

## Dangerous merger:

Corrupting the criminal justice system for immigration enforcement

*Why pouring billions of dollars into CAP, 287(g), and Secure Communities subverts the criminal justice system, erodes due process, and makes us less safe*

### Questions and Answers:

#### What is the connection between immigration enforcement and the criminal justice system?

Immigration and Customs Enforcement (ICE), the agency within the Department of Homeland Security charged with deporting and detaining immigrants, uses local law enforcement and jails in its enforcement operations. The ICE ACCESS initiative combines 13 programs with the goal of using local criminal justice systems—the courts, jails, and police—to hunt down people deemed to be “criminal aliens.”<sup>1</sup> The “Criminal Alien” Program (CAP), 287(g) Agreements, and the Secure Communities initiatives are the three most well-known ACCESS programs used to accomplish this goal.<sup>2</sup> ICE spent over \$1 billion on these programs in FY 2009.<sup>3</sup> FY 2010 funding is projected to be nearly \$1.5 billion.

#### The alleged target: “criminal aliens” who commit serious offenses

- The term “criminal alien” is used to describe any noncitizen who has been arrested or convicted for any criminal offense, regardless of the severity of the person’s crime or whether they are undocumented or have lawful immigration status. Under current laws and practices, ICE is classifying increasingly alarming numbers of noncitizens as “criminal aliens.” This “criminal alien” dragnet is being used to indiscriminately target, apprehend and deport ever larger numbers of noncitizens, including long-time green card holders with U.S. citizen spouses and children. Since Fall 2006, ICE has identified and charged over 450,000 non citizens through CAP, with increasingly more immigrants charged each year.<sup>4</sup>
- While ICE claims to target serious criminals, the Government Accountability Office in the March 2009 review of the 287(g) program found that ICE failed to meet this goal, and was aggressively focusing on “easier” targets—those who commit minor offenses, like shoplifting or minor violations of law such as traffic violations.<sup>5</sup>

#### How do these programs refer immigrants in the criminal justice system to ICE?

Local police and jails collect immigration information on all people arrested (e.g. booking or at arrest), share this information with ICE, and allow ICE to interrogate defendants in jail. Or, ICE encourages local law enforcement officials to use integrated criminal/immigration databases or ICE fingerprint checks. A “detainer” or an immigration “hold” is placed on those in custody, preventing their release from jail and

#### 287 (g):

ICE contracts with state and local police and jail officials to enforce immigration laws



#### Secure Communities:

Uses technology and databases to identify, detain, and deport “criminal aliens” in federal, state and local facilities



#### “Criminal Alien” Program:

Relies on jail officials, police, and the courts to identify “criminal aliens” incarcerated within federal, state and local facilities



#### Detainer damage: a misused and mishandled tool

- The immigration “detainer” is the key tool used by ICE to apprehend noncitizens in the criminal justice system. When booked into jail, noncitizens unknowingly respond to questions about where they were born. The jail then provides this information to ICE who then files a detainer on the person. The detainer permits the jail to detain the immigrant beyond their criminal case so that ICE can pick them up for deportation. In Irving, TX, 60% of people who had detainers placed on them were arrested for low level infractions such as speeding, public intoxication, misdemeanor assault and writing bad checks.<sup>6</sup>
- Under law, the detainer only permits a jail to hold the person for a 48 hour period. However, noncitizens frequently remain in jail beyond the 48 hour limit. ICE does not provide proper guidance to jail officials on detainer authority, including the 48 hour limitation or how to lift the detainer when it is erroneously placed on U.S. citizens. ICE detainers mean that noncitizen defendants are being held in jail for much longer periods than noncitizens. For example, in Travis County, TX, the average length of stay for U.S. citizen inmates on the lowest level misdemeanor charges was seven days; for this same group of noncitizen defendants, the average length of stay was *fifty* days.<sup>7</sup>

ensuring that they will only be released to ICE custody. Any suspicion of noncitizen status means the person gets referred to ICE for deportation.

#### How effective are these programs?

There are no government regulations or any other procedural mechanisms in place to ensure effective oversight, accountability and redress.

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## **Dangerous merger:** Corrupting the criminal justice system for immigration enforcement

*While rounding up “criminal aliens” sounds good, these programs actually subvert the criminal justice system, erode due process, and make us less safe*

### **There is no immigrant crime wave**

Despite rhetoric that the “criminal alien” population is on the rise, studies show that immigrants commit fewer crimes than native-born citizens, and that a high proportion of immigrants in a neighborhood is associated with lower rates of crime.<sup>8</sup> A California study, a state with more immigrants than any other, concluded the foreign-born are incarcerated at a rate half as high as their presence in the population.<sup>9</sup> According to the latest Justice Department statistics available, noncitizen prisoners accounted for only 5.9% of the combined **federal and state** prisoner population.<sup>10</sup>

### **Shifts Scarce Resources Away From Prosecuting True Criminals and Jeopardizes Effective Law Enforcement**

Instead of fighting crime, it is now common practice for many police departments to target immigrants for arrests on minor violations that result in their deportation by ICE. Police chiefs and scholars worry that political pressure to divert law enforcement to immigration enforcement will sabotage “sound and well established policing practices.”<sup>11</sup> In Maricopa County, Arizona, where Sheriff Arpaio has shifted law enforcement resources to illegal immigration, FBI statistics show that violent crime has increased by 69%, murder is up 166%, robbery is up 74%; property crime is up 26%; burglary is up 25%.

### **Fosters bias against immigrants in our criminal justice system**

Misguided policies against suspected immigrants, legal or undocumented, by judges and our criminal court systems are on the rise. Treating immigrants differently than U.S. citizens in our criminal justice system subverts the core purpose of our legal system to enforce equal treatment of the law. In Harris County, TX, the district attorney who has vowed to fight illegal immigration, proposed to bar plea deals for people who refuse to provide citizenship information, in violation of state law. State legislatures and judges are abandoning time-tested bail provisions to create blanket no-bail policies for noncitizens with detainers—regardless of the severity of the crime—even though there is “no conclusive research to show that illegal immigrants are more likely than their U.S.-citizens to abscond on state charges while out on bail.”<sup>12</sup>

### **Violates the basic promises of fairness and due process at the core of our legal system**

Long ago the U.S. Supreme Court held that our Constitution requires that people accused of a crime be given the right to remain silent and the right to have a court-appointed attorney to defend these and other due process rights. Under immigration law, immigrants have far fewer due process rights, including no right to an attorney until after they have incriminated themselves, and no right to an appointed attorney ever. Arresting immigrants, locking them up in jail, interrogating them without lawyers, and then using this information to deport them, prosecute them, and jail them is un-American.

### **The North Carolina case: How 287(g) Increased Racial Profiling**

- With eight active 287(g) agreements, North Carolina has become a national testing ground for programs between ICE and local enforcement. Local police set up roadblocks for the purpose of checking licenses outside of Latino markets on the weekends and on Sundays, they station themselves at roads that provide access to Latino churches.<sup>13</sup> Johnson County Sheriff Steve Bizzell has stated that “they [immigrants] are breeding like rabbits,” and that they “rape, rob and murder American citizens.”<sup>14</sup> Despite this attempt to link immigrants to violent crime, in one North Carolina county, 83% of immigrants arrested in one month by ICE-authorized police officers were charged with traffic violations.<sup>15</sup> Still, criminal alien programs do not require data collection on race or ethnicity to verify that racial profiling does not exist.



The Immigrant Justice Network is a collaborative formed in 2006 with the Immigrant Legal Resource Center, the National Immigration Project of the National Lawyers' Guild, and the Washington Defender Association's Immigration Project to advocate on behalf of noncitizens facing unjust immigration penalties as a result of being entangled with the criminal justice system.



Footnote citations can be found on:  
<http://www.immigrantjusticenetowork.org>