

# Hold on, ICE

*Activists continue to find fault with sheriff's cooperation with Immigration and Customs Enforcement*

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Miguel Hernández, not his real name, really wanted a drink and a night out. What he got was a detention from U.S. Immigration and Customs Enforcement (ICE).

The 26-year-old Mexican immigrant and part-time auto-body worker was arrested in early August at a downtown nightclub after he attempted to enter with a fake ID. An Oregon Liquor Control Commission officer confirmed Hernández's ID was forged. This landed the long-time Portland resident with a felony booking. And because Hernández was in the country illegally, the Multnomah County Jail held him for ICE.

If you're in the U.S. illegally and you're arrested on certain qualifying charges, ICE can request local law enforcement detain you an additional 48 hours. ICE has long claimed these detentions are intended to keep dangerous criminals off the streets and allows ICE the time it needs to deport them. However, in practice, nonviolent people have also been detained and deported, and often for minor infractions.

Here in Multnomah County, Sheriff Dan Staton continues to honor these ICE I-247 Immigration Detainers. But responding to pressure from activists and Multnomah County commissioners, the sheriff has abandoned his earlier conciliatory relationship with the federal immigration enforcers for a more nuanced and lenient one. But immigrant and civil rights advocates say cases like Hernández's reveal cracks in the sheriff's ICE policy where nonviolent individuals still slip through.

"You can get charged with many charges," says Jaime Guzman from the immigrant advocacy group Oregon DreamActivist, "and by the end of the day they might all get dropped. And by the end of day, you already have an ICE hold regardless."

This is what happened to Hernández. He was booked on a felony, but at his arraignment the district attorney lowered his charges to a B misdemeanor. Lowering charges at arraignment is common, however, Staton's current ICE policy doesn't

account for it.

The sheriff's policy states it will honor ICE holds based on the charges at the time of booking. Qualifying charges are felonies and class A person misdemeanors — these are crimes that are inflicted directly on individuals, things like child neglect and assaulting a police officer — or when ICE presents a warrant or an affidavit. Policy aside, in practice the jail has honored holds if the charge was a qualifying one at the time ICE made its request. Hernández's request came after his booking but before his arraignment. His hold stuck, and Hernández isn't the only person with a petty charge who has gotten caught up in ICE's deportation dragnet.

Beginning in late 2008, the first reports of people being deported after encounters with local law enforcement started rolling in from members of Portland's immigrant community and the lawyers representing them in the courts. In December 2010, the Portland Human Rights Commission released a study confirming these reports. People were deported often for minor offenses. The Portland Police Bureau even raised concerns that mere traffic citations were leading to a rise in deportations.

Just how many nonviolent people ICE has deported since the start of its detainee program is a bit of a mystery. Nonetheless, this spring, in testimony to the House Judiciary Committee, ICE Director John Morton offered some clues.

Last year, Morton told Congress that ICE deported 409,849 individuals. According to him, roughly half of these deportations were people who had been convicted with felonies or misdemeanors. Of these, only 1,215 were convicted of homicides — that's roughly 0.5 percent; only 2.5 percent of arrestees were sexual offenders; and roughly 34 percent of cases were drug- and alcohol-related, leaving 63 percent of arrestees unaccounted for.

Due to the current government shutdown, ICE was unavailable to comment for this story.

Responding to concerns in Portland, Multnomah County commissioners held

public

hearings on the issue. In April of this year, the commission unanimously passed resolution 2013-032, which outlined under what conditions the county will continue to honor ICE holds. The sheriff's new policy came shortly after, closely following the resolution. Both policies are more lenient than ICE's own recommendations. Regardless, activists say the county might not need to honor the holds at all.

"It's both our advocacy and our legal position that they (Multnomah County Sheriff's office) are violating the state law and these requests are coming without any probable cause," says Becky Straus of the Oregon ACLU.

Straus says it's questionable whether local law enforcement is obligated to honor the detentions, saying more often than not, detention requests from ICE are just that — requests — and don't come attached to legal obligations, such as warrants. That, says Straus, means they're largely voluntary, not mandatory.

"These requests are most often coming without any probable cause of criminal wrongdoing, which, as we know, is an unconstitutional hold," says Straus.

In September 2012, the Oregon ACLU sued Multnomah County and the Multnomah County Sheriff's office on behalf of Portland resident and ICE detainee Miguel Cabrera Cruz. The lawsuit argued ICE detentions violate Oregon Statute 181.850, which bars local law enforcement from using its funds to apprehend anyone whose only violation is breaking U.S. immigration law. The judge disagreed and ruled in favor of the defendants. The Oregon ACLU plans on appealing the ruling.

As the Oregon ACLU plans its next offensive, other activists are petitioning the sheriff's office to release individual ICE

holds.

Hearing about Hernández's case from his friends, Guzman and others in the Activists

Coming Together for Justice and Dignity Network, or ACT Network — a coalition that includes Guzman's Oregon DreamActivist, Portland Jobs with Justice, and the Center for Intercultural Organizing, among others — then barraged the sheriff's office with phone calls and emails requesting Hernández's release. The group also held a protest in the Multnomah County building, where Sheriff Staton keeps an office. The sheriff responded.

"The sheriff agreed to look at the case and judge it on a case-by-case basis," says Chief Deputy Drew Brosh about the incident. "It was discovered that yes, the felony charge which we had at time of the detainer [sic] request was dropped to a misdemeanor...the sheriff made the decision to release."

Sheriff Staton was unavailable for comment.

Seventeen days after his initial arrest, Hernández posted bail. His lawyer, John Edward Schlosser, who asked that we not use his client's real name, says Hernández later plea-bargained down to a violation, paying a \$200 fine.

Responding to the Hernández case, at a September 23 meeting with ACT Network members and representatives from the sheriff's office, a policy change was discussed that would make ICE holds dependant on arraignment, not booking charges.

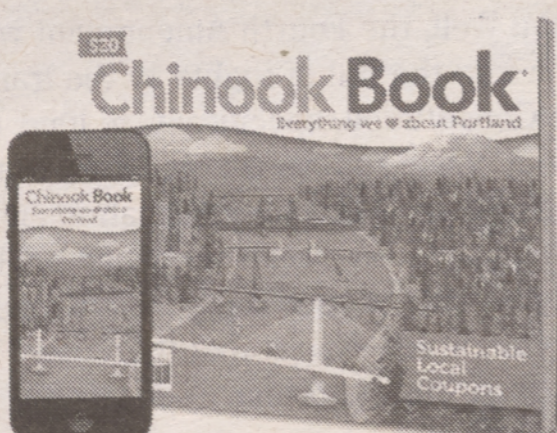
"I think they (the sheriff's office) are willing to figure out how to make that change," says Nicole Brown, ACT Network member and Field Director at the Center for Intercultural Organizing. "But for them it's really complicated. They're just trying to figure out a systematic process."

Brosh also confirmed the sheriff's office was currently investigating how to make the

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