

IN THE COURT OF APPEALS OF THE STATE OF OREGON
BRIAN STOVALL, JOHN OLMSTEAD, CONNIE KRUMMRICH,
AND KAREN BROWN,

Plaintiffs-Appellants
Cross-Respondents,

v.

NORTHERN OREGON CORRECTIONS, dba NORCOR,
an intergovernmental corrections entity,

Defendant-Respondent
Cross-Appellant

and

WASCO COUNTY,
Defendant-Respondent.

Wasco County Circuit Court
17CV31082

A170661

**BRIEF OF AMICI CURIAE
GORGE ECUMENICAL MINISTRIES, GORGE ICE
RESISTANCE, HOOD RIVER LATINO NETWORK,
NORCOR COMMUNITY RESOURCES COALITION,
AND RURAL ORGANIZING PROJECT**

On Appeal from the Corrected General Judgment
of the Wasco County Circuit Court
dated April 22, 2019,
The Honorable John A. Wolf, Judge

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BRIEF OF AMICI

Amici Gorge Ecumenical Ministries, Gorge ICE

Resistance, Hood River Latino Network, NORCOR Community Resources Coalition, and Rural Organizing Project (collectively, the "Community Members") submit this brief in support of the opening brief of Plaintiffs-Appellants/Cross-Respondents Brian Stovall, John Olmstead, Connie Krummrich, and Karen Brown ("Appellants"). The federal immigration enforcement activities undertaken by Defendant-Respondent/Cross-Appellant Northern Oregon Corrections ("NORCOR"), including its booking notifications and its detention of individuals for the purpose of enforcing federal immigration law, violate ORS 181A.820 (the "Disentanglement Statute").¹ Respectfully, the trial court erred in holding that these practices did not violate the Disentanglement Statute. This Court

¹ ORS 181A.820 is sometimes referred to as Oregon's "sanctuary" statute. That term, however, is vague and means different things to different people. It relates back to a practice of hiding individuals from immigration authorities and connotes the idea of *blocking* federal immigration efforts, which is not what ORS 181A.820 does. For those reasons, *amici* use "disentanglement" because it more accurately describes the legislature's intent and the actual operation of the statute.

should correct the trial court's error and provide guidance to the bench, bar, and people of the state on the application of the Disentanglement Statute.

INTERESTS OF AMICI CURIAE

NORCOR runs a regional jail in The Dalles, Oregon, which was organized by and serves Gilliam, Hood River, Sherman, and Wasco Counties. The jail undertakes several activities for the purpose of immigration enforcement. As relevant to the matter on appeal, NORCOR incarcerates individuals under an Intergovernmental Government Services Agreement with the United States solely for the purpose of enforcing federal immigration law. NORCOR also engages in a practice of notifying agents with United States Immigration and Customs Enforcement ("ICE") whenever it books into the jail an individual who states a foreign place of birth.

The Community Members united in this brief are all organizations that operate, serve, and count membership in Hood River, Sherman, Wasco, and Gilliam Counties. The Community Members appear as amici curiae because each organization is deeply invested in the communities impacted by NORCOR's immigration

practices, objects to NORCOR's unlawful participation in the enforcement of immigration law, and has dedicated substantial resources to opposing the jail's unlawful activities and supporting immigration detainees.

The Community Members have organized and participated in more than 700 consecutive, unbroken daily protests at NORCOR; helped raise funds for immigrant detainees to afford commissary and phone calls to loved ones; lobbied politicians to take action; connected detainees with legal services; and raised awareness within the Columbia Gorge community about the detention conditions faced by immigrant detainees.²

The Community Members also include dedicated clergy, who represent a spectrum of religious faiths and communities present in the Columbia Gorge region. The clergy visits act as a bridge between the surrounding community and those incarcerated in violation of the Disentanglement Statute. In the words of one

² IMIrJ, *ICE Out of NORCOR*, <http://imirj.org/iceoutofnorcort> (last accessed Oct. 22, 2019).

Community Member: "Their strength and perseverance are inspirational, and we share this inspiring resilience with the broader community. We also share the personal devastation and depression felt by the many detainees."³ A second Community Member describes the religious visitations as follows: "In the midst of terrible conditions, I and my fellow workers attempt to walk the emotional walk with real people, some who would disappear after one visit, some of whom we've come to know for years."⁴

The Community Members agree with appellants about the proper interpretation of the Disentanglement Statute: the text, context, and legislative history of ORS 181A.820 demonstrate that the statute "broadly prohibit[s] the use of any public resources to enforce or assist in the enforcement of federal immigration laws at any stage of the law enforcement process." Appellants' Opening Brief at 28. NORCOR's immigration detention and booking

³ Interview with the Rev. John Boonstra, on file with counsel.

⁴ Interview with the Rev. Dr. M. Richard Stevens, interview on file with counsel.

notifications violate this law, and the trial court erred in concluding otherwise.

The Community Members write separately to explain how NORCOR's immigration enforcement activities (1) violate the Disentanglement Statute, (2) cause precisely the harm that the legislature intended ORS 181A.820 to prevent; and (3) undermine state and local policies of inclusion and disentanglement.

INTRODUCTION

Our nation has a long and robust history of immigration. A letter from this country's first president to a refugee from another era, Dutch political revolutionary Francis Adrian Van der Kemp, assured Mr. Van der Kemp that the United States was a refuge for those who have faced persecution and other hardships. In that letter, President George Washington wrote: "I had always hoped that this land might become a safe & agreeable Asylum to the virtuous & persecuted part of mankind, to whatever nation they might belong[.]"⁵ America's first Irish-Catholic president—whose

⁵ National Archives: Founders Online, *George Washington to Francis Adrian Van der Kemp*, May 28, 1788,

own great-grandparents immigrated to the United States from Ireland—John F. Kennedy, wrote in his book *A Nation of Immigrants*, "The immigrants we welcome today and tomorrow will carry on this tradition and help us to retain, reinvigorate, and strengthen the American Spirit."⁶ President Kennedy continued in his book: "Everywhere immigrants have enriched and strengthened the fabric of American life."⁷

Similarly, Oregon's own history is bound up with immigration. Although Oregon's early history was marked with exclusionary policies intended to exclude black Americans and immigrants of color,⁸ Oregonians later came together to create a new

<https://founders.archives.gov/documents/Washington/04-06-02-0266>.

⁶ John F. Kennedy, *A Nation of Immigrants* (1959).

⁷ Kennedy, *A Nation of Immigrants*.

⁸ See, e.g., DeNeen L. Brown, *When Portland Banned Blacks: Oregon's Shameful History as an 'All-White' State*, The Washington Post, June 7, 2017,

<https://www.washingtonpost.com/news/retropolis/wp/2017/06/07/when-portland-banned-blacks-oregons-shameful-history-as-an-all-white-state> (detailing Oregon's founding as the nation's only "whites only" state); Oregon Racial Laws and Events, 1844-1959, Oregon Department of Education, <https://centraloregoncoastnow.org/2016/04/27/oregon-racial-laws-and->

vision—one of inclusion. Such was the bipartisan passage in 1987 of the law now codified at ORS 181A.820, the nation's first statewide disentanglement law. In enacting that law, Oregon codified a vision for a body politic that celebrates the rich diversity of its people, regardless one's national origin. Oregonians are Oregonians, regardless of where they were born or immigration status.

ARGUMENT

I. NORCOR's federal immigration enforcement activities in violation of ORS 181A.820 run contrary to state and local policies of disentanglement and inclusion.

ORS 181A.820 broadly prohibits local law enforcement from participating in the enforcement of federal immigration law.

The statute provides:

"No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of *detecting or apprehending persons whose only violation of law* is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws." ORS 181A.820(1) (emphasis added).

[events-1844-1959/](#) (detailing other racially exclusionary laws and policies).

That broad prohibition is subject to only three narrow exceptions: Local law enforcement agencies may "exchange information" with federal immigration authorities to "[v]erify the immigration status" of someone arrested for a criminal offense or to obtain "criminal investigation information" about an individual "named in" records maintained by federal immigration authorities. ORS 181A.820(2). Local law enforcement agencies may also arrest an individual charged with a violation of federal *criminal* violations of immigration law. ORS 181A.820(3). For the reasons outlined in Appellants' Opening Brief, NORCOR's participation in federal immigration enforcement violates ORS 181A.820(1), and none of the practices challenged by Appellants falls within limited statutory exceptions. Appellants' Opening Brief at 28.

II. NORCOR's unlawful practices cause precisely the kinds of harm that lawmakers intended the Disentanglement Statute to prevent.

In addition to violating the text of the Disentanglement Statute, NORCOR's unlawful collaboration with federal immigration officials inflicts exactly the kind of harm on the surrounding

communities that concerned legislators when they passed the law in 1987.

A. Lawmakers enacted the statute to preserve community trust in local law enforcement and prevent the unjust and unlawful targeting of immigrant communities and people of color.

The legislative history of ORS 181A.820 shows that lawmakers were particularly motivated to enact the statute by concerns over the targeting of immigrants of color by local law enforcement. As detailed in Appellants' Opening Brief, legislators considering the bill received testimony that the entanglement of local law enforcement with federal immigration enforcement was having "an adverse effect on community relations with Hispanic citizenry." APP-3, Testimony, House Committee on Judiciary, HB 2314, Feb. 6, 1987, Ex. A (statement of Danny Santos). This entanglement "[was] such that Hispanics and other ethnic minorities, including United States citizens, are detained, interrogated, and harassed by local law enforcement agencies on the mere bases of color, language, and dress, a clear violation of one's constitutional rights." APP-16, Testimony, Senate Committee on Judiciary, HB 2314, May 20, 1987,

Ex. S (statement of Robert Mendoza, Commissioner on Hispanic Affairs).

Descriptions of the bill as it was being considered demonstrate that legislators sought to draw a bright, hard line between state law enforcement functions and federal immigration enforcement. *See, e.g.*, APP-20, Bill Taylor, Staff Measure Analysis of HB 2314 (Feb. 1987) ("The intent of the measure is to ensure that only [federal immigration authorities] enforce[] immigration law, and to verify that police have only the authority to enforce criminal laws."); APP-22, Eric Carlson, Staff Measure Analysis of HB 2314 (May 1987) (explaining that "there is no authority found for police officers to enforce immigration laws" and that the bill would "codif[y] existing practice").

B. NORCOR's immigration enforcement activities sow mistrust in local government and law enforcement.

The concerns of the 1987 Oregon Legislature are echoed today each and every time that line is crossed. The harm caused by entanglement has been widely documented in other settings, particularly state courts. ICE enforcement in and around Oregon's state courthouses has caused widespread alarm and has led both

Oregon's current and former Chief Justices to ask ICE directly to change their conduct.

In 2017, then-Chief Justice of the Oregon Supreme Court Thomas A. Balmer sent a letter to then-Attorney General Jeff Sessions and the Secretary of Homeland Security John F. Kelly about how ICE's actions have been a "strong deterrent" for *all* individuals trying to gain access to the criminal justice system:

"The chilling effect of ICE's actions deters not only undocumented residents, but also those who are uncertain about the implications of their immigration or residency status or are close family, friends, or neighbors of undocumented residents. ICE's actions also deter appearances in court by those who are legal residents or citizens, but who do not want to face the prospect of what they see as hostile questioning based on perceived ethnicity, cases of misidentification, or other intrusive interactions with ICE agents."⁹

Following up on Chief Justice Balmer's efforts, the present Chief Justice of the Oregon Supreme Court, Martha L. Walters, recognized the "adverse effect on the administration of

⁹ Chief Justice Thomas A. Balmer, Letter to Attorney General Sessions and Secretary Kelly (Apr. 6, 2017), <https://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>.

justice" caused by ongoing ICE arrests at state courthouses in a letter she sent directly to ICE:

"ICE agents are usually in plain clothes, do not always identify themselves during arrests, and have refused to produce a warrant or other document authorizing the detention, when requested. An arrest made under those circumstances understandably leads to confusion and uncertainty."¹⁰

The same concerns that apply to state courthouses apply to the counties surrounding NORCOR: ICE's actions and presence expose numerous people, not just undocumented immigrants—based on their race and ethnicity—"to tactics that arouse[] their fear."¹¹ NORCOR's entanglement has blurred the very line between local law enforcement and federal immigration enforcement that the legislature intended to draw with the Disentanglement Statute, undermining community safety and trust in local law enforcement and government agencies.¹²

¹⁰ Chief Justice Martha L. Walters, Letter to Bryan S, Wilcox Re: ICE Enforcement Activities in State Courthouses (June 17, 2019), <https://innovationlawlab.org/wp-content/uploads/2019/07/ICE-Letter-to-Wilcox.pdf>.

¹¹ *Id.*

¹² NORCOR's collaboration with ICE is against not only the values of the country, the state of Oregon, these impacted counties, and the

Amicus Hood River Latino Network is particularly well positioned to observe this impact. Hood River Latino Network is a community organization that works to empower and advocate for vulnerable communities throughout the Columbia Gorge region. The organization was founded in 2016 to respond to an increasing number of requests for help from the Latino and immigrant community following the election that year. As fear-based rhetoric and policies toward immigrants at the federal level grew, the Community Members felt the impact acutely through NORCOR.

As a result of NORCOR's entanglement with federal immigration enforcement, many in the community see a direct link between contact with local law enforcement and being potentially subject to arrest and detention by ICE. "When someone is pulled

Communities Members, but it is also against the current trend. In an interview this year, ICE's former acting field office director for the Pacific Northwest region noted that "jails across the country" have "stop[ped] honoring ICE requests that they notify the agency of pending releases or hold immigrants beyond their scheduled release dates." McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, The New York Times Magazine, Oct. 2, 2019, <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>.

over and they are undocumented, the fear is they will go to NORCOR and get deported," says Martha Verduzco, the founder and president of Hood River Latino Network.

Ms. Verduzco has observed a specific fear in the Latino community: getting racially profiled or pulled over by police, "and maybe the police officer doesn't like you and you get taken to NORCOR. So people are afraid to have any contact with law enforcement. It creates a cycle of fear. Someone may be hurting me, but because ICE is at NORCOR, I'm afraid to contact law enforcement because I'm afraid I will be taken away."

That fear is amplified by incidents in which an individual may be cited for a criminal offense and told to report to NORCOR for booking and fingerprinting, and then is placed into federal immigration custody once there.

In addition to Hood River Latino Network, various other Community Members have witnessed this erosion of trust:

- "Wasco County, by and large, welcomes people of color to our communities. I expect all of her citizens should be treated with respect and fairness," states one Community Member who has

lived in Wasco County for 48 years. Yet, she adds, "[t]he presence of ICE in our community creates an atmosphere of fear and distrust, especially among our Hispanic brothers and sisters."¹³

- "Over the past 2 1/2 years I have noticed an increasing awareness around the fact that NORCOR has a contract with ICE and that immigrants in detention proceedings are held in our county jail. The fact that NORCOR has a contract with ICE means immigrants feel less safe living in our community," says one Community Member who has lived in Hood River County for nine years. "The population of Hood River County is over 30% Latino, and while the majority of these community members are living here legally, many have a family member who is undocumented. Knowing ICE has a presence here, immigrants are less likely to trust local law enforcement and

¹³ Interview with Gretchen Kimsey, on file with counsel.

therefore less likely to report a crime they are witness to or victim of."¹⁴

- "The negative effects of the ICE contract on the community include a heightened sense of fear that ICE is in the community and perhaps more likely to mount enforcement actions or interdict residents at the courthouse or on the street. Certainly the immigrant community is aware that there is an ICE presence in the Gorge that would not ordinarily be here but for the NORCOR contract," says an attorney and Community Member who has lived in Hood River County for 26 years. "I am an adjunct professor at the local community college and most of the students are quite aware that NORCOR houses immigration detainees and that ICE officers are there weekly. Many of these students are DACA recipients so they are particularly concerned."¹⁵

¹⁴ Interview with Sarah Kellems, on file with counsel.

¹⁵ Interview with Jean Sheppard, on file with counsel.

- "In rural communities we rely on our neighbors in a different way than folks do in urban areas making it even more dangerous to single out folks who were not born in the US as this leads to fear of reporting when they are the victim of a crime, children staying home from school, adults skipping work, and elders simply afraid to leave their homes for fear of arrest when ICE activity is reported anywhere in Oregon. Knowing NORCOR cooperates with ICE to imprison immigrants amplifies these fears and with good reason. It is all too easy for law enforcement to apprehend folks and throw them into our local jail then transfer them to ICE custody."¹⁶
- "I work for a manufacturing company in the Port of The Dalles and drive past NORCOR every day going to and from work. We pride ourselves on the diversity we have fostered in the workplace. My colleagues are not just from Oregon but from across the US and from countries including China, India, Romania, Mexico, Venezuela, Guatemala and El Salvador.

¹⁶ Interview with Solea Kabakov, on file with counsel.

Awareness of NORCOR's cooperation with ICE has raised concerns and forced us to review policy regarding how to respond when law enforcement enters the property. This causes stress across every department from human resources and health and safety management, to production workers and on up through senior management."¹⁷

III. NORCOR's practices undermine state and local policies of disentanglement and inclusion.

In the decades since its enactment, Oregon has repeatedly reaffirmed its commitment to the policy of inclusion announced by ORS 181A.820. Just weeks after the most anti-immigrant presidential campaign of modern history, Oregon Governor Kate Brown issued an executive order "renewing Oregon's commitment to protecting its immigrant, refugee, and religious-minority residents" and declaring that it "is the policy of this State that Oregon be an inclusive jurisdiction that embraces, celebrates, and welcomes its immigrant and refugee residents and recognizes their contributions

¹⁷ *Id.*

to the collective prosperity of all Oregonians."¹⁸ Poignantly, in 2018, Oregonians voted overwhelmingly to support immigrant inclusion and rejected a ballot measure that would have repealed the Disentanglement Statute.¹⁹

Communities impacted by NORCOR have also demonstrated and codified their support for immigrant Oregonians and the policy of inclusion. Hood River County, for example, was the first community in the Pacific Northwest to issue local identification ("ID") cards that are "available and accessible to all who live in Hood River County," regardless of immigration status.²⁰ A local social worker who helped spearhead the community ID explained that these cards

¹⁸ Executive Order 17-04 (Feb. 2, 2017), https://www.oregon.gov/gov/Documents/executive_orders/eo_17-04.pdf.

¹⁹ Whitney Woodworth, *Measure 105 Election Results: Voters Uphold Oregon's Sanctuary State Law*, Statesman Journal, Nov. 6, 2018, <https://www.statesmanjournal.com/story/news/politics/2018/11/06/measure-105-voters-appear-keep-oregons-sanctuary-state-law-election-results/1782171002>.

²⁰ The Next Door, *Hood River County (HRC) Community ID*, <https://nextdoorinc.org/community-id/>.

"help the most vulnerable people in the community, including the elderly, homeless, foster kids, formerly incarcerated or *undocumented immigrants who have no other forms of photo identification, or who cannot get a state identification card*. 'They don't go forth to law enforcement and talk to people about crimes and concerns they have because they are afraid they will get in trouble, *this ID makes it safe for them.*'"²¹

For amici, there is a straight line that runs from ORS 181A.820 through these local policies to the work of the Community Members. An ordained Christian minister with one of the Community Members and a 13-year resident of Hood River County states that the Disentanglement Statute provides "a legal foundation for us to affirm values of inclusion and the promotion of the dignity of all persons regardless of citizenship."²²

NORCOR's activities to enforce federal immigration law, however, violate ORS 181A.820 and these policies of inclusion and disentanglement by forcing taxpayers to support an enterprise that "apprehend[s]" individuals "whose only violation of law is that they

²¹ Keaton Thomas, *Hood River County Considering Local ID cards*, KATU2, Jan. 16, 2018, <https://katu.com/news/local/hood-river-county-considering-local-id-cards> (*emphasis added*).

²² Interview with the Rev. John Boonstra, on file with counsel.

are persons of foreign citizenship present in the United States in violation of federal immigration laws," ORS 181A.820(1); Appellants' Opening Brief at 6, and that separates immigrants from their families.

As explained by another Community Member:

"The people of Oregon decided decades ago not to be a party to racial profiling by not causing fear in our communities nor terrorizing immigrants in Oregon with the threat of arrest, detention and deportation based on one's country of origin at the hands of local law enforcement whose purpose is to protect and serve our communities. I am proud of the foresight of the Oregonians who passed this law, [and] it cannot be undermined by inhumane federal policies which violate our human rights."²³

The Community Members believe that NORCOR's participation in immigration enforcement not only violates ORS 181A.820, but runs counter to their communities' celebration of diversity and promotion of caring, safe, and healthy communities.

²³ Interview with Solea Kabakov, on file with counsel.

CONCLUSION

If left to stand, the trial court's decision will authorize NORCOR and other law enforcement agencies to participate in the enforcement of federal immigration law in direct contradiction of ORS 181A.820 and the policies and values imbedded in its broad mandate. This will continue to spread fear and to sow the seeds of divisiveness in communities that pride themselves on openness and inclusion. The continued presence of ICE in NORCOR will continue to deter not only undocumented residents from living and fully participating in the surrounding community, others who are uncertain about the implications of their immigration or residency status, and their close family, friends, or neighbors, but also those who are legal residents or citizens and do not want to face the prospect of hostile questioning based on ethnicity or misidentification, or other intrusive interactions with ICE agents.

The Community Members respectively submit this amicus brief with the hope that it will help this Court see how NORCOR's immigration enforcement activities (1) violate the Disentanglement Statute; (2) cause precisely the harm that the

legislature intended ORS 181A.820 to prevent; and (3) undermine state and local policies of inclusion and disentanglement.

DATED this 8th day of November, 2019.

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