

# 1 Overview of ICE Enforcement Programs in the Criminal Justice System

Washington Defender Association's Immigration Project  
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## 2 ICE ACCESS Programs

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

## 3 Substance vs. Procedure

- Substantive provisions of immigration law primarily focus on levying immigration consequences against noncitizens w/criminal convictions
- ICE ACCESS Programs are an enforcement apprehension regime that is expanding to use the criminal justice system (CJS) as a primary means to round up noncitizens regardless of whether they have convictions that trigger removal.

## 4 What's Wrong with Merging Immigration Enforcement into CJS?

- Creates an airtight pipeline to deportation
- Encourages racial and ethnic profiling
- Uses corrupt terminology: "criminal alien"
- Causes criminal justice system to lose its core function of giving people accused of crimes a fair process

## 5 What's Wrong with Merging Immigration Enforcement into CJS?

- Fosters bias against immigrants in CJS
- Gives power to local & federal agents with no oversight mechanism
- Shifts resources away from community law enforcement

## 6 Terminology: "Criminal Aliens"

- No government definition of the term
- 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 criminal offense
    - 2009 GAO report on 287(g) found, despite ICE's stated goal of targeting "serious criminals" primary and aggressive focus of 287(g) locations was on apprehension of "easy" targets – those arrested for minor misdemeanor offenses.

- 7  **Criminal Alien Program (CAP)**
- Primary enforcement program used by ICE to apprehend noncitizens who have contact w/the criminal justice system
  - Existed in some form since late 1980's but vastly expanded in last 10 yrs
- 8  **Criminal Alien Program (CAP)**
- CAP is part of ICE-DRO (Detention and Removal Operations)
  - DRO maintains 119 CAP "Teams" comprised of unknown number of ICE agents deployed to jails throughout the U.S.
- 9  **Criminal Alien Program (CAP)**
- **Stated goals from ICE:**
    - 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.
- 10  **How CAP works**
- Jails identify foreign-born detainees, usually during booking process
    - Asking POB questions during booking process
    - Secure Communities data base checks
    - Sometimes cop initiates contact at arrest
  - Jails then provide ICE with info of foreign-born detainees in their custody
    - Either affirmatively or b/c ICE has access to LEA data bases w/POB info
- 11  **How CAP works**
- DRO officers screen and interview detainees
    - Almost always w/o counsel
  - ICE lodges detainers against those who can't prove U.S. citizenship
  - Upon release from criminal custody DRO assumes custody & initiates removal proceedings or

- transfer to federal criminal custody for illegal re/entry prosecution
  - Often obtains stipulated order of removal while incarcerated

12  **CAP in Federal Prisons**

- Detention Enforcement and Processing Offenders by Remote Technology (DEPORT): ICE agents conducts interviews with inmates through video teleconferencing
- Issues detainers
- CAP also works with the U.S. Attorney's Office to identify noncitizen federal inmates for illegal reentry prosecution

13  **Statistics Regarding CAP**

- In FY 2008, began removal proceedings against 221,085 people it calls "criminal aliens" through CAP in FY 2008
  - 46% increase over 2007 total
  - Over 500,000 since Fall 2006
- 15 mo. study of CAP in Irving, TX, showed:
  - only 2% of ICE detainers were issued against persons charged with felony offenses
  - 98% of ICE detainers issued against persons charged w/misdemeanor offenses.

14  **ICE Statistics Regarding CAP**

- In FY 2008, 57% of individuals apprehended through CAP did not have criminal conviction
- Currently nearly half (48%) of noncitizens in ICE custody apprehended through the CAP
  - See Schriro, Immigration Detention Overview and Recommendations, Sept. 2009, available at: [http://www.ice.gov/doclib/091005\\_ice\\_detention\\_report-final.pdf](http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf)

15  **Problems with CAP**

- Racial profiling:
  - Study Irving, TX, showed that after CAP was launched local police arrested Hispanics for low level misdemeanor offenses in significantly higher numbers
    - *The CAP Effect (September 2009)*
- Primary targets of CAP are not serious criminal offenders, but noncitizens arrested for minor violations.

16  **Problems with CAP**

- **Doesn't target "serious criminals"**
  - Felony charges were 2% of ICE detainees;
    - 98% of ICE detainees for misdemeanor offenses (*The CAP Effect report - 2009*)
  - Human Rights Watch Report:
    - Between 1997 and 2007, 72% of people deported that ICE calls "criminal aliens" were in fact removed for non-violent offenses

17  **Problems with CAP**

- **No oversight, transparency or accountability;**
  - No governing regulations
  - Very little public information regarding operations and procedures
  - no grievance or redress procedures.

18  **Problems with CAP**

- **Profit motive to house immigrants:**
  - Double/triple reimbursement for detention costs of incarcerating noncitizens vs. regular offenders
- **Detainer misuse:**
  - results in unlawful imprisonment and/or increases criminal detention time, leading to more guilty pleas
- **Costly:**
  - FY2010 budget for CAP alone = nearly \$200 million

19  **287(g) and Informal Cooperation**

20  **What is a 287(g) MOA?**

- **Section 287(g) of the INA**
  - allows DHS Secretary to enter into agreements (MOA) that delegate powers to local police to enforce civil provisions of immigration law

21  **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**
  - LEA assesses inmates in jails and, if subject to removal, places detainees and processes paperwork to initiate removal proceedings.

22  **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.

- 67 active MOAs
  - Mostly in rural areas and with Sheriffs
- over 1,075 officers trained

23  **The 287(g) Program - Problems**

- Mistakes, civil rights violations, profiling
- Ineffective use of limited resources
- Doesn't stop undocumented immigration
- Makes community policing more difficult

24  **ICE's claims about changes to the 287g program**

- New clarity in purpose and authority
- New priorities
- New requirement to pursue to completion all criminal charges
- New standard MOA
- New complaint procedures
- New ability to terminate MOAs

25  **The Reality**

- No enforcement of priorities
- 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

26  **Secure Communities**

27  **Secure Communities Initiative**

- Fingerprint submission from criminal arrest/booking allows state/local law enforcement and ICE to automatically and immediately search for an person's criminal *and* immigration history.
  - FBI database
    - Integrated Automatic Fingerprint Identification System (IAFIS) and
  - DHS databases
    - Automated Biometric Identification System (IDENT)
    - Immigrant Status Indicator Technology (US-VISIT) Program

- 28  **Secure Communities Initiative**
- If a database “hit,” (arrested person is matched to a record indicating immigration violation) ICE & local law enforcement automatically notified.
  - ICE then evaluates each case to determine what, if any, enforcement action will be taken:
    - Generally, ICE will issue detainer against person
    - On average, the process from admission of fingerprints to issuance of ICE detainer takes approx. 4 hours.
  - Undocumented persons w/no immigration history will not be identified through S-Comm initiative

- 29  **Secure Communities Initiative**
- Gives ICE technological, not a physical presence in jails
  - Unlike CAP and 287(g) programs
    - Detainers can be issued w/o presence of ICE agents in jails
      - However, overlap between CAP and S-Comm
    - No MOAs required w/local LEAs
    - No deputization of local LEA’s agents

- 30  **Secure Communities Initiative**
- ICE enters into MOA w/State Identification Bureau (SIB) which processes fingerprints of those arrested by state and local LEAs.
  - ICE provides Standard Operating Procedures (SOPs) to LEAs outlining S-Comm processes and ICE’s responsibilities.
    - Unclear if local LEA can opt out

- 31  **Secure Communities Initiative**
- By November 2009 S-Comm was operational in 81 jurisdictions in 9 states
  - ICE plans to have S-Comm presence in every state by 2011
    - Pierce Co. first WA jurisdiction – 2010
  - Goal is to have S-Comm operational in each of 3,100 state & local jails by 2013

- 32  **ICE’s Initial Version of S-Comm Priorities**
- **Level 1** – Individuals convicted of major drug offenses & violent offenses such as murder, manslaughter, rape, robbery, and kidnapping
    - Includes resisting a police officer
  - **Level 2** – Individuals convicted of minor drug offenses & mainly property offenses such as burglary, larceny, fraud, and money laundering
    - Includes traffic offenses
  - **Level 3** – Individuals convicted of other offenses.

33  **Updated Version of S-Comm Priorities**

- ICE will focus its efforts on “risk-based approach” to identify the criminal aliens currently charged with, or previously convicted of, the most serious criminal offenses.
  - Most serious = national security, homicide, kidnapping, assault, robbery, sex offenses and narcotics crimes that carry a sentence of greater than one year.
- MOA’s w/SIBs and SOPs still continue to refer to levels 1,2,&3

ICE Secure Communities Fact Sheet - 9/1/09

34  **S-Comm: ICE Statistics**

- **In first year of S-Comm (Oct. 08-09):**
  - Over 825,000 fingerprint submissions
  - Approx. 111,000 “hits” for persons with both immigration history and record of prior conviction or charge.
    - 9% of hits were level 1
    - 86% of hits were level 2 or 3
    - 5% of hits were U.S. citizens

35  **What’s wrong with S-Comm?**

- Mischaracterizes all noncitizens ID’d through S-Comm as removable “criminal aliens.”
- ICE’s willful blindness to racial profiling and pretextual arrests.
- Lack of complaint mechanisms.

36  **What’s wrong with S-Comm?**

- Creates obstacles to community policing
  - Immigrant communities fear police.
- Lack of oversight and transparency.
  - DHS has not issued any regulations for any aspect of S-Comm.
- Lack of data.
  - None of ICE’s public information regarding S-Comm has included any requirements for data collection, audits or oversight.

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## Operation Community Shield

38  Operation Community Shield (OSC)

- Emerged from 2007 U.S. interagency efforts to combat criminal gangs from Central America & Mexico
  - FBI, DOS, DOJ, DHS, USAID, and DOD
- Repatriation (i.e. deportation) as key strategy in suppressing gang activity

39  OCS: How does it work?

- Expands ICE's National Gang Unit
- ICE partners with local law enforcement to apprehend alleged gang members and associates; Raid format
- Seeks prosecution (RICO) and/or deportation
- Works closely with attaché offices throughout Latin America and foreign law enforcement counterparts in gathering intelligence, sharing information and conducting coordinated enforcement operations

40  Problems with OCS

- **No definition of gang member or associate**
  - ICE defers to local law enforcement
- **Relies on tools of local law enforcement**
  - Notoriously unreliable gang databases
  - Secret police gang units
  - Local police not immigration experts
- **Serious Fourth and Fifth amendment violations during OCS raids**

41  Problems with OCS

- Undermines best practices in combating youth violence (disrupts family and social networks)
- Undermines community policing
- Impacts on immigration proceedings:
  - Judge and agency bias against alleged gang membership

42  **Additional Impacts of  
ICE ACCESS Programs**

- **Impact on community safety:**
  - Underreporting of crimes: PERF survey: 57% of 159 respondents believed reporting would decrease if local enforcement policies implemented
  - Creates a new target class:
    - Less likely to stand witnesses to a crime
    - More likely to become target of crime
    - Undermines community policing strategies
  - Deteriorating relationships with police:
    - Nashville, TN – over 50% of Latinos reported deteriorating relationships with police since 287(g) (27% control)

43  **Additional Impacts of  
ICE ACCESS Programs**

- Prince William, VA: \$14 million for five years of enforcement
- AZ: \$30 million in ICE partnerships (2007-2009)
- Unreimbursed detention costs: Travis County, TX (CAP) - \$634,951 in 2008
- 287(g) implementation costs: NC Sheriff's Association received \$750,000 from state to help sign NC counties

44  **Additional Impacts of  
ICE ACCESS Programs**

- No bond laws for immigrants in AZ or MO
- High bond policies constitutional: NJ and PA
- Proposals to ban plea deals for people who do not disclose status (Harris County, TX)
- Judges ask prosecutors or court staff to call ICE
- Legislative efforts to give enhanced sentences to noncitizens, expand grounds of deportability