

IN THE COURT OF APPELAS OF THE STATE OF OREGON

MIGUEL CABRERA-CRUZ,
Plaintiff-Respondent,

v.

MULTNOMAH COUNTY
SHERIFF'S OFFICE and
MULTNOMAH COUNTY,

Defendant-
Appellant.

Multnomah County Circuit Court
Case No. 1209-11181

CA A155157

**BRIEF FOR NON-PROFIT ORGANIZATIONS
AMICI CURIAE OREGON JUSTICE
RESOURCE CENTER, CENTER FOR
INTERCULTURAL ORGANIZING, OREGON
DREAM ACTIVIST, AND CAUSA**

Appeal from the Judgment of the Circuit Court of Oregon,
for the County of Multnomah
The Honorable Bushong

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STATEMENT OF INTEREST OF AMICUS

The **Oregon Justice Resource Center (OJRC)**, based out of Lewis and Clark Law School, is a nonprofit organization that assists with trial and appellate litigation on behalf of indigent, prisoner, and low-income clients in federal and state courts and on a range of civil liberties and civil rights matters, including immigrant rights. The **Center for Intercultural Organizing (CIO)** is a diverse, grassroots organization working to build a multi-racial, multicultural movement for immigrant and refugee rights. **Oregon Dream Activist (ODA)** is an undocumented-led organization whose mission is to empower, educate and escalate in an effort to advance the rights of undocumented immigrants and communities. **Causa** is Oregon's statewide Latino immigrant rights organization and is the largest Latino civil and human rights organization in the Pacific Northwest. Causa works to defend and advance immigrant rights by coordinating with local, state, and national coalitions and allies.

All the above-named organizations are members of the Activist Coming Together Network for Justice and Dignity (ACT Network), which is a collection of individuals and organizations who advocate for an end to collaboration between ICE and local law enforcement. OJRC, CIO, ODA, and Causa have no private interest in the outcome of the merits of this case, but they have a strong interest in upholding the rights and dignity of all persons, regardless of immigration status.

Proposed amici regularly work with individuals affected by ICE detainer requests and the federal government's aggressive immigration enforcement policies.

SUMMARY OF ARGUMENT

Not so long ago, the Lincoln County Sheriff held Rigoberto, an individual like Miguel Cabrera-Cruz, after his local charge had been disposed based on the existence of an immigration detainer. On the same day that Rigoberto proposed to his fiancée, Rosie Gomez, he was arrested and accused of showing a fake ID to enter a casino. Rigoberto was over 21 years of age, but he had a fake ID because, due to his immigration status, he lacked the documents required to get a valid Oregon ID. The police later dropped the charges. However, because he was an unauthorized immigrant, the sheriff did not release Rigoberto. Instead, the sheriff continued to detain him because the U.S. Immigration and Customs Enforcement had requested the continued detention via an immigration detainer. Rigoberto had no other criminal record.

In 2013, Rigoberto was deported. Rosie and her three young nephews, whom she and Rigoberto cared for, were left scared and alone. "Everything completely changed in my life, and I felt like I had nothing....When he got arrested, I realized that something so simple could cause so much harm. He was the main provider, and I got kicked out of my house," she said. At an immigrant rights rally soon after Rigoberto was deported, Rosie said, "It breaks my heart that

I may never see him again.”

Although cloaked in federal immigration law, Rigoberto’s detention and deportation were of a local, Oregon-based origin. Every county sheriff in Oregon that operates a detention facility, detains individuals based on the existence of an immigration detainer after any local authority has expired. Immigration detainees impact the state of Oregon as a whole in dramatic ways far beyond the single individual held in detention by the Sheriffs. The federal government’s aggressive immigration enforcement, key to which are the force-multiplier effects of immigration detainer requests, has literally left a trail of parentless, devastated families. As individuals in Oregon and their families face the threat of removal, the ripple effects of detention and deportation split apart families and communities. This brief presents their stories.¹

ARGUMENT

The role of local law enforcement agencies in federal immigration enforcement reduces the likelihood of immigrant communities reporting crime and impedes the efficacy law enforcement. Public safety is threatened and a culture of fear has developed in immigrant communities. The ICE detainer policy is purported to target serious criminals, yet people with minor criminal history or no

¹ The personal narratives in the brief were provided to the author by amici organizations by letter and are on file with the author.

record at all are often swept up in the aggressive policy and deported to countries they have not called home in decades. The subsequent deportations resulting from these aggressive policies leave gaping holes in families and communities throughout Oregon and the country. As a result, many children of deported immigrants have become increasingly reliant on state and community-based social services.

I. ICE Detainer Requests Threaten Public Safety and Objectives of State Law Enforcement Agencies.

Oregon pays a high cost for its collaboration with ICE. Secured Communities and other aggressive immigration enforcement policies create tension among local law enforcement and immigrant communities, diminishing trust and reducing the likelihood of crime reporting. Additionally, Oregon bears the financial burden of detaining individuals past the local law enforcement agency's jurisdiction.

A. State collaboration in federal immigration enforcement fosters distrust in local enforcement agencies, reducing the likelihood of crime reporting.

The detainer link ties, in the public mind, Oregon's public safety officers with deportation goals, thus severing community trust in the police. Ironically, the costs for this link are borne fully by Oregon. Not only do Oregon counties use Oregon public money (without reimbursement from the federal government) for pre-conviction detainers, Oregon counties also bear a more impactful and

fundamentally destructive cost: loss of community trust.

In two important studies conducted after law enforcement became involved in aggressive federal deportation actions, the authors report that the impact on children's perception of local public safety officers is destructively tainted.

“Studies show that the threat of deportation makes families and community members less trusting of police and other government officials[.]” Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground*, Washington, DC: Center for American Progress (August 2012), 24. Indeed, the reports note that “[w]hen immigrants do not trust the police, they are less likely to report crimes or to cooperate, and it limits the ability of law enforcement to do their jobs keeping our communities safe.” *Id.* Additionally, several studies reveal that children of immigrants often do not differentiate between local law enforcement and immigration enforcement officers. Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castañeda, Roberts Santos, and Molly M. Scott, *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Washington, DC: Urban Institute (February 2010); Dreby.

The long-term impacts of aggressive immigration enforcement policies on immigrant families and communities include enduring mistrust of law enforcement agencies, development of a “culture of fear,” and social isolation. Marcela

Mendoza & Edward M. Olivos, *Advocating for Control with Compassion: The Impacts of Raids and Deportations on Children and Families*, 11 Or. Rev. Int'l L. 111 (2009). This leaves communities who are already marginalized further vulnerable to being victims of crime and unwilling to assert the rights that they do have, regardless of immigration status.

In June 2012, Karla Hernandez, a community organizer for CIO, assisted an undocumented woman named “Mayra.” Mayra had been arrested and placed on an ICE hold in Multnomah County Jail after the police were called to her apartment because of an altercation with her neighbor. Her neighbor had repeatedly harassed her children, and her neighbor’s children harassed her children at school. Mayra and her family tried to ignore it, because they didn’t want to bring attention to their immigration status. Fearing that involvement from law enforcement could put her at risk for deportation, Mayra resisted calling the police despite the persistent harassment to her and her family.

B. Compliance with ICE detainer requests misuses state resources for purposes of federal immigration enforcement.

People subject to ICE detainer requests will likely be transferred to ICE upon their release. Defendants and court actors understand that pre-trial release to ICE would halt the criminal process. Studies suggest that this knowledge affects defendants’ and court actors’ decision-making process in a number of ways.

Katherine Beckett & Heather Evans, *Immigration Detainer Requests in King*

County, Washington: Costs and Consequences, The University of Washington (March 26, 2013); Judith A. Greene, *The Cost of Responding to Immigration Detainers in California: Preliminary Findings*, Justice Strategies (August 2012).

For example, people subject to an ICE detainer request may be less likely to post bail or obtain a bond because they understand that they would likely not be able to return to court, and would therefore forfeit these funds.

In King County, Washington, the average jail stay for people subject to ICE detainers was 29.2 days longer than those not subject to ICE detainers. Beckett and Evans at 12. Honoring ICE detainer requests in King County cost local governments nearly \$3 million in jail costs in 2011. *Id.* at 22. To date, there has not been comprehensive research on the costs to Multnomah County of honoring ICE detainer requests. However, it is clear that detaining an individual beyond the law enforcement agency's jurisdiction requires more resources and incurs extra expense on an already stressed system and budget.

Muktar Jama fled Ethiopia and entered the United States as a refugee in 2008. When he was 19, Muktar was arrested while riding the MAX light rail from downtown Portland to his home in Beaverton because he did not pay the fare and, because of previous unpaid tickets for riding the train without a fare, he was arrested and booked. Upon his arrest, Muktar was told that because he was a student, he would be released if he paid his fine. Instead, ICE placed a hold on

him.

Leticia Mora G. of Portland, Ore. missed a court date for a DUII charge because she was pregnant with her first child and scared to put her baby at risk. After her baby was born, she turned herself into the police to continue her proceedings. The judge on her case released her and told her she wouldn't have to spend any time in jail. However, afterward, she was told that there were people who wanted to talk to her. She was placed on an ICE detainer and held in Multnomah County jail for two days. After that, she was transferred through other jails, including Inverness and Coffee Creek, totaling almost a week of being detained in Oregon jails pursuant to an immigration hold.

Leticia remembers being pressured by one ICE officer to not fight deportation or else she would face extended immigration detention. She said that the officer told her and the other detainees that it would go much faster if they “just signed the papers” to be deported, without contesting the removal charges in immigration court. Finally, she had the opportunity to speak with another ICE officer about her individual case, and that officer saw a pathway to permanent residency for her through her U.S. citizen father. “I was one of the lucky ones. It was a horrible experience, but it helped a lot that I spoke English. I remember that they would just pass by the people who didn't speak English, they didn't make any effort to help them understand what was happening,” she said.

II. ICE Detainer Requests and Subsequent Deportations Tear Apart Families.

One of the guiding principles behind U.S. immigration law is family reunification, yet the increased detention and deportation of immigrant parents has left thousands of children in the United States forced to cope with the emotional and psychological trauma of being separated from a parent. Single parents struggle to meet ends meet, leaving more families and children reliant on state and community-based social services.

A. A major consequence of aggressive immigration enforcement is the separation of children, often U.S. citizens, from their unauthorized immigrant parents.

According to the Pew Hispanic Center, approximately 5.5 million children in the United States, including 4.5 million U.S.-born children, live in mixed-legal status families with at least one parent who is an unauthorized immigrant. Jeffrey Passel & D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Washington DC: Pew Hispanic Center (February 1, 2011). The DHS Office of the Inspector General estimated that over 108,000 parents of U.S.-citizen children were removed from the United States between 1997 and 2007. U.S. Department of Homeland Security, Office of Inspector General, *Removals Involving Illegal Alien Parents United States Citizen Children* (January 2009). Reflecting a dramatic increase in recent years, statistics released by DHS revealed that 204,810 parents of U.S.-citizen children were removed from the United States

between July 1, 2010 and September 31, 2012. U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement. *Deportation of U.S.-Born Citizens: Fiscal Year 2011 Report to Congress, Second Semi-Annual Report* (March 26, 2012). This rise in parental removals is correlated with a shift in immigration enforcement policy in late 2007 from worksite raids to cooperation with local law enforcement agencies within the criminal justice system.

The most prominent jail-based immigration enforcement programs, the Criminal Alien Program and Secure Communities, identify immigrants who are booked into U.S. jails and who are suspected of violating immigration law. According to a 2011 analysis by the University of California, Berkeley Law School, 83 percent of individuals arrested through Secure Communities were placed in immigration detention and 37 percent of those arrested reported that they had a U.S.-citizen child. Aarti Kohli, Peter L. Markowitz and Lisa Chavez. *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, The Chief Justice Earl Warren Institute of Law and Social Policy at the University of California, Berkeley Law School, at 2, 5. Berkeley, CA (October 2011). This number is likely an underestimate since many parents may be reluctant to reveal they have children for fear of losing parental rights.

Numerous studies have shown the harmful effects of a parent's deportation on the children left behind, many of whom are U.S. citizens. Jacqueline Hagan,

Brianna Castro, Nestor Rodriguez. *The Effects of U.S. Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives*. 88 N.C. L. Rev. 1799 (June 2010); *Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System*, Immigration Policy Center, American Immigration Council (December 2012). Aggressive immigration enforcement policies often leave single parents struggling to make ends meet, and children and undocumented parents live in constant fear of separation. Family separation due to immigration detention or deportation commonly leads to economic hardship, psychological trauma, fear, and stigma. Marcela Mendoza & Edward M. Olivos. *Advocating for Control with Compassion: The Impacts of Raids and Deportations on Children and Families*. 11 Or. Rev. Int'l L. 111 (2009).

Victor Salinas, a U.S. citizen, grew up in Newberg, Ore. Victor's parents immigrated to the United States from Mexico in the 1980s. When Victor was 13, his family returned to Mexico to avoid judicial proceedings that they believed would result in deportation. A family friend took custody of Victor, but the loss of his family left him confronting depression as well as "cultural and identity issues that weighed heavily as a young man." At an immigrant rights rally held on Father's Day 2013, he said that the holiday, "was a cruel reminder that our families have been torn apart by a broken immigration system." Victor added, "Millions of

other young people are growing up without their parents due to detentions and deportations. We need to address this as a family issue, not a legal or political one.”

B. Aggressive immigration enforcement results in more children left in foster care and reliant on state and community-based social services.

The federal government’s callous enforcement of immigration laws has created a situation in which families have been forced apart and thousands of children have been separated from parents. Schools, early childhood centers, child welfare agencies, churches, and community-based organizations are left to play the role of first responder when parents are detained, often without the opportunity to arrange childcare or even notify family of their detention.

Liliana Ramos, a single mother to three U.S. citizen children, was deported in 2011. Liliana entered the United States illegally with her parents when she was a teenager. Prior to being deported, she lived in the United States for 20 years, 10 of which she spent in Central Oregon. On January 19, 2011, she left the resort where she worked as a housekeeper for her lunch break, and two unmarked white suburbans started flashing police lights. They pulled up to her and asked if she was Liliana Ramos. She said yes. She described their rest of their interaction:

“Do you know who we are?”

“No,” she replied.

“We are the immigration police. You are being arrested to be deported, and

you're going directly to Mexico.”

Liliana said she was “paralyzed.” She said that she understood that it was against the law to live in the United States without documentation, but also that she tried to lead a good and peaceful life. ICE told her she had three months to leave, and that she should sell her things, grab her children, and get out of here. She told them that she would not take her children to Mexico to suffer. Liliana was deported and now lives in Tijuana, Mexico, so that it is easier for her children to visit.

CONCLUSION

Immigration is integral to our nation’s identity and prosperity, yet our laws and policies divide families, create a culture of fear among immigrant communities, and impede the efficacy of law enforcement and our criminal justice system. If not for jail-based immigration enforcement policies that blur the lines between local police and federal immigration enforcement, Rigoberto and Liliana would be with their families today. For these reasons, amici respectfully request the court to consider the social implications of the federal government’s co-optation of local law enforcement in its aggressive immigration enforcement.

DATED this 5th day of February, 2014.

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 6, 2014, I directed the original BRIEF-AMICUS CURIAE to be electronically filed with the Appellate Court Administrator and electronically served on Jennifer Middleton, attorney for appellant, and that Stephen Manning and Kevin Díaz, attorneys for appellant, and Carlos J. Caladriello, attorney for respondent, were conventionally served by mail.

/s Erin L. McKee

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