

# ICE case reveals complexities in local policies

BY NATHAN GILLES  
STAFF WRITER

The knocks came early. At around 7:30 a.m. on Jan. 23, Daniel Hernandez Garcia and his girlfriend of five years, Josefina Aguiniga, answered the door of their Southeast Portland home to find two officers.

"They told me they were police officers and they were knocking on doors in the neighborhood to make sure everything was okay," says Aguiniga.

Thinking nothing of it, Aguiniga left Hernandez with the officers and went to check on her and Hernandez's two young daughters in the back bedrooms. Moments later, she heard her boyfriend yelling, "Josie, Josie, they're taking me." Aguiniga raced to the front door. There an officer handed her a card with the words "U.S. Immigration and Customs Enforcement" on it.

Hernandez, an immigrant from central Mexico, is now being held at ICE's detention facility in Tacoma, Wash., awaiting possible deportation for violating U.S. immigration law. Aguiniga, a legal resident, has been petitioning for his release.

Hernandez's case is the latest in a series in Multnomah County that immigrant rights activists hope to point to as proof that ICE's policies aren't working. But Hernandez's detention by ICE also reveals a hole in the advocates' strategy.

In Portland, the Activists Coming Together for Justice and Dignity Network, or ACT Network — a coalition that includes Oregon DreamActivist, the Center for Intercultural Organizing, and Jobs With Justice, among others — has been keeping a watchful eye on ICE's activities. To date, the coalition's goal has been to persuade Multnomah County Sheriff Daniel Staton to stop honoring ICE I-247 immigration "detainers," commonly called ICE holds.

The holds work like this: If you're not a U.S. citizen or legal resident, and you're arrested and charged with a crime, ICE can request local law enforcers detain you an additional 48 hours, long enough for ICE to come get you.

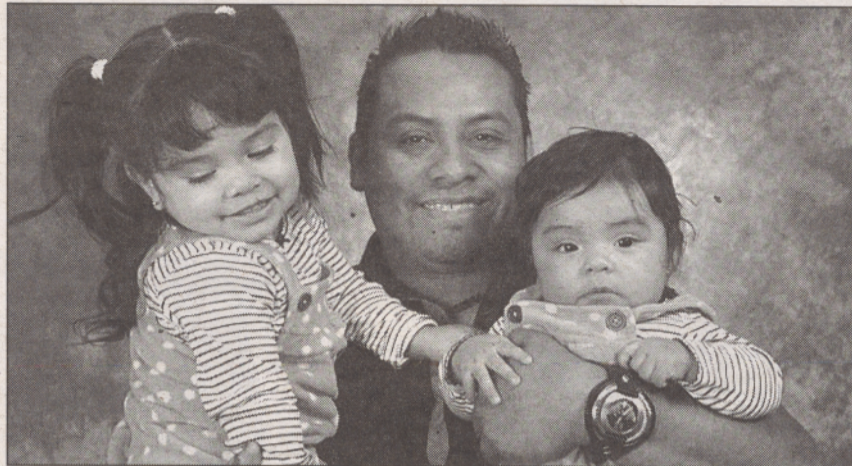
In April 2013, following a nonbinding resolution from Multnomah County commissioners recommending reforms to Staton's ICE policy, the sheriff crafted new rules stating under which circumstances his jail would honor ICE holds.

The new policy, which continues to honor ICE holds under certain circumstances, wasn't what activists wanted, but it was a step forward. Since last spring, the ACT Network has closely monitored how the sheriff has implemented his policy.

But while ACT Network members have kept an eye on Staton, as Hernandez's case illustrates, not getting an ICE hold or having one removed doesn't mean ICE won't come for you.

"Whether or not the sheriff's department honors an ICE hold is one thing, but they do have to share that information with ICE. And unfortunately I don't think there's anything [Sheriff Staton's] policy can do about that," says Nicole Brown from the Center for Intercultural Organizing.

Local governments have a good deal of legal discretion in how and when they honor ICE holds. This varies from honoring requests only for certain crimes, as we do here in Multnomah County, to choosing not



Above, Daniel Hernandez Garcia with his children during happier times. At right, his wife, Josefina, outside the office of Immigration and Customs Enforcement after Daniel was placed in the Tacoma, Wash., detention facility awaiting possible deportation.

to honor the holds at all, as the city of New Orleans has opted to do. However, this freedom from ICE doesn't extend to opting out of a critical information-sharing program.

The program is called Secure Communities, and it's closely tied to ICE's detainee program. Secure Communities requires local law enforcement to share information they gather on arrestees with ICE, the Department of Homeland Security, and the FBI.

In August 2011, following several municipalities' and states' attempts to opt-out of Secure Communities, the Obama Administration made it clear that participation in the program wasn't an

option; local law enforcement had to participate.

Attempts to drop Secure Communities followed multiple reports that ICE was deporting people after local law enforcers arrested them for minor infractions such as traffic violations. Similar cases were reported in Portland.

Multnomah County's continued participation in Secure Communities was the reason Hernandez was later picked up by ICE.

Hernandez's initial charge was a felony. This charge was later dropped to a

misdemeanor at arraignment. While he was in custody, ICE called in a hold on Hernandez. The Multnomah County Jail honored the hold, but following pressure from Aguiniga, Hernandez's friends and the ACT Network, the sheriff's department admitted it had held Hernandez in violation of its own policy and released him.

"Basically there was an error in the charge or an error in the hold, so they took it off as soon as somebody said this one doesn't qualify," says Sheriff's Department spokesman Lt. Steve Alexander.

Sheriff Staton's current policy states it will honor ICE holds only if ICE has a warrant or an arrestee as been charged with a serious crime. Qualifying crimes are typically felonies. But they also include lower, Class A misdemeanor charges that are person-to-person crimes. These include resisting arrest, endangering the welfare of a minor and driving while intoxicated.

Staton's policy largely excludes lower B and C misdemeanor charges, but makes



exceptions for person-to-person crimes especially when related to domestic violence.

As Street Roots first reported in our Oct. 11 edition, Sheriff Staton made these changes in fall 2013, following the arrest of a 19-year-old immigrant who violated a restraining order by contacting an ex-girlfriend. The violation earned the young man a B misdemeanor charge. Noting the connection to domestic violence, the sheriff's department chose to honor the ICE request when it came in.

"The sheriff's office realized in reviewing its policy and moving forward, the violation of a restraining order is an inherently person-affected violation," Chief Deputy Drew Brosh told Street Roots in the fall.

Despite protests from the ACT Network and the detainee's family members, the sheriff didn't budge. Brosh says the policy hasn't changed since then.

"When you get down to the nuts and bolts of a policy you find things, and we found that restraining order violations were not identified on the list of misdemeanors," says Brosh. "We included that because of the connection to domestic violence [we would honor holds connected to these charges]."

Hernandez's case also brings up the issue of domestic violence.

On the night of December 8, 2013, Hernandez and Aguiniga had gotten into an argument, according to court and police documents. The argument started at a friend's house where the two verbally fought over who was going to change their seven-month-old daughter Daniella's diaper and clean up after their other daughter, one-year-old Denise, who had gotten sick and vomited. When they got home, Hernandez, according to his arrest report, told Aguiniga, "Don't ever talk to me like that in front of other people." Hernandez then slapped Aguiniga. She called the police.

"Immediately, I knew that was bad idea," says Aguiniga.

Aguiniga spoke with Street Roots with the aid of Liliana Luna from Oregon DreamActivist.

Portland police arrested Hernandez on a domestic violence charge of felony assault. Fearing that her boyfriend would get

deported for the charge, Aguiniga asked the Multnomah County District Attorney's office to drop the charges. The DA refused, but did agree to lower Hernandez's charge to misdemeanor harassment.

On Jan. 9, Hernandez entered a guilty plea of one count of harassment. He was allowed to return home. As a condition of his release he was ordered to take classes related to domestic violence and anger management and meet regularly with a case manager. Following the court order, his record would have been expunged of the charge at year's end. ICE arrested him two weeks later. He didn't make it to his first class.

Luna, who has done the lion's share of organizing and advocating for Hernandez, says her group realizes a case involving domestic violence isn't going to win a lot of sympathy.

"I myself, I identify as a feminist," says Luna. "And it was really hard, to be honest, [to advocate for Hernandez] because of my personal beliefs and experiences. But I don't believe a family should be torn apart because of domestic violence, because we don't know what will happen if Daniel (Hernandez) gets deported."

The CIO's Nicole Brown says Hernandez's case illustrates a larger problem with ICE's policy.

"Many people who are victims of domestic violence often think if they call the police they might get deported, or the father of their children — who helps put food on the table and helps pay the rent — will get deported," says Brown. "We ultimately feel that the current collaboration between police and ICE is doing an injustice to victims of domestic violence."

Luna calls Aguiniga's decision to phone the police "brave." She says Aguiniga has faced criticism in the community by advocating for Hernandez and visiting him at the detention center in Tacoma.

Aguiniga says the situation has been stressful, especially for her kids. She says Daniella now refuses to be held or fed by anybody but her mother. Denise is also taking it hard. She vomited for days after ICE took her father. The one-year-old witnessed the event through her bedroom window.

"She wakes up in the middle of the night crying, calling for her daddy," says Aguiniga.

Hernandez's bond hearing is set for March 5. His immigration lawyer is Sandy Restrepo, from the nonprofit Colectiva Legal del Pueblo. She says she's working for Hernandez's release either on the grounds that he has family in the US or on asylum.

Aguiniga says Hernandez is afraid of being deported back to Mexico because of the violence there.

"ICE might think he's a high priority, but he's really not," says Restrepo. "He's a husband and father and this is his first offense. And there is no reason he should be detained in my opinion."

ICE spokesman for the Tacoma field office Andrew Muñoz said due to privacy concerns his agency couldn't comment on Hernandez's case. He also declined Street Roots' request for an interview with Tacoma Field Office Director Nathalie Asher. Asher sent this response via email:

"While aliens may be placed in removal proceedings by ICE, it is immigration judges from the Justice Department's Executive Office of Immigration Review who decide whether or not an alien will be ordered removed from the U.S."

On Feb. 14, Valentine's Day, Hernandez and Aguiniga received their marriage license. Aguiniga says they plan on having a formal wedding ceremony when Hernandez is released. On ICE's detention program she says, "We need a policy to protect those that aren't really criminals, to protect them from deportation."