IN THE SUPREME COURT OF THE STATE OF OREGON

JOSE ANTONIO GONZALES VERDUZCO, Petitioner-Appellant Petitioner-Appellant,	)	Supreme Court Case No. S056500
v.	)	Appellate Court Case No. A132780
STATE OF OREGON Defendant-Respondent.	)	Yamhill County Circuit Court Case No. CV060029

AMENDED PETITION FOR REVIEW OF PETITIONER-APPELLANT

Notice of Intent to File Brief on the Merits

Petition to Review the Decision of the Court of Appeals on the Petitioner's Appeal from a Judgment of the Circuit Court for Yamhill County Honorable John L. Collins, Judge.

Decision of Court of Appeals filed: March 19, 2008. Edmonds, Presiding Judge, and Wollheim and Sercombe, Judges. Affirmed Without Opinion.

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PETITION FOR REVIEW

PRAYER FOR REVIEW

Jose Verduzco, petitioner below, requests this Court to review and reverse the decision of the Court of Appeals in this case, filed March 19, 2008. (Decision attached in Appendix p. 1.) (Appendix hereafter APP).

LEGAL ISSUE PRESENTED

(A.) Is it affirmative misadvice by criminal defense counsel to advise his legal permanent resident (LPR) client that he may be deported as a result of a contemplated plea to an "aggravated felony" [1] charge when, in reality, the LPR is legally required by the immigration laws to be banished as a direct consequence and inevitable "mandatory minimum" result of the plea?

PROPOSED RULE OF LAW

(A.) It is affirmative misadvice constituting ineffective assistance of counsel under the Oregon Constitution for criminal defense counsel to advise an LPR that he may be deported as a result of a guilty plea to an aggravated felony charge that, as a "mandatory minimum" immigration consequence of his conviction, will require his banishment by the immigration authorities from the United States.

REASONS FOR REVERSAL

- The Court of Appeals decision is contrary to the US Supreme Court opinion in INS v. St. Cyr, 533 U.S. 289 (2001). The decision is contrary to this court's decisions in In re Complaint as to the Conduct of Wade P. Bettis, Accused, 342 Or 232 (2006), Lyons v. Pearce,

1. INA 101(a)(43) The term "aggravated felony" [in pertinent part as it applies to this case] means- (B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code); INA 101(a)(43) et seq in total is attached at APP, page 42.

298 Or 554, 694 P.2d 969, and Krummacher v. Gierloff, 290 Or 867, 883, 627 P.2d 458 (1981). The decision is contrary to the Oregon Court of Appeals decision in Long v. State of Oregon, 130 Or App 198, 880 P.2d 509 (1994). The decision is contrary to US v. Kwan, 407 F.3d 1005 (9th Cir. 2005) and US v. Cuoto, 311 F.3d 179, 181 (2nd 2002).

- Any distinction between "direct" and "collateral" consequences loses all significance when the defendant's plea results from affirmative misadvice about its immigration or other effects. See, e.g., United States v. Del Rosario, 902 F.2d 55, 59 (D.C. Cir. 1990); see also, Holmes v. United States, 876 F.2d 1545, 1549, n.5 (11th Cir., 1989), and cases cited therein [discussing the effect of misinformation regarding the "collateral consequence" of parole eligibility on the voluntariness of a plea], United States v. Toothman, 137 F.3d 1393 (9th Cir. 1998) [material misinformation inducing a plea where defendant expected a sentence from 10-16 months but was sentenced to 109 months. Toothman was held not to have been "'equipped intelligently to accept the plea offer made to him.'" Id. at 1400; quoting, United States v. Watley, 987 F.2d 841, 842 (D.C. Cir. 1993)]

- It is fundamental that a plea that is involuntary, unintelligent, or uninformed is an invalid plea. Brady v. United States, 397 U.S. 742, 748 (1969); see also, McCarthy v. United States, 394 U.S. 459, 464-67 (1969).

- Alien-defendants in criminal court in Oregon are most often from Mexico. These alien-defendants are frequently LPRs who are not eligible for asylum, Convention Against Torture (CAT) relief or Withholding of Removal relief, and who as a matter of law have no entitlement to any prosecutorial discretion to not commence deportation proceedings against them.[2] The issue raised by this petition for review arises frequently in the courts of this state and

[2] Footnote 4 of Gonzalez v. State, 340 Or 452, 454 states:
We note that petitioner did not offer any evidence that reveals the likelihood that the Attorney General will or will not choose to pursue deportation proceedings—either generally or in particular classes of cases. There is also no

the proof of the frequency of deportation proceedings presented against Oregon defendants distinguish this case from the record in Gonzales.

- The US Supreme Court in INS v. St. Cyr stated that the Attorney General has no discretion to not banish a legal permanent resident convicted of an aggravated felony after the effective date of AEDPA[3] AND IRRIRA.[4]

- Petitioner provides substantial evidence that proves that the enforcement of the immigration laws in the State of Oregon is a dragnet that makes it virtually certain that an LPR convicted in this State of an "aggravated felony" will be deported from the United States forever. Data obtained from county jails in Oregon show astonishing and increasing numbers of aliens systematically transferred from county jails to ICE custody.[5] In 2007 alone, Washington County transferred 611 inmates to ICE custody, Multnomah County transferred 242, and the NORCOR facility in the Dalles transferred 484. (See APP, p. 21, 22, 25). Thus far in 2008, the amount of inmates placed into ICE custody at NORCOR has been 708, which by the end of the year may be close to twice the amount of inmates in 2007 (APP p. 25). The amount of inmates in Washington County According to the *Oregonian*, "In 2007, the Marion County Jail identified 3,423 foreign born inmates, about one out of every six people booked into the jail." (See article from 9/21/08,

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evidence whether Oregon reports every alien who is convicted of an aggravated felony to the INS. This Petition for Review outlines the manner in which Oregon Law Enforcement assist ICE in the deportation of criminal aliens from the state of Oregon.

[3] AEDPA refers to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 (hereafter AEDPA).

[4] IIRIRA refers to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (effective April 1, 1997) (hereafter IRRIRA).

[5] Petitioner provides evidence concerning the amount of inmates held by ICE or transferred into ICE custody at NORCOR jail facility, the Washington County Jail, and Multnomah County Jails, obtained from these sources. If briefing is permitted, and, if the Court allows petitioner to present additional such evidence as part of the brief to the Supreme Court on this issue, he will do so. The point is made though: criminal aliens, due to the substantial assistance of law enforcement authorities in the enforcement of the immigration laws, are routinely being deported by ICE from the State of Oregon in substantial numbers on an everyday basis in this state.

"More arrests end in deportation," APP p. 19) Also see attached Associated Press (AP) article from July 2008 "Deportations up 40 percent in Pacific Northwest."[6]

In a March 28, 2008 ICE News Release, "ICE unveils sweeping new plan to target criminal aliens in jails nationwide," (APP, p. 7) Julie Meyers, Homeland Security Assistant Secretary for US ICE, states "this comprehensive initiative ["Secure Communities"] aims to identify and remove all aliens convicted of a crime." The news release also states:

> Last year under CAP [Criminal Alien Program], ICE charged a records 164,000 aliens in law enforcement custody with immigration violations and removed approximately 95,000 aliens with criminal histories.

A fact sheet available on the ICE website (July 3, 2008) states that their Law Enforcement Support Center (LESC), a national enforcement operations facility administered by ICE, and located in Vermont, has just completed a record-breaking year.[7] (APP p. 14.) APP p.14 states:

> Law enforcement officers have immediate access to alien records entered with the National Crime Information Center (NCIC) from every alien file maintained by DHS—*approximately 100 million records*—by using the formatted Immigration Alien Query (IAQ) screen *incorporated within each state's law enforcement communications system.*"

(Emphasis added.) The "Significant FY2007 accomplishments" on this Fact Sheet boast a more than 30% increase since fiscal year 2006 in immigration detainers placed on foreign nationals (including aggravated felons) wanted by ICE for criminal and immigration violations,

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[6] Immigration officials state in this article that the number of illegal aliens deported from Washington, Oregon and Alaska was 7,345 for the first 9 months of a fiscal year. This is up from 5,256 for the same period of 2007. This article notes that 4,500 people were added to the Criminal Alien Program (CAP) in Oregon Between June 2007 and June 2008. Immigration and Customs Enforcement (ICE) monitors detainees added to the CAP until they are deported after their sentence is served. The ICE Detention and Removal Operations (DRO) spokesperson stated of the Program: "I think the message from this is if you're committing crime and you're foreign born, you're going to be found and be removed." (APP p. 16)

Regarding the Criminal Alien Program, also see March 19, 2008 article "Immigration agents step up enforcement." (APP, p. 5) showing that this jail now has more "ICE holds" placed on prisoners than ever before. In 2005 there were 213 transfers; in 2006, 304 transfers; and in 2007, 696 transfers from Washington County Jail to ICE custody. Neil Clark, a field office director for DRO stated, "Last year we had 160,000 charging documents issued through the criminal alien program as compared to 60-thousand the year before that. This year we expect to issue more than 200,000 charging documents." (APP, p. 6)

[7] The LESC operates 24 hours a day, 7 days a week, 365 days a year and provides information to state and local law enforcement officers, and to federal, state and local correctional and court systems.

from 14,803 to 20,330. The LESC also set a new record of 250,000 records entered into the NCIC database for previously deported aggravated felons, immigration fugitives and wanted criminals. (APP, p. 14) In ICE's Fiscal Year '07 Accomplishments the agency states "In FY07, ICE removed a record 276, 912 illegal aliens, including voluntary removals, from the United States" (APP, p. 10); "IN FY07, the LESC responded to a record 728,243 requests for information from law enforcement officials" (APP, p. 12); and "In FY07, ICE Attorneys participated in the completion of 365,851 cases before immigration courts, including 323,845 removal cases" (APP, p. 13).

- Under Wiedersperg v. INS, 896 F.2d 1179 (9th Cir. 1990), petitioner Verduzco who has been ordered deported as required by the immigration laws, can reopen the deportation proceedings against him and have his legal permanent resident status restored if this court rules that his removal from the United States was caused by a flawed, unconstitutionally obtained conviction in violation of the petitioner's right to counsel under Article 1, section, 11, of the Oregon constitution. The Ninth Circuit affirmed the continuing vitality of Wiedersperg in Cardoso-Tlaseca v. Gonzales, 460 F.3d 1102 (9th Cir. 2006). For an example of this procedure, please see excerpted materials r.e. Robin Wilder, PCR case (APP, pp. 32-41).

Petitioner in the record below presented to the PCR court expert affidavits supplied by experienced immigration counsel that proved he was affirmatively misadvised by criminal defense counsel that he may be deported when in reality he was required to be deported forever as a matter of the immigration laws and that he had no opportunity to seek CAT, Withholding of Removal, or Cancellation of Removal relief from removal. (See ER pages 18-38; ER refers to Excerpt of Record provided to the Court of Appeals.) Moreover, that prosecutorial discretion is not extended to aggravated felons as a required matter of the immigration law. The Attorney General's office no longer has prosecutorial discretion to not deport an aggravated felon.

- Petitioner in fact has been deported from the United States where he has resided since he was 10 years of age as a result of his conviction for an aggravated felony. (APP, p. 2-4) To confirm Mr. Verduzco has been ordered deported from the United States, please call 1-800-898-7180 and enter his alien number A 078 737 272. Counsel does not have a copy of the deportation order entered against Mr. Verduzco.

- Petitioner was further misadvised by criminal defense counsel that the federal government can do anything it may wish to him. However, the Federal Government could not deport petitioner from the United States as an aggravated felon until after he entered a plea to an aggravated felony charge. Criminal defense counsel's reckless statement would cause a reasonable defendant to believe there was no immigration reason to fight the criminal charge as he already is subject to banishment at the whim of the Federal Government. (See deposition of Paula Lawrence at SER pages 10-36; SER refers to Supplemental Excerpt of Records filed by the State of Oregon to the Court of Appeals).

- Petitioner was prejudiced by the mistaken and reckless advice by criminal defense counsel. Criminal defense counsel admits that if she had known that Mr. Verduzco was going to be required by the immigration laws to be deported forever as a result of his plea to delivery of a controlled substance, but otherwise would be able to remain in the United States, that she would have handled the defense of Mr. Verduzco completely differently. Mr. Verduzco swore by affidavit below that he would have gone to jury trial and defended his case in all possible ways had he known banishment was at stake. (See ER page 18-24.) Petitioner shows he would not have pled guilty and would have insisted on jury trial and has proved prejudice due to the ineffective assistance of counsel. Hills v. Lockhart 474 US 52(1985) (that defendant would have insisted on a jury trial proves prejudice in the context of a plea caused by ineffective assistance). It is at least reasonably probable that in light of the State v. Hall 339 Or 7 (2005) decision, that if

Mr. Verduzco would have filed a motion to suppress[8] in this matter, the charges against him might have been dismissed. See the depositions of the officers involved in this illegal stop and search of Mr. Verduzco at PE Exhibits 24, 25.

STATEMENT OF THE CASE

Pertinent Facts

For purposes of reviewing the legal issues presented by the petitioner, the facts pertinent to this appeal that are reasonably not in dispute are as follows:

Mr. Jose Verduzco swore to the PCR court that:

> I am currently 23 years of age. If I work for another forty years, I am likely to make by a conservative estimate more than a million dollars more over my lifetime in the United States than I would ever earn in Mexico....
>
> I would have taken all legal measures, including a jury trial, stop motion, Miranda rights motion (based on compelling circumstances I should have been given Miranda rights), Motion to Suppress (drugs and statements).... of defending the Delivery of a Controlled Substance charge if I had been advised by my criminal defense counsel that I would be required to be banished from the United States following a conviction for delivery of a controlled substance. I would have proceeded with any and all of these motions in a jury trial if my criminal defense counsel advised me as my PCR attorney is advising me now that there is at least some potential of winning the Motions to Suppress at the trial stage in Yamhill County and/or at the Court of Appeals level...
>
> I would have agreed to a jail sentence of 364 days on a "generic" solicitation offense in order to resolve the case and not be deported....
>
> I have been advised by Immigration counsel, also my post-conviction relief counsel, that solicitation is a non-deportable offense under the Ninth Circuit case *Coronado-Durazo v. INS,* 123 F3d 1322 (9th Cir. 1997). I would have been willing to serve 364 days in jail following a plea to this charge in order to avoid banishment....
>
> I know that I was not given Miranda rights until after the police seized marijuana that was in my vehicle. They seized the marijuana after I told Detective Desmond where it was. He had not given me Miranda warnings before I told him where the drugs were. I felt I had no choice but to agree to the search as I felt like it was going to happen no matter what I said.
>
> The police had no right to stop my vehicle in the first place. The numerals on my license plate were readable. The tinting on the windshield of the vehicle was not such that I could not see out of the vehicle and that others could not see within the vehicle. The tinting did not make it difficult to see at all....
>
> At that point, I saw the drug dog coming towards my car and I felt there was nothing I could do except to let them have the drugs in my car....
>
> (Please see Affadavit at ER pages 18-24)

Criminal defense counsel admitted in depositions that she did not know the immigration laws. She admitted not telling her client she did not know the immigration laws. She admitted

[8] Generally, see PE 23-33 and Deposition Exhibits 1-3.

that her defense of the criminal case would have been materially different had she known that by recommending to the petitioner that he plead guilty to the delivery charge that she was also requiring his banishment from the United States, where he had lived since the age of 10. She admits doing absolutely no investigation into a motion to suppress and suspended her judgment on that issue after suspending her judgment on the immigration consequence of conviction issue.

The record below shows that if she had investigated a motion to suppress that this was fertile ground to possibly succeed with a dismissal of the charges against Mr. Verduzco. Mr. Verduzco's purported "goal" proffered by criminal defense counsel in this case to not go to jail and to continue with his life was triggered by criminal defense counsel's reckless statement that Mr. Verduzco could be deported from the United States at any time by the immigration authorities. The resulting defense to deportation, i.e. do not go to jail so immigration does not find you, is especially futile and ill-advised in this case as the only chance that Mr. Verduzco had to not be deported was to fight his case. The US could not deport Mr. Verduzco for any reason or based on any whim whatsoever as claimed in the reckless statement made by criminal defense counsel to her client. Mr. Verduzco, who had been convicted as a juvenile of delivery of a controlled substance, was not equipped by criminal defense counsel to enter into an informed decision as to whether or not to enter a plea of guilty to the delivery charge. He was not told by criminal defense counsel that the juvenile case could not result in his deportation as a matter of law. *See Matter of Devison,* 22 I. & N. Dec. 1362, 1369 (BIA 2000) (en banc)(juvenile adjudications are not convictions for purposes of federal immigration law"). Ironically, pleading guilty to escape the assumed clutches of the immigration authorities by not going to jail in fact put Mr. Verduzco under the immigration authorities' power to banish him forever from the United States. Mr. Verduzco was eventually arrested by the immigration authorities when he travelled outside of the United States, at which point they identified his criminal record and put

him into deferred inspection. He was then placed into custody at the Tacoma Northwest Detention Center, where over 1000 Northwest immigrants are held at any given time by the immigration authorities and subsequently deported from the United States as required by the immigration laws.[9] He had no defense available to him from the immigration charge. He was charged with inadmissibility under INA 212 (APP p. 45-46) due to his drug conviction (See Notice to Appear at APP, p. 4a). The immigration authorities have no discretion not to deport an inadmissible alien. See excerpt of Memorandum by Doris Meissner of the INS (APP, p. 27-31). Mr. Verduzco's deportation was completely forseeable and very likely avoidable but for the malpractice of criminal defense counsel.

INA 236(c) (APP, p. 46) provides for the administrative detention of any LPR who has been convicted of an aggravated felony pending the completion of the removal process. The intent of Congress in implementing INA 236 (c) was to provide that dangerous criminals are never released back onto the streets of the United States after they are placed into criminal custody.

I. Post-Conviction Court Ruling: Post-Conviction Relief Denied

Judge Collins states in pertinent part in his opinion letter attached in the ER as follows:

> According to depositions, the emphasis in representation was Mr. Verduzco's desire to avoid jail or prison. That goal would appear to have been abundantly achieved. The issue of deportation was discussed. Mr. Verduzco was advised that he may be deported. Counsel further testified at deposition that she tells clients who are not United States citizens that "[T]he Federal Government can do whatever the Federal Government wants to do and so they need to understand that they could be deported." Ms. Lawrence indicated that if a client wants to know more after that she will refer them to an immigration attorney. Ms. Lawrence characterized this as something more than "may" be deported, but something less than "will" be deported ... In support of petitioner's position that Ms. Lawrence's representation was constitutionally

[9] The GEO group which runs the Northwest Detention Center has announced a 545-bed expansion of the facility, which currently holds 1030 beds but it is upping its capacity *by more than half* to 1,575 beds. (See article, APP, p. 17)

inadequate for failure to pursue a motion to suppress the searches, counsel submits numerous documents and exhibits outlining issues that may have been raised on a motion to suppress evidence ...

Here, Ms. Lawrence advised Mr. Verduzco that he *may* be deported ... Even though it might have been stated in stronger terms, it was, unlike statements in *Kwan*, neither inaccurate nor misleading. Unlike Mr. Kwan, the advise was not in response to specific questions and not "affirmatively misleading." Finally, it is worth noting that had Mr. Verduzco asked questions Ms. Lawrence could not answer with confidence, Mr. Verduzco would have been referred to an attorney specializing in immigration law.

I conclude that Ms. Lawrence's representation met both state and federal standards. I also, then, conclude that any failure of the judge accepting the plea to engage in further colloquy regarding immigration consequences would not constitute error that would require post-conviction relief.

Material submitted by counsel appear to establish issues of fact regarding the searches that are central to this case. However, the issue, again, is not whether a motion to suppress might have been granted, therefore it is inadequate assistance of counsel not to pursue suppression. Rather, it is whether counsel adequately considered the issue and made, with client, an informed decision not to pursue it. Here, the client's primary and strong focus was not on avoiding conviction, but rather on avoiding prison. Adequacy of counsel is not to be measured solely by the outcome, but, clearly, here, counsel not only accomplished the result sought by the client, but managed to obtain 80 hours of community service as the only sanction for apparent involvement in what, by Yamhill County standards, is distribution of a fairly significant quantity of marijuana by a person who admitted regular sales.

Counsel and client clearly chose to focus on this outcome which proved successful. The court should not second guess counsel's judgment in not pursuing a motion to suppress and cannot find that failure to do so constitutes such breach of reasonable standards of representation as to amount to a constitutional denial of adequate assistance of counsel.

The relief sought in the petition is denied.

Please see ER pp. 45-49 for entire decision.

II. Decision of the Court of Appeals

The Court of Appeals affirmed without opinion on March 19, 2008 (APP, p. 1).

ARGUMENT

Standard of Review

The court reviews post-conviction proceedings for errors of law. ORS 138.220, Peiffer v. Hoyt, 339 OR 649, 660, 125 P.3d 734 (2005). The post-conviction court's findings of historical fact are binding on this court if sufficient evidence in the record supports them. Ball v. Gladden,

250 Or. 485, 487, 443 P.2d 621 (1968). If the post-conviction court fails to make findings of fact on all the issues, and there is evidence from which such facts could be decided more than one way, we will presume that the facts were decided in a manner consistent with the post-conviction court's conclusion of law. *Id.*, Peiffer, 339 Or at 660.

A. AFFIRMATIVE MISADVICE

Long v. State of Oregon, 130 Or APP 198, 880 P.2d 509 (1994), held that once criminal defense counsel begins to advise on a "collateral area of the law," he must do so completely and accurately. Criminal defense counsel's advice in Mr. Verduzco's case was inaccurate and incomplete. Lyons v. Pearce, 298 Or 554, 694 P.2d 969, required criminal defense counsel to know basic immigration consequences and to protect the immigrant defendant from potentially avoidable deportation consequences, stating at 564, 565, 567, 568:

> 12. A deported alien may be required to sever family ties, become impoverished and return to a society in which he no longer can function and may, indeed, face life-threatening conditions. It portends drastic consequences in many cases. It is in all cases "a life sentence of banishment," *Jordan v. DeGeorge*, 341 US 223 ... This necessarily places a great responsibility on those attorneys who represent persons who may be subject to deportation ...
> 17. We hold that failure of counsel to request from the court a recommendation against deportation where the defendant, in fact, was subject to deportation as a result of his conviction rendered counsel's assistance constitutionally inadequate.

This court should require criminal defense counsel to know INA 101(a)(43) et seq, that is, what convictions will require the banishment of their legal permanent resident clients from the United States forever so that a plea to such a charge is knowingly and voluntarily made by the criminal defendant.

A. (a) GONZALEZ IS INAPPOSITE TO VERDUZCO

Gonzalez v. State of Oregon, 340 Or 452 (2006), decided Gonzalez was only possibly, as a matter of fact, going to be deported. The legal decision follows from that factual conclusion. It is inapposite to Mr. Verduzco's claim that he had been affirmatively misadvised of the

immigration consequences of his conviction. The Oregon Supreme Court held that under the facts and law as presented by the litigation in Gonzalez, there was no affirmative misadvice to Gonzalez, because he was accurately informed of the immigration consequences of his conviction and because there was no proof submitted by Gonzalez that "aliens" committing deportable crimes are in fact deported by ICE with the substantial assistance and zealous cooperation of Oregon law enforcement, jail, probation officers and prosecutorial officials.

A. (b) ASYLUM, WITHOLDING OF REMOVAL, CAT

Mr. Verduzco faced no persecution in Mexico and was therefore legally ineligible for withholding of removal. As an "aggravated felon" he was further legally ineligible for asylum. Mr. Verduzco was ineligible for Convention Against Torture (CAT) relief. The January 2008 Immigration Outline on the 9th Circuit website states (pages 132-144):

> An applicant in removal proceedings is barred from relief if, "having been convicted by a final judgement of a particularly serious crime, [he] constitutes a danger to the community in the United States." *See* 8 U.S.C. Section 1158 (b)(2)(A)(ii): .... A person convicted of an aggravated felony "shall be considered to have been convicted of a particularly serious crime." 8 U.S.C. Section 1158(b)(2)(B)(i)....
>
> In order to qualify for withholding of removal, an applicant must show that [her] "life or freedom would be threatened" if [she] is returned to [her] homeland... 8 U.S.C. Section 1231 (b)(3); 8 C.F.R. Section 1208.16(b)...
>
> In order to be eligible for withholding of removal under the Convention Against Torture, the applicant has the burden of establishing that if removed to the proposed country of removal, "he is more likely than not to suffer intentionally inflicted, cruel, and inhuman treatment that either: (1) is not lawfully sanctioned by that country, or (2) is lawfully sanctioned by that country, *but* defeats the object and purpose of CAT." Nuru v. Gonzales, 404 F.3d 1207, 1221 (9th Cir. 2005) (citing Wang v. Ashcroft, 320 F.3d 130, 134 (2d Cir. 2003) (emphasis in original); *see also* 8 C.F.R. Sect. 1208.16(c)(2).

A. (c) PROSECUTORIAL DISCRETION TO NOT DEPORT

The Attorney General (AG) has no discretion not to deport an aggravated felon. See Fernandez-Vargas v. Gonzalez, 548 U.S. 30, 126 S. Ct. 2422, 165 L. Ed. 2d 323 (2006) (*Deportation is "dead certain" for an LPR who pleads to an aggravated felony).* In INS v. St. Cyr, 533 U.S. 289 (2001), the Court held an LPR "must be deported" once convicted of Delivery

of a Controlled Substance post AEDPA and IIRIRA. Mr. St. Cyr was from Haiti and had been a LPR for ten years when he pled to delivery prior to AEDPA and IIRIRA. Under pre-AEDPA and pre-IIRIRA law he was eligible for 212(c) relief, but after AEDPA and IRRIRA he was not if these laws operated retroactively. St. Cyr held that this immigrant's "settled expectation" was that he "may be" deported, not that he must be deported and that the meaning of these terms is materially different. St. Cyr assumed criminal defense counsel advised an "alien" defendant of the immigration consequences of his conviction because of the obvious importance of this factor to an immigrant in accepting or declining a plea offer. Accordingly, the AEDPA and IRRIRA statute was held to not operate retroactively to take away St Cyr's opportunity for a 212(c) hearing at which he could request the IJ to allow him to remain in the US. St. Cyr states:

> There is a clear difference, for purposes of retroactivity analysis, between facing possible deportation and facing certain deportation. *Lindsey* v. *Washington,* 301 U. S. 397, 401 (1937) ("Removal of the *possibility* of a sentence of less than fifteen years ... operates to [defendants'] detriment" (emphasis added)). Prior to AEDPA and IIRIRA, aliens like St. Cyr had a significant likelihood of receiving § 212(c) relief.54 Because respondent, and other aliens like him, almost certainly relied upon that likelihood in deciding whether to forgo their right to a trial, the elimination of any possibility of § 212(c) relief by IIRIRA has an obvious and severe retroactive effect.55

The Immigration Judge (IJ) is the agent of the Department of Justice who independently decides whether or not an immigrant who is eligible for and requests 212(c) or 240A(a) (APP p. 47) relief will be allowed in the IJ's discretion to remain in the United States. Following the passage of AEDPA and IIRIRA, neither the IJ nor the AG's office can exercise discretion to not deport an LPR aggravated felon such as Mr. Verduzco, who does not qualify for withholding of removal or CAT relief.[10]

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[10] INA 240(A)(a) clearly provides that a legal LPR, who suffers an aggravated felony conviction is not eligible for cancellation of removal, as follows:

> Cancellation of Removal for Certain Permanent Residents. – The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien –
>
> (1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
>
> (2) has resided in the United States continuously for 7 years after having been admitted in any status, and

B. THE GUILTY PLEA WAS UNKNOWINGLY AND INVOLUNTARILY ENTERED

US Supreme Court jurisprudence recognizes that deportation is punishment.[11] Failure to advise of the mandatory minimum of deportation voids the guilty plea as a matter of law under an Oregon constitutional analysis. The guilty plea must be set aside as unknowing and involuntary. In Lyons v. Pearce, supra, at 562, the court stated:

> We indicated [in Dixon v. Gladden, 250 Or 580 (1968)] that "[a] plea of guilty cannot be said to be understandingly made if the defendant does not know the legal consequence of such a plea." 250 Or. at 585, 444 P.2d 11.
> Article I, sections 11 and 12, require as well that the defendant waive these substantive rights only with knowledge of the "legal consequences" of the plea.

In In re Complaint as to the Conduct of Wade P. Bettis, Accused, 342 Or 232 (2006), Bettis recommended to his client that he unknowingly and involuntarily waive his right to a jury trial without having conducted discovery, research or factual investigation. Based on Bettis, the plea in Mr. Verduzco' case should similarly be held to be entered into unknowingly and involuntarily because of criminal defense counsel's failure to read (research) INA 101(a)(43) and INA 240A(a) and to thereby know that Mr. Verduzco was stipulating to his own banishment by signing onto the guilty plea agreement.

REASONS FOR GRANTING REVIEW

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(3) has not been convicted of an aggravated felony.

The Gonzalez opinion did not address this statute and its effect on an LPR who is "virtually certain" to be banished like Mr. Verduzco.

Cancellation of Removal is the device through which an immigrant can still request the IJ to exercise his/her discretion to not deport an immigrant after that immigrant has committed a crime. By the plain language of the statute, we see that this relief available in the IJ's discretion is not available should the immigrant be convicted of an aggravated felony. The list of aggravated felonies is attached in this appendix (APP, p. 42-44) and are found at INA (101)(A)(43) et seq. Inadmissibility grounds under INA 212 are at APP p. 45.

[11] *See* Bridges v. Wixon 326 US 135,147 (1945) *("Although deportation technically is not a criminal punishment, it may nevertheless visit as great a hardship as the deprivation of the right to pursue a vocation or a calling")*. Olim v. Wakinekona, 461 US 238, 253 Note 1 (1983) *("Whether it is called banishment, exile, deportation, relegation or transportation, compelling the person 'to quit a city, place, or country, for a specified period of time or for life' has long been considered a unique and severe deprivation and was specifically outlawed by 'the twelfth section of the English habeas corpus act, 31 CAR.II, one the three great muniments of English liberty"[*J. Marshall]). ; Ng Fung Ho v. White, 295 US 276, 284 (1922) (*deportation may result in the loss of "all that makes life worth living"* [J. Brandeis]).

- In its Petition for Review in Gonzalez at page 17 the AAG stated among his reasons for review by the Oregon Supreme Court of the Oregon Court of Appeals decision that:

> It is important to emphasize here the potential "collateral consequences" of the decision of the Court of Appeals in this case. First, suffice it to say, it is not a unique circumstance for a non-citizen to plead guilty to a felony offense in this state after being advised only that deportation "may result". Given this Court's decision in *Lyons* and the requirement in ORS 135.385(2)(d), it is reasonable to assume that that particular circumstance occurs on a daily basis in this state. That petitioner executed a preprinted plea petition with precisely that advice well illustrates the point. In short, it is reasonable to assume that many convicted defendants are within the scope of the decision in this case and that it will prompt many similar post-conviction challenges asserting that same claim.

Similarly, many long term LPRs are in similar circumstances to Mr. Verduzco's. His immigration circumstances are clearly distinguishable from the facts and the law upon which the Gonzalez decision is based. Gonzalez has left open the affirmative misadvice issue for another day. That day has come in Mr. Verduzco's case, which is well-briefed and has the complete record that this Court needs to consider this important issue of justice for Oregon's immigrant community. The importance of this issue has increased as enforcement of the immigration laws have become part and parcel of the enforcement of the criminal laws. The "separation" between immigration enforcement and criminal law enforcement is an antiquated concept. Law enforcement officials work hand in hand with ICE officials every day to deport criminal aliens.

CONCLUSION

This Court should grant this petition for review and order full briefing in this case and after full briefing and argument grant Mr. Verduzco's request for post-conviction relief.

DATED: October 24, 2008.

Respectfully Submitted,

Brian Patrick Conry, OSB No. 82224
Attorney for Petitioner-Appellant

APPENDIX

FILED: March 19, 2008

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOSE ANTONIO GONZALEZ VERDUZCO,
Petitioner-Appellant,

v.

STATE OF OREGON,
Defendant-Respondent.

Yamhill County Circuit Court
CV060029

A132780

John L. Collins, Judge

Argued and submitted: February 26, 2008

Before Edmonds, Presiding Judge, and Wollheim and Sercombe, Judges

Attorney for Appellant: Brian Patrick Conry

Attorney for Respondent: Carolyn Alexander

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[ ] Costs allowed, payable by

U.S. DEPARTMENT OF JUSTICE
Immigration & Naturalization Service

PORTLAND DISTRICT OFFICE
511 NW BROADWAY
Portland, OR 97209

JOSE VERDUZCO-GONZALEZ
102 SW CYPRESS
MCMINNVILLE OR 97128

Date:	December 03, 2001
File:	A78737272
Approval Date:	December 03, 2001
As of Date:	December 03, 2001
ADJ Class:	FX7

Dear Applicant:

Please be advised that you have been granted permanent resident alien status as of the above date.

This letter should not be regarded as proof of that status. You are being processed for an alien registration card which will be mailed to you at your mailing address within the next (6) six months. If you move from your address prior to receiving the card, please notify this office of your new address by mail or in person at the address listed below. If you require proof of your status in order to travel, accept employment or other reasons, you may come to the office listed below for a temporary stamp. Bring this letter and your passport with you.
If you do not have a passport, bring an identification card such as a Drivers License and (1) ONE INS Photo and we will issue you a temporary card.

PORTLAND DISTRICT OFFICE

511 NW BROADWAY
Portland,OR 97209
Monday through Thursday, 7:30am to 2:30pm
Friday, 7:30 to 12:00pm

Sincerely,

Ronald J. Smith
DISTRICT DIRECTOR

RJS/ JB

Enclosure

Admin

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U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Memorandum of Creation of Record
of Lawful Permanent Residence

Place	POO
File No.	A 78 737 272

Status as a lawful permanent resident of the United States is accorded:

Name In Care Of Street Address Apt. No. City, State, Zip	JOSE ANTONIO VERDUZCO-GONZALEZ 102 SW CYPRESS MCMINNVILLE, OR 97128	Sex 1 [X] Male 2 [ ] Female	Date of Birth (Month/Day/Year) 06/14/82
		City of Birth SAN MIGUEL	Country of Birth MEXIC
		Country of Nationality MEXIC	Country of Last Residence MEXIC
Marital Status 3 [ ] Widowed	1 [X] Single 2 [ ] Married 4 [ ] Divorced 5 [ ] Separated	Occupation STC	N/I Class at time of Adj. EWI
			Year Adm. to U.S. or Year of Change to Preser NI Class (whichever most recent) 1992
Priority Date (Month/Day/Year) 08/18/1994		Preference (If any) 2ND	Country to Which Chargeable (If any) MEXIC
Section 212 (a)(14) Labor Certification	1 [ ] Applicable-Submitted 3 [X] Not Applicable	Mother's First Name AMELIA	Father's First Name ANTONIO
Last NIV issued at (U.S. Consulate Post)		Date of Issuance of Last NIV	Number of Last NIV / Classification of Last NIV EV

Under the following provision of law
- [ ] Public Law 95-412
- [ ] Public Law 95-212
- [ ] Private Law No. ____ of the ___ Congress ___ Session
- [ ] Sec. 209 (a) of the I & N Act
- [ ] Sec. 209 (b) of the I & N Act
- [ ] Sec. 244 ( ) ( ) of the I & N Act
- [X] Sec. 245 of the I & N Act
- [ ] Sec. 249 of the I & N Act
- [ ] Sec. 1 of the Act of 11/2/66
- [ ] Sec. 13 of the Act of 9/11/57
- [ ] Sec. 214 (d) of the I & N Act
- [ ] Other law (Specify)

As of DEC 16 2001 (Month / Day / Year) at POO (PORT OF ENTRY FOR PERMANENT RESIDENCE)

Class of admission (Insert Symbol) FX7

REMARKS

RECOMMENDED BY (Immigration Officer) DEC 16 2001

(a)(k)(2)
(b)(7)(c)
(a)(k)(2)
(b)(7)(c)

DATE OF ACTION

DD

DISTRICT

APPROVED
U.S. DEPARTMENT OF JUSTICE
DEC 16 2001

FOR USE BY VISA CONTROL OFFICE

Date

Foreign State MEXIC

Preference Category 2ND

Number

Month of Issuance

Signed
(Visa Office, Dept. of State)

CC: Page 2 Master Index copy sent on 09/12/2000
CC: Page 3 ADIT and Statistical report copy sent on

Form I - 181 (Rev. 3-1-83)N

1. FILE COPY

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(3)

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

Part 1. Information About You.

Family Name	Given Name	Middle Initial
VERDUZCO-Gonzalez	Jose	A.

Address - C/O

Street Number and Name	Apt. #
102 SW Cypress	

City		
McMinnville		
State: OR.	Zip Code: 97128	
Date of Birth (month/day/year): 6-14-82	Country of Birth: Mexico	
Social Security #: 540-37-3475	A # (if any): A78731272	
Date of Last Arrival (month/day/year): 5-92	I-94 #: None	
Current INS Status:	Expires on (month/day/year): N/A	

Part 2. Application Type. *(check one)*

I am applying for an adjustment to permanent resident status because:

a. [X] an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice— or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. [ ] my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. [ ] I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]

d. [ ] I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. [ ] I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. [ ] I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. [ ] I have continuously resided in the U.S. since before January 1, 1972.

h. [ ] Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)

(a)(k)(2)

(b)(7)(c)

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: *(Check one)*

i. [ ] I am a native or citizen of Cuba and meet the description in (e), above.

j. [ ] I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

FOR INS USE ONLY

Returned

Receipt
Aug15/00 001#07977 PDC-DB
I-485 S245I $220.00
Aug15/00 001#07977 PDC-DB
FP-Fee/FD258 $25.00

Resubmitted

2000 AUG 11 PM 1:25
PORTLAND, OR

Reloc Sent

Reloc Rec'd

Applicant Interviewed

Section of Law
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 2 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other

Preference

Action Block

APPROVED
I.N.S. DISTRICT DIRECTOR
PORTLAND, OR
DEC X 6 2001

To be Completed by *Attorney or Representative,* if any

☐ Fill in box if G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

In the Matter of:
Respondent: VERDUZCO GONZALES, Jose Antonio

File No: A 78 737 272

currently residing at:

NWDC, 1623 E "J" Street, Suite 2, Tacoma, WA 98421
(Number, street, city state and ZIP code)

(Area code and phone number)

☒ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Mexico and a citizen of Mexico.
3. You received status as a Lawful Permanent Resident on December 03, 2001.
4. You were on January 12, 2004 convicted at the Yamhill County Circuit Court in McMinnville, Oregon for the offense of Delivery of a Controlled Substance, a Class B felony conviction in violation of ORS 475.992.
5. You applied for entry through Phoenix as a returning resident on January 09, 2006.
6. You were then paroled by an Immigration Officer to complete your inspection in Portland, Oregon.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

CHARGES:

Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended, in that you are an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a Controlled Substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802).

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: EOIR, Suite 218, Edith Green Building, 1220 S.W. 3rd Ave., Portland, OR 97204
(Complete address of immigration court, including room number, if any)

on _____ at _____ to show why you should not be removed from the Uni[illegible] the
(Date) (Time)

(a)(k)(2) charge(s) set forth above.

(b)(7)(c)

AREA PORT DIRECTOR

Date: _____

Portland, Oregon
(City and state)

See reverse for important information

Form I-862 (Rev. 3-22-99) 56

4a

RECORD OF DEPORTABLE ALIEN (See A.M. - 2790.31-34 for instructions)

Family Name (Capital Letters)	Given Name	Middle Name	Sex	Hair	Eyes	Complexion
VERDUZCO GONZALES, Jose Antonio			Male	Black	Brown	

Country of Citizenship	Passport Number and Country of Issue	File Number	Height		Occupation
Mexico		A 78 737 272	5'9"	170	Unk

U.S. Address (Residence) (Number) (Street) (City) (State) (Zip Code): 102 SW Cypress Street, McMinnville, Oregon

Scars or Marks:

Date, Place, Time, Manner of Last Entry	Passenger Boarded at	F.B.I. No.	Marital Status
01-09-2006/Phoenix/Permanent Resident		23350DC2	Unknown

Number, Street, City, Province (State) and Country of Permanent Residence: 102 SW Cypress Street, McMinnville, Oregon

Method of Location /Apprehension: Deferred Inspection

Birthdate	Date of Action	Location Code	(At/Near)	Date & Hour
06/14/1982		POO		

City, Province (State) and Country of Birth: Mexico	AR	Form (Type & No.)	By
		Lifted / Not Lifted	

Visa Issued At-NIV No.	Social Security Account Name	Status at Entry	Status When Found
		Applicant.	Applicant

Date Visa Issued	Social Security No.	Send C.O. Rec. Check To:	Length of Time Illegally in U.S.

Immigration Record	Criminal Record
See Narrative, NTA	SID: OR15270425

Name, Address, and Nationality of Spouse (Maiden Name, if appropriate): | Number and Nationality of minor Children:

Father's Name, Nationality, and Address, if Known: Unknown | Mother's Present and Maiden Names, Nationality, and Address, if Known:

Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted	Lookout Book Checked	Deportation Charge(s) (Code Words)
[ ] None Claimed [ ] See Form I-43	[ ] Yes [ ] No	[ ] Not Listed [ ] Listed, Code	2A2

Name and Address of (Last)(Current) U.S. Employer	Type of Employment	Salary	From / To
		$ hr	

Narrative (outline particulars under which alien located/apprehended. Include details not shown above, i.e.: time, manner of last entry, and elements which establish administrative and/or criminal violation. Indicate means of travel to interior) Alien has been advised of communication privileges pursuant to 8 CFR 236.1(e)

Initial _____ Date _____

Written from A-file: Subject is a citizen and national of Mexico who has been a lawful permanent resident of the United States since December 03, 2001, applied for entry as a returning resident at the Sky Harbor International Airport on January 09, 2006. Subject was convicted of Delivery of Controlled Substance, a Class B felony conviction in violation of ORS 475.992 at the Yamhill County Circuit Court in McMinnville, Oregon on January 12, 2004. Subject was deferred from Phoenix, Arizona to complete his inspection due to his conviction record.

Jose Antonio VERDUZCO GONZALES appears to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the INA.

(If space insufficient, show "continued" and continue on reverse, from bottom up): _____ (Signature and Title)

DISTRIBUTION

(a)(k)(2) 1 - A File
(b)(7)(c)

Received (subject and documents)/reports of interview) from

Officer: [redacted]

Disposition NTA

(Receiving Officer) _____

Form I-213 UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

62

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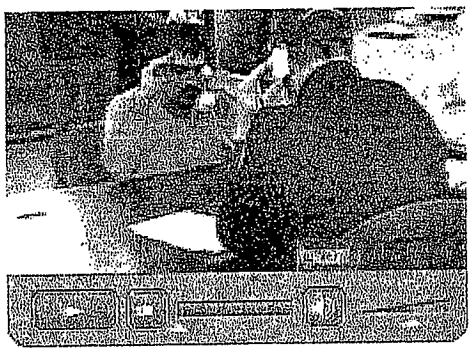
kgw.com

Local News

Immigration agents step up enforcement at NW jails

06:53 PM PDT on Wednesday, March 19, 2008

By PAT DOORIS, kgw.com



Watch the KGW report

Immigration and Customs Enforcement agents arrive in Hillsboro before dawn. They've come to gather up a handful of illegal immigrants who were held at the Washington County Jail and will now be processed by ICE for deportation.

This is part of a new effort by ICE to cull county jails with a zero policy for illegals.

"Up until august of 2007 there was kind of a bench mark based on criminal charges, " said jail commander Marie Tyler, "where inmates, if they reached a certain level for a seriousness of charge then ICE would want to be contacted. "

After August, ICE wanted to know about every illegal booked into the jail.

"During that time, there's been a really significant change," said Tyler.

Her statistics back that up. Washington County jail records show "holds" put on prisoners by ICE in 2005 hit a high of 78 prisoners for one month. In 2006 the ICE holds hit a high of 91. In 2007 the ICE holds high a high of 183 in September, the month after ICE changed its policy.

(5)

You can also see the impact in the number of "ICE Transfers", people who were physically moved to federal custody from the Washington County jail:

2005: 213 transfers

2006: 304 transfers

2007: 696 tranfers

Commander Tyler has also noticed a decline in the number of illegals immigrants showing up at her jail, with 633 fewer booked into the jail in 2007 than 2005.

The illegal immigrants collected from Hillsboro are driven to an aging federal building in downtown Portland. There, they are photographed and fingerprinted and interviewed.

One is 21 year old Dalin Acosta-Echeverria, a slight woman from Mexico who arrived in the U.S. illegally 8 years ago. She said she cleaned hotel rooms in the Hillsboro area and earned $400 a week, much more than the $100 a month she expected to earn if returned to Mexico.

Police arrested her in March, 2008, after a fight with her boyfriend. The charge was dropped by Washington, County, but she's being deported.

She stands with her head lowered, ankles handcuffed at the federal detention facility. She says she's nervous and afraid of being deported.

Also here, Jesus Valencia-Valencia. He's not afraid. He says he's been in the U.S. 30 of his 43 years. He has three children, all born in America and automatically citizens. Through a translator he says "his whole family is now here in Oregon. They're gonna send him back? He'll be back tomorrow, cause he has to. His family is here," he said.

Valencia has a criminal record in America that includes assault, menacing, interfering with making a police report, harassment and parole violation.

His claim of a quick return may be wishful thinking. Federal officials say he was deported June 22, 2005. Now he may face federal prison time of two years or more before he's deported again.

The agent in charge says ICE is stepping up enforcement across the country.

"I think we're making a significant impact," said Neil Clark, Field office Director for Detention and Removal Operations.

"Last year we had 160,000 charging documents issued thru the criminal alien program as compared to 60-thousand the year before that. This year we expect to issue more than 200-thousand charging documents," he said.

"So if we havent made an impact as of today we're going to make a significant impact as the future comes," said Clark.

(6)

Office of Public Affairs
U.S. Department of Homeland Security

News Release

U.S. Immigration and Customs Enforcement

March 28, 2008

Contact: Richard Rocha
202-616-8895

ICE unveils sweeping new plan to target criminal aliens in jails nationwide

Secure Communities aims to identify and remove criminal aliens from all U.S. jails and prisons

WASHINGTON, D.C. — U.S. Immigration Enforcement (ICE) today unveiled its Secure Communities plan, a comprehensive, multi-year initiative to more effectively identify, detain, and return removable criminal aliens incarcerated in federal, state and local prisons and jails.

ICE's plan will use expanded integration technology and build upon the relationships with state and local law enforcement agencies to ensure that incarcerated criminal aliens are removed from the country instead of being released into our communities after their time in custody.

One of the key components of the Secure Communities plan is the distribution of integration technology that will link local law enforcement agencies to both DHS and FBI biometric databases. Currently, as part of the routine booking process, local officers submit an arrested person's fingerprints through FBI databases to access that individual's criminal history. With interoperability, those fingerprints will also automatically be checked against DHS databases to access immigration history information. The automated process would also notify ICE when fingerprints match those of an immigration violator. ICE officers would conduct follow-up interviews and take appropriate action.

"The Secure Communities plan presents a historic opportunity to transform immigration enforcement and improve public safety by focusing on those criminal aliens who pose the greatest threats to our communities," said Julie L. Myers, Homeland Security Assistant Secretary for ICE. "Although ICE has made considerable progress over the past several years in identifying criminal aliens and removing them from this country, this comprehensive initiative aims to identify and remove all aliens convicted of a crime."

"Under this plan, ICE will be utilizing FBI system enhancements that allow improved information sharing at the state and local law enforcement level based on positive identification of incarcerated criminal aliens," said John S. Pistole, FBI Deputy Director. "Additionally, ICE and the FBI are working together to take advantage of the strong relationships already forged between the FBI and state and local law enforcement necessary to assist ICE in achieving their goals."

Last year under CAP, ICE charged a record 164,000 aliens in law enforcement custody with immigration violations and removed approximately 95,000 aliens with criminal histories. ICE estimates that approximately 300,000 to 450,000 convicted criminal aliens who are removable are detained each year at federal, state and local prisons and jails. The total estimated cost to remove all convicted criminal aliens in custody annually will be from $2 to 3 billion.

"The support of the Congressional appropriations committees, especially their Chairmen, Price and Byrd, and Ranking Members Rogers and Cochran, has been critical to our ability to develop this comprehensive plan. Congress affirmed its commitment to this important initiative by providing ICE an initial $200 million to begin transforming our approach to immigration enforcement in correctional institutions," said Myers.

Additional components of the Secure Communities plan:

- ICE will identify removable criminal aliens and prioritize their removal based on the threat they pose to the community.
- ICE will continue working with local, state and federal detention centers and the Department of Justice Executive Office of Immigration Review (EOIR), which oversees the immigration courts, to increase the number of facilities that use video teleconferencing technology.
- Working with ICE, U.S. Attorney's Offices will seek to prosecute more criminal aliens who illegally re-enter the country. This initiative is aimed at deterring recidivism.
- ICE will continue and expand the use of its Rapid REPAT (Removal of Eligible Parolees Accepted for Transfer) program whereby non-violent criminal aliens serving state sentences receive early parole in exchange for assisting in their removal from the United States. The program has proven successful in New York and Arizona and ICE seeks to establish Rapid REPAT programs in four additional states by the end of FY 2008.
- ICE will provide 24/7 nationwide operational coverage for the Criminal Alien Program by assigning additional personnel in field offices, standing up command centers in priority areas, and expanding use of video teleconferencing to remotely interview and process criminals who are subject to removal.
- ICE will increase local law enforcement partnerships through 287(g) cross-designation that allows trained officers to interview and initiate removal proceedings of aliens processed through their detention facilities.

The Secure Communities plan will continue to evolve as ICE's partners provide input and as the program matures. Partner agencies will be asked to join a project management team that will oversee SC's implementation.

In addition to numerous state and local enforcement agencies and the FBI, ICE's partners within DHS include U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. ICE's federal interagency partners include the Bureau of Prisons (BOP), the Executive Office of Immigration Review (EOIR), U.S. Attorneys, the Department of State (DOS), the Department of Justice (DOJ), and the U.S. Marshals Service (USMS).

ICE

U.S. Immigration and Customs Enforcement was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.