’s immigration status.

Oregon has also turned toward inclusive legislation to protect the welfare of its residents, extending state health coverage to all undocumented children in Oregon and dedicating state funds to ensure reproductive health services for undocumented women. Earlier this year, the Oregon legislature reaffirmed legislation that grants in-state tuition rates and state-funded scholarship opportunities to undocumented Oregon residents. The Oregon legislature has also aimed to tackle racial prejudice through education: new laws mandate ethnic studies standards in the state’s K-12 curriculum as well as anti-bias training for Oregon police, including veteran officers and leadership. Oregon’s anti-racial-profiling law has been revised to improve accountability by requiring all Oregon state law enforcement agencies to collect data on officer-
initiated stops.\textsuperscript{71} And HB 3464 limits public bodies from sharing information with ICE except where mandated by law.\textsuperscript{72}

In the words of Governor Kate Brown, “while Washington DC is falling apart, Oregonians are coming together.”\textsuperscript{73} ORS 181A.820 is a critical tool to facilitate this vision of inclusion.


Oregon’s disentanglement statute is part of a broader movement toward inclusion that benefits the safety, rights, and prosperity of all Oregonians.

a. ORS 181A.820 remains a critical component of Oregon’s efforts to advance racial and cultural inclusion. It is well documented that illegal use of immigration enforcement power reifies racial and cultural exclusion and divides communities. For decades, US immigration policy was overtly based on racial exclusion, using explicitly race-based categories to restrict immigration from non-white countries. The Immigration and Nationality Act, passed in 1952 and amended in 1965, abolished national origin quotas and included a non-discrimination clause. Although immigration laws are now framed in race-neutral language, however, they continue to reflect foundations of racial prejudice and have a disparate impact on certain racial groups, acting to “dehumanize, demonize, and criminalize immigrants of color.”

Systemically, these laws also interact with racial and cultural bias by functioning as “a system of social categorization” that is strongly connected to the “basic human tendency to classify people into ingroups and outgroups,

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75 Id.; INA § 202(a)(1)(A).
ORS 181A.820 and public safety: a tool of empowerment, not an impediment

From the outset, ORS 181A.820 has supported – not restricted – the ability of local police to do the job of ensuring public safety for all. The statute does not and was never intended to interfere with the ability of local police to perform law enforcement duties. Testimony at the time of the statute’s passage explicitly stated that the law “would not interfere with law enforcement agencies’ enforcement of criminal laws.”1 As Representative Rocky Barilla explained, “[The statute] doesn’t prevent local police from arresting aliens who are engaged in criminal activity. Nobody should go unpunished for criminal activity.”2 Indeed, the first version of ORS 181A.820 was amended to ensure that criminal investigations by the police were not impeded by the statute.3

ORS 181A.820 and public safety: a tool of empowerment, not an impediment

‘we’s’ and ‘theys.’”77 As Delmiro Trevino’s experience vividly demonstrated, immigration policies thus have the potential to be used in a discriminatory manner. On a local level, unlawful immigration policing “tends to invoke racial and ethnic characteristics in ways that create ‘suspect communities’ [and lead to] restrictions on the enjoyment of fundamental rights and freedoms.”78

ORS 181A.820 works to prevent rights violations and divided communities by prohibiting unlawful state and local participation in federal immigration enforcement. As noted above, furthering inclusion through preventing racial profiling was a motivating concern behind the statute’s passage.79 ORS 181A.820 enshrines the belief that the purpose of policing is to ensure the safety of all Oregonians, affirming that local police should be expected neither to do the work of federal immigration officers nor to harass or profile individuals perceived to be immigrants or “outsiders.” Enforced appropriately, ORS 181A.820 thus provides a robust disentanglement policy that results in local control over criminal justice, strengthens community trust, prevents unlawful arrests, safeguards equal protection, and promotes equity, inclusivity, and prosperity.80

b. By building trust across communities, ORS 181A.820 helps local law enforcement keep Oregon safe.

ORS 181A.820 empowers local law enforcement by allowing officials to focus limited resources on public safety issues that most directly concern their

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1 Testimony of Danny Santos, State President of Hispanic Political Action Committee, to Oregon House Judiciary Committee on House Bill 2314 (Feb. 6, 1987).
3 Testimony of Lt. Lee C. Erickson, Assistant Division Commander of the Oregon State Police Criminal Division, Oregon State Police Department, to the Senate Judiciary Committee (May 19, 1987); See Staff proposed amendments, HB 2314 (Jun. 3, 1987); Senate Judiciary Committee minutes, ¶ 187, 208, 212 (May 20, 1987); Senate Judiciary Committee minutes, ¶ 390 (Jun. 3, 1987).
4 Lasch, supra n. 51 at 1752–54.

79 Santos testimony, supra n. 35; Testimony of Robert Mendoza, Commissioner of Commission on Hispanic Affairs, to Oregon House Judiciary Committee (Feb. 6, 1987).
80 Lasch, supra n. 51 at 1752–54.
When local police attempt to administer federal immigration laws, there is “[a]n increased fiscal impact on cities and counties in terms of higher costs of enforcement.” The problem also extends beyond mere financial impact, for example “exacerbat[ing] the jail overcrowding problem.”

The Law Enforcement Immigration Task Force, a group of over sixty law enforcement leaders from across the country, has explained that disentanglement policies allow “state and local law enforcement to focus limited resources and funding on true threats to public safety and security.” Indeed, at the time of its passage, most local police welcomed ORS 181A.820 for ensuring that county resources should be utilized for local priorities and purposes.

More broadly, by advancing Oregon law enforcement’s commitment to racial and cultural inclusion, ORS 181A.820 improves public safety by building trust at a general community level. Research shows that crime is 35–65% lower in sanctuary counties compared to similar non-sanctuary counties.

As Multnomah County Sheriff Mike Reese has explained, “When our community trusts us, they share information about crime and victimization that they may not otherwise share. That makes us all safer.” By contrast, fear of deportation is well-documented to lead to underreporting of crimes by minority communities of color, regardless of legal immigration status. The Portland Human Rights Commission has explained that research has consistently shown that if immigrant communities are mistrusting or fearful of local government agencies and their representatives they become isolated to protect themselves and their families. This is of great concern because without trust in local law enforcement, for example, the city’s immigrant communities may not cooperate with their efforts to keep them safe. People who would take advantage, intimidate, and harm these communities are then unrestricted and violence or human rights violations against them are inevitable.

Over the past year, cities across the country have noted decreased reporting of domestic
abuse and sexual assault by Latino victims due to their heightened fear of deportation. In an extensive national survey conducted by the American Civil Liberties Union (ACLU), 64% of police officers surveyed “cited a concern for community safety when immigrant crime survivors are afraid to seek assistance.”

This phenomenon of underreporting crime is already playing out in many Oregon communities. In Woodburn, for example, women have told community workers that they are too afraid to report sexual assault and abuse to local police after ICE seized eleven local residents on their way to work last year. The Woodburn police chief has expressed concern that his department will be handicapped, explaining that “[i]t would have a significant impact on the quality of life of our community if the majority of the population quit interacting with police.”

It is for these reasons that disentanglement policies are the preferred approach to community policing among major police jurisdictions throughout the country. Over the past four decades, states and localities across the United States have passed over five hundred policies aiming to protect community safety and cohesion by limiting local involvement with federal immigration enforcement. Last year, the Major Cities Chiefs Association, a professional organization representing law enforcement in the largest US and Canadian cities, and the US Conference of Mayors, a non-partisan organization representing the 1400 largest US cities, issued a joint statement of concern in response to the Trump administration’s anti-sanctuary policies, asserting that

Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims, both stated goals of the new Administration in Washington. We must be able to continue to protect the safety of all of our residents while ensuring that local law enforcement is focused on community policing . . . Local police departments work hard to build and preserve trust with all of

A previous report by the Major Cities Chiefs concluded that “[i]mmigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities.”\footnote{M.C.C., supra n. 82; see also Discussion with Houston Police Chief Art Acevedo, Cities for Tomorrow: Showdown Over Immigration, The New York Times (July 11, 2017), https://www.youtube.com/watch?v=aHxHwUpBbYQ.} Similarly, the International Association of Chiefs of Police have expressed concern that “[i]mmigration enforcement by state and local police could have a chilling effect in immigrant communities and could limit cooperation with police by members of those communities.”\footnote{IACP, supra n. 94 at 5.} Recognition of the value of community policing has also led local law enforcement leaders across the United States to speak out personally in support of disentanglement policies.\footnote{See, e.g., Acevedo discussion, supra n. 97; Jazmine Ulloa, L.A. Police Chief Charlie Beck endorses ‘sanctuary state’ bill that Eric Holder hails as ‘constitutional,’ Los Angeles Times (Jun. 19, 2017), http://www.latimes.com/politics/la-pol-ca-eric-holder-charlie-beck-kevin-deleon-sanctuary-state-bill-20170619-story.html; Alexia Fernández Campbell, US police chiefs are fighting the crackdown on “sanctuary cities,” Vox (Aug. 18, 2017). https://www.vox.com/policy-and-politics/2017/8/18/16130954/police-sanctuary-cities.}

c. By protecting diverse communities from rights violations, ORS 181A.820 strengthens the rule of law.

In addition to its community safety benefits, ORS 181A.820 strengthens the rule of law by codifying and clarifying the appropriate division between local crime enforcement and federal immigration enforcement. ORS 181A.820 codified a legal memorandum by Oregon’s then Attorney General James A. Redden concluding that there is no legal authority supporting the ability of Oregon law enforcement to enforce federal civil immigration laws.\footnote{Oregon Attorney General James A. Redden, Opinion No. 7439 (Apr. 28, 1977); see also M.C.C., supra n. 82 at 7 (noting that civil nature of immigration laws “creates a gap in authority for local police officers who generally are limited to acting only in criminal matters”).} According to Redden, local police are not authorized by Oregon state or federal law “to initiate investigations of, or to stop, detain or arrest persons solely because they are suspected illegal aliens.”\footnote{Barilla testimony, supra n. 34; Redden, supra n. 100.} As its legislative history explains, the statute thus “clarifies the existing law prohibiting local police from enforcing federal immigration laws.”\footnote{Barilla testimony, supra n. 34; see also Testimony of Danny Santos, State President of Hispanic Political Action Committee, to Oregon Senate Judiciary Committee on House Bill 2314 (April 30, 1987) (“The purpose of this bill is to resolve the problem of local law enforcement agencies attempting to enforce federal immigration laws.”).}

While the Trump administration has sought to characterize disentanglement policies as unlawful noncooperation with federal authorities, this interpretation is clearly refuted by constitutional law. Oregon’s right to choose its own policing policies is firmly supported by the Tenth Amendment to the US Constitution, which reserves non-enumerated powers to the states. This constitutional guarantee means that the federal government may not compel state officials to enforce federal law.\footnote{Printz v. United States, 521 U.S. 898 (1997).}
The Supreme Court has affirmed local law enforcement’s right to decline to participate in federal enforcement initiatives, stating that forcing local officers to administer federal law is “fundamentally incompatible with our constitutional system of dual sovereignty.”

This position has also been affirmed by the Oregon State Supreme Court, which noted in 2011 that “[i]t is well established that the federal government lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by requiring them to enact or enforce a federal regulatory program.” In June 2018, building on recent US Supreme Court precedent, a federal court ruled that the Tenth Amendment prevents the federal government from even mandating information sharing between local law enforcement and federal immigration authorities.

Rather than attempting to impede immigration enforcement, Oregon’s disentanglement policy has from the outset been explicitly intended to prevent illegal enforcement of immigration laws by state actors. Legislative history shows that ORS 181A.820 was passed largely to address the “problems [that occur] when local police try to enforce federal immigration laws.”

Federal immigration authorities should be properly trained in immigration law, which is a notoriously complex body of law. By contrast, “[l]ocal police have neither the authority nor the training to enforce any such laws.” Preventing local police from enforcing immigration laws ensures that the laws will be enforced in a more uniform manner by trained administrative professionals.

Indeed, recent scholarship has recognized that “disentanglement is not simply an attempt to frustrate federal policy, but an effort to ensure that local governments and the federal government can operate independently in their respective policymaking areas.”

Reserving immigration enforcement to trained administrative professionals is particularly important because experience shows that rights violations occur when local police illegally enforce immigration law. Policing has had a “historic role maintaining the racial power imbalance” in the United States, and recent studies have shown that racial profiling by police remains a widespread problem.

The risk of profiling is heightened in the
immigration context, as research has shown that “exposure to anti-immigration laws can easily trigger negative racial attitudes.”

Disentanglement thus reduces the likelihood of rights violations resulting from discriminatory profiling. Untrained in immigration law, local police may violate constitutional rights of both citizens and non-citizens by abusing their discretion to target individuals based on racial or perceived ethnic characteristics – as was the case in the events leading to the passage of ORS 181A.820. In recent years, widespread racial profiling has been documented in jurisdictions where local law enforcement is entangled with federal immigration officials through 287(g) task force agreements.

Preventing local law enforcement from enforcing federal immigration law protects Oregon’s localities from civil suits that might arise from unauthorized actions by local police. As the International Association of Chiefs of Police has explained, “[w]hen local police have waded into immigration enforcement, it has often come with disastrous and expensive consequences.” Police and local communities face the risk of liability when local police enforce immigration laws without proper training, leading to “increased litigation and insurance costs against cities and counties for false arrests by local police.” Continued concern over such liability has been consistently expressed by major law enforcement leadership organizations.

In the past, immigration enforcement by local law enforcement has caused Oregon to engage in constitutionally unlawful practices for which Oregon, not the federal government, has carried the cost. Local liability is not a new phenomenon: forty years ago, Umatilla County paid damages to a man who had been unlawfully detained by local law enforcement pursuant to an immigration detainer. More recently, in the case of both Secure Communities and ICE detainers, the federal government has asked Oregon law enforcement to comply with federal programs that have been found unlawful by state and federal courts. In 2011, a federal court found “ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities.” This misdirection has caused confusion and costly liability for Oregon jurisdictions.

d. By furthering inclusion, ORS 181A.820 improves Oregonians’ collective prosperity.

There is powerful empirical evidence demonstrating that disentanglement policies not only improve community safety and the rule of law, as detailed above, but also enhance civic engagement and raise the level of collective prosperity. Research shows that

115 Santos testimony, supra n. 102; Lasch, supra n. 51 at 1765.
116 Lasch, supra n. 51 at 1725–27.
117 IACP, supra n. 94 at 4.
118 Barilla testimony, supra n. 34.
119 See M.C.C. supra n. 82 at 8; IACP, supra n. 94 at 4.
120 Kleinman, supra n. 20 at 33.
sanctuary policies correspond with a higher level of economic well-being. A recent study of 2500 US counties found that compared to similar non-sanctuary counties, sanctuary counties have higher median household incomes, higher labor force participation, lower poverty rates, and lower unemployment. Inclusive policies are also proven to enhance health and well-being at the community level.

The benefits of inclusive disentanglement policies are particularly strong in Oregon, where immigrants are deeply integrated into state and local communities. 10% of Oregon residents – nearly 400,000 Oregonians – are immigrants. One in eight Oregon residents is a US citizen with at least one immigrant parent, and one in twelve Oregon children is a US citizen with at least one undocumented parent.

In addition to their significant contributions to community vibrancy and social cohesion, immigrants drive Oregon’s economy, comprising nearly 13% of the state’s workforce. In 2014, Oregon residents in immigrant-led households contributed nearly $737 million in state and local taxes and wielded $7.4 billion in consumer spending power. Undocumented immigrants are an important component of these trends, constituting nearly 5% of Oregon’s workforce and contributing roughly $81 million in state and local taxes in 2014. Inclusive policies that protect immigrants thus further the welfare of all Oregonians, regardless of immigration status.

By contrast, entanglement of local law enforcement with federal immigration authorities creates a divisive and exclusionary environment of fear and mistrust. The Trump administration has actively sought to instill this fear in communities of color by deploying arrest and deportation practices at critical community service sites such as hospitals, schools, and church homeless shelters. Immigration agents have arrested
parents while their infant was hospitalized, removed a woman with a brain tumor from a hospital to a detention facility, and detained a ten-year-old with cerebral palsy after her emergency surgery.\textsuperscript{133} Sowing fear in every aspect of immigrants’ lives, these destructive policies negatively impact the prosperity and cohesion of the local communities to which immigrants contribute.\textsuperscript{134}

In Oregon, the federal government’s inhumane deportation policies are already causing harm. Following immigration raids in Woodburn, many residents have stopped seeking medical services and are afraid to send their children to school.\textsuperscript{135} At a state level, Oregon’s economy has been impacted: fear of immigration raids has caused local businesses to suffer, and severe labor shortages in the agricultural sector have been linked to the impact of federal immigration policies.\textsuperscript{136} And despite the state’s recent expansion of health coverage to undocumented children, fewer immigrant families – regardless of legal status – are using medical facilities out of fear of deportation.\textsuperscript{137}

These developments are consistent with recent research concluding that “Hispanic citizens respond to recent immigration enforcement by reducing their safety net participation, likely due to fear of revealing non-citizens in their networks . . . [and] with potentially adverse long-term consequences

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\textsuperscript{134} See Elizabeth Aranda & Elizabeth Vaquea, Racism, the Immigration Enforcement Regime and the Implications for Racial Inequality in the Lives of Undocumented Young Adults, Sociology of Race and Ethnicity 1(1), 88–104 (2015).

\textsuperscript{135} Parks, supra n. 92.

\textsuperscript{136} Phillips, supra n. 73; One Oregon, supra n. 87; Parks, supra n. 92.


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**Cover All Kids: illustrating the collective benefits of inclusive policies**

The positive outcomes of inclusive policies are illustrated by Oregon’s recent expansion of health coverage to all Oregon children through the Cover All Kids Act. Decades of public health research show that the best way to increase overall community health is through primary preventive care; inclusive programs like Cover All Kids are thus investments in long-term community health as well as providing immediate health services for children.\textsuperscript{1} Preventive care policies limit suffering and save taxpayer money by encouraging low-income and immigrant families to seek medical care early, rather than waiting until minor health issues deteriorate and force a visit to the emergency room.\textsuperscript{2} Testimony before the Oregon legislature last year explained that children’s health coverage not only reduces emergency room visits but also lowers high school drop-out rates and increases incomes.\textsuperscript{3} In these ways, an inclusive policy furthers the collective prosperity of all Oregonians, regardless of immigration status.


\textsuperscript{2} https://portlandtribune.com/ttp/90-opinion/368830-251132-cover-all-kids-worth-praising

for the health and well-being of Hispanic families.”

Faced with these destructive consequences of the Trump administration’s divisive fear-mongering, Oregon’s state and local law enforcement officials play a crucial role in fostering community trust. Portland Police Chief Danielle Outlaw has emphasized that “now more than ever, we must ensure our immigrant community does not see us as a source for fear.”

As Multnomah County Sheriff Mike Reese has explained,

Our community is safer when all people feel confident about going to local law enforcement when they need help. We need all [local] residents, no matter their immigration status, to feel confident going to law enforcement [without] worry of deportation. Law enforcement begins with understanding that all people have a right to be treated with respect and equal protection. Local law enforcement should be focused on building trust within the community, not doing the job of federal immigration enforcement . . . Once trust is lost, it cannot be easily repaired. As Multnomah County Sheriff, I am personally committed to serving this community and defending its values of equality and inclusion. If the administration wants to make controversial [and] dangerous changes to immigration enforcement, they should convince Congress instead of leaning on local law enforcement . . . Forcing local law enforcement to act like immigration agents makes all of us less safe.

To protect the rights and privileges of all Oregonians, it is thus crucial that Oregon reaffirms and expands upon its commitment to disentanglement from federal immigration enforcement.

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139 Shepherd, supra n. 58.
140 Mike Reese, @SheriffReese, Tweets from 2:28–2:35 PM, Twitter (Sep. 19, 2017), https://twitter.com/SheriffReese/status/91025479272187904.
Policy Recommendations

While the potential of ORS 181A.820 and Oregon’s recent inclusivity initiatives are encouraging, more action is needed to achieve an Oregon that welcomes and protects everyone. The nineteen recommendations proposed here would help provide the protections, rights, and opportunities that all Oregonians deserve.

**a. Strengthening ORS 181A.820 to further inclusion**

1. **Eliminate the statute’s criminal exception to information sharing with immigration enforcement.**

Oregon should amend ORS 181A.820 to remove the arrest exception to information exchanges with immigration enforcement. Section (2)(a) of the statute permits state and local law enforcement to exchange information with immigration authorities in order to verify a person’s immigration status if arrested for “any” criminal offense. This exception blurs the lines between criminality and civil immigration status, contributing to the stigmatization and exclusion of immigrant communities.

2. **Cease state and local correctional facilities’ unlawful contracts, agreements, and engagements with ICE.**

Oregon correctional facilities should cease their immigration detention contracts, agreements, and engagements (formal or informal) with ICE, which are in violation of ORS 181A.820. Both the plain text and general intent of the statute forbid state and local jails from enforcing federal immigration law by using their facilities and resources for immigrant detention. The statute’s legislative history

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141 2017 ORS 181A.820(2)(a).
also shows that Representative Barilla, the bill’s sponsor, explicitly considered detention of immigrants in local prisons as a problem that the statute would address.\textsuperscript{142} However, the NORCOR correctional facility maintains an active contract with ICE and cooperates with ICE in the detection and apprehension of individuals whose only alleged violation of law is their immigration status.\textsuperscript{143}

3. Provide training and clear guidance to state and local officials.

Oregon should offer training and guidelines to state and local officials to ensure compliance with ORS 181A.820. Local law enforcement officials who try to follow the statute in good faith may be unsure of its full scope, leading to unintended violations. A recent internal investigation of the Multnomah County Sheriff’s Department, for example, showed that some officials were not even aware of ORS 181A.820 despite the department having adopted internal guidelines to enable compliance with the statute.\textsuperscript{144} Issuing clearer guidance and training to all Oregon law enforcement officials will ensure that the statute is enforced uniformly across the state.

4. Revise the statute to include damages as a remedy.

Oregon should amend ORS 181A.820 to include economic and noneconomic damages as a remedy for any violation of the statute. In 2016, the Oregon Court of Appeals declined to grant damages to an Oregon plaintiff who was held by local law enforcement pursuant to an ICE detainer without a warrant or probable cause.\textsuperscript{145} While not challenging the assumption that such detention was a violation of ORS 181A.820, the Court of Appeals found that the current statute provided “no statutory tort” as a remedy for such rights violations.\textsuperscript{146} In the context of the statute’s well-documented underenforcement, it is clear that ORS 181A.820 would benefit from stronger enforcement mechanisms.\textsuperscript{147} The stakes of statutory compliance are particularly high today, given the increasing federal pressure on local officials to violate long-standing disentanglement policies. The Oregon legislature should thus add damages as an additional remedy under ORS 181A.820, both as an appropriate remedy for rights violations and as a tool to encourage local compliance and advocacy in the private bar.

b. Upholding the rule of law and improving access to justice

5. Add a due process clause to the Oregon Constitution.

Oregon should amend its state constitution to include a due process clause. In its current form, the Oregon Constitution enshrines fundamental rights in many ways. Far-reaching constitutional clauses provide remedies for rights violations and assure equal privileges

\textsuperscript{142} Barilla testimony, supra n. 34.
\textsuperscript{143} Wilson, supra n. 53.
\textsuperscript{146} Id.
\textsuperscript{147} See supra, § 1.c.
and immunities. However, commentators and courts have long recognized that the state constitution lacks a true due process provision. While Oregon is bound by the due process protections of the US Constitution, amending the state constitution would allow the state to expand substantive and procedural due process protections for Oregonians. To protect Oregonians from rights violations that may arise through Oregon’s initiative and referendum process, this clause should explicitly encompass the actions of both the state and the people of Oregon. A thoughtfully crafted constitutional due process clause would provide a powerful tool to strengthen and expand fundamental rights protections for all Oregonians.

6. Provide universal representation to all persons in removal proceedings.

Oregon should establish a state right to legal representation for persons subject to removal proceedings, supported by sustainable funding commitments. Universal representation promotes inclusion of Oregon’s communities of color by reducing family separation, deportation, and detention based on race and ethnicity. Without attorneys, Oregonians with a lawful right to remain in Oregon face deportation: current rates show that 80% of unrepresented Oregonians whose removal cases are decided on the merits at the Portland Immigration Court are ordered deported. Most of these individuals are people of color – and all have ties to their state and local communities. Local governments have already begun to recognize the importance of universal representation. The Mayor of Portland’s proposed 2018–2019 budget includes a one-time commitment of $500,000 “for legal services that support Portland’s immigrant and refugee communities,” and Multnomah County’s proposed budget includes a $160,000 legal fund to help immigrants at risk of removal. These initiatives should be extended at a state level, accompanied by long-term budget appropriations.

150 See Olsen v. State, 554 P.2d 139, 143 (Or. 1976) (affirming Oregon Supreme Court’s ability to “decide that the equal protection clause of the Oregon Constitution is broader than that of the Federal Constitution”). For examples of due process clauses in other state constitutions, see Maine Const., art. I, § 6-A; Montana Const., art. II, part II, § 17; Virginia Const., art. I, § 11; Wa. Const., art. I, § 3.
151 See also Recommendation 15, infra.
152 See generally Thomas A. Balmer, “Does Oregon’s Constitution Need a Due Process Clause?”: Thoughts on Due Process and Other Limitations on State Action, 91 Wash. L.R. Online 157 (2016).
7. Prevent courthouse arrests without judicial process by enacting legislation and issuing guidance for court personnel.

Oregon should enact legislation preventing courthouse arrest without a judicial warrant or court order, both in the courthouse itself and during travel to and from courthouse proceedings. The US Supreme Court has recognized that “the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy.” However, under ICE policy, courthouses do not qualify as a “sensitive location” where immigration enforcement efforts are limited. The Chief Justice of the Oregon Supreme Court and prosecutors across the country have spoken out against the “chilling effect” caused by ICE courthouse arrests. When individuals do not feel safe coming forward to report crime or attend hearings, courts are prevented from operating fairly and effectively.

Oregon should also issue guidance for court personnel that will direct them not to facilitate ICE activities in the course of their employment, unless a judicial order requires it. Oregon HB 3464 requires the Oregon Attorney General to provide courthouses with model policies for how to interact with ICE. Oregon should direct court personnel that (1) they are not required to disclose citizenship or immigration status, unless judicial order or state or federal law requires it; (2) they should not ask about any individual’s immigration status, unless it is required to perform their regular duties; (3) they are prohibited from providing any information to federal immigration officials other than citizenship or immigration status information; and (4) they may not take any action not required in the regular course of their duty to stop, question, interrogate, or investigate an individual based solely on actual or suspected immigration or citizenship status or on a civil immigration warrant, administrative warrant, or immigration detainer.

8. Change the evidence code to prevent improper use of immigration status in civil and criminal proceedings.

Oregon should amend its evidence code to prohibit the improper use of immigration status in civil and criminal proceedings. Oregon courts are committed to providing fair and impartial adjudication in all trial proceedings.

160 Sheriff Clayton of Washtenaw County, Michigan, has explained that, “[e]very time someone refuses to participate by reporting a crime, we run the risk of continuing the victimization of that individual and possibly of someone else . . . Our success in keeping communities safe is grounded in our relationship with the community — that there is respect between police and the community as well as a clear understanding of what our role is, which is not to enforce federal immigration law.” ACLU, supra n. 90 at 2–4.
161 For an example of courthouse protection legislation, see New York’s proposed Protect Our Courts Act, AB A11013-A (introduced May 30, 2018), http://assembly.state.ny.us/leg/?default_fld=&bvn=A11013&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y.
162 HB 3464, supra n. 72.
163 ACLU, supra n. 90 at 8.
Under Oregon Rule of Evidence 403, relevant evidence may be excluded from court “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Federal and state courts have consistently recognized that knowledge of immigration status can have a prejudicial impact on trial proceedings. Studies have also shown that race and immigration status impact jurors’ assessments of defendants’ guilt, with undocumented Latino defendants more likely to be found guilty by a jury. To limit the improper and prejudicial impact of immigration status on the judicial process, in any civil or criminal case evidence of a party’s or a witness’s immigration status should not be admissible in court unless it is an essential fact to prove an element of or a defense to the offense charged, or if it is necessary to show the bias or prejudice of a witness.

9. Standardize U visa certification procedures by state and local law enforcement for victims of crime.

Oregon should pass legislation streamlining the process by which state and local law enforcement confirm that survivors of crime are eligible for appropriate immigration relief. U visas are available to immigrants who are victims of crime in the United States. To receive a U visa, an individual must present a certification from law enforcement confirming that he or she has been willing to cooperate with police in the investigation or prosecution of the crime. In practice, this straightforward requirement often becomes an impediment to applicants when police officers ignore or delay signing the certifications. A bill that provided a faster, more uniform approach to law enforcement certifications would ensure that immigrant survivors of crime receive timely and lawful support from community police. It would also improve public safety by encouraging more victims to report crimes and cooperate with police.

164  2017 ORS 40.160.
167  For an example of a protective evidence provision, see Washington Rule of Evidence 413 (adopted Nov. 8, 2017; effective Sep. 1, 2018).
169  Id. at 2–4.
10. Prevent law enforcement from honoring ICE detainers without a judicial warrant.

Oregon should prohibit state and local law enforcement from honoring ICE detainers without a judicial warrant. Courts across the country have recognized that ICE detainers violate immigrants’ due process rights under state and federal law.\(^{172}\) When Oregon law enforcement cooperates with ICE detainers, they risk violating Oregonians' rights, contributing to further exclusion of immigrant communities and communities of color. They also face liability for complicity with unconstitutional immigration policies; a federal judge in California, for example, has recently found that the Los Angeles County Sheriff’s Department may be liable for damages for violating thousands of inmates’ constitutional rights by complying with unlawful immigration detainers.\(^{173}\) The Oregon legislature should thus explicitly forbid state and local law enforcement from extending individuals’ detention periods based on warrantless requests from immigration authorities.\(^{174}\)

172 See e.g., Lunn, supra n. 121.


176 For an example of legislation prohibiting local contracts with private companies involved in immigration detention, see California’s proposed Dignity Not Detention Act SB-1289 (vetoed by governor Sep. 28, 2016), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1289.


11. Prohibit state or local contracts with private prisons engaging in immigration detention.

Oregon should clarify that ORS 181A.820 prohibits state and local governments from contracting with for-profit corporations engaging in or intending to engage in immigration detention. There are currently no private prisons in Oregon. However, in 2011 Oregon legislators proposed a bill that would allow Oregon inmates to be transferred to out-of-state private prisons, intending to facilitate cooperation with ICE.\(^{175}\) A clear statutory ban on local contracts with private prisons engaging in immigration detention would protect Oregon from complicity in the rights and safety abuses that routinely occur in these facilities.\(^{176}\) In 2016, the Department of Justice released a comprehensive report concluding that “in most key areas, contract prisons incurred more safety and security incidents per capita than comparable [public] institutions.”\(^{177}\) 73% of beds for detained immigrants are held in private prisons, where human rights abuses and inadequate medical care have resulted in
over 160 reported deaths in custody. Despite this substandard care, recent reporting shows that ICE consistently ignores Congressional directions to improve conditions in immigrant detention centers. 40% of the facilities in ICE’s detention system do not undergo independent safety inspections, and over 75% have been contracted under the outdated minimum safety standards that applied in 2000.

c. Defending Oregon communities from discrimination and harassment

12. Delineate essential public services providers as “safe zones,” including protection of information shared with public service providers.

Oregon should expressly delineate “safe zones” where federal immigration authorities are barred from enforcement activities absent a judicial warrant or court order. Immigrants should be able to access education, criminal justice, and social services without fearing deportation. Under current ICE policies, enforcement activities including surveillance, interviews, searches, and arrests are prohibited from certain “sensitive locations” absent exigent or special circumstances or prior approval. However, ICE can still obtain records, documents, and similar materials from officials or employees; provide notice to officials or employees; and serve subpoenas at sensitive locations, which include schools, medical facilities, places of worship, religious and civil ceremonies, and public demonstrations. Oregon should enact policies that will guarantee and protect immigrants’ access to these basic services and locations, free from fear of arrest.

13. Amend anti-profiling legislation to prohibit police bias based on real or perceived immigration or citizenship status.

Oregon should amend its anti-racial profiling legislation to explicitly prohibit unlawful targeting based on real or perceived immigration or citizenship status. ORS 131.920 prohibits police profiling. However, the definition of profiling currently encompasses only “real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability.” This definition

should be amended to include real or perceived immigration status and citizenship status.\textsuperscript{186}

14. Revise Oregon’s statute criminalizing the act of giving false information to a peace officer.

Oregon should revise ORS 162.385, which makes it a crime to give a false name, address, or date of birth to a peace officer in connection with a citation or warrant, including minor traffic and parking violations. As written, this statute criminalizes self-identity by encompassing individuals who use common names that do not correspond with their legal names.\textsuperscript{187} The law thus disproportionately affects Latino residents with multiple names or multi-part last names as well as residents who lack the resources to legally change their names.\textsuperscript{188} The law’s racialized impact was illustrated in the recent case of Ana del Rocío, the state director of Oregon’s Color PAC and a David Douglas School Board member: after a routine fare check on Portland’s TriMet system, del Rocío was detained based on discrepancies in her common and legal names and subsequently faced a class A misdemeanor charge.\textsuperscript{189} The stakes are particularly high for non-citizen Oregonians, who may face serious immigration consequences for violating the statute.

15. Amend Oregon anti-discrimination statutes to include perceived immigration status as a protected class and close the loophole allowing the passage of discriminatory laws.

Oregon should amend its anti-discrimination statutes to include “perceived immigration status,” “non-citizen status,” and “language proficiency or preference” as protected classes. Specifically, Oregon should amend provisions of ORS 659 to ensure that immigrants and non-citizens are explicitly protected from being negatively targeted by local ordinances, denied equal access to public accommodations, or subjected to discrimination in the workplace.\textsuperscript{190}

Oregon should revise ORS 659.870 to prohibit the use of initiative petitions and referendums against protected classes of people, including perceived immigrants and non-citizens. While this statute forbids any of Oregon’s political subdivisions from enacting or enforcing discriminatory policies, the Oregon Supreme Court has interpreted the provision to allow local elections on initiative petitions that target individuals based on their personal characteristics.\textsuperscript{191} Although the Oregon Supreme Court declined to rule on the enforceability of such petitions by the state,\textsuperscript{192} in practice this interpretation has allowed otherwise prohibited measures to be proposed at the local level and enacted into state law.

\textsuperscript{186} For examples of inclusive anti-bias policing policies, see New Orleans’s Bias-Free Policing policy, NOPD Policy Ch. 41.13 (effective Jul. 10, 2016, encompassing “any other similar identifiable group”), https://www.nola.gov/nopd/policies/; and Seattle Police Department’s Bias-Free Policing policy 5.140-POL (effective Aug. 1, 2015, including “other discernible personal characteristics”), https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing.

\textsuperscript{187} See 2017 ORS 162.385.


\textsuperscript{191} See 2017 ORS 659.870; Boytano v. Fritz, 901 P.2d 835, 840 (Or. 1995).

\textsuperscript{192} Boytano, 901 P.2d at 840 n. 4.
The referendum on Oregon Ballot Measure 88, which overturned the law providing drivers’ licenses to all qualifying residents regardless of immigration status, was one such initiative that targeted non-citizen Oregonians. Initiative Petition 22, the proposed ballot measure aiming to repeal ORS 181A.820, similarly undermines the objectives of ORS 659.870. The Oregon legislature should thus either amend the language of ORS 659.870 to extend to policies proposed through initiative petitions and referendums or pass new legislation, supported by clear intent in the legislative record, that closes this loophole allowing discriminatory laws to be passed.

16. Train employers and mandate protection for employees in the workplace.

Oregon should require employers to inform their employees that they are protected from workplace discrimination and harassment, regardless of their immigration status. All workers, regardless of immigration or citizenship status, are protected against workplace discrimination under federal law. State and federal law also protect immigrants against employment discrimination and workplace harassment on the basis of national origin. Employers should be expressly required to inform workers of these provisions, as well as of the protections of the US Equal Employment Opportunity Commission (EEOC), through mandated Know Your Rights sessions held at regular intervals and flyers that are clearly posted and provided to employees upon hiring.

Oregon should protect all workers by mandating that employers assert lawful limits on federal immigration enforcement activities. Oregon should require employers to receive and inspect a judicial warrant before granting immigration enforcement agents access to nonpublic worksite areas or employee records. Employers should also be required to provide employees with timely notice of an upcoming I-9 audit within twenty-four hours of receiving a Notice of Inspection from federal immigration authorities. These requirements should be facilitated through structured training sessions, model policies, and implementation guidelines from the Oregon Bureau of Labor and Industries, including clearly demarcating non-public areas and

195 U.S. Equal Employment Opportunity Commission (EEOC), Rescission of Enforcement Guidance on Remedies Available to Undocumented Workers Under Federal Employment Discrimination Laws (Jun. 28, 2002), https://www.eeoc.gov/policy/docs/rescind.html (affirming “the settled principle that undocumented workers are covered by the federal employment discrimination statutes and that it is as illegal for employers to discriminate against them as it is to discriminate against individuals authorized to work”).
197 EEOC supra n. 196; EEOC, EEOC Reaffirms Commitment To Protecting Undocumented Workers From Discrimination, Press Release (Jun. 28, 2002), https://www.eeoc.gov/eeoc/newsroom/release/archive/6-28-02.html (“When enforcing [federal employment discrimination statutes], EEOC will not, on its own initiative, inquire into a worker’s immigration status. Nor will EEOC consider an individual’s immigration status when examining the underlying merits of a charge.”).
199 Wong, supra n. 198.
directing employees to inform ICE that only the employer is authorized to speak to them.200

d. Ensuring equal access to state privileges

17. Reinstate legislation extending driver’s licenses to all Oregon residents regardless of immigration status.

Oregon should make driver’s licenses available to all Oregon residents regardless of immigration status. Oregon should reinstate an inclusive version of SB 833, the 2013 law that made four-year driver licenses available to all Oregon residents without requiring proof of legal immigration status.201 In addition to providing a valuable form of municipal identification allowing all Oregonians access to important public services, a universal driver’s license program has significant benefits for the community at large.202 Universal access to driver’s licenses improves public safety and decreases taxpayer costs by increasing the proportion of insured drivers and reducing the likelihood of hit-and-runs.203 It also empowers economic involvement and social cohesion by enabling all Oregonians to drive as part of their employment, educational, or family responsibilities.204

18. Establish parity in residency requirements for in-state tuition rates.

Oregon should offer in-state tuition rates at state universities to all Oregon students who meet the standard one-year residency requirement, regardless of immigration status. While the Oregon legislature has recently reaffirmed legislation extending in-state tuition rates to some undocumented students, this legislation requires undocumented students to prove three years of Oregon residency and five years of US residency in order to qualify for tuition parity.205 By contrast, students who are US citizens, lawful permanent residents, or other lawful visa holders qualify for in-state tuition rates after


201 SB 833, Oregon State Legislature (signed into law 2013; effective Jan. 1, 2014), https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB833. For another example of a universal driver’s license program, see California’s AB-60 (effective Jan. 1, 2015), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB60.


204 See Elizabeth Aranda and Elizabeth Vaqua, Racism, the Immigration Enforcement Regime and the Implications for Racial Inequality in the Lives of Undocumented Young Adults, Sociology of Race and Ethnicity 1(1), 88–104, 95 (2015) (discussing immigrants’ fear of driving due to potential deportation consequences of a traffic stop).

only twelve months of Oregon residency. The standard twelve-month residency requirement should be extended to all Oregon students irrespective of their immigration status.

19. Extend health coverage to undocumented adults in Oregon.

Oregon should extend state-provided health coverage to all qualifying undocumented adults living in Oregon. While the Affordable Care Act excludes undocumented immigrant adults from eligibility, health coverage may be provided independently at the state or local level. Governor Kate Brown has stated that Oregon is committed to providing healthcare for every single Oregonian. In 2017, the Oregon Legislature passed the bipartisan Cover All Kids Act, extending health coverage to more than 17,000 undocumented children currently excluded from the Oregon Health Plan. Building on this momentum, as well as recent legislation extending reproductive health benefits to undocumented women, Oregon should expand its state health plan to all residents, regardless of immigration status.

208 Phillips, supra n. 73.
ORS 181A.820 is a crucial tool in building an inclusive Oregon. As the Trump administration continues to promote destructive and divisive federal immigration policies, it is more important than ever to protect fundamental rights and privileges at the state level. Upholding and expanding upon Oregon’s disentanglement statute will enhance public safety, defend the rule of law, and further the collective prosperity of Oregon’s diverse community, with benefits for all Oregonians.