

A Plea for Compassion and Common Sense:

The Senseless and *Optional* Detention of Undocumented Immigrants by Local Law Enforcement in Deschutes County, Oregon

Report and Analysis by

Immigrant Family Advocates

Bend, Oregon

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Executive Summary

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 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.

Introduction: The Human Toll of Optional Immigrant Detentions and Transfers to ICE

In the past four years, more than 600 Latino families have experienced having a family member removed from their home, job, and society by local law enforcement officers. Over 60% of these individuals were arrested and transferred to immigration enforcement custody on minor charges, charges for which a U.S. citizen would simply be ticketed, and sent home to pay a fine, or to take classes or do community service. Some have even been shipped off without having had any local charges. Individuals entering the ICE system are often “disappeared” from their families for days or weeks. They may also spend months in substandard out-of-state detention facilities under egregious conditions, with little or no due process, before their fate, usually deportation, is determined. As we will show, such practices are not required by state or federal law or policy, and often violate international human rights law.

Local law enforcement agencies play different roles in the deporting of immigrants. Officers patrolling in Deschutes County—including Bend, Redmond, and Oregon State Police, and Sheriff’s deputies —detain individual immigrants and take them to the county jail. The booking officers at the county jail are the people responsible for calling ICE. When confronted with questions about immigrant human rights, local police point to the county jail as the problem, while the county jail points to ICE. ICE could not commit these abuses without the aid of local law enforcement, including especially the county jail.

These detentions and transfers to ICE by local authorities are occurring at a terrible human cost to the detainees and their families, especially the children, many of whom are U.S. citizens. When community members see their family and friends removed from their lives when no significant violation of law has occurred, they begin to feel victimized by our local law enforcement, and they are left feeling unsafe and under siege.

People decide to stay home and off the roads. Many experience depression. The children who witness their fathers being arrested are traumatized as one parent disappears and the other cries and worries constantly. Kids miss school and lose interest in learning. Mothers have to look for work to replace wages lost due to detention of the breadwinning spouse and have less time to care for their children. The family’s ability to function effectively is diminished. Youth lose hope and begin to question the wisdom of investing time and energy in school. Kids we have invested in teaching and preparing for a better future lose interest and drop out, opting to begin work at sixteen to help support their family in order to feel useful. Those who would like to continue their schooling are denied reasonably-priced access to higher education under current discriminatory law.

The costs to families and society, in dollars, include, but are not limited to: legal costs to attorneys and bail bondsmen; agency time, energy and dollars spent helping families cope and survive; employer turnover and training costs; law enforcement costs to transport, process, and house people; law enforcement *opportunity* costs when officers are removed from service while transporting people to jail unnecessarily; immigration enforcement costs to transport, process, house and deport people; school costs to meet special needs of traumatized kids.

These practices constitute an undeniable violation of immigrant human rights, and are of grave concern to us. We believe it is time for an honest discussion of the facts behind these practices. It is time for a little more compassion, a little more common sense. We offer this report toward these ends, and in the interests of a community that strives to live up to its humanitarian values.

Research and Findings by Immigrant Family Advocates

IFA has now done research using the Deschutes County Adult Jail (DCAJ) records for four years, from the start of 2007 through 2010. These data indicate (*in part; see Appendix “A” for more detail*):

- A total of 648 individuals were placed on ICE holds at DCAJ between 1/1/07 and 12/31/10.
- An average of about 130 people per year, or about 2.5 people a week were turned over directly to ICE from DCAJ during this time period.

- 66%, the great majority of those released directly to ICE during this period, have been turned over to ICE as a result of traffic stops or minor infractions, or without any charges at all.

Practices Not Required by Federal or State Law

It is remarkable that neither federal nor state law requires local law enforcement to assume this aggressive posture towards the detention and transfer to federal authorities of undocumented immigrants in Central Oregon.

Federal law traditionally has reserved the enforcement of immigration laws to the U.S. Attorney General and his or her (federal) agents. According to the United States Immigration and Nationality Act, he may also call upon the (federal) employees of the U.S. Department of Justice. Nowhere in the list of the Attorney General's powers¹ is there any indication of authority to call upon local law enforcement inland of U.S. borders. It should be noted that the clarity of the distinction between responsibilities of federal and local enforcement is currently being compromised by current and proposed ICE programs involving locally-based officers.

Furthermore, Oregon Statute 181.850 on enforcement of federal immigration laws, states that:

- (1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

Discretion with respect to the handling of undocumented immigrants by local law enforcement is further clarified and emphasized in Section 2 of the statute:

- (2) Notwithstanding subsection (1) of this section, a law enforcement agency *may* [emphasis added] exchange information with the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and Border Protection in order to:
 - (a) Verify the immigration status of a person if the person is arrested for any criminal offense; or
 - (b) Request criminal investigation information with reference to persons named in records of the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services or the United States Bureau of Customs and Border Protection.

Neither federal nor state law requires the collaboration with ICE that is practiced in Deschutes County.

The "Morton Memo"

ICE policy itself is reportedly shifting to focus more sharply than before on those found guilty of the more heinous crimes. A June 30, 2010, policy memorandum for ICE employees issued by John Morton, Assistant Secretary of ICE,² indicates that priority for "the removal of aliens convicted of crimes" goes to those convicted of serious or

¹ See the "Immigration and Nationality Act" (updated through March 4, 2010), Act 103: "Powers and Duties of the Attorney General...", at <http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=act>.

² See http://www.ice.gov/doclib/civil_enforcement_priorities.pdf for the document: "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,"

multiple crimes. Top priority is given to those convicted as “Priority 1, Level 1 offenders”, *i.e.*, “aliens convicted of aggravated felonies,³ 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.” Even in regard to “aggravated felonies,” Morton’s memo suggests discretion, saying “As the definition of ‘aggravated felony’ includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.”

The memo goes on to say “Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.” (This underlining appears in the memo.)

Arrests of such fragile immigrants continue to occur right here in Deschutes County. A nursing mother was detained and threatened with deportation in Deschutes County for failing to pay a fine. An immigrant boy was arrested by local patrol officers for a bicycle light that was not functioning and delivered to the county jail. Even though he was barely 18 years old and had been cited on an extremely minor issue, ICE was called and the youth was transported to the Tacoma Detention Center.

In October 2010, a father of young children was taken into custody on minor charges. Denied his medication, he had an epileptic seizure in the jail; he fell and had to have stitches. He and other local people have been released from ICE custody pending trial in immigration court in Portland, but then these immigrants, many without valid driver’s licenses, are required find monthly transportation over the mountains just to check in with ICE. ICE refuses to allow them to check in with federal probation officers located in Bend, nor will ICE accept a phone call from clergy on an immigrant’s behalf.

In another recent incident, the family of a young mother of small children, who herself has been in the U.S. since childhood, called local police to seek their help in subduing a family argument. Their “serving and protecting” resulted in her being taken to the jail and put on an ICE hold.

It is people like these for whom ICE agents are specifically directed *not* to “expend detention resources.” The memo explicitly states: “Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.”

While this memo is directed to ICE employees, IFA believes that in the name of humanity and compassion, our Sheriff should help ICE follow its own directives by avoiding calls to ICE in such cases.

The Issue of “Proper” Identification

We understand and appreciate that standard public safety practice entails a check of identification. But failure to produce identification deemed proper by the officer in the field is resulting in a process whereby this failure is used to justify an individual’s being jailed and subsequently “released” to federal authorities. It seems, further, that under present circumstances, the otherwise legitimate check of identification has become the primary tool enabling local law enforcement officers from all agencies to “innocently” detain and thus initiate deportation proceedings against individuals who have not been accused—much less convicted—of any serious crime. This, perhaps inadvertently, is in fact seriously and negatively impacting the community.

³ See Appendix D for a definition and list of aggravated felonies.

Lack of acceptable identification is central to two key steps in the process:

- (1) The officer in the field who stops an immigrant and finds that s/he lacks identification will detain that person and deliver him or her to the jail. IFA believes that steps need to be taken to stop the practice of jailing immigrants simply for lack of acceptable identification.
- (2) The deputies at the jail call ICE, reportedly because they call ICE for any foreign-born persons who are to be booked, but also, allegedly, to identify them. It should be noted that calling ICE is not a reliable method for positively identifying people. ICE databases have been found to be seriously flawed; a report by the Migration Policy Institute found that 42% of all immigration hits from the National Crime Information Center (NCIC) database were false positives.⁴ Also, this “information exchange” with ICE is clearly optional according to OR 181.850 (2), cited above.

We know of no law that requires arresting an individual who cannot produce acceptable identification. Given the new Oregon requirement for “proof of your legal presence in the U.S.” in order to obtain an Oregon Driver’s License or state ID, it is especially important for local patrol officers and jail personnel to consistently respect the internationally-accepted Mexican *matricula* card as verifiable identification. Acceptance of the Mexican *matricula* card would give Mexican citizens valid identification and would remove the need for the jail to call ICE for identification.

Consular registration, like the *matricula*, is recognized by international law (in the 1963 “Vienna Convention on Consular Relations”, signed by over 160 countries, included the U.S. and Mexico) and in bilateral agreements, and is respected by every country around the world. The *matricula* has more security devices imbedded in it than the Oregon driver’s license. The authenticity of a *matricula* card can be determined by law enforcement using a simple pocket-sized plastic device that all local patrol and corrections officers should keep on their persons. The Mexican Consulate states that “in fairness and according to the International Law, Mexican immigrants deserve to have a recognized form of identification, without having to act outside the law, since they make important contributions to the economy of the places where they reside, and the economy of the United States...”

A sense of fair play and common decency dictates that respect for the *matricula* be mandated for all local patrol officers and corrections personnel and that the broader issue of acceptable identification be addressed as well, to reduce the number of unwarranted transfers of undocumented immigrants to federal detention facilities.

Why Deschutes County Law Enforcement Should Not Collaborate with ICE

- Local public safety is not served by this process.
- Local public safety is undermined when immigrants fear local law enforcement officers; they will be disinclined to report crimes, serve as witnesses or otherwise collaborate with them.
- The destruction of families living and working in our communities should never be undertaken with the apparently unaccountable practices currently being employed by local law enforcement in general and especially by the county jail. It violates our charitable traditions and religious tenets. It defies common sense and sound public policy by creating social and economic costs when families are forced to rely more heavily on the community for maintenance because a breadwinner has been detained. These practices also serve to create feelings of resentment and disenfranchisement that will likely have serious, negative multi-generational effects both on the families and on the community at large.
- The ICE detention system is inhumane and inefficient; many of its facilities are privately owned for profit. This prison system treats immigrants as hard-core criminals rather than as the economic refugees that most of them are. The ICE court system is a barrier to due process and civil rights.

⁴ Cited in *Forcing Our Blues into Gray Areas: Local Police and Federal Immigration Enforcement*. (Nebraska Appleseed, 2005), p. 29. (See http://www.neappleseed.org/docs/local_police_and_immigration_enforcement.pdf).

- The frightening social, psychological and economic impacts of the manner in which the majority of undocumented immigrants are treated as a result of being brought to the County Jail are obviously amplified and extended if a detained immigrant is ultimately deported. If our immigration system worked properly, immigrants and citizens alike could be assured that deportations were legal and many might consider them appropriate. But recent research has found an unacceptably high level of errors and inconsistencies in the way the rules are applied throughout the country. Cases of mistaken identity are all too common. And remedies for these mistakes, practically speaking, are non-existent. For the most part immigrants cannot afford to pay an immigration attorney, yet the ICE system does not provide legal aid. There are too many immigrants in the deportation system, so the system chokes on its own overcrowding, delays and inefficiencies. Immigrants fleeing economic oppression, violent crime and corruption in their own countries should not have to pay for U.S. policy failures.
- These failures of our immigration system and the aggressive remedies being applied by both federal agencies and local law enforcement here in Deschutes County likely constitute multiple violations of the Universal Declaration of Human Rights, to which the United States is a signatory.
- Federal administrative policy, itself, has recently re-emphasized the principles of focusing only on those found guilty of serious crimes or deemed serious threats to our communities, and suggests avoiding, whenever possible, the splitting of families (*see discussion of the Morton Memo, pp. 4-5*).
- Finally, it cannot be stressed enough that the Deschutes County Sheriff should not collaborate with ICE because he is not required to do so by law, and indeed, has express permission and authority under state and federal law to opt out of these negative and harmful practices.

Summary and Conclusions

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.

APPENDIX A
SUMMARY OF IFA RESEARCH FINDINGS AND METHODOLOGY
(updated 1/19/11)

Data acquired through public information channels have enabled us to track releases to Immigration and Customs Enforcement (ICE) from the Deschutes County Adult Jail since the start of 2007. ICE is the division of Homeland Security responsible for deportations of undocumented immigrants living inland, away from the borders (the jurisdiction of the Border Patrol and others). ICE's focus is supposed to be on ridding the nation of violent criminals who endanger our communities, whereas, in practice, the majority of ICE activity, at least locally, is focused on those detained as the result of traffic stops and/or minor infractions, if any. Local charges are often dropped once an individual has been put on an ICE detainer.

Every effort has been made to insure accuracy and to extrapolate from the data a true and accurate picture of actual circumstances. In some instances where we encountered a lack of clarity in the data, we have extrapolated with great care, made conservative estimates and provided an explanation. We believe that even accounting for some errors, the data overwhelmingly supports our conclusions, concerns and recommendations. For example, there is reportedly no consistent list of abbreviations for charges used at the jail, no consistent list of release codes, no easy way to determine which inmates have been put on detainers by Immigration and Customs Enforcement (ICE). While we are open to correcting errors due to inadequate communication, we want to make it clear that the proof for what we say and ask is in the bigger picture, rather than in minute details or individual case-related data.

IFA has now done research using the Deschutes County Adult Jail records for four complete years, 2007-2010. Based on the data (summarized from Tables I, II, and III, below), we conservatively estimate that:

- A total of 648 individuals were placed on ICE detainers (holds) at DCAJ between 1/1/07 and 12/31/10, or an average of about 162 per year, or 3.1 per week during this time period.
- An average of about 130 people per year, or about 2.5 people a week, were turned over directly to ICE from DCAJ during this time period.
- While federal law authorizes local detainers only for controlled substance violations, our research (see *Table II, below*) suggests that only some 17% (87 out of the approximately 515) of identifiable ICE releases from DCAJ in this four-year period were charged with controlled substance violations. Detainers unrelated to controlled substance charges are not authorized by law.
- 66%, the great majority of those released directly to ICE during this period, have been turned over to ICE as a result of traffic stops or other minor infractions, or without any charges at all.

TABLE I: ICE DETAINERS ISSUED AT DESCHUTES COUNTY ADULT JAIL		
1/1/07-12/31/10		
Year	Total ICE Detainers	Average Number Detainers per Week
2007	238	4.58
2008	172	3.31
2009	140	2.69
2010	98	1.88
TOTALS	648	3.12

Detainers imposed by ICE at DCAJ represent part of the overall picture. They are important to IFA because they give a clearer picture of the total numbers turned over to ICE through the efforts of our Sheriff's Office (see *Table I*). Almost without exception, everyone put on an ICE detainer in Deschutes County sooner or later will be turned over to

ICE for deportation proceedings. The number of detainers imposed in Deschutes County is consistently higher than the number of releases to ICE from our jail for the same time periods, because:

- (1) Detainers and releases for any given individual can easily occur within different time frames; and
- (2) The releases to ICE of a number of individuals who are placed on detainers at the Deschutes County Jail are not included within our criteria (*see note at the bottom of Table II*) because they are not released to ICE directly from DCAJ.

Statistics below (*Tables II and III*) provide information on releases from the jail that IFA has tracked.⁵ We have done our best, given the lack of a list of consistent codes for charges, to translate the “charges” codes into those we consider traffic violations or minor infractions, charges likely to be more serious, and those related to controlled substances (*please note the consistently high percentage of minor charges*). Most of IFA’s attention is focused on the “minor infractions” or “no charges” cases because they reflect the most questionable or problematic ICE detentions. Those convicted for serious crimes are frequently released to state prisons. We have no way to track these individuals since release records give no indication whether they are on ICE detainers. It is our belief that not even one individual should be held for ICE in our jail unless or until s/he has been convicted of a serious crime that is on ICE’s list of high priorities.

TABLE II: NUMBERS AND PERCENTAGES OF PROBABLE DCAJ ICE RELEASES—1/1/07-12/31/10										
Year	No Charges		Charges for Minor Infractions		Possibly more Major Charges		Controlled Substance Charges		Totals <i>(percentage totals not 100% reflect rounding)</i>	
	Num-ber	% (for year)	Num-ber	% (for year)	Num-ber	% (for year)	Num-ber	% (for year)	Num-ber*	Ave/no./ week
2007	10	5%	125	64%	28	15%	27	14%	190	3.65
2008	4	3%	92	62%	29	20%	23	16%	148	2.85
2009	5	5%	55	56%	17	17%	21	21%	98	1.88
2010	3	4%	45	57%	15	19%	16	20%	79	1.52
TOTALS	22	4%	317	62%	89	17%	87	17%	515	2.48

NOTE: Figures in this table reflect only those individuals believed to have been released directly to ICE (“Rel to” “KLAM,” “ICE”, or “INS”, not those released to police departments, other counties, state prisons or U.S. marshals, etc.)

Interestingly, recent tracking has shown significant variation in numbers of individuals being released to ICE. For example, we tracked a 55-day period without a single release to ICE. This period ended on 2/11/10, when releases to ICE resumed at close to the earlier average.

On June 30, 2010, ICE headquarters issued a memorandum to its agents, which deemphasized the detention of immigrants who had committed minor offenses (*see above, pp. 4-5*). Despite this memo to ICE agents, statistics from Deschutes County took the opposite direction. Statistics from the Deschutes County Adult Jail indicate that 29 immigrants with minor or no recorded charges were transferred to ICE custody from July through December 2010. Statistics from 2009 during the same time period for DCAJ were lower, 18 immigrants detained for minor offenses or none at all. This represents an increased percentage of all immigrants booked and released in that period; that is, 66% minor or no infractions charged in 2010 as contrasted with 58% for the same group in 2009 (*see Table III*). While taking a sampling from such a small period of time may not be statistically significant, IFA finds this increase disturbing, especially after the new directive was issued, and hopes these statistics are not indicative of a new trend.

⁵ The selection of release listings IFA tracks is based on “released to” information provided by the jail and includes those released to “ICE” or “INS” and those released to “KLAM”ath County with Hispanic surnames. (Re: “INS”: Immigration and Naturalization Services, which—in fact—ceased to exist when Homeland Security was brought into being and reorganized immigration-related agencies. Re: “KLAM”: Jail personnel have indicated that the first destination of inmates transferred to ICE from the Deschutes County Jail is normally the Klamath County Jail.) Over this entire period there were only one or two identifiable individuals released to ICE who did not have Hispanic surnames, strongly suggesting a disturbing trend of racial profiling on the part of local law enforcement.

TABLE III: RECENT INCREASE IN “MINOR CHARGES” RELEASES TO ICE FROM DCAJ				
Booked into and released from DCAJ to ICE in the 6-month period from July through December	2009		2010	
	Number	% of total for period	Number	% of total for period
...with no charges or charges related to minor infractions	18	58%	29	66%
Totals for period	31	100%	44	100%

Like the number of releases to ICE, the number of detainees imposed has also decreased over the years; precise reasons for these decreases are impossible to determine. One factor to consider is the possible decline in immigrant population due to the lack of available jobs during the present recession. Another perhaps more important factor—of which IFA has first-hand knowledge—is that our families with undocumented parents are opting to stay home more and drive as little as possible given their inability to obtain a driver’s license in Oregon—and most arrests occur in relation to driving. We will continue to monitor the situation and hope to document decreases in the future due to change in policies and/or practices of local law enforcement, especially jail personnel.

APPENDIX B **THE LONG DARK JOURNEY OF DETENTION—CASE HISTORIES**

The following stories reflect a certain degree of success that IFA and others have had in assisting immigrants in detention. However, such successes are extremely rare, and there is a desperate need for systemic change in the way that undocumented immigrants are dealt with by local law enforcement.

The Deschutes County Detention Process as IFA Understands It

Gradually, over the years of IFA research, a picture has emerged of the journey faced by an immigrant who has been detained under the aegis of the Deschutes County Adult Jail (DCAJ). The process of detention and deportation, normally begins for an individual when s/he is apprehended by law enforcement officers (normally Deschutes County Sheriff’s deputies; or Bend, Redmond or Oregon State Police), most often for traffic stops and/or minor infractions. If the person fails to show identification satisfactory to the detaining officers, s/he is taken to DCAJ and turned over to jail personnel. The responsibility of the patrol officer most often ends with this transfer.

The process by which local immigrants are fed into the deportation process is normally initiated when a detained person of foreign origin is being booked into the jail and the jail calls ICE, purportedly to verify the person’s identity (whether and how this would work is unclear) and determine whether “red flags” show up on the ICE database in regard to that individual. After an extremely brief interview on the phone between an ICE agent and the arrested immigrant, if the agent questions the immigrant’s right to be in the country, s/he tells the officer at the county jail to put the person on an ICE hold or “detainer”, which means that they are to be released to ICE within 48 hours (excluding weekends or holidays) of the time their business with the local court—if any—is concluded.

Most of these immigrants remain in custody in the county jail until at least a first court appearance via video transmission in the county court. When the offense committed is minor, the court often drops the local charges at this first hearing. However, these individuals are not released but are soon aboard an ICE van, which takes them on a circuitous journey through Oregon and then drives north through Washington to the Tacoma Detention Center. This journey lasts four or five days during which it is difficult to contact family, so family members often do not know where they are.

Other arrested immigrants stay in jail awaiting plea agreements or trial, involving various court appearances for their state or local charges. Those convicted may serve their entire sentence in the jail and then be released from the jail to ICE. Or, they may serve part of the sentence in the jail before being transferred to a state prison or other jurisdiction for completion of their sentence before being released to ICE. Even if exonerated, those on ICE holds are held for release to ICE. During much or all of this entire process contact with family is extremely limited, if permitted at all.

Once “released to” (transferred to the custody of) ICE, the great majority of these people—most of whom are husbands, fathers, wage-earners, hard-working contributors to our community—start an arduous four or five day journey to Tacoma, via detention facilities in Klamath Falls, Medford and other jurisdictions. During this trip (as is true whenever prisoners are “in transit”), no one knows where they are. Finally they arrive at the privately-owned Tacoma detention center where appalling conditions prevail.⁶ They often stay here for weeks, months, or years, awaiting their “day in immigration court”. Since there is a “removal order” in place for them, it is up to them to show why they should not be deported. (There are circumstances that can work in their favor, for example, their having been in the country more than ten years, having children who are U.S. citizens, their facing persecution or torture in their home countries, etc.) No public defenders are provided in immigration cases; attorneys charge thousands of dollars to defend someone. Finding a (nearly) free attorney from a non-profit agency is close to impossible for most. The vast majority of those reaching Tacoma are deported.

All branches of local law enforcement—including the county jail are complicit in this deportation system. Patrol officers’ arrests and the cooperation of Deschutes County Adult Jail with ICE means that hundreds of individual immigrants have been deported from Deschutes County for minor charges like traffic tickets. According to the recent memo from Assistant Secretary Morton, ICE is now prioritizing its attention away from such individuals. Neither corrections nor patrol officers are required by law to aid ICE further this process.

Case History #1 **“My Experience with the Immigration”** *by “José Gómez”*

I have been in the United States since I was four years of age. My personal experience with the Immigration I.C.E. started on June 22nd 2007. I was arrested for an accident which I admit that I caused. I made an unlawful left hand turn and was hit by an oncoming vehicle. While in a detained cell at the Bend Police Department a phone call was made from an I.C.E. officer to me. The officer asked "Are you 'Jose Gomez'?" I responded with a 'yes,' and he said "Have you ever been deported before?" I responded with a no. He said "Don't give me that shit!" So I said "I do not know what you are talking about." I gave the phone back to a Bend Police Officer and he hung it up. Now this conversation probably was recorded and to be spoke to this way is absolutely absurd. To automatically be accused of being deported before and of lying to the officer I knew I was in for a long difficult journey. I went to court for the accident and no charges were filed. The judge notified me that there was an immigration hold on me and I finally was able to call my wife to let her know that soon I would be moved to another facility and I loved her and my children and somehow I would call or write. I was awakened at about five thirty in the morning with the other detainees and loaded into a van. We were taken to Klamath Falls and stayed there for one night. Then we were hauled into a van with

⁶ Conditions at the privately owned detention center have been documented by at least three human rights watch organizations. The food is inadequate both nutritionally and in quantity. Insect larvae have been present in the food. Prisoners can buy only poor quality food, like Top Raman, at a small prison store. A private phone company has a concession at the detention center, and this company charges outrageous fees to prisoner’s families. When the detention center becomes crowded prisoners are housed in tents in a court yard. Many prisoners arrive without adequate clothing. If a prisoner remains at the detention center for several months the likelihood of permanent health damage increases due to the poor quality of the food and the lack of exercise. A list of the 107 ICE prisoners who have died in detention centers from 2003 through January 2010 is here: <http://denverabc.files.wordpress.com/2010/01/icelistofdeathsindetention.pdf> One of these deaths was at Tacoma.

stainless steel benches and no seatbelts trying to hold on to each other while the van went around curves, it was unpleasantly dangerous. We finally arrived in Medford the next day which was an I.C.E. facility. They took my back ground history of when I came into the states, how and with whom. They basically wanted my life traveling history. After the interview process we were sent to Josephine County in the same van. We stayed there about one and a half nights. We had to get back into the same van and arrived in the Portland main I.C.E. facility. We were processed again the same way we were processed in Medford. They took fifty people straight to Tacoma while the rest of us went to Columbia County jail in the same van which was about twelve. We stayed there over the weekend and were taken back to Portland. Now there were men crying, talking about their families. The women crying for there children because they were just picked up from work and did not know where there children were. The ride was emotionally terrifying. I could not help but cry for my family and being moved from place to place I prayed that I would be seen by my family and thoughts in my head to just be seen by another human being again. I could not help but thoughts cross my mind of what happened with the holocaust. It's what happens to you in time of distress and no control of what is going to happen to you.

After arriving back in Portland they took us on a bigger bus it said "Home Land Security." They drove us all the way to Tacoma where I would have my nine month court battle. In the Tacoma facility there were detention officers who treated us as if we had no rights to be on this earth. Every inmate there had questions wanting to know when they had a court date, whom was going to be in charge of their cases. Basically they had questions that would never be answered. They were told to send a kite. Which if you are not inmate savvy you would not know what that meant and being told that in English you basically were not answered. A kite is a form that you have to fill out and put in an officers box, that may or may not be looked at or answered. You are given a 1-800 number to find out your court date, but 85% of the time that did not work, let alone the phones working. There were four phones and two worked. They would cut you off but still take your money from your phone card which is the only life line that many inmates depended on, if they could afford it. Now here are the basics of living at Tacoma:

Food: To begin with they gave you only the tiniest portion, and all of the food was stale, or rotten. We were served ground beef everyday that had no flavor or texture, hopefully it was ground beef. Now none of this is exaggerated. I personally called the health department because the inmates were scared we had maggots in our beans. This call should have been recorded. They called in the officer in charge of the kitchen, and she did in fact find the maggots and told them they would bring back some food. They did not arrive until two hours later but at least we ate that night. If you were able to obtain money from your family or whomever you were able to purchase food from the commissary, if not you were severely malnourished until fellow inmates offered to help you. I decided to work in the kitchen, so I could make a dollar a day. I needed to eat as much as I could [to make up for previous malnutrition], and I knew men there who were loosing weight too fast, so I got food for them. It was a while before I got any money, and when commissary came once a week, everyone was hungry, and we shared all our food.

Laundry: When arriving I was issued a blanket, I sent a kite to the Warden asking how come I was not issued a blanket in two months the one I received was the same one I was sleeping with two months later! Luckily I knew someone in laundry that washed my blanket. I decided to work in the laundry, because that was my only way to have clean laundry, blankets and to help the other inmates.

Medical: There was a man dying. He was really skinny when he came into the facility. He could not stand to get help. The inmates told the detention officers and no one came. The inmates demanded the warden to come because the man was dying. The inmates made an uproar for more attention until they took the man. Basically the officers say "go to sick hall." That does not help any if you can not walk and are dying. It was hard to sleep that night because I have severe asthma, and if I had an attack I knew I would die there. I was not always provided with inhalers while in the facility.

Mail: There would be people waiting for an attorney letters and they would not pass out letters until they were ready to, sometimes late at night and people would have to call there attorneys the next day or over the weekend.

Court Dates: Well, I never had the same judge through all seven court hearings. Each judge had a different point of view. That was the hardest to walk in and have my two minute court hearing and not understand the court lingo. All the prosecutors demanded my deportation with the exception to my last hearing which she happened to be Asian and the judge who granted my release was colored, with an accent. Thank God! She approved all of my paperwork and gave me back my life.

I survived the Tacoma detention facility. After nine months I was given back the right to live with my family and be an active member in the community. The way people are treated by the immigration is absolutely outrageous. I still have dreams of officers there cussing and yelling and wake up not wanting to look out of my blanket, but when I do I am home. If you ever did have a disagreement with an officer you filled out a grievance that did nothing! I have a lot to say more than what you can read here, a lot more, but it would take all my energy out of me. I hope this helps people understand about the immigration. US Immigration I.C.E. does not care that you have a family, job, friends, or that you are human. I.C.E. really needs to answer for the care provided to humans in their facilities and for their judges who are sent to sit at a two minute hearings like a merry-go-round.

Case History #2 **The Story of “Samuel Rodriguez”—March 2010** *(compiled/edited from church member reports)*

“Samuel Rodriguez,” a Bend husband and father of four, was pulled over by the Oregon State Police shortly before midnight on Saturday, March 20, 2010, for allegedly driving under the influence of intoxicants. Even though he carried a valid Oregon Driver’s License for identification (expiration date: 2016), he was taken to the Deschutes County Adult Jail, where an ICE detainer was placed on him. The first question they asked him was whether he had a social security number, and he said no. After only a few more questions they called ICE. Samuel, having lived in this country for 11 years—three of them in Bend—is well known to members of Bend’s First Presbyterian Church, through his children’s involvement in activities there. They are reportedly “one of the nicest families you could ever meet”.

The mother in this family called a church member for help on Sunday morning. On Monday, church members went with his family to the hearing. “Our hearts broke as the children and the mother cried helplessly watching their father on the T.V. monitor from the jail,” one said. They knew that whatever was decided about the DUII would not undo the ICE detainer.

The next day, 8:00 a.m., with the church pastor present in support, some went to the Sheriff’s office and asked them to release Samuel to clergy. They said they could not release him. They told us the local charges had been dropped, but he that he had an ICE (immigration) hold and that he was already on the ICE van traveling first to Klamath (even though we later learned that the van was still there when we went into the jail’s waiting room). People protested with signs at the jail. They also notified the media. A misdemeanor DUII is not supposed to be a deportable offense.

“We did some protesting against ICE until 10:30 that morning, and then began to call the Medford office of ICE. One of the Sheriff’s deputies at the Deschutes County Jail gave us the ICE phone number in Medford. So some of us from our church began calling Medford (one of the earlier stops on the immigrants’ route to Tacoma), to ask if there was any way he could be released. We were very polite, but told of the plight of this family if the father—the only breadwinner—was sent away.” We made so many calls that at least one phone for ICE at Medford was shut down.

When Samuel (still in custody) arrived in Medford on Wednesday, 3/24, he signed papers and—miracle of miracles—was released that afternoon, along with another detainee from Redmond.

Samuel phoned his wife from a restaurant in Medford, and some of his neighbors drove to Medford to get him. He arrived safely at his home at 1:30 AM Thursday morning. Before all this happened, Samuel had been out of work and had just secured a new job, which he was able to keep. Some people from the church bought the family groceries and agreed to continue their walk with this family.

Once back in Bend the local court assigned him to its DUII diversion program that requires him to take DUII classes. He cannot get his Oregon driver's license back; all avenues of restitution are closed. After one initial appearance at the ICE office in Medford, he now must report to the ICE office in Portland about once every two months. This required appearance forces him to miss a work day each time. He will have an ICE hearing in Portland in the spring of 2011. The church is purchasing his bus tickets to Portland -- \$88 round trip from monies donated to help his family at the beginning of his ordeal. His attorney fees for the immigration hearing will be paid by a private individual. So far a \$2,000 retainer has been paid. There is no way a family like this one, living below the poverty level, can pay the fines, fees, etc. that ICE demands from them.

One of the church members commented, "It does pay to make our opinions known, even to such an elusive agency as ICE! We continue to maintain that Sheriff's Office personnel should only call ICE when legally required to do so—which is not the case for a situation like this. Three days of terror for a family with four children could have been stopped if our sheriff had used more discretion. Our local sheriff starts the process of deportation by picking up a telephone to call ICE when anyone who is foreign born enters the jail."

Case History #3 **The Story of "Susana" and "Fernando",** *by an IFA member*

In October 2009, at 7:00 in the morning, the Bend Police arrived at the door of a Bend family to arrest the mother of three young boys, the youngest still nursing. He had never had any nourishment other than his mother's milk.

The mother, whom we'll call Susanna, was whisked off to jail for a petty theft charge two years old, for which the family had neglected to pay a fine. The father's attempts to communicate there were futile; the only Spanish-speaker scheduled for that shift was absent that day. So about noon he turned to the Latino Community Association for help; Executive Director Brad Porterfield called me in to help.

The father, whom we'll call Fernando, and the three boys spent the entire afternoon between the jail and the courthouse, with a couple of brief stops back at the LCA Office. Obstacles to gaining Susana's speedy release cropped up throughout this time.

- First, we were told she might be able to get out on bail, paying a bond of maybe \$100 or \$1,000,... but then were immediately informed that that wouldn't work because she had been put on an ICE hold.
- Then the lieutenant in charge said there was no way Fernando or the hungry baby could visit with Susana.
- While Brad initiated calls to immigration and the Sheriff's Office, we went to the courtroom where Susana was to be re-sentenced on the petty theft charge (by video from the jail). We talked with the Deputy District Attorney (DDA), who was ready, if the fine was paid, to accept her time served in the jail in lieu of the community service she was supposed to have done. (Susana had never understood anything about the community service—they are an indigenous couple and she speaks little Spanish.). But the DDA was also powerless to do anything about the ICE hold.
- After Fernando paid the fine and we returned to the jail, the lieutenant in charge then informed us that the first day in jail always had to be a full 24 hours, so even if through some unheard of miracle Susana were to have her ICE hold cancelled, there was no way she could be released from jail until 7:44 the next morning. (I later showed a friendly sergeant that the DDA had written "done" beside the "time served" stipulation.) Meanwhile, jail personnel, too, were making a call to ICE (Brad had heard there was at least a possibility the hold might be dealt with).

Finally, at 6:00 pm, after waiting in the parking lot an hour after the jail lobby was closed, we were able to greet Susanna as she emerged from the jail.

So, thankfully, our goal of securing Susana's release was met; she was reunited the same day with her family—totally contrary to the normal outcome for ICE holds.

But there is more than this happy ending to the story. Fernando is now involved, too, and they're both now to appear before the immigration court in February 2011. So the ultimate outcome is still to be determined, but at least they are together now and able to plan with each other to the degree possible for what is to come.

Three priceless pictures from that October day remain in the heart of this writer:

1. In the jail lobby, Fernando sitting in a chair with the three sleeping children: the baby nestled in one arm, the three-year-old straddling the other knee and leaning on his shoulder, and the eldest in the next chair, with his head in his father's lap.
2. By the jail parking lot, the two older boys and their little cousin (a girl) holding hands together as they played in the grass.
3. In the jail parking lot, with the whole family standing around while an officer from the jail waited for me to get off the phone with the ICE agent. I commented to the officer about how beautiful it was to see Susana free and lovingly holding the baby. The officer looked, and it was then that I could see that Susana was discreetly but clearly nursing him. The officer obviously felt the emotion of the moment.

APPENDIX C **HUMAN RIGHTS CONSIDERATIONS**

Throughout "A Plea for Compassion," numerous references to human rights have been made. In this Appendix, we seek to elaborate further on this area.

Our sense of morality and humanity is violated by the optional practices of local law enforcement in regard to immigrants, based as they are on broader U. S. domestic policy, in which human rights violations are inherent and rampant:

- Creating demand for labor through our domestic economic policies,
- Creating a supply of foreign labor through our foreign trade policies,
- Operating an immigration visa system that ignores these realities, and, subsequently,
- Operating law enforcement and regulatory systems that punish and criminalize productive foreign workers for working without official authorization, and
- Denying the same workforce and many of their family members the public benefits lawfully accorded to them as tax-paying contributors to society.

We encourage reflection on each one of these points individually, as each contributes in a unique and significant manner to the overall problem. These inevitable consequences of broader policy clearly are not to be blamed on Deschutes County law enforcement. But their existence needs to influence our decisions and actions in regard to our local community.

The Roots of Migration

Immigrants have not come to Deschutes County to take our jobs. Most have come because they were unable to sustain their families on the jobs available at home. Many would prefer to be in their home countries. But foreign trade policies like the free trade agreements NAFTA (affecting Mexico, signed in 1994), and CAFTA (affecting the Central American countries and the Dominican Republic, signed in 2005), have had the effect of draining their countries of job opportunities, especially those for farmers and unskilled workers.

In Mexico, for example, after the passage of NAFTA, many farmers left their little subsistence plots of land for employment in factories. By the time the factories closed (not many years after they opened), the farmers' small plots had been bought up by international agribusiness, leaving the people stranded with nothing. Some small farmers, who had grown food crops for sale, found their crops now undersold by U.S.-subsidized produce exported to Mexico and again leaving the farmers without income. The people were left without recourse. Many came to the United States to eke out a living for their families.

Many undocumented Mexicans and Central Americans here today are truly economic refugees, due to the failed policies of NAFTA and CAFTA. These economic factors are the roots—the causes—of their migration to the U.S.

The majority of undocumented immigrants in the U.S. came here with valid visas which have since expired; most of those visas are not renewable. The great majority of people who have crossed the border without authorization have done so because they have seen no alternative. Most would not meet the strict requirements for visas in their home countries. Now that they are here and members of our communities they need to be treated as such as we all await the reforms needed in trade and economic policies as well as those related to immigration.

IFA believes that every human being, every family, has the right to access to work that reflects human dignity and provides compensation adequate for sustenance.

Other Human Rights Concerns

On a more local level, other human rights concerns surface as we consider the treatment of the immigrants present among us. As an example, IFA believes that access to Identification is a human right. Without ID it is more difficult to get a marriage license, it is impossible to open a bank account, it is impossible to get auto insurance or to register a vehicle. At present, without ID, local immigrants are being jailed and deported, their families separated, their breadwinners taken. The lack of access to ID may be a state issue, but local officials can opt to treat those who lack ID compassionately.

The same is true in regard to other human rights. We are to act toward one another in a spirit of brother- and sisterhood. No one is to be subjected to arbitrary arrest or detention. Everyone is entitled to full equality in fair, public hearings in impartial courts. All have the right to be presumed innocent until proven guilty in a court in which they have access to adequate defense.

According to the United Nations "Universal Declaration of Human Rights," of which the U.S. is a signatory (*see below*), immigrants in Deschutes County should not be fed into the ICE system in the manner in which this is happening, especially by those aware of the effects this process has on their families and on our community. We can and should change our policy and practice.

The Universal Declaration of Human Rights

It is clear from the 1948 United Nations Universal Declaration of Human Rights, of which the U.S. is a signatory, that every human being shares inherent and equal dignity and equal rights, without restriction, and that those rights are to be respected. A quick read of the excerpts below reveals the ways in which the human rights of Deschutes County immigrants are being violated. (*Please take special note of the ideas in italics, provided for emphasis.*)

Excerpts from the Declaration

(The complete version may be seen at <http://www.un.org/en/documents/udhr/index.shtml>)

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights...

PREAMBLE

Whereas recognition of the *inherent dignity and of the equal and inalienable rights of all members of the human family* is the foundation of freedom, justice and peace in the world,...

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in *the dignity and worth of the human person* and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, ...

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

Article 2. *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, ... national or social origin, ... or other status....*

Article 3. *Everyone has the right to ... security of person....*

Article 5. *No one shall be subjected to..., inhuman or degrading treatment or punishment.*

Article 6. *Everyone has the right to recognition everywhere as a person before the law.*

Article 7. *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration*

Article 9. *No one shall be subjected to arbitrary arrest, detention or exile.*

Article 10 *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

Article 11 (1) *Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense....*

Article 12. *No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks....*

APPENDIX D **DEFINITION AND LIST OF AGGRAVATED FELONIES⁷**

Because the primary focus (Priority Level 1:1) of ICE detentions and deportations is to be upon those convicted of aggravated felonies, it seems appropriate that a definition and list of these crimes is included in this paper. In United States immigration law, the term aggravated felony is defined more broadly than in state law, and the list of aggravated felonies has been redefined several times to include more crimes.

The definition of aggravated felonies appears to refer to a broad category of crimes that carry certain severe consequences for aliens seeking asylum, legal permanent resident status, citizenship, or avoidance of deportation proceedings. When the category of "aggravated felonies" was added to the Immigration and Nationality Act in 1988, as a response to heightened concerns about drug abuse, it encompassed only murder and trafficking in drugs or firearms. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) both tremendously expanded the category. AEDPA added crimes related to gambling and passport fraud; IIRIRA added a great many more crimes, including certain crimes of a

⁷ Sources for this Appendix include *Wikipedia* (http://en.wikipedia.org/wiki/Aggravated_felony) and such articles as "'Aggravated Felony' Defined—When is a Criminal Conviction Considered Serious?" by Vikram Badrinath, P.C., at: <http://www.vkblaw.com/law/aggravated.htm>.; and "The Evolving Definition of an Aggravated Felony"⁷ by Socheat Chea of Socheat Chea P.C., at: <http://library.findlaw.com/1999/Jun/1/126967.html>.

sentence of at least a year regardless of whether the sentence had been suspended. Under present law, 8 U.S.C. § 1101(a)(43), aggravated felonies include the crimes on the following (unadorned) list :

1. Murder, rape, or sexual abuse of a minor
2. Illicit trafficking in a controlled substance, including a drug trafficking crime
3. Illicit trafficking in firearms, destructive devices, or explosive materials
4. Money laundering (see 18 U.S.C. § 1956)
5. Certain explosives and firearms crimes (see 18 U.S.C. § 842, 18 U.S.C. § 924, and 26 U.S.C. § 5861)
6. "Crimes of violence," as defined in 18 U.S.C. § 16, for which the sentence imposed was one year or greater
7. Theft or burglary offenses, for which the sentence imposed was one year or greater
8. Making ransom demands (see 18 U.S.C. § 875 et seq.)
9. Certain child pornography crimes (see 18 U.S.C. § 2251)
10. Racketeering crimes, for which the sentence imposed was one year or greater
11. Prostitution crimes, supervising prostitutes, or transporting persons across state lines for purposes of forcing them into prostitution
12. Disclosing national security information
13. Fraud on another person or against the government, where the amount of loss exceeds \$10,000
14. Alien smuggling
15. Illegally entering or reentering the United States
16. Passport fraud, for which the sentence imposed was one year or greater
17. Failing to report to serve a prison sentence
18. Bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers
19. Perjury, tampering with witnesses, or obstruction of justice, for which the sentence imposed was one year or greater
20. Failing to appear in court in relation to a criminal prosecution where the potential sentence is two years or more
21. Any attempt or conspiracy to commit any of these offenses

Both the inclusion multiple times in this list of the phrase "for which the sentence imposed was...", and the "innocent until proven guilty" principle suggest that conviction should precede detention by ICE of anyone accused of an aggravated felony or other lesser crimes.

The list of aggravated felonies is so broad that in the "Morton Memo" (see p. 4), ICE employees are urged to focus their attention on "the most serious" of the aggravated felonies when prioritizing among level one offenses.

APPENDIX E **IMMIGRANT FAMILY ADVOCATES (IFA)**

Immigrant Family Advocates (IFA) is a local group, diverse in gender, age, ethnicity and faith perspective, working toward a mutually-acceptable resolution to immigration-related community concerns.

IFA'S Mission is . . .

To promote a safe and welcoming local community for our immigrant sisters and brothers through research and information sharing, constructive dialogue, coalition-building, educational outreach and public policy advocacy.

IFA seeks to . . .

1. *Form a framework to increase information-sharing and collaboration among local law enforcement agencies, public officials, and the community at large.*
2. *Establish mutually agreeable parameters for local collaboration with ICE.*

3. *Clarify and broaden the list of forms of identification consistently accepted in all local jurisdictions, to reduce the number of detentions of undocumented individuals for lack of acceptable identification.*
 4. *Assure accessibility to some form of acceptable identification and driving endorsement for undocumented individuals. IFA believes that access to identification documentation is a human rights issue, that no person should be denied identification documents. Additionally, for safe driving conditions for everyone, all drivers should be required and able to take and pass a test to obtain drivers' licenses or other legal written endorsement for their driving, as well as access to auto insurance and vehicle registration.*
 5. *Work for the passage of federal legislation that would clarify, streamline and further humanize the treatment of immigrants. At the very least, this should include the Dream Act, which would provide a path to documentation for a significant segment of the local undocumented population, as well as improve their access to education.*
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