

# Immigration Detainees in Nebraska:

## An Opportunity to Welcome Our Newest Neighbors<sup>1</sup>

by Milo Mumgaard

Nebraska is a state of immigrants. From the time of its early settlement to the present day, this great state is full of people from all over the world. It's easy to see, as every summer Nebraskans have a rich smorgasbord of local festivals and events to choose from commemorating our immigrant heritage. Today, Nebraskans are in the midst of one of history's great demographic moments, just like we saw 100 years ago. Today, Spanish-speaking newcomers from Mexico, Guatemala, and other parts of Central and South America, coming here with dreams of a better life for their families, are positively transforming towns and communities all across the state—just like waves of immigrants before them.

These families, though, have significantly different ethnic and language backgrounds than the majority of Nebraskans today. These families also have members with a wide mixture of legal status under present immigration law. According to census data, 85% of immigrant families with children are

“mixed legal status” families—that is, families where at least one parent is a non-citizen and one child is a citizen. Nebraska, with one of the nation's fastest-growing foreign born populations in the country, is seeing this first hand.<sup>2</sup>

These mixed status families, given present federal immigration policy, experience significant legal complexities. In our experience at Nebraska Appleseed, where we are dealing with the legal rights of non-citizens across a wide range of issues, including public benefits, education, employment rights, and child welfare, we work with mixed status families who, every day, make life changing decisions based upon a family member's immigration status. These decisions are made even more critical when a non-citizen family member is undocumented, and there is a risk this person may be deported. It is estimated that over 40% of the foreign-born residents in Nebraska are undocumented, which includes parents, children, and other working family members in communities all across the state.<sup>3</sup>

Given this demographic reality, policies that disadvantage non-citizens are likely to have broad spillover effects on the citizens that live with them in the great majority of immigrant families. More specifically, policies to remove or deport illegal- and legal- immigrants with long connections to their communities have the impact of dividing mixed-status families and generating significant community problems.

Admirably, state and local leaders in Nebraska have acted to insure Nebraska is a welcoming state, focused on how best to have policies that do not disadvantage these newest Nebraskans and try to keep families together. Recognizing that the future of much of the state largely rests on ensuring these newcomers are treated fairly and have equal



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opportunities in life, there have been various initiatives to ensure our state provides a welcoming legal and policy environment. These efforts include the Nebraska Legislature's Task Force on the Productive Integration of the Immigrant Workforce Population, which led to the introduction of legislation to create a state "Newcomer Welcoming Policy." Modeled on the state's family and juvenile justice policies, this policy would require state and local governments "to consistently welcome newcomers, to lower barriers to participation, and provide equal opportunity for newcomers."<sup>4</sup> In addition, the Supreme Court's Minority and Justice Task Force, and now its Implementation Committee, have taken huge steps forward in identifying and addressing barriers to justice.

Another important positive development over the last few years has been the creation of several legal clinics to assist low-income immigrants with their legal problems, including immigration. These include the Justice for Our Neighbors program, the Interfaith Immigration Clinic, and bilingual clinics targeting new immigrants sponsored by Nebraska Legal Services, the Volunteer Lawyers Project of the NSBA, and Creighton School of Law. In combination, these programs have vastly expanded our state's capacity to provide basic legal help to our newest Nebraskans.<sup>5</sup>

Nevertheless, our state's progress in treating immigrant families equitably is frustrated by the number of non-citizens detained for immigration law violations without legal representation. According to the Bureau of Immigration and Customs Enforcement (BICE) (formerly known as the Immigration & Naturalization Service) district for Nebraska and Iowa, there were over 4,300 aliens arrested for the Fiscal Year of 2002. For that same fiscal year, over 3,200 were removed from the United States. For FY 2003, 2,013 individuals were removed. At the end of May 2003, there were 2,189 in BICE custody in Nebraska and Iowa.<sup>6</sup> As the percentage of mixed status families confirms, the number of parents detained and deported from our area is traumatic for these families.

A significant number of these detainees have some legal claim to residing in the United States with their families, but face a unique set of legal circumstances: they do not have the same right to appointed legal counsel as those who are charged with criminal violations. While a detainee is allowed the right to legal representation if there are removal (deportation) proceedings started against them, it must be either at his or her own expense or provided *pro bono*.<sup>7</sup>

Nebraska Appleseed, working with the VLP, has sponsored trainings and posted information on the Equal Justice Clearinghouse website at [www.NeEqualJustice.org](http://www.NeEqualJustice.org) to boost the ability of *pro bono* attorneys to represent these detainees, most of whose only "crime" is to be here working

and supporting their families. Further, the VLP has received a grant from the Nebraska Commission on Public Advocacy and now has staff to provide direct representation and develop *pro bono* assistance for these detainees.

The need for representation, however, continues to outstrip the need, leaving thousands of new Nebraskans without basic legal help and deported from the country, leaving behind children, spouses, and jobs.

Nebraska Appleseed recently asked two questions related to this issue: How does our problem compare nationwide or to other areas of the country? What is the status of the detainees who are being held in county jails, in our legal backyards all across the state?

The simple truth is that legal representation for immigration detainees continues to be sorely lacking in Nebraska compared to the rest of the country. According to the Executive Office for Immigration Review (EIOR), for the fiscal years between 1998 through 2002, less than half of those aliens whose proceedings were completed were represented.<sup>8</sup> While disconcerting, this still far outstrips Nebraska and Iowa. In fiscal year 2001, for example, only 53 respondents of 796 were represented in hearings in the area—less than 7%.<sup>9</sup>

Yet, if you go down the road, to Kansas City, MO, you find that an amazing 76% of the detainees at that location were represented (981 of 1,292 in FY 2001). A combination of concentrated presence by a legal service provider and *pro bono* commitment has made this possible.<sup>10</sup>

It is thus possible for more people to have more representation. Unfortunately, although representation does not depend entirely on where these detainees are held, in our experience this is the major hurdle. In Nebraska, there is a significant reliance by BICE on holding detainees in county jails across the state.<sup>11</sup> For most lawyers across the state, it is literally possible to travel to the county jail and see, mixed with those charged with crimes and awaiting sentencing, non-citizen parents who until a few days before were working and supporting their families right there in town but had the misfortune to be detained for immigration violations.

In order to gain a clearer picture of where detainees were being held, under what conditions, and for how long without representation, in 2003 Nebraska Appleseed began an informal fact-finding investigation of local county jails throughout Nebraska and Iowa. Our goal was to obtain a "snapshot" of who was being detained in county jails in the Nebraska and Iowa immigration district by calling the dozens of jails at which BICE confirmed they held detainees, ask a series of questions as to how many immigration detainees were being held, and document their responses. Our intern

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carefully contacted each jail and recorded the information he received. There was a mixed reaction to our queries, ranging from very open and forthcoming to unreserved suspiciousness. It also included many anti-immigrant references from some of the public officials. Many jails were also unwilling to provide this information, so we were required to write open records requests demanding the information.

The end result was a multi-layered picture of the thousands of non-citizens languishing in Nebraska's and Iowa's county jails because they had come to the U.S. to work and support a family. Some jails hold hundreds of detainees over the course of a year, others just a few. Some hold them for long periods of time, others honor the law and release the detainees if the BICE does not deal with them within 72 hours. We also learned of overcrowding and the reliance of some counties on federal detention payments to run their jails.

This "snapshot" also confirmed there was little uniform process being used by county jail officials in handling immigration detainees and informing them of their right to legal counsel. Even among counties, the respect paid to this right ranged greatly, from those that described themselves openly as "a major detention center" and talked about how they provided information to detainees, to jails that barely knew they had immigration detainees mixed in among their "Mexican" or "Spanish" inmates. No jail seemed familiar with any process to locate *pro bono* counsel for detainees. One jail official helpfully explained the county provides a lawyer that advises the detainees "to plead guilty."

Nebraska Appleseed intends to revisit these county jails in the coming months to determine what has changed for immigration detainees with respect to opportunities for legal representation. We all know these detainees are often the primary breadwinners for families that are part of the historic demographic change we are now experiencing, and are part of families that represent the future of our state. We must, as those committed to a more equitable legal system in Nebraska for these newcomers, do better. Legal rights do not end at the border, and they should not end once someone is detained for an immigration violation in a Nebraska county jail.

## Endnotes

- <sup>1</sup> This article was researched and drafted by Gustavo Gutierrez, 2004 graduate of UNL College of Law and law clerk at Nebraska Appleseed, and Jonathan Jones, intern at Nebraska Appleseed and recent recipient of Truman Fellowship, under the direction of Milo Mumgaard, Executive Director, Nebraska Appleseed.
- <sup>2</sup> "The Integration of Immigrant Families in the United States," *Urban Institute* (July 2001), at 15.
- <sup>3</sup> "Undocumented Immigrants: Facts and Figures," *Urban Institute* (January 2004), at 2.
- <sup>4</sup> This legislation passed out of committee but died at the end of the 2004 legislative session.
- <sup>5</sup> A listing of these clinics and their services is available at [www.NeEqualJustice.org](http://www.NeEqualJustice.org).
- <sup>6</sup> Numbers provided to Nebraska Appleseed by the BICE office in Omaha, Nebraska in August of 2003.
- <sup>7</sup> See 8 U.S.C. § 1362.
- <sup>8</sup> Executive Office for Immigration Review, FY 2002 Statistical Year Book, at page G1.
- <sup>9</sup> Executive Office of Immigration Review, Statistical chart for FY 2001, Immigration Court Review.
- <sup>10</sup> Interview with Western Missouri Legal Services, March 2004.
- <sup>11</sup> BICE typically uses three types of facilities to hold detainees: (1) government-owned Service Processing Centers (SPC), which are operated by the detention and deportation branch of BICE; (2) privately operated "contract facilities"; and (3) state, local, and county jails, in which BICE rents bed space as needed. 

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