Seattle Journal for Social Justice

Volume 11 | Issue 1 Article 10

7-1-2012

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Recommended Citation

Cházaro, Angélica (2012) "Rolling Back the Tide: Challenging the Criminalization of Immigrants in Washington State," *Seattle Journal for Social Justice*: Vol. 11: Iss. 1, Article 10.
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Rolling Back the Tide: Challenging the Criminalization of Immigrants in Washington State[1]

Angélica Cházaro[2]

I. INTRODUCTION

For the past five years, I have worked as an attorney with the Northwest Immigrant Rights Project (NWIRP), a Washington State-based nonprofit that provides legal representation to low-income immigrants and refugees. NWIRP staff members help people both obtain and defend immigration status. As a NWIRP attorney, part of my job has been to represent Washington State residents who are facing exile in the form of deportation. This job has afforded me the opportunity to witness firsthand the mechanisms by which individuals come into contact with the immigration enforcement apparatus.[3]

During my time at NWIRP, the Bush administration came to an end and the Obama administration began. For the clients I work with, this change

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[1] This article originates in Angélica Cházaro's February 2012 presentation at The 25th Anniversary of the *United States v. Hirabayashi Coram Nobis* Case: Its Meaning Then and Its Relevance Now, a conference hosted by Seattle University School of Law's Fred T. Korematsu Center for Law and Equality. The conference focused on recognizing Gordon Hirabayashi's courageous stand during World War II, and the legacy he left through his life and work; reflecting on the work of his legal team who took on the reopening of his case in the 1980s; and discussing the role that lawyers play in public interest movements.

[2] Angélica Cházaro received a New Voices Fellowship and joined the staff of the Northwest Immigrant Rights Project in 2006 to provide legal representation to low-income immigrants of color fighting deportation. She focuses her practice on representing immigrant survivors of violence and immigrants affected by the criminal legal system. Angélica received her JD from Columbia Law School (2006) and her BA in Women's Studies from Harvard College (2001).

[3] This essay reflects firsthand observations the author has made over the course of her work with NWIRP. The views are those of the author, not of the organization.

has not been a positive one. More individuals have been deported under the current administration than under any previous administration. The count reached 1.4 million as of July 2012.[4] While states like Arizona and Alabama have created headlines due to the unabashed nature of anti-immigrant sentiment reflected in their poisonous bills,[5] no state has been exempt from the immigration dragnet.

Washington State is no exception to the national trend toward criminalizing immigration. In Washington State, the intertwining of local law enforcement and federal immigration functions, combined with the growing use of immigration prisons, form part of the national trend. Part II of this essay will focus on a brief snapshot of three local trends that contribute to the broader criminalization of immigrants in Washington State: 1) the role of the King County[6] Jail in immigration enforcement, 2) the expansion of immigrant detention in Washington State, and 3) the harmful partnerships between US Customs and Border Protection, a component of the US Department of Homeland Security, and local law enforcement in the border regions of Washington State.

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[4] Suzy Khimm, *Obama is Deporting Immigrants Faster than Bush. Republicans Don't Think That's Enough.*, WASH. POST, Aug. 27, 2012, http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/08/27/obama-is-deporting-more-immigrants-than-bush-republicans-dont-think-thats-enough/.

[5] *See* Campbell Robertson, *Alabama Gets Strict Immigration Law as Governor Relents*, N.Y. TIMES, May 18, 2012, http://www.nytimes.com/2012/05/19/us/alabama-gets-strict-immigration-law-as-governor-relents.html?_r=1; *Feds: Alabama Immigration Law Caused Spike in Hispanic Student Absences*, CNN, May 3, 2012, http://articles.cnn.com/2012-05-03/us/us_alabama-immigration-law-education_1_immigration-status-hispanic-students-immigration-law?_s=PM:US; David Crary, *Push for Tough State Immigration Measures Could Spread if Supreme Court Upholds Arizona Law*, ORLANDO SENTINEL, Apr. 28, 2012, http://www.foxnews.com/us/2012/04/28/high-court-stance-could-spur-immigration-laws/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+foxnews%2Fnational+%28Internal+-+US+Latest+-+Text%29.

[6] *About King County*, KING CNTY., http://www.kingcounty.gov/About.aspx (last visited June 1, 2012). The City of Seattle is located in King County, WA. King County holds more than 1.9 million people and ranks as the fourteenth most populous county in the nation. *Id.*

In providing immigration legal services, NWIRP is on the front lines of the struggle to help noncitizens survive the current trends that render them vulnerable to imprisonment and exile. Part III of this essay will describe NWIRP's efforts on three fronts: individual representation, impact litigation, and advocacy. Finally, in Part IV, I will seek to describe some of the challenges in legal advocacy for immigrant justice. For example, in the struggle for immigrant justice, should advocates focus on minimizing the importance of immigration status or on creating legal change that grants status to all? And as advocates fighting the criminalization of immigrants, can we avoid the pitfalls of dividing immigrant community members into those deserving of status and those, presumably marked as somehow criminal, for whom caging and exile are deemed an acceptable compromise?

On the twenty-fifth anniversary of the *Hirabayashi* coram nobis decision,[7] I want to challenge us to think about the experiences of today's immigrants as part of two continuums—the long continuum of US government practices targeting specific populations for caging and exile, and the equally long continuum of active resistance to these practices. Gordon Hirabayashi's refusal to comply with an unjust law, the coram nobis legal team's insistence on righting a clear wrong, and today's challenges by immigrant communities and their allies to the targeting of foreign born individuals all form part of a longer historical arc toward liberation and justice.

II. CRIMINALIZATION OF IMMIGRANTS IN WASHINGTON STATE

Strategically deployed racism and hysteria led to Japanese American internment and resulted, in part, in the struggle to overturn Mr. Hirabayashi's conviction for violating the US Army's curfew and exclusion orders. In the lead up to the Japanese American internment, images of

[7] *See* Hirabayashi v. United States, 828 F.2d 591 (9th Cir. 1987).

people of Japanese descent as inherently traitorous and dangerous were deployed to render acceptable to the general population the mass incarceration of an entire group of people.[8] Today, the use of harmful imagery of foreign bodies continues—in this case, the imagery invokes the idea of immigrants as inherently law-breaking. This rhetoric is on open display in the recent Republican presidential debates, with candidates seemingly trying to outdo each other on how openly racist they can be.[9] We also see practices leading to the criminalization of immigrants in cities like Seattle, which many consider to be bastions of progressive thought.

A. King County Jail: Gateway to Deportation

The King County jail,[10] located in Seattle, WA, played a central role in Gordon Hirabayashi's ordeal. After his arrest for defying the army's curfew and exclusion orders, he was held in the King County jail for a nine-month period that spanned the time before, during, and after his conviction. He refused bail because his release would not result in freedom. Rather, it would mean being transferred to another form of imprisonment: the internment camps that housed his family and community. Today, in a disturbing historical continuum, the King County jail, the same institution that held Gordon Hirabayashi, now functions as a gateway to detention and deportation for noncitizen residents of Seattle.

On paper, the King County jail's practice of handing over noncitizens from local custody to federal immigration custody appears incongruent with

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[8] *See, e.g.*, PETER IRONS, JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES 10 (1989); SUCHENG CHAN, ASIAN AMERICANS: AN INTERPRETIVE HISTORY 125 (1991); Korematsu v. United States, 323 U.S. 214, 203–04 (1944) (Murphy, F., dissenting).

[9] For examples of the extreme stands taken by the competing Republican candidates for the 2012 presidential nomination, see *A Party Divided: Where the Republican Candidates Stand on Immigration,* NATION, Jan. 19, 2012, http://www.thenation.com/slideshow/165734/party-divided-where-republican-candidates-stand-immigration.

[10] For more information on the King County Correctional Facility, see *King County Correctional Facility – Seattle*, KING CNTY (Jan. 13, 2010), http://www.kingcounty.gov/courts/detention/adult_detention/KCCF.aspx#about.

the stated practices of both the City of Seattle and King County. Both municipalities have passed ordinances, in 2003 and 2009, respectively, stating that city and state employees will not attempt to ascertain the immigration status of individuals with whom they come in contact.[11] Because of these ordinances, Seattle has been touted as a "sanctuary city,"[12] a city where noncitizens can safely proceed with their lives, knowing that they will not be targeted on the basis of their national origins. The City of Seattle and King County ordinances, however, do not apply to one key local governmental institution: the King County jail. In practice, the protections of these ordinances stop at the door of the King County jail. By exempting the jail from the ordinance, King County has chosen to allow US Immigration and Customs Enforcement (ICE) to target noncitizens for imprisonment and deportation.

Under the general umbrella of ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS), ICE teams up with local law enforcement agencies to round up those arrested by local authorities. ICE ACCESS programs include the Criminal Alien Program (CAP), Secure Communities, and 287(g).[13] While the tactics of each may

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[11] SEATTLE, WASH., MUN. CODE § 4.18.015 (2012); KING COUNTY, WASH., CODE § 2.15.010 (2010).

[12] Lynn Tramonte, *Debunking the Myth of "Sanctuary Cities,"* IMMIGR. POL'Y CTR. (Apr. 26, 2011), http://www.immigrationpolicy.org/special-reports/debunking-myth-sanctuary-cities.

[13] *ICE ACCESS Programs – Fact Sheet*, ONE AM., http://www.weareoneamerica.org/ice-access-programs-fact-sheet (last visited Oct. 22, 2012. "The ICE ACCESS initiative combines 13 programs with the goal of using local criminal justice systems—the courts, jails, and police—to detain and remove people deemed to be 'criminal aliens.'" *Id.* Under ICE ACCESS, ICE enters agreements "with state and local law enforcement agencies that allow these agencies to carry out immigration law enforcement functions that they would otherwise not be allowed to perform." *Id.* The 287(g) program refers to section 287(g) of the Immigration and Nationality Act (INA), which can be found at 8 U.S.C. § 1357(g). *Id.* Under 287(g), "ICE is allowed to enter into a Memorandum of Understanding (MOU)—also referred to as a Memorandum of Agreement (MOA)—with local governments to contract with state and local police and jail officials to enforce immigration laws." *Id.* The Criminal Alien Program (CAP) screens inmates in jails, identifies deportable noncitizens, and alerts ICE to the presence of noncitizens. *Id.* CAP

differ, the goal of these programs is the same—to create a direct conduit to federal imprisonment and deportation for those noncitizens who come into contact with local law enforcement.

King County actively participates in ICE ACCESS. In NWIRP's experience, individuals booked into the King County jail are routinely asked about their national origin. Under CAP, this information is passed on to ICE. The jail allows ICE officers to use jail facilities to interview individuals flagged as foreign born. ICE then asks the jail to hold the identified noncitizens for forty-eight hours after local law enforcement would have otherwise released them. In NWIRP's experience, the practice of the jail is to comply with these voluntary requests from ICE.

Secure Communities, a high-tech alternative to CAP, was recently instituted in jails statewide. The Secure Communities program eliminates the need for ICE officers to appear at the jail to individually interview noncitizens. Instead, the fingerprints taken from all individuals at the time they are booked are run through a federal immigration database. When there is a "hit"—when an individual is flagged as having previously come into contact with immigration enforcement—ICE issues a request for the jail to hold the individual. These requests to hold an individual are the lynchpin of ICE ACCESS programs. While ICE has imposed Secure Communities on Washington State, despite the opposition of many local government

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is active in all US state and federal prisons, as well as more than three hundred local jails throughout the country. *Glossary*, DEPORTATION NATION, http://www.deportationnation.org/library/immigration-enforcement-programs/ (last visited Oct. 23, 2012). Secure Communities is an initiative that allows the federal government to partner with local law enforcement agencies through the use of technology and information sharing. *ICE ACCESS Programs – Fact Sheet*, *supra* note 13. The purported goal of the program is to identify and remove "high-risk criminal aliens" who are held in state and local prisons by allowing local offices to screen foreign-born detainees in a national database managed by ICE. If the database makes a "match," the local police office or jail will then inform ICE of the finding. *Id. See also* IMMIGRANT JUSTICE NETWORK, DANGEROUS MERGER: CORRUPTING THE CRIMINAL JUSTICE SYSTEM FOR IMMIGRATION ENFORCEMENT *available at* http://www.immigrantjusticenetwork.org/HandoutFinal5.pdf (last visited Oct. 23, 2012).

officials,[14] the only way for programs like Secure Communities to work is for jails to continue to agree to hold individuals for forty-eight hours past the time when the criminal legal system would have otherwise released them.

The voluntary nature of the requests from ICE to the King County jail highlights the complicity of local authorities with federal immigration enforcement. The King County jail could choose not to hand over community members to ICE. However, they continue to do so. Thus, if you are not a US citizen, being booked into King County jail constitutes the first step in a process that can involve your imprisonment in a federal facility and your possible deportation. The purported protections granted to noncitizens by the King County and City of Seattle ordinances, which resulted in Seattle's reputation as a "sanctuary city," do not apply to those who are vulnerable to incarceration in the King County jail. The jail was not a sanctuary for Gordon Hirabayashi, and it is not a sanctuary for those individuals considered foreign today.

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[14] Interview with Jorge Barón, Exec. Dir., Nw. Immigrant Rights Project (Sept. 27, 2012) (on file with author). In Washington State, only a handful of counties had voluntarily opted into Secure Communities, with state officials leaving the choice to participate in the program to each county. *See* Manuel Valdez, *WA Counties Deciding Fate of Immigration Program*, SEATTLE TIMES, July 17, 2011 http://seattletimes.com/html/localnews/2015640104_apwasecurecommunitieswashington1stldwritethru.html. However, by April 4, 2012, federal immigration authorities had activated the program throughout the entire state as part of a forcible roll out of Secure Communities that is planned to be complete by 2013. Manuel Valdez, *ICE's Secure Communities Activated in Wash., Mont.*, SEATTLE PI, Apr. 14, 2012, http://www.seattlepi.com/news/article/ICE-s-Secure-Communities-activated-in-Wash-Mont-3458836.php.

B. The Northwest Detention Center: Pre-Exile Prison[15]

About half an hour south of Seattle, in the City of Tacoma, WA, a federal prison opened in 2004.[16] This prison, the Northwest Detention Center (NWDC), holds those charged and convicted of criminal offenses, those charged but never convicted, and those who have had no contact with the criminal legal system. The one thing all imprisoned noncitizens at the NWDC have in common is that they are alleged to have violated civil immigration laws.

While federal immigration authorities term it a "detention center," and its inhabitants are often referred to as "detainees," there is no doubt that the NWDC is a prison, and that those held there are prisoners. Prisoners are held behind locked doors and issued prison uniforms that are color coded to mark their alleged levels of dangerousness, as measured by their past contacts with the criminal legal system. Prisoners are not allowed to leave the prison or to move freely within it. Several times a day, the functions of the prison slow to a halt as every detainee is counted to ensure that no one has escaped. For visiting attorneys and family members, these "counts" add to the long waits to see their clients and loved ones. For prisoners, the counts constitute one more element of their caging.

Prison administrators choose the times and spaces for prisoners to eat, sleep, wake, wash, and socialize. Except for attorneys, who are allowed to visit with prisoners in small, windowless rooms, all communication between prisoners and visitors happens through glass partitions. No physical contact between prisoners and visitors is allowed. The immigration

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[15] Descriptions of the Northwest Detention Center are based on the author's own observations. For more information about human rights issues at the Northwest Detention Center, see SEATTLE UNIVERSITY SCHOOL OF LAW INTERNATIONAL HUMAN RIGHTS CLINIC, VOICES FROM DETENTION: A REPORT ON HUMAN RIGHTS VIOLATIONS AT THE NORTHWEST DETENTION CENTER IN TACOMA, WASHINGTON 5 (2008), *available at* http://www.weareoneamerica.org/sites/default/files/OneAmerica_Detention_Report.pdf [hereinafter VOICES FROM DETENTION].

[16] The government refers to the Northwest Detention Center as a detention facility, but for all intents and purposes, it is a prison, as explained below.

courts, where prisoners have hearings with immigration judges who will ultimately decide their fates, are also located inside the prison.

Immigration prisoners have the right to an attorney, but only if they can afford one. At the NWDC, 90 percent of prisoners go forward unrepresented and must attempt to parse the complex immigration code while trained government prosecutors, who are ICE employees, argue for their exile.[17] Some prisoners are eligible for release after paying a bond, but many cannot pay the bond amounts set. Many others are subject to mandatory detention while their deportation cases are pending. A loss before an immigration judge can mean appeals before the Board of Immigration Appeals and the federal courts of appeal, which translate to being held for months, and even years, in an immigration prison. For some, the humiliations of prison life trump all else, so they give up fighting their cases, preferring the harms of exile to the harms of imprisonment.

The NWDC has grown exponentially since its construction in 2004. Originally a facility capable of caging five hundred immigrants, the facility now has the capacity to hold over fifteen hundred.[18] In order to keep the prison at capacity, the NWDC relies on ICE ACCESS programs, like those active in the King County jail, to funnel community members from the back of a police car, to jail, to immigration prison. The local increase in imprisoning immigrants mirrors a national trend. In 2001, US immigration officials imprisoned ninety-five thousand people. By 2010, ICE was

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[17] This information was provided to NWIRP by the local Executive Office of Immigration Review (EOIR), which houses immigration courts. This information is on file with the author. For more information on the EOIR, see *Immigration Court – Seattle, WA*, DEP'T JUST., http://www.justice.gov/eoir/sibpages/sea/seamain.htm (last visited Oct. 23, 2012).

[18] VOICES FROM DETENTION, *supra* note 15, at 5; *see* Lornet Turnbull, *More Immigrants in Detention: Tacoma Center Getting Influx,* SEATTLE TIMES, Sept. 30, 2006, http://seattletimes.com/html/localnews/2003282373_detention30m.html; *see also About Immigration and the Northwest Detention Center*, NW. DETENTION CTR ROUNDTABLE, http://nwdcroundtable.org/awareness.html (last visited June 1, 2012).

detaining four hundred thousand people.[19] This reliance on immigration prisons cannot be separated from the national trend toward imprisonment that has made the United States the country with the largest prison population in the world. The War on Terror is only the most recent rhetorical device used to impel the massive growth of a system of imprisonment over the past thirty years.[20] The United States now imprisons one of out every hundred people. Despite having only 5 percent of the world's population, the United States now holds 25 percent of the world's prisoners. In all, 60 percent of these prisoners are people of color.[21]

The growth of the NWDC is part of this national trend that devastates communities of color while simultaneously enriching private corporations that run prisons for the purpose of financial profit. The NWDC, owned and operated by the private GEO Group, is one of the multiple prisons responsible for GEO Group's record profits in 2011.[22] In 1940, Gordon Hirabayashi refused to comply with the logic that was forcing his community into large-scale internment. Today, the expansive growth of immigration prisons continues the US government's legacy of large-scale warehousing of individuals who have been marked as foreign.

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[19] Gretchen Gavett, *Map: The U.S. Immigration Detention Boom,* FRONTLINE (Oct. 18, 2011), http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/; VOICES FROM DETENTION, *supra* note 15, at 3.

[20] The "War on Terror," activated in the aftermath of September 11, 2001, magnified the fear of immigrants in many communities, with government officials conflating immigration with national security and safety. *See generally* Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control, and National Security*, 39 CONN. L. REV. 1837 (2007). This conflation of immigration enforcement with national security contributed in large part to a drive for higher deportation numbers. *Id.*

[21] DEAN SPADE, NORMAL LIFE 54 (2011).

[22] George C. Zoley, *Letter to the Shareholders*, *in* GEO GROUP: 2011 ANNUAL REPORT 2 (2011), *available at* https://materials.proxyvote.com/Approved/36159R/20120302/AR_120114/.

C. Customs and Border Protection in Washington State

While contact with the King County Sheriff's Office or the Seattle Police Department serves as one of the originating points in the jail to deportation pipeline, King County residents can rest assured that there are at least a few steps between being arrested and coming into contact with federal immigration enforcement. This is not the case for residents of the regions of Washington State that share a border with Canada, where a traffic stop or a call to 911 results often results in immediate contact with border patrol officers. In recent years, cooperation between border patrol and local law enforcement in these regions has increased. This increase matches the exponential increase in funding for US Customs and Border Protection (CBP), the federal agency that houses the border patrol.

In 2001, the Olympic Peninsula, which shares only a water border with Canada, had only three border patrol officers, charged primarily with inspecting individuals arriving from Canada at the Port Angeles ferry terminal in Port Angeles, WA. In the past decade, CBP has increased its presence on the peninsula from three officers to forty-two officers, an increase justified by the so-called War on Terror.[23] Counties that share an actual land border with Canada have seen similarly dramatic increases in border patrol presence. The "Blaine Sector," which covers Western Washington, including the areas that share an actual land border with Canada, went from forty-eight agents in 2001 to 327 in 2010.[24] The total

[23] *See* William Yardley, *In Far Northwest, a New Border Focus on Latinos*, N.Y. TIMES, May 28, 2012, http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?pagewanted=all.

[24] Rob Hotakainen & Adam Sege, *Border Patrol Agents in Blaine Sector Have Increased Sevenfold in Wake of 9/11*, BELLINGHAM HERALD, Sept. 11, 2011, http://southsound.remembers911.com/articles/border-patrol-agents-in-blaine-sector-have-increased-sevenfold-in-wake-of-911/.

budget for CBP ballooned from $5.9 billion in 2003 to an allocated $11.4 billion for 2010.[25]

The increase in border patrol presence in Washington State has led to harmful alliances between CBP and local law enforcement. The drastic increase in CBP personnel correlates with the logic of the War on Terror, and not with any actual increase of border activity. As a result, the newly dispatched border patrol officers have found outlets for their efforts that produce devastating consequences for communities of immigrants and people of color in the affected counties. The border patrol officers dispatched to the northern border are primarily Spanish-English bilingual. In order to fill their time, these officers have offered their language services to local law enforcement.[26] Thus, if a resident of the Olympic peninsula is pulled over by a law enforcement officer and that resident is perceived as not speaking English fluently, CBP officers are now called to interpret. During the process, of course, these individuals are questioned by border patrol as to their immigration status, and a stop for a broken taillight can turn into a transfer to the NWDC. The Forks Human Rights Group has documented multiple instances of local law enforcement and border patrol officers joining forces, and allegations of race-based stops are on the rise. Affected community members include the Native American residents of the peninsula, who are profiled as "foreign" by border patrol officers, and questioned as to their right to be present on their ancestral lands.[27]

In three cities in Whatcom County, Washington, CBP does more than provide interpretation for local law enforcement. In the towns of Blaine,

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[25] *Throwing Good Money after Bad: Immigration Enforcement*, IMMIGR. POL'Y CTR. (May 26, 2010), http://www.immigrationpolicy.org/just-facts/throwing-good-money-after-bad-immigration-enforcement#_edn3.

[26] *See* Lornet Turnbull, *Bias Seen in Forest Service Practice on Olympic Peninsula*, SEATTLE TIMES, Sept. 11, 2012, http://seattletimes.com/html/localnews/2018327993_forks01m.html.

[27] *See* FORKS HUMAN RIGHTS GRP, ANALYSIS OF BORDER PATROL ACTIVITY IN/AROUND FORKS, WA (2012), *available at* http://issuu.com/peninsuladailynews/docs/2012_and_2010_analysis_of_border_patrol_merged.

Lynden, and Sumas, border patrol officers have been contracted to act as 911 dispatchers.[28] Noncitizens in these towns face impossible choices. In a medical emergency, for example, they must choose between calling 911, for what could be lifesaving assistance, and avoiding the possibility that the person answering their emergency calls could choose to dispatch, not just emergency medical personnel, but also federal immigration agents. The town of Lynden has also seen border patrol officers appearing at local courthouses, particularly on the days when the courthouse provides Spanish-language interpretation.[29] Community members have also reported that border patrol officers stop and question individuals in gas stations, bus terminals, ferry terminals, and outside of stores.[30]

The death of Benjamin Roldan Salinas, a resident of the Olympic Peninsula who drowned after being chased into the raging Sol Duc River by a border patrol officer,[31] is only the most extreme example of the consequences of CBP's drastically increased presence in Washington State's border regions. The quieter tragedy of entire communities forced into a state of constant fear and vigilance continues as the number of border patrol officers in Washington State's border counties remains steady, despite increasingly vocal opposition to their presence.

III. NWIRP'S RESPONSE

NWIRP was originally founded with the goal of providing immigration legal services to the immigrants and refugees fleeing the US-sponsored civil

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[28] Joseph Nevins, *Your Local Police Officer in Northern Washington State: A U.S. Border Patrol Agent*, N. AM. CONG. ON LATIN AM. (June 6, 2012), http://nacla.org/blog/2012/6/6/your-local-police-officer-northern-washington-state-us-border-patrol-agent.

[29] SARAH CURRY ET AL., THE GROWING HUMAN RIGHTS CRISIS ALONG WASHINGTON'S NORTHERN BORDER 5 (Pramila Jayapal & Sarah Curry eds., OneAmerica 2012).

[30] Joseph Nevins, *Your Local Police Officer in Northern Washington State: A U.S. Border Patrol Agent*, N. AM. CONG. ON LATIN AM. (June 6, 2012), http://nacla.org/blog/2012/6/6/your-local-police-officer-northern-washington-state-us-border-patrol-agent.

[31] *Id.*

wars in Central America.[32] From these beginnings, and over its twenty-seven-year history, NWIRP has developed into a statewide nonprofit legal services organization, with four offices throughout the state of Washington.

The primary reason for NWIRP's existence, and the organization's primary focus, is to provide legal representation both to those seeking to obtain lawful immigration status and to those seeking to avoid deportation. NWIRP attorneys and legal advocates help immigrants navigate the complex immigration system by preparing and filing applications on their behalf, representing them during immigration interviews and court hearings, and filing appeals. Many individuals have no hope for immigration relief under the current immigration laws, and a major part of NWIRP's work is to conduct detailed interviews with immigrants both in and out of detention, and then advise them of their options under the present legal regime.

As mentioned previously, immigrants have no right to appointed counsel, so for most low-income immigrants in Washington State, NWIRP is the only resource for legal immigration representation. I see my own role at NWIRP as helping immigrant community members survive the current system. By providing them with a chance to avoid deportation and to obtain lawful status, I see my work as redistributing life chances to under-resourced community members.

Apart from the day-to-day work of representing immigrants, NWIRP staff engages in impact litigation to challenge and highlight some of the more egregious aspects of the immigration system. For example, in 2008, NWIRP brought a lawsuit to challenge the imprisonment, for over seven

[32] NWIRP began in 1984 as the Joint Legal Task Force (JLTF), a grassroots effort to respond to the needs of Central American refugees who had fled the civil wars in that region. Over the next several years, JLTF merged with other organizations that had also been assisting the immigrant community, emerging in 1992 as NWIRP. Over the period of its existence, NWIRP has provided direct representation in immigration cases to thousands of individuals and families, as well as other forms of assistance—such as community education, advice, and counseling—to tens of thousands of others. For more information, see *About Us – Mission History*, NW IMMIGRANTS RIGHTS PROJECT, http://www.nwirp.org/whoweare/missionhistory (last visited Sept. 11, 2012).

months, of a US citizen in the NWDC.[33] Rennison Castillo is a naturalized US citizen. He was not born in the United States, but became a citizen at the encouragement of his superiors during the seven years that he served in the US Army. After Mr. Castillo was honorably discharged from the army, he had a run-in with local law enforcement. He ended up in the Pierce County jail, where he was flagged by ICE and then passed from local custody to federal immigration custody at the NWDC. He spent seven months at the NWDC, despite repeatedly informing the immigration judge, the ICE prosecutor, and his deportation officer of his citizenship. He was, nonetheless, ordered to be deported. He appealed his deportation order, and remained imprisoned until NWIRP attorneys helped secure his release. NWIRP's subsequent lawsuit on behalf of Mr. Castillo resulted in a large cash settlement and helped bring attention to the immigration prison system by garnering press coverage and a formal apology from the government.[34] Mr. Castillo's case also showed that anyone who does not fit the profile of a US-born person (anyone with a foreign-sounding last name, anyone with a racial identity other than white) is in danger of ending up in an immigration prison.

On the advocacy front, NWIRP engages in efforts to create changes at the county level, the state level, and, when possible, the national level to minimize the impact of the policies and practices that criminalize immigrants. On the local level, NWIRP supports efforts to stop county jail officials from submitting to ICE hold requests. ICE holds, as discussed above, are the lynchpin to programs like Secure Communities and the Criminal Alien Program. ICE requests that local jails inform them when a noncitizen in custody is going to be released, and then ICE requests for

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[33] Castillo v. Skwarski, No. C08-5683BHS, 2009 WL 4844801 (W.D. Wash. Dec. 10, 2009).

[34] Andrew Becker, *Immigration Agency Pays Army Veteran $400,000 for Wrongfully Detaining Him,* L.A. TIMES, Feb. 24, 2011, http://articles.latimes.com/2011/feb/24/local/la-me-citizen-sweep-20110224.

local jails to hold individuals for an additional forty-eight hours to give ICE an opportunity to pick them up. As a general practice, all Washington State jails currently comply with ICE hold requests, despite the completely voluntary nature of these requests. NWIRP currently engages in advocacy efforts to change local jail policies regarding these requests in order to eliminate local law enforcement's willing cooperation with ICE on this front.

On the state level, NWIRP engages in advocacy to fight legislation that would disproportionately impact immigrant communities. NWIRP collaborates with other community-based organizations to fight the passage of state-level bills that would make distinctions between Washington State residents on the basis of their immigration status. Washington State and New Mexico are currently the only states in the country to provide full driver license benefits to all state residents, regardless of their immigration status. Every legislative session in Washington State sees another effort to encumber noncitizens with requirements that would render many of them ineligible for driver licenses,[35] and NWIRP rallies each time to support efforts to defeat these bills that would tie licenses to immigration status.

Efforts like these seek to push the idea that immigration status should generally matter less, and that it should be irrelevant in the distribution of state services and privileges. Food stamps and medical benefits—survival basics for low-income, noncitizen youth—are constantly on the chopping block during budget cut discussions. NWIRP resists these cuts through our advocacy efforts, fighting against the maldistribution of life chances on the basis of immigration status.

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[35] *See, e.g.*, Keegan Hamilton, *With Driver's License Bill Dead, Washington Immigrants Get to Keep Their IDs*, SEATTLE WEEKLY, Mar. 8, 2011, http://blogs.seattleweekly.com/dailyweekly/2011/03/drivers_license_bill_dead_washington_immigrants.php.

IV. CHALLENGES IN LEGAL ADVOCACY FOR IMMIGRANT JUSTICE

NWIRP's ongoing efforts raise questions that the immigration justice movement as a whole faces. For example, should we be prioritizing advocacy that minimizes the relevance of immigration status, which pushes for distribution of state resources and opportunities in a way that does not take immigration status into consideration? Efforts to retain driver licenses for noncitizens, and food stamps and medical benefits for noncitizen children, would fall under this strategy. Efforts to encourage local jurisdictions to change their policies about ICE holds, so that immigrants do not face the extra burden of risking deportation when encountering the criminal legal system, do as well. This strategy also includes efforts to secure in-state tuition for all state residents, regardless of immigration status, and recent efforts to defeat SB 1070 in Arizona,[36] a bill which seeks to inject unprecedented relevance to immigration status at the state level, as well as efforts to defeat copycat bills in other states.

Gordon Hirabayashi's defiance of the military curfew and exclusion orders that forced Japanese Americans into internment camps could be seen as another example of this strategy. Mr. Hirabayashi believed that the mere fact of his heritage was insufficient grounds to intern him and force him to follow a curfew. In the same way, today's immigrant justice advocates seek to push for policies that recognize that the mere fact of a person's immigration status is insufficient grounds for differential treatment.

Yet, while NWIRP advocates for changes at the state and local level that would minimize the importance of immigration status, our daily efforts to help individuals obtain and defend immigration status continue. With every green card and work permit I help a client obtain, with every deportation defense hearing I take part in, I engage with the idea that immigration status matters. As an attorney providing legal aid to immigrants, I spend most of my time trying to push my clients over the line from undocumented to

[36] Ariz. Rev. Stat. Ann. § 11-1051 (2010).

holding lawful status. At the same time, however, many of the advocacy efforts I believe in—the types of efforts in which NWIRP often engages—push to end the relevance of that line.

In past years, national advocacy efforts on immigration—efforts to create a mass solution to the lack of lawful status encumbering an estimated twelve million people[37] in the United States—have focused on large-scale solutions labeled "comprehensive immigration reform." Comprehensive immigration reform efforts would seek to create changes in federal immigration law that would push as many of the twelve million people as possible from the undocumented side of the line to the side where they hold lawful immigration status. Those efforts have stalled, with Congress deadlocked on the issue, and federal agencies more focused on immigration enforcement than ever before. Even smaller bills, such as the oft-introduced Dream Act, which would provide lawful status for the most politically palatable group of undocumented people—youth who were brought to the United States as children—have repeatedly failed.[38]

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[37] The United States is currently home to nearly 12 million undocumented immigrants. Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEW HISPANIC CTR (Apr. 14, 2009), http://www.pewhispanic.org/files/reports/107.pdf.

[38] In response to organizing efforts for the passage of the Dream Act by undocumented youth and their allies, the Obama administration announced a temporary reprieve for noncitizens who arrived in the United States before turning sixteen years old. *Consideration of Deferred Action for Childhood Arrivals Process,* US CITIZENSHIP & IMMIGR. SERVS., http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD (last visited Sept. 27, 2012).

> On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not provide an individual with lawful status.

Id.

The combination of failed large-scale immigration reform bills and the ramped-up levels of deportations have led immigrant advocacy groups to change tactics. As important as obtaining immigration status remains to the survival of individuals at risk of being caught in the deportation dragnet, much of the work of the social movements focused on immigration has necessarily transformed into resisting the types of policies that make life-altering differentiations between citizens and noncitizens, the types of policies that lead to mass incarceration of noncitizens.

NWIRP's litigation efforts in cases like Mr. Castillo's, the US citizen who was wrongfully detained by immigration authorities, highlight tensions between focusing on the importance of immigration status and focusing on rendering status irrelevant. One narrative take on that case could focus on Mr. Castillo's US citizenship and his years of serving in the US Army as the sources of outrage for the seven months of caging in an immigration prison that he endured. In that narrative, the rights inherent to Mr. Castillo as a US citizen would be the very thing that should have prevented him from being placed in an immigration prison, and the large settlement and formal apology from the government would have been granted to him in recognition of the violation of his citizenship-granted rights.

An alternative narrative of the case, one that focuses on minimizing the importance of immigration status, would view the fact of Mr. Castillo's citizenship as indicative of the failed protections that citizenship provides people of color. An exclusive focus on the importance of lawful status—in this case, Mr. Castillo's US citizenship—erases the ways in which racially targeted policing, regardless of immigration status, is constantly deployed by enforcers of both criminal laws and immigration laws. Thus, rather than have his case highlight questions of how a US citizen could be jailed for seven months by immigration authorities, it could center on questions such as the following: Why do immigration authorities target people of color for immigration enforcement? And why do immigration authorities have the power to cage anyone at all? The work that NWIRP does—calling attention

to the abuses of the detention system, defending and obtaining immigration status, and advocating for the irrelevance of immigration status in the distribution of life chances—engages our communities in struggles for immediate survival, while also recognizing that survival should not depend on immigration status.

Another challenge in responding to the criminalization of immigrants involves the use of language and imagery that sets up immigrants in opposition to so-called criminals in a misguided effort to add legitimacy to the struggle for immigrant justice. At immigrant rights rallies and events, it is common to see signs declaring "we are not criminals" side by side with signs that declare immigrants are "hard workers" and that "working is not a crime." In reality, in part because of the disproportionate policing of communities of color, the dichotomy set up between "criminal" and "hard worker" is a false and, I would argue, damaging one. My clients are primarily poor people of color, and many of them have had at least one brush with a state apparatus that would readily label them criminal, whether that is a criminal court, a county jail, or the child welfare system.

In fact, NWIRP prioritizes the representation of individuals with criminal convictions precisely because the immigration laws, in seeking to readily divide individuals into "deserving" and "undeserving" of status, are so heavily stacked against them. For many of NWIRP's clients, carrying a sign stating, "We are not criminals" would belie the labels put on them by state institutions that seek to criminalize their survival activities. These activities include seeking employment while lacking a social security number, parenting while poor, and living in neighborhoods heavily targeted by police for enforcement of criminal laws. Strategies for pursuing immigrant justice that center the ultimate goal as a quest for inclusion in a presumed hardworking, noncriminal populace necessarily divide immigrant community members into "deserving" and "undeserving" of relief from harmful immigration enforcement. By representing those who would most readily be thrust into the category of "undeserving," NWIRP rejects the

deserving/undeserving dichotomy. The alternative, a strategy that centers on images of immigrants as hardworking and non-criminal, promotes the idea that those who are "undeserving" should not benefit from policy changes, and is thus unacceptable.

This is precisely the strategy employed in the Obama administration's program allowing prosecutorial discretion.[39] Partially in response to the pressure put on the administration for inflicting a record number of deportations, an announcement was made in 2011 that ICE would review the files of individuals currently facing deportation and stop seeking the deportation of those deemed "deserving" of mercy. This is not a process that grants anyone lawful status. Rather, it temporarily removes the "deserving" person from the list of individuals for whom seeking deportation is considered a priority. In order to be deemed deserving, a person must have had no contact with the criminal legal system. In NWIRP's experience thus far, any contact with the criminal legal system, from an arrest on, can be enough to disqualify an individual from receiving the benefit of prosecutorial discretion. Thus, the immigration enforcement apparatus continues to target the most vulnerable people (those more likely to come into contact with the criminal legal system), while temporarily removing some of the less vulnerable (those whose skin color or income bracket mark them as less likely to have experienced contact with the criminal legal system) from the crosshairs.

V. CONCLUSION

Challenging this brand of policy solution, which pits the supposedly good immigrants against the supposedly bad immigrants, places today's immigrant advocates on the same continuum as Gordon Hirabayashi and the

[39] Unlike an act of Congress, this program is subject to the whim of the executive branch. *Prosecutorial Discretion and Executive Action: A Resource Page*, IMMIGR. POL'Y CTR., http://www.immigrationpolicy.org/just-facts/prosecutorial-discretion-and-executive-action-resource-page (last visited Sept. 11, 2012).

coram nobis legal team that questioned the division of the US population between those deemed "loyal" and those branded "disloyal" on the basis of their heritage. In defying the military-imposed curfew and the order to report for internment, Gordon Hirabayashi offered a bold challenge to the injustices threatening his community's survival. Similarly, today's immigrants and their allies are engaged in a battle to roll back the tide of criminalization, whether by challenging individual deportations, dismantling ICE and local law enforcement collaborations, or fighting back legislation that seeks to render noncitizens more vulnerable to harm on the basis of their status.

This work is both about helping our communities survive this current climate and creating the space to build alternatives. Alternatives could include new paradigms of citizenship that are not tied to national origin, but are instead based in recognizing people's connections to their communities—a citizenship that could not be taken away, or perhaps a paradigm where the concept of citizenship itself becomes irrelevant.