

Secure Communities????

A Dangerous Merger: ICE Enforcement Programs in the Criminal Justice System

Webinar One
March 4, 2010

Presented by: Detention Watch Network, Immigrant Defense Project, Immigrant Legal Resource Center, Washington Defender Association's Immigration Project, National Immigration Project of NLG, National Immigration Law Center, Rights Working Group

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Goals of Session One

- Provide a framework for understanding the intersection between the immigration and criminal justice systems
- Identify key concepts and issues necessary to effective advocacy
- Outline key ICE enforcement programs & practices in the criminal justice system and their impact on immigrant communities



Presentation Overview

- Section I: The Intersection Between Immigration Law and the Criminal Justice System (CJS)
- Section II: Intro to Immigration Detainers: ICE's Key Tool
- Section III: ICE ACCESS Programs
- Section IV: Immigration Detainers Revisited
- Section V: Bring This All Together



Section I:

The Intersection Between Immigration Law and the Criminal Justice System (CJS):

Selected Key Concepts

Key Concept!

Anyone who is not a U.S. citizen can be deported. This includes immigrants in the country lawfully as well as undocumented persons (e.g. legal permanent residents, refugees, people granted TPS, etc.)

- Regardless of how long they have been in the U.S.
- Regardless of their family and community ties

The General Rule

- Any immigrant who is stopped or arrested by law enforcement is likely to be targeted for deportation - whether or not the arrest results in conviction or a jail sentence
 - Regardless of whether cops have 287(g) agreement



Convictions can lead to deportation

- Convictions, even misdemeanors, can prevent undocumented persons from getting lawful status
- Convictions, even misdemeanors, can result in greencard holders and refugees losing their status and being deported
- Examples: marijuana possession, shoplifting



People deported because of convictions have few rights

- Immigration detention and deportation are often automatic and mandatory
- People with convictions often do not get to see an immigration judge
- Even when they do see an immigration judge, the judge often has no power to stop deportation



Key Point

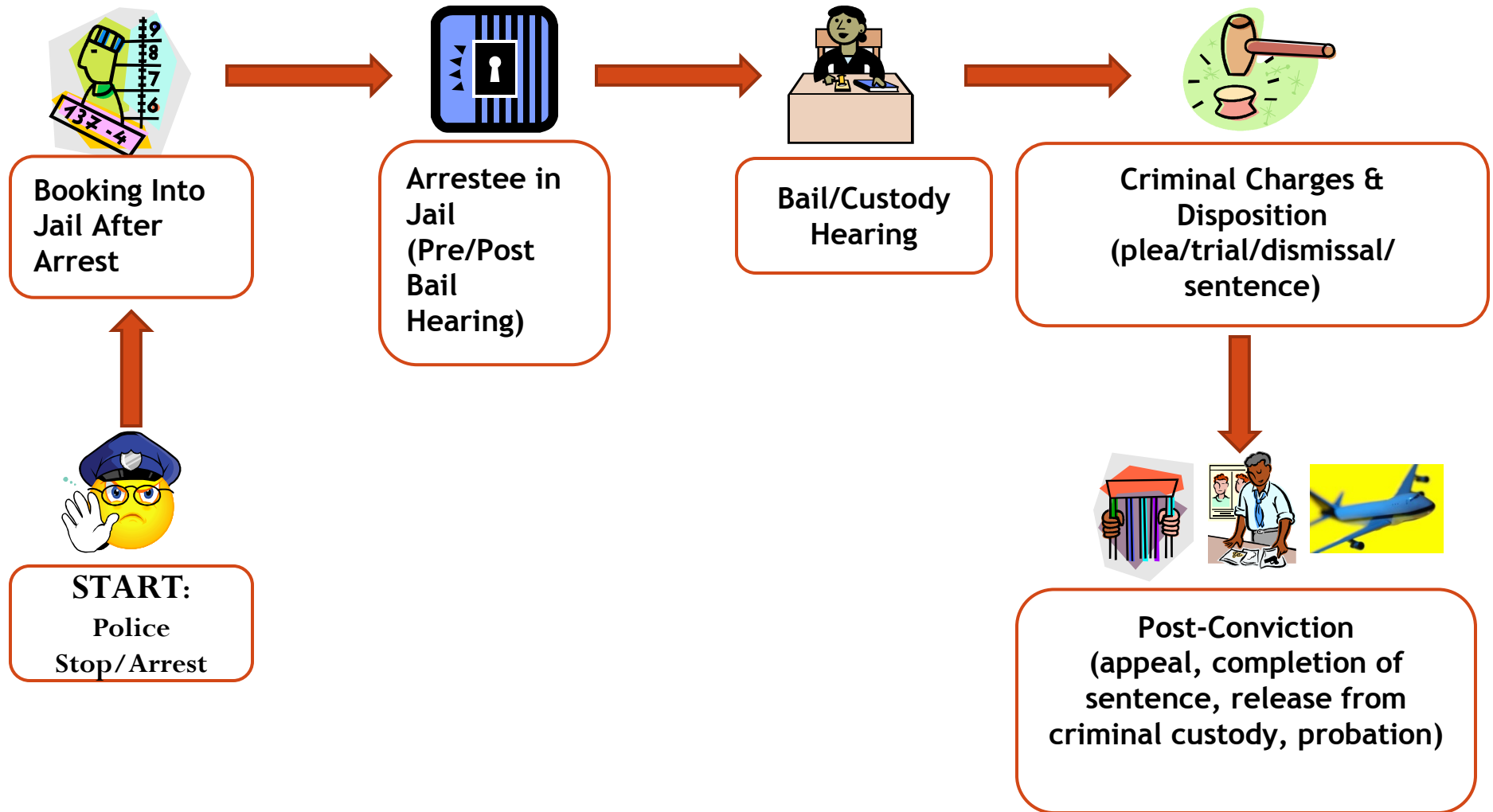
- Apprehending noncitizens through the criminal justice system (not raids) is now ICE's primary focus for enforcement
 - In the last 3 years ICE has rounded up over half a million people through the Criminal Alien Program alone



The Pipeline

- The ICE ACCESS Programs use the criminal justice system to channel immigrants into the deportation system, regardless of whether they have convictions that make them deportable
- Immigration enforcement now happens at every point of the criminal system: arrest, courts, jails and probation/parole

Overview of the Criminal Justice System



“Criminal Aliens”

- Once a person is caught up in the criminal justice system, ICE will label him or her a “criminal alien”
- Between 1997-2007, 72% of deportees who ICE calls “criminal aliens” deported for non-violent offenses

Human Rights Watch Report

“Criminal Aliens”

- Propaganda term used to justify heavy-handed enforcement practices & increased budgets
 - No legal or official definition
- Now used indiscriminately to refer to any noncitizen apprehended by ICE through CJS
 - Regardless of severity of alleged criminal offenses
 - Regardless of whether noncitizen was ever convicted for any crime
 - Sometimes also used against US citizens



Section II

Intro to Immigration Detainers: ICE's Key Tool

Immigration Detainers

- What are the goals of the ICE ACCESS programs?
 - (1) identify noncitizens
 - (2) lodge detainers
 - (3) then, usually, ICE custody or deportation
- Detainer is primary tool used by ICE to facilitate transfer of person from criminal to ICE custody and deportation
 - But ICE practices and policies about detainers are confusing and arbitrary

INA § 287; 8 CFR 287.7

What is an Immigration Detainer?

- A notice to the jail or police that ICE is interested in this person; used to track a noncitizen throughout the criminal process
 - Usually, turns up as a Form I-247 (next slide)
- In practice, detainer prevents the person's release from criminal custody

U.S. Department of Justice

Immigration and Naturalization Service

Immigration Detainer - Notice of Action

File No. _____ Date _____	
To: (Name and title of institution)	From: (INS office address)

Name of alien: _____
 Date of birth: _____ Nationality: _____ Sex: _____

You are advised that the action noted below has been taken by the Immigration and Naturalization Service concerning the above-named inmate of your institution:

- Investigation has been initiated to determine whether this person is subject to removal from the United States.
- A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on _____ (Date)
- A warrant of arrest in removal proceedings, a copy of which is attached, was served on _____ (Date)
- Deportation or removal from the United States has been ordered.

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the inmate's classification, work and quarters assignments, or other treatment which he or she would otherwise receive.

- Federal regulations (8 CFR 237.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for INS to assume custody of the alien. You may notify INS by calling _____ during business hours or _____ after hours in an emergency.
- Please complete and sign the bottom block of the duplicate of this form and return it in this office. A self-addressed stamped envelope is enclosed for your convenience. Please return a signed copy via facsimile to _____ (Area code and facsimile number)

Return fax to the attention of _____ of _____ (Area code and phone number)

- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death or transfer to another institution.
- Please cancel the detainer previously placed by this Service on _____

 (Signature of INS official) (Title of INS official)

Receipt acknowledged:

Date of latest conviction: _____ Latest conviction charge: _____
 Estimated release date: _____
 Signature and title of official: _____

Why do detainers matter?

- Nearly all ICE ACCESS programs rely on detainers
- Follow the detainer! To understand how these programs work in your community, you must discover as much about detainers as you can
- Because detainer rules are frequently misunderstood, jail/police/local government routinely violates detainer rules - this may create litigation or local advocacy opportunities to fight the ICE ACCESS programs



Section III

ICE ACCESS Enforcement Programs

ICE ACCESS Programs

287g Program	Criminal Alien Program	Operation Community Shield	Secure Communities
Rapid REPAT	Operation Predator	Operation Firewall	Law Enfcmt Support Ctr LESC
Intellectual Property Rights Center	Fugitive Operations Teams	Document and Benefit Fraud Task Force	Customs Cross-Designation
Border Enforcement Security Task Force	Asset Forfeiture/Equitable Sharing	http://www.ice.gov/oslc/iceaccess.htm	



ICE ACCESS Programs

- Primary ICE Access Programs:
 - Criminal Alien Program
 - 287(g) Agreements
 - Secure Communities Initiative
 - Operation Community Shield
 - Fugitive Operations Teams
- FY 2010 funding for ICE ACCESS programs = nearly \$1.5 billion



Problems with ICE ACCESS Programs

- Criminalize migration
- Create an airtight pipeline to deportation
- Cause criminal justice system to lose its core promise of giving people accused of crimes a fair process

Problems with ICE ACCESS Programs

- Foster bias against noncitizens in criminal justice system
 - Detainers and detainer violations result in unlawful imprisonment and increase criminal custody time
 - Judges grant no bail or higher bail amount
 - Even if posted, risk of going directly into ICE custody
 - Travis County, TX: inmates with ICE detainers spent triple time in jail
 - Exacerbated by violations of 48-hour rule
 - Significantly impair ability to defend against criminal charges
 - Leads to more guilty pleas
 - Keep immigrants from accessing early release and jail programs



Problems with ICE ACCESS Programs

- **Tolerate and encourage expansion of term “criminal alien”**
 - Mask abuses
 - Deter criticism and challenges
 - Misinform public and politicians about ICE goals and priorities



Problems with ICE ACCESS Programs

- **Continue ICE's pattern of using arrests on minor charges as gateway to immigration enforcement**

Problems with ICE ACCESS Programs

- Encourage racial and ethnic profiling
 - Police target perceived immigrants for arrest, knowing they will end up in ICE custody (deported), regardless of validity of arrest
 - ICE is willfully blind to racial profiling and pretextual arrests
 - No mechanisms exist to ensure that racial profiling and pretextual arrests don't occur

Problems with ICE ACCESS Programs

- Give power to local & federal agents with no oversight, transparency or governing regulations
 - Very little public information about operations and procedures
 - No (or woefully inadequate) grievance or redress procedures.
- Allow ICE to ignore impacts of the programs
 - No (or insufficient) requirements for data collection, audits or oversight.
 - No requirement for documentation of impact of program



Problems with ICE ACCESS Programs

- Undermine community safety
 - Underreporting of crimes
 - Immigrants more likely to become target of crime
 - Undermine community policing strategies, resulting in deteriorating relationships with police



Problems with ICE ACCESS Programs

- Create high costs
 - FY2010 budget for CAP alone: nearly \$200 million
 - For Secure Communities: \$200 million
- Create burden for communities
 - Misuse of resources
 - Detention costs
 - Social costs

The Criminal Alien Program



Criminal Alien Program (CAP)

- Primary enforcement program used by ICE to apprehend noncitizens who have contact with the criminal justice system
- Has existed since 1980's but vastly expanded in last 10 years

Criminal Alien Program (CAP)

- ICE's stated goals for CAP:
 - Identify and screen inmates in federal, state, and local jails and prisons, AND
 - Initiate removal proceedings while people are still in criminal custody OR transfer people to ICE for removal proceedings directly from jail.



Criminal Alien Program (CAP)

- ICE has 119 CAP “Teams”
- Teams have an unknown number of ICE agents deployed to jails and prisons across the U.S.



How CAP Works

- Jail or cops identify foreign-born people
 - Asking place-of-birth information at booking (jail)
 - Asking identifying info at arrest (cops)
 - S-Comm fingerprint checks
- Jail or cops provide ICE with the names and information of foreign-born people
- ICE lodges detainers against those who cannot prove U.S. citizenship



How CAP Works

- ICE conducts jail interviews of noncitizens in jail
 - Before or after detainer is issued
 - To gather information used to deport people
 - To process people for deportation
- ICE takes people into immigration custody upon release from jail (criminal custody)

How CAP works

- Questioning by local police or ICE in jails:
 - Almost always without counsel
 - Facts from jail interviews help ICE prove deportability (especially for people who entered unlawfully)
 - Pressure people to agree to waive right to see immigration judge and agree to deportation (stipulation of removal order)

Right to remain silent?

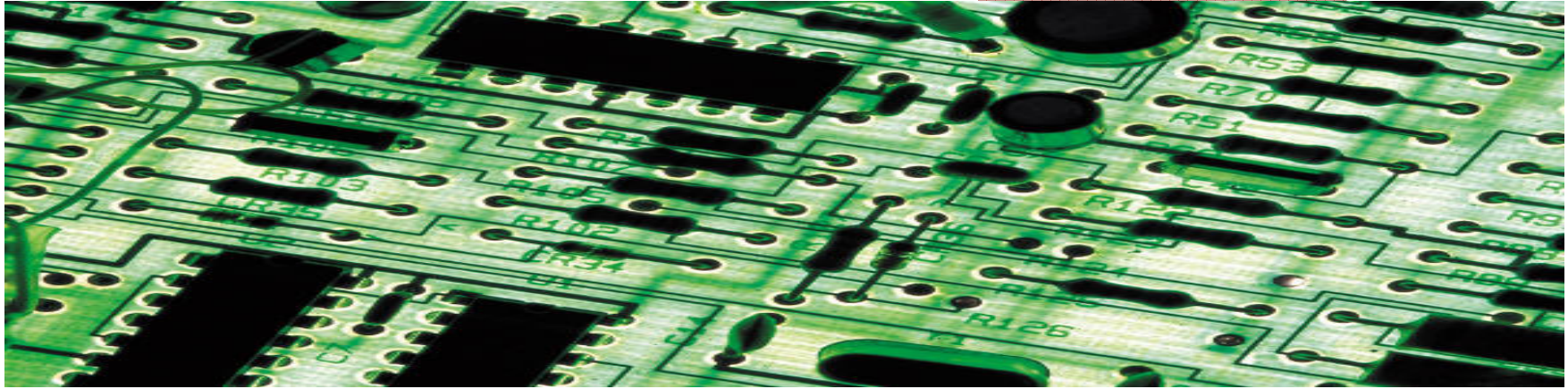
- People have a right to remain silent and not answer questions about where they were born or their immigration status
 - But no requirement that cops or ICE agent tell people of this right (no “*Miranda*” warning)
- * *Community Tip! Spread word of right to remain silent - people do not have to answer ICE questions!*

CAP Statistics

- In FY 2008 alone, ICE began removal proceedings against 221,085 people through CAP
 - 46% increase over 2007 total
- Currently nearly half (48%) of all noncitizens in ICE custody apprehended through CAP
 - 57% did not have criminal conviction (2008)
- Fastest growing DHS program:
 - Budget increased 253% from FY 2005-2009
 - FY 2010 budget >\$200 million

CAP Statistics

- 15 mo. study of CAP in Irving, TX:
 - 2% of ICE detainers were issued against persons charged with felony offenses
 - 98% of ICE detainers issued against persons charged with misdemeanor offenses
 - After CAP was launched, local police arrested Hispanics for low level misdemeanor offenses in significantly higher numbers
 - *(The CAP Effect report - 2009)*



Secure Communities



Secure Communities: What Is It?

- Fingerprints taken at arrest/booking used to automatically and immediately search for person's criminal *and* immigration history.
 - FBI database (current practice)
 - DHS databases (added by S-Comm)
- If a database “hit” (arrested person is matched to a record indicating immigration history), ICE and jail automatically notified.

S-Comm: How It Works

- ICE then evaluates each case to determine what, if any, enforcement action will be taken:
 - Generally, ICE will issue detainer against person
 - ICE claims, on average, the process from submission of fingerprints to issuance of ICE detainer takes approximately 4 hours.
- Undocumented persons with no immigration history will not be identified through S-Comm initiative

S-Comm: How It Works

- Gives ICE technological, not a physical presence in jails
- Unlike CAP and 287(g) programs
 - Detainers can be issued without presence of ICE agents in jails
 - However, overlap between CAP and S-Comm
 - No MOAs required w/local jails/cops
 - No deputization of local police agents

S-Comm: How It Works

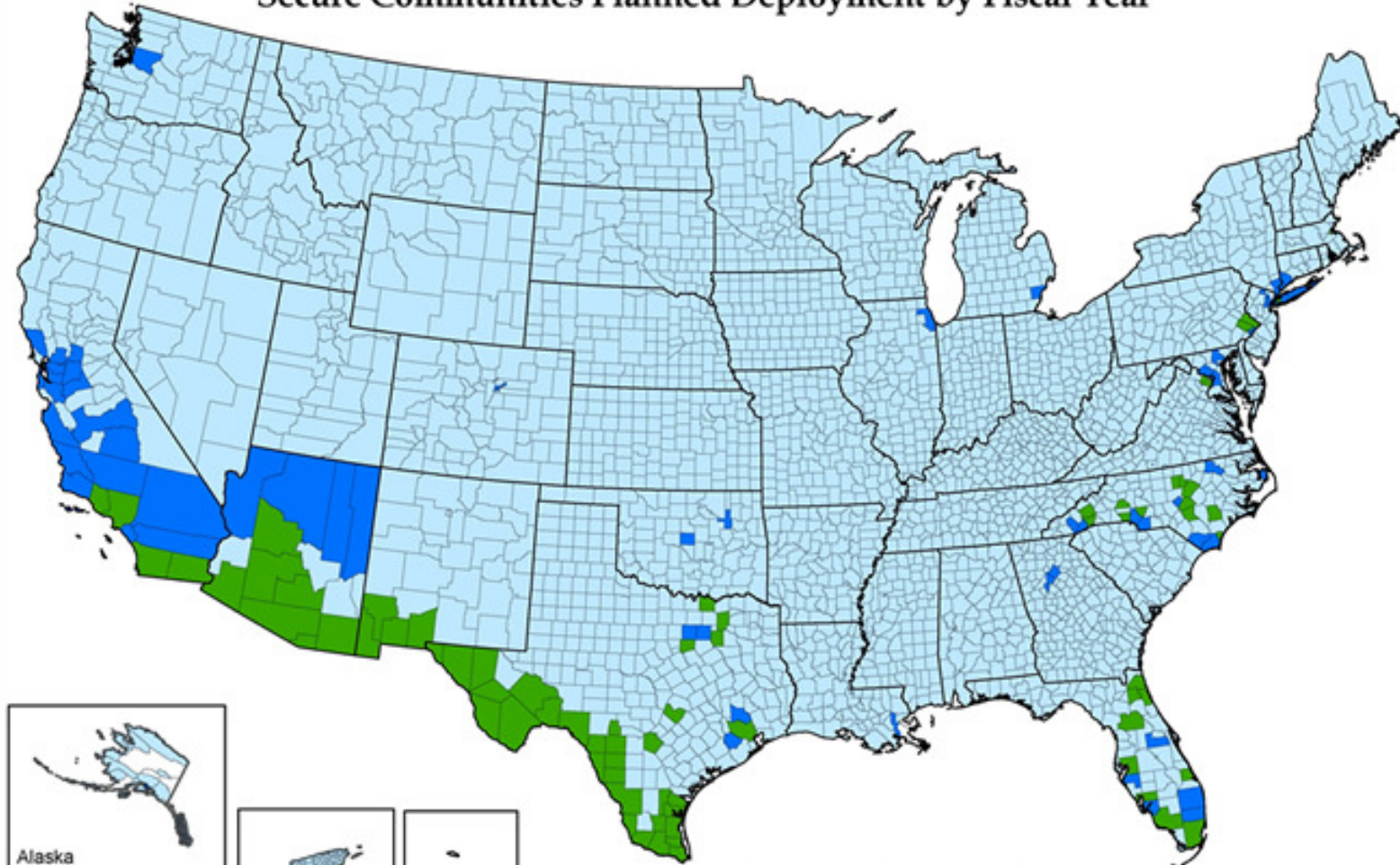
- ICE enters into agreement with State Identification Bureau (SIB)
 - SIB processes fingerprints of those arrested by state and local police
- ICE provides Standard Operating Procedures to jail/police
 - Outlines S-Comm processes and ICE's responsibilities
 - Unclear if local jail/police can opt out



S-Comm: Where Is It?

- By January 2010, S-Comm was in 116 jurisdictions in 16 states
- ICE plans to have S-Comm in every state by 2011
- Goal is to have S-Comm in each of 3,100 state & local jails by 2013

Secure Communities Planned Deployment by Fiscal Year *



% Coverage of Foreign-born Non-citizen Arrests**

■ FY 2009
 ■ FY 2010
 ■ FY 2011 - FY 2013

2009 ▶ 29%

2009 - 2010 ▶ + 63%

2009 - 2013 ▶ + + 100%

* Assuming adequate funding

** Numbers are estimates and are subject to change



S-Comm: Focus and Priorities

- ICE claims to have established priorities (Levels 1, 2 and 3) that allow S-Comm to focus on apprehending “serious criminals”



S-Comm: Focus and Priorities

The Reality

- In practice, ICE is using S-Comm to focus on apprehension of all noncitizens
- Targets people arrested, not convicted
- Who ICE classifies as a serious criminal is inaccurate and misleading
 - Includes low-level misdemeanor crimes such as resisting arrest and traffic offenses

S-Comm: ICE's Statistics

- In S-Comm's First Year (Oct. 08-Oct. 09):
 - Over 990,000 fingerprint submissions
 - Approximately 111,000 records “hits” for persons with both immigration history and prior conviction or charge
 - 9% of hits were level 1 serious charges or convictions
 - 86% of hits were level 2 or 3 non-violent or minor charges or convictions
 - 5% of hits were U.S. citizens

S-Comm:

Well-Funded Fears of Perpetuation

- FY 2010 appropriation: \$200 million.
- President's FY 2011 budget:
 - For ICE:
 - \$146.9 million “to continue FY 2010 progress toward nationwide implementation of the S-Comm program”
 - For the Department of Justice:
 - Over \$11M increase for Immigration Court System (EOIR)
 - For 125 additional staff to deal with increased caseloads resulting from CAP and Secure Communities

287(g) Programs



What is “287(g)”?

- 287(g) refers to a section of the federal immigration laws (Immigration and Nationality Act)
- Section 287(g) of the INA allows DHS Secretary to enter into agreements (MOA) that give powers to local police to enforce civil provisions of immigration law
 - Without 287(g), police can ask about immigration status but cannot arrest for possible deportation

What is a 287(g) MOA?

- Task force model
 - Police have authority to detain people on civil violations that they encounter in the course of their criminal enforcement duties in the field
- Jail model
 - Police assess inmates in jails and, if subject to removal, places detainers and processes paperwork to initiate removal proceedings

What is a 287(g) MOA?

- Deputized 287(g) officer must attend a 4-week immigration law training course
- All deputized 287(g) officials are supposed to be under ICE supervision
- 71 active MOAs
 - Mostly in rural areas and with Sheriffs
- Over 1,075 officers trained



The 287(g) Program - History

- Despite ICE's stated goal of targeting "serious criminal aliens," primary and aggressive focus was on "easy" targets - those arrested for minor misdemeanors
- *2009 GAO report on 287(g)*

What does the new 287(g) MOA do?

- June 2009: Expanded the 287(g) with new standard MOA
 - New priorities
 - New requirement to pursue to completion all criminal charges
 - New complaint procedures
 - New ability to terminate MOAs

Problems with the MOA

- No mechanism to prevent and address racial profiling
- No clarity re: “recommendation” to pursue to completion all criminal charges
- Not-so-standard MOA
- Ineffective complaint procedures
- Same old bad actors signed up with new MOA



Section IV:

Immigration Detainers Revisited



Back to Detainers: Quick Review

- ICE uses the detainer in ICE ACCESS programs to flag and pick up suspected noncitizens
- How detainers impact a person:
 - In practice, detainers keep you in criminal custody for a longer period of time
 - Most often, detainers are used to deny criminal bail or make it higher
 - Detainers impact what kind of jail you will be incarcerated in or what kind of rehab programs you have access to

What does ICE need from police or a jail to lodge the detainer?

- There is no standard of proof to lodge a detainer (so mistakes are made)
 - Persons with lawful status (LPR, refugees) without deportable convictions
 - U.S. citizens wrongfully get detainers
- Usually, ICE lodges detainer with place of birth information
 - An admission at arrest or during booking that they were born outside U.S. (or are not U.S. citizens)
 - Police or jail gives ICE the info

Advocacy Point!

- *Investigate whether your jails collect place of birth information - and how ICE gets this information*
 - *Can you advocate to change this policy of collecting this information with the jail?*
 - *Can arrested people refuse to answer questions about place of birth by police?*
 - *Can arrestees or incarcerated individuals refuse interviews by ICE ?*

How do you remove the detainer?

- Answer: IT IS REALLY HARD!
 - Generally, negotiate with ICE Detention and Removal Offices to lift the detainer
 - If the person is in the federal criminal justice system, you might be able to file a lawsuit to lift it
- Although it is not easy to lift a detainer, there are other rules you can use to get the detainer lifted

Remember the rules!

- A detainer is an ICE request - NOT an order - to the criminal justice agency (jail, prison) to notify ICE before releasing the person
 - Does not mean:
 - Local police or local jails can hold someone for an undetermined period of time
 - That the person will NECESSARILY be deported

The 48-hour rule on detainers

- The detainer requests that jail/police hold someone 48 hours after the criminal case is resolved (e.g. dismissed, sentence concluded, innocent) OR when bail has been posted
 - Except weekends and holidays
- Being held beyond 48 hours = unlawful imprisonment
 - This violation could mean liability to local government or jail (NYC Rikers lawsuit won \$145,000)

Advocacy Points!

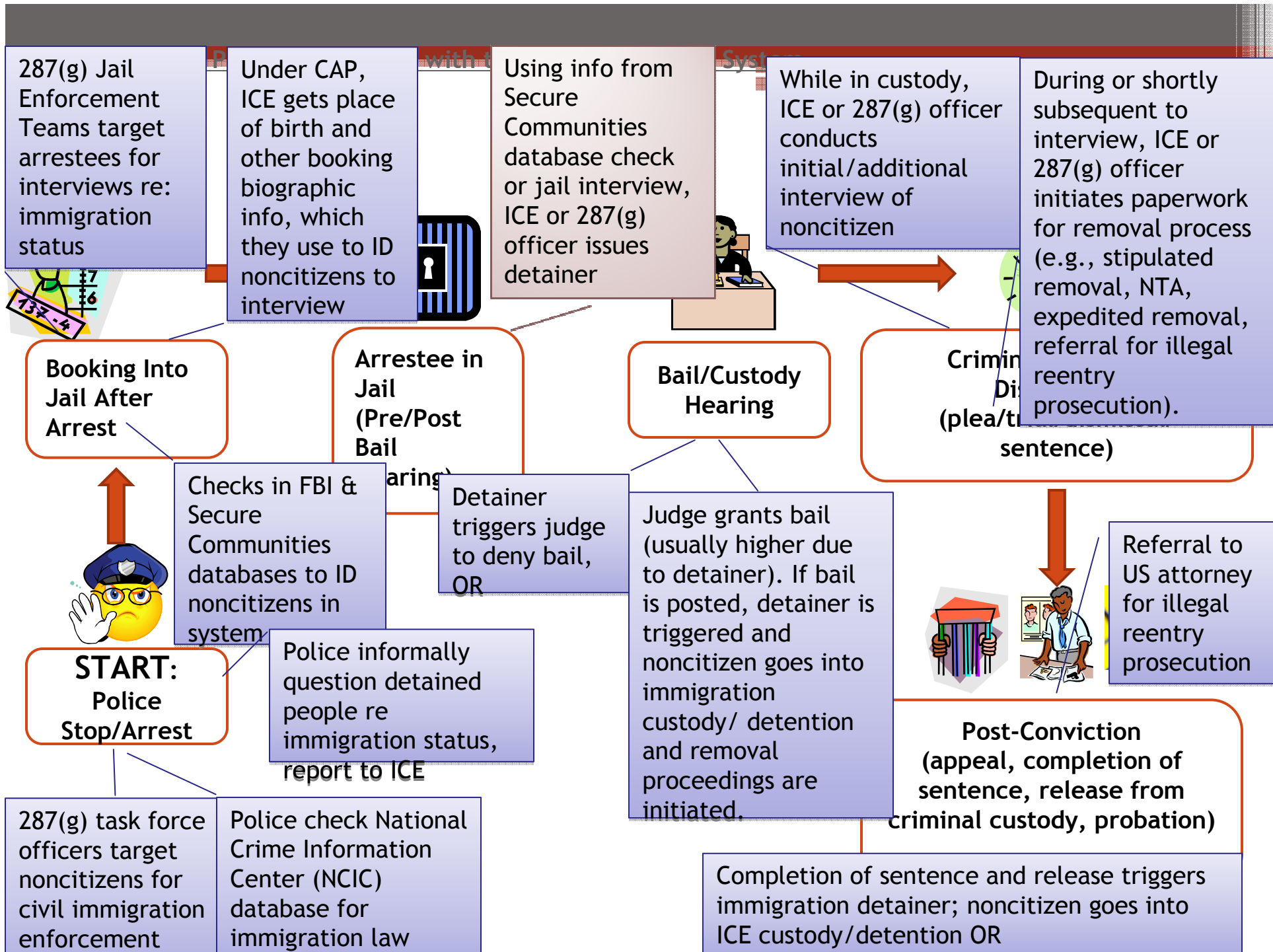
- Identify practices in your local jail:
 - How do you make police or the jail stop violating the 48-hour rule?
 - How long are people held beyond the 48-hour period?
- Establish relationship with your public defenders
 - Educate them about immigration detainers
 - Understand how detainers impact release from criminal custody during cases
 - Include them in your advocacy efforts



Section V

Bringing This All Together

What This Means for Your Advocacy Work



Advocacy Step One

- Find out what practices and procedures your local jail and cops have in place to collaborate with ICE in the implementation of ICE ACCESS programs
 - Public Records Requests
 - Build relationships with public defenders
 - Meet with jail officials and local cops

Questions & Answers



Washington Defender
Association's
Immigration Project



- **THE END**

- **See you on March 11 from 1-2:30pm EST for Webinar 2, A Strategy Discussion!**