

A Plea for Compassion and Common Sense: **The Senseless and *Optional* Detention of Undocumented Immigrants** **by Local Law Enforcement in Deschutes County**

EXECUTIVE SUMMARY ✕ CONCLUSIONS AND RECOMMENDATIONS **by *Immigrant Family Advocates*—Bend, Oregon—November, 2010**

Executive Summary *(from page 2)*

In Deschutes County, Oregon, families are suffering serious hardships as the result of procedures employed by the Deschutes County Sheriff's Office.

Deschutes deputies regularly turn over to the Immigration and Customs Enforcement Agency (ICE) undocumented immigrants detained as the result of traffic stops and/or minor infractions.

This is done even though they are not required to do so by either state or federal law, and even though there is no benefit to local public safety.

In fact, as the result of these practices, public safety suffers as immigrants are increasingly reluctant to report crime to law enforcement agencies.

These detentions result in terrible impacts on family members, and on the community at large:

- Children are abruptly deprived of the love and care of a parent, causing serious emotional trauma that has both immediate and long-term implications for children and adults;
- A parent, often the family breadwinner, is “disappeared” without notification to family, friends or faith community;
- The stranded family is thus forced to rely on often insufficient community resources, creating further difficulties both for the family and the public/private sectors of the community;
- Since many of those detained and/or deported are employed there is also a serious effect on the local economy as a result of these disruptive and unnecessary practices.
- All of these hardships are amplified and multiplied if or when the detained individual is deported.

These practices have been confirmed following painstaking examination by Immigrant Family Advocates (IFA), a group of concerned Deschutes County residents dedicated to alleviating the trauma being experienced by detainees and their families. This group has studied—and found lacking—the legal framework for the practices described in this paper. IFA has also collected and analyzed statistics from the Deschutes County Adult Jail (DCAJ) over a period of almost four years.

These practices represent an unwarranted and heavy-handed approach to addressing the presence of undocumented immigrants in our community. Such practices do not afford immigrants even the modest due process to which they are entitled under international law. Both compassion and common sense dictate a less aggressive approach which allows Central Oregon immigrant families to stay together and will keep our community more genuinely safe. Such an approach will not only keep Central Oregon families together, but also will keep the community genuinely safe and more fully reflect our constitutional and moral values, like treating our neighbors as ourselves.

Conclusions and Recommendations *(from pages 7-8)*

The current procedures by which the Deschutes County Sheriff's Office turns the majority of detained undocumented immigrants over to federal authorities are creating egregious hardship for Central Oregon families. They are also harmful to the larger community in a number of critical ways. These practices are not only optional under state and federal law, but also violate current federal law and policy. Until a comprehensive overhaul of federal immigration policy is achieved, state and local jurisdictions such as Deschutes County should employ more practical and equitable standards when dealing with detained immigrants.

It is imperative that we:

- Protect our community's families from traumatic and inhumane treatment at the hands of a federal immigration system that fails to abide by its own guidelines;
- Assure that our local law enforcement authorities not collaborate with the practices arising from this system; and
- Preserve our country's principle of "innocent until proven guilty".

Both federal and state/local law enforcement have considerable latitude and discretion in how they handle undocumented immigrants. IFA makes the case that local law enforcement can and should use discretion to avoid detaining immigrants and others unless absolutely necessary. The goal is to minimize the unnecessary suffering of people in our communities and the related trauma and expense resulting from incarceration and the separation of families, as well as to improve community safety.

To these ends, IFA has formulated the following recommendations for local law enforcement, including jail personnel.

1) IFA recommends that jail personnel:

- a. Notify families when a spouse or other family member has been detained.
- b. After an arrest, send the alleged offender through the normal local court process, without first calling ICE. Remember that calling ICE is not a reliable method for positively identifying people. It would be more effective to contact the Mexican Consulate, or other consular office, if no acceptable photo ID is presented. (The Protection Department of the Mexican Consulate can be reached at 503-478-0436 to verify identification of foreign nationals in custody.)
- c. After an official charge, apply the same release criteria to immigrants as are applied to U.S. citizens, i.e., release them on their own recognizance or on bail, unless charges warrant their detention. Let the local courts do their work.
- d. After conviction, do not call ICE unless or until foreign nationals have been convicted as ICE "Priority 1, Level 1 offenders", i.e., "aliens convicted of aggravated felonies, as defined in § 101(a)(43) the Immigration and Nationality Act, ... or two or more crimes each punishable by more than one year, commonly referred to as felonies" (see "*Morton Memo*", above).
- e. Keep in mind that communication with ICE is optional for Sheriff's Office personnel. (Note: If the Sheriff's Office insists on having ICE called as a matter of procedure, a policy needs to be established in writing stating the intent of the procedure and stipulating for jail staff when ICE should and should not be called, respecting the distinctions made in the Morton memo.)

2) IFA recommends that patrol officers:

- a. Do not detain ("arrest") or charge immigrants for not having ID when they have presented an acceptable photo ID issued by a foreign consulate.
- b. Do not detain or charge immigrants for not having ID when their state ID has recently been confiscated. In such cases, they should check immigrants' names against the Oregon driver license database to authenticate their self-identification, since record of their license may still be found in that database after confiscation.
- c. Apprise immigrants they are detaining of their right to a free call to their consulate, and provide the telephone number (503-478-0436) and opportunity to make this call in order to be informed of their rights.

3) IFA recommends that all local law enforcement agencies:

- a. Adopt written policies establishing the acceptability of photo IDs issued by foreign consulates (e.g., the Mexican Consulate's *matricula*) as a credible means of positively identifying individuals, as required by International Law.
- b. Train all officers to recognize these foreign IDs as acceptable identification and verify their authenticity.
- c. Require that each officer, including those in patrol vehicles and Sheriff's deputies assigned to the jail, carry a *matricula* decoder as standard equipment.

4) In the meantime, we call on all our law enforcement agencies to focus on public safety and use allowable discretion in order to minimize the suffering of people in our communities and the related trauma and expense resulting from unnecessary incarceration and the separation of families.

Common sense and fairness dictate that we take a step back from current practice while Congress debates broader changes in immigration policy. It is wrong to make immigrants pawns in the political debate. We need changes in federal policies and local practices, and we need it now. In the meantime, we call on local law enforcement to focus on public safety and to use allowable discretion with the local immigrant community.