

ARE IMMIGRATION DETAINER PRACTICES RATIONAL?



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Research Report

Introduction

As public safety resources become more limited, justice administrators across California have begun to scrutinize the wisdom of immigration detainer programs (Gascón, 2013).¹ Holding people in local jails for federal civil immigration purposes occupies valuable resources that could be used to address violent and serious criminal activity. Instead, these detainers are often enforced against people with minimal and non-violent criminal histories without the due process afforded them under the criminal justice system.

CJCJ has produced several publications analyzing data on California’s ICE hold requests from October 2009 to February 2013. The series demonstrated that many ICE holds were being requested for people with no documented criminal histories or who were arrested for low priority marijuana offenses (CJCJ, 2013, 2013a). CJCJ has suggested limiting county compliance with these requests in order to better manage already strained jail capacities (CJCJ, 2013b). Additionally, ICE continues to request holds for individuals detained in youth detention facilities despite the de-prioritization of immigration enforcement for youth (CJCJ, 2013c).

The cost of incarceration is high, averaging \$114 per day per person in California jails (BSCC, 2012). Therefore, best correctional practices differentiate between low-risk and high-risk offenders and place them in the least restrictive settings necessary to protect public safety. Similarly, immigration enforcement and detention under the Secure Communities Program “prioritizes the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators” (ICE, 2013).

This final publication in the series examines a sample of the data set to determine whether stated criminal justice and immigration priorities are upheld in the practice of detaining suspected undocumented immigrants who have committed criminal offenses. Both systems have expressly stated the need to reserve custodial resources only for those who pose a danger to public safety.

Method

Details on 234,363 ICE hold requests made during October 1, 2009 through February 13, 2013, were obtained courtesy of the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law as a result of litigation filed in 2010 by them, the National Day Laborer Organizing Network (NDLON), and the Center for Constitutional Rights (CCR) (ERO LESA Statistical Tracking Unit, 2012).

The data set is subject to limitations. For example, the data set may contain duplicate records, with an individual facing multiple detainers during the time studied. Additionally, ICE reporting systems use non-

¹ Under federal detainer programs, Immigration and Customs Enforcement (ICE) make non-binding requests to

mandatory reporting fields, which include the “Most Serious Criminal Charge” fields.² Individuals may have a criminal charge and/or history that were not properly recorded by the ICE officer, or may have been convicted of the offense many years ago. Additionally, the “Lift Detainer Reason” describes how an ICE hold request was resolved. However, not all of the entries had a “Lift Detainer Reason” specified and no definition for a blank field was provided.

In order to isolate only the ICE holds known to have been resolved for those people with a known criminal history, 127,486 entries with no detainer lift reason indicated were removed, followed by the removal of an additional 28,785 entries listing a blank field for most serious criminal charge. An additional 169 requests were removed as they related to youth, leaving a total sample of 77,923 adult ICE hold requests with completed lift detainer reason and criminal charge fields. The restricted sample used in this report removes the limitations in, and may differ in other ways from, the larger data set.

Results

Of the various ways an ICE hold request is resolved, 71 percent of the sample were retrieved from local jails and placed into ICE custody (Table 1; for definitions of detention outcomes, see Appendix A). The remaining 29 percent is comprised of individuals released due predominantly to a detention lift, case closed, or early release.

Table 1. Resolution of ICE hold requests³

Lift Detainer Reason	Number	Percent
Booked into ICE detention	55,556	71.3
Detention lifted	10,686	13.7
Case closed	7,009	9.0
Early release	2,739	3.5
Transferred to another jurisdiction	1,817	2.3
Not subject to deportation	39	0.1
U.S. citizen interviewed	29	0.0
Died	21	0.0
Lifted - Lack of funds	10	0.0
Lifted- Lack of space	10	0.0
Prosecutorial discretion	7	0.0
TOTAL	77,923	100.0

Source: ERO LESA Statistical Tracking Unit, 2012.

Table 2 shows what percentage of ICE hold requests resulted in the person being booked into ICE detention by category of most serious criminal offense (the specific offenses in each category are shown in Appendix A). Around one-fifth of ICE holds with a prior conviction had violent offenses on their records. For the remainder, drug, property, immigration, procedural, and other minor crimes and traffic offenses predominated, with drunk driving comprising the most common offense. According to these data, an undocumented foreign national with a traffic offense is more likely to be booked into ICE detention than

² “The Most Serious Criminal Conviction is based upon all convictions prior to an alien's departure and determines which conviction has the highest criminal charge severity code” (ERO LESA Statistical Tracking Unit, 2012).

³ See Appendix B for definitions.

one with a homicide, forcible rape, robbery, or aggravated assault offense. For example, of the 741 holds with a prior or current homicide offense, 440 were booked into detention. According to the data available, then, about 41 percent of undocumented immigrants with a homicide on their record would not be transferred into ICE detention.

Table 2. ICE hold requests by offense category and selected offenses⁴

Offense Category	Number of ICE holds requested	Percent booked into ICE detention
Violent	15,999	67.5
Homicide	741	59.4
Rape/sexual assault	1,280	69.7
Robbery	2,881	59.8
Aggravated Assault	1,659	56.4
Property	10,444	71.4
Burglary	2,774	66.2
Theft	1,923	73.8
Motor vehicle theft	908	63.0
Fraud/Forgery	1,715	78.0
Drug	22,135	67.2
Marijuana possession	1,263	73.1
Other drug possession	6,029	70.2
Other	7,854	75.8
Non-violent sex	407	76.9
Trafficking	1,930	81.6
Weapons	1,578	68.7
Traffic	17,876	75.8
DUI	12,757	75.4
Immigration	3,615	81.1
Illegal Entry/Re-entry	2,989	82.4
TOTAL	77,923	71.3

Source: ERO LESA Statistical Tracking Unit, 2012.

Similarly, a suspected undocumented immigrant with a prior or contemporaneous conviction for possessing less than an ounce of marijuana—which is no longer even a crime in California—is more likely to face ICE detention (73.1 percent) than one with a rape conviction (69.7 percent). Traffic offenders are more likely to be booked into ICE detention (75.8 percent) than violent offenders (67.5 percent). If this is the case, then immigration and customs enforcement operates erratically, applying scarce detention space and resources to suspected undocumented immigrants with the least or no criminal records while allowing one-third of individuals convicted of murder, rape, kidnapping, and terrorism to be released from custody. It does not seem plausible that officials would detain lesser offenders more than more serious ones, given detainer program stated priorities. These trends require further study beyond the scope of this publication.

⁴ See Appendix B for categorizations.

Regardless of the immigration outcome of the ICE hold requests studied, 16.4 percent were for individuals with a DUI documented as their most serious criminal charge. In fact, approximately 32.2 percent were for traffic or simple drug possession offenses. Holding these individuals in local correctional facilities for non-criminal reasons is an inefficient use of limited public safety resources. It is also in conflict with the express priorities of public safety administrators who have consistently de-emphasized drug law enforcement and incarceration for low-level crimes.⁵

Conclusion

Assuming petitioners in the litigation received the best statistical information available then two possibilities emerge from the data analysis. First, American immigration enforcement policy is irrationally applied in that it targets, holds, detains, and departs undocumented immigrants without regard for their dangerousness. Alternatively, ICE record keeping is too deficient to reach any valid conclusion.

However, if the problem is poor record keeping then it becomes unfeasible to evaluate immigration enforcement as it now exists, let alone to pinpoint reforms to prioritize detention and deportation for the most serious criminal offenders. ICE record keeping should be upgraded to require that prior/current criminal charge or conviction and date; most recent date of apprehension; detention booking, release, or transfer outcome; and deportation outcome be specified for every hold. In cases in which information cannot be found, notations such as “no other specified offense” or “no specified detention lift outcome” should be provided. Finally, the number of days spent in detention both prior to and after adjudication is information vital to evaluating the costs of holding undocumented foreign nationals. CJCJ has formally requested that ICE officials upgrade their record keeping to produce meaningful and interpretable data (see Appendix B).

In the absence of alternate evidence, however, these data cast doubt on the efficacy of ICE hold requests in achieving either immigration or criminal justice goals. Detaining people in correctional facilities for civil immigration reasons is a dubious use of public safety resources. While many are eventually assumed into ICE custody, these individuals are not always a stated public safety or immigration priority. Law enforcement should target the smaller, dangerous, and largely transient criminal element while deprioritizing enforcement, detention, and deportation efforts directed at the larger, employment-seeking immigrant population.

Finally, it should be noted that the suspected undocumented immigrants who were apprehended during the 44-month study period represent only a small fraction of the estimated 2.8 million undocumented immigrants in California (Department of Homeland Security, 2012). The records of prior offending of those apprehended by law enforcement do not reflect that of the much larger undocumented population, any more than the criminal records of the arrested population of United States citizens would reflect all citizens.

⁵ For examples, see Holder, 2013; A.B. 109.

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Please note: Each year, every county submits their data to the official statewide databases maintained by appointed governmental bodies. While every effort is made to review data for accuracy and to correct information upon revision, CJCJ cannot be responsible for data reporting errors made at the county, state, or national level.

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Definitions

Lift Detainer Reasons

Definitions for the Lift Detainer Reasons were provided with the data set as Exhibit D of the stipulation (ESO LESA Statistical Tracking Unit, 2012). Modified for clarity, these definitions are as follows:

- **Booked into ICE detention.**
- **Transferred to another jurisdiction.** The ICE detainer is not lifted as a result of the transfer, but this code allows ICE to note the change of location since the detainer was issued.
- **Detention lifted** for an unspecified reason.
- **Case closed** means that the immigration case has been closed. An officer might use this code rather than “not subject to deportation” where the case has been closed for administrative reasons rather than a substantive finding that the individual was not removable.
- **Early release** means the individual was released from criminal custody before the 48-hour period tolled or began to run.
- **U.S. citizen interviewed.**
- **Not subject to deportation.**
- **Prosecutorial discretion.**
- **Lifted – Lack of funds** means that the ICE field office did not have funding available to effectuate the individual’s detention in an ICE facility.
- **Lifted – Lack of space** means there was a lack of bed space in the ICE detention facility for ICE to assume custody.
- **Died.**

Offense Categories

The 86 unique criminal offenses listed in the data set were categorized by CJCJ into six broad groups as follows:

- **Violent:** Bestiality, Homosexual Act With Boy, Incest With Minor, Lewd or Lascivious Acts with Minor, Molestation of Minor, Rape - Disabled, Rape - Drug-Induced, Rape - Gun, Rape - Remarks, Rape - Strongarm, Rape With Weapon, Sex Assault, Sex Assault - Carnal Abuse, Sex Assault - Disabled, Sex Assault - Sodomy-Boy-Gun, Sex Assault - Sodomy-Boy-Strongarm, Sex Assault - Sodomy-Boy-Weapon, Sex Assault - Sodomy-Girl-Gun, Sex Assault - Sodomy-Girl-Strongarm, Sex Assault - Sodomy-Girl-Weapon, Sex Assault - Sodomy-Man-Weapon, Sex Assault - Sodomy-Woman-Strongarm, Sex Assault - Sodomy-Woman-Weapon, Sex Offense, Sex Offense - Disabled, Sex Offense Against Child-Fondling, Sexual Assault - Drug-Induced, Sexual Exploitation of Minor - Exhibition of Minor, Sexual Exploitation of Minor - Material - Film, Sexual Exploitation of Minor - Material - Photograph, Sexual Exploitation of Minor - Material - Transport, Sexual Exploitation of Minor - Sex Performance, Aggravated Assault - Family-Gun, Aggravated Assault - Family-Strongarm, Aggravated Assault - Family-Weapon, Aggravated Assault - Gun, Aggravated Assault - Non-family-Gun, Aggravated Assault - Non-family-Strongarm, Aggravated Assault - Non-family-Weapon, Aggravated Assault - Police Officer-Gun, Aggravated Assault - Police Officer-Strongarm, Aggravated Assault - Police Officer-Weapon, Aggravated Assault - Public Officer-Gun, Aggravated Assault - Public Officer-Strongarm, Aggravated Assault - Public Officer-Weapon, Aggravated Assault - Weapon, Assault, Battery, Carjacking-Armed, Crimes Against Person, Cruelty Toward Child, Cruelty Toward Elderly, Cruelty Toward Wife, Domestic Violence, Firing Weapon, Homicide, Homicide-John/Jane Doe-No Warr, Homicide-Negligent Manslaughter-Vehicle, Homicide-Negligent Manslaughter-Weapon, Homicide-Willful Kill-Family-Gun, Homicide-Willful Kill-Family-

Weapon, Homicide-Willful Kill-Gun, Homicide-Willful Kill-Non-family-Gun, Homicide-Willful Kill-Non-family-Weapon, Homicide-Willful Kill-Police Officer-Weapon, Homicide-Willful Kill-Weapon, Kidnap Adult, Kidnap Adult For Ransom, Kidnap Adult To Sexually Assault, Kidnap Hostage For Escape, Kidnap Minor, Kidnap Minor For Ransom, Kidnap Minor To Sexually Assault, Kidnap Minor-Parental, Kidnapping, Robbery, Robbery - Banking-Type Institution, Robbery - Business Weapon, Robbery - Business-Gun, Robbery - Business-Strongarm, Robbery - Residence-Gun, Robbery - Residence-Strongarm, Robbery - Residence-Weapon, Robbery - Street-Gun, Robbery - Street-Strongarm, Robbery - Street-Weapon, Simple Assault, Terrorism, Threat Terroristic State Offenses, Threat To Bomb, Threat To Burn, Threaten Federal Protectee, Voluntary – Manslaughter, Illegal Arrest, Intimidation, Abduct-No Ransom or Assault, False Imprisonment, False Imprisonment-Minor-Nonparental, False Imprisonment-Minor-Parental.

- Property:** Arson, Arson - Business, Arson - Business-Endangered Life, Arson - Residence, Arson - Residence-Defraud Insurer, Arson - Residence-Endangered Life, Burglary, Burglary - Banking-Type Institution, Burglary - Forced Entry-Non-Residence, Burglary - Forced Entry-Residence, Burglary - No Forced Entry-Non-Residence, Burglary - No Forced Entry-Residence, Burglary Tools - Possession, Conceal Stolen Property, Counterfeiting, Counterfeiting Of (identify in comments), Damage Property, Damage Property - Business, Damage Property - Private, Damage Property - Private-With Explosive, Damage Property - Public, Embezzle, Embezzle -Business Property, Forgery, Forgery Of (identify in comments), Forgery Of Checks, Fraud, Fraud - False Statement, Fraud - Illegal Use Credit Cards, Fraud - Impersonating, Fraud - Insufficient Funds Check, Fraud - Swindle, Fraud and Abuse - Computer, Fraud By Wire, Larceny, Larceny - From Auto, Larceny - From Banking-Type Institution, Larceny - From Building, Larceny - From Mails, Larceny - From Yards, Larceny - Parts from Vehicle, Larceny - Postal, Mail Fraud, Pass Counterfeited (identify in comments), Pass Forged (identify in comments), Pocketpicking, Possession Counterfeited (identify in comments), Possession Forged (identify in comments), Possession Stolen Property, Possession Stolen Vehicle, Possession Tools For Forgery/Counterfeiting, Deceptive Business Practices (to include False Advertising), Identity Theft, Property Crimes, Purse Snatching - No Force, Receive Stolen Property, Receiving Stolen Vehicle, Sabotage, Sale Of Stolen Property, Shoplifting, Stolen Property, Stolen Vehicle, Strip Stolen Vehicle, Tax Revenue, Theft And Sale Vehicle, Theft And Strip Vehicle, Theft And Use Vehicle Other Crime, Theft Of US Government Property, Theft Vehicle By Bailee, Trespassing, Unauthorized Use of Vehicle (includes joy riding), Vehicle Theft.
- Drug:** Amphetamine, Amphetamine – Manufacturing, Amphetamine – Possession, Amphetamine – Sell, Barbiturate – Possession, Barbiturate – Sell, Cocaine, Cocaine – Possession, Cocaine – Sell, Dangerous Drugs, Drug Possession, Drugs – Adulterated, Drugs - Health or Safety, Drugs – Misbranded, Hallucinogen, Hallucinogen – Distribution, Hallucinogen – Manufacturing, Hallucinogen – Possession, Hallucinogen – Sell, Heroin, Heroin – Possession, Heroin – Sell, Marijuana, Marijuana – Possession, Marijuana – Sell, Marijuana (describe offense), Narcotic Equip – Possession, Opium Or Derivatives, Opium Or Derivatives – Possession, Opium Or Derivatives – Sell, Synthetic Narcotic, Synthetic Narcotic – Possession, Synthetic Narcotic – Sell, Liquor, Liquor – Possession, Liquor – Sell.
- Other (includes all trafficking, weapons, and nonviolent sex offenses):** Carrying Concealed Weapon, Carrying Prohibited Weapon, Conservation, Conservation – Animals, Conservation – Birds, Conservation – Fish, Conspiracy [use when no underlying offense, such as 18 U.S.C. SEC. 371], Contributing to Delinquency of Minor, Eavesdrop Equipment, Family Offense, Flight – Escape, Flight To Avoid (prosecution, confinement, etc.), Food - Health or Safety, Frequent House Ill Fame, Gambling, Gambling Device - Not Registered, Gambling Device – Possession, Harassing Communication, Harboring Escapee/Fugitive, Health – Safety, Invade Privacy, Keeping House Ill Fame, Morals - Decency Crimes, Neglect Child, Neglect Elderly, Neglect Family, Non-support of Parent, Treason Misprision, Weapon Offense, Wiretap - Failure To Report, Bail - Secured Bond, Conditional Release Violation, Contempt Of Congress, Contempt Of Court, Evidence - Destroying, Failure Report Crime, Failure To Appear, Failure To Register As A Sex Offender, Licensing Violation, Obstruct (specify Judiciary, Congress, Legislature, Commission in comments), Obstruct Correspondence (postal violation), Obstruct Criminal Invest, Obstruct Police, Obstructing Court Order, Obstructing Justice, Parole Violation, Perjury, Perjury - Subornation Of, Probation Violation, Violation of a Court Order, Witness - Deceiving, Witness –

Dissuading, Assembly - Unlawful, Civil Rights, Compounding Crime, Disorderly Conduct, Escape (identify type institution in comments), Escape From Custody, Making False Report, Public Order Crimes, Public Peace, Refusing To Aid Officer, Resisting Officer, Riot, Riot - Engaging in, Altering Identification On Weapon, Bribe - Offering, Bribery, Espionage, Exploitation/Enticement (Use the MIS Field to further describe offense), Explosives - Possession, Extortion, Extortion - Threat Accuse Person Of Crime, Extortion - Threat Injure Person, Extortion - Threat of Informing of Violence, Smuggling Aliens, Transport Female Interstate for Immoral Purposes, Cocaine – Smuggle, Drug Trafficking, Heroin – Smuggle, Marijuana – Smuggle , Opium Or Derivatives – Smuggle, Synthetic Narcotic – Smuggle, Gang Activity, Incendiary Device – Possession, Liquor – Transport, Money Laundering-Remarks, Desecrating Flag, Possession Of Weapon, Racketeer Influenced and Corrupt Organizations Act (RICO), Selling Weapon, Smuggle Contraband, Smuggle Contraband Into Prison, Smuggle To Avoid Paying Duty, Smuggling, Transport Counterfeited (identify in comments), Transport Interstate Stolen Property, Transport Tools For Forgery/Counterfeiting, Transporting Dangerous Material, Weapon Trafficking, Bigamy, Commercial Sex, Commercial Sex - Homosexual Prostitution, Enticement of Minor for Indecent Purposes, Enticement of Minor for Prostitution, Indecent Exposure, Indecent Exposure to Adult, Indecent Exposure to Minor, Obscene, Obscene Material - Distribution, Obscene Material - Possession, Peeping Tom, Procure For Prostitute (pimping), Prostitution, Statutory Rape - No Force, Voyeurism, Human Slavery or Trafficking.

- **Traffic:** Driving Under Influence Drugs, Driving Under Influence Liquor, Traffic Offense, Hit and Run.
- **Immigration:** False Citizenship, Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only), Illegal Re-Entry (INA SEC.101(a)(43)(O), 8USC1326 only), Immigration (Possess of Fraud. Immigration Docs), Immigration (Trafficking of Fraud. Immigration Documents).



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August 15, 2013

RE: Immigration and Customs Enforcement Data Collection Systems

Acting Director John Sandweg
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Dear Mr. Sandweg:

The Center on Juvenile and Criminal Justice (CJCJ) is writing you to advocate that Immigrations and Customs Enforcement (ICE) implement the mandatory collection of relevant data and ensure public access to this information. These systems are necessary for ICE to properly monitor the effectiveness of its operations.

CJCJ is a private non-profit organization that promotes humane criminal justice policies to reduce incarceration and foster long-term public safety in California. CJCJ's mission is pursued through the development of model programs, technical assistance, and policy analysis.

In this age of immigration reform, data-driven research is crucially important to analyzing the effectiveness of immigration policy. CJCJ recently examined the large number of suspected undocumented immigrants, without a documented criminal history, who are detained in California's local jails on non-mandatory ICE holds using data obtained from the ESO LESA Statistical Tracking Unit as a result of litigation (*Nat'l Day Laborer Org. Network v. U.S. Immigration and Customs Enforcement Agency*, No. 10 Civ. 3488 (SAS) (D. NY, filed July 13, 2012)). These data have been used in many published academic studies, which are relied upon by local government, the legislature, state and federal agencies, and other immigration and criminal justice stakeholders.

During our analysis, we became concerned by the absence of rigorous standards for data entry by ICE personnel. The information, which ICE provided as a result of this litigation, does not sufficiently track the detention of individuals on holds. ICE systems contain non-mandatory fields, including the "most serious criminal conviction" fields. However, individuals may have a criminal charge and/or history that were not properly recorded by the ICE officer. Moreover, this data fails to register whether said ICE holds are actually being enforced or if local jurisdictions choose not to respond to these non-binding requests. This information is fundamentally important to ICE detainer programs' stated purpose of targeting only those undocumented immigrants that pose a serious public safety threat. Additionally, local law enforcement must be able to make educated decisions on participation in the detainer programs relative to their public safety resources.

Data collection is necessary for providing accountability and transparency, while ensuring that ICE is meeting its mandate for a safer America. Therefore, the Center on Juvenile and Criminal Justice strongly urges you to develop the data collections systems and protocols necessary to ensure that ICE efficiently meets its stated mandate. Please feel free to contact me with any questions at brian@cjcj.org or at (415) 621-5661 ext. 121.

Sincerely,

Brian Goldstein, Policy Analyst

~ Changing lives. Changing systems. Changing the future. ~