

We the People

The Forgotten Constitution

**Racial Profiling and Immigration Enforcement in
Bedford County, Tennessee**

***A report prepared for the September 12, 2011
Racial Profiling Hearing in Shelbyville, TN***

Principal Authors: Sarah White and Salmun Kazerounian

Produced by the Tennessee Immigrant and Refugee Rights Coalition

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Racial Profiling and Immigration Enforcement in Bedford County, Tennessee

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Panelists for the September 12, 2011 Racial Profiling Hearing in Shelbyville, TN

We extend a special appreciation to the members of the panel who were present to hear the testimony of Shelbyville community members. Panel members include:

Pastor David Carrera, Beth Sar Shalom Ministries

Associate Pastor Lindsey Wade, First Presbyterian Church, Shelbyville, TN

Pastor Kent Lewis, Christ Lutheran Church, Shelbyville, TN

Noel Johnson, Board President, SOCM

Beverly Watts, Executive Director, TN Human Rights Commission

Sameera Hafiz, Policy Director, Rights Working Group

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Racial Profiling and Immigration Enforcement in Bedford County, Tennessee

Monday, September 12, 2011

Executive Summary

Bedford County is exceptional for its large and vibrant immigrant and refugee communities, who live and work in the rolling hills of this rural county about an hour south of Nashville, Tennessee. Somali and Burmese refugees, Egyptian immigrants, and Latino immigrants are the backbone of local industry, working at poultry plants and on the walking horse farms that make Shelbyville – Bedford's county seat – famous. Many immigrants are small business owners, and many more have chosen to make their homes and raise their children here.

“To be an immigrant or refugee in Bedford County is to be treated with suspicion or outright hostility by one’s own government, whose offices still exhibit vestiges of the overt racial apartheid of years past.”

Despite immigrants’ essential economic contributions to Bedford County, they face hostility and discrimination from all aspects of the criminal justice system, which works in close coordination with federal immigration enforcement authorities. Arrests of Latinos have intensified since Tennessee law changed in January 2011 to require jailers to ask arrestees their citizenship and report this information to ICE. Pervasive anti-immigrant sentiment coupled with misinterpretation of the scope of this law has resulted in an ongoing immigration inquisition by local law enforcement that has caused a steep increase in

detention and removal by ICE. Suspected immigrants are subjected to racial profiling and increased police surveillance. They are arrested and detained in county jail for minor traffic violations--often unlawfully--in order to facilitate their deportation. Immigrants and refugees are unable to meaningfully access government services and the court system, which means many of them are unable to vindicate their rights. Immigrants are mistreated by ICE officials, who have collaborated with locals engaged in explicitly racially discriminatory practices to entrap, interrogate, and arrest immigrants who clearly do not fit immigration enforcement priorities. Many immigrant victims of crime no longer trust law enforcement to protect them, and families have been torn apart by these arbitrary arrests. Families with children who have lived in the U.S. for their whole lives have had no choice but to uproot and relocate out of the country after the sudden removal of a caretaker or breadwinner. Law enforcement practices and the fear they have stirred in the community have thus resulted in a mass exodus of immigrants from Bedford County. To be an immigrant or refugee in Bedford County is to be treated with suspicion or outright hostility by one’s own government, whose offices still exhibit vestiges of the overt racial apartheid of years past.

This report briefly outlines the abuse and discrimination immigrants in Bedford County face in each stage of the criminal justice system. Part 1 describes initial encounters with law enforcement officials. Part 2 discusses booking and detention procedures at the Bedford County Jail. Part 3 addresses problems experienced by immigrants attempting to navigate the Bedford County court system. Part 4 outlines the experience of immigrants who are taken into custody by Immigration and Customs Enforcement (“ICE”). Part 5 sketches efforts to address these problems through grassroots community organizing and advocacy.

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Interaction with Law Enforcement

Immigrants are targeted at disproportionate rates by officers of Bedford County law enforcement agencies, particularly the Shelbyville Police Department, as a pretext for making arrests that will enable jailers to contact ICE. These local officials regularly support and collaborate with a State Trooper employed by the Tennessee Highway Patrol. Law enforcement officers have routinely set up roadblocks and extra patrols around Latino groceries and markets. For instance, an owner of a local tortilleria reports that an officer with the Shelbyville Police Department, in conjunction with the State Trooper, set up a roadblock in front of his store, just outside of a business complex frequented by Latinos. The police officer stopped vehicles, most driven by Latinos, to check for drivers' licenses and IDs, even though they were obeying traffic laws.

Police who patrol Bedford County selectively enforce traffic laws and make pretextual traffic stops of Latino drivers in order to check for driver licenses and verify citizenship. Latino victims of police harassment report that they have been stopped by police allegedly to verify they are wearing a seatbelt that is visibly fastened, for driving less than 5 mph over the speed limit, or for no reason at all. Latinos who come into contact with law enforcement, particularly during traffic stops, are more likely than non-Latinos to be subject to arrest and detention for minor violations such as driving without a license. Arresting an immigrant driver ensures that ICE will be contacted at the jail; if an immigrant driver is cited and released, ICE will not be notified.

Reports from the Shelbyville Police Department obtained through a public records request verify that a disproportionate number of Latino drivers were arrested for traffic violations in the first quarter of 2011, and that a few police officers made the bulk of these arrests of Latinos. Of 74 reported arrests for traffic violations, 26 of those arrested were Latinos, and at least six other Latinos were omitted from the list of arrests provided by the police department. Thus, although Latinos make up only about 20 percent of the city's population, approximately 39% of arrests for driving license violations were arrests of Latinos. Arrests of Latino drivers were not equally distributed amongst



Miguel Gonzalez, long-time community member and Tortilla/Grocery store owner.

“In the beginning of this year, local police officers, the Sheriff’s Department, and the TN Highway patrol were out in front of my store almost every day—they would come and park and just stay there. If local law enforcement really wanted to keep the community safe, they should have patrolled the residential areas nearby, where there were reports of break-ins. Instead, they focused on my store and the families doing nothing more than shop for their tortillas and food.

We are heavily surveilled as a community. Whether you are here legally or not, you are marked out if you have dark skin, hair, or if you speak English with in accent. We are still far, far from our ideals when we look at the practices of local law enforcement. I have been in Tennessee for nineteen years, and we need to educate our community and bring them into this society, rather than marginalize them and violate their civil and human rights.”

Shelbyville police officers. Eleven of 23 Shelbyville police officers made arrests of 26 Hispanic drivers. Remarkably, just four officers made 62% of the total arrests of Latinos for traffic violations. Since Shelbyville police officers are assigned to patrol throughout the city rather than in a specific area, these statistics suggest that some officers may be intentionally targeting Latino drivers for traffic stops and arrests, perhaps in order to facilitate detention by ICE.

Latinos' individual experiences with the Shelbyville Police Department substantiate this statistical evidence of racial profiling. One Latino resident was pulled over by a Tennessee Highway Patrol State Trooper allegedly for speeding and immediately showed the officer his valid driver's license and proof of insurance. The officer then asked for the driver's green card. When the driver asked what authority the Trooper had to inquire about immigration, the Trooper demanded proof of his citizenship, stating that he "knew" the driver "was an illegal." The officer issued a citation for driving without a license, no proof of insurance, and no seatbelt, even though he had been given this documentation and the driver was visibly wearing a seatbelt. Latino drivers unable to produce a driver's license are typically arrested for driving without a license and transported to jail, where they are questioned about their national origin and reported to ICE. Officers have chosen to arrest parents for driving without a license even when they have small children with them in the car and no other caretaker is present.

Another recent victim of police harassment reports that he was pulled over without cause by one of the Shelbyville police officers responsible for the bulk of arrests of Latinos. The police officer refused to give a reason for pulling the driver over, and asked for the IDs of all occupants of the car. The driver was ultimately arrested and transported to jail for driving without a license, even though he was a longtime resident of Shelbyville, had no criminal record, and the officer had no reason to make the initial stop. Once at the jail, he was unlawfully detained after posting bond while the jailer waited for ICE to remove him, and he was only released through the aggressive advocacy of community members. Local law enforcement officers choose to arrest Latinos for minor traffic violations even when there are compelling reasons for them to exercise their discretion.

A single mother was recently involved in a minor fender-bender, for which she was not at fault. She explained to a Shelbyville police officer that she was a victim of severe domestic abuse in the process of submitting her VAWA self-petition to become a lawful permanent resident and was unable to produce a driver's license at this time. She was nevertheless arrested for driving without a license and detained in the Bedford County jail, where she was questioned about her national origin. She reports that she relied in the past on the Shelbyville police to help keep her safe from her abusive partner, but after her arbitrary arrest, she no longer trusted law enforcement to protect her from abuse and feared that she would be arrested too if she called for help.

Local law enforcement agencies' patrols, traffic stops, and arrests demonstrate a pattern of treating Latinos and other immigrants in a discriminatory manner.

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Booking and Detention in Bedford County

Immigrants face discrimination in booking and detention procedures at the Bedford County Jail, which is administered by the Bedford County Sheriff's Department and Sheriff Randall Boyce. Since at least 2007, the Bedford County Sheriff's Department has publicly sought to deport undocumented immigrants who come into contact with the criminal justice system for minor traffic violations like driving without a license. But the Department was never able to secure a 287(g) agreement with federal authorities. The Bedford County Sheriff's Department is now a zealous participant in Secure Communities, reporting all detainees who are born outside the United States to ICE pursuant to Tennessee law that went into effect January 2011. Unfortunately, the Bedford County Sheriff's Department has misconstrued this state law as a license to do whatever it takes to detain immigrants for ICE and facilitate their deportation, no matter if these practices are patently unlawful and unconstitutional. Immigrants are more likely to be held for long periods of time for minor traffic violations and to be held unlawfully without bond or after posting bond as a "courtesy" for ICE when there is no ICE detainer. Since January 2011, the unlawful practices of the Bedford County Sheriff's Department have resulted in as much as a tenfold increase in the number of immigrants detained for ICE – all at the expense of Bedford County's taxpayers. ICE has initiated deportation proceedings against most of those who have been unlawfully detained.

Under T.C.A. § 40-7-123, the Tennessee "Jailer Bill" that went into effect January 2011, standards issued by Tennessee's Peace Officer Standards Training ("P.O.S.T.") Commission give jailers narrow directives to question detainees about their citizenship and make certain reports to ICE. It by no means suspends the constitutional rights of detainees or the obligations of jailers under state and federal law, nor does it deputize jailers to enforce federal immigration law by indefinitely detaining suspected undocumented immigrants. In Bedford County, the Sheriff's Department has systematically misinterpreted its authority under this law. Numerous department officials, including high-level supervisors, have cited to the Jailer Bill as justifying their refusal to facilitate the setting of a bail amount for immigrant detainees, even though the right to bond is enshrined in Tennessee's state constitution. Even when a bail amount has been set, many department officials have refused to let families post bond, stating that the Jailer Bill forbids them from accepting bond for an immigrant detainee until ICE officials have determined they will not pick up that person. As a result, immigrants have languished in Bedford County jail for days and

“So pervasive is the warped sense of responsibility within the Sheriff’s Department for enforcing federal immigration law that even when a noncitizen successfully posted bond and secured his release, Sheriff’s deputies went to the individual’s home to re-arrest him less than twenty-four hours later ... jailers give a dizzying array of inaccurate interpretations of federal regulations, ever-evolving in response to community advocacy and legal education to justify their continued illegal detention of immigrants in the Bedford County Jail.”

weeks longer than non-immigrants. Most do so without meaningful access to legal counsel, even when their only crime was driving without a license. Many are ultimately removed by ICE, even though the Bedford County Jail had detained them illegally. Only after systematic advocacy and legal education by community members have officers begun to allow immigrants to post bond.

The Bedford County Sheriff's Department has also systematically misconstrued federal regulations governing ICE detainers as justifying the discriminatory and illegal detention of many immigrants. Federal regulations give discretionary authority to ICE to request that local law enforcement detain individuals for up to 48 hours beyond the time they would otherwise have been entitled to release. 8 C.F.R. § 287.7 requires an immigration officer to issue Form I-247, the ICE detainer document, to the local jailor before requesting an individual's 48-hour detention. Officers at all levels in the Bedford County Sheriff's Department have routinely detained people beyond when they should have been released when they lack an ICE detainer, or the ICE detainer has long expired. In their conversations with advocates, jailers give a dizzying array of inaccurate interpretations of federal regulations, ever-evolving in response to community advocacy and legal education to justify their continued illegal detention of immigrants in the Bedford County Jail. Some jailers have told advocates that the federal regulations mandate 48 hours of additional detention time for all immigrant arrestees, regardless of whether ICE submits Form I-247. Some jailers have asserted that they may indefinitely hold immigrants who would otherwise be released until ICE decides whether or not to issue an ICE detainer. Most recently, jailers claim they cannot release a person until they have made a "courtesy call" or "courtesy fax" to ICE, which may take many hours and result in the issuance of an ICE detainer. These "courtesy" procedures are not provided in any statute or regulation.

Even when the jail has received Form I-247, the ICE detainer, jailers have habitually refused to release individuals upon expiration of the 48-hour clock. One method of circumventing the clear language of the 8 C.F.R. § 287.7 is to distort the moment at which the 48 hours begin to run. The Bedford County Sheriff's Department grossly overstates the amount of time they are allowed to hold someone pursuant to an ICE detainer. Sheriff Boyce has stated publicly that he believes if he arrests someone on a Friday, the 48 hours do not start to run until Monday, allowing him to hold that person until Wednesday. Others officers claim they must hold an immigrant over the weekend even if ICE hasn't issued a detainer. Another method is to simply disregard the 48 hours, and hold people until ICE arrives. On several occasions, jailers have maintained that they possess authority to unlawfully detain individuals because "ICE is on the way."

So pervasive is the warped sense of responsibility within the Sheriff's Department for enforcing federal immigration law that even when a noncitizen successfully posted bond and secured his release, Sheriff's deputies went to the individual's home to re-arrest him less than twenty-four hours later. When pressed by the Latino resident's family, Sheriff's Department officials admitted the sole reason for his re-arrest was to allow questioning by ICE, and to detain him pursuant to an ICE hold.

The policies of the Bedford County Sheriff's Department substantially increase jail time for immigrant arrestees who haven't been to court, haven't been convicted of a crime, and have usually been arrested for a minor traffic infraction. These inmates are presumed guilty, and their deportation by ICE is widely considered a foregone conclusion.

For example, one Bedford County resident was arrested for a minor traffic violation and held in Bedford County jail days after he should have been released. The jail lacked an ICE detainer, but jailers claimed they had an "oral" ICE hold and refused to release him when pressed. He was eventually arrested and deported by ICE, even though he was a victim of violent crime and was likely eligible for a U-Visa.

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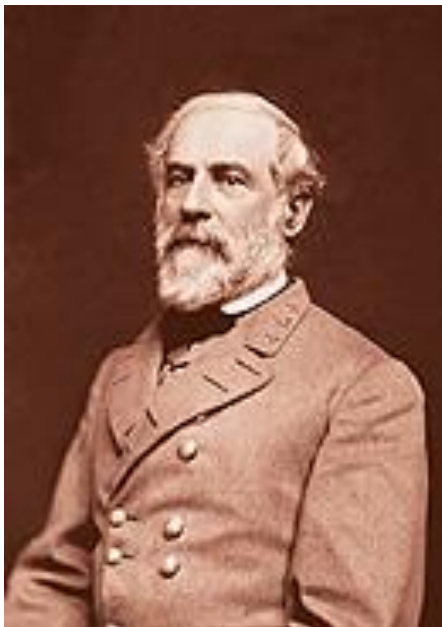
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Navigating the Court System

A large painting of Confederate General Robert E. Lee hangs above the main doorway just inside the Bedford County criminal court, and is the only portrait in the courtroom. There is little justice here for immigrants who walk through these doors, in the shadow of that disciple of state racism and white supremacy.

Multiple reports by criminal defense counsel indicate that some local law enforcement officers are making notations reading “Not a U.S. Citizen” or “Non-citizen” on the arrest report or criminal citation – the document that provides the basis for the judicial proceeding against a criminal defendant. Latino drivers are consistently sentenced to jail time and probation for minor offenses such as driving without a license, whereas non-immigrant drivers may be ordered to pay a fine or attend traffic school. Immigrant criminal defendants assigned to the public defender are often not advised of the immigration consequences of a criminal conviction pursuant to *Padilla*. Recommendations by defense counsel to plead guilty have jeopardized the ability of some long-standing community members to qualify for cancellation of removal or other immigration relief. Finally, some court-appointed attorneys have apparently charged indigent Latino clients for court appearances, despite the fact that these defendants are charged attorney fees by the probation office for the exact same representation and court appearances.

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Immigrants with limited English proficiency face additional barriers to their meaningful participation in the court system, even when they are criminal defendants and the stakes are exceptionally high. The Department of Justice has made clear that courts receiving federal assistance must provide meaningful access to people with limited English proficiency and should provide quality language interpreters at no cost to litigants and witnesses in order to comply with Title VI of the Civil Rights Act. Although roughly 20% of the population of Shelbyville is Latino, the Bedford County Circuit and Sessions Courts systematically fail to provide interpreter services, making it difficult for many immigrants to enjoy equal access to the justice system. No interpreter services are offered at the clerk’s office. A Spanish language interpreter is regularly present only in criminal court, and she is reportedly not certified or registered as a court interpreter by the State of Tennessee. On several occasions where criminal defendants were indigenous Guatemalans with little or no Spanish proficiency, the Spanish-language interpreter has failed to identify these language barriers and pressured them to allow the process to move forward. Many criminal defendants report that this court interpreter has failed to provide accurate interpretation, inserted her own opinions or legal advice, told undocumented immigrants

they have to plead guilty because they have no rights and will “definitely be deported,” and served as a matchmaker for private defense attorneys who would be paid far less for the same representation were they court-appointed instead of hired by the defendant. One former defendant states that the interpreter told him to “plead guilty in order for [the] case to go faster.” Another former defendant states that the interpreter told her she had to plead guilty because her sister had. Bedford County courts fail to provide interpreter services at no cost and assess interpreter fees uniformly against most Latino litigants, effectively levying an additional tax against Latinos who need to access the court system based on their perceived national origin. Latinos are assessed at least \$50 by the court for interpreter services at each court appearance, in at least some cases, even when a person was proficient in English and had not used an interpreter.

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Encounters with Immigration and Customs Enforcement (ICE)

In 2011, Immigration and Customs Enforcement (ICE) initiated a sting in cooperation with the Bedford County Probation Office in which Latino probationers were profiled based on their perceived national origin.

As part of ICE's annual Operation Cross-Check, ICE Nashville Fugitive Operations Team Deportation Officer Bradley Epley contacted the head of the Bedford County Probation Office, Rory Griffey. Epley informed Mr. Griffey of his desire to arrest noncitizens with criminal convictions as part of Cross-Check. Over multiple e-mails, the Probation Office prepared and transmitted to Epley a list of probationers who may be subject to deportation. The only trouble was, for the vast majority of persons, the Probation Office knew neither the individual's country of birth nor his immigration status. Rather than investigating further, Epley and the Probation Office simply compiled a list of Hispanic-sounding names, thus profiling the individuals based on perceived national origin and ethnicity. Probation officers then put on a full-court press in the weeks leading up to Cross-Check by calling all individuals on the list and demanding they come to the Probation Office at 9 am on an upcoming Thursday. For many, if not most probationers, Thursday was not their normal report day; several had to miss work—a thing all-to-difficult to come by in this economy — to be present for the inquisition. No mention was made of ICE's presence. The message was clear: show up or go to jail for violating probation.

Once at the Bedford County Probation Office, individuals were asked to pay their probation fees (generally each probationer pays a weekly amount). Then at least 15 Hispanic men were taken to a second room, where an ICE agent was waiting. That agent proceeded to interrogate the men about their citizenship and immigration status. If the right answers weren't forthcoming, another ICE agent—believed to be Nashville-based Eric Lim—handcuffed or shackled the individual and took him to a room where over a dozen Latino men were gathered.

In addition to the racially-targeted arrests that occurred inside the Probation Office, ICE questioned multiple residents of Latino appearance in the parking lot. At least one man was arrested while standing outside the Probation Office talking on his cellular phone, according to eyewitness accounts. Indeed, the zeal of some Fugitive Operations Team agents to arrest everyone in sight reportedly culminated in a visible argument between a white agent and another agent who was a native Spanish speaker.

Following their arrests by ICE, the approximately 18 men were transported in white vans to the ICE office in Nashville, Tennessee, where they were further interrogated and made to sign documents without the opportunity to consult counsel. Multiple accounts

The head of probation “publicly expressed his profound regret that he had ever collaborated with ICE. What he was led to believe would be a targeted operation to remove the worst of the worst proved to be a dragnet aimed at grabbing as many men as possible.”

report ICE agents and supervisors becoming furious at men who refused to make statements and requested a lawyer. One man who was present refused to repeat the profanities agents used for fear that his wife and children could overhear him.

In the aftermath of the probation raid, the head of the Probation Office admitted that the list he compiled at Deportation Officer Epley's request was based not on reasonable suspicion of alienage or unlawful presence, but rather, on the way each person's last name looked and sounded. Mr. Griffey publicly expressed his profound regret that he had ever collaborated with ICE. What he was led to believe would be a targeted operation to remove the worst of the worst proved to be a dragnet aimed at grabbing as many men as possible.

At least one official with ICE's Chattanooga field office candidly admits that its office follows this "dragnet" approach to immigration enforcement in Bedford County. The office follows this approach despite clear guidance from ICE director John Morton on priorities for immigration apprehension, detention, and removal that instruct ICE agents to "exercise particular discretion when dealing with minor traffic offenses such as driving without a license." John Bobo with ICE's Chattanooga office told an advocate that he will fill every seat on the bus when he sends it to a county jail, even if this means detaining people who have committed minor traffic infractions. Bobo states he intends to take every person he can into his custody because he sees no distinction between traffic violations and more serious criminal acts.

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Efforts Undertaken by the Community Thus Far

Community members directly affected by racial profiling are building grassroots power to defend the community from law enforcement abuses and to fight back against racial discrimination. Latinos Unidos de Shelbyville (LUS) formed in January 2011 in direct response to the problems described in this report, and has been at the forefront of the daily struggle to improve life for immigrants in Bedford County by organizing the community. Statewide groups including Tennessee Immigrant and Refugee Rights Coalition (TIRRC), Statewide Organizing for Community Empowerment (SOCM), and Justice for Our Neighbors (JFON) have provided tremendous support to these local organizers.

Together, these groups have convened community meetings sometimes more than a hundred strong, provided know-your-rights trainings on the criminal justice and immigration enforcement systems, collected stories and data documenting discrimination towards immigrants, and inspired community members to engage in strategic, organized resistance against anti-immigrant law enforcement practices. The organizing model of “Neighborhood Defense Committees” was one of the few good things to come out of the aftermath of SB 1070 in Arizona, and in November of 2010, Shelbyville residents were able to meet with Arizona organizers and partake in the lessons learned from Arizona’s struggle against racial profiling. Through a process of popular education and intensive “Defend Your Rights” trainings, TIRRC has helped community members form their own “Neighborhood Defense Committee”, where community members use radio, one-on-one conversations, and door-to-door outreach to move forward a proactive, rapid-response network of activists to fend off attacks on the community. For instance, in response to the raid at the probation office, LUS rapidly organized several teams to go door-to-door to offer know-your-rights to other immigrants on probation and urge them to get involved in community organizing. SOCM has been an invaluable ally to the immigrant community, diligently documenting rights abuses, and opening doors with local and state officials to address egregious violations of civil and human rights. For example, LUS and SOCM persuaded the head of the probation office to attend a community meeting to explain his collaboration with ICE. He was peppered with questions from many individuals directly affected by the raid. By the end of the meeting, the probation officer was deeply apologetic and vowed not to cooperate with future requests from ICE.

In the coming weeks, TIRRC, LUS, RWG and our community partners will complete and deliver a comprehensive pattern-and-practice complaint to the Department of Justice Civil Rights division that will document specific instances of the violations described above.

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NOTES



The Tennessee Immigrant and Refugee Rights Coalition
446 Metroplex Drive, Bldg. A, Ste. 224, Nashville, TN 37211
