

# REVVING UP THE DEPORTATION MACHINERY

Enforcement and Pushback under Trump



By Randy Capps, Muzaffar Chishti, Julia Gelatt,  
Jessica Bolter, and Ariel G. Ruiz Soto

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## Executive Summary

A centerpiece of Donald Trump's bid for the presidency was a promise to strictly enforce the nation's immigration laws, both at the border and within the U.S. interior. Changes, some begun within days of the inauguration, are dramatically reshaping the system by which removable noncitizens are arrested, detained, and deported.

To assess differences in enforcement and resulting impacts, the Migration Policy Institute (MPI) undertook a year-long study, visiting seven of the 24 U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) field offices and 15 local jurisdictions. The locations spanned those fully cooperating with ICE as well as ones limiting their involvement. MPI researchers interviewed more than 120 officials, ranging from ICE field office leadership and local law enforcement to state and local government and consular officials, as well as providers of legal and other services to immigrants, advocates, and former immigration judges. The researchers also analyzed ICE data obtained via *Freedom of Information Act* request on arrests during the first 135 days of the Trump administration and ICE detainers for the first 104 days.<sup>1</sup>

The broad picture that emerges is of a sea change in interior enforcement from the final years of the Obama administration, when ICE immigration activities were tightly focused on criminals, recent border crossers, and those with fresh removal orders. In a sharp reversal, Department of Homeland Security (DHS) policy under the Trump administration deems every unauthorized immigrant or otherwise deportable noncitizen a candidate for arrest and removal. In an interior enforcement executive order issued in the first week of his administration, President Trump revoked Obama administration prosecutorial discretion policies that effectively shielded nearly 90 percent of unauthorized immigrants from deportation.

The new enforcement environment is perhaps best illustrated in a public warning by Acting ICE Director Thomas Homan to those in the country illegally: "You should be uncomfortable. You should look over your shoulder."

The changes in enforcement have resulted in a sudden and substantial increase in arrests and deportations, as compared with the immediately preceding Obama years. Yet the numbers arrested and deported to date fall well short of peak levels set during the Bush and early Obama administrations—largely the result, as this report demonstrates, of state and local policies limiting cooperation with ICE. While the call for aggressive enforcement has been met with favor in some states, such as Texas, Mississippi, and Iowa, it has been opposed in others, most notably California.

### The MPI study sites

*California:* Los Angeles and Orange counties

*Georgia:* DeKalb, Fulton, Gwinnett, and Hall counties

*Illinois:* Cook, DuPage, Lake, and McHenry counties

*New York:* New York City

*Tennessee:* Davidson and Shelby counties

*Texas:* Harris County

*Virginia:* Prince William County

### A. Findings: The First Year of Interior Enforcement under Trump

The fieldwork and analysis of ICE data turned up a number of insights. Among the top ones the researchers found were:

***A significant increase in arrests and removals amid expanded enforcement priorities under Trump—though well short of the peaks.*** During the eight months between the inauguration and the

<sup>1</sup> The first 135 days of the Trump administration span the period from January 20 – June 3, 2017. The first 104 days span the January 20 - May 4 period. U.S. Immigration and Customs Enforcement (ICE) selected those periods in providing the data sought by MPI in its *Freedom of Information Act* (FOIA) request.



September 30 end of the fiscal year, ICE made 110,568 arrests, up 42 percent from the same period in FY 2016. The number of removals (i.e., formal deportations) from the U.S. interior rose by 37 percent: to 61,094. However, even with the rising arrests and deportations under Trump, the numbers are far from the peak enforcement years. There were more than 300,000 arrests annually in FY 2010 and FY 2011—about twice the 2017 level. Interior deportations from FY 2008-11 were also twice the 2017 level: more than 200,000 annually.

***“Sanctuary” policies are curbing ICE enforcement.*** ICE relies heavily on state and local law enforcement agencies to help identify and arrest noncitizens for removal. During the first 135 days of the Trump administration, according to MPI’s analysis, 69 percent of ICE arrests nationwide were based on transfers from the criminal justice system, mostly state prisons or local jails. This is a decline from the FY 2008-11 period, during the peak of ICE activity, when state and local prisons and jails were the origin for more than 85 percent of ICE arrests. The decline is attributable to reduced cooperation with ICE.

Even as states and localities vary widely in their cooperation with ICE in prisons and jails under their jurisdiction, as many as 300 have “sanctuary” policies that either limit cooperation with ICE or symbolically oppose cooperation. About 200 of these do not honor detainers—ICE requests for federal and state prisons and local jails to hold inmates for up to 48 hours after they have served their sentences or otherwise been released from custody. Other jurisdictions, however, have moved farther in the other direction, promoting and formalizing greater cooperation with ICE. Growing variations in levels of cooperation with ICE have given rise to different trends in the national picture of ICE arrests.

The California share of overall ICE arrests fell after the state enacted laws (including the TRUST Act and the TRUTH Act) limiting cooperation, dropping from 23 percent in FY 2013 to 14 percent in FY 2017. Even as arrests nationally increased by 30 percent from FY 2016 to FY 2017, they rose by just 9 percent in the San Francisco and Los Angeles ICE offices.

By contrast, the Texas share of overall ICE arrests rose amid enactment of a state law (SB 4) mandating full cooperation and expansion of 287(g) cooperative agreements across the state, growing from 25 percent of national ICE arrests to 28 percent between FY 2013 and FY 2017.

Even as ICE is issuing significantly more detainers, book-in rates are not keeping pace because of policies limiting cooperation, including in California, New York City, and Chicago. ICE issued 70 percent more detainers nationwide during the first 104 days of the Trump administration than during the same period in 2016, but the number of people booked into ICE custody through detainers rose just 20 percent. The number of detainers that state or local law enforcement agencies officially declined more than quadrupled. In California, the numbers transferred to ICE fell in Los Angeles, Orange, Ventura, Riverside, Alameda, and Kern counties, even though the number of detainers issued increased in all of them. During FY 2017, just 6 percent of those released from state or local custody after a detainer was declined were later rearrested by ICE officers.

Full-cooperation policies have led to more transfers to ICE from local custody in some jurisdictions, however. From January 20 through May 4, 2017, the number of people booked into ICE custody from local jails was 60 percent higher in Harris County, Texas than the same period in the prior year, and 248 percent higher in Gwinnett County, Georgia. No detainers were declined in these counties.

***Enforcement has expanded and become unpredictable.*** Amid growing pushback in some locations, ICE has adjusted some of its enforcement activities, conducting more operations in limited-cooperation jurisdictions, arresting people in courthouses and near sensitive locations such as schools, carrying out more arrests in the community and bringing in immigrants who were not targets, and taking in a growing share of noncriminals. ICE officers told MPI researchers that to the extent jurisdictions do not cooperate by granting ICE access to controlled settings, such as local jails, their agency has little choice but to carry out enforcement activities in neighborhoods and other community locations, even though it is not as efficient a use of their time or resources, nor does such enforcement yield the numbers that



can be identified by screening cases in local jails. Changes in the policies and strategies ICE is now implementing have altered the character and predictability of immigration enforcement in significant ways:

- *Nationwide, the number of “at-large” arrests by ICE agents at homes and in the community rose more rapidly than arrests originating in prisons and jails.* During the first 135 days of the Trump administration, there were 13,601 such arrests—up 55 percent from the same period in 2016; a much greater increase than the 24 percent rise in arrests from prisons and jails. Moreover, there were 40,066 at-large arrests during all of FY 2017—a level similar to the peaks during FY 2009-11. These arrests are not subject to cooperation with state and local authorities, who cannot prevent them.
- *The majority of those ICE arrested had criminal records, but this share is falling.* In FY 2017, two-thirds of noncitizens picked up in at-large arrests had criminal convictions. Between FY 2016 and FY 2017, however, ICE arrests of noncitizens without criminal convictions rose by 147 percent, while arrests of those with such convictions rose by only 7 percent.
- *ICE has stepped-up enforcement in jurisdictions that limit cooperation.* During Operation Safe City, in September 2017, ICE made 498 arrests in Baltimore, Boston, Chicago, Los Angeles, New York, Philadelphia, San Jose, Seattle, and Washington, DC. All are jurisdictions that have limited-cooperation policies.
- *ICE arrested more bystanders during targeted enforcement operations.* Known as “collateral arrests,” bystanders include unauthorized immigrants living in the same house or apartment, riding in the same car, or walking with someone who is an ICE target. ICE had stopped making collateral arrests midway through the Obama administration, but resumed them after Trump took office. In one nationwide ICE operation in 2017 fewer than 200 of the 650 arrested were initial targets, and just 130 had criminal convictions. During Operation Safe City, nearly 40 percent of the 498 immigrants arrested did not have criminal convictions, even though the operation targeted offenders who had been released from local jails. In both operations, many of those arrested were simply nearby when the targeted arrests took place.
- *ICE arrested more immigrants whose prior removal orders had been deferred during the Obama administration.* As reported in every site MPI visited, ICE arrested a substantial number of people with old removal orders who had been checking in with the agency on a regular basis for years. Historically, ICE released small numbers of removable individuals on orders of supervision for specific reasons such as an illness, a child in school, or difficulty obtaining travel documents. At the end of the Obama administration, there were about 90,000 noncitizens checking in regularly with orders of supervision. Most of those arrested at check-ins during 2017 had been low priorities for the Obama administration because they had little or no criminal history or had old removal orders.
- *ICE has increased arrests in courthouses but mostly avoided schools, churches, and hospitals.* ICE retains its “sensitive locations” policy, decreeing that arrests should not be conducted in schools, churches, or hospitals. The study team did not hear any examples of arrests inside sensitive locations. But there have been some well-publicized arrests near such locations. According to DHS officials, arrests near schools, hospitals, and other public locations may be necessary when individuals refuse to open their doors, making it impossible for ICE to conduct arrests in homes. Courthouses have not historically been subject to the sensitive locations policy. However, ICE has increased arrests in local courthouses, stating that such actions are necessary in jurisdictions that do not cooperate in transferring noncitizens to ICE from jails. In New York State there were 53 courthouse arrests during the first eight months of the Trump administration, compared to 11 arrests for all of 2016 and 14 in 2015. District attorneys and judges in New York, California, and elsewhere have issued statements condemning courthouse arrests, claiming they deter crime victims and witnesses from testifying.





*Use of detention has expanded, and discretion after arrest declined.* As the administration has widened the scope of ICE arrests, it has narrowed the discretion of ICE officers and trial attorneys to release individuals after they are arrested or to postpone deportation. The administration is also speeding up deportation hearings in immigration courts. At the same time, DHS has curtailed avenues for reviewing local-level ICE enforcement decisions by DHS headquarters or congressional intervention.

- *ICE is routinely detaining noncitizens instead of releasing them pending immigration court hearings.* In 2017 ICE rarely released individuals on their own recognizance or with bonds. Instead, the agency detained more people, including those without criminal convictions and with longstanding ties to their communities. In most offices MPI visited, ICE only released people with medical conditions or those with dependents with medical conditions. In a sharp departure from Obama administration policy, ICE detained 506 pregnant women between January 1 and March 20, 2018.
- *ICE has stopped administratively closing cases.* Early in 2017 ICE informed representatives of the immigration bar that ICE attorneys would stop administratively closing cases and would instead pursue them through to deportation. ICE administratively closed 100 cases during each of the first five months of the Trump administration, compared to a monthly average of 2,400 during the same five months of 2016. (Immigration judges can also administratively close cases.) In FY 2017, ICE reopened 9,400 cases that had been closed during the Obama administration and put them back on judges' calendars; this was a 74 percent increase over the number of cases reopened in FY 2016.

## **B. Responses by States, Localities, Consulates, and Immigrant Communities**

The rapidly changing enforcement landscape set the stage for state and local governments and other actors to become more active in fashioning their own responses to increasingly muscular federal enforcement.

Some state and local governments, in efforts that began in some cases during heightened enforcement in the early Obama years, changed policing and criminal prosecution practices so that fewer noncitizens would be arrested. Such changes included decriminalizing driving without a license, minor drug offenses, and other misdemeanors. Among the study sites, unauthorized immigrants are eligible for licenses in California and Illinois, where it is unusual for noncitizens to be taken into custody based on traffic offenses.

Even though Memphis, Nashville, and Houston are in counties that fully cooperate with ICE and in states that bar licenses for unauthorized immigrants, these three cities allow the use of alternate identification when stopped for a traffic violation and appearing in court instead of being arrested. During 2017, these policies prevented unauthorized immigrants from getting booked into the Shelby, Davidson, and Harris County jails, where every noncitizen was screened for legal status and potentially taken into ICE custody, including for a traffic violation.

Recent immigration enforcement activities have also engendered strong responses from immigrant communities and the institutions and organizations that serve them. Across the study sites, state and local governments, attorneys, advocates, community leaders, and Mexican and other consulates have been engaged in increased activism and mobilization to monitor ICE activities, develop response plans to protect immigrants during ICE operations, and provide legal defense to those in deportation proceedings. California, New York, Chicago, and the Mexican consulates provided significant new funding to support immigration legal services and representation.

The Mexican consular network and other consulates expanded their services and protections for nationals in ICE custody. During 2017, Mexican consulates greatly expanded services such as issuing passports and other documentation, assisting with naturalization and Deferred Action for Childhood



Arrivals (DACA) applications, monitoring those in ICE detention, providing representation to those in deportation proceedings, and preparing for the possible return of their nationals to Mexico.

Immigrant advocates and legal service providers have expanded their activities to protect immigrants from deportation. Legal service providers that had focused on DACA, naturalization, and other benefits applications in the latter years of the Obama administration shifted their attention to know-your-rights trainings and deportation defense and litigation challenging Trump administration policies.

And community leaders across the study sites established response teams to monitor ICE activity, confirm rumors of ICE operations, and organize possible civil disobedience. These activities have reportedly been effective in convincing people not to open their doors to ICE officers without a warrant. ICE officers reported significantly reduced community cooperation in their work, which they say has forced them to conduct operations in other locations at greater expense, as well as what they say is greater risk to community members and law enforcement personnel alike.

### C. A Heightened Climate of Fear

Broader enforcement and narrowed prosecutorial discretion have generated a climate of fear that is changing the behavior of immigrants and their families and communities. In the MPI study sites, local businesses, public safety, and the use of education, health and social services for which immigrants are eligible all report being affected.

Economic activity has declined in immigrant neighborhoods. In suburban Atlanta, where ICE in 2017 took custody of a large number of people based on arrests for traffic violations, many immigrants stopped driving except when necessary, curtailing their patronage of local businesses and their participation in school, church, and community activities. In Chicago, after ICE arrested several people in an immigrant gateway neighborhood, activity at nearby restaurants, shops, and other businesses declined substantially. A *Houston Chronicle* survey of more than 30 immigrant-owned businesses in the city reported revenue declines of up to 70 percent from January to September 2017.

Police chiefs of several major cities are expressing concern that ICE arrests have made immigrants fearful of law enforcement and less likely to report crimes. In Houston, reports of rape dropped 43 percent among Hispanics but just 8 percent among non-Hispanics in the first three months of 2017 compared to the same three months a year earlier; violent crime reports fell 13 percent among Hispanics but rose 12 percent among non-Hispanics. In Los Angeles, Latinos' reports of domestic violence fell 10 percent and their reports of sexual assault fell 25 percent from 2016 to 2017. Domestic violence service providers in Atlanta, Chicago, Los Angeles, and New York reported declines in service calls, participation in counseling services, and willingness to pursue charges against their abusers.

There were also reports of declines in the use of health services and public benefits by immigrant families. At two major nonprofit health agencies in Houston, the number of unauthorized immigrant patients dropped by about half at times in 2017, while a children's hospital there saw fewer low-income Latino patients. A community-based organization in Atlanta reported 15 percent fewer food stamp applications during January-March 2017 compared to the same period a year earlier, and half as many in April. Such participation drops often mean that low-income children in immigrant families—most of whom are U.S. citizens and therefore eligible for these programs—cannot get needed health care or food assistance.

### D. Conclusions

The machinery of interior enforcement that had been dialed down during the final Obama years has been revved back up by the Trump administration. ICE officers say that widening enforcement and ending prosecutorial discretion requirements have given ICE the leeway necessary to properly do its job and more faithfully execute the nation's immigration laws. For their part, advocates and others decry



what they see as unshackled enforcement that makes no distinction between otherwise law-abiding unauthorized immigrants and those with serious criminal offenses.

Arrests and removals are increasing significantly in cooperating jurisdictions, and arrests in community settings are rising as the share of those with criminal convictions falls. Nonetheless, the pace of arrests and removals during 2017 was only half that achieved at earlier peaks.

It is unlikely that arrests and removals can substantially rise again, given the significant constraints the Trump administration faces in implementing its enforcement agenda. Beyond resource limitations that Congress has declined to lift, the most important constraint lies in the limits on ICE cooperation imposed by growing numbers of states and localities that have large foreign-born populations. Arrests made directly by ICE officers during operations at residences and in the community have risen to near earlier peaks. But transfers into ICE custody from state and local law enforcement agencies lag historic highs substantially, especially in California and other places with sizeable foreign-born populations that limit cooperation with federal immigration enforcement.

Because any unauthorized immigrant or removable legal immigrant encountered by ICE can now be arrested, the character and unpredictability of ICE enforcement have generated an overarching climate of fear, which is itself serving as an enforcement tool. Across all the MPI study sites, thickening networks of community-based actors are responding and successfully providing legal services, know-your-rights counsel, monitoring, rapid-response assistance, and political advocacy in opposition to ICE enforcement.

As the war of words, legislation, and litigation escalate, growing enforcement disparities and uneven treatment across levels of government are visible. As MPI's findings demonstrate, the fortunes of an unauthorized immigrant are quite different in Texas, Tennessee, and Georgia, where the mere act of driving can result in arrest and deportation, than in California, Chicago, and New York, where immigrants can be arrested for a variety of crimes and still not be taken into ICE custody. Such unevenness in the enforcement landscape threatens a core principle of the U.S. constitutional system—federal pre-eminence in immigration—with severe implications for effective law enforcement relationships and public safety.

## I. Introduction

President Donald J. Trump campaigned on restricting immigration and more vigorously enforcing current immigration laws. He followed up on his campaign promises by issuing executive orders to limit refugee and other lawful flows, tightening immigration enforcement in the U.S. interior, and endorsing legislation to curb legal immigration.

While Trump's rhetoric and policy pronouncements about immigration are more muscular than those of recent presidents, the enabling tools of his administration's enforcement activities lie deep in the legislation, policies, and enforcement machinery developed over several past administrations.

### Removals and deportations

“Deportation” is synonymous with “removals” in this report. The term “deportation” was replaced by “removal” in the statute in 1996. The U.S. government deports people both using formal removals (which require either a removal order signed by an immigration judge, an expedited removal order signed by the Border Patrol, or reinstatement of a prior removal order) and via “returns” in which individuals do not contest their removal but depart the country without a formal order of removal. While most deportations based on apprehensions at the U.S.-Mexico border are removals, still a significant number are returns. Almost all deportations based on arrests in the U.S. interior are removals. As used in this report, the terms deportation and removal do not include returns.



Congress approved significant enhancements to immigration enforcement in 1996, including provisions expanding the scope of deportation based on criminal offenses, mandating detention for more noncitizens during deportation proceedings, limiting the authority of immigration judges to grant relief from deportation, and allowing state and local law enforcement agencies to cooperate with the federal government in arresting immigrants. Following the September 11, 2001 terrorist attacks, Congress created the Department of Homeland Security (DHS) and greatly increased funding for both border and interior enforcement. Interior enforcement (i.e., beyond the border), undertaken by the DHS agency U.S. Immigration and Customs Enforcement (ICE), rose rapidly under the George W. Bush and Obama administrations, peaking at more than 300,000 arrests and 200,000 formal deportations from inside the United States each year during the first three years of the Obama administration (2009-11).

Later, the Obama administration narrowed the focus of enforcement activities to noncitizens with serious criminal convictions, recent illegal entries, or fresh removal orders, while allowing for consideration of humanitarian concerns in deportation decisions. As a result, by 2016, the last year of the Obama administration, interior arrests had fallen below 100,000 and interior deportations below 70,000.

After Trump took office, rescinding the narrower enforcement priorities and announcing other changes in immigration enforcement, arrest and deportation trends reversed. From Inauguration Day (January 20, 2017) through the end of the fiscal year (September 30, 2017), ICE arrested more than 110,000 people inside the United States on immigration charges, a 42 percent increase from the same period in fiscal year (FY) 2016.<sup>2</sup> Interior deportations increased 37 percent (from 45,000 to 61,000).<sup>3</sup>

During 2017, as in recent years, a large majority of immigration arrests and deportations were of noncitizens with criminal charges. These arrests were initiated by state and local law enforcement officials during ordinary policing, rather than by ICE officers launching operations to arrest unauthorized immigrants. State and local law enforcement agencies have cooperated with ICE on arrests to varying degrees, and limits on cooperation in California, Chicago, New York, and other major jurisdictions that have been referred to as “sanctuaries” have reduced ICE’s capacity for large-scale enforcement. But ICE officers also conducted more of their own arrests in 2017, unconstrained by state or local policies. These arrests were generally conducted by fugitive operations, at-large, or criminal alien teams. Arrests by these teams often included people with limited or no criminal history, some of whom were not targeted in operations but were bystanders checked for their immigration status during ICE operations. (See appendices for a full description of how ICE interacted with local law enforcement agencies in sanctuary, nonsanctuary, and 287(g) jurisdictions, as well as arrests by ICE teams in the study sites.)

The expansion of immigration enforcement activities is occurring against the backdrop of new national anti-immigrant rhetoric and rumors, sometimes unfounded, of large immigration sweeps. Trump

### ICE cooperation and “sanctuaries”

State and local law enforcement agencies cooperate with ICE to varying degrees. More than 300 jurisdictions nationwide place some limits on their cooperation, usually by limiting the access of ICE officers to question people in state or local custody, refusing to notify ICE when noncitizens are released from custody, refusing to honor ICE detainers (i.e. holding people longer than the term served for their state or local charges), or otherwise preventing ICE from directly taking custody. States and localities limiting ICE cooperation are often referred to as “sanctuaries,” though the term also includes places that have policies prohibiting the police and/or other government employees from asking individuals about immigration status and places with largely symbolic policies opposing immigration enforcement or supporting immigrant residents. Thus, “sanctuary” is a broad and imprecise term. Throughout this report, the authors use “sanctuaries” to denote jurisdictions that limit cooperation with ICE. Even using this narrower definition, the term encompasses jurisdictions with a broad range of policies.

<sup>2</sup> ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” updated December 13, 2017, 3, [www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf](http://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf).

<sup>3</sup> *Ibid.*, 11.



administration policy pronouncements and extensive media coverage of ICE's activities have led to rising fear and anxiety in immigrant communities across the country.

### Box. I Functions of ICE's Enforcement and Removal Operations Division

ICE's Enforcement and Removal Operations has officers working in several functions:

- **Criminal Alien Program (CAP)** officers are stationed in state prisons or local jails or otherwise communicate with these prisons and jails to identify, detain, and initiate deportation proceedings against removable noncitizens in those facilities.
- **287(g) program** managers supervise state or local police officers—called designated immigration officers—who have been trained to identify, detain, and transport removable noncitizens, and work with ICE program managers to initiate the removal process. All 287(g) programs currently operate in jail settings, so state or local officers must first arrest removable noncitizens on nonimmigration criminal charges.
- **Fugitive operations team (FOT)** officers conduct arrests at homes or in the community, seeking individuals who have failed to comply with final removal orders, those who have been released after being charged with state and local crimes, and those who have re-entered the United States illegally after being deported. Some of these teams are referred to as at-large or criminal alien teams.
- **Detained caseload** officers supervise immigrants in ICE detention and those released with ankle-monitoring bracelets or in other alternatives to detention.
- **Nondetained caseload** officers are responsible for monitoring immigrants previously arrested by ICE or the Border Patrol who were released on bond or on their own recognizance pending a hearing before an immigration judge or pending their removal, after a judge has ordered them removed.
- **Deportation officers** carry out physical removal by transporting those being removed to the U.S.-Mexico border or flying them to their home countries.

## A. Purpose of the Report

This report focuses on interior immigration enforcement during the Trump administration and in particular the activities of ICE, the DHS agency responsible for interior enforcement.<sup>4</sup> Over the course of six months, Migration Policy Institute (MPI) researchers visited 15 jurisdictions in seven states, both in locations fully cooperative with ICE and those limiting their involvement, to assess the differences in enforcement and resulting impacts (see next section for a fuller discussion; see Appendix B for details of the polices governing cooperation with ICE in each of the study sites).

Within ICE, the study focuses on the activities of the Enforcement and Removal Operations (ERO) division, which is responsible for finding, arresting, detaining, and deporting unauthorized immigrants as

<sup>4</sup> The Department of Homeland Security (DHS) includes two other large immigration agencies. U.S. Customs and Border Protection (CBP) houses the Border Patrol and the Office of Field Operations, which provides inspections of travelers entering at airports, seaports, and land ports along the Mexican and Canadian borders. U.S. Citizenship and Immigration Services (USCIS) processes applications for immigration benefits such as lawful permanent residency, nonimmigrant visas, and naturalization. Though there have also been significant changes in border enforcement activities and the administration of legal immigration during the Trump administration, neither these changes nor the agencies responsible for implementing them are the focus of this report.



well as green-card holders and other legal noncitizens who have criminal convictions that warrant their deportation.<sup>5</sup>

The study also considered the role of two other groups of federal employees in the removal process: ICE trial attorneys and immigration judges. ICE trial attorneys represent the government's case for removal in immigration court and must prosecute most individuals in court before they can be removed—unless apprehended at the border or already ordered removed by an immigration judge. Immigration judges are employees of the Department of Justice and report to the Attorney General. They decide all removal cases except expedited removal ones, which can be adjudicated by certain U.S. Customs and Border Protection (CBP) officers or Border Patrol agents under special procedures in specified circumstances. Decisions by immigration judges can be appealed to the Board of Immigration Appeals. Two former immigration judges were interviewed for the study, but no ICE attorneys participated.

The report is organized around the following topics:

- Continuity and change in interior enforcement policies between the Trump and earlier administrations
- Analysis of ICE arrest patterns and trends at ICE field office and local levels
- Changes in the location of ICE arrests and the characteristics of those arrested
- Changes in how ICE handles cases after arrest
- Responses to enforcement activities by states, localities, civil society, and foreign consulates
- Impacts of enforcement activities on immigrant communities.

Appendix A describes the interior enforcement process in detail, whether the process is undertaken in cooperation with state and local law enforcement agencies or independently by ICE officers.

## B. Research Methods

The study team used a mixed-methods approach including fieldwork at regional ICE offices and in local communities, as well as analysis of ICE administrative data. The fieldwork involved meetings with current and former DHS and ICE administrators and policy staff at national and regional office levels, as well as state and local government and law enforcement officials, immigration defense attorneys, immigrant advocates, consular officials, and others. The study team visited seven ICE ERO field offices (which cover jurisdictions ranging from a handful of counties to several states), and a total of 15 jurisdictions, mostly major cities, four of which had policies limiting cooperation with ICE. The remainder cooperate fully with ICE (see Table 1). Additionally, three sites had 287(g) agreements, allowing local law enforcement officers to assist ICE in screening jail inmates for removability.

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*This report focuses on interior immigration enforcement during the Trump administration and in particular the activities of ICE, the DHS agency responsible for interior enforcement.*

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<sup>5</sup> ICE also has a Homeland Security Investigations (HSI) division devoted to investigation of serious immigration-related crimes such as smuggling, trafficking, and gang activity; HSI was not the subject of this study. Nor was the third main branch of ICE: The Office of the Principal Legal Advisor (OPLA), which supervises ICE attorneys who prosecute deportation cases.

**Table 1. ICE ERO Field Offices and Local Jurisdictions Visited, with ICE Cooperation Status and Month Visited**

ICE Field Office	Jurisdiction	Level of Cooperation with ICE	Month Visited by MPI Study Team
Houston	Harris County	Fully cooperating	March 2017
Chicago	Cook County	Limited cooperation/ sanctuary	April 2017
Chicago	DuPage, Lake, and McHenry counties (Chicago suburbs)	Fully cooperating	April 2017
Atlanta	Fulton and DeKalb counties in Georgia (Atlanta and suburbs)	Fully cooperating	May 2017
Atlanta	Gwinnett and Hall counties (Atlanta suburbs)	Fully cooperating / 287(g) agreements	May 2017
Los Angeles	Los Angeles County	Limited cooperation / sanctuary	June 2017
Los Angeles	Orange County (suburban Los Angeles)	Limited cooperation/ 287(g) agreement	June 2017
Arlington, VA	Prince William County, Virginia (suburban Washington, DC)	Fully cooperating / 287(g) agreement	July 2017
New Orleans	Nashville/Davidson County  Memphis/Shelby County	Fully cooperating	July 2017
New York	New York City	Limited cooperation / sanctuary	August 2017

*Notes:* Since 1996, under section 287(g) of the *Immigration and Nationality Act*, the federal government has been permitted to deputize duly trained and supervised state and local law enforcement officers to perform some aspects of federal immigration enforcement. Under 287(g) “jail enforcement” agreements, state and local officers may assist ICE in interviewing individuals in custody and accessing databases to ascertain their legal status and removability; they may also initiate their removal proceedings. ICE officers sign off on all paperwork. Under “task force” agreements, state and local officers may assist ICE during field operations or during their own policing operations in the community can ask individuals about their immigration status and removability. In March 2018, ICE had jail-enforcement agreements with 75 states and localities. No task force agreements were in operation, and so they could not be studied. See Appendix B for fuller detail on the policies governing cooperation with ICE in each of the study sites.

MPI selected study sites to include a mix of cooperating and noncooperating jurisdictions, urban and suburban areas, U.S. geographic regions, and policy contexts.<sup>6</sup> Together, the jurisdictions in the study accounted for estimated 11 percent of all detainees issued to federal and state prisons and local jails during the first 104 days of the Trump administration.<sup>7</sup> About 28 percent (3.1 million) of the estimated 11 million unauthorized immigrants in the United States lived in the study sites.<sup>8</sup>

In each site MPI team members met with ICE ERO field office leadership—including field office directors, deputies, assistant directors, and/or supervisors of the main ERO programs. They visited seven of the 24 ERO field offices, which together accounted for 38 percent of ICE administrative arrests during the first 135 days of the Trump administration. In each site, MPI researchers also met with some combination

6 Rural areas were not included because of the small numbers of ICE arrests in these areas and the difficulty in identifying and recruiting community respondents for the study.

7 In response to MPI FOIA requests for the “latest available” data, ICE provided data on all Enforcement and Removal Operations (ERO) administrative arrests for the first 135 days of the Trump administration and detainees issued to federal and state prisons and local jails for the first 104 days.

8 MPI Data Hub, “Unauthorized Immigrant Population Profiles,” accessed March 15, 2018, [www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles](http://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles).



of local police chiefs and/or sheriffs, immigration defense attorneys, immigrant-serving community-based organizations, state and local government officials, representatives from Mexican and Central American consular networks, union leaders, and community organizers. In total, the team conducted 122 interviews. Respondents were offered confidentiality, and this report does not attribute findings to any respondent by name or position, except where interviewees have made public statements.

Using a *Freedom of Information Act* (FOIA) request, the study team obtained data on administrative arrests at the ERO regional field office and suboffice levels for the first four months of the Trump administration in 2017, and for comparable periods during 2013 through 2016. The researchers also obtained data from 2013 through the first three months of the administration on detainers issued by ICE and individuals taken into ICE custody for each state and local law enforcement agency across the country.

## II. Continuity and Change in Federal Immigration Enforcement: From Clinton to Trump

Key elements of the legislative framework for the current enforcement regime were enacted in the 1990s, but not substantially implemented until after the 9/11 terrorist attacks. The Bush and Obama administrations built and refined an interior enforcement system based on a combination of arrests by ICE officers at worksites, residences, and public places, as well as transfers into federal custody of removable noncitizens first arrested by state and local police officers. As the system increased in scope, the balance shifted, with transfers from state and local custody to ICE now forming nearly 70 percent of all ICE arrests.

### A. The Legislative Framework in the Clinton Administration

Though statutory authorities for arresting and deporting noncitizens go back decades, Congress passed and President Clinton signed two critical laws in 1996 expanding the immigration enforcement system: *The Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) and the *Antiterrorism and Effective Death*

#### Detainers

“Detainers” are ICE requests to federal, state, or local law enforcement agencies to hold removable noncitizens for up to 48 hours after they have served their sentences for a crime, been released on bail, or otherwise been released from custody. ICE may issue a detainer when a removable immigrant is found in federal, state, or local custody—usually through the Secure Communities link between immigration and FBI databases, or through interviews with ICE or state or local law enforcement officers. The purpose of the detainer is to allow ICE extra time to arrange transport of the detainee into ICE custody.

During the Trump administration, detainers have been accompanied by administrative arrest warrants based on probable cause that an immigrant is unauthorized or otherwise removable. Detainer requests are voluntary, meaning that local jurisdictions are not required to honor them. When they receive detainer requests, some jurisdictions hold an individual up to 48 hours; others notify ICE of the individual’s release date and time but do not hold him or her for additional time; and still others do not notify ICE about releases at all. During 2014-16, under the Obama administration, ICE alternatively requested advance notification of release, which did not require agencies to hold people after serving their sentences. At the beginning of the Trump administration, ICE discontinued this practice, instead issuing detainer requests in all cases.





*Penalty Act* (AEDPA) (see Figure 1).<sup>9</sup> These laws significantly expanded the list of criminal convictions that could lead to removal of lawful permanent residents (LPRs, also known as green-card holders).<sup>10</sup> (Unauthorized immigrants were and continue to be removable even if not convicted of a crime). IIRIRA also limited immigration judges' discretion to prevent deportations based on hardship to families. Congress created expedited removal, a new mechanism enabling deportation based on an administrative order rather than a judicial order.<sup>11</sup> And IIRIRA also added a new Section 287(g) to the *Immigration and Nationality Act*, authorizing the training of state and local law enforcement officers to assist the federal government in immigration enforcement—ushering in a new period of “immigration enforcement federalism.”<sup>12</sup>

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*The September 11, 2001 terrorist attacks led to a more vigorous debate over security threats associated with immigration and spurred the creation of DHS.*

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The implementation of these new enforcement authorities was limited during the Clinton administration. Formal removals increased from 70,000 in 1996—when the two laws were enacted—to 189,000 in 2000, Clinton's last year in office.<sup>13</sup> But most of the expansion of immigration enforcement during that period occurred along the U.S.-Mexico border, not the U.S. interior.

## **B. September 11 and Immigration Enforcement in the Bush Administration**

The September 11, 2001 terrorist attacks led to a more vigorous debate over security threats associated with immigration and spurred the creation of DHS, which absorbed the functions of the U.S. Immigration and Naturalization Service (INS) and 21 other federal agencies. Against the backdrop of 9/11 and the formation of DHS, Congress authorized rapidly increasing funding for immigration enforcement, which nearly doubled from \$7.9 billion in 2002 to \$12.5 billion in 2006 (in constant 2012 dollars).<sup>14</sup>

During the second Bush term (2005-08), the scope of immigration enforcement expanded dramatically after this infusion of resources. The number of overall removals nearly doubled from 189,000 in 2001 to 360,000 in 2008, due to increasing interior deportations and a rise in formal removals from the border using the 1996 law's expedited removal provisions.<sup>15</sup> The Bush administration secured much of the increase in interior removals by encouraging closer cooperation with state and local law enforcement agencies, particularly through two programs: the Criminal Alien Program (CAP) and 287(g).

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<sup>9</sup> *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA), Division C of Public Law 104–208, *U.S. Statutes at Large* 110 (1996): 3009, [www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf); *Antiterrorism and Effective Death Penalty Act of 1996*, Public Law 104-132, *U.S. Statutes at Large* 110 (1996): 1214, [www.gpo.gov/fdsys/pkg/PLAW-104publ132/pdf/PLAW-104publ132.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-104publ132/pdf/PLAW-104publ132.pdf).

<sup>10</sup> Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), 103, [www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery](http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery).

<sup>11</sup> The expedited removal provision allows fast-track deportation of unauthorized immigrants with less than two years of U.S. residence, though it currently applies only to adults apprehended within 14 days of entry and within 100 miles of the border with Mexico or Canada, or the U.S. seacoast. See CBP, “Designating Aliens for Expedited Removal,” *Federal Register* 69, no. 154 (August 11, 2004): 48877-881, [www.federalregister.gov/documents/2004/08/11/04-18469/designating-aliens-for-expedited-removal](http://www.federalregister.gov/documents/2004/08/11/04-18469/designating-aliens-for-expedited-removal).

<sup>12</sup> Cristina Rodríguez, “Enforcement, Integration, and the Future of Immigration Federalism,” *Journal on Migration and Human Security* 5, no. 2 (2017): 509-40, <http://cmsny.org/publications/jmhs-future-immigration-federalism/>.

<sup>13</sup> DHS, Office of Immigration Statistics (OIS), “Table 39: Aliens Removed or Returned: Fiscal Years 1892 to 2015,” 2015 Yearbook of Immigration Statistics, December 15, 2016, [www.dhs.gov/immigration-statistics/yearbook/2015/table39](http://www.dhs.gov/immigration-statistics/yearbook/2015/table39).

<sup>14</sup> Meissner, Kerwin, Chishti, and Bergeron, *Immigration Enforcement in the United States*, 17-18.

<sup>15</sup> Data on the share of removals from the U.S.-Mexico border versus the U.S. interior were not available for this period. See DHS, OIS, “Table 39: Aliens Removed or Returned,” Meissner, Kerwin, Chishti, and Bergeron, *Immigration Enforcement in the United States*.



Through CAP, ICE officers go to or communicate directly with state prisons or local jails and the individuals in their custody to identify, screen, and take custody of deportable immigrants. Arrests by ICE officers under CAP jumped from 4,000 in FY 2004 to 221,000 in FY 2008.<sup>16</sup> The number of 287(g) program arrests—by state and local officers in cooperation with ICE—climbed from zero in 2004 to 45,000 in 2008, as the number of jurisdictions participating in the program grew from one (the state of Florida) to 61.<sup>17</sup>

During 2005-08, DHS also launched a series of worksite enforcement operations, some of which were large-scale, netting hundreds of workers at a time. Nonetheless, the number of worksite arrests peaked at 6,287 in FY 2008<sup>18</sup>—far below the number arrested through cooperation with state or local law enforcement.

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*Together, worksite operations and Fugitive Operations Team arrests resulted in more arrests, detentions, and deportations of people without a criminal conviction.*

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At the same time, the Bush administration increased the scope of activities by Fugitive Operations Teams (FOTs), which arrest individuals at their homes and in public places. FOTs were initially created to apprehend fugitives—those who fail to comply with their final removal orders.<sup>19</sup> During the later Bush years, FOT arrests grew dramatically—from under 7,000 in FY 2004 to more than 34,000 in FY 2008—as the scope broadened to include prior deportees who had re-entered illegally and those without prior contact with immigration enforcement.<sup>20</sup> FOTs often arrested “collaterals”—people who were not on the target list but were arrested anyway because they lacked legal status and were in the wrong place at the wrong time.<sup>21</sup> As a result, from FY 2003 through FY 2008, 73 percent of immigrants arrested by FOTs did not have a criminal conviction.<sup>22</sup>

Together, worksite operations and FOT arrests resulted in more arrests, detentions, and deportations of people without a criminal conviction. Interior removals of noncitizens without a criminal conviction increased from 13,000 in FY 2003 to 73,000 in FY 2008, when they comprised almost half of all interior removals.

The latter years of the Bush administration also saw increasing activity by state legislatures in the immigration enforcement arena, amid rising concern about rapid growth in the unauthorized population. From 2005 through 2008, 13 states (Arkansas, Arizona, Ohio, Virginia, Georgia, Colorado,

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16 Marc R. Rosenblum and William Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, 2012), 25, <https://fas.org/sgp/crs/homsec/R42057.pdf>.

17 Ibid., 25; Meissner, Kerwin, Chishti, and Bergeron, *Immigration Enforcement in the United States*, 111.

18 Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures* (Washington, DC: Congressional Research Service, 2015), 6, <https://fas.org/sgp/crs/homsec/R40002.pdf>.

19 Michael Wishnie, Margot Mendelson, and Shayna Strom, *Collateral Damage: An Examination of ICE's Fugitive Operations Program* (Washington, DC: MPI, 2009), [www.migrationpolicy.org/research/ice-fugitive-operations-program](http://www.migrationpolicy.org/research/ice-fugitive-operations-program).

20 Also referred to as National Fugitive Operations Program (NFOP). See Rosenblum and Kandel, *Interior Immigration Enforcement*, 25.

21 For example, an ICE Fugitive Operations Team could be searching for someone with a criminal record and knock on the door of that person's home. If another person answering the door is thought to be unauthorized, ICE may arrest him or her. In some cases, ICE arrests relatives or other bystanders without finding the original target of the operation. See Wishnie, Mendelson, and Strom, *Collateral Damage*.

22 Meissner, Kerwin, Chishti, and Bergeron, *Immigration Enforcement in the United States*, 107.



Illinois, Oklahoma, Tennessee, North Carolina, Utah, South Carolina, and Missouri)<sup>23</sup>—passed laws that encouraged state and local participation in immigration enforcement. New Mexico, Utah, and Washington issued driver’s licenses to unauthorized immigrants during the second Bush term, thus protecting unauthorized immigrants from arrest based on minor traffic violations.<sup>24</sup>

### C. Expanded Interior Enforcement During the Early Obama Years

President Obama’s administration can be separated into two immigration enforcement periods: the first (2009 through 2011), during which the record-high levels of ICE arrests and removals at the end of the Bush administration continued, and the second (2012 through 2016), during which new enforcement priorities and prosecutorial discretion policies narrowed the scope of enforcement activities, resulting in steep declines in arrests and removals. Peak removals from the U.S. interior occurred during FY 2008-11 (exceeding 200,000 annually), while ICE arrests peaked at more than 300,000 each year during FY 2010-11.<sup>25</sup>

While the administration ended large-scale worksite operations in 2009, the scale of arrests through state and local criminal justice systems rose as Secure Communities expanded. Proposed by the

23 State of Arkansas, *An Act to Allow the Director of the Department of Arkansas State Police to Negotiate a Memorandum of Understanding Concerning the Enforcement of Immigration Laws; To Authorize Certain Law Enforcement Officer to Make an Arrest to Enforce Federal Immigration Laws; and for Other Purposes*, H1012, 85th General Assembly, regular sess., Act 907 (2005), [www.arkleg.state.ar.us/acts/2005/public/ACT907.pdf](http://www.arkleg.state.ar.us/acts/2005/public/ACT907.pdf); State of Arizona, *An Act Amending Section 13-702, Arizona Revised Statutes; Relating to Sentencing*, HB2259, 47th Legislature, 1st regular sess., Public Chapter No. 133 (2005), <https://apps.azleg.gov/BillStatus/GetDocumentPdf/120980>; State of Ohio, *An Act to Amend Sections 121.40, 2901.13, 2909.21, 2923.31, 2933.51, 3701.04, 4505.02, 4507.08, 4561.17, 4561.18, 4561.22, 4931.45, 4931.49, 5502.011, 5502.03, 5502.28, and 5502.41, and to Enact Sections 9.63, 121.404, 1547.80, 2909.26, 2909.27, 2909.28, 2909.29, 2909.30, 2909.31, 2909.32, 2909.33, 2909.34, 2921.29, 2935.033, 3750.22, and 4563.30 of the Revised Code*, SB9, 126th General Assembly (January 11, 2006), [http://archives.legislature.state.oh.us/BillText126/126\\_SB\\_9\\_EN\\_N.pdf](http://archives.legislature.state.oh.us/BillText126/126_SB_9_EN_N.pdf); State of Virginia, *An Act to Amend and Reenact § 16.1-309.1 of the Code of Virginia, Relating to Reporting Certain Juveniles to the Immigration and Customs Enforcement Agency*, Virginia Acts of Assembly, Chapter 682 (April 5, 2006), <http://lis.virginia.gov/cgi-bin/legp604.exe?061+ful+CHAP0682+pdf>; State of Georgia, *Georgia Security and Immigration Compliance Act*, Act 457, *Acts and Resolutions of the General Assembly of the State of Georgia 2006 1* (2006): 105-17, [http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2006/ga/l407/2006/v\\_p1/bk\\_p1.con](http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2006/ga/l407/2006/v_p1/bk_p1.con); State of Colorado, *An Act Concerning Local Government Cooperation with Federal Officials Regarding the Immigration Status of Persons in this State*, Session Laws 2006, Chapter 177 (2006): 721-3, [http://leg.colorado.gov/sites/default/files/images/olls/2006a\\_sl\\_177.pdf](http://leg.colorado.gov/sites/default/files/images/olls/2006a_sl_177.pdf), repealed in 2013; State of Illinois, *An Act Concerning State Government, SB624, 94th General Assembly, Public Act 094-1035* (2006), [www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-1035](http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-1035); State of Oklahoma, *Oklahoma Taxpayer and Citizen Protection Act*, HB1804, (May 8, 2007), [http://webserver1.lsb.state.ok.us/cf\\_pdf/2007-08%20ENR/hB/HB1804%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2007-08%20ENR/hB/HB1804%20ENR.PDF); State of Tennessee, *An Act to Amend Tennessee Code Annotated, Title 4, Relative to Enforcement of Federal Immigration and Customs Laws in the State of Tennessee*, SB1604, 105th General Assembly, Public Chapter No. 165 (2007), <http://publications.tnsosfiles.com/acts/105/pub/pc0165.pdf>; State of Tennessee, *An Act to Amend Tennessee Code Annotated, Title 39, Chapter 17, Relative to Transportation of Illegal Aliens*, HB600, 105th General Assembly, Public Chapter No. 242 (2007), <http://publications.tnsosfiles.com/acts/105/pub/pc0242.pdf>; State of Colorado, *An Act Concerning Legal Process for Persons Who Are Not Legally Present in This Country, and Making an Appropriation in Connection Therewith and Requiring a Post-Enactment Review of the Implementation of This Act*, Session Laws 2007, Chapter 397 (2007): 1770-4, [https://leg.colorado.gov/sites/default/files/images/olls/2007a\\_sl\\_397.pdf](https://leg.colorado.gov/sites/default/files/images/olls/2007a_sl_397.pdf); State of Arizona, *An Act Amending Sections 12-116.01, 13-610, 13-2314.01, 13-3967, 38-886.01, and 41-191.09, Arizona Revised Statutes; Repealing Laws 2006, Chapter 348, Section 4; Making Appropriations; Relating to Criminal Justice Budget Reconciliation; Providing for Conditional Enactment*, HB2757, 48th Legislature, 1st regular sess., Public Chapter No. 261 (2007), [www.azleg.gov/legtext/48Leg/1R/laws/0261.pdf](http://www.azleg.gov/legtext/48Leg/1R/laws/0261.pdf); State of Arizona, *An Act Amending Sections 13-3906 and 13-3961, Arizona Revised Statutes; Relating to Bail*, SB1265, 48th Legislature, 1st regular sess., Public Chapter No. 289 (2007), [www.azleg.gov/legtext/48Leg/1R/laws/0289.pdf](http://www.azleg.gov/legtext/48Leg/1R/laws/0289.pdf); State of North Carolina, *An Act to Determine the Residency Status of Persons Jailed on Felony or Driving While Impaired Charges*, Session Law 2007-494 (2007), [www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2007-2008/SL2007-494.pdf](http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2007-2008/SL2007-494.pdf); State of Virginia, *An Act to Amend and Reenact §§ 19.2-294.2 and 53.1-218 of the Code of Virginia and to Amend the Code of Virginia by Adding in Chapter 7 of Title 19.2 a Section Numbered 19.2-83.2, Relating to Reports on Alien Status of Jail and Correctional Facility Inmates*, Virginia Acts of Assembly, Chapter No. 180 (2008), <https://lis.virginia.gov/cgi-bin/legp604.exe?081+ful+CHAP0180+pdf>; State of Virginia, *An Act to Amend the Code of Virginia by Adding a Section Numbered 19.2-120.1, Relating to Presumption of No Bail for Illegal Aliens Charged with Certain Crimes*, Virginia Acts of Assembly, Chapter No. 469 (2008), <https://lis.virginia.gov/cgi-bin/legp604.exe?081+ful+CHAP0469+pdf>; State of Utah, *Illegal Immigration*, SB81, 2008 General Session, Chapter No. 26 (March 13, 2008), <https://le.utah.gov/~2008/bills/static/SB0081.html>; State of Georgia, *Acts and Resolutions of the General Assembly of the State of Georgia 2008*, (2008): 1137-1140, [http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2008/ga/l407/2008/v\\_p1/bk\\_p1.con](http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2008/ga/l407/2008/v_p1/bk_p1.con); State of South Carolina, *South Carolina Illegal Immigration Reform Act*, Act No. 280 (2008), [www.scstatehouse.gov/sess117\\_2007-2008/bills/4400.htm](http://www.scstatehouse.gov/sess117_2007-2008/bills/4400.htm); State of Missouri, *An Act to Repeal Sections 8.283, 302.720, and 544.470, RSMo, and to Enact in Lieu Thereof Twenty-four New Sections Relating to Illegal Aliens, with Penalty Provisions, and an Effective Date for Certain Sections*, HB1549, 94th General Assembly, 2d regular sess. (2008), <https://house.mo.gov/billtracking/bills081/biltxt/truly/HB1549T.HTM>.

24 Gilberto Mendoza, “States Offering Driver’s Licenses to Immigrants,” National Conference of State Legislatures, November 30, 2016, [www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx](http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx).

25 At their peak, interior removals totaled 238,000 in fiscal year (FY) 2009. The peak for all removals—including those at the U.S.-Mexico border—was nearly 410,000 in FY 2012. Comprehensive ICE arrest data are not available for years before FY 2010. See ICE, “FY 2015 ICE Removals,” updated June 22, 2017, [www.ice.gov/removal-statistics/2015](http://www.ice.gov/removal-statistics/2015).



9/11 Commission, mandated and funded by Congress, and piloted in Harris County, Texas, in 2008,<sup>26</sup> Secure Communities links DHS and FBI databases. The fingerprint linkage with DHS allows identification of immigration violations and provides information on any other encounters with immigration authorities for anyone fingerprinted in a prison, jail, or police station. The goal of rolling out Secure Communities to all 3,181 law enforcement jurisdictions in the country, set during the Bush administration, was achieved in January 2013.<sup>27</sup> Secure Communities expanded the scope of state and local cooperation with ICE far beyond what could be accomplished by stationing a few hundred CAP officers in prisons and jails or through the 287(g) cooperative agreements, which numbered 72 at their height.<sup>28</sup>

During Obama's first term, several more states enacted pro-enforcement legislation, including Georgia and Tennessee in 2009.<sup>29</sup> In 2010, Arizona enacted SB 1070, the most publicized and broadest pro-enforcement state law to date. Utah, Alabama, Indiana, and South Carolina later passed similar legislation, while Tennessee, Oklahoma, and Georgia adopted laws with narrower immigration enforcement provisions.

### Secure Communities

Secure Communities is a program that screens the fingerprints of arrested persons against FBI criminal and DHS immigration databases. The FBI database is checked for warrants and past violations, while DHS databases are checked for prior Border Patrol apprehensions, ICE arrests, removals, and receipt of immigration benefits such as lawful permanent residence or citizenship. Once ICE receives a Secure Communities "hit," i.e., a notification that an individual in state or local custody has the same fingerprints as a known removable immigrant, then ICE may issue a detainer or seek to interview the person in custody. During 2014-16, the Obama administration replaced Secure Communities with a new Priority Enforcement Program that limited ICE detainers or notification requests for people matching the administration's narrowed enforcement priorities. In early 2017, the Trump administration restored Secure Communities, expanded the enforcement priorities, and began issuing detainers for all individuals identified as removable.

While Arizona received the most attention, MPI researchers and others found widespread arrests of immigrants in traffic stops and for other minor violations in states such as Florida, Georgia, North Carolina, and South Carolina. There, Secure Communities combined with the 287(g) jail model meant that any unauthorized immigrant arrested on a criminal charge—no matter how minor or whether the charge resulted in a conviction—could be arrested and taken into ICE custody. This included driving without a license in states where unauthorized immigrants were ineligible for driver's licenses.<sup>30</sup>

26 Susan Carroll, "Harris County Jailers Can Access Immigration Database," *Houston Chronicle*, October 27, 2008, [www.chron.com/news/article/Harris-County-jailers-can-access-immigration-1789565.php](http://www.chron.com/news/article/Harris-County-jailers-can-access-immigration-1789565.php).

27 ICE, "Secure Communities: Overview," updated November 13, 2017, [www.ice.gov/secure-communities](http://www.ice.gov/secure-communities). Participation in Secure Communities was initially voluntary, as increasing numbers of jurisdictions joined it, but by the time it was active in all jurisdictions, the Obama administration clarified that participation was mandatory. See Meissner, Kerwin, Chishti, and Bergeron, *Immigration Enforcement in the United States*, 109.

28 Randy Capps, Marc R. Rosenblum, Muzaffar Chishti, and Cristina Rodríguez, *Delegation and Divergence: 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2010), [www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement](http://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement).

29 State of Georgia, *An Act to Amend Chapter 80 of Title 36 of the Official Code of Georgia Annotated, Relating to General Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities, so as to Prohibit Immigration Sanctuary Policies by Local Governmental Entities; to Provide for Penalties; to Provide for Related Matters; to Provide an Effective Date; to Repeal Conflicting Laws; and for Other Purposes*, Act 152, *Acts and Resolutions of the General Assembly of the State of Georgia 2009 1* (2009): 734-5, [http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2009/ga/l407/2009/v\\_p1/bk\\_p1.con](http://dlg.galileo.usg.edu/cgi-bin/govdimag.cgi?path=dbs/2009/ga/l407/2009/v_p1/bk_p1.con); State of Tennessee, *An Act to Amend Tennessee Code Annotated, Title 7, Relative to Local Government Cooperation with Federal Officials Regarding Immigration Status of Persons in This State*, HB1354, 106th General Assembly, Public Chapter No. 447 (2009), <http://publications.tnsosfiles.com/acts/106/pub/pc0447.pdf>.

30 Capps, Rosenblum, Chishti, and Rodríguez, *Delegation and Divergence*; Deborah M. Weissman, Rebecca C. Headen, and Katherine Lewis Parker, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina* (Chapel Hill: University of North Carolina School of Law, Immigration and Human Rights Policy Clinic, 2008), [www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf](http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf); Azadeh Shahshahani, ed., *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety* (Atlanta: American Civil Liberties Union Foundation of Georgia, 2009), [www.aclu.org/files/intlhumanrights/immigrantsrights/asset\\_upload\\_file306\\_41281.pdf](http://www.aclu.org/files/intlhumanrights/immigrantsrights/asset_upload_file306_41281.pdf); Letter from Thomas E. Perez, Assistant U.S. Attorney General, to Clyde B. Albright, Alamance County Attorney, and Chuck Kitchen, Attorney, *Re: United States' Investigation of the Alamance County Sheriff's Office*, September 18, 2012, [www.justice.gov/iso/opa/resources/171201291812462488198.pdf](http://www.justice.gov/iso/opa/resources/171201291812462488198.pdf).



## D. Narrowing of Enforcement During the Latter Obama Years

The broad application of immigration enforcement in Arizona, the Southeast, and other parts of the country during Obama's first term was controversial. The President had promised immigration reform and protections for immigrants, though neither was the centerpiece of his campaign. With record deportations, criticisms of local policing in immigrant communities, and little progress to show on immigration reform legislation, he earned increasing public and political criticism.<sup>31</sup>

The Obama administration responded by narrowing the scope of the interior enforcement system. In 1976, 2000, 2005, and 2007, immigration officials in DHS and its predecessor, INS, had issued memoranda stating that individual immigration officers and attorneys could use their "prosecutorial discretion" to decide which cases to prioritize for arrest, detention, and deportation, with the implication that, given limited federal resources, not all cases should be pursued through to deportation.<sup>32</sup> In 2010, ICE Director John Morton issued a memo explicitly limiting interior enforcement priorities to people with criminal convictions, recent arrivals, and immigration fugitives (those who failed to comply with removal orders).<sup>33</sup> In 2011, Morton issued additional memos<sup>34</sup> instructing ICE officers and attorneys to use their prosecutorial discretion to avoid arresting, detaining, or removing unauthorized immigrants who were low priority and who had equities such as long-term U.S. ties and U.S.-citizen

### Prosecutorial discretion

ICE, like other law enforcement agencies, exercises "prosecutorial discretion" during its enforcement activities. Prosecutorial discretion means devoting more enforcement effort and resources to some cases than others. ICE officers and trial attorneys exercise discretion in targeting arrests, making detention recommendations, and deciding whether to pursue cases all the way to removal.

ICE and the predecessor Immigration and Naturalization Service (INS) have long issued memoranda instructing ICE officers to use discretion in arresting, detaining and deporting people who are not enforcement priorities and who have equities or humanitarian concerns, such as long-term U.S. residence, U.S.-citizen children, sick children or other dependents, or a major illness or a disability themselves.

The Trump administration overturned all prior prosecutorial discretion policies and has instructed ICE officers and trial attorneys to use discretion rarely, if at all.

- 31 Ana Gonzalez-Barrera and Jens Manuel Krogstad, "U.S. Deportations of Immigrants Reach Record High in 2013," Pew Research Center Fact Tank blog, October 2, 2014, [www.pewresearch.org/fact-tank/2014/10/02/u-s-deportations-of-immigrants-reach-record-high-in-2013/](http://www.pewresearch.org/fact-tank/2014/10/02/u-s-deportations-of-immigrants-reach-record-high-in-2013/); Alex Nowrasteh, "President Obama Is Still the Deporter-In-Chief," Cato at Liberty blog, December 20, 2013, [www.cato.org/blog/president-obama-still-deporter-chief](http://www.cato.org/blog/president-obama-still-deporter-chief).
- 32 Opinion from Sam Bernsen, Immigration and Naturalization Service (INS) General Counsel, to the INS Commissioner, *Legal Opinion Regarding Service Exercise of Prosecutorial Discretion*, July 15, 1976, [www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf); Memorandum from William J. Howard, ICE Principal Legal Advisor, to the Chief Counsels, *Exercising Prosecutorial Discretion to Dismiss Adjustment Cases*, October 6, 2005, [www.ice.gov/doclib/foia/prosecutorial-discretion/pd-dismiss-adjustment-cases.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/pd-dismiss-adjustment-cases.pdf); Memorandum from William J. Howard, ICE Principal Legal Advisor, to All Office of the Principal Legal Advisor Chief Counsel, *Prosecutorial Discretion*, October 24, 2005, [www.asistahelp.org/documents/resources/DHS\\_NTA\\_discretion\\_7076BC4E57842.pdf](http://www.asistahelp.org/documents/resources/DHS_NTA_discretion_7076BC4E57842.pdf); Memorandum from Julie L. Myers, *Homeland Security Assistant Secretary*, to All Field Office Directors and All Special Agents in Charge, *Prosecutorial and Custody Discretion*, November 7, 2007, [www.ice.gov/doclib/foia/prosecutorial-discretion/custody-pd.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/custody-pd.pdf); Memorandum from Doris Meissner, INS Commissioner, to Regional Directors, District Directors, Chief Patrol Agents, and Regional and District Counsel, *Exercising Prosecutorial Discretion*, November 17, 2000, [www.shusterman.com/pdf/prosecutorialdiscretionimmigration1100.pdf](http://www.shusterman.com/pdf/prosecutorialdiscretionimmigration1100.pdf).
- 33 Memorandum from John Morton, Homeland Security Assistant Secretary, to All ICE Employees, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, June 30, 2010, [www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf](http://www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf).
- 34 Memorandum from John Morton, ICE Director, to All Field Office Directors, All Special Agents in Charge, All Chief Counsel, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011, [www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf](http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf); Memorandum from John Morton, ICE Director, to All Field Office Directors, All Special Agents in Charge, All Chief Counsel, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011, [www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf).



children.<sup>35</sup> Taken together, the memos put pressure on ICE officers to pursue a narrower range of cases, rather than arresting and deporting any removable immigrant, as had been the case earlier in the Obama administration.

Other actions taken by the administration and some state and local governments narrowed the population of unauthorized immigrants at risk of removal. In June 2012, President Obama announced the Deferred Action for Childhood Arrivals (DACA) program, which offered work authorization and two-year reprieves from deportation to unauthorized youth who entered the United States as children, eventually covering almost 800,000 people.<sup>36</sup>

In 2013, two states enacted policies limiting law enforcement cooperation with ICE. California passed the *Transparency and Responsibility Using State Tools Act* (TRUST Act), which prohibits state and local jails from holding for ICE individuals who have completed their criminal sentences, unless convicted of certain crimes, mostly felonies and serious misdemeanors.<sup>37</sup> Connecticut passed a more tailored TRUST Act.<sup>38</sup> From 2011-14, the New York City Council enacted a series of laws limiting compliance with detainers and

### Enforcement priorities

As with all other law enforcement agencies, ICE sets priorities for whom to arrest, detain, or remove. For the first seven years of its existence, ICE did not establish any guidelines for implementing such priorities. In 2010 ICE issued a memorandum specifying its enforcement priorities: national-security or public-safety threats, those with criminal convictions or gang affiliations, recent arrivals, and immigration fugitives.

In 2014, ICE narrowed the priorities related to criminal convictions to include only felonies, substantial misdemeanors, or three or more misdemeanors.

In 2017, the Trump administration broadened priorities to include noncitizens convicted of any crime, arrested but not convicted of a crime, committing a crime but not arrested for it, and anyone deemed by an ICE officer to be a public-safety threat.

For purposes of this report, enforcement priorities refer primarily to the targets of ICE arrests. People who are not priorities may also be arrested, often as “collaterals” during ICE operations.

35 These memoranda also initiated a review by ICE’s OPLA of pending removal cases to determine which qualified for prosecutorial discretion. See Memorandum from Peter S. Vincent, ICE Principal Legal Advisor, to All Chief Counsel, *Case-by-Case Review of Incoming and Certain Pending Cases*, November 17, 2011, [www.ice.gov/doclib/foia/prosecutorial-discretion/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf). The process generated channels for lawyers, advocates, and lawmakers to request reconsideration of sympathetic cases. While the June 17, 2011 Morton memorandum stated that noncitizens or their representatives could affirmatively request prosecutorial discretion, it did not lay out procedures for doing so. It was not until 2015 that formal procedures for elevating appeals from ICE field offices to headquarters were published.

36 USCIS approved 793,000 Deferred Action for Childhood Arrivals (DACA) applications from August 2012 through June 2017; see USCIS, “Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017 (June 30),” accessed November 2, 2017, [www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca\\_performancedata\\_fy2017\\_qtr3.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr3.pdf). In November 2014, President Obama announced an expansion of DACA that could cover as many as 200,000 more unauthorized youth, and a new program, Deferred Action for Parents of Americans and Legal Permanent Residents (DAPA), that would have offered DACA-like benefits (i.e., work authorization and temporary reprieves from deportation) to an estimated 4 million unauthorized-immigrant parents with U.S.-citizen or legal permanent resident (LPR) children. The DACA expansion and DAPA program were blocked in 2015 by the federal courts following a lawsuit by Texas and 25 other states, while DACA continued to operate as originally set out in 2012 throughout the remainder of the Obama administration. See Randy Capps and Marc R. Rosenblum, *Executive Action for Unauthorized Immigrants: Estimates of the Populations that Could Receive Relief* (Washington, DC: MPI, 2014), [www.migrationpolicy.org/research/executive-action-unauthorized-immigrants-estimates-populations-could-receive-relief](http://www.migrationpolicy.org/research/executive-action-unauthorized-immigrants-estimates-populations-could-receive-relief); USCIS, “2014 Executive Actions on Immigration,” updated April 15, 2015, [www.uscis.gov/archive/2014-executive-actions-immigration](http://www.uscis.gov/archive/2014-executive-actions-immigration).

37 State of California, *An Act to Add Chapter 17.1 (Commencing with Section 7282) to Division 7 of Title 1 of the Government Code, Relating to State Government*, AB4, 2013–14 Assembly session, Chapter 570, (2013), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140AB4](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB4).

38 While similar to the California law, the Connecticut TRUST Act allows jails to hold, for example, people with final removal orders, those determined by enforcement officers to present a great risk to public safety, and those convicted of a felony. See State of Connecticut, *An Act Concerning Civil Immigration Detainers*, HB6659, General Assembly Session Year 2013, Public Act No. 13-155, (2013), [www.cga.ct.gov/2013/act/pa/2013PA-00155-R00HB-06659-PA.htm](http://www.cga.ct.gov/2013/act/pa/2013PA-00155-R00HB-06659-PA.htm).



barring ICE personnel from city jails.<sup>39</sup> In 2011, Cook County, Illinois, enacted an ordinance completely prohibiting compliance with detainers, denying ICE officers access to individuals in custody, and forbidding county personnel from communicating with ICE about noncitizens in custody.<sup>40</sup>

During Obama's second term, several federal and state courts ruled that ICE detainers were not binding on states and localities. Two landmark 2014 federal cases—*Miranda-Olivares v. Clackamas County* and *Galarza v. Szalczyk*—found that detainers are voluntary requests.<sup>41</sup> In *Miranda-Olivares v. Clackamas County*, the court further held that since detainers are not federal mandates, individuals could sue local agencies for Fourth Amendment violations (i.e., being held without criminal charges). During 2014, these and other court cases led some state and local governments to restrict detainer compliance to avoid legal liability. Because *Miranda-Olivares* was decided in Oregon and is binding there, all Oregon counties stopped honoring ICE detainers. All California counties stopped honoring detainers after then State Attorney General Kamala Harris issued a bulletin suggesting that individuals could sue jurisdictions for holding them based solely on immigration detainers, and the ACLU threatened litigation.<sup>42</sup> The Governor of Rhode Island directed the Department of Corrections to cooperate with ICE only in cases with outstanding arrest warrants or in cases where ICE could provide a judicial warrant.<sup>43</sup> Following an ACLU campaign, all Colorado county jails agreed not to hold people past their release dates based solely on ICE detainers.<sup>44</sup>

In November 2014, in response to state pushback, court challenges, and ongoing public criticism, the administration issued a series of executive actions further narrowing interior enforcement, limiting it to individuals with felony convictions, serious or multiple misdemeanor convictions, or those who entered the country or received a final order of removal on or after January 1, 2014. DHS also urged ICE officers and trial attorneys to more broadly exercise prosecutorial discretion to not arrest, detain, or remove those low on the new priority list.<sup>45</sup> According to MPI estimates, the 2014 priorities effectively excluded 87 percent of the unauthorized population from enforcement, up from 73 percent under the earlier 2010 guidelines.<sup>46</sup> ICE officers around the country told MPI researchers that these executive actions had severely handicapped enforcement operations and prevented them from exercising discretion to arrest noncitizens who were not in the priority categories, even if they had been convicted of a crime. Furthermore, senior ICE officers expressed frustration with the frequently changing priorities that made training junior officers more challenging.

Amid rising noncooperation by jurisdictions across the country, DHS in 2014 also replaced Secure Communities with the more-tailored Priority Enforcement Program (PEP). PEP allowed jurisdictions to negotiate cooperation guidelines based on state and local contexts. In some cases, states and localities had

39 New York City, *Persons Not to Be Detained*, Law Number 2011/062 (2011), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=967785&GUID=9F7C289B-A8D8-4A95-8882-BF044CBB5EE2>; New York City, *Persons Not to Be Detained by the Department of Correction*, Law Number 2014/058 (2014), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935437&GUID=0A456911-54A6-41E5-8C5A-1D3B231D56AA>; New York City, *Persons Not to be Detained by the Police Department*, Law Number 2014/059, (2014), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935438&GUID=0F5303CD-D849-4451-A082-6C9997FC782D>.

40 Cook County, Illinois, *Policy for Responding to ICE Detainers*, Ordinance 11-0-73, (2011), [https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20\(enacted\).pdf](https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20(enacted).pdf).

41 *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST (U.S. District Court, District of Oregon, April 11, 2014), [www.clearinghouse.net/chDocs/public/IM-OR-0004-0003.pdf](http://www.clearinghouse.net/chDocs/public/IM-OR-0004-0003.pdf); *Galarza v. Szalczyk*, No. 12-3991 (Third U.S. Circuit Court of Appeals, March 4, 2014), [www2.ca3.uscourts.gov/opinarch/123991p.pdf](http://www2.ca3.uscourts.gov/opinarch/123991p.pdf).

42 State of California, Department of Justice, "Attorney General Kamala D. Harris Issues Bulletin to Law Enforcement on Federal Immigration Detainers" (press release, June 25, 2014), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-bulletin-law-enforcement-federal>.

43 Letter from Lincoln D. Chafee, Governor of Rhode Island, to Ashbel T. Wall, III, Director, Rhode Island Department of Corrections, *ICE Detainer Policy*, July 17, 2014, [www.catrustact.org/uploads/2/5/4/6/25464410/rhode\\_island\\_7.17.2014\\_ice\\_detainer\\_policy\\_and\\_letter.pdf](http://www.catrustact.org/uploads/2/5/4/6/25464410/rhode_island_7.17.2014_ice_detainer_policy_and_letter.pdf).

44 American Civil Liberties Union (ACLU), "All Colorado Jails Now Reject Federal Immigration Detainers" (press release, September 18, 2014), [www.aclu.org/news/all-colorado-jails-now-reject-federal-immigration-detainers](http://www.aclu.org/news/all-colorado-jails-now-reject-federal-immigration-detainers).

45 Memorandum from Jeh Charles Johnson, Homeland Security Secretary, to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement; R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection; Leon Rodriguez, Director, U.S. Citizenship and Immigration Services; and Alan D. Bersin, Acting Assistant Homeland Security Secretary for Policy, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, November 20, 2014, [www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

46 Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement* (Washington, DC: MPI, 2015), [www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement](http://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement).



narrower enforcement priorities than those set by the Obama administration, while in other cases, state and local priorities were broader.<sup>47</sup> PEP also allowed jurisdictions to notify ICE of release dates instead of holding individuals using detainers. Notifications enabled ICE to pick up removable noncitizens upon release but allowed jurisdictions to avoid holding people for extra time, thereby avoiding potential legal liability. At the end of FY 2016, DHS announced that 21 of the 25 largest jurisdictions that had previously declined the largest numbers of detainers were cooperating with ICE through PEP.<sup>48</sup>

In 2016, California further restricted ICE cooperation by enacting the TRUTH Act, which requires that individuals be informed that a detainer has been placed on them and give their consent before being interviewed by an immigration officer.<sup>49</sup> If unauthorized immigrants do not consent to be interviewed and there is no Secure Communities match for them, they might not be identified as removable.

The narrower enforcement priorities, implementation of PEP, and growing number of sanctuary jurisdictions resulted in a sharp reduction in ICE arrests and deportations from inside the United States. ICE arrests fell by about two-thirds: from 322,000 in FY 2011 to 110,000 in FY 2016. Interior deportations dropped by a similar ratio: from 224,000 in FY 2011 to 65,000 in FY 2016.<sup>50</sup>

## E. A New Era of Immigration Enforcement under Trump

As a candidate, Donald Trump took a sharply different view of immigration policy than his predecessors, who had supported legalization for a substantial portion of the unauthorized population. Making immigration a central campaign theme, Trump depicted unauthorized immigrants as lawbreakers, threats to national security, and competitors for American jobs.<sup>51</sup> On January 25, 2017, in one of his first actions, President Trump issued two executive orders. The first set new border enforcement policies, including making official his famous pledge to build a border wall with Mexico.<sup>52</sup> The second addressed interior enforcement and included provisions to:<sup>53</sup>

- Hire 10,000 new ICE officers, more than doubling manpower
- Expand the number of 287(g) partnerships
- Revoke federal funding to “sanctuary” jurisdictions not fully cooperating with ICE
- End PEP, restore Secure Communities, and issue detainers on all removable noncitizens encountered in state prisons and local jails
- End prosecutorial discretion after arrest (to ensure detention and deportation for all)
- Expand the use of expedited removal—enabling deportation without going before an immigration judge—to all unauthorized immigrants with less than two years of U.S. residence arrested in the U.S. interior<sup>54</sup>

47 ICE, “Priority Enforcement Program,” updated June 22, 2017, [www.ice.gov/pep](http://www.ice.gov/pep).

48 DHS, “DHS Releases End of Year Fiscal Year 2016 Statistics” (news release, December 30, 2016), [www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics](http://www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics).

49 State of California, *Transparent Review of Unjust Transfers and Holds (TRUTH) Act*, AB2792, 2015–16 Assembly session, Chapter 768 (2016), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2792](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2792).

50 ICE, “FY 2015 ICE Removals.”

51 Candidate Trump laid out his vision for U.S. immigration policy in detail in an August 2016 speech. For a transcript, see *The New York Times*, “Transcript of Donald Trump’s Immigration Speech,” September 1, 2016, [www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html](http://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html).

52 Donald J. Trump, “Executive Order 13767 of January 25, 2017: Border Security and Immigration Enforcement Improvements,” *Federal Register* 82, no.18 (January 30, 2017): 8793–97, [www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf](http://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf).

53 Donald J. Trump, “Executive Order 13768 of January 25, 2017: Enhancing Public Safety in the Interior of the United States,” *Federal Register* 82, no.18 (January 30, 2017): 8799–803, [www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf](http://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf).

54 Expedited removal currently applies only to adults apprehended within 14 days of entry and within 100 miles of the border with Mexico or Canada, or the U.S. seacoast. At the time this report was completed in April 2018, the administration had not announced any formal proposals to expand expedited removal to noncitizens arrested in the U.S. interior.





- Most importantly, replace the Obama administration’s 2014 enforcement priorities with new priorities to deport people who:
  - Have been convicted of a crime
  - Have been arrested for but not convicted of a crime
  - Have committed a crime but not been arrested
  - Have fraudulently sought to access public benefits
  - Are a public-safety threat, as determined by an individual immigration officer.

On February 20, 2017, then-Homeland Security Secretary John Kelly issued a memorandum authorizing enforcement action against all removable noncitizens—even those not listed as priorities<sup>55</sup> The next day, ICE ERO Executive Associate Director Matthew Albence issued a memo stating that ICE officers “will take enforcement action against” all removable immigrants encountered.<sup>56</sup>

The executive order and implementing memos changed interior enforcement policies in three important ways. First, the scope of arrests widened dramatically. While all unauthorized immigrants are subject to arrest and deportation, prior to 2010, there were no explicit priorities narrowing the focus to which groups ICE should pursue. But the Trump executive order and follow-on DHS and ICE memos for the first time explicitly provided support from top agency leadership for the arrest of any and all unauthorized immigrants. Moreover, ICE Acting Director Thomas Homan has repeatedly suggested that all unauthorized immigrants are targets for enforcement. For instance, in June 2017, he said,

*“If you’re in this country illegally, and you committed a crime by entering this country, you should be uncomfortable. You should look over your shoulder.”<sup>57</sup>*

Second, once arrested, immigrants now are to be detained and deported no matter whether they have a criminal violation or a compelling reason to be allowed to remain. Beyond rescinding prosecutorial discretion guidance dating to the 1970s, the administration would also later instruct immigration judges, who are Justice Department employees, to streamline removal hearings.

Third, in addition to streamlining removal hearings, the administration closed avenues to contest removals outside the immigration court system. In contrast to the latter Obama years, arrest, detention, and removal decisions by local ICE officers and their field office supervisors are seldom overruled by ICE headquarters. And official requests by federal, state, and local elected officials rarely prevent detention and removal of individuals.

### State and Local Jurisdictions Enact Policies of Their Own

Early in the Trump administration, Texas, Mississippi, and Iowa passed laws to require and strengthen cooperation with ICE.<sup>58</sup> The most widely publicized of these laws, Texas Senate Bill (SB) 4, prohibits any locality in the state from limiting law enforcement officers’ ability to inquire about the immigration status

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55 Memorandum from John F. Kelly, Homeland Security Secretary, to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection; Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement; Lori Scialabba, Acting Director, U.S. Citizenship and Immigration Services; Joseph B. Maher, Acting General Counsel; Dimple Shah, Acting Assistant Secretary for International Affairs; and Chip Fulghum, Acting Undersecretary for Management, *Enforcement of the Immigration Laws to Serve the National Interest*, February 20, 2017, [www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](http://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

56 Memorandum from Matthew T. Albence, ICE Executive Associate Director, to All ERO Employees, *Implementing the President’s Border Security and Interior Immigration Enforcement Policies*, February 21, 2017, <https://object.cato.org/sites/cato.org/files/wp-content/uploads/icememofeb21.pdf>.

57 Maria Sacchetti, “ICE Chief Tells Lawmakers Agency Needs Much More Money for Immigration Arrests,” *Washington Post*, June 13, 2017, [www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98\\_story.html?utm\\_term=.5fbc548d563a](http://www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98_story.html?utm_term=.5fbc548d563a).

58 Indiana and Georgia also enacted new laws, but they were both limited to prohibiting policies that restrict ICE cooperation on college and university campuses.



of individuals in custody and communicate that information to federal immigration authorities; requires jurisdictions to comply with most ICE detainers and otherwise fully cooperate with federal immigration authorities; and levies fines on localities and officials not fully cooperating, as well as criminal penalties on jail administrators (e.g., sheriffs or chiefs of police) who knowingly fail to comply with a detainer.<sup>59</sup> The Texas law forced the two sanctuary jurisdictions in the state—Austin and Travis County—to rescind those policies.<sup>60</sup> Mississippi SB 2710 prohibits any state agency, locality, or university from adopting policies that limit communication or cooperation with federal immigration authorities regarding immigration status and from granting anyone lawful presence or status in violation of state or federal law.<sup>61</sup> In 2018, Iowa enacted legislation withholds state funding for at least 90 days from local entities that prohibit or discourage enforcement of immigration laws, cooperation with federal immigration authorities, inquiries about immigration status of people under arrest, and information sharing about immigrants' status with federal authorities.<sup>62</sup>

Dozens of localities across the country recently signed 287(g) agreements to enhance their cooperation with ICE. Between January 2017 and February 2018, the number of agreements more than doubled from 30 to 76—the most agencies participating in the history of the program.<sup>63</sup> Most of the new jurisdictions are in small cities and suburban or rural areas, and 25 out of the 46 new agreements are in Texas. The large cities that used to have 287(g) agreements—Los Angeles, Houston, Phoenix, and Nashville—are unlikely to return to the program.<sup>64</sup> Still, 287(g)s in smaller, more scattered communities have expanded the geographic reach of ICE's enforcement activities and could allow the agency to concentrate its resources more heavily in major urban areas.

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## *Dozens of localities across the country recently signed 287(g) agreements to enhance their cooperation with ICE.*

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Meanwhile, California and Illinois enacted legislation further restraining ICE cooperation. The *California Values Act* prohibits local jurisdictions from entering into 287(g) agreements, holding individuals on ICE detainers without judicial warrants, and sharing nonpublic information about noncitizens with ICE. The *Values Act* also prohibits transferring into ICE custody individuals who have not been convicted of certain enumerated crimes—a list narrower than that in the earlier TRUST Act—and notifications to

59 State of Texas, *An Act Relating to the Enforcement by Campus Police Departments and Certain Local Governmental Entities of State and Federal Laws Governing Immigration and to Related Duties and Liability of Certain Persons in the Criminal Justice System; Providing a Civil Penalty; Creating a Criminal Offense*, General and Special Laws of Texas, Chapter 4 (2017), [www.lrl.state.tx.us/scanned/signedBills/85-0/sb4.pdf](http://www.lrl.state.tx.us/scanned/signedBills/85-0/sb4.pdf).

60 Austin and other major Texas cities sued the state to stop implementation of SB 4, but the law has been largely upheld by a federal appellate court. See *City of El Cenizo, Texas et al. v. State of Texas*, No. 17-50762 (Fifth U.S. Circuit Court of Appeals, September 25, 2017), [www.court-housenews.com/wp-content/uploads/2017/09/SanctuaryCities5th.pdf](http://www.court-housenews.com/wp-content/uploads/2017/09/SanctuaryCities5th.pdf).

61 State of Mississippi, *An Act to Prohibit a State Agency, Department, Political Subdivision of This State, County, Municipality, University, College, Community College or Junior College, or Any Agent, Employee or Officer Thereof from Creating, Planning, Implementing, Assisting, Participating In, or Enabling a Sanctuary Policy; to Provide that Any Sanctuary Policy Adopted in Violation of This Act Shall Be Invalid and Void from the Date of Its Adoption or Enactment; and for Related Purposes*, SB2710, 2017 regular sess., Public Chapter 383 (2017), <http://billstatus.ls.state.ms.us/documents/2017/pdf/SB/2700-2799/SB2710SG.pdf>.

62 State of Iowa, *An Act Relating to the Enforcement of Immigration Laws and Providing Penalties and Remedies, Including the Denial of State Funds to Certain Entities*, SF 481, 87th General Assembly (2018), [www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf481](http://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf481).

63 All of the existing and new jurisdictions operate jail screening models, whereby individuals must first be arrested for a crime and then booked into state or local custody. The Obama administration discontinued task force models allowing state and local 287(g) officers to ask questions about immigration status and removability outside of jails, during policing operations, and the Trump administration had not authorized any task force agreements as of April 2018. See Mica Rosenberg and Reade Levinson, "Police in Trump-Supporting Towns Aid Immigration Officials in Crackdown," Reuters, November 27, 2017, [www.reuters.com/article/us-trump-effect-immigration-police/police-in-trump-supporting-towns-aid-immigration-officials-in-crackdown-idUSKBN1DR169](http://www.reuters.com/article/us-trump-effect-immigration-police/police-in-trump-supporting-towns-aid-immigration-officials-in-crackdown-idUSKBN1DR169); ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," updated March 26, 2018, [www.ice.gov/287g](http://www.ice.gov/287g).

64 The largest jurisdiction with a 287(g) agreement still in operation in early 2018 was Tarrant County, Texas, with a population of 1.9 million. Four of the Texas counties with new agreements have immigrant populations of less than 1,000, and together the 75 jurisdictions with agreements account for just 6 percent of the country's total immigrant population. See Nicole Prchal Svajlenka, *What's at Stake: Immigrant Impacts in 287(g) Jurisdictions* (Washington, DC: Center for American Progress, 2018), [www.americanprogress.org/issues/immigration/reports/2018/03/20/448172/whats-at-stake/](http://www.americanprogress.org/issues/immigration/reports/2018/03/20/448172/whats-at-stake/).



ICE of release dates for such individuals, unless those release dates are also publicly available.<sup>65</sup> The *Illinois TRUST Act* prohibits state and local law enforcement officers from honoring detainers unless accompanied by a judicial warrant, and from stopping, arresting, searching or detaining individuals solely based on immigration status.<sup>66</sup>

In October 2017, New York City Council banned city employees from spending time on duty or using city property to assist federal authorities, barred the Department of Probation from transferring immigrants into ICE custody, and prohibited the city from entering into a 287(g) agreement.<sup>67</sup>

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*The combination of state legislation, local ordinances, detainer litigation, and 287(g) expansions have made the context for immigration enforcement very uneven.*

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Litigation against jurisdictions for holding people based on ICE detainers continues. In February 2018, for example, a U.S. district judge found that past practice by the Los Angeles County Sheriff's Department of holding immigrants based solely on ICE detainers violated the Fourth Amendment because officers did not have probable cause to suspect that the detainees were involved in criminal activity.<sup>68</sup> In response, ICE has issued detainers accompanied by administrative warrants which, though not signed by a judge, establish probable cause that a noncitizen is removable.<sup>69</sup> In January 2018, ICE announced an innovation: basic ordering agreements (BOAs) with 17 counties in Florida that will reimburse them for holding immigrants up to 48 hours past their release date and may provide protection from liability for honoring detainers.<sup>70</sup> Whether the courts will agree that administrative warrants and BOAs protect jurisdictions from liability remains to be seen.

The combination of state legislation, local ordinances, detainer litigation, and 287(g) expansions have made the context for immigration enforcement very uneven. While about 300 jurisdictions have a policy either limiting ICE cooperation or symbolically providing sanctuary (with 200 of these refusing to honor detainers), a large majority of the more than 3,000 law enforcement jurisdictions across the country fully cooperate with ICE.<sup>71</sup> Just 76 of these have 287(g) agreements.

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65 State of California, *An Act to Amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (Commencing With Section 7284) to Division 7 of Title 1 of the Government Code, and to Repeal Section 11369 of the Health and Safety Code, Relating to Law Enforcement*, SB54, 2017-18 Senate session, Chapter 495 (2017), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20170180SB54](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20170180SB54).

66 State of Illinois, *The Illinois TRUST Act*, SB31, Public Act 100-0463 (2017) [www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0463](http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0463).

67 Erin Durkin, "New Regulations Fortify New York City as Immigration Sanctuary," *New York Daily News*, October 31, 2017, [www.nydailynews.com/new-york/new-regulations-fortify-new-york-city-immigration-sanctuary-article-1.3602487](http://www.nydailynews.com/new-york/new-regulations-fortify-new-york-city-immigration-sanctuary-article-1.3602487).

68 Brian Melley and Amy Taxin, "Court Rules Los Angeles Sheriff Violated Immigrants' Rights," Associated Press, February 9, 2018, <https://ap-news.com/bef91382ea9f41f0b65fbd43bf2b7a6/Court-rules-Los-Angeles-sheriff-violated-immigrants'-rights>.

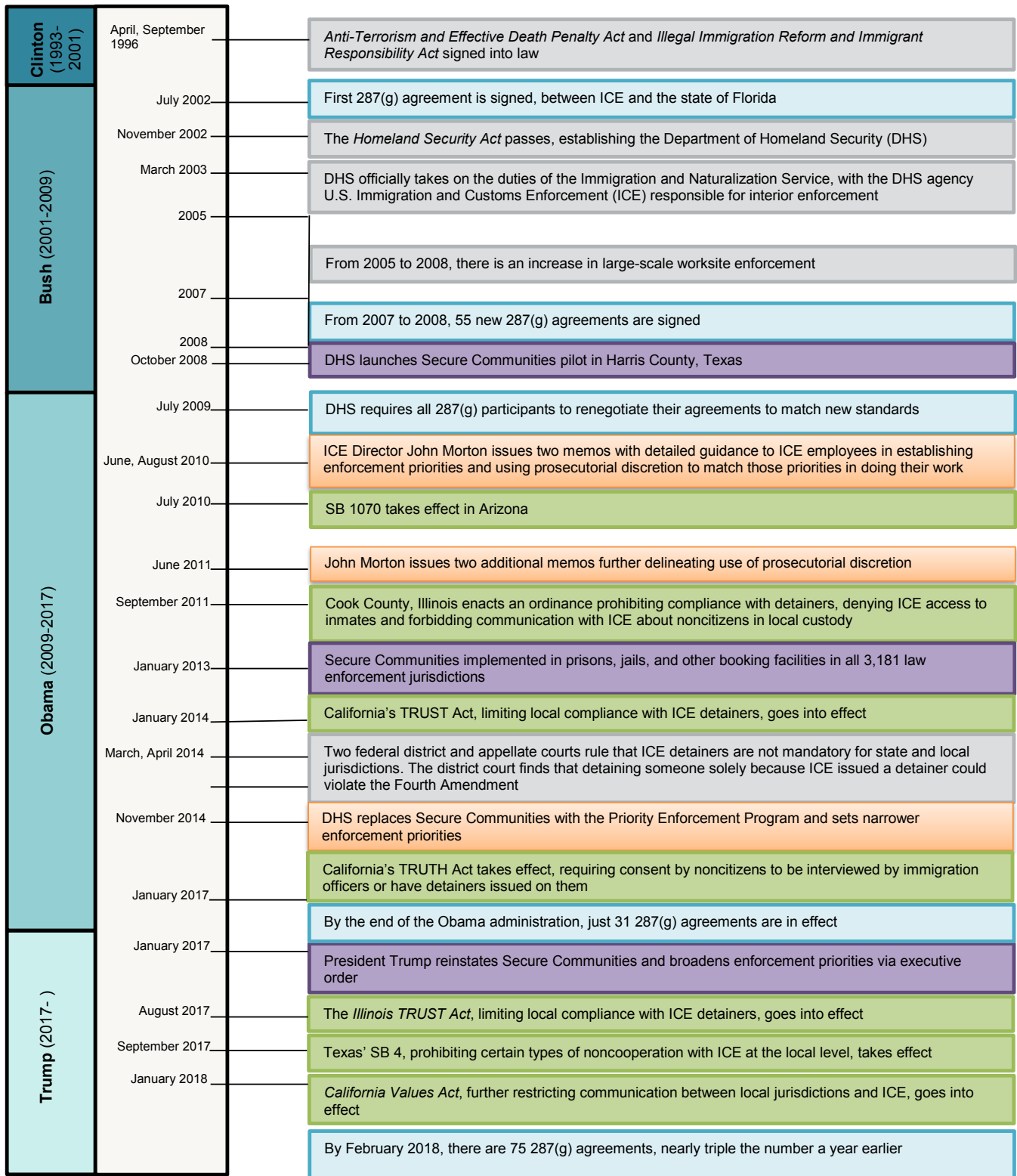
69 ICE, "Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers," 4, March 24, 2017, [www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf](http://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf).

70 ICE, "ICE, 17 FL Sheriffs Announce New Enforcement Partnership" (news release, January 17, 2018), [www.ice.gov/news/releases/ice-17-fl-sheriffs-announce-new-enforcement-partnership](http://www.ice.gov/news/releases/ice-17-fl-sheriffs-announce-new-enforcement-partnership).

71 Tal Kopan, "What Are Sanctuary Cities and Can They Be Defunded?" CNN, March 26, 2018, [www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/index.html](http://www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/index.html).



**Figure 1. Major Changes in Interior Immigration Enforcement Laws and Policies, 1996-Present**





### III. By the Numbers: ICE Arrest, Detainer, and Removal Activity

The Trump administration's policy changes had an immediate impact on arrests and deportations from the U.S. interior. But the impact was uneven across the country, due in large part to differences in state and local policies regarding ICE cooperation. MPI's analysis of ICE administrative data show that arrests post-Trump increased much more in Texas and the Southeast than in California, especially compared with 2013—the year before implementation of the California TRUST Act and the much narrower enforcement priorities put in place by the Obama administration. Similarly, there were greater increases in the number of individuals taken into ICE custody via detainers in fully cooperating counties in Texas and the Southeast than in sanctuaries such as Chicago, New York, and many California counties. The data demonstrate that state and county policies substantially affect ICE's capacity to take custody of removable immigrants. They also help explain why ICE's arrests and interior removals have not yet reached the peak levels of the early Obama years—and why they may never, notwithstanding the Trump administration's significant focus on expanding enforcement.

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*The Trump administration's policy changes had an immediate impact on arrests and deportations from the U.S. interior.*

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The decline in ICE custody transfers in most California counties and the very small numbers of transfers in New York and Chicago in the early months of the Trump administration highlight the curbs that protective jurisdictions can place on federal immigration enforcement. Since these areas have large unauthorized populations, their restrictions on ICE cooperation have a major impact on the numbers of people that ICE can detain via criminal justice systems. As this section will explain, these data suggest that as long as large states and major cities retain such noncooperation policies, ICE's ability to identify, arrest, detain, and deport removable noncitizens will be limited.

#### A. An Increase in ICE Arrests

Arrests jumped soon after the inauguration on January 20, 2017. During the period between the inauguration and the end of the fiscal year (September 30), ICE made 110,568 arrests, up 42 percent from 77,806 during the same period a year earlier (see Figure 2).<sup>72</sup> There were 143,047 arrests for the full 2017 fiscal year (including the last four months of the Obama administration), up from 110,104 a year earlier.<sup>73</sup> While arrests rose in 2017, they were still only about half their level in FY 2010 (314,915 arrests) and FY 2011 (322,093), before the Obama administration began narrowing ICE enforcement priorities.<sup>74</sup>

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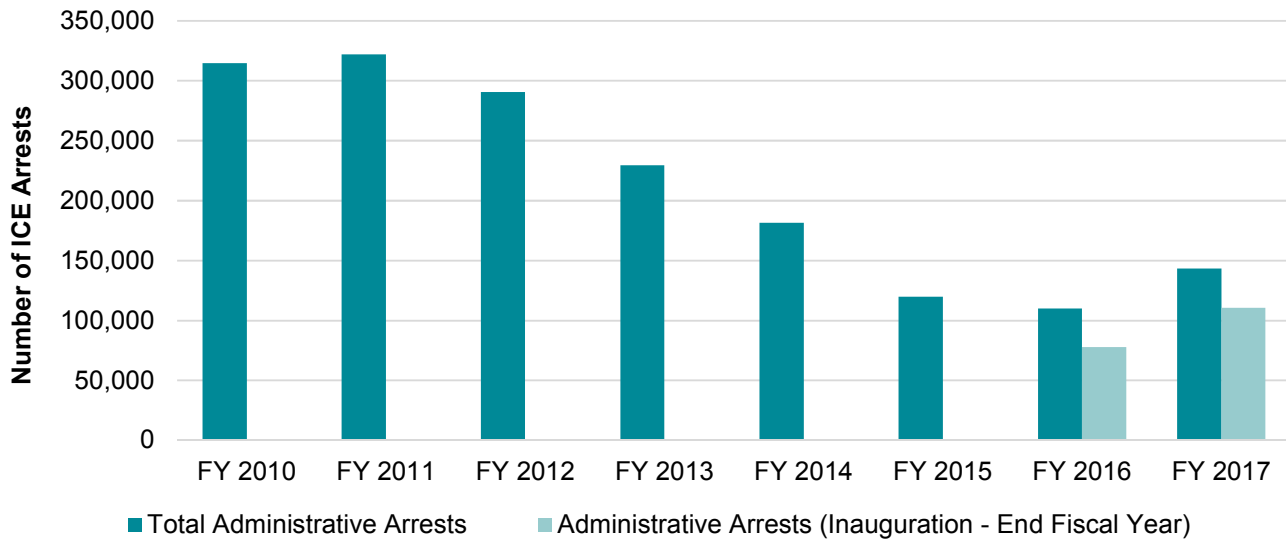
<sup>72</sup> ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 3.

<sup>73</sup> *Ibid.*, 3.

<sup>74</sup> Bryan Baker, *Immigration Enforcement Actions: 2016* (Washington, DC: DHS, OIS, 2017), 4, [www.dhs.gov/sites/default/files/publications/Enforcement Actions 2016.pdf](http://www.dhs.gov/sites/default/files/publications/Enforcement%20Actions%202016.pdf).



**Figure 2. ICE ERO Administrative Arrests in U.S. Interior, FY 2010-17**



Note: The light teal bar for FY 2016 spans the same January 20 – September 30 period as for FY 2017 for comparison purposes.

Sources: U.S. Immigration and Customs Enforcement (ICE), “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” December 13, 2017, 2-3, [www.ice.gov/removal-statistics/2017](http://www.ice.gov/removal-statistics/2017); Bryan Baker, *Immigration Enforcement Actions: 2016* (Washington, DC: Department of Homeland Security, Office of Immigration Statistics, 2017), 4, [www.dhs.gov/sites/default/files/publications/Enforcement\\_Actions\\_2016.pdf](http://www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2016.pdf).

### ICE Arrests by Enforcement Program

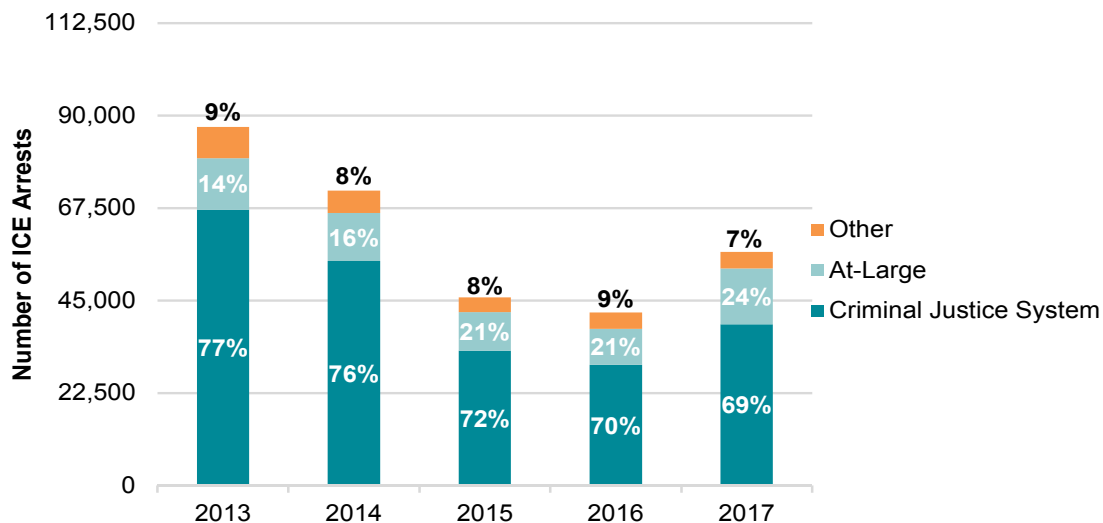
According to data obtained from ICE by MPI via *Freedom of Information Act* (FOIA) request, arrests by ICE officers increased more rapidly than arrests through the criminal justice system (i.e., transfers from prisons or jails) during the first 135 days of the Trump administration.<sup>75</sup> From January 20 through June 3, 2017, there were 13,601 “at-large” arrests at residences and in the community by Fugitive Operations Teams and other teams of ICE officers—representing a 55 percent increase over the 8,783 at-large arrests over the same period in 2016 (see Figure 3). Criminal justice system arrests, those by ICE CAP officers or 287(g)-designated state and local officers, totaled 39,230 during January 20 through June 23, 2017, up 34 percent from 29,335 during the same days in 2016.<sup>76</sup>

While most arrests continued to occur via the criminal justice system, their share of all ICE ERO arrests declined gradually from 2011 through 2017, corresponding with a period in which California and several other states and cities limited their cooperation with ICE. Criminal justice system arrests accounted for 69 percent of arrests during the first 135 days of the Trump administration—still a large majority but down from 77 percent during the comparable period in FY 2013 and shares exceeding 85 percent during the peak in ICE arrests from 2008 through 2011.<sup>77</sup> At-large arrests were 24 percent of ICE arrests during the first 135 days of the Trump administration, up from 14 percent in the comparable period in 2013. Thus, over the last several years, ICE has increasingly relied on arrests by its own officers, though transfers from state and local custody still comprise the overwhelming majority.

<sup>75</sup> MPI obtained data on ICE ERO division administrative arrests from the beginning of FY 2013 through June 3, 2017 through a FOIA request. Data after this period on ICE arrests by program are unavailable.

<sup>76</sup> Arrests were categorized based on the ICE ERO program to which the arresting ICE officer was assigned. Criminal Alien Program (CAP) and 287(g) arrests were grouped together as “criminal justice system” arrests, with the bulk of these being CAP arrests. “At-large arrests” included Fugitive Operations, Violent Criminal Alien Sections, Law Enforcement Area Response Units, Mobile Criminal Alien Teams, and Joint Criminal Alien Response Teams; the bulk of these were Fugitive Operations Team arrests. About 7-10 percent of arrests could not be coded as “criminal justice system” or “at-large” arrests because they were coded as “detained docket,” “nondetained docket,” or using other terms that could not easily be classified. Arrests are coded based on the permanent responsibilities of the arresting officer, and officers are often detailed from other responsibilities to assist with at-large arrests during major operations, or to CAP arrests during CAP surges in federal, state, or local facilities. As a result, the assignment of arrests to the different ICE programs is necessarily imprecise.

<sup>77</sup> Rosenblum and Kandel, *Interior Immigration Enforcement*, 25.

**Figure 3. ICE ERO Arrests by Type, 2013 through 2017\***

\* The yearly period spans January 20 through June 3.

*Notes:* “Criminal justice system” arrests are those conducted by Criminal Alien Program (CAP) and 287(g) officers. “At-large” arrests are those conducted by officers assigned to Fugitive Operations Teams (FOTs), Violent Criminal Alien Sections, Law Enforcement Area Response Units, Mobile Criminal Alien Teams, and Joint Criminal Alien Response Teams. “Other” arrests could not be coded; these programs included Alternatives to Detention, Detained Docket Control, Detention and Deportation, Juvenile, and Nondetained Docket. Arresting programs are coded based on which officers entered the arrest data, and officers from one program may have been assigned to assist in arrests in another program, leading to imprecision in program coding. January 20 through June 3, 2017 represent the first 135 days of the Trump administration; June 3 is the last date for which ICE provided data.

*Source:* Migration Policy Institute (MPI) analysis of ICE, Enforcement and Removal Operations (ERO) administrative arrest data received June 28, 2017 via *Freedom of Information Act* (FOIA) request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751.

## B. Varying Cooperation Affects Arrest Trends by ICE Field Office

ICE’s significant reliance on criminal justice system arrests means that state and local policies have strongly affected arrest trends. For instance, California accounted for a declining share of ICE arrests from FY 2013 to FY 2017, due to the TRUST Act, TRUTH Act, and county policies ending compliance with ICE detainers that were adopted during this period. From FY 2013 to FY 2017, the share of arrests made by the three California ICE offices (Los Angeles, San Francisco, and San Diego) dropped from 23 percent of the national total to 14 percent (see Figure 4). In absolute numbers, arrests in both the Los Angeles and San Francisco offices plummeted by about two-thirds over this period, with arrests in San Diego falling slightly more than the 35 percent average decline for ICE offices nationwide (see Table 2). Arrests by the California offices fell most sharply between FY 2013 and FY 2015, as the California TRUST Act and narrower national enforcement priorities went into effect and all California counties stopped complying with most ICE detainers. The New York office also saw a relatively steep drop over the FY 2013-15 period, when New York City policies limiting ICE cooperation went into effect; there were fewer than half as many arrests in FY 2017 as in FY 2013.<sup>78</sup>

By contrast, the share of arrests made by Texas ICE offices increased during a time when almost all major jurisdictions covered by these offices fully cooperated in immigration enforcement.<sup>79</sup> The four Texas ICE offices (Dallas, Houston, San Antonio, and El Paso) saw their share of overall ICE arrests increase from 25 percent to 28 percent between FY 2013 and FY 2017. The number of arrests by the Dallas and Houston

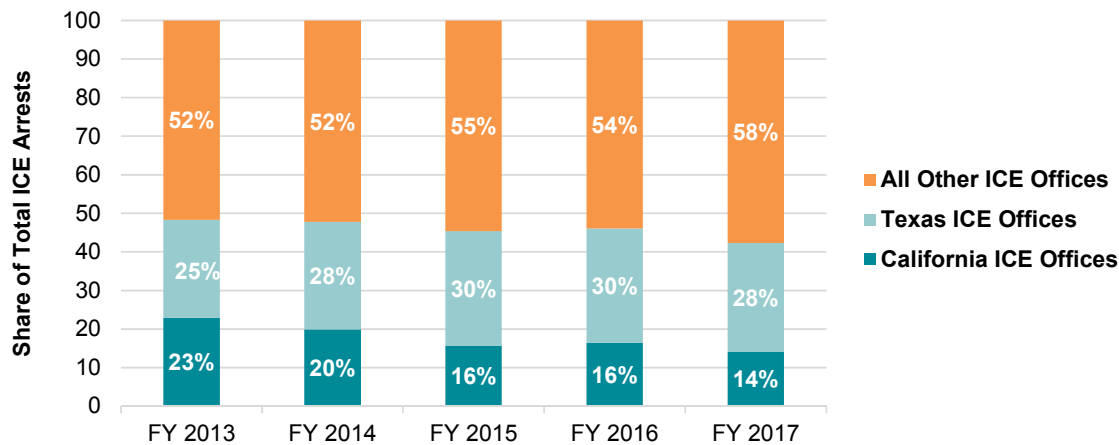
<sup>78</sup> The New York office covers many suburban New York jurisdictions, some of which fully cooperate with ICE, so the office’s arrests trends are not entirely driven by New York City.

<sup>79</sup> Beyond covering areas in Texas, the Dallas office covers Oklahoma and the El Paso office spans New Mexico.



offices dropped from FY 2013 through FY 2016, but then rose again the following year to a level that was comparable to FY 2013. San Antonio and El Paso, smaller offices, had substantially fewer arrests in FY 2017 than FY 2013—but this could be because both offices cover large sections of the U.S.-Mexico border, where apprehensions dropped significantly. Other than Travis County (Austin), no major jurisdiction in Texas or Oklahoma limited compliance with detainers or any other form of cooperation with ICE during the first half of 2017, though there were limitations on ICE cooperation in some New Mexico jurisdictions, particularly Bernalillo County (Albuquerque).<sup>80</sup>

**Figure 4. Share of Nationwide ICE ERO Arrests by California, Texas, and Other Field Offices, FY 2013-17**



*Notes:* FY 2017 includes approximately four months of the Obama administration (October 2016 through January 2017) as well as eight months of the Trump administration.

*Sources:* For FY 2013 through FY 2016 numbers, MPI analysis of ICE ERO administrative arrest data received June 28, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751; for FY 2017, Kristen Bialik, “ICE Arrests Went Up in 2017, with Biggest Increases in Florida, Northern Texas, Oklahoma,” Pew Research Center Fact Tank blog, February 8, 2018, [www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/](http://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/).

Focusing on just FY 2016 and FY 2017, the biggest increases in ICE arrests occurred in the Miami, Dallas, St. Paul, New Orleans, and Atlanta field offices.<sup>81</sup> In four of these offices—except for St. Paul—all the major jurisdictions fully cooperated with ICE during most of FY 2017. Miami-Dade County had policies limiting ICE cooperation during 2013-2016, but just days after the Trump inaugural, Miami-Dade County Mayor Carlos Gimenez ordered Miami-Dade jails to honor ICE detainer requests.<sup>82</sup> After this policy change, the jails transferred 436 people into ICE custody during 2017, an average of more than one per day.<sup>83</sup> Some of the increase in arrests for the Miami and Atlanta offices may be due to increased activity in major urban or suburban jurisdictions with 287(g) agreements such as Collier County, Florida (west of Miami); Gwinnett and Cobb counties (suburban Atlanta), Georgia; and Mecklenburg (Charlotte) and Wake (Raleigh) counties, North Carolina.

All 24 ICE ERO field offices conducted more arrests during FY 2017 than during the prior year. The field offices cover different-sized areas: some included in this study—Chicago and New Orleans—encompass

<sup>80</sup> Travis County rescinded its noncooperation policy in August 2017, after Texas enacted SB 4.

<sup>81</sup> FY 2016 was the last full year of the Obama administration, while FY 2017 was split between administrations, with October 1, 2016 through January 19, 2017 occurring during the Obama administration, and January 20 through September 30, 2017 in the Trump administration. Data for FY 2017 were obtained from Pew Research Center and could not be adjusted to match the Trump administration period in FY 2017. See Kristen Bialik, “ICE Arrests Went Up in 2017, with Biggest Increases in Florida, Northern Texas, Oklahoma,” Pew Research Center Fact Tank blog, February 8, 2018, [www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/](http://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/).

<sup>82</sup> In August 2017, the Department of Justice sent a letter certifying that the city had complied with federal detainer policies. See Douglas Hanks, “Miami-Dade Complied with Trump to Change Its ‘Sanctuary’ Status. It Worked,” *Miami Herald*, August 7, 2017, [www.miamiherald.com/news/local/community/miami-dade/article165837497.html](http://www.miamiherald.com/news/local/community/miami-dade/article165837497.html).

<sup>83</sup> Douglas Hanks, “Sanctuary No More: Feds Seize 1 Immigration Detainee per Day from Miami-Dade Jails,” *Miami Herald*, January 3, 2018, [www.miamiherald.com/news/local/community/miami-dade/article192652294.html](http://www.miamiherald.com/news/local/community/miami-dade/article192652294.html).





several states, while others—Los Angeles, Houston, and New York—are focused primarily on single metropolitan areas with large immigrant populations.<sup>84</sup>

**Table 2. ICE ERO Arrests by Field Office, FY 2013-17**

Area of Responsibility	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Change in Arrests from 2016 to 2017 (%)	Change in Arrests from 2013 to 2017 (%)
Dallas	16,021	13,231	8,229	9,635	16,520	71	3
Houston	13,984	16,362	13,991	12,948	13,565	5	-3
Atlanta	17,709	14,559	10,094	8,870	13,551	53	-23
Chicago	12,045	10,152	6,972	7,056	8,604	22	-29
San Antonio	25,773	18,793	11,369	8,436	8,510	1	-67
Los Angeles	25,198	18,983	8,739	7,717	8,419	9	-67
New Orleans	9,196	7,434	5,247	5,182	7,968	54	-13
San Francisco	20,803	10,822	6,146	6,652	7,231	9	-65
Phoenix	11,118	8,540	7,225	5,389	6,457	20	-42
Miami	11,441	8,538	4,855	3,532	6,192	75	-46
Salt Lake City	6,235	5,141	4,420	4,641	5,177	12	-17
Philadelphia	4,983	4,948	4,061	3,674	4,938	34	-1
San Diego	7,228	6,801	3,964	3,704	4,551	23	-37
St. Paul	5,567	3,704	2,378	2,502	4,175	67	-25
Washington	5,708	4,788	3,155	2,887	4,163	44	-27
Detroit	5,446	4,609	2,590	2,248	3,409	52	-37
Seattle	7,192	4,722	2,980	2,700	3,376	25	-53
Newark	4,464	3,953	2,545	2,249	3,189	42	-29
Boston	3,960	2,858	1,803	1,861	2,834	52	-28
Denver	4,910	3,317	2,351	2,284	2,746	20	-44
New York City	5,646	4,942	2,369	1,849	2,576	39	-54
El Paso	3,329	2,791	1,929	1,637	1,892	16	-43
Baltimore	2,579	2,125	1,117	1,240	1,666	34	-35
Buffalo	1,717	1,527	1,202	1,174	1,494	27	-13
<b>Total</b>	<b>232,287</b>	<b>183,703</b>	<b>119,772</b>	<b>110,104</b>	<b>143,470</b>	<b>30</b>	<b>-38</b>

Notes: FY 2017 includes approximately four months of the Obama administration and eight months of the Trump administration. The ICE ERO offices visited for the study are shaded.

Sources: For FY 2013 through FY 2016 numbers, MPI analysis of ICE ERO administrative arrest data received June 28, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751; for FY 2017, Bialik, "ICE Arrests Went Up in 2017."

<sup>84</sup> Among the seven ICE ERO field offices included in the study, Chicago covers the largest area: the states of Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and Wisconsin. New Orleans covers five states: Alabama, Arkansas, Louisiana, Mississippi, and Tennessee (including study sites of Memphis and Nashville). The Houston office covers about one-quarter of Texas (the Houston metropolitan area and other areas in the South and East of the state), and the Los Angeles office covers the Los Angeles metropolitan area (including the Orange County study site) but not much more. The New York office covers New York City, Long Island, and other New York suburbs, while the Washington office covers Washington, DC, and all of Virginia (including the study sites of Fairfax and Prince William counties). For a full list of the field offices and their areas of responsibility, see ICE, "Enforcement and Removal Operations Field Offices," updated October 30, 2014, [www.ice.gov/contact/ero](http://www.ice.gov/contact/ero).



### C. ICE Arrests by Gender and Origin Country

The demographics of those arrested by ICE have remained consistent, with men comprising more than 90 percent of arrests in each year 2013 through 2017, and Mexicans and Central Americans accounting for between 85-87 percent of arrests during this period.<sup>85</sup> The gender and origin breakdowns were similar in the Bush and early Obama administrations.<sup>86</sup> Despite widespread media reports of ICE arresting non-Latin American nationalities—such as the arrests of Somalis, Indonesians, Iraqis, and Cambodians discussed later in the report—the data do not show a disproportionate increase in arrests of non-Mexican, non-Central American nationals during the Trump administration.

### D. Trends in Use of Detainers at the County Level

The preceding analysis of ICE arrest data indicates broad geographic variations in ICE enforcement activity, with arrests shifting away from California and toward Texas and the Southeast. But the publicly available data do not provide enough geographic detail to analyze arrests at the local level. To measure local-level enforcement patterns, MPI obtained unique data on detainers: requests to hold people an extra 48 hours based on immigration charges. The detainer data obtained via FOIA from ICE included three useful measures: (1) detainer requests issued to federal or state prisons, or local jails; (2) detainers that resulted in “book-ins,” i.e., people taken into ICE custody from prisons and jails; and (3) detainers issued by ICE but declined by the law enforcement agencies that received them. These data were obtained for the first 104 days of the Trump administration—January 20 through May 4, 2017—and for prior years 2013 through 2016—and were tallied by county for the counties with the most detainers issued.<sup>87</sup>

#### I. Detainer Issuance Nationwide

The number of detainers issued during the first 104 days of the new administration was substantially higher (70 percent) than the number issued during the comparable period in 2016: 45,000 versus 27,000 (see Table 3).<sup>88</sup> According to more recent data released by ICE, the agency issued 112,493 detainers for January 20 through September 30, 2017, up 81 percent versus the same period in 2016.<sup>89</sup> The number of detainers issued nationwide in the first 104 days of the Trump administration in 2017, however, was still 27 percent below the number issued during the same period in 2013.

#### 2. Detainer Issuance in the Largest U.S. Counties

The number of detainers issued generally tracked the size of unauthorized population in the largest jurisdictions. Los Angeles County and Harris County (Houston)—the two counties with the most

<sup>85</sup> The Mexican share of arrests fell slightly from the 66 percent recorded during the January 20 through June 3, 2013 period, to 62 percent during January 20 through June 3, 2016, while the share from the three Northern Triangle countries of El Salvador, Guatemala, and Honduras rose from 20 to 24 percent.

<sup>86</sup> During FY 2003-13, 94 percent of interior removals were men, and 83 percent were nationals of Mexico or the Northern Triangle. See Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion, Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), 11, [www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change](http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change).

<sup>87</sup> Detainer data were not available for the full 2017 fiscal year; ICE provided MPI with data only through May 4, 2017. For simplicity, the team identified the individual facilities with the most detainers issued over the period for which MPI received data: January 1, 2013 through May 4, 2017 (usually county jails), and then tallied up detainers across all facilities in the same county as those facilities (including local police departments), to develop county-level estimates. County totals include all local jails, whether operated by the county or by cities within the county. City and county jails had multiple, and in some cases incomplete, codes in the data and are recoded as completely as possible given the information available to the researchers. New York City includes all facilities in the five boroughs. Federal and state detention facilities are excluded from the list but are included in the nationwide total. The top federal and state facilities for detainer issuance during 2013 through the first 104 days of the Trump administration in 2017 were: Arizona Department of Corrections, Alhambra Reception Center in Phoenix; U.S. Bureau of Prisons, GEO Group Flightline Unit in Big Spring, Texas; U.S. Bureau of Prisons, Management and Training Company, Gils W. Dalby Correctional Facility in Post, Texas; U.S. Bureau of Prisons, CCA Eden Correctional Institution in Eden, Texas; U.S. Bureau of Prisons, C.I. Willacy Correctional Institution, in Raymondville, Texas; and U.S. Bureau of Prisons, GEO Group, D. Ray James Correctional Facility in Folkston, Georgia.

<sup>88</sup> More than one detainer may be issued for an individual; for instance, if that person is first booked into a local jail and then transferred to a state prison or another local facility. Detainers may also be issued by both local ICE ERO offices and the Law Enforcement Support Center (LESC) or another remote facility that identifies removable immigrants via Secure Communities using their fingerprint data.

<sup>89</sup> ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report.”



unauthorized immigrants—had the greatest number of detainers issued over the 2013-17 period, followed by Maricopa County (Phoenix), Dallas County, Gwinnett County (in the Atlanta suburbs), and New York City. Cook County (Chicago), however, was much further down the list despite having the third-largest unauthorized population among counties (or fourth if the five counties comprising New York City were combined). Policies limiting ICE cooperation in Chicago and Cook County, among the strictest in the country, likely mean that the agency issues fewer detainers there, because ICE is unable to interview anyone in local jails and therefore must rely entirely on biometric information from Secure Communities. Local policing policies that prevent more people from being booked into jail in the first place could also affect detainer issuance there. In contrast, Gwinnett County has a relatively small unauthorized population, ranking 28<sup>th</sup> among all counties, but it ranks fifth in the number of detainers issued by ICE.<sup>90</sup> The data suggest that unauthorized immigrants are disproportionately being identified as removable in Gwinnett County, perhaps due to a high prevalence of being arrested for driving without a license and other traffic violations.

Detainer issuance rose from 2016 to 2017 in every major U.S. county except for Tulsa, Oklahoma, and Webb (Laredo), Texas. The most rapid increases were in Oklahoma County (Oklahoma City), New York City, and Gwinnett County—all three from very low levels in 2016. (Despite the relatively large increase in detainers issued in New York from 2016 to 2017, the number issued in 2017 was still less than half the 2013 total.) The rapid increase in detainer issuance in Gwinnett County again corresponds with reports of increasing numbers of immigrants pulled over by the police there for driving infractions and booked into the county jail.<sup>91</sup>

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*Gwinnett County has a relatively small unauthorized population, ranking 28th among all counties, but it ranks fifth in the number of detainers issued by ICE.*

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Detainer issuance grew more slowly in most of the major California counties, particularly Orange County (just 7 percent). Under the TRUTH Act, implemented in January 2017, immigrants in local jails must consent before ICE officers—or 287(g) officers in the case of Orange County—can interview them.<sup>92</sup> If an inmate declines to be interviewed by ICE under the TRUTH Act, then an ICE officer may not be able to establish the probable cause for removal necessary to issue a detainer and take him or her into custody. Indeed, Orange County officials reported that many people detained there had refused to give their consent to interviews at the time of the MPI visit in July 2017. However, this would only reduce the number of detainers issued by Orange County’s 287(g) officers, not those issued by ICE via Secure Communities, which does not require an interview and therefore does not require detainees’ consent.

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90 MPI Data Hub, “Unauthorized Immigrant Population Profiles,” national and county estimates.

91 Vivian Yee, “Please, God, Don’t Let Me Get Stopped”: Around Atlanta, No Sanctuary for Immigrants,” *The New York Times*, November 25, 2017, [www.nytimes.com/2017/11/25/us/atlanta-immigration-arrests.html?r=0](http://www.nytimes.com/2017/11/25/us/atlanta-immigration-arrests.html?r=0).

92 State of California, *Transparent Review of Unjust Transfers and Holds (TRUTH) Act*, AB2790.

**Table 3. Immigration Detainer Issuance by Top 25 Counties, 2013-17\***

County	2013	2014	2015	2016	2017	Change in Detainer Issuance from 2016 to 2017 (%)	Change in Detainer Issuance from 2013 to 2017 (%)
Los Angeles County	2,881	2,917	1,751	1,369	2,302	68	-20
Harris County	1,474	1,239	545	652	1,330	104	-10
Maricopa County	1,589	1,216	1,088	381	973	155	-39
Dallas County	845	918	460	498	841	69	0
Gwinnett County	640	558	165	150	746	397	17
New York City	1,475	1,247	117	110	626	469	-58
Hidalgo County	789	647	481	361	622	72	-21
Orange County	1,145	839	565	560	599	7	-48
Clark County	406	383	274	356	566	59	39
San Diego County	547	506	422	200	443	122	-19
Oklahoma County	247	310	80	43	321	647	30
Salt Lake County	195	227	208	201	306	52	57
Travis County	805	530	368	242	285	18	-65
Bexar County	607	348	254	155	263	70	-57
Collier County	277	278	116	89	257	189	-7
Ventura County	272	196	326	227	249	10	-8
Wake County	267	255	81	99	206	108	-23
Riverside County	581	295	282	163	197	21	-66
Prince William County	279	252	110	160	186	16	-33
Dade County	594	302	42	88	181	106	-70
Alameda County	374	431	115	133	171	29	-54
Cook County	434	322	57	73	156	114	-64
Tulsa County	241	223	196	139	134	-4	-44
Kern County	384	207	176	85	96	13	-75
Webb County	350	226	153	92	84	-9	-76
<b>Nationwide</b>	<b>63,901</b>	<b>49,987</b>	<b>28,206</b>	<b>26,550</b>	<b>45,099</b>	<b>70</b>	<b>-29</b>

\* The period covered is January 20 through May 4 of each year, the first 104 days of the Trump administration and the final date for which ICE provided data.

*Notes:* The data displayed here are sorted by the counties with the most detainees issued during January 1, 2013 through May 4, 2017. County totals include all local jails, whether operated by the county or by cities within the county; city and county jails had multiple and, in some cases, incomplete codes in the data and are recoded as completely as possible given the information available to the researchers. Federal and state detention facilities are excluded from the list but are included in the nationwide total. The counties visited for the study are shaded.

*Source:* MPI analysis of ICE ERO detainees received August 3, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-26209.



### 3. ICE Book-Ins via Detainers

Only a small share of detainers resulted in someone being taken into custody.<sup>93</sup> Between January 20 and May 4, 2017, just 33 percent of detainers (15,000 out of 45,000) resulted in someone being “booked into (ICE) detention” (see Table 4).<sup>94</sup> In other words, ICE issued detainers about three times as often as it transferred people into agency custody. Detainers may not have led to book-ins either because the person on whom the detainer was placed was still serving a jail or prison sentence and would be transferred to ICE in the future, because the local jurisdiction did not honor the detainer and the person was released, or because ICE did not physically take custody of the person for other reasons such as staffing or transportation limitations. The trends shown in Table 4 reflect all three factors.

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*ICE issued detainers about three times as often as it transferred people into agency custody.*

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In some prior years greater shares of detainers resulted in a higher rate of book-ins: 46 percent in 2016, 43 percent in 2014, and 41 percent in 2013; in 2015, however, the share was the same as in 2017: 33 percent. The 2017 data reflect detainers placed in earlier years (on people whose state and local sentences ended in 2017), as well as the increasing placement of detainers on people whose sentences both began and ended in 2017.<sup>95</sup>

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<sup>93</sup> In the ICE ERO administrative data, individuals were not booked into ICE custody for several reasons including: case closed, detainer declined by law enforcement agency, died, early release, lifted (case reprocessed, lack of funds, lack of space, or other reasons), not subject to deportation, prosecutorial discretion, transferred, and U.S. citizen. Additionally, many detainers did not result in ICE book-ins because individuals were still serving their federal, state, or local sentences when ICE produced the data.

<sup>94</sup> ICE has not published nor provided via FOIA more recent data on ICE book-ins via detainers. The 2017 ICE enforcement report provides total ICE book-ins, but these include book-ins from CBP and ICE arrests as well as state and local law enforcement agencies, so are not comparable to the data presented here. See ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 9.

<sup>95</sup> Detainers are issued just after individuals are booked into local or state custody, which may be a long time before they are taken into ICE custody, depending on the lengths of their state or local criminal sentences; as a result, some detainers issued during one year could result in an ICE arrest in a different year. This problem is most acute for detainers issued in 2017, because the exposure to completing a jail or prison sentence is much shorter for individuals initially arrested and booked into the criminal justice system in 2017 than in prior years.

**Table 4. ICE Book-Ins Resulting from Detainers by County (Top 25 Counties), 2013-17\***

County	2013	2014	2015	2016	2017	Change in Book-Ins from 2016 to 2017	Change in Book-Ins from 2013 to 2017
						(%)	(%)
Maricopa County	765	819	520	268	644	140	-16
Harris County	58	332	169	401	641	60	1005
Dallas County	448	425	196	379	514	36	15
Los Angeles County	499	945	419	405	353	-13	-29
Clark County	107	179	40	207	319	54	198
Hidalgo County	47	139	85	158	264	67	462
San Diego County	314	68	212	134	261	95	-17
Oklahoma County	92	139	33	23	182	691	98
Collier County	193	216	68	59	166	181	-14
Gwinnett County	414	346	91	44	153	248	-63
Salt Lake County	77	159	78	143	124	-13	61
Wake County	168	115	26	72	124	72	-26
Bexar County	91	178	64	95	116	22	27
Prince William County	223	187	9	114	116	2	-48
Ventura County	162	56	14	137	110	-20	-32
Tulsa County	40	75	94	86	88	2	120
Dade County	291	8	4	8	68	750	-77
Orange County	885	256	203	241	48	-80	-95
Riverside County	325	78	68	46	44	-4	-86
Alameda County	294	41	18	58	43	-26	-85
New York City	756	529	13	36	29	-19	-96
Travis County	83	332	72	160	28	-83	-66
Kern County	312	83	23	35	27	-23	-91
Webb County	59	37	27	26	17	-35	-71
Cook County	59	30	14	19	10	-47	-83
<b>Nationwide</b>	<b>26,481</b>	<b>21,258</b>	<b>9,498</b>	<b>12,258</b>	<b>14,734</b>	<b>20</b>	<b>-44</b>

\* The period covered is January 20 through May 4 of each year, the first 104 days of the Trump administration and the final date for which ICE provided data.

*Notes:* Declined detainers represent only a subset of the number of detainers that did not result in individuals going into ICE custody, and the researchers could not determine how often local law enforcement agencies refused to transfer people into ICE custody without formally declining a detainer. The data displayed here include the 25 counties with the most detainers issued during the period reviewed, sorted by the number of detainers resulting in ICE custody. County totals include all local jails, whether operated by the county or by cities within the county; city and county jails had multiple and, in some cases, incomplete codes in the data and are recoded as completely as possible given the information available to the researchers. Federal and state detention facilities are excluded from the list but are included in the nationwide total. More than one detainer may be issued for the same individual. The counties visited for the study are shaded.

*Source:* MPI analysis of ICE ERO detainers received August 3, 2017, via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-26209.



The nationwide increase in ICE book-ins via detainers (20 percent) from 2016 to 2017 was far below the 70 percent increase in detainer issuance. ICE issued far more detainers early in the Trump administration than in the latter Obama years, presumably because of the new administration's broader enforcement priorities. Yet ICE arrests and book-ins did not keep pace with detainer issuance due in part to agency resource constraints and state and local policies limiting ICE cooperation. Another key reason is the lag between detainer issuance and release to ICE custody while the criminal justice process, including the completion of any sentence (which could last many years), is concluded. Thus, while ICE requests for state and local jurisdictions to hold people increased dramatically, these requests did not result in nearly as large an increase in transfers into ICE custody. Moreover, over the longer period for which MPI obtained data (2013 to 2017) the drop in ICE book-ins exceeded the decline in detainer issuance (44 percent versus 29 percent).

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*While ICE requests for state and local jurisdictions to hold people increased dramatically, these requests did not result in nearly as large an increase in transfers into ICE custody.*

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#### 4. ICE Book-Ins in the Largest Counties

Book-ins resulting from ICE detainers show different local trends than detainers issued, with substantial declines in some counties and increases in others. The number of book-ins declined from 2016 to 2017 in most of the largest California counties: Los Angeles, Ventura, Orange, Riverside, Alameda, and Kern. (San Diego County, along the U.S.-Mexico border, was an exception.) Among the counties with the largest volumes of detainers, Orange County had the second steepest decline in ICE book-ins due to detainers among the major counties (80 percent). The biggest plunge in book-ins (83 percent) occurred in Travis County, which implemented a strict noncooperation policy on January 20, 2017. The county's noncooperation policy was withdrawn in August 2017, however, as Texas implemented SB 4, which withholds state funding from and threatens criminal penalties against officials in counties not fully cooperating with ICE. More recent data would likely show a steep increase in Travis County book-ins after August.

These decreases in book-ins from county jails occurred even though the Trump administration broadened its enforcement priorities.

In early 2017, Miami-Dade County had the greatest percentage increase in book-ins, likely because the county dropped its prohibitions on ICE cooperation at the end of January, under federal and state pressure.<sup>96</sup> Indeed, the media reported that Miami-Dade jails transferred 11 people into ICE custody during the first week after the county's detainer policy changed.<sup>97</sup> The next largest increases were in Oklahoma, Gwinnett, Collier, and Maricopa counties; Collier (a suburb of Miami) and Gwinnett both operate 287(g) programs.

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<sup>96</sup> Miami-Dade County was the largest county in the United States to drop a noncooperation policy since the start of the Trump administration. Its policy was passed in 2013 and went into effect at the beginning of 2014, in the form of a Board of Supervisors resolution saying that the Department of Corrections had the discretion to decide to honor detainer requests only if the federal government agreed in writing to reimburse all funds the county had to spend to comply with the detainer. The day after President Trump issued his executive order threatening to withhold federal grants from noncooperating jurisdictions, the Mayor of Miami, who has jurisdiction over the Department of Corrections, wrote a memo ending this policy. See Miami-Dade County, Florida, *Resolution Directing the Mayor or Mayor's Designee to Implement Policy on Responding to Detainer Requests from the United States Department of Homeland Security Immigration and Customs Enforcement*, Legislative Item, File No. 132196, December 3, 2013, [www.miamidade.gov/govaction/matter.asp?matter=132196&file=false&yearFolder=Y2013](http://www.miamidade.gov/govaction/matter.asp?matter=132196&file=false&yearFolder=Y2013); Memorandum from Carlos Gimenez, Mayor of Miami-Dade County, to Daniel Junior, Interim Director, Corrections and Rehabilitation Department, *Executive Order: Enhancing Public Safety in the Interior of the United States*, January 26, 2017, [https://media.local10.com/document\\_dev/2017/01/26/Executive%20Order%20-%20Enhancing%20Public%20Safety%20in%20the%20Interior%20of%20the%20United%20States\\_1485471118817\\_8889239\\_ver1.0.pdf](https://media.local10.com/document_dev/2017/01/26/Executive%20Order%20-%20Enhancing%20Public%20Safety%20in%20the%20Interior%20of%20the%20United%20States_1485471118817_8889239_ver1.0.pdf).

<sup>97</sup> Douglas Hanks, "Miami-Dade Turned Over 11 People to Immigration Authorities in Week under New Policy," *Miami Herald*, February 3, 2017, [www.miamiherald.com/news/local/community/miami-dade/article130688064.html](http://www.miamiherald.com/news/local/community/miami-dade/article130688064.html).



Very few people were taken into custody via detainers in two of the nation's largest cities—New York and Chicago (Cook County)—during the first 104 days of the Trump administration: 29 and 10, respectively. These are two of the cities with the strictest noncooperation policies nationally (see Appendix for a comprehensive assessment of policies towards ICE by the jurisdictions that were studied for this report). Moreover, because the detainer data do not permit identification of the *last* facility in which people were located, it is possible that most were taken into ICE custody from state prisons after being booked initially in New York or Chicago, rather than directly from local jails. In January 2018, it was reported that ICE issued 1,400 detainers to the New York City Police Department during calendar 2017, and not a single person was taken into ICE custody directly.<sup>98</sup>

Limitations on ICE cooperation in California, New York, Chicago, and other major states and cities are part of the reason why nationwide ICE administrative arrests and interior deportations are still only about half the levels of 2010-11—and may never revert to earlier highs.

## 5. Declined Detainers

The number of detainers declined by state and local law enforcement agencies more than quadrupled between 2016 and 2017, rising from 422 to 1,972 during comparable 104-day periods (see Table 5). ICE similarly reported a large increase in declined detainers during January 20 through September 30, 2017, versus the same period in 2016: from 2,267 to 7,232.<sup>99</sup>

The increase in declined detainers has significantly affected ICE's ability to do its work: Publicly released ICE data for FY 2017 show that, nationwide only about 6 percent of noncitizens with detainers declined were rearrested after their release from state or local custody.<sup>100</sup> Still, declined detainers comprised a very small share of all detainers issued: just 4 percent (2,000 out of 45,000) in the first 104 days of the Trump administration.<sup>101</sup> Local law enforcement agency noncompliance with detainers is understated because the ICE data do not identify every case in which an agency refuses to honor a detainer. It is possible, even likely, that many jurisdictions failed to honor detainers without officially declining them.

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*Nationwide only about 6 percent of noncitizens with detainers declined were rearrested after their release from state or local custody.*

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It is also worth noting that the number of declined detainers fell about 90 percent between 2014 and 2016 (from over 4,000 to just over 400), as the Obama administration replaced the increasingly controversial Secure Communities with the more tailored PEP program. During this period, ICE negotiated arrangements with many local jurisdictions that allowed them to respond to requests for notifications instead of detainers and to set different enforcement priorities (sometimes narrower, sometimes broader) than the national ones. When the Trump administration rescinded PEP and reinstated Secure Communities along with broader enforcement priorities, some of the jurisdictions that had negotiated the terms for responding to detainers and notification requests under the Obama administration began receiving detainers for cases that did not match state or local priorities and declined them, leading to a substantial increase in declines nationwide.

98 Mira Wassef, "NYC Immigrant Arrests Spike, as Critics Point to 'Trump Effect,'" Staten Island Real-Time News, January 29, 2017, [www.silive.com/news/2018/01/the\\_trump\\_affect--\\_nyc\\_immigra.html](http://www.silive.com/news/2018/01/the_trump_affect--_nyc_immigra.html).

99 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report."

100 *Ibid.*, 9.

101 Prior research has also shown that very small shares of detainers were declined in past years, indicating that the number of declined detainers is only a partial proxy for noncooperation by city and county law enforcement agencies. See Transactional Records Access Clearinghouse (TRAC), "Has Cooperation by State and Local Law Enforcement Agencies Improved ICE's Apprehension Numbers?" TRAC Immigration, August 12, 2016, <http://trac.syr.edu/immigration/reports/433/>.





Declined detainees show a geographic pattern that is mostly consistent with local policies regarding ICE cooperation. Among the jurisdictions with the most detainees overall, New York City, Los Angeles County, Travis County (Austin), and Cook County (Chicago) declined the most the detainees during the early Trump months.<sup>102</sup> All four declined significantly more detainees in 2017 versus 2016, when few or no detainees were declined. High percentages of detainees were declined in the Trump administration period in three of these locations: 51 percent in Cook County, 46 percent in Travis County, and 43 percent in New York City (Compare Tables 3 and 5 for actual numbers).

Conversely, when PEP and the Obama administration’s narrower enforcement priorities were implemented, declined detainees in Los Angeles County, Cook County, and New York City fell substantially from 2014 through 2016. Declined detainees rebounded in 2017, though not to 2014 levels. In Travis County there were no declined detainees before 2017; in prior years, the county fully cooperated with ICE.

*Declined detainees show a geographic pattern that is mostly consistent with local policies regarding ICE cooperation.*

On the other hand, no detainees were declined during 2017 in the 287(g) counties of Gwinnett, Georgia; Collier, Florida; Prince William, Virginia; and Wake, North Carolina—with only a handful declined in earlier years. Most of the other counties with one or zero declined detainees were in fully cooperating jurisdictions in Texas or Oklahoma. In Orange County, there were small numbers of declined detainees with little variation from year to year, as 287(g) officers there complied with state policies limiting detainee compliance to individuals who had been convicted of more serious crimes.

**Table 5. Detainers Declined by Local Law Enforcement Agencies for Top 25 Counties, 2013-17\***

County	2013	2014	2015	2016	2017	Change in Declined Detainers from 2016 to 2017 (%)	Change in Declined Detainers from 2013 to 2017 (%)
New York City	318	374	49	11	267	2,327	-16
Los Angeles County	6	361	226	14	161	1,050	2,583
Travis County	0	0	0	0	130	N/A	N/A
Cook County	4	152	6	10	80	700	1,900
Maricopa County	0	1	3	0	63	N/A	N/A
Alameda County	1	357	29	6	35	483	3,400
Riverside County	1	59	20	0	31	N/A	3,000
Orange County	2	18	16	12	17	42	750
Dallas County	0	0	0	0	17	N/A	N/A
Dade County	11	197	19	42	7	-83	-36
Ventura County	1	33	247	5	3	-40	200
San Diego County	4	340	56	13	2	-85	-50
Clark County	0	15	65	45	2	-96	N/A
Oklahoma County	1	0	24	2	1	-50	N/A

<sup>102</sup> Santa Clara County (San Jose) declined more than 200 detainees, and San Francisco declined more than 80 during this period, but neither was among the top 25 counties in terms of total detainees issued, and so are not displayed in the table.

**Table 5. Detainers Declined by Local Law Enforcement Agencies for Top 25 Counties, 2013-17\* (cont.)**

County	2013	2014	2015	2016	2017	Change in Declined Detainers from 2016 to 2017 (%)	Change in Declined Detainers from 2013 to 2017 (%)
Hidalgo County	0	0	0	0	1	N/A	N/A
Kern County	2	87	29	1	0	-100	-100
Gwinnett County	1	5	0	0	0	0	-100
Collier County	1	1	0	0	0	0	-100
Prince William County	1	0	0	1	0	-100	-100
Wake County	0	1	1	0	0	0	0
Harris County	0	0	0	0	0	0	0
Salt Lake County	0	0	0	0	0	0	0
Bexar County	0	0	0	0	0	0	0
Tulsa County	0	0	0	0	0	0	0
Webb County	0	0	0	0	0	0	0
<b>Nationwide total</b>	<b>636</b>	<b>4,152</b>	<b>1,807</b>	<b>422</b>	<b>1,972</b>	<b>367</b>	<b>210</b>

\* The period covered is January 20 through May 4 of each year, the first 104 days of the Trump administration and the final date for which ICE provided data.

Notes: The data displayed here are for the 25 counties with the most detainers issued during January 20 through May 4, 2017, sorted by the number of detainers resulting in ICE custody. County totals include all local jails, whether operated by the county or by cities within the county; city and county jails had multiple and, in some cases, incomplete codes in the data and are recoded as completely as possible given the information available to the researchers. Federal and state detention facilities are excluded from the list but are included in the nationwide total. More than one detainer may be issued for the same individual. The counties visited for the study are shaded.

Source: MPI analysis of ICE ERO detainers received August 3, 2017, via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-26209.

## E. Trends in Removals from the Interior United States

Like ICE arrests, the number of removals from the U.S. interior also rose rapidly after the Trump inaugural. Removals from January 20 through September 30, 2017 jumped 37 percent compared to the same period the year before: from 44,512 to 61,094 (see Figure 5). But like arrests, interior removals in FY 2017 were less than half their levels during the early Obama administration,<sup>103</sup> when they exceeded 200,000 annually.<sup>104</sup>

Interior removals were substantially lower than arrests during all periods, as only some of those arrested are removed, while others obtain prosecutorial discretion or relief from immigration judges. There can also be a substantial lag between arrests and removals, as in most cases individuals must be ordered removed by an immigration judge before they can be deported. Due to the backlog in the immigration courts, which stood at 668,000 cases in December 2017, the removal process takes months in instances where ICE keeps the individual in detention and can take years if the individual is released from ICE detention, because immigration courts prioritize detained cases over nondetained cases.<sup>105</sup> But ICE can

<sup>103</sup> A pace of about 60,000 removals over eight months would translate to about 90,000 removals annually, assuming an even pace of activity across the year.

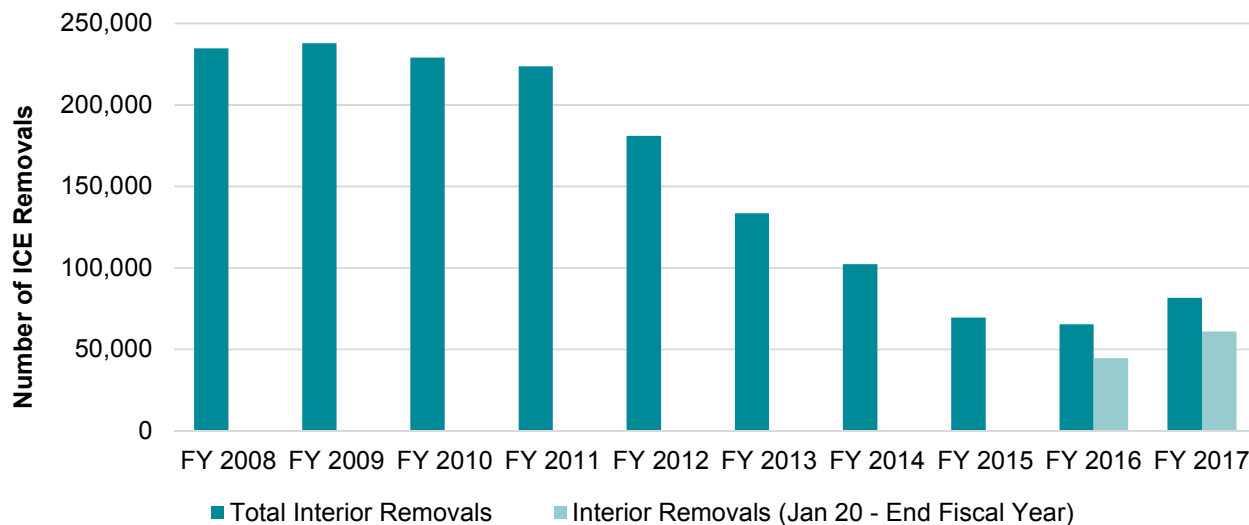
<sup>104</sup> ICE, "FY 2015 ICE Immigration Removals," updated June 22, 2017, [www.ice.gov/removal-statistics/2015](http://www.ice.gov/removal-statistics/2015).

<sup>105</sup> TRAC, "Immigration Court Backlog Tool: Pending Cases and Length of Wait by Nationality, State, Court, and Hearing Location," through December 2017, [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/).



more quickly remove immigrants who have already been ordered removed by an immigration judge or if they were removed before and returned illegally, because they do not have to get a new removal order from a judge.

**Figure 5. ICE Removals from the U.S. Interior, FY 2008-17**



*Notes:* January 20, 2017, was Inauguration Day for the Trump administration. The light teal bar for FY 2016 spans the same January 20 – September 30 period as for FY 2017 for comparison purposes.

*Sources:* ICE, “Fiscal year 2017 ICE Enforcement and Removal Operations Report,” 11-12; ICE, “FY 2015 ICE Immigration Removals.”

## IV. Changing ICE Arrest Patterns: New Targets, New Locations

The data described in the previous section show that ICE reliance on the cooperation of state and local law enforcement agencies greatly affects how many people the agency can take into custody directly from the criminal justice system. Transfers from the criminal justice system still comprise most ICE arrests (69 percent during the first four months of the Trump administration), but the share of those arrested by ICE officers in the community (at-large arrests) has been growing.

When conducting at-large operations, ICE is unconstrained by state and local policies. Compared with recent years, the agency is also substantially less constrained by federal enforcement priorities, which the President’s 2017 “Enhancing Public Safety in the Interior” executive order opened up to include immigrants convicted of any crime, those charged with a crime but not convicted, those committing a crime but not arrested (often applied to gang members), and those deemed by individual ICE officers to represent a public-safety threat. During the Trump administration, at-large arrest targets have still been mostly noncitizens with criminal convictions. But a substantial and growing number of targets do not have criminal records, and instead have immigration violations such as illegal re-entry or failure to comply with a removal order. Furthermore, during these operations, ICE can also arrest collaterals—bystanders who are not the targets of the operation and often have no criminal history or prior contact with the agency.

This section outlines trends in the numbers of at-large arrests and the criminality of those arrested. Departures from the recent years of the Obama administration are described in terms of the locations of arrests and characteristics of those arrested. The findings about qualitative changes in ICE arrests in this section are drawn from media reports and from MPI fieldwork.



## A. At-Large Arrests: A Growing Share of Overall Arrests

Even as overall ICE arrests during FY 2017 were about half their height in FY 2010-11—mostly due to limits on transfers from jails in California and other major jurisdictions—the number of arrests occurring as a result of ICE operations in the community was about 40,000, similar to peak years during the Obama administration (FY 2009-11) and up from about 30,000 in FY 2015 and FY 2016.<sup>106</sup>

Though small in number relative to criminal justice system arrests, these at-large arrests have netted a much broader segment of the unauthorized population, as well as some lawful permanent residents, and generated fear in immigrant communities. Statements by the administration have fueled the fear. As mentioned earlier, ICE Acting Director Homan suggested that all unauthorized immigrants should “look over their shoulders” and be “worried” about being arrested.<sup>107</sup> Widespread coverage of ICE’s activities, alongside occasional rumors of arrests that turned out to be true, have also added to the anxiety.

## B. Intensifying Arrests in Jurisdictions that Limit ICE Cooperation

Throughout 2017, ICE conducted major operations in cities that limit their cooperation with the agency, with accusations of retribution being leveled at ICE for these operations. While the term “sanctuary” is vague and has been defined differently by the administration and its opponents, several major cities have policies limiting cooperation with ICE. These include the study sites of Chicago, New York, and Los Angeles, as well as cities not visited such as Austin, Boston, Philadelphia, Seattle, and San Francisco.<sup>108</sup> During the period of MPI’s fieldwork—March through August 2017—ICE publicly maintained that it was not targeting such noncooperating jurisdictions for arrests. For instance, after the first major ICE operation of the Trump administration produced more than 680 arrests in February 2017, then-Homeland Security Secretary John Kelly stated: “ICE conducts these kind of targeted enforcement operations regularly and has for many years,” implying that agency targets had changed very little.<sup>109</sup>

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### *ICE acknowledged a policy of targeting arrests in sanctuary locations when it announced Operation Safe City.*

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During fieldwork, MPI researchers heard of several operations that appeared to be targeted to make a statement in these locations. For instance, there were two ICE operations within a mile of the home of a County Commissioner in Chicago, which Cook County government respondents said they took as a threat to local policies. In New York, advocates interpreted ICE press releases about arrests of people whom the city had released after ICE issued detainers as a warning to the city government and immigrant communities there.<sup>110</sup>

At the end of September, after MPI’s fieldwork was completed, ICE acknowledged a policy of targeting arrests in sanctuary locations when it announced Operation Safe City. The operation, which resulted in 498 arrests, explicitly targeted places “where ICE deportation officers are denied access to jails and

<sup>106</sup> ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 6.

<sup>107</sup> Elise Foley, “ICE Director to All Undocumented Immigrants: ‘You Need to Be Worried,’” Huffington Post, June 13, 2017, [www.huffingtonpost.com/entry/ice-arrests-undocumented\\_us\\_594027c0e4b0e84514eebfbe](http://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe).

<sup>108</sup> Austin and surrounding Travis County, Texas, dropped their ICE noncooperation policies after an appeals court upheld many provisions of Texas’ SB 4—which banned such policies—in September 2017.

<sup>109</sup> ICE, “Statement from Secretary Kelly on Recent ICE Enforcement Actions” (news release, February 13, 2017), [www.ice.gov/news/releases/statement-secretary-kelly-recent-ice-enforcement-actions](http://www.ice.gov/news/releases/statement-secretary-kelly-recent-ice-enforcement-actions).

<sup>110</sup> See ICE, “ICE Arrests Previously Removed Dominican National After New York City Declines to Honor ICE Detainer and Federal Felony Warrant” (news release, June 30, 2017), [www.ice.gov/news/releases/ice-arrests-previously-removed-dominican-national-after-new-york-city-declines-honor](http://www.ice.gov/news/releases/ice-arrests-previously-removed-dominican-national-after-new-york-city-declines-honor); ICE, “ICE Arrests Jamaican National Released on an Active Detainer” (news release, July 5, 2017), [www.ice.gov/news/releases/ice-arrests-jamaican-national-released-active-detainer](http://www.ice.gov/news/releases/ice-arrests-jamaican-national-released-active-detainer).



prisons to interview suspected immigration violators or jurisdictions where ICE detainers are not honored.”<sup>111</sup> These jurisdictions included Baltimore, Boston, Chicago, Los Angeles, New York, Philadelphia, Seattle, San Jose, and Washington, DC. Many of those arrested had misdemeanor charges; the most common charge was driving under the influence (DUI)—at 86 arrests—while 20 individuals had drug possession and related charges, and ten had “other” traffic offenses.<sup>112</sup>

ICE asserts that these operations target public-safety threats who are at large due to state and local limits on cooperation. In January 2018, Homan stated his preference to take people into custody directly from jails, where it is safer for his officers and others. He publicly acknowledged that in the absence of local cooperation ICE will continue to seek out people in their homes and neighborhoods, and arrests others in the community, many of whom lack criminal records.<sup>113</sup>

According to ICE officers participating in the study, at-large operations are relatively expensive and complex to conduct. From the viewpoint of some city officials and local immigrant communities, at-large operations often unnecessarily target people with low-level criminal offenses or those with removal orders but without any criminal offenses. These targets, they say, do not represent true public-safety threats and can lead to arrests of family members and bystanders.

### C. Arrests in Courthouses and Near Sensitive Locations

In efforts to rearrest individuals released from local custody, ICE has operated more frequently inside local courthouses. During 2017, there were multiple reports of ICE courthouse arrests and in January 2018, the ICE Director issued a directive that individuals with and without criminal charges could be targets of courthouse operations, given that courthouses are safe locations for ICE officers.<sup>114</sup> The directive states that family members and others accompanying targets should not be subject to arrest, effectively minimizing collateral arrests, subject to public-safety determinations of individual ICE officers. According to the directive, ICE will not conduct arrests in noncriminal settings such as family court or small claims court.

Crime victims and witnesses, while not named in the directive, have been arrested in recent ICE operations. For instance, in a widely noted and much-criticized action in February 2017, ICE arrested a transgender woman inside an El Paso courthouse while she was awaiting a hearing about her request for a protective order against an abusive ex-boyfriend.<sup>115</sup>

The practice of arresting immigrants in courthouses did not begin with the Trump administration, but the pace has increased in some locations. Between February and September 2017, for instance, ICE arrested 31 immigrants at courthouses in New York City, and ICE agents were present inside city courthouses at least 53 times during the same period, according to New York State Office of Court Administration data.<sup>116</sup> Across New York State, 53 arrests were made in courts, compared to 11 and 14 arrests in 2016 and 2015, respectively.<sup>117</sup> Comprehensive statistics on courthouse arrests were not available for other study sites.

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111 ICE, “ICE Arrests Over 450 on Federal Immigration Charges during Operation ‘Safe City’” (news release, September 28, 2017), [www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city](http://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city).

112 Driving under the influence (DUI) charges can be misdemeanors or felonies. Also arrested were 191 immigrants without criminal convictions, a group that included 68 with prior removal orders but who were never removed and 104 who had been deported before and re-entered illegally.

113 Roque Planas, “ICE Chief Will ‘Never Back Down’ from Telling Undocumented Immigrants to Be Afraid,” *Huffington Post*, January 31, 2017, [www.huffingtonpost.com/entry/ice-thomas-homan-immigrants-afraid\\_us\\_5a723134e4b09a544b562913](http://www.huffingtonpost.com/entry/ice-thomas-homan-immigrants-afraid_us_5a723134e4b09a544b562913).

114 ICE, “Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses,” January 10, 2018, [www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf](http://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf).

115 Jonathan Blitzer, “The Woman Arrested by ICE in a Courthouse Speaks Out,” *New Yorker*, February 21, 2017, [www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out](http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out).

116 Noah Hurowitz, “31 Immigrants Arrested by ICE Agents at Court Since February, Officials Say,” *DNAinfo*, September 25, 2017, [www.dnainfo.com/new-york/20170925/bed-stuy/ice-arrests-in-nyc-courthouses](http://www.dnainfo.com/new-york/20170925/bed-stuy/ice-arrests-in-nyc-courthouses).

117 Azi Paybarah, “Law Enforcement, Court Officials Differ on Impact of ICE Courthouse Arrests,” *Politico*, August 3, 2017, [www.politico.com/states/new-york/city-hall/story/2017/08/03/law-enforcement-court-officials-differ-on-impact-of-ice-courthouse-arrests-113781](http://www.politico.com/states/new-york/city-hall/story/2017/08/03/law-enforcement-court-officials-differ-on-impact-of-ice-courthouse-arrests-113781).



Court officials in several cities and states have criticized courthouse arrests because they can deter victims and witnesses from coming forward. In early 2017, according to study respondents, Cook County Commissioners ordered an investigation of the Sheriff's Office for colluding with ICE and providing detailed information about local court cases. The New York State Attorney General and Brooklyn District Attorney criticized courthouse arrests as including witnesses, victims of crime, and people charged with low-level offenses, and therefore discouraging these individuals from appearing in court.<sup>118</sup> In March 2017, California Supreme Court Justice Tani Cantil-Sakauye sent a letter to the Attorney General and Homeland Security Secretary criticizing courthouse arrests for generating fear and anxiety that might deter crime victims, victims of domestic violence and sexual assault, and witnesses from coming forward.<sup>119</sup> In March 2018, three legal advocacy groups asked the Massachusetts Supreme Judicial Court to enjoin ICE from arresting people in courthouses, or going to and from them.<sup>120</sup>

### Arrests Near Sensitive Locations such as Schools, Churches, and Hospitals

Study respondents reported that ICE's longstanding policy of not arresting people in "sensitive" locations such as schools, churches, and hospitals remained in place in the early months of the Trump administration, and they did not report any arrests inside these locations.<sup>121</sup> There were, however, several reports of arrests near sensitive locations.

In June 2017 ICE arrested several alleged gang members near a high school in Northern Virginia, after staking out the school's parking lot.<sup>122</sup> In Northern Virginia in February 2018, ICE arrested two men after they left a warming shelter in a church basement.<sup>123</sup> In July 2017 in Los Angeles, a widely publicized video showed a father being arrested by ICE after dropping off his daughter at school, while another daughter hid in the car and recorded the arrest with her cellphone. Reports say the arrest occurred six blocks from his daughter's school.<sup>124</sup> The media also reported the arrest of an unauthorized immigrant who had a DUI charge at a bus stop outside the main entrance of a Portland hospital. ICE officers claimed they had been unable to locate and arrest him elsewhere, and so had obtained authorization to make the arrest at the hospital.<sup>125</sup>

According to Acting ICE Director Homan:

*We don't arrest people at churches, hospitals, or schools. Do we arrest people near a school? Absolutely. ...When you're in New York City, Los Angeles, Chicago, chances are when you pull that car (driven by an immigrant) over, you're within a block or two of a school, or a church, or a hospital.*<sup>126</sup>

The study team did not hear reports of any arrests in or near schools, hospitals, or churches in the other study sites.

<sup>118</sup> Ibid.

<sup>119</sup> California Courts, "Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses" (news release, March 16, 2017), <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

<sup>120</sup> Shannon Dooling, "Advocates Ask SJC to Block Immigration Arrests at Mass. Courthouses," WBUR, March 15, 2018, [www.wbur.org/news/2018/03/15/blocking-arrests-at-courthouses](http://www.wbur.org/news/2018/03/15/blocking-arrests-at-courthouses).

<sup>121</sup> ICE, "FAQ on Sensitive Locations and Courthouse Arrests," updated June 13, 2017, [www.ice.gov/ero/enforcement/sensitive-loc](http://www.ice.gov/ero/enforcement/sensitive-loc).

<sup>122</sup> Armando Trull, "In Northern Virginia, Some Communities Want to Help Immigration Agents Make Deportations," WAMU, June 12, 2017, <https://wamu.org/story/17/06/12/northern-virginia-communities-want-help-immigration-agents-make-deportations/>.

<sup>123</sup> Julie Carey, "ICE Agents Arrest Men Leaving Fairfax County Church Shelter," WRC TV, February 15, 2017, [www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter-413889013.html](http://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter-413889013.html).

<sup>124</sup> Andrea Castillo, "L.A. Father Detained by ICE After Dropping Daughter at School May Be Deported," *Los Angeles Times*, July 31, 2017, [www.latimes.com/local/lanow/la-me-romulo-avelica-deportation-20170731-story.html](http://www.latimes.com/local/lanow/la-me-romulo-avelica-deportation-20170731-story.html).

<sup>125</sup> Katie Shepherd, "ICE Arrested an Undocumented Immigrant Just Outside a Portland Hospital," *Willamette Week*, October 31, 2017, [www.wweek.com/news/courts/2017/10/31/ice-arrested-an-undocumented-immigrant-just-outside-a-portland-hospital/](http://www.wweek.com/news/courts/2017/10/31/ice-arrested-an-undocumented-immigrant-just-outside-a-portland-hospital/).

<sup>126</sup> Speech by Thomas Homan, ICE Acting Director, at the Heritage Foundation, *Enforcing U.S. Immigration Laws: A Top Priority for the Trump Administration*, Washington, DC, October 17, 2017, [www.heritage.org/immigration/event/enforcing-us-immigration-laws-top-priority-the-trump-administration](http://www.heritage.org/immigration/event/enforcing-us-immigration-laws-top-priority-the-trump-administration).



ICE's sensitive locations policy has allowed some people to seek sanctuary in churches, a practice that goes back to the 1980s when large numbers of migrants from Central America sought refuge to avoid being deported back to civil wars in the region. More than 400 churches have declared themselves sanctuaries since the 2016 election. According to one report, 37 immigrants publicly took sanctuary in churches in 2017, up from five in 2016.<sup>127</sup> (MPI researchers did not hear of any such cases in the study sites.) For instance, a woman spent 86 nights in churches in Denver while her deportation case was being appealed; she was eventually granted a stay of deportation. Another woman spent six nights at a church in New Haven, Connecticut, before her stay was approved.<sup>128</sup> And a father spent almost a month in a church in Amherst, Massachusetts, after ICE officers arrested him and put an ankle bracelet on to track his whereabouts.

#### D. Arrests of Immigrants with Criminal Convictions

The majority of those arrested by ICE in the community have criminal convictions, though their share of total at-large arrests is falling. In FY 2017, 66 percent of at-large arrests had criminal convictions (26,466 out of 40,066), substantially lower than the 82 percent with criminal convictions in FY 2016 (24,850 out of 30,348).<sup>129</sup> Comparing these two years, the number with criminal convictions rose just 7 percent while the number without convictions rose 147 percent. The most serious criminal convictions for at-large arrests have not been published, and ICE did not respond to a FOIA request for these data; as a result, the seriousness of the criminal convictions of those arrested is not known.

ICE has, however, published periodic press releases detailing the criminal convictions of those arrested in specific at-large operations. These reports highlight serious cases, for instance in January through March 2018, ICE arrested:

- 89 noncitizens in Texas and Oklahoma, including individuals convicted of rape, sexual assault, and manufacturing/delivery of a controlled substance.<sup>130</sup>
- 115 noncitizens in San Diego and Imperial County, among them individuals convicted of grand theft and spousal abuse including battery.<sup>131</sup>
- 232 unauthorized immigrants in Northern California, including individuals convicted of involuntary manslaughter, assault with force, discharge of a firearm, and spousal abuse including battery.<sup>132</sup>
- 86 noncitizens in Texas and Oklahoma, including individuals convicted of assault with a deadly weapon, assaulting a child under 14, and manufacturing/delivery of methamphetamine.<sup>133</sup>
- 22 noncitizens in the Chicago area, including individuals convicted of criminal sexual assault, battery, and domestic assault.<sup>134</sup>

127 Myrna Orozco and Rev. Noel Anderson, *Sanctuary in the Age of Trump: Rise of the Movement a Year into the Trump Administration* (Elkhart, IN: Church World Service, 2018), [www.sanctuarynotdeportation.org/uploads/7/6/9/1/76912017/sanctuary\\_in\\_the\\_age\\_of\\_trump\\_january\\_2018.pdf](http://www.sanctuarynotdeportation.org/uploads/7/6/9/1/76912017/sanctuary_in_the_age_of_trump_january_2018.pdf).

128 Gabriella Borter, "More Churches Are Offering Sanctuary for Immigrants under Trump," Reuters, August 1, 2017, [www.reuters.com/article/us-usa-immigration-sanctuary/under-trump-more-churches-offer-sanctuary-but-few-see-refuge-idUSKBN1AH350](http://www.reuters.com/article/us-usa-immigration-sanctuary/under-trump-more-churches-offer-sanctuary-but-few-see-refuge-idUSKBN1AH350); Dusty Christensen, "A Sanctuary Life: Guatemalan Man Adjusts to Life in Amherst Church," *New Hampshire Daily Gazette*, November 6, 2017, [www.gazettenet.com/lucio-perez-sanctuary-13474030](http://www.gazettenet.com/lucio-perez-sanctuary-13474030).

129 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 7.

130 ICE, "ICE Arrests 89 in North Texas and Oklahoma Areas During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives" (news release, March 27, 2018), [www.ice.gov/news/releases/ice-arrests-89-north-texas-and-oklahoma-areas-during-3-day-operation-targeting](http://www.ice.gov/news/releases/ice-arrests-89-north-texas-and-oklahoma-areas-during-3-day-operation-targeting).

131 ICE, "ICE Operation in San Diego/Imperial Counties Results In 115 Arrests" (news release, March 16, 2018), [www.ice.gov/news/releases/ice-operation-san-diegoimperial-counties-results-115-arrests](http://www.ice.gov/news/releases/ice-operation-san-diegoimperial-counties-results-115-arrests).

132 ICE, "232 Illegal Aliens Arrested During ICE Operation in Northern California" (news release, March 1, 2018), [www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california](http://www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california).

133 ICE, "ICE Arrests 86 in North Texas and Oklahoma Areas During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives" (news release, January 26, 2018), [www.ice.gov/news/releases/ice-arrests-86-north-texas-and-oklahoma-areas-during-3-day-operation-targeting](http://www.ice.gov/news/releases/ice-arrests-86-north-texas-and-oklahoma-areas-during-3-day-operation-targeting).

134 ICE, "ICE Arrests 22 in Chicago Area During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives" (news release, January 10, 2018), [www.ice.gov/news/releases/ice-arrests-22-chicago-area-during-3-day-operation-targeting-criminal-aliens-and](http://www.ice.gov/news/releases/ice-arrests-22-chicago-area-during-3-day-operation-targeting-criminal-aliens-and).



Each major operation that ICE has launched during the Trump administration is discussed in a news release, and each release lists a number of individuals convicted of serious crimes such as those listed above. However, the number of people listed in each release for serious crimes is generally a small minority of the total arrested.

Similar operations were launched during the Obama administration, and press releases then also listed the criminal convictions of those arrested.

### E. Collateral Arrests of Immigrants without Criminal Convictions

During Operation Safe City and other at-large operations during 2017, ICE officers returned to late Bush and early Obama administration policy of arresting “collaterals,” removable noncitizens who were bystanders when the operations took place. ICE’s Fugitive Operations Program was created in 2003 to locate and arrest dangerous criminals with existing removal orders. But during the George W. Bush administration, if fugitive team officers encountered other unauthorized immigrants, they frequently took them into custody—even when they could not find the original target of the operation at the home or other location. By the end of the Bush administration, most fugitive operations arrests were of immigrants who were not fugitives who had violated final orders; most also lacked criminal histories.<sup>135</sup>

Later in the Obama administration, as ICE enforcement priorities narrowed, the agency’s fugitive and at-large teams focused their operations on noncitizens with criminal convictions, recent border crossers, and those with recent removal orders.<sup>136</sup> By early 2017, it had been several years since ICE arrested significant numbers of collaterals in at-large operations.

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### *Some fugitive operations in 2017 netted large numbers of noncriminals.*

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Under the Trump administration, fugitive operations teams have been targeting anyone with a current or prior removal order, no matter how old the order or whether the person has any prior criminal conviction. And ICE returned to the old practice of arresting collaterals encountered during operations. As a result, the agency started arresting more people without criminal convictions.

Some fugitive operations in 2017 netted large numbers of noncriminals. For example, in a nationwide operation conducted in July 2017, fewer than 200 of the 650 immigrants arrested (30 percent) were targets of the operation, and just 20 percent had criminal convictions.<sup>137</sup> During Operation Safe City in September, nearly 40 percent of the 498 immigrants arrested did not have criminal convictions, even though the operation targeted people with convictions who had been released from local jails.<sup>138</sup>

<sup>135</sup> Wishnie, Mendelson, and Strom, *Collateral Damage*.

<sup>136</sup> For example, see ICE press releases on fugitive operations from 2015 indicating that everyone arrested met agency enforcement priorities; ICE, “ICE Arrests 79 in 2-State Operation Targeting Criminal Aliens, Public Safety Threats” (news release, September 8, 2015), [www.ice.gov/news/releases/ice-arrests-79-2-state-operation-targeting-criminal-aliens-public-safety-threats](http://www.ice.gov/news/releases/ice-arrests-79-2-state-operation-targeting-criminal-aliens-public-safety-threats); ICE, “235 Arrested in 4-State ICE Operation Targeting Convicted Criminals” (news release, November 3, 2015), [www.ice.gov/news/releases/235-arrested-4-state-ice-operation-targeting-convicted-criminals](http://www.ice.gov/news/releases/235-arrested-4-state-ice-operation-targeting-convicted-criminals); ICE, “ICE Enforcement Surge Nets 39 Criminal Alien Arrests in WV, PA, DE” (news release, December 8, 2015), [www.ice.gov/news/releases/ice-enforcement-surge-nets-39-criminal-alien-arrests-wv-pa-de](http://www.ice.gov/news/releases/ice-enforcement-surge-nets-39-criminal-alien-arrests-wv-pa-de).

<sup>137</sup> ICE, “ICE Announces Results of Operation Border Guardian/Border Resolve” (news release, August 1, 2017), [www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve](http://www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve). See also press releases about smaller operations that netted significant shares of collaterals; ICE, “ICE Arrests 33 in Western Michigan Operation Targeting Criminal Aliens, Illegal Re-Entrants and Immigration Violators” (news release, August 3, 2017), [www.ice.gov/news/releases/ice-arrests-33-western-michigan-operation-targeting-criminal-aliens-illegal-re](http://www.ice.gov/news/releases/ice-arrests-33-western-michigan-operation-targeting-criminal-aliens-illegal-re); ICE, “114 Arrested in New York ICE Operation Targeting Criminal Aliens, Illegal Re-Entrants, Immigration Fugitives” (news release, July 25, 2017), [www.ice.gov/news/releases/114-arrested-new-york-ice-operation-targeting-criminal-aliens-illegal-re-entrants](http://www.ice.gov/news/releases/114-arrested-new-york-ice-operation-targeting-criminal-aliens-illegal-re-entrants).

<sup>138</sup> ICE, “ICE Arrests Over 450 on Federal Immigration Charges During Operation ‘Safe City.’”





There were also many examples of collateral arrests across MPI study sites, except for Nashville where limited fugitive operations staff constrained ICE's ability to arrest collaterals. Examples based on news reports and MPI fieldwork include six men arrested at a home in Memphis in April 2017 when ICE came looking for someone else,<sup>139</sup> a group of day laborers in Memphis reportedly arrested on their way to work after ICE showed them a picture of a different target, and a man arrested in Atlanta in March 2017 as he ran away from ICE officers looking for another Hispanic man fitting his description.<sup>140</sup>

In the study sites, ICE officers did not always take collaterals into custody. They sometimes used fingerprinting devices to identify everyone at the location and then prioritized arrests based on criminal and immigration history, following up with letters requesting people to come to the ICE office or notices to appear before an immigration judge for those not deemed high priorities.

## **F. Arrests by the Local Police for Traffic Violations**

ICE arrests based on traffic offenses appeared rare in 2017 in all the major cities included in the study—New York, Los Angeles, Chicago, Houston, Atlanta, Nashville, and Memphis—but were more common in the suburbs and in rural areas. For instance, though the Houston Police Department generally did not arrest unauthorized immigrants for driving without a license, immigration attorneys noted such arrests in nearby suburban and rural jurisdictions, including Bryan, Galveston, and Liberty counties.

Arrests based on traffic violations were reportedly rare in Atlanta, but common in the city's northern suburbs. Traffic violations comprised 70 percent of charges leading to immigration detainers in Gwinnett County from February through April 2017, versus just 36 percent during the same period in 2016. Driving without a license had been the most common offense for those arrested through Gwinnett County's 287(g) program during its first two years of operation in 2009 and 2010.<sup>141</sup> Later in the Obama administration, the number of people taken into ICE custody based on traffic offenses fell as the national enforcement priorities were narrowed to include only people with convictions for felonies and more serious misdemeanors, as mentioned earlier. Just days after Trump took office, the media reported multiple traffic arrests of immigrants in Gwinnett County, who were then taken into ICE custody.<sup>142</sup> According to ICE administrative data, the number of detainers issued in Gwinnett increased by nearly 400 percent (from 150 to 746) from January 20 through May 4, 2017 compared to the same period in 2016 (the third largest increase among the 20 largest U.S. counties). Because ICE issues detainers when removable noncitizens are booked into jail, Gwinnett County's rapid rise in detainer issuance could result from two possible trends: broader detainer issuance by ICE on noncitizens arrested for minor crimes, and a greater arrest rate for minor crimes by the local police in anticipation that immigrants would be taken into ICE custody. Both trends result from the Trump administration's new enforcement priorities that encompass individuals convicted of or arrested for minor crimes such as traffic violations.

## **G. Expanding the Ability to Target Based on Contact Information**

To help deploy resources more efficiently, ICE reportedly targets at-large operations based on new information about the location of targets in addition to their criminal and immigration histories. Fugitive operations and at-large teams generally target arrests using lists of removable immigrants, the two largest groups being fugitives with removal orders and those with ICE detainers who were released from state or local custody. As of early 2018, ICE reported there were 542,000 fugitives who either did not show up for their immigration court date and were ordered removed by an immigration judge or who

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139 Daniel Connolly, "Immigration Agents Make Arrests in Memphis – One Family's Story," *The Commercial Appeal*, June 9, 2017, [www.commercialappeal.com/story/news/2017/06/09/immigration-agents-make-arrests-memphis-one-family-story/101211638/](http://www.commercialappeal.com/story/news/2017/06/09/immigration-agents-make-arrests-memphis-one-family-story/101211638/).

140 Bill Rankin, "Immigration Judge Finds Racial Profiling in Detention Case," *Atlanta Journal-Constitution*, April 28, 2017, [www.myajc.com/news/local/immigration-judge-finds-racial-profiling-detention-case/ZKpBEDYMJwi9OUSoD7nghI/](http://www.myajc.com/news/local/immigration-judge-finds-racial-profiling-detention-case/ZKpBEDYMJwi9OUSoD7nghI/).

141 Capps, Rosenblum, Chishti, and Rodríguez, *Delegation and Divergence*.

142 Amanda Sakuma, "Police in Georgia Are Turning Traffic Stops into the First Step Toward Deportation," *The Intercept*, May 8, 2017, <https://theintercept.com/2017/05/08/police-in-georgia-are-turning-traffic-stops-into-the-first-step-toward-deportation/>.



were ordered removed and failed to leave the country.<sup>143</sup> In addition, thousands of removable immigrants are released from state prisons and local jails monthly, often in jurisdictions that do not fully cooperate in transferring people into ICE custody.

During MPI's site work in spring and summer 2017, ICE officers reported mostly continuing to target people with serious criminal convictions or prior removal orders, but officers in one of the field offices included in the study also acknowledged that for the sake of operational efficiency, they targeted individuals with fresh location information, even if they had a minor criminal record or no record. In other words, ICE might target an immigrant with a final removal order but no criminal history if officers have recent contact information for that person, over someone with a removal order and serious criminal record for whom they do not have fresh contact information. These individuals would not have been targeted in the latter years of the Obama administration, though they likely would have been targets before narrower enforcement priorities were established in 2014.

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*During MPI's site work ... ICE officers reported mostly continuing to target people with serious criminal convictions or prior removal orders.*

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ICE field offices regularly receive contact information for those on their target list from ICE's National Criminal Analysis and Targeting Center.<sup>144</sup> The agency might also use data from state Departments of Motor Vehicles or other sources, such as license plate readers and private databases. In January 2018, for instance, ICE signed a contract to access a commercial, nationwide database that includes more than 2 billion license plate images, with 100 million more added each month.<sup>145</sup> According to an ICE spokesperson, the agency also regularly subpoenas information from local, state, and federal government agencies, as well as private companies, as part of its enforcement operations.<sup>146</sup>

## **H. Arrests of Individuals Checking in with ICE for Regular Appointments**

During the Trump administration, ICE has reportedly rearrested and deported many noncitizens from the nondetained caseload under supervision, though statistics on the number of these "check-in" arrests are unavailable. Historically, ICE released small numbers of removable individuals on orders of supervision for specific reasons such as an illness, a child in school, or difficulty obtaining travel documents. After release, ICE required them to check in periodically. During the Obama administration, the number of people on supervision orders grew dramatically, and many kept checking in with ICE over a period of years. At the end of the administration, there were about 90,000 people checking in with orders of supervision.<sup>147</sup>

The 90,000 are a subset of the 2.4 million potentially removable immigrants who have been released from ICE custody on its "nondetailed docket"—a population equivalent to nearly one-quarter of the estimated

143 Nick Miroff and Maria Sacchetti, "Trump Takes 'Shackles' Off ICE, Which Is Slapping Them on Immigrants Who Thought They Were Safe," *Washington Post*, February 11, 2018, [www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5\\_story.html](https://www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5_story.html).

144 DHS, "DHS/ICE/PIA-048 Data Analysis System (DAS)," accessed February 12, 2018, [www.dhs.gov/publication/dhsicepia-048-data-analysis-system-das](https://www.dhs.gov/publication/dhsicepia-048-data-analysis-system-das).

145 Russell Brandom, "Exclusive: ICE Is About to Start Tracking License Plates Across the US," *The Verge*, January 26, 2018, [www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions](https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions).

146 Kristine Phillips, "A Government Worker Says He Didn't Want to Help ICE Deport Immigrants. So He Quit," *Washington Post*, February 9, 2018, [www.washingtonpost.com/news/post-nation/wp/2018/02/09/a-government-worker-says-he-didnt-want-to-help-ice-deport-immigrants-so-he-quit/?utm\\_term=.a27367d12247](https://www.washingtonpost.com/news/post-nation/wp/2018/02/09/a-government-worker-says-he-didnt-want-to-help-ice-deport-immigrants-so-he-quit/?utm_term=.a27367d12247).

147 Tal Kopan, "How Trump Changed the Rules to Arrest More Non-Criminal Immigrants," *CNN*, March 2, 2018, [www.cnn.com/2018/03/02/politics/ice-immigration-deportations/index.html](https://www.cnn.com/2018/03/02/politics/ice-immigration-deportations/index.html).



11 million unauthorized immigrants in the United States. Caseloads for ICE officers who handle the nondetained docket are large, ranging from 1,700 to 10,000 per officer, depending on the field office; as a result, ICE officers are overwhelmed and have difficulty managing their caseloads.<sup>148</sup>

The nondetained caseload includes 969,000 individuals with final removal orders, and the rest are mostly still in removal proceedings—i.e., still have ongoing removal cases in immigration court—and who qualified for release on bond or parole. Individuals with final orders can be removed quickly, within a matter of days, because ICE does not have to take them back to court. Many of those arrested at ICE check-ins have removal orders and have been rapidly deported. The others cannot be removed until after an immigration judge so orders, a process that can take years with current immigration court backlogs.

Arrests at check-ins are administratively efficient but mostly yield deportations of unauthorized immigrants with minor or no criminal violations. From ICE's perspective, arrests during check-ins offer a safe and secure means to bring people into custody, because officers do not have to conduct operations in public, information about those with check-in appointments is readily available, and many on the nondetained docket have already been ordered removed by an immigration judge and so can be deported swiftly. The opposing point of view is that ICE uses check-ins to arrest the "low-hanging fruit."<sup>149</sup> Because of mandatory detention rules, most nondetained immigrants are low priorities for removal (which was the Obama administration's argument for not deporting so many of them): just 369,000 of the 2.2 million immigrants on the nondetained docket in August 2016, for example, had criminal convictions.<sup>150</sup> No data were available on how many fit other priorities such as having a criminal charge but not a conviction, a prior removal order, or having reentered illegally.

Reported patterns of check-in arrests varied greatly from one study site to another, and from one respondent to the next. When they occurred, check-in arrests often involved individuals with long-term U.S. residence and years-old removal orders. In Houston, one attorney reported the arrest of 24 out of 25 clients checking in with ICE, while another said that his clients without criminal convictions were not arrested. ICE officers and some attorneys in Nashville and Memphis noted that immigrants with final removal orders were arrested while those without removal orders were not, while other attorneys there noted no such pattern. New York City officials reported few check-in arrests, but a group of attorneys described arrests of those with old removal orders and no criminal convictions. In Chicago, all but one attorney said that most clients were not arrested at check-ins. An Atlanta attorney reported that 15 out of 20 clients attending check-ins had been arrested. But lawyers in Los Angeles and Orange County noted that their clients were seldom arrested if attorneys accompanied them to check-ins and they were properly prepared with letters of support from prominent community leaders.

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*Arrests at check-ins are administratively efficient but mostly yield deportations of unauthorized immigrants with minor or no criminal violations.*

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ICE officers, some immigration attorneys, and a former immigration judge interviewed for the study did not express sympathy for those arrested at check-ins, since in their perception most of those arrested had already been ordered removed. From the judge's point of view, it was a waste of time for immigration judges to adjudicate a case, issue an order of removal, and then have that order effectively overturned by the Obama administration.

148 DHS, Office of Inspector General (OIG), *ICE Deportation Operations*, OIG 17-51 (Washington, DC: DHS, OIG, 2017), [www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf](http://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf).

149 Nick Miroff, "Deportations Slow under Trump," *The Washington Post*, September 28, 2017, [www.washingtonpost.com/world/national-security/deportations-fall-under-trump-despite-increase-in-arrests-by-ice/2017/09/28/1648d4ee-a3ba-11e7-8c37-e1d99ad6aa22\\_story.html?utm\\_term=.d1019363dbcd](http://www.washingtonpost.com/world/national-security/deportations-fall-under-trump-despite-increase-in-arrests-by-ice/2017/09/28/1648d4ee-a3ba-11e7-8c37-e1d99ad6aa22_story.html?utm_term=.d1019363dbcd).

150 DHS, OIG, *ICE Deportation Operations*, 3.



## I. Enforcement Against Those with Special Status: DACA Recipients, Refugees, Asylum Seekers, and Unaccompanied Children

Recent arrests suggest the Trump administration is offering less prosecutorial discretion than predecessor ones to classes of immigrants who have or have had protected status.

### 1. Revocation of DACA and Arrests of DACA-Eligible Youth

Even before the Trump administration announced in September 2017 that it would phase out the DACA program, some DACA participants and DACA-eligible youth who had let their protections lapse were arrested and deported. Although the MPI study team could not obtain data on the incidence of arrests of DACA-eligible youth, several cases were reported by respondents or in the media. Though few in number, these cases represent instances in which DHS has not exempted the generally sympathetic DACA population from enforcement.

In a well-publicized case, an Atlanta paralegal was arrested by ICE in 2010 but released and later received DACA. In May 2017 her DACA renewal was denied due to an old charge of providing false information to a police officer—a charge that had been dismissed.<sup>151</sup> As of late 2017 she had appealed her DACA revocation, which was still pending at this writing.<sup>152</sup> In another case, a former DACA recipient in Northern Virginia was deported after being arrested for a traffic violation. He had let his DACA lapse due to another traffic charge in Maryland but was still technically eligible for deferred action. He reapplied while in ICE custody, but USCIS denied his application because he was in custody.<sup>153</sup>

### 2. Arrests and Deportations of Refugees and Asylum Seekers

During 2017, ICE arrested more immigrants from countries and ethnic groups who fled persecution, many of whom entered as refugees and have long-term U.S. residence. Some were granted asylee or refugee status and lived legally in the United States but committed crimes that made them removable, while others were denied asylum but failed to leave the country. Unless convicted of felonies, most were beneficiaries of prosecutorial discretion exercised by the Bush or Obama administrations, and therefore had been allowed to remain in the United States. A small number committed serious crimes but were released from ICE detention and were not removed because their countries of origin refused to accept them.

Somalis, one of the largest recent refugee groups, have been a notable enforcement target, with ICE removals more than doubling between FY 2016 and FY 2017, from 198 to 521.<sup>154</sup> Somalia began receiving deportees in 2012, but community advocates and defense attorneys maintain that Somalia is still too dangerous for repatriation. The largest concentration of deported Somalis—80 individuals—were arrested in the Minneapolis area; almost all were on a list of 4,801 Somalis with final removal orders.<sup>155</sup> Another ten were arrested in the Atlanta area. Eight were legal permanent residents (LPRs), admitted as refugees, with criminal convictions, but only one for a serious, violent offense; the other two overstayed visas and sought asylum but were ordered removed when asylum was denied by an immigration judge. All ten were on an ICE list of individuals with final removal orders.

Iraqis, another major refugee group, have been deported in smaller numbers: 61 in FY 2017, up from 48 in FY 2016.<sup>156</sup> Iraq was listed on the initial travel ban executive order signed by Trump in January 2017 (as was Somalia), but later dropped after the Iraqi government agreed to accept deportees and to

151 Jessica Colotl, "If We Are Deported, Who Benefits?," Politico, June 8, 2017, [www.politico.com/magazine/story/2017/06/08/daca-deportations-president-trump-jessica-colotl-215217](http://www.politico.com/magazine/story/2017/06/08/daca-deportations-president-trump-jessica-colotl-215217).

152 Jeremy Redmon, "Judge: Keep Jessica Colotl's DACA Status in Place," *Atlanta Journal-Constitution*, October 30, 2017, [www.ajc.com/news/state--regional-govt--politics/judge-keep-jessica-colotl-daca-status-place/mhgjia7YbQkwUjMWb2GvXK/](http://www.ajc.com/news/state--regional-govt--politics/judge-keep-jessica-colotl-daca-status-place/mhgjia7YbQkwUjMWb2GvXK/).

153 Esther Yu Hsi Lee, "A Traffic Stop Just Led to This DREAMer's Deportation," Think Progress, August 22, 2017, <https://thinkprogress.org/mario-daca-deported-el-salvador-ae645d7b141b/>.

154 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 15.

155 Mila Koumpilova, "Rising Deportations to Somalia Raise Concerns in Minnesota," *Minneapolis Star-Tribune*, June 4, 2017, [www.startribune.com/rising-deportations-to-somalia-raise-concerns-in-minnesota/426385301/](http://www.startribune.com/rising-deportations-to-somalia-raise-concerns-in-minnesota/426385301/).

156 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 15.



cooperate more fully in screening applicants for immigration to the United States.<sup>157</sup> ICE arrested about 300 Iraqis in 2017, after Iraq started accepting deportees. The majority of those arrested nationwide are Chaldean Christians who claim they would face persecution—even torture or death—in majority-Muslim Iraq.<sup>158</sup> In June 2017, ICE arrested a dozen Kurdish refugees from Iraq in the Nashville area. According to an attorney, most had green cards, but also had criminal convictions. One of those arrested was a filmmaker who had been denied asylum and received a final removal order in 2004; he had also been convicted for selling alcohol to a minor while working at a store just after he arrived in 2002. He had been checking in annually with ICE for almost 15 years and was arrested at his home in June 2017.<sup>159</sup>

Indonesians who mostly claimed asylum after they came to the United States have also been deported in larger numbers: 68 in FY 2017 versus 31 the prior year.<sup>160</sup> While not listed in any of the travel ban executive orders, Indonesia has also recently agreed to accept return of its nationals who are deported from the United States. During summer 2017, about 70 Indonesians living in New Hampshire were either arrested at their ICE check-ins or told to come to the next appointment with plane tickets and travel documents. These Indonesians, all Christians, overstayed their nonimmigrant visas and were denied for denied asylum because they filed their claims too late, but had been allowed to check in with ICE for years. Some have been in the country for nearly 20 years. In their asylum applications, they claimed they had faced persecution under an authoritarian Muslim regime, and fear discrimination and violence if returned.<sup>161</sup> A group of these Indonesians sued the government, and a federal judge in Boston ruled that ICE could not remove them until they had the chance to try to reopen their cases.<sup>162</sup> In another case, a federal judge in New Jersey also temporarily blocked ICE from removing a group of Indonesian Christians.<sup>163</sup>

A number of Cambodians, a major Southeast Asian refugee group, were arrested in 2017, but few were deported: 29, down from 74 in 2016.<sup>164</sup> In October 2017 alone, 100 Cambodians were arrested nationwide, compared to 500 since 2002.<sup>165</sup> According to ICE, there are 1,900 Cambodians with final removal orders, 1,400 of whom have criminal convictions. In many cases the convictions are decades-old.<sup>166</sup> In November, the Trump administration was in the process of renegotiating a repatriation agreement with Cambodia and had imposed visa sanctions on some high-ranking Cambodian officials. The visa sanctions were intended to put pressure on the Cambodian government, which had tightened requirements for repatriation in 2016.<sup>167</sup> In March 2018, the Cambodian government allowed the deportation of 43 nationals convicted of felonies, signaling a relaxation of the government's position. Two other Cambodians received pardons for their crimes from the California Governor, giving them a temporary reprieve from deportation.<sup>168</sup>

157 Donald J. Trump, "Executive Order 13769 of January 27, 2017: Protecting the Nation from Foreign Terrorist Entry into the United States," *Federal Register* 82, no. 20 (February 1, 2017): 8977-82, [www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf](http://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf).

158 Kim Kozlowski, "ACLU Asks Judge to Free Nearly 300 Iraqi Detainees," *Detroit News*, November 8, 2017, [www.detroitnews.com/story/news/local/michigan/2017/11/08/aclu-iraqi-detainees/107467130/](http://www.detroitnews.com/story/news/local/michigan/2017/11/08/aclu-iraqi-detainees/107467130/).

159 Ariana Maia Sawyer, "ICE Targets Some Nashville Kurds for Deportation after U.S. Deal with Iraq," *Tennessean*, June 13, 2017, [www.tennessean.com/story/news/local/2017/06/13/ice-targets-some-nashville-kurds-deportation-after-u-s-deal-iraq/379582001/](http://www.tennessean.com/story/news/local/2017/06/13/ice-targets-some-nashville-kurds-deportation-after-u-s-deal-iraq/379582001/).

160 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 15.

161 Mark Hayward, "Judge Halts Deportation of Indonesians Living in NH; Shaheen Relieved," *New Hampshire Union Leader*, September 26, 2017, [www.unionleader.com/courts/judge-halts-deportation-of-indonesians-living-in-nh-shaheen-relieved-20170926](http://www.unionleader.com/courts/judge-halts-deportation-of-indonesians-living-in-nh-shaheen-relieved-20170926).

162 *Devitri et al. v. Cronen et al.*, No. 17-11842-PBS (U.S. District Court, District of Massachusetts, Memorandum and Order, February 1, 2018), [www.aclu-nh.org/sites/default/files/field\\_documents/indonesian\\_decision.pdf](http://www.aclu-nh.org/sites/default/files/field_documents/indonesian_decision.pdf).

163 *Pangemanan et al. v. Tsoukaris et al.*, No. 18-1510 (U.S. District Court, District of New Jersey, Order, February 2, 2018), [www.aclu-nj.org/files/3015/1761/8636/Pangemanan\\_ruling.pdf](http://www.aclu-nj.org/files/3015/1761/8636/Pangemanan_ruling.pdf).

164 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 15.

165 Tatiana Sanchez, "California Leaders Call for Release of Detained Cambodian, Vietnamese Immigrants," *The Mercury News*, November 29, 2017, [www.mercurynews.com/2017/11/28/california-leaders-call-for-release-of-detained-cambodian-vietnamese-immigrants/](http://www.mercurynews.com/2017/11/28/california-leaders-call-for-release-of-detained-cambodian-vietnamese-immigrants/).

166 Teresa Welsh, "The Federal Government Wants to Deport Father to Cambodia. He's Never Been There," *Sacramento Bee*, June 30, 2017, [www.sacbee.com/news/nation-world/national/article159119794.html](http://www.sacbee.com/news/nation-world/national/article159119794.html).

167 Agnes Constante, "Nonprofits Sue Over Immigration Detention of Cambodian Nationals Who Came as Refugees," NBC News, November 3, 2017, [www.nbcnews.com/news/asian-america/nonprofits-sue-over-immigration-detention-cambodian-nationals-who-came-refugees-n816861](http://www.nbcnews.com/news/asian-america/nonprofits-sue-over-immigration-detention-cambodian-nationals-who-came-refugees-n816861).

168 Sopheng Cheang, "43 Cambodians Convicted of Felonies Repatriated from US," Associated Press, April 5, 2018, <https://apnews.com/436412bbde8e49b1867d903a46367a85/43-Cambodians-convicted-of-felonies-repatriated-from-US>.



Enforcement actions against immigrants from refugee-source countries have taken place against a backdrop of major cuts to the U.S. refugee resettlement system. The Trump administration set the annual cap on refugee admissions at 45,000, the lowest since the beginning of the resettlement program in 1980.<sup>169</sup> Recent arrests and deportations of refugees and asylum seekers suggest that the administration is not offering prosecutorial discretion based on humanitarian claims but rather focusing on prior criminal convictions and removal orders. These arrests and deportations also appear to be part of a broader strategy to convince “recalcitrant” countries—which are often refugee-source countries—to accept U.S. deportees.

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*There have been several well-publicized operations to arrest those who entered as unaccompanied children.*

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### 3. Arrests of Unaccompanied Children from Central America and their Parents

The Trump administration has increased arrests of unauthorized immigrants from Central America who came alone to the United States as children—known as unaccompanied minors—and has begun arresting their parents or other sponsors. Since 2014, tens of thousands of children from El Salvador, Guatemala, and Honduras—mostly adolescents, but some younger than age 10—entered via the Texas-Mexico border. Most were released into the custody of parents, other relatives, or family friends, pending adjudication of their asylum applications and immigration cases, which have been held up in years-long backlogs at U.S. Citizenship and Immigration Services (USCIS) and the immigration courts.

There have been several well-publicized operations to arrest those who entered as unaccompanied children. (In most cases, ICE arrests them after they turn age 18.) The first operation, undertaken in January 2016, involved the arrest of 121 adults who had entered as unaccompanied children.<sup>170</sup> There have been several such operations during the Trump administration. In June 2017, multiple law enforcement agencies, including ICE and the local police, arrested 39 Central American unaccompanied minors suspected of being MS-13 members during Operation Matador in Long Island, NY. Some of those arrested had no criminal charges, and advocates claim there was little hard evidence connecting them to a gang.<sup>171</sup> In August 2017, the Northern Virginia Regional Gang Task Force sent heavily armed officers to a home in suburban Virginia to arrest a 20-year-old who had been an unaccompanied minor. Suspected of being an MS-13 gang member, he was not convicted or even charged with a crime, but instead arrested by an ICE officer based on his illegal entry and suspicion of being a gang member.<sup>172</sup> In late July 2017, ICE carried out Operation Border Guardian/Border Resolve, a four-day operation targeting those who entered the country as unaccompanied children.<sup>173</sup> Out of the 650 people arrested, 120 fit that description, and 73 others had entered as children accompanied by adult family members. The 120 unaccompanied children were either over 18 at the time of their arrest, or over 16 with criminal histories or suspected gang ties.

Starting in February 2017, for the first time, ICE arrested parents and other family members who had paid smugglers to bring unaccompanied children to the United States, under the theory that such payments put children in danger during the migration process and provide incentives for more to attempt the trip.

169 U.S. Department of State, “Background Briefing: U.S. Government Officials on the Refugee Cap for Fiscal Year 2018,” September 27, 2017, [www.state.gov/r/pa/prs/ps/2017/09/274464.htm](http://www.state.gov/r/pa/prs/ps/2017/09/274464.htm).

170 Lisa Rein, “U.S. Authorities Begin Raids, Taking 121 Illegal Immigrants into Custody over the Weekend,” *Washington Post*, January 4, 2016, [www.washingtonpost.com/news/federal-eye/wp/2016/01/04/u-s-authorities-begin-raids-taking-121-illegal-immigrants-into-custody-over-the-weekend/?utm\\_term=.9e3a1a12032b](http://www.washingtonpost.com/news/federal-eye/wp/2016/01/04/u-s-authorities-begin-raids-taking-121-illegal-immigrants-into-custody-over-the-weekend/?utm_term=.9e3a1a12032b).

171 *Saravia et al. v. Jefferson B. Sessions et al.*, No. 17-cv-03615-VC (U.S. District Court, Northern District of California, November 20, 2017), [www.aclunc.org/sites/default/files/20171121-Gomez\\_v\\_Sessions-Order\\_Granteeing\\_PI\\_and\\_Class\\_Cert.pdf](http://www.aclunc.org/sites/default/files/20171121-Gomez_v_Sessions-Order_Granteeing_PI_and_Class_Cert.pdf).

172 Michael E. Miller, “Trump’s MS-13 Crackdown: Going after Suspected Gang Members for Immigration Violations,” *Washington Post*, August 31, 2017, [www.washingtonpost.com/local/trumps-ms-13-crackdown-going-after-suspected-gang-members-for-immigration-violations/2017/08/31/8c467bcc-8bf7-11e7-8df5-c2e5cf46c1e2\\_story.html?utm\\_term=.0c7321d4ea6b](http://www.washingtonpost.com/local/trumps-ms-13-crackdown-going-after-suspected-gang-members-for-immigration-violations/2017/08/31/8c467bcc-8bf7-11e7-8df5-c2e5cf46c1e2_story.html?utm_term=.0c7321d4ea6b).

173 ICE, “ICE announces results of Operation Border Guardian/Border Resolve.”



Immigration attorneys have suspected that Border Patrol agents obtained address information from the children when they were apprehended. Some minors provided phone numbers of relatives to the Border Patrol, which then forwarded the information to ICE; ICE called and asked those answering the phone for their names and addresses. In Texas, ICE called sponsors, notifying them of impending “home visits”—the term the Office of Refugee Resettlement (ORR) uses for the home studies conducted before unaccompanied children are reunified with sponsors. In New York and Nashville, ICE requested meetings with sponsors at ICE offices to ask them about their child’s trip to the United States or have them fill out paperwork as part of the sponsorship process. In December 2017, eight civil-rights organizations filed suit against ICE for unlawfully coercing a group of unaccompanied children then in ICE detention into divulging information about the locations of their parents and other family members.<sup>174</sup>

Respondents in Houston, Nashville, New York, and Prince William County, Virginia noted that fewer parents and other relatives were coming forward to sponsor unaccompanied children because they feared arrest and deportation. Without sponsors, more children could remain in ORR shelters or be placed in foster care. Or it is possible that sponsors would pay smugglers more money to transport their children directly to them instead of having the minors present themselves to the Border Patrol, with the risk of exposing the sponsors. On the other hand, arresting potential sponsors could also deter future migration of children to the U.S.-Mexico border, an important DHS policy goal.

#### 4. Arrests of People with Pending Humanitarian Immigration Benefit Applications

Lawyers in the study sites also reported that ICE was arresting individuals with pending humanitarian immigration benefit applications, for instance T visas for trafficking victims, U visas for victims of crime, and Special Immigrant Juvenile (SIJ) visas for unauthorized youth who have been abused, abandoned, or neglected (including some who arrived as unaccompanied children).

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*Immigration attorneys in several study sites expressed concern that applicants for T, U, or SIJ visas could be deported while their applications were in process.*

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Applicants for these visas are at risk for arrest and deportation because the visas take long to process. U and SIJ visas have large backlogs, meaning it can take years for applications to be adjudicated.<sup>175</sup> Additionally, U visa applicants must obtain certification that they cooperated with state or local prosecutors or law enforcement officials, and SIJ applicants must receive certification from family courts that they cannot be reunified with parents or guardians. Study respondents reported that in the latter part of the Obama administration, USCIS began requiring more evidence from state and local authorities for underlying certifications, thereby slowing the adjudication process. Processing of SIJ visas slowed further during the early months of the Trump administration, with USCIS approvals from April through June 2017 down more than 50 percent from the previous three-month period, and the backlog of

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174 Morgan Baskin, “Eight Immigration Advocacy Groups File Complaint Against DHS,” *Pacific Standard*, December 6, 2017, <https://psmag.com/social-justice/immigrant-advocacy-groups-lodge-complaint-against-ice>.

175 USCIS, “Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009-2017,” accessed November 2, 2017, [www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1918u\\_visastatistics\\_fy2017\\_qtr3.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1918u_visastatistics_fy2017_qtr3.pdf); U.S. Department of State, “Visa Bulletin For November 2017,” accessed November 2, 2017, <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2018/visa-bulletin-for-november-2017.html>; USCIS, “Average Processing Time for All USCIS Offices,” accessed November 29, 2017, <https://egov.uscis.gov/cris/ptAllFormsAverage.do>. As of June 2017, there were 177,000 pending U visa cases. The average processing time for U visa applications as of February 2017 was a little over three years. In November 2017, the priority date for Special Immigrant Juvenile (SIJ) visas was still November 2015 for people from El Salvador, Guatemala, and Honduras—meaning applicants would have to wait two years for these visas.



pending cases increasing.<sup>176</sup> Moreover, ICE told lawyers that their clients applying for these visas could continue their applications via U.S. consulates after deportation, if necessary.

Immigration attorneys in several study sites expressed concern that applicants for T, U, or SIJ visas could be deported while their applications were in process. Though they could not cite a case in which a humanitarian visa applicant had been deported, they offered several examples of ICE arrests in such cases. In Memphis, a woman was put into removal proceedings while her U visa was pending. In Houston, attorneys notified clients who were U visa applicants that they could be deported if they had prior criminal violations or removal orders. In Los Angeles and New York, lawyers said ICE refused their requests to administratively close deportation cases for clients with pending U visas. In Northern Virginia, immigration judges encouraged respondents with pending T, U, or SIJ visas to file asylum applications, and immigration attorneys there said they had heard that judges in Arizona and North Carolina had issued removal orders for a few such cases. In New York, a U visa applicant with no criminal record was arrested at an ICE check-in. In Chicago, some attorneys stopped filing U visas for people with old removal orders for fear they could be identified, taken into ICE custody, and deported.

The Trump administration's apparent position on humanitarian visa applications—that they cannot be expedited and are not grounds for reconsidering deportation—is a significant change from past practice.

## V. Reduction in Use of Prosecutorial Discretion After Arrest

While widening the scope of ICE arrests, the Trump administration also narrowed the discretion of ICE officers and trial attorneys after arrest. The removal process is complex, involving several steps where noncitizens can request release from detention, a stay of deportation, or relief from deportation based on eligibility for immigration status or other factors. ICE officers and attorneys, as well as immigration judges—employees of the Justice Department—are involved throughout these steps (see Figure 6). Throughout this process, ICE may use prosecutorial discretion to close cases or stay removals at any stage.

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*While widening the scope of ICE arrests, the Trump administration also narrowed the discretion of ICE officers and trial attorneys after arrest.*

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The Trump administration's narrowing of prosecutorial discretion after arrest has resulted in four outcomes: 1) people are more often detained rather than released on bond while awaiting their removal hearings; 2) ICE pursues nearly all removal cases to completion rather than agreeing to administrative closure of cases for removable noncitizens with no criminal record or a minor criminal record; 3) ICE pursues the physical removal of more people who had ever been ordered removed by an immigration judge, even if they have strong equities in the United States or raise humanitarian concerns; and 4) the administration has closed avenues to review decisions of local ICE officers and attorneys to DHS headquarters or seek congressional intervention. Most of these changes represent a reversion to practices of the Bush and early Obama administrations, but represent a sharp departure from the latter Obama years.

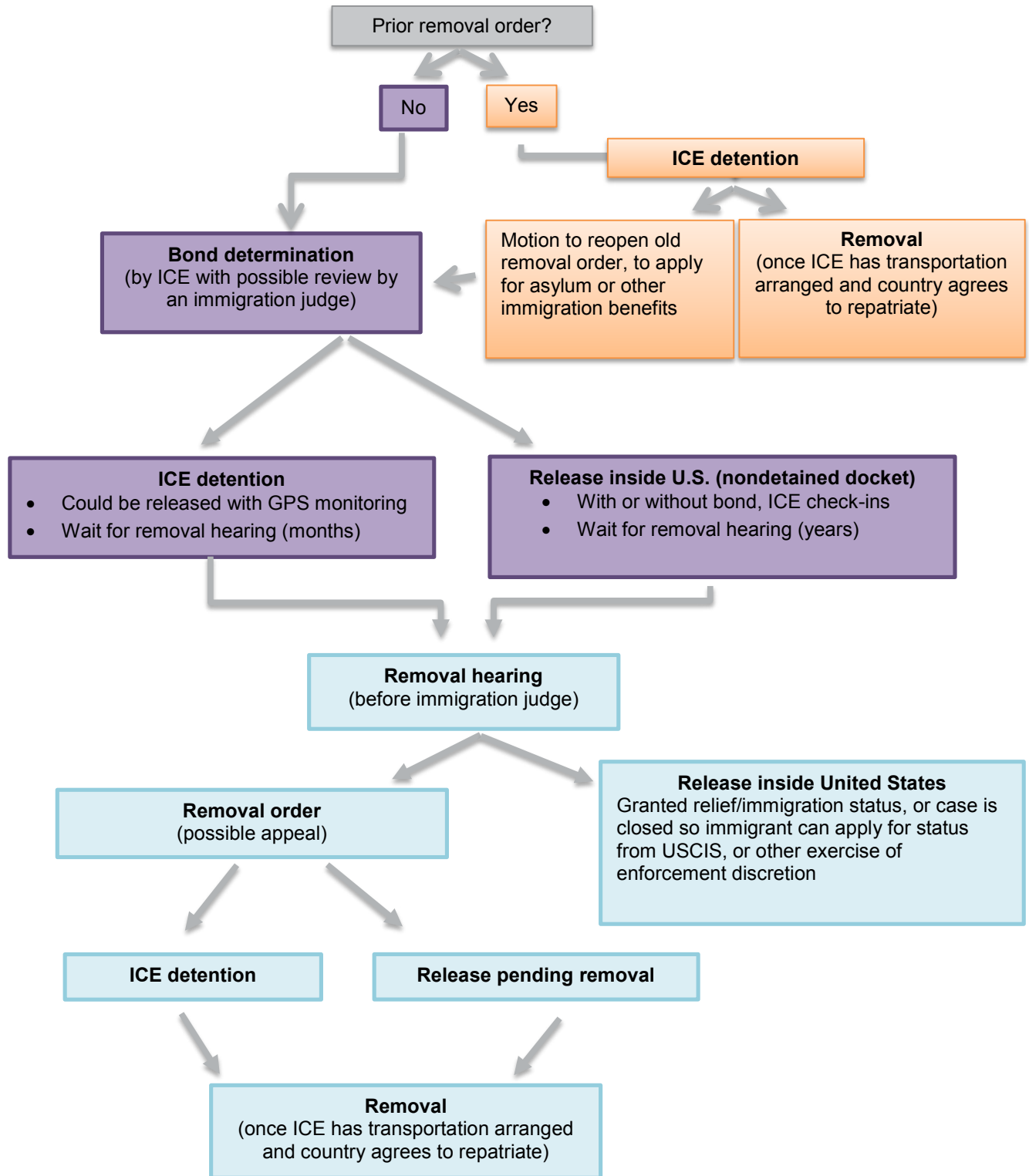
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<sup>176</sup> There were almost 23,000 pending applications in June 2017. See Mica Rosenberg, "New Trump Immigration Efforts Aim to Stop Child Border Crossers," Reuters, November 3, 2017, [www.reuters.com/article/us-trump-effect-immigration-children/new-trump-immigration-efforts-aim-to-stop-child-border-crossers-idUSKBN1D309S](http://www.reuters.com/article/us-trump-effect-immigration-children/new-trump-immigration-efforts-aim-to-stop-child-border-crossers-idUSKBN1D309S).





Figure 6. The Detention and Removal Process





## A. Increased Detention of People in Removal Proceedings

Respondents across the study sites reported that since the start of the Trump administration, ICE officers rarely released individuals on their own recognizance or with bonds; instead, they detained more people, even those without criminal convictions or who had longstanding ties to the community and therefore were not considered flight risks. This was a big change from the latter years of the Obama administration, when ICE attorneys and detention officers increasingly released people from detention, sometimes without posting an immigration bond, or never placed them in detention in the first place.

Respondents reported isolated cases during 2017 in which ICE did not detain people they arrested, including for example, nursing and pregnant mothers, parents of sick children, individuals with significant health problems, or those serving in the armed forces. However, news outlets have reported on cases of pregnant women held in detention centers while awaiting court dates and of detention of caregivers of sick and disabled children.<sup>177</sup> Between January 1 and March 20, 2018, ICE detained 506 pregnant women, whereas it had been the policy during the latter years of the Obama administration to release them pending their removal hearings.<sup>178</sup>

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*With the decline in discretionary releases, more noncitizens face long-term detention.*

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Respondents also reported different practices regarding the release from ICE detention by posting bonds. In one site where there was sufficient detention space, ICE detained nearly everyone. In other locations where detention space was tight, ICE offered bond to lower-priority cases. Bond amounts ranged from \$1,500 to \$25,000. Detainees can also request bond redetermination from immigration judges in most types of cases. One of the Mexican Consuls interviewed for the study noted that most of those granted bonds had strong extenuating circumstances involving serious medical conditions. Across the study sites, it was unusual for immigrants to be released unless detention space was tight, there were extenuating circumstances, and they could afford high bond amounts.

With the decline in discretionary releases, more noncitizens face long-term detention. Many long-term detention centers are located far away from metropolitan areas, making it difficult for detainees to find attorneys to represent them in seeking relief from deportation. Attorneys reported that in a few cases, after spending weeks in ICE detention, their clients preferred voluntary departure from the United States as a way to get out of detention.<sup>179</sup>

## B. Pursuing Cases All the Way to Deportation

The Trump administration also reversed policies of the latter Obama administration that allowed ICE attorneys to close deportation proceedings in low-priority cases. Once cases are referred to immigration court, they become the responsibility of ICE trial attorneys, who can decide how strongly to pursue cases or drop them. Starting in 2011, ICE closed some removal cases administratively—meaning that the cases

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<sup>177</sup> Roque Planas, “Two Women Say They Lost Pregnancies in Immigrant Detention Since July,” *Huffington Post*, September 27, 2017, [www.huffingtonpost.com/entry/immigrant-detention-pregnancy\\_us\\_59cbaee4e4b05063fe0e211b](http://www.huffingtonpost.com/entry/immigrant-detention-pregnancy_us_59cbaee4e4b05063fe0e211b); Mark Curnutte, “Appeal Denied: ICE to Move Forward with Deportation of Paraplegic Boy’s Caregiver,” *Cincinnati Enquirer*, January 5, 2018, [www.cincinnati.com/story/news/2018/01/05/appeal-denied-ice-move-forward-deportation-paraplegic-boys-caregiver/1008789001/](http://www.cincinnati.com/story/news/2018/01/05/appeal-denied-ice-move-forward-deportation-paraplegic-boys-caregiver/1008789001/).

<sup>178</sup> Tal Kopan, “ICE Paves Way to Detain More Pregnant Immigrants,” *CNN*, March 29, 2018, [www.cnn.com/2018/03/29/politics/ice-immigration-pregnant-women/index.html](http://www.cnn.com/2018/03/29/politics/ice-immigration-pregnant-women/index.html).

<sup>179</sup> In February 2018, the Supreme Court overruled the Ninth U.S. Circuit Court of Appeals in *Jennings v. Rodriguez*, finding that U.S. immigration law does not give detained noncitizens whose removal proceedings are pending the right to bond hearings after a certain period of time. This decision allows ICE to detain people for months or years in some cases, through the conclusion of their proceedings. However, the Supreme Court also sent the case back to the Ninth Circuit to rule on the constitutionality of indefinite detention without bond. See *Jennings et al. v. Rodriguez et al.*, No. 15–1204 (U.S. Supreme Court, February 27, 2018), [www.supremecourt.gov/opinions/17pdf/15-1204\\_f29g.pdf](http://www.supremecourt.gov/opinions/17pdf/15-1204_f29g.pdf).



would be withdrawn from the judicial docket because they did not meet ICE's narrowed enforcement priorities. The theory was that it was not worth pursuing cases that were unlikely to result in a removal order or where ICE would later stay the removal, even if ordered by a judge.

Early in 2017, representatives of the immigration bar were informed that ICE attorneys would oppose all requests for administrative case closures, even though the interior enforcement executive order signed by Trump stated that discretion could be exercised on a case-by-case basis.<sup>180</sup> ICE administratively closed fewer than 100 removal cases monthly in the first five months of the Trump administration,<sup>181</sup> compared to the monthly average of 2,400 during the same period in 2016.<sup>182</sup>

Immigration judges and defense attorneys participating in the study reported that ICE attorneys contested attempts to build more time for deportation proceedings—for instance, if a defense attorney sought a continuance to find a witness. At the time of MPI's visits in late spring and early summer 2017, some judges were still issuing continuances over the objections of the ICE attorneys. But a July 2017 memo from the Department of Justice to immigration judges urged them to limit the granting of multiple or lengthy continuances.<sup>183</sup>

Further, the administration has reopened old removal cases that had been administratively closed and placed them back on immigration judges' calendars for adjudication. In FY 2017, ICE asked courts to recalendar about 9,400 cases, a 74 percent increase over FY 2016.<sup>184</sup> By bringing back cases that had been closed, ICE has added to the growing immigration court backlog, which stood at 668,000 cases at the end of December 2017, with an average wait time of 708 days for cases to be adjudicated.<sup>185</sup> Wait times in immigration court were much shorter for individuals in detention, ranging from two to six months across the study sites, as conveyed by attorneys participating in the study. The shorter wait times for individuals in detention was reportedly due to the Trump administration's decision to make detained individuals the courts' highest priority.<sup>186</sup> The Obama administration had prioritized cases involving families and children, regardless of whether they were detained.

### C. *Deporting People with Old Removal Orders*

In 2017 ICE also cancelled stays of removal and orders of supervision issued during the prior administration. These cancellations are associated with the large number of arrests of people checking in with ICE.

During the latter Obama years, ICE granted stays of removal for some people who were ordered removed by an immigration judge on or after January 1, 2014, but who did not meet the narrowed enforcement priorities.<sup>187</sup> With a stay of removal, an immigrant can remain in the United States at ICE's discretion and apply for work authorization. These administrative stays of removal frustrated some immigration

<sup>180</sup> American Immigration Lawyers Association (AILA), "2017 AILA –DC Chapter Fall Conference: Everyone's an ICE Target," (unpublished, provided to authors), September 5, 2017.

<sup>181</sup> TRAC, "Immigration Court Dispositions Drop 9.3 Percent Under Trump," July 17, 2017, <http://trac.syr.edu/immigration/reports/474/>.

<sup>182</sup> *Immigration judges, however, can still close some cases even when ICE attorneys oppose closure*. See *Matter of Avetisyan*, 25 I&N Dec. 688 (Board of Immigration Appeals, 2012), affirming that the authority to grant administrative closure lies entirely with the immigration judge or Board of Immigration Appeals (BIA). Therefore, judges may grant administrative closure over ICE's objection. Attorney General Jeff Sessions recently directed that a case pending in the BIA be referred directly to him to reconsider the legal authority for, and the standards governing, administrative closure. *Matter of Castro Tum*, 27 I&N Dec. 187 (Attorney General, 2018).

<sup>183</sup> Memorandum from Mary Beth Keller, Chief Immigration Judge, to All Immigration Court Judges, All Court Administrators, All Attorney Advisors and Judicial Law Clerks, and All Immigration Court Staff, *Operating Policies and Procedures Memorandum 17-01: Continuances*, July 31, 2017, [www.justice.gov/eoir/file/oppm17-01/download](http://www.justice.gov/eoir/file/oppm17-01/download).

<sup>184</sup> Beth Fertig, "Trump Administration Reviewing Thousands of Deportation Cases Once Put on Pause," WNYC, March 7, 2018, [www.wnyc.org/story/trump-administration-reviewing-thousands-deportation-cases-once-put-pause/](http://www.wnyc.org/story/trump-administration-reviewing-thousands-deportation-cases-once-put-pause/).

<sup>185</sup> Average wait times in the continental United States ranged from just 48 days in New Mexico to slightly more than 1,000 days in Colorado and Illinois. See TRAC, "Immigration Court Backlog Tool."

<sup>186</sup> Memorandum from Mary Beth Keller, Chief Immigration Judge, to All Immigration Court Judges, All Court Administrators, and All Immigration Court Staff, *Case Processing Priorities*, January 31, 2017, [www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocessingpriorities.pdf](http://www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocessingpriorities.pdf).

<sup>187</sup> Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement*, Table 1.



judges. Two former judges interviewed for this study expressed concerns that they and their colleagues adjudicated cases carefully and conscientiously, only to have ICE attorneys stay their removal orders during the Obama administration.

Consistent with its expanded removal priorities, the Trump administration dramatically reversed the earlier policies on stays of removal. One attorney told MPI that the Trump administration set the standard for a stay of removal at the level of exceptional hardship to a U.S. citizen or LPR immediate family member—a bar so high that only a handful of people could ever meet it. As the administration overturns many administrative stays of removal, more of the 969,000 people with outstanding removal orders are subject to arrest and deportation.

#### **D. Limiting Options to Review ICE Enforcement Decisions**

The new administration also curtailed avenues to seek review of local-level ICE enforcement decisions by contacting ICE headquarters or Congress. (Immigrants still have the right to contest their removal before immigration judges, though the Trump administration has pressured judges to streamline their procedures as well.) During the latter Obama years, if immigrants were not granted release from detention, administrative closure of their case, or a stay of their removal, attorneys, advocates, and community leaders could use a variety of means to pressure ICE to exercise discretion. They could inform the media, approach elected officials, stage public protests, or call or write emails to ICE or DHS. Both ICE and DHS headquarters had email addresses where lawyers, advocates, or members of Congress could call attention to individual cases they thought deserved prosecutorial discretion. Headquarters regularly overturned local ICE office detention and removal decisions, and ICE was reportedly very responsive to pressure from the media—both unusual practices for a law enforcement agency. The use of these avenues frequently resulted in release from custody, closure of cases, or stays of removal—even for some unauthorized immigrants convicted of crimes.

After Trump took office, ICE and DHS headquarters stopped accepting emails requesting prosecutorial discretion, making decisions of regional field office directors final in almost every case. Field offices also no longer bowed to pressure from the media or local elected officials. In every study site, the new administration's approach had thwarted attempts by supporters to get people out of ICE custody.

It also became harder for members of Congress to appeal or delay deportations. In May 2017, ICE notified Congress that the agency would no longer delay deportations for subjects of private bills. (In the past, very few of these private bills passed, but lawmakers could delay deportation for years by simply reintroducing the bills.)<sup>188</sup> Also in May ICE began requiring a written request from the Chair of the House or Senate Judiciary Committee to stay a removal for up to six months. Despite this, in January 2018, ICE deported a Jordanian man with almost 40 years of U.S. residence despite a request by the House Judiciary Committee for a six-month stay.<sup>189</sup> In August 2017, Senator Dianne Feinstein (D-CA) was able to obtain a one-day stay of removal for a couple living in Oakland and facing deportation to Mexico, but a request for a longer stay was denied.<sup>190</sup> The inability of leaders of congressional committees with jurisdiction over immigration functions to overturn ICE deportation decisions demonstrates the agency's high degree of autonomy during the current administration.

Immigrants can still slow their deportation if they appeal their removal orders to the Board of Immigration Appeals (BIA) within the Justice Department or to the federal appellate courts. In February 2018, a federal judge in New York delayed deportation of an immigrant activist from Trinidad and Tobago on due process grounds, as did judges in New Jersey and Boston for more than 50 Indonesian

<sup>188</sup> Kate Morrissey, "ICE Will No Longer Delay Deportations for Those with 'Private Bills' Pending," *San Diego Union-Tribune*, May 9, 2017, [www.sandiegouniontribune.com/news/immigration/sd-me-private-bills-20170509-story.html](http://www.sandiegouniontribune.com/news/immigration/sd-me-private-bills-20170509-story.html).

<sup>189</sup> Willa Frej, "ICE Depports Palestinian Man Living in the U.S. for Almost 40 Years Despite Outcry," *Huffington Post*, January 30, 2018, [www.huffingtonpost.com/entry/ice-deports-palestinian-man\\_us\\_5a70259de4b05836a255fe36](http://www.huffingtonpost.com/entry/ice-deports-palestinian-man_us_5a70259de4b05836a255fe36).

<sup>190</sup> KGO TV, "ICE Denies Stay for Oakland Nurse; Couple to Be Deported Wednesday," KGO TV, August 15, 2017, <http://abc7news.com/family/ice-denies-stay-for-oakland-nurse;-couple-to-be-deported-wednesday/2312308/>.



Christians. During 2017, judges in Miami and Detroit temporarily halted deportation of Somalis and Iraqi Christians, in cases covering about 1,500 immigrants. ICE Acting Director Homan expressed frustration with these court cases: “I am increasingly troubled by orders from federal judges halting the deportation of certain groups of individuals, all of which appear to ignore the fact that each alien in question was lawfully ordered removed from the United States after full and fair proceedings.”<sup>191</sup> Nonetheless, the federal courts remain a major avenue for immigrants to contest deportation, given the strict limits ICE has placed on prosecutorial discretion.

## VI. Responses by States, Localities, Consulates, and Immigrant Communities

The rapidly changing enforcement landscape, polarization over immigration policymaking in Washington, and the centrality of immigration in a rough-and-tumble presidential election cycle set the table for state and local governments to respond in vastly different fashion to the new administration. As described in detail in Appendix B, many states and local governments have embraced the increasingly muscular federal enforcement, while others set policies that curb enforcement primarily by reducing cooperation with ICE in transferring people from state prisons and local jails. Beyond ICE cooperation policies, several major cities and urban counties have changed their policing policies so that fewer noncitizens will be arrested and put at risk of deportation. Some of these changes in policing practices predate the Trump administration, and most of them apply broadly to the entire population, not just immigrants.

Additionally, the Trump administration has witnessed an era of increased activism and mobilization by state and local governments, attorneys, advocates, community leaders, and Mexican and other consulates seeking to respond to the heightened levels of fear in immigrant communities across the country. In the latter years of the Obama administration, these stakeholders primarily dedicated their efforts to supporting applications for immigration benefits such as naturalization and DACA, or to immigration defense, including negotiating with DHS and Congress to release detainees from ICE custody. These groups adapted their strategies to the new policy environment in the Trump administration by shifting the focus from immigration benefit applications to deportation defense and litigation challenging Trump policies. For example, the Houston Immigration Legal Services Collaborative (HILSC) was established in 2013 to address the lack of legal services capacity in the region.<sup>192</sup> During the Obama administration, HILSC mostly focused on naturalization, DACA, and other benefit applications. But in the weeks after Trump issued a controversial executive order banning travel for nationals of several majority-Muslim countries and making deep cuts to refugee resettlement, the collaborative organized a group of more than 400 attorneys to represent affected international travelers en route to or arriving at the Houston airport.

As the administration introduced more restrictive immigration policies and broadened enforcement, stakeholders across the United States responded by building new alliances to represent a wider spectrum of immigrant communities. In the past, deportation defense attorneys worked mostly with Latino clients, because Mexican and Central American nationals represent the vast majority of those arrested, detained, and deported. But the travel ban focused on African and Middle Eastern nationals—putting them at risk for exclusion from the United States. Deportations of individuals from these countries remain relatively uncommon in the new administration, but arrests of Somalis and Iraqis have drawn national media coverage. As a result, in some areas—Atlanta, Houston, New York, and Prince William County, Virginia among the study sites—lawyers and advocates representing Latino immigrants joined those advocating for immigrants from Africa, the Middle East, and South Asia. For instance, a coalition formed in Georgia with more than 25 Latino, Muslim, Jewish, African-American, and other community-based organizations.

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191 Liz Robbins, “Not So Fast on Deportations, Judges Tell Immigration Agency,” *The New York Times*, February 9, 2018, [www.nytimes.com/2018/02/09/nyregion/federal-courts-deportation-ragbir-indonesians-stays-ice.html](http://www.nytimes.com/2018/02/09/nyregion/federal-courts-deportation-ragbir-indonesians-stays-ice.html).

192 Houston Immigration Legal Services Collaborative, “About Us,” accessed October 22, 2017, [www.houstonimmigration.org/about-us/](http://www.houstonimmigration.org/about-us/).



Mexican consulates in some locations—most notably Houston and Chicago—also expanded their networks to bring in consulates from other countries. In parallel efforts, several states and cities are providing new financial resources for legal services to immigrants in deportation proceedings.

## A. Responses of States and Localities to ICE's Changed Enforcement Activities

As evident in MPI's study sites, state and local laws, ordinances, guidelines, or procedures governing cooperation with ICE can have a great impact on the number of people who come into ICE custody after they are arrested and jailed by local authorities. (See Appendix for a more detailed review of study site policies.) But the first step—the initial arrest by local law enforcement—is also important. After all, if unauthorized immigrants are not arrested in the first place, they will not be taken to jail and be put at risk of ICE detention.

### I. Extending Driver's Licenses to Unauthorized Immigrants

Allowing unauthorized immigrants to obtain a driver's license has public-safety benefits, as it reduces the number of drivers without identification and insurance coverage. At the same time, having a driver's license protects unauthorized immigrants from being taken into ICE custody, because driving without a license is one of the most common charges used to arrest them.<sup>193</sup> In 2017, 12 states and the District of Columbia made unauthorized immigrants eligible for driver's licenses. Among the study sites, unauthorized immigrants were eligible for licenses in California and Illinois, but not in Georgia, New York, Tennessee, Texas, or Virginia.<sup>194</sup> At the time of the site visits in 2017, it was unusual for unauthorized immigrants in California and Illinois to be arrested for driving without a license, though attorneys in Illinois reported occasional arrests of immigrants driving with suspended or invalid licenses.

In Houston, Nashville, and Memphis, local policing practices reduced the number of arrests for driving without a license, even though Texas and Tennessee prohibit unauthorized immigrants from obtaining licenses. In March 2017, Houston police officers generally did not arrest unauthorized immigrants for driving without a license, allowing them to provide other forms of identification such as Mexican consular cards or a foreign passport, and then issuing a summons to appear later in court. The Nashville and Memphis police departments, in June 2017, also allowed unauthorized immigrants to provide an alternate identification when pulled over for a traffic violation and to appear later in court instead of being arrested. All three of these cities are located in counties that fully cooperate with ICE, and so if unauthorized immigrants are arrested for traffic violations, they would likely be taken to county jails where their status would be screened, detainers would be issued, and they would be taken into ICE custody.

By contrast, in Gwinnett County, Georgia, and Prince William County, Virginia, it was common for unauthorized immigrants to be arrested and taken into ICE custody based on traffic violations. Both Georgia and Virginia prohibit unauthorized immigrants from obtaining driver's licenses, and both counties have 287(g) agreements that allow officers to screen everyone booked into jail for immigration status and initiate removal proceedings. Georgia law requires arrest for driving without a license, but Virginia permits officers to issue a summons for a misdemeanor offense, with the exceptions of driving while intoxicated (DWI), some motor vehicle offenses (e.g., eluding a police officer, reckless driving),

<sup>193</sup> In FY 2017, traffic offenses other than DUI were the third most common category of convictions leading to ICE custody, after DUI and dangerous drugs. Traffic offenses other than DUI were the most common category of "pending charges" (i.e., people arrested but not yet convicted for an offense) leading to ICE custody. See Kristen Bialik, "Most Immigrants Arrested by ICE Have Prior Criminal Convictions, a Big Change from 2009," Pew Research Center Fact Tank blog, February 15, 2018, [www.pewresearch.org/fact-tank/2018/02/15/most-immigrants-arrested-by-ice-have-prior-criminal-convictions-a-big-change-from-2009/?utm\\_content=buffer7d71d&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.pewresearch.org/fact-tank/2018/02/15/most-immigrants-arrested-by-ice-have-prior-criminal-convictions-a-big-change-from-2009/?utm_content=buffer7d71d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

<sup>194</sup> The 12 states allowing driver's licenses for unauthorized immigrants were California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, New Mexico, Nevada, Utah, Vermont, and Washington. See National Immigration Law Center (NILC), "State Laws Providing Access to Driver's Licenses or Cards, Regardless of Immigration Status," May 2017, [www.nilc.org/wp-content/uploads/2015/11/drivers-license-access-table.pdf](http://www.nilc.org/wp-content/uploads/2015/11/drivers-license-access-table.pdf).



and public drunkenness.<sup>195</sup> According to study respondents, officers in Prince William County were more likely to make arrests in such cases than officers in jurisdictions without 287(g) programs.

## 2. Reducing Penalties for Drug Possession and Other Misdemeanor Offenses

Some state and local prosecutors have implemented policies to reduce immigrant arrests for drug possession and other minor crimes, which represent another significant deportation pipeline. For example, in 2014, the district attorney's office in Brooklyn, New York, stopped prosecuting people for possession of small amounts of marijuana.<sup>196</sup> In 2015, the district attorney's office initiated a program called Begin Again, which allows immigrants as well as the U.S. born to resolve outstanding arrest warrants for minor offenses without going to jail.<sup>197</sup> And in April 2017, the office hired two lawyers to advise prosecutors on immigration consequences of plea deals and sentencing recommendations, so that LPRs in particular could avoid ICE arrest and detention for minor crimes.<sup>198</sup> From April through December, immigration attorneys consulted with prosecutors on more than 200 cases.<sup>199</sup> In August 2017, the district attorneys in Brooklyn, the Bronx, Manhattan, and Queens dismissed 644,000 outstanding warrants for minor crimes dating back at least ten years, results of the era of "broken-windows" policing that began in the 1990s.<sup>200</sup> In March 2017, the Harris County, Texas, District Attorney created a precharge diversion program for low-level marijuana offenses as part of a broader crime diversion program intended to reduce crowding in county jails.<sup>201</sup> And in October 2017, the Atlanta City Council voted to decriminalize minor marijuana possession to reduce racially uneven policing, as 92 percent of those arrested for minor possession between 2014 and 2016 were black; this policy change also reduced the likelihood of immigrants being taken into custody for drug possession.<sup>202</sup>

There have also been policy changes to reclassify felonies as misdemeanors or reduce the amount of jail time associated with certain offenses to shield legal immigrants from deportation. (Legal immigrants may be deported if they are convicted of specific crimes.)<sup>203</sup> In 2014, California enacted Proposition 47, intended to reduce the state prison population by reclassifying "nonserious, nonviolent" felonies as misdemeanors, listing certain property crimes that must be sentenced as misdemeanors, and allowing those sentenced for felonies to petition for resentencing. In Cook County in December 2016, the Illinois State Attorney raised the threshold for prosecuting certain crimes (such as shoplifting) as felonies in order to shield people from immigration and other potential consequences.<sup>204</sup>

195 State of Virginia, *An Act to Amend and Reenact §§ 19.2-73, 19.2-74, and 19.2-81 of the Code of Virginia, Relating to Arrest without Warrant*, Virginia Acts of Assembly, Chapter 840 (2010), <https://law.justia.com/codes/virginia/2016/title-46.2/chapter-8/section-46.2-817/>.

196 Kings County District Attorney, "Brooklyn District Attorney Kenneth P. Thompson Announces New Policy for Prosecuting Low-Level Marijuana Possession Arrests" (news release, July 8, 2014), [http://brooklynda.org/wp-content/uploads/2015/03/MarijuanaPolicy\\_7\\_8\\_2014.pdf](http://brooklynda.org/wp-content/uploads/2015/03/MarijuanaPolicy_7_8_2014.pdf).

197 Brooklyn District Attorney's Office, "Brooklyn District Attorney's Citizens' Safety Day Took Guns Off the Streets and Allowed Residents to Begin Again by Clearing Summons Warrants" (press release, December 7, 2015), [www.brooklynda.org/2015/12/07/brooklyn-district-attorneys-citizens-safety-day-took-guns-off-the-streets-and-allowed-residents-to-begin-again-by-clearing-summons-warrants/](http://www.brooklynda.org/2015/12/07/brooklyn-district-attorneys-citizens-safety-day-took-guns-off-the-streets-and-allowed-residents-to-begin-again-by-clearing-summons-warrants/).

198 Brooklyn District Attorney's Office, "Acting Brooklyn District Attorney Eric Gonzalez Announces New Policy Regarding Handling of Cases against Non-Citizen Defendants" (press release, April 24, 2017), [www.brooklynda.org/2017/04/24/acting-brooklyn-district-attorney-eric-gonzalez-announces-new-policy-regarding-handling-of-cases-against-non-citizen-defendants/](http://www.brooklynda.org/2017/04/24/acting-brooklyn-district-attorney-eric-gonzalez-announces-new-policy-regarding-handling-of-cases-against-non-citizen-defendants/).

199 Kate Ryan, "Collateral Consequences: Brooklyn DA Seeks to Protect Immigrant Defendants from Deportation," WNYC, December 12, 2017, [www.wnyc.org/story/collateral-consequences-brooklyn-da-seeks-protect-immigrant-defendants-deportation/](http://www.wnyc.org/story/collateral-consequences-brooklyn-da-seeks-protect-immigrant-defendants-deportation/).

200 James C. McKinley Jr., "644,000 Old Warrants Scrapped for Crimes Like Public Drinking," *The New York Times*, August 9, 2017, [www.nytimes.com/2017/08/09/nyregion/644000-old-warrants-scrapped-for-crimes-like-public-drinking.html](http://www.nytimes.com/2017/08/09/nyregion/644000-old-warrants-scrapped-for-crimes-like-public-drinking.html).

201 Kim Ogg, Office of District Attorney, Harris County, Texas, "Misdemeanor Marijuana Diversion Program," effective March 1, 2017, <https://app.dao.hctx.net/MMDP>.

202 Grace Donnelly, "Atlanta Is the Latest U.S. City to Decriminalize Marijuana. Here's What That Means," *Fortune*, October 3, 2017, <http://fortune.com/2017/10/03/list-of-cities-that-decriminalized-marijuana/>.

203 Immigration law defines certain crimes—both felonies and misdemeanors—as "aggravated felonies" or "crimes of moral turpitude" that warrant deportation of lawful permanent residents. See *Immigration and Nationality Act of 1965*, Public Law 89-236, codified at *U.S. Code* 8 § 1227 (2016 Edition): 262, [www.govinfo.gov/content/pkg/USCODE-2016-title8/pdf/USCODE-2016-title8-chap12-subchapII-partIV-sec1227.pdf](http://www.govinfo.gov/content/pkg/USCODE-2016-title8/pdf/USCODE-2016-title8-chap12-subchapII-partIV-sec1227.pdf).

204 Christie Thompson, "How Prosecutors Are Fighting Trump's Deportation Plans," Marshall Project, May 16, 2017, [www.themarshallproject.org/2017/05/16/how-prosecutors-are-fighting-trump-s-deportation-plans#.Lsb7UzIFh](http://www.themarshallproject.org/2017/05/16/how-prosecutors-are-fighting-trump-s-deportation-plans#.Lsb7UzIFh); Steve Schmadeke, "Top Cook County Prosecutor Raising Bar for Charging Shoplifters with Felony," *Chicago Tribune*, December 16, 2016, [www.chicagotribune.com/news/local/breaking/ct-kim-foxx-retail-theft-1215-20161214-story.html](http://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-retail-theft-1215-20161214-story.html).



### 3. Putting Immigrants at Risk of Arrest for Alleged Gang Involvement

Gang activities and affiliations offer another pipeline into ICE custody, and except for New York City, the MPI study sites generally cooperated with ICE in arresting immigrants based on alleged gang membership. Under Trump's interior enforcement executive order, individuals who have committed a crime but have not yet been arrested or convicted for it are also priorities for enforcement. ICE Acting Director Homan suggested that gang members are a top priority even if they haven't been prosecuted for a crime:

*We also made it a priority to enforce laws against MS-13. Criminal gangs are a priority. ... If there's not enough evidence to prosecute them criminally, and they are here in the country illegally, we're still going to send them back to where they belong. It's the right thing to do for the safety of this nation.*<sup>205</sup>

Among the study sites, there were reports of cooperation between the police and ICE to arrest gang members or others with criminal charges in Chicago, Houston, and Los Angeles through DHS task forces—even though Chicago and Los Angeles had policies otherwise limiting ICE cooperation. Further, ICE can query at least some state and local gang databases to target unauthorized immigrant gang members who have not been convicted of a crime. The Chicago Police Department gang database has been controversial generally for including a broad swath of the city's population: 130,000, according to a FOIA request, of whom 90,000 are identified as Black and 32,000 as Hispanic.<sup>206</sup> Coalitions of Latino and Black advocacy groups oppose the police department's use of the database, and two immigrants have sued the city for listing them in the database, which led to ICE arresting them in a gang-targeted operation.<sup>207</sup> The criteria for being listed in the database are vague; the only information about identifying gang members is a page on the police department website:

*Gangs can be identified by what they wear, graffiti they display, and hand signals that they gesture. Most gang members are proud of their gang and freely admit their membership. Many gang members display tattoos openly and dress in a style identifying their particular gang. Their personal belongings are frequently covered with graffiti and bear the gang's logo and the member's gang name.*<sup>208</sup>

The California gang database, which has more than 150,000 names (40,000 from Los Angeles), has also been controversial. According to advocates interviewed for this study, placement in the database has been arbitrary, and there is no mechanism to appeal and be removed. A 2016 audit of the statewide CalGang database found 42 infants in it, 28 of whom were listed as self-declared gang members.<sup>209</sup> According to a 2014 law, juveniles and their parents must be notified when their names are added to the database, but the audit found 70 percent had been added without proper notification.<sup>210</sup> CalGang and the Los Angeles Police Department have also been criticized for labeling people as gang members based solely on the neighborhoods in which they reside.<sup>211</sup> In October 2017, California passed AB90, a law prohibiting DHS and ICE from directly accessing CalGang and other gang databases, and state and local agencies in California from directly sharing CalGang and related database information with DHS and ICE,

<sup>205</sup> Homan, Heritage Foundation presentation, *Enforcing U.S. Immigration Laws*.

<sup>206</sup> Griselda Flores, "Chicago Police Admission Exposes Loophole in the City's Sanctuary Protection," CityLab, December 27, 2017, [www.citylab.com/equity/2017/12/chicago-gang-database/549149/](http://www.citylab.com/equity/2017/12/chicago-gang-database/549149/).

<sup>207</sup> Curtis Black, "Gang Database Compromises Chicago's Sanctuary City Protections," *Chicago Reporter*, September 14, 2017, <http://chicagoreporter.com/gang-database-compromises-chicagos-sanctuary-city-protections/>.

<sup>208</sup> Chicago Police Department, "How Gangs Are Identified," accessed October 13, 2017, <https://home.chicagopolice.org/community/gang-awareness/how-gangs-are-identified/>.

<sup>209</sup> Richard Wilson, "California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds," *Los Angeles Times*, August 11, 2016, [www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html](http://www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html).

<sup>210</sup> Morgan Cook, "Auditor Calls for Oversight of State Gang Database," *San Diego Union-Tribune*, August 11, 2016, [www.sandiegouniontribune.com/news/watchdog/sdut-auditor-calgang-2016aug11-story.html](http://www.sandiegouniontribune.com/news/watchdog/sdut-auditor-calgang-2016aug11-story.html).

<sup>211</sup> Jennifer Medina, "Gang Database Criticized for Denying Due Process May Be Used for Deportations," *The New York Times*, January 10, 2017, [www.nytimes.com/2017/01/10/us/gang-database-criticized-for-denying-due-process-may-be-used-for-deportations.html](http://www.nytimes.com/2017/01/10/us/gang-database-criticized-for-denying-due-process-may-be-used-for-deportations.html).





for immigration enforcement purposes.<sup>212</sup> Gang information may, however, be included in other crime databases such as the FBI's National Crime Information Center (NCIC), and so indirect identification of gang members may be possible even after AB90's implementation.

In New York City, the 2014 ordinance restricting New York Police Department cooperation with ICE removed exceptions that otherwise prohibited enforcement against alleged gang members, and the study team did not hear of any collaboration between the police department and ICE in arresting gang members. The police department has a gang squad that targets those identified as gang members. It maintains a gang database similar to those in Chicago and California, including people identified as gang members based on indicators such as admission of gang membership or displaying gang symbols.<sup>213</sup>

#### 4. State and Local Funding for Legal Defense of Immigrants

Since Trump took office, some city and state governments have substantially increased funding for legal aid to immigrants in their removal proceedings. New York's Mayor and City Council raised spending on the New York Immigrant Family Unity Project (NYIFUP) to \$26 million for FY 2018, from \$7 million the prior year.<sup>214</sup> In operation since 2013, the fund offers representation to all detained immigrants from New York City with incomes below 200 percent of the federal poverty level, regardless of prior criminal convictions or potential eligibility for relief from deportation.<sup>215</sup>

California and Los Angeles have also devoted more resources for immigration legal defense. In June 2017, California increased its state deportation defense funding from \$30 million to \$45 million annually.<sup>216</sup> The L.A. Justice Fund raised an additional \$10 million in legal defense funds from public and private resources, including \$2 million from the Los Angeles City Council and \$3 million from the County Board of Supervisors; \$7.45 million in grants were awarded through the fund as of November 2017.<sup>217</sup>

In December 2016, the Chicago City Council approved \$1.3 million for the Mayor's Chicago Legal Protection Fund to expand access to legal representation for immigrants and refugees.<sup>218</sup> Half of the amount funded additional legal capacity for a legal service provider with a network of more than 1,400 pro bono attorneys. The other half supported a Community Navigators program, a collaboration of eight community-based organizations (CBOs) to conduct "know-your-rights" workshops, train community navigators, and refer people to pro bono attorneys.<sup>219</sup>

The data suggest that publicly funded legal defense programs have expanded representation for unauthorized immigrants facing deportation. For instance, the New York Family Unity Project's 2013

212 NILC, "AB90: More Welcome Fixes to California's Gang Databases," November 2017, [www.nilc.org/issues/immigration-enforcement/ab90-fixes-to-calif-gang-databases/](http://www.nilc.org/issues/immigration-enforcement/ab90-fixes-to-calif-gang-databases/); State of California, *Fair and Accurate Gang Database Act of 2017*, AB90, 2017-18 Assembly session, Chapter 695 (2017), [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB90](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB90).

213 Noah Hurowitz, "NYPD's Secret Gang Database Filled With 'Garbage,' Advocates Say," DNAinfo, October 19, 2017, [www.dnainfo.com/new-york/2017/10/19/civic-center/nypd-gang-database-legal-aid-brooklyn-defenders-foil-request](http://www.dnainfo.com/new-york/2017/10/19/civic-center/nypd-gang-database-legal-aid-brooklyn-defenders-foil-request).

214 Liz Robbins, "Mayor and City Council Make Deal on Lawyers for Immigrants," *The New York Times*, July 31, 2017, [www.nytimes.com/2017/07/31/nyregion/mayor-and-city-council-make-deal-on-lawyers-for-immigrants.html](http://www.nytimes.com/2017/07/31/nyregion/mayor-and-city-council-make-deal-on-lawyers-for-immigrants.html).

215 Melissa Mark-Viverito and Julissa Ferreras-Copeland, *Fiscal Year 2018 Adopted Expense Budget, Adjustment Summary/Schedule C* (budget document, the City Council of the City of New York, New York, NY, June 6, 2017), <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/FY-2018-Schedule-C-Cover-Template-FINAL-MERGE.pdf>.

216 Katy Murphy, "California Budget Deal Includes Deportation Defense Funds for Undocumented Immigrants," *The Mercury News*, June 16, 2017, [www.mercurynews.com/2017/06/16/california-budget-deal-includes-deportation-defense-for-undocumented-immigrants/](http://www.mercurynews.com/2017/06/16/california-budget-deal-includes-deportation-defense-for-undocumented-immigrants/).

217 Nina Agrawal and Dakota Smith, "L.A. County Supervisors OK \$3 Million to Aid Legal Efforts for Immigrants Facing Deportation," *Los Angeles Times*, June 20, 2017, [www.latimes.com/local/lanow/la-me-ln-justice-fund-immigrants-20170620-story.html](http://www.latimes.com/local/lanow/la-me-ln-justice-fund-immigrants-20170620-story.html); California Community Foundation, "\$7.4 Million Awarded to 17 Legal Nonprofit Organizations to Provide Free Legal Representation" (press release, November 27, 2017), [www.calfund.org/7-4-million-awarded-to-17-legal-nonprofit-organizations-to-provide-free-legal-representation/](http://www.calfund.org/7-4-million-awarded-to-17-legal-nonprofit-organizations-to-provide-free-legal-representation/).

218 City of Chicago, Family and Support Services, "City Council Approves Budget Amendment to Support Mayor Emanuel's Chicago Legal Protection Fund" (press release, December 14, 2016), [www.cityofchicago.org/city/en/depts/fss/provdrs/serv/news/2016/december/city-council-approves-budget-amendment-to-support-mayor-emanuel.html](http://www.cityofchicago.org/city/en/depts/fss/provdrs/serv/news/2016/december/city-council-approves-budget-amendment-to-support-mayor-emanuel.html).

219 By November 2017, when the city reauthorized \$1.3 million in support for the coming year, the fund had been used to provide legal consultations to 1,700 immigrants and legal representation for 900 cases and had reached more than 22,000 people through workshops and community education programs. See Associated Press, "Chicago Renews Legal Fund for Immigrants Facing Deportation," Associated Press, November 21, 2017, <https://apnews.com/d08a0dad63494365b500d3d432fb8c12/Chicago-renews-legal-fund-for-immigrants-facing-deportation>; National Immigrant Justice Center, "Chicago City Council Votes to Continue Legal Protection Fund" (press release, November 21, 2017), [www.immigrantjustice.org/index.php/press-releases/chicago-city-council-votes-continue-legal-protection-fund](http://www.immigrantjustice.org/index.php/press-releases/chicago-city-council-votes-continue-legal-protection-fund).



pilot program increased legal representation in removal proceedings from an average of 60 percent of noncitizens appearing in immigration court to between 70 and 80 percent. Since the program was fully implemented in July 2014, the representation rate has generally exceeded 90 percent.<sup>220</sup> Almost half (48 percent) of those represented by the program prevailed in their cases.<sup>221</sup> Chicago's legal defense fund helped increase representation during removal hearings from 30 percent in May 2017 to 57 percent three months later.<sup>222</sup> Research has shown that legal representation plays a significant role in determining success in immigration cases: in a national study of more than 1 million deportation cases decided between 2007 and 2012, immigrants with attorneys were more than five times as likely to obtain relief from removal than those without representation.<sup>223</sup>

## 5. Municipal Identification Cards

Municipal identification cards offer unauthorized immigrants access to public services, as well as banking and other private services. Such IDs also help promote public safety and protect unauthorized immigrants from arrest and exposure to ICE detention when police cannot otherwise identify them. In April 2017, the Chicago City Council passed a municipal ID ordinance. Its ID database is modeled after San Francisco's: all required information is collected to verify identities, but only names and birthdates are retained once cards are issued, to protect participants' confidentiality.<sup>224</sup> New York City has had a municipal ID in place since 2015, with more than 1 million applicants—immigrants as well as the native born—as of April 2017. New York scrubbed its database of personal information to ensure that the federal government could not potentially access this information for immigration enforcement purposes.<sup>225</sup>

### B. Consulates Across United States Expand Outreach, Services, and Protection

During 2017, Mexican consulates greatly expanded their services, in areas such as issuance of passports and other documentation, support for naturalization and DACA applications, protection of the rights of ICE detainees, legal representation during deportation proceedings, and preparation for possible return to Mexico. To better understand the provision of these services, MPI researchers met with officials at five consulates in the study sites. Although the Mexican consular network has far more capacity to provide these types of services than the consulates of other countries, MPI researchers also met with officials at a Salvadoran consulate and a Honduran consulate.

#### I. The Mexican Consular Network

The network of 50 Mexican consulates across the United States experienced a spike in demand for services just after the Trump inauguration. In Houston, requests for consular services doubled from January to February 2017. Parents sought information about temporary legal guardianship for their children in case they were deported. Following consular recommendations, parents also applied for Mexican citizenship for their U.S.-born children, ensuring the children would have full rights in Mexico if they joined their parents postdeportation. Parents also requested information about transferring property rights, financial assets, and school paperwork to Mexico. Consulates also provided background checks in Mexican databases to help individuals plan for employment in Mexico or establish whether

220 TRAC, "Details on Deportation Proceedings in Immigration Court," accessed November 11, 2017, <http://trac.syr.edu/phptools/immigration/nta/>.

221 Vera Institute of Justice, "SAFE Cities Network Launches: 11 Communities United to Provide Public Defense to Immigrants Facing Deportation" (press release, November 9, 2017), [www.vera.org/newsroom/press-releases/safe-cities-network-launches-11-communities-united-to-provide-public-defense-to-immigrants-facing-deportation](http://www.vera.org/newsroom/press-releases/safe-cities-network-launches-11-communities-united-to-provide-public-defense-to-immigrants-facing-deportation).

222 Vikki Ortiz, "Spike in Legal Representation for Immigrants in Chicago Is Attributed to \$1 Million City Fund," *Chicago Tribune*, November 16, 2017, [www.chicagotribune.com/news/immigration/ct-met-immigrants-represented-in-court-20171031-story.html](http://www.chicagotribune.com/news/immigration/ct-met-immigrants-represented-in-court-20171031-story.html).

223 Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015): 1-91, [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review).

224 City of Chicago, Office of New Americans, "Chicago's Municipal ID Program," accessed October 20, 2017, [www.cityofchicago.org/city/en/depts/mayor/supp\\_info/office-of-new-americans/Municipal-ID.html](http://www.cityofchicago.org/city/en/depts/mayor/supp_info/office-of-new-americans/Municipal-ID.html).

225 Liz Robbins, "New York Can Destroy Documents, Judge Rules in Municipal ID Case," *The New York Times*, April 7, 2017, [www.nytimes.com/2017/04/07/nyregion/new-york-can-destroy-documents-judge-rules-in-municipal-id-case.html](http://www.nytimes.com/2017/04/07/nyregion/new-york-can-destroy-documents-judge-rules-in-municipal-id-case.html).



individuals maintained good moral character in Mexico as supporting evidence to include in deportation defense cases or DACA applications.

Mexican consulates also experienced a surge in demand for workshops and assistance in preparation for citizenship and DACA. While the Mexican consular network has long-established operations in major U.S. cities, many consulates have recently expanded their geographic reach by sending staff to suburban and rural communities: for instance, from Houston to suburban Southeast Texas, and from Atlanta to smaller cities and rural areas in Georgia, Alabama, and Tennessee.

Consular officials increased their protection activities by increasing contacts with Mexicans in detention, strengthening links with local ICE offices to obtain information, and increasing their support for legal representation of nationals in deportation proceedings. In Los Angeles, the consulate began collecting information through a survey of ICE detainees' demographics and conditions of arrest and detention.

In March 2017, the Mexican government announced the allocation of \$54 million in new funding to hire 300-plus workers in Legal Defense Centers (*Centros de Defensoría*) at all the consulates in the United States.<sup>226</sup> Through these centers, the Mexican government assisted 370,000 immigrants, provided more than 2,000 know-your-rights workshops and nearly 900 workshops on immigration screenings, and hosted almost 1,000 events with attorneys from March through July 2017.<sup>227</sup> New guidelines were issued to focus on deportation defense cases with the greatest chance of success, including those that do not involve serious criminal violations or individuals with U.S.-citizen children, health conditions, or other special needs. During spring 2017 in some study sites, Mexican consular staff attempted to interview all detained nationals at least twice and screen them for their legal immigration options such as family sponsorship or special protections for victims of crime or domestic violence. Through the Program for External Legal Assessment (*Programa de Asistencia Jurídica a Mexicanos a través de Asesorías Legales Externas Estados Unidos de América, PALE*), consulates also referred individuals to immigration attorneys in their local networks and paid up to half of their legal fees in some cases.<sup>228</sup> For example, immigration attorneys provided legal consultations on site at the Los Angeles consulate. The consular network referred more than 2,000 immigrants for legal assessment or representation through the PALE program between January and July 2017, representing a 10 percent increase over the same period in 2016.<sup>229</sup>

In 2017, the Mexican government strengthened its interagency “We are Mexican” (*Somos Mexicanos*) initiative, established in 2014 to facilitate the reception and reintegration of returning migrants.<sup>230</sup> Consulates in Chicago, Houston, and Los Angeles assisted migrants seeking to return voluntarily to Mexico by providing information on the return process, required documentation, and asset transfers, and referring them to government agencies in their destinations for reintegration services. Between January and September 2017, the Los Angeles consulate had assisted 47 migrants with these services.<sup>231</sup> At the 11 ports of entry along the U.S.-Mexico border and the Mexico City airport, *Somos Mexicanos* provides deported migrants with reception services, information about reintegration services, and referral to government agencies for assistance.<sup>232</sup>

226 Marilia Brocchetto, “Mexico Opens Immigrant Defense Centers at its US Consulates,” CNN, March 5, 2017, [www.cnn.com/2017/03/04/americas/mexico-us-consulates-legal-services-immigrants/index.html](http://www.cnn.com/2017/03/04/americas/mexico-us-consulates-legal-services-immigrants/index.html).

227 Mexican Foreign Affairs Secretariat, “5to Informe de Labores, 2016-2017,” accessed January 18, 2018, [www.gob.mx/cms/uploads/attachment/file/255693/5o\\_INFORME\\_SRE.pdf](http://www.gob.mx/cms/uploads/attachment/file/255693/5o_INFORME_SRE.pdf).

228 The PALE program authorizes a maximum \$1,000 award for legal advice and \$5,000 for legal representation. See Mexican Foreign Affairs Secretariat, “Lineamientos para la Operación del Programa de Asistencia Jurídica a Mexicanos a Través de Asesorías Legales Externas en los Estados Unidos de América,” accessed January 18, 2018, <https://sre.gob.mx/images/stories/docnormateca/comeri/2014/lineamiento-spale.pdf>.

229 Mexican Foreign Affairs Secretariat, “5to Informe de Labores, 2016-2017.”

230 Mexican Secretariat of the Interior, “Programa Somos Mexicanos,” accessed January 26, 2018, [www.gob.mx/presidencia/articulos/4197](http://www.gob.mx/presidencia/articulos/4197). See also Mexican Secretariat of the Interior, “Acuerdo por el que la Secretaría de Gobierno y la Secretaría de Relaciones Exteriores Implementan la Estrategia ‘Somos Mexicanos,’” June 7, 2016, [http://dof.gob.mx/nota\\_detalle.php?codigo=5443723&fecha=06/07/2016](http://dof.gob.mx/nota_detalle.php?codigo=5443723&fecha=06/07/2016).

231 Brittney Mejia, “Leaving America: With Shaky Job Prospects and Trump Promising Crackdowns, Immigrants Return to Mexico with U.S.-Born Children,” *Los Angeles Times*, September 19, 2017, [www.latimes.com/local/la-me-ln-dual-citizenship-20170808-htlstory.html](http://www.latimes.com/local/la-me-ln-dual-citizenship-20170808-htlstory.html).

232 Mexican Secretariat of the Interior, “Con el Programa Somos Mexicanos Hay Esperanza para los Connacionales Repatriados,” accessed January 26, 2018, [www.gob.mx/inm/articulos/con-el-programa-somos-mexicanos-hay-esperanza-para-los-connacionales-repatriados?idiom=es](http://www.gob.mx/inm/articulos/con-el-programa-somos-mexicanos-hay-esperanza-para-los-connacionales-repatriados?idiom=es). See also Mexican Secretariat of the Interior, “Qué es Somos Mexicanos?,” accessed January 26, 2018, [www.gob.mx/cms/uploads/attachment/file/133316/Infografi\\_a\\_Somos\\_Mex\\_FINAL.pdf](http://www.gob.mx/cms/uploads/attachment/file/133316/Infografi_a_Somos_Mex_FINAL.pdf).



## 2. Salvadoran Consulates

As with the Mexican consulates, the Salvadoran consulate in Northern Virginia experienced increasing demand for services beyond the typical volume prior to the Trump administration, including a doubling of passport applications, tripling of registrations for dual nationality, and a doubling of requests for assistance in writing powers of attorney for financial matters and guardianship arrangements for children as of August 2017. Immigrants aiming to purchase property in El Salvador also sought legal support.

According to a memorandum of agreement between the U.S. and Salvadoran governments, a Salvadoran national cannot be deported with a regular passport; rather, consulates must issue a provisional passport before the immigrant can be repatriated, consular officials told MPI researchers. Consulates will not issue a provisional passport until the immigrant has had a consular interview and request the document, or family members have visited the consulate and been informed that the migrant is ready to accept deportation. Consulates will not issue the provisional passport if the immigrant seeks to contest his or her deportation. These constraints place the final decision to accept deportation with the individual, not ICE. This process can slow down the issuance of Salvadoran travel documents, especially in comparison to Mexico and the other Central American countries.

In February 2017, the Salvadoran government initiated the Special Fund for the Care of Salvadorans Abroad and Returned Migrants (*Fondo de Actividades Especiales para la Atención a los Salvadoreños y Salvadoreñas en el Exterior y para las Personas Retornadas*, FOSALEX).<sup>233</sup> Funded in part by service fees Salvadorans pay at consulates, FOSALEX supports legal screenings and representation for migrants, with an emphasis on deportation cases with the greatest chance for success. These legal services are offered primarily at the larger consulates in New York City, Long Island, San Francisco, Los Angeles, and Silver Spring, Maryland. Smaller consulates obtain support for legal services from larger consulates when possible. For example, the Maryland consulate extends legal orientation services to the Northern Virginia consulate and helps provide pro bono lawyers for Salvadorans in removal proceedings in Virginia. FOSALEX also funds reintegration services for migrants who have returned to El Salvador.

## 3. Honduran Consular Protection Office in Houston

The Honduran Embassy recently opened a nationwide consular protection office in Houston. Before this office opened, consulates had been issuing travel documents routinely so that ICE could expeditiously deport people to Honduras. In March 2017, the nationwide consular protection office was reviewing travel document requests more thoroughly and identifying ways to challenge removal cases. As of March, ICE was sending the Houston consulate a list of all Hondurans in deportation proceedings nationwide, and a single consular protection officer attempted to review all the paperwork, interview all detainees in ICE custody, consult with their families, and refer them to legal service providers as appropriate. The Honduran Embassy was hiring other officials to support this work; with limited resources, it was very difficult for the Houston protection office to handle the workload generated by the increase in ICE arrests.

## 4. Coordination among the Consulates

In December 2016, the governments of El Salvador, Guatemala, Honduras, and Mexico expanded their TRICAMEX initiative—a year after its inauguration in McAllen, Texas—to several U.S. cities with consulates representing the four countries.<sup>234</sup> TRICAMEX was originally designed to share best practices in consular assistance and foster a constructive dialogue with U.S. authorities. In 2017, the initiative was expanded to emphasize protection and deportation defense efforts and sought to harmonize

<sup>233</sup> Salvadoran Ministry of Foreign Affairs, “Asamblea Legislativa Aprueba Fondo para Atención a Salvadoreños en el Exterior y Compatriotas Retornados” (press release, February 23, 2017), [www.rree.gob.sv/index.php?option=com\\_k2&view=item&id=6522:asamblea-legislativa-aprueba-fondo-para-atencion-a-salvadorenos-en-el-exterior-y-compatriotas-retornados&Itemid=1770](http://www.rree.gob.sv/index.php?option=com_k2&view=item&id=6522:asamblea-legislativa-aprueba-fondo-para-atencion-a-salvadorenos-en-el-exterior-y-compatriotas-retornados&Itemid=1770).

<sup>234</sup> Grupo de Concentración de Consulados del Triángulo Norte de Centroamérica y México en McAllen, “Inicio de TRICAMEX,” *TRICAMEX McAllen en Acción: Boletín Electrónico Trimestral de Buenas Prácticas Consulares* year 1, no. 1 (2017): 1–3, [https://consulmex.sre.gob.mx/mcal-len/images/stories/PDF/2017/TRICAMEX\\_1.pdf](https://consulmex.sre.gob.mx/mcal-len/images/stories/PDF/2017/TRICAMEX_1.pdf)



these efforts among the four consular networks. In Chicago, for instance, the four Consuls General communicate frequently about programming and assistance, and the Mexican Consulate has opened its events and workshops to all immigrants, referring Salvadoran, Guatemalan, and Honduran migrants to their respective consular offices for specific services. In effect, TRICAMEX amplifies the outreach and coordination capacity of the four countries' consular networks with the objective of reaching and informing a broader audience of immigrants and their families.

### C. *Increased Representation for Detained Immigrants*

There have also been new concerted efforts to increase representation of immigrants in ICE detention centers. Legal service providers have longstanding contracts with detention centers near major cities, and legal representation is generally more available in these areas. But many ICE detention facilities are in remote locations where there are few lawyers available to screen detainees and offer representation. For example, during summer 2017, individuals arrested in Tennessee were taken to a detention facility in rural Louisiana. A legal service provider in Memphis organized lawyers' visits to the LaSalle Detention Center in Jena, Louisiana, but attorneys in Tennessee generally attempted to convince ICE to allow their clients to post bond or otherwise exercise discretion before their clients were transferred to Louisiana, where it was more difficult to represent them.

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*There have been new concerted efforts to increase representation of immigrants in ICE detention centers.*

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In 2017, the Southern Poverty Law Center (SPLC) launched the Southeast Immigrant Freedom Initiative (SIFI) to provide legal orientation, individualized screening for relief, and pro bono representation to detainees in three of the largest and most remote ICE facilities: Stewart and Irwin in southern Georgia, and LaSalle in Louisiana. For cases initiated in FY 2017, 24 percent of immigrants held at the Stewart Detention Center and 36 percent of all other immigration detainees who had their cases heard in Atlanta were represented, compared with 32 percent of those detained nationwide.<sup>235</sup> Without representation, detainees have had a very low success rate in contesting their removal, and the immigration judges there have among the lowest rates in the country for granting asylum and other forms of relief.<sup>236</sup> One of SIFI's goals is to increase the share of detained immigrants who can obtain representation and successfully fight their deportation cases; another is to ensure that immigration courts afford all immigrants their due-process rights, and to appeal cases in which such rights are denied.<sup>237</sup>

### D. *Visiting Programs for ICE Detainees*

Arranging visits by family members is another important support for immigrants in ICE detention. In 2007, two nuns with the Sisters of Mercy started a detainee-visiting program called the Interfaith Community for Detained Migrants (ICDI) in Chicago.<sup>238</sup> For ten years, the nuns have taken other clergy, lay volunteers, and family members to visit detainees just before they are deported. Starting in 2009, ICDI has also arranged for clergy and volunteers to meet with detainees in ICE's long-term detention facilities

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<sup>235</sup> Representation data for noncitizens held at Irwin were not available but were included among "all other detainees" with cases heard by the Georgia immigration court. See TRAC, "Details on Deportation Proceedings in Immigration Court."

<sup>236</sup> During the first 11 months of FY 2017, immigration judges ordered individuals in custody at the Stewart facility to be deported 92 percent of the time, and judges in the Atlanta court—which covers the Irwin facility—ordered deportation 83 percent of the time, compared with 56 percent nationwide. See TRAC, "Outcomes of Deportation Proceedings in Immigration Court, by Nationality, State, Court, Hearing Location, and Type of Charge," through August 2017, [http://trac.syr.edu/phptools/immigration/court\\_backlog/deport\\_outcome\\_charge.php](http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php).

<sup>237</sup> Southern Poverty Law Center, "Southeast Immigrant Freedom Initiative," accessed October 20, 2017, [www.splcenter.org/our-issues/immigrant-justice/southeast-immigrant-freedom-initiative](http://www.splcenter.org/our-issues/immigrant-justice/southeast-immigrant-freedom-initiative).

<sup>238</sup> Interfaith Committee for Detained Immigrants, "Dignity. Service. Spirituality. Justice," accessed October 15, 2017, [www.icdichicago.org/](http://www.icdichicago.org/).



in the Chicago area on a weekly basis. The nuns and ICDI built confidence with the local ICE office and have opened two shelters for ICE inmates when they are released and initiated a community-supervision program as an alternative to detention.

Two nationwide groups have expanded family visitation to other ICE detention centers. Community Initiatives for Visiting Immigrants in Confinement (CIVIC) is a national network that provides resources, training, and capacity-building support to 43 community-led visitation programs in 19 states.<sup>239</sup> Lutheran Immigration and Refugee Service (LIRS) has partnerships with local visitation ministries in 13 states, including ICDI.<sup>240</sup>

ICE in certain cases facilitates visitation between parents in custody and children in child welfare systems through its Parental Interest Directive, issued in 2013 and revised in 2017.<sup>241</sup>

### E. Community Rapid Response Teams

Community leaders across the study sites have established response teams to monitor ICE activity, confirm rumored ICE operations, provide know-your-rights presentations, and organize possible civil disobedience. In Chicago, such teams were organized in predominantly immigrant neighborhoods—including Albany Park, Back-of-the Yards, Little Village, Logan Square, and Pilsen—two of which had experienced ICE operations during February and March 2017. They also collaborated with Black, Asian-American, and Arab-American groups, with large numbers of mainstream activists joining, particularly in the wake of the travel ban. In Los Angeles, several CBOs organized rapid-response networks involving hotlines, enforcement action verification (i.e., sending an attorney to verify reported ICE operations), providing deportation defense trainings for local attorneys, and activating attorneys to provide unauthorized immigrants with representation in the event of an arrest. United We Dream, a national immigrants-rights advocacy group, launched a mobile app, Notifica, that allows users to immediately alert friends and family members if they are caught up in immigration enforcement.<sup>242</sup>

In Atlanta, CBOs distributed posters declaring residences to be “ICE-free zones,” letting ICE officers know people would not open the door without a warrant. CBOs also attempted to get employers to post ICE-free zone posters. One group organized community response committees in immigrant neighborhoods to monitor ICE activities, alert others in the community through a hotline and the Internet, and develop response plans including identifying sources of food, shelter, and other emergency support for families whose members were arrested.

In Nashville, a community response team followed ICE officers and recorded their activities as they arrested Kurdish refugees and asylum seekers. The group taped ICE detaining a U.S. citizen during a traffic stop and presented the video to the Nashville mayor, who wrote a letter to a local ICE official complaining about ICE agents identifying themselves as “police” during operations. ICE responded that “police” is a universally recognized term for law enforcement, especially among people with low English proficiency.<sup>243</sup>

ICE officers participating in the study noted that at-large operations have become more difficult due to community organizing and backlash. People are reluctant to open their doors, requiring ICE agents to

<sup>239</sup> Community Initiatives for Visiting Immigrants in Confinement, “Visitation Programs,” accessed December 15, 2017, [www.endisolation.org/projects/visitation-programs/](http://www.endisolation.org/projects/visitation-programs/).

<sup>240</sup> Lutheran Immigration and Refugee Service, “Visitation Ministry Partners,” accessed December 15, 2017, <http://lirs.org/act/visitation/join-a-visitation-ministry/>.

<sup>241</sup> Under the directive, ICE facilitates contact between detained parents and their children when mandated by juvenile or family courts, and it includes instructions for arranging in-person or teleconference appearances for parents in child custody hearings. See ICE, “Parental Interests Directive,” updated November 15, 2017, [www.ice.gov/parental-interest](http://www.ice.gov/parental-interest).

<sup>242</sup> Al Ortiz, “Advocacy Group Uses Technology to Help Undocumented Immigrants at Risk,” Houston Public Media, April 2, 2018, [www.houstonpublicmedia.org/articles/news/politics/immigration/2018/04/02/276333/advocacy-group-uses-technology-to-help-undocumented-immigrants-at-risk/](http://www.houstonpublicmedia.org/articles/news/politics/immigration/2018/04/02/276333/advocacy-group-uses-technology-to-help-undocumented-immigrants-at-risk/).

<sup>243</sup> Stephen Elliott, “ICE Accused of Impersonating Police in Immigration Stops,” Nashville Scene, June 22, 2017, [www.nashvillescene.com/news/features/article/20865344/do-immigration-sweeps-in-the-kurdish-community-undermine-mnpds-credibility](http://www.nashvillescene.com/news/features/article/20865344/do-immigration-sweeps-in-the-kurdish-community-undermine-mnpds-credibility).



stake out properties for hours until people leave, or try to arrest them at work, a partner's house, near school, or some other location. In the words of one ICE officer, "our target population is emboldened to resist us."

## F. Efforts to Stop New ICE Detention Facilities

Another advocacy strategy has been blocking the contracting and construction of ICE detention facilities. From 2013 through 2016, the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and other organizations successfully blocked contracts for ICE detention facilities in two cities in Illinois and two locations in Indiana. In May 2017, a detention contract with Winnebago County, Illinois, was blocked after more than 1,000 county residents signed a petition opposing the facility, and a nonprofit legal service provider threatened litigation.<sup>244</sup> ICE did sign a contract in Kankakee County, Illinois, with a facility there opening to ICE detainees in March 2017. Immigrant-rights organizations and other advocates failed to convince the Illinois Legislature to extend an existing ban on private contracting for state and local prisons for purposes of criminal incarceration to immigration detention. In January 2018, local activists were successful in halting construction of a large new private ICE detention facility in Elkhart County, Indiana.<sup>245</sup> Despite these efforts, the number of detainees in the Chicago area rose slightly to 1,940 at the end of FY 2017, up from 1,669 at the end of the previous year, and ICE continued to seek 400 to 1,200 more beds in the area.<sup>246</sup>

In California, advocates have been successful in preventing detention space expansions. A provision prohibiting the state or local governments from contracting with ICE for detention space was included in the *California Values Act*, enacted in October 2017.

## VII. Impact of the New Enforcement Climate on Immigrant Communities

The combination of increased arrests, high-profile cases highlighted in the media, unfounded rumors of ICE "raids," and the Trump administration's strong rhetoric against illegal immigration has led to a climate of fear in immigrant communities. Early in the Obama administration, when deportations were at their peak, several studies documented fear in immigrant communities and the impact of this fear on their well-being.<sup>247</sup> This anxiety subsided when interior arrests and deportations fell in 2015 and 2016. But the dramatic policy changes and immediate increase in ICE operations in February 2017 renewed a more urgent sense of fear. A December 2017 study by the Kaiser Family Foundation, based on focus groups with 100 parents and interviews with 13 pediatricians, concluded that immigrant families—both those with unauthorized and legal status—were experiencing "resounding levels of fear and uncertainty" that escalated after immigration enforcement activities and the announcement of DACA's rescission

244 Owen Stiffler, "Law Firm Sends Letter to Winnebago County Officials Advising Against ICE Center," My Stateline, May 12, 2017, [www.mystateline.com/news/law-firm-sends-letter-to-winnebago-county-officials-advising-against-ice-center/712697046](http://www.mystateline.com/news/law-firm-sends-letter-to-winnebago-county-officials-advising-against-ice-center/712697046); Victoria Cabales, "Winnebago County Stands against ICE Detention Center in Rockford," Immigrant Connect Chicago, June 9, 2017, <http://immigrantconnect.medill.northwestern.edu/blog/2017/06/09/cabales-100-days/>.

245 Caleb Bauer, "CoreCivic Pulls Plans for Elkhart County Immigration Detention Center," *South Bend Tribune*, January 23, 2018, [www.southbendtribune.com/news/local/corecivic-pulls-plans-for-elkhart-county-immigration-detention-center/article\\_1114cbe4-ff9b-11e7-9df0-93e7fae32cdb.html](http://www.southbendtribune.com/news/local/corecivic-pulls-plans-for-elkhart-county-immigration-detention-center/article_1114cbe4-ff9b-11e7-9df0-93e7fae32cdb.html).

246 Jeff Coen, "Chaotic Year in Immigration Policy Challenges Chicago," *Chicago Tribune*, November 25, 2017, [www.chicagotribune.com/news/immigration/ct-met-chicago-immigration-chaos-2017-story.html](http://www.chicagotribune.com/news/immigration/ct-met-chicago-immigration-chaos-2017-story.html).

247 Joanna Dreby, "The Burden of Deportation on Children in Mexican Immigrant Families," *Journal of Marriage and Family* 74, no. 4 (2012), 829-45; Luis H. Zayas, *Forgotten Citizens: Deportation, Children, and the Making of American Exiles and Orphans* (Oxford, UK: Oxford University Press, 2015); Hirokazu Yoshikawa, Jenya Kholoptseva, and Carola Suárez-Orozco, "The Role of Public Policies and Community-Based Organizations in the Developmental Consequences of Parent Undocumented Status," *Social Policy Report* 27, no. 3 (2013), 1-23, [http://srcd.org/sites/default/files/documents/E-News/spr\\_273.pdf](http://srcd.org/sites/default/files/documents/E-News/spr_273.pdf).



in September.<sup>248</sup> Thus fears surrounding immigration enforcement extend not just to the 11 million unauthorized immigrants but also to the broader group of 17 million people living with unauthorized immigrants, many of whom are U.S.-citizen children.<sup>249</sup> Respondents interviewed by MPI researchers also noted high levels of fear in the immigrant communities included in the study, though the levels varied by location.

During the early months of the Trump administration, misinformation about ICE activities was prevalent. Throughout the country, there were reports of ICE “raids” at worksites, shopping malls, parking lots, and other places. ICE conducted some major operations early in the administration, but these were mostly targeted actions conducted in or near people’s homes or workplaces rather than broad sweeps in more public settings. While ICE arrested some bystanders who had no criminal charges, such collateral arrests were few in number, as described earlier.

Immigrant communities, however, perceived ICE operations during the early months of the administration as much larger, broader public raids. For example, in Chicago, the Chicago Transit Authority and DHS jointly conducted random bag checks in the subway system for security purposes, and there were rumors that ICE was checking immigrants for identification. New York City also experienced unfounded rumors of ICE agents on the subway. In Houston, the Border Patrol attempted to recruit staff at a rodeo at the city’s sports stadium, and some misinterpreted this as an ICE operation.

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*During the early months of the Trump administration,  
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While study respondents reported declining levels of fear later in spring and summer of 2017, as raid rumors were dispelled, they noted that each new ICE operation rekindled anxiety. The media, particularly Spanish-language, often widely reported enforcement actions—and even rumors—in sensationalized ways that intensified immigrants’ concerns.

Below are descriptions of the ways in which amplified fears of ICE activity affected immigrant communities. In some cases, study respondents shared anecdotes or general observations. In other cases, there were data to back up these descriptions.

### **A. Limited Mobility Outside the Home**

In its nationwide study, Kaiser reported that increased fears of immigration enforcement affected the daily routines of families with unauthorized members. Some parents cited in the Kaiser study drove less frequently and only left the house when necessary. Some families with children said they no longer participated in recreational activities.<sup>250</sup>

Across MPI study sites, interviewees reported that some unauthorized immigrants limited time outside the home to reduce exposure to ICE arrest. In the Chicago area, which the study team visited in April 2017, respondents noted that unauthorized immigrants were hesitant to go to grocery stores or buy goods in local commercial areas where they perceived they could be easy targets for ICE enforcement. In the most visible example, the Little Village commercial corridor on Chicago’s 26<sup>th</sup> Street reportedly

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<sup>248</sup> Samantha Artiga and Petry Ubri, *Living in an Immigrant Family in America: How Fear and Toxic Stress Are Affecting Daily Life, Well-Being, and Health* (Menlo Park, CA: Kaiser Family Foundation, 2017), [www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health](http://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health).

<sup>249</sup> Nationwide, more than 16.7 million people have at least one unauthorized immigrant family member living with them; about half (8.2 million) are U.S. citizens, and most of these are children. See Silva Mathema, “State-by-State Estimates of the Family Members of Unauthorized Immigrants,” Center for American Progress, March 16, 2017, [www.americanprogress.org/issues/immigration/news/2017/03/16/427868/state-state-estimates-family-members-unauthorized-immigrants/](http://www.americanprogress.org/issues/immigration/news/2017/03/16/427868/state-state-estimates-family-members-unauthorized-immigrants/).

<sup>250</sup> Artiga and Ubri, *Living in an Immigrant Family in America*.





experienced a decline in retail and restaurant sales.<sup>251</sup> According to advocates and local government officials, the level of fear in Chicago's immigrant communities was higher than it ever had been before due to ICE's at-large operations. In Houston, more than 30 immigrant-owned businesses surveyed by the *Houston Chronicle* saw revenues decline by as much as 70 percent from January to September 2017. A real estate agent saw a 70 percent drop in applications for mortgages and investment loans among unauthorized immigrant clients, and sales at a farmers' market with a large Latino shopping base fell almost 60 percent.<sup>252</sup> In Houston, respondents reported that immigrants were withdrawing money from bank accounts, and in one case, burying it in the backyard. City officials also reported a decline in people seeking permits to start businesses. In Virginia, respondents reported fewer immigrants participating in public gatherings such as soccer tournaments in 2017.

The greatest fear of unauthorized immigrants in the Atlanta suburbs, according to advocates and service providers, was getting arrested by the local police while driving. During a visit to the area in 2010, after Cobb and Gwinnett counties had recently entered into 287(g) agreements, MPI researchers heard similar reports of fears about driving. In 2010, local police often operated seatbelt and drunk-driving checkpoints in immigrant communities and otherwise pulled people over for minor violations.<sup>253</sup> Unauthorized immigrants limited their driving to essential trips and otherwise reduced their participation in nonessential activities such as church and sports. Some relied on shared rides. (Public transportation is limited in the Atlanta suburbs). However, after ICE's enforcement priorities narrowed later in the Obama administration, people quickly became aware that those arrested for driving without a license or a similar traffic violation were not being detained and deported.

At the time of MPI's visit in May 2017, many unauthorized immigrants were again minimizing their driving out of fear of arrest and deportation. According to study respondents, one important difference between the Trump and Obama administrations is that during the earlier period, unauthorized immigrants felt they might be safer if they left Georgia for another state, but in the new administration, they felt it would be just as risky living anywhere else. Immigrants' fear of driving in the Atlanta area was based on the reality that some immigrants were being arrested and placed in deportation proceedings based on driving infractions; in Gwinnett County, more than 100 people were detained over one summer month for driving without a license or for minor traffic violations.<sup>254</sup>

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*Fear of immigration enforcement chilled immigrants' willingness to report crimes in some study sites, but not others.*

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## **B. Declines in Crime and Domestic Violence Reporting**

Fear of immigration enforcement chilled immigrants' willingness to report crimes in some study sites, but not others. Police chiefs in major U.S. cities have expressed concern that ICE operations are generating fear of authorities and have led to declines in crime reporting, particularly in Latino communities. For example, Houston Police Chief Art Acevedo said that early in the Trump administration rape reports had declined by 43 percent in the Hispanic community, at a time when such reports increased 8 percent among non-Hispanics, and that violent crime reports by Hispanics fell 13 percent even as they rose 12 percent among non-Hispanics. His statement compared crime reports for January through March 2017 with the same

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251 Marwa Altagouri, "Little Village Streets, Restaurants Quiet as Deportation Fears Rise," *Chicago Tribune*, February 19, 2017, [www.chicagotribune.com/news/ct-little-village-immigrants-met-20170216-story.html](http://www.chicagotribune.com/news/ct-little-village-immigrants-met-20170216-story.html).

252 Ileana Najarro and Monica Rhor, "Deeper Underground: Fear Drives Mistrust Between Police, Immigrant Communities," *Houston Chronicle*, September 22, 2017, [www.houstonchronicle.com/deeperunderground/1/](http://www.houstonchronicle.com/deeperunderground/1/); Ileana Najarro and Monica Rhor, "Deeper Underground: Businesses Feel the Pinch as Undocumented Consumers Limit Shopping Expenses," *Houston Chronicle*, October 20, 2017, [www.houstonchronicle.com/deeperunderground/2/](http://www.houstonchronicle.com/deeperunderground/2/).

253 Capps, Rosenblum, Chishti, and Rodríguez, *Delegation and Divergence*.

254 Yee, "Please God, Don't Let Me Get Stopped!"



three months in 2016.<sup>255</sup> In Los Angeles, Latinos' reporting of domestic violence was down 10 percent and reports of sexual assault down 25 percent in 2017 versus 2016.<sup>256</sup> The Salt Lake City Police Department received 12.9 percent fewer reports of criminal activity in Latino neighborhoods, compared to a 1.4 percent decline in reporting citywide, when comparing January through May 2017 to the same period a year earlier.<sup>257</sup> Montgomery County, Maryland, received roughly half the calls for sexual assault and domestic violence in the first four months of 2017 compared with in 2016. Law enforcement officials in Orange County, Denver, Austin, and Nassau County on Long Island also reported significant declines in domestic abuse calls during that period.<sup>258</sup>

At the same time, Atlanta investigated whether calls to police declined in the new administration and found no change. A suburban Atlanta city, with a police department that has invested heavily in immigrant community relations, reported that the number of calls went up after the inauguration. And a suburban Northern Virginia police department reported no decrease in domestic violence reports from immigrants in 2017 compared to the same period in 2016.

While the changes in reports to police varied across study sites, domestic violence advocates and service providers more consistently noted declines in immigrant participation in their services and a drop in clients pursuing protection from abusers. A domestic violence service provider in Chicago noted three cases in which abuse victims declined to pursue prosecution, including one in which the abuser had called ICE and officers had gone to the woman's home. Another Chicago provider saw a 24 percent drop in women seeking protection orders in the first six months of 2017, compared to the same period in 2016. The provider noted a 20 percent increase in the number of people seeking counseling, attributing the increase to prior trauma and a high-stress environment. In Atlanta, a domestic violence service provider reported the number of Latino women attending a support group for abuse survivors fell substantially during March and April 2017, as did the number of children coming to their support group. According to a provider in Los Angeles, few people attended support groups during the first half of 2017, and there were 25 to 30 percent fewer hotline calls with callers less willing to provide personal information. In New York, attorneys reported clients were less willing to seek protection orders due to fear of courthouse arrest. None of the domestic violence providers interviewed for the study, however, had a client who was arrested by ICE or deported during the first few months of 2017.

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*Across the study sites, interviewees cited declines in use of public benefits and services such as health care and food assistance in early 2017.*

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### C. Declines in Health and Human Services Program Participation

Across the study sites, interviewees cited declines in use of public benefits and services such as health care and food assistance in early 2017. In Los Angeles, a large community-based provider reported a 20 percent reduction in health-care visits in May 2017, by likely unauthorized immigrants. In Houston, local government respondents in March 2017 said fewer Latino immigrants were participating in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as well as preventive check-ups

255 Marissa Cummings, "Houston Police Department Wants to Reassure the Hispanic Community," Houston Public Media, April 6, 2017, [www.houstonpublicmedia.org/articles/news/2017/04/06/195007/houston-police-department-wants-to-reassure-the-hispanic-community/](http://www.houstonpublicmedia.org/articles/news/2017/04/06/195007/houston-police-department-wants-to-reassure-the-hispanic-community/).

256 Jennifer Medina, "Too Scared to Report Sexual Abuse. The Fear: Deportation," *The New York Times*, April 30, 2017, [www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html](http://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html).

257 Christopher Smart, "Fearful of Deportation, Unauthorized Immigrants in Salt Lake City Are Not Reporting Crime, Police Chief Says," *Salt Lake Tribune*, January 8, 2018, [www.sltrib.com/news/2018/01/08/fearful-of-deportation-unauthorized-immigrants-in-salt-lake-city-are-not-reporting-crime-police-chief-says/](http://www.sltrib.com/news/2018/01/08/fearful-of-deportation-unauthorized-immigrants-in-salt-lake-city-are-not-reporting-crime-police-chief-says/).

258 Medina, "Too Scared to Report Sexual Abuse."



and health screenings in public health clinics. Texas Children’s Hospital also noted a drop in the number of low-income Latino patients.<sup>259</sup> Centro de Corazon, a longstanding clinic serving Houston’s immigrants, reported in August 2017 a near 50 percent decline in prenatal care patients who are unauthorized immigrants, and six nonprofit Houston clinics run by the Ibn Sina Foundation reported a more than 50 percent drop in unauthorized patients from September through December. The larger Harris County Health Care system, including Houston’s two major public hospitals, had not recorded a significant decline in the number of patients as of December, however.<sup>260</sup> In Atlanta, a community-based organization reported a 15 percent decline in clients applying for the Supplemental Nutrition Assistance Program (SNAP, or food stamps) in the first three months of 2017 versus 2016, and a drop by about half in April.<sup>261</sup> School district staff from Atlanta-area suburbs and school district staff in Houston noted that immigrant parents were less willing this year to sign children up for free or reduced-price lunch.

Respondents reported that immigrants withdrew from public benefits and services due to fears that public agencies would share their personal information with ICE and that use of such services could result in deportation or denial of immigrant benefit applications. Even though unauthorized immigrants are ineligible for most public benefits, including SNAP and Medicaid, their children or other family members may be eligible if they are U.S. citizens or permanent residents. They may fear that sharing information about anyone in their household could assist ICE in locating and deporting them.<sup>262</sup>

Potential federal regulations that would restrict the admission of legal immigrants based on use of public benefits, and potentially allow their deportation, have heightened fears of accessing benefits. During 2017, there were rumors that another executive order would use “public charge” provisions in U.S. law to bar green cards for noncitizens accessing public benefits and to deport those who do. Although no such order had been issued at this writing, late in 2017 the Trump administration began a process to amend public charge regulations, with a new proposed rule expected to be released for comment in 2018.<sup>263</sup> Under current immigration law, immigrants can be excluded from admission if they are likely to become dependent on government assistance, and they can be deported if they become dependent; such exclusions and deportations are rare.

#### D. School Enrollment, Attendance, and Participation in Educational Activities

Some major-city school district superintendents have expressed concerns about reduced attendance and declining student and parent participation in schools with large Latino populations. For instance, in August 2017, the Superintendent of Shelby County (Memphis) schools stated that enrollment in heavily Latino schools declined slightly amid fears of immigration arrests.<sup>264</sup> In the Houston Independent School District, according to study respondents, attendance fell at times during January through March 2017 on days when ICE raids were rumored, though total enrollment remained stable.

259 Olivia Tallet, “Houston Health Department Aims to Ease Immigrants’ Fear,” *Houston Chronicle*, March 24, 2017, [www.chron.com/lifestyle/calle-houston/article/HHD-alert-about-fears-among-immigrants-to-see-11023636.php](http://www.chron.com/lifestyle/calle-houston/article/HHD-alert-about-fears-among-immigrants-to-see-11023636.php).

260 Ileana Najarro and Jenny Deam, “Fearing Deportation, Undocumented Immigrants in Houston Are Avoiding Hospitals and Clinics,” *Houston Chronicle*, December 27, 2017, [www.houstonchronicle.com/news/houston-texas/houston/article/Fearing-deportation-undocumented-immigrants-are-12450772.php](http://www.houstonchronicle.com/news/houston-texas/houston/article/Fearing-deportation-undocumented-immigrants-are-12450772.php).

261 Craig Schneider and Jeremy Redmon, “Wary Immigrants in Georgia Drop Food Stamps,” *Atlanta Journal-Constitution*, April 24, 2017, [www.myajc.com/news/breaking-news/wary-immigrants-georgia-drop-food-stamps/jV6ziVbq3zkB43gBQUxtjN/](http://www.myajc.com/news/breaking-news/wary-immigrants-georgia-drop-food-stamps/jV6ziVbq3zkB43gBQUxtjN/).

262 Michael E. Fix, ed., *Immigrants and Welfare: The Impact of Welfare Reform on America’s Newcomers* (New York: Russell Sage Foundation, 2009).

263 In early 2018, a series of draft DHS proposed rules on “public charge” inadmissibility and deportation were leaked. The drafts broadened the list of public benefits that could result in an applicant being denied a visa or a green card, to include most public cash assistance, nutrition, and health-coverage programs—as well as some other need-based programs. At the time of this writing, the rule had not been released for public comment, and it was not clear whether it would apply to deportation of legal immigrants or only their admission to the United States. See NILC, “The Trump Administration’s ‘Public Charge’ Attack on Immigrant Families: Information About an Upcoming Proposed Rule,” updated April 2, 2018, [www.nilc.org/wp-content/uploads/2018/01/Public-Charge-Fact-Sheet-2018.pdf](http://www.nilc.org/wp-content/uploads/2018/01/Public-Charge-Fact-Sheet-2018.pdf); USCIS, “Inadmissibility and Deportability on Public Charge Grounds” (proposed rule 1615-AA22, Fall 2017), [www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22](http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22).

264 Daniel Connolly, “Hispanic Enrollment Drops amid Immigration Arrest Fears, SCS Superintendent Says,” *The Commercial Appeal*, August 22, 2017, [www.commercialappeal.com/story/news/2017/08/22/hispanic-enrollment-has-dropped-amid-immigration-arrest-fears-scs-superintendent-says/588201001/](http://www.commercialappeal.com/story/news/2017/08/22/hispanic-enrollment-has-dropped-amid-immigration-arrest-fears-scs-superintendent-says/588201001/).



School officials also reported that fear of parental arrest was affecting student performance and educational aspirations. In Houston, the school district reported that fewer Latino students took Advanced Placement courses, applied for higher-level high-school diplomas, or enrolled in dual-language programs in 2017. Educators in Houston reported that students preferred to get through high school more quickly, so they could work and earn money to prepare for possible parental arrest and deportation. Similarly, in the Atlanta suburbs, educators reported that unauthorized immigrant high school students planned to drop out and work so they could save money in case they were deported; according to one educator, youth estimated they would need at least \$1,500 in cash to survive in Mexico immediately after deportation. School officials also noted that some younger children exhibited fewer instances of disruptive behavior during the spring of 2017, perhaps to protect themselves and their unauthorized immigrant parents from scrutiny by school officials.

## VIII. Conclusions

The machinery of immigration enforcement in the U.S. interior that had been dialed down during the final Obama years has been revved back up by the Trump administration. The result has been a sudden and substantial increase in arrests and deportations, including of noncriminals, that has generated fear in immigrant communities and opposition from many state and local governments. At the same time, Immigration and Customs Enforcement officers view the widening enforcement and dropping prosecutorial discretion requirements as giving them the leeway to perform their job properly and faithfully execute U.S. immigration laws.

Even as the pace of arrests and removals quickened during 2017, the numbers remained just half those recorded at the peak of enforcement activity during the Bush and early Obama administrations. That is because there are limits to how much arrests and removals can rise, given the significant constraints the administration faces in implementing its immigration enforcement agenda.

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*The machinery of immigration enforcement in the U.S. interior that had been dialed down during the final Obama years has been revved back up by the Trump administration.*

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The first constraint is resource limitations. Increased deportations require more ICE officers, trial attorneys, immigration judges, and detention space. In its FY 2019 budget proposal, DHS is requesting funding for 2,000 more ICE officers, 500 more attorneys, and 9,000 more detention beds.<sup>265</sup> The Justice Department is seeking 150 more immigration judges.<sup>266</sup> Congress declined to appropriate significant new funds for similar requests in FY 2018, suggesting a similar fate may occur with future spending decisions.<sup>267</sup>

<sup>265</sup> DHS, “U.S. Immigration and Customs Enforcement, Budget Overview, Fiscal Year 2019: Congressional Justification,” accessed March 15, 2018, 14, 69, [www.dhs.gov/sites/default/files/publications/ICE%20FY19%20CJ.pdf](http://www.dhs.gov/sites/default/files/publications/ICE%20FY19%20CJ.pdf).

<sup>266</sup> U.S. Department of Justice, Executive Office for Immigration Review, “FY 2019 Budget Request at a Glance” (budget overview, U.S. Department of Justice, Washington, DC, 2018), [www.justice.gov/jmd/page/file/1033216/download](http://www.justice.gov/jmd/page/file/1033216/download).

<sup>267</sup> An omnibus budget agreement enacted in March 2018 for the remainder of FY 2018 provided \$7.1 billion for ICE, up \$641 million from the previous year. The budget included salaries for 75 more ICE Homeland Security Investigations officers, but no additional ERO officers—the officers charged with arresting, detaining, and deporting removable noncitizens. The budget also funded an additional 1,196 detention beds, far fewer than the number requested. See House Appropriations Committee, *Fiscal Year 2018 Homeland Security Bill*, March 21, 2018, [https://appropriations.house.gov/uploadedfiles/03.21.18\\_fy18\\_omnibus\\_-\\_homeland\\_security\\_-\\_summary.pdf](https://appropriations.house.gov/uploadedfiles/03.21.18_fy18_omnibus_-_homeland_security_-_summary.pdf). The Justice Department’s request for immigration judges was more successful, as the omnibus funded 100 more immigration judges and support staff. See House Appropriations Committee, *Fiscal Year 2018 Commerce, Justice, Science Appropriations Bill*, March 21, 2018, [https://appropriations.house.gov/uploadedfiles/03.21.18\\_fy18\\_omnibus\\_-\\_commerce\\_justice\\_science\\_-\\_summary.pdf](https://appropriations.house.gov/uploadedfiles/03.21.18_fy18_omnibus_-_commerce_justice_science_-_summary.pdf).



A second constraint lies in U.S. immigration law. Unless a noncitizen has a prior removal order or has reentered the country illegally after being removed, he or she has the right to contest removal before an immigration judge. This process takes months for those in ICE detention and years for those who have been released. The administration is taking steps to speed the process.<sup>268</sup> In January 2018, the Director of the Executive Office of Immigration Review issued a memorandum to all immigration judges and court staff detailing new performance measures.<sup>269</sup> Yet these new, strict measures are facing resistance from immigration judges.<sup>270</sup>

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*Curbs on cooperation by ... sanctuary jurisdictions help explain why ICE arrests and interior removals have not reached earlier peaks and why they may not again.*

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The third and most important constraint lies in the limits on ICE cooperation imposed by some states and localities. In places such as California, ICE is issuing an increasing number of detainer requests, and more and more of them are being rejected. Noncitizens whose detainers were rejected are being released from state and local custody. ICE data for FY 2017 show that only about 6 percent of noncitizens with detainers declined were rearrested by ICE officers after their release from state or local custody.<sup>271</sup>

Curbs on cooperation by California, Chicago, New York, and other sanctuary jurisdictions help explain why ICE arrests and interior removals have not reached earlier peaks and why they may not again—at least in the current resource climate—notwithstanding the Trump administration’s focus on expanding enforcement. Since these areas have large unauthorized populations, their restrictions on cooperation have a major impact on the numbers of people that ICE can detain via state prisons and local jails—the sources for the majority of ICE arrests.

The Trump administration has escalated the fight between the federal government and these jurisdictions. Legal battles have also ensued. The Justice Department recently brought a lawsuit challenging California state laws that limit ICE cooperation. Announcing the lawsuit in California, Attorney General Jeff Sessions said: “Federal law is the supreme law of the land. A refusal to apprehend and deport those, especially the criminal element, effectively rejects all immigration law and creates an open borders system.”<sup>272</sup>

The Justice Department is also seeking to deny federal grants to sanctuary jurisdictions. In making its funding announcement, the Justice Department said 80 percent of jurisdictions receiving awards scored

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268 The Justice Department plans to reduce the immigration court backlog by using videoconferencing, improving the efficiency of scheduling hearings, employing retired judges to hear cases, providing clearer standards for case completion, and issuing guidance on adjudicating cases efficiently. See U.S. Department of Justice (USDJO), “Background on EOIR Strategic Caseload Reduction Plan,” accessed March 15, 2018, [www.justice.gov/opa/press-release/file/1016066/download](http://www.justice.gov/opa/press-release/file/1016066/download). In December 2017, the Justice Department issued a press release showing improvements in the efficiency of immigration court processing: from February 1 through November 30, 2017, immigration courts issued 30 percent more removal orders versus the same period in 2016; total removal orders and voluntary departures increased by 34 percent, and final decisions were up 17 percent. See USDJO, “Attorney General Sessions Issues Memo Outlining Principles” (press release, December 6, 2017), [www.justice.gov/opa/pr/attorney-general-sessions-issues-memo-outlining-principles-ensure-adjudication-immigration](http://www.justice.gov/opa/pr/attorney-general-sessions-issues-memo-outlining-principles-ensure-adjudication-immigration).

269 The performance measures include: 85 percent of all detained removal cases should be completed within 60 days after they are initiated; 85 percent of all nondetained removal cases should be completed within one year; 85 percent of all motions should be adjudicated within 40 days of filing; and 95 percent of all hearings should be completed on the initial merits hearing date. See Memorandum from James McHenry, Chief Immigration Judge, to Office of the Chief Immigration Judge, All Immigration Judges, All Court Administrators, and All Immigration Court Staff, *Case Priorities and Immigration Court Performance Measures*, January 17, 2018, [www.justice.gov/eoir/page/file/1026721/download](http://www.justice.gov/eoir/page/file/1026721/download).

270 The National Association of Immigration Judges has publicly objected to the “application of any kind of numeric or time-based quota,” which the group argues would undermine judicial independence and judges’ ability to be fair and impartial. See Kate Morrissey, “Immigration Judges Getting New Performance Metrics,” *San Diego Union-Tribune*, January 1, 2018, [www.sandiegouniontribune.com/news/immigration/sd-me-immigration-judges-20171228-story.html](http://www.sandiegouniontribune.com/news/immigration/sd-me-immigration-judges-20171228-story.html).

271 ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 9.

272 Kevin Johnson, “Sessions Defends Sanctuary Cities Lawsuit against California,” *USA Today*, March 7, 2018, [www.usatoday.com/story/news/politics/2018/03/07/sessions-defends-sanctuary-cities-lawsuit-against-california/402936002/](http://www.usatoday.com/story/news/politics/2018/03/07/sessions-defends-sanctuary-cities-lawsuit-against-california/402936002/); *United States v. State of California et al.*, No. 18-264 (U.S. District Court, Eastern District of California, March 6, 2018), [www.justice.gov/opa/press-release/file/1041431/download](http://www.justice.gov/opa/press-release/file/1041431/download).



higher on their applications because of their willingness to cooperate with ICE.<sup>273</sup> States and localities are fighting back with litigation to retain their federal funds.<sup>274</sup>

Battles over ICE cooperation are also being waged between states and local governments. In Texas, several major cities sued unsuccessfully to prevent implementation of SB 4, the state law allowing for the criminal prosecution of local officials who limit their agencies' compliance with ICE. Texas prevailed at the federal appellate level, thereby strengthening the hand of state lawmakers who seek to limit the ability of local officeholders to set their own policies. In California, Orange and San Diego counties, both with large unauthorized populations, joined the Justice Department's lawsuit against the state's sanctuary laws,<sup>275</sup> and some California cities are seeking to go their own way as well.<sup>276</sup>

In both cooperating and noncooperating jurisdictions, MPI interviews demonstrate that actors from diverse sectors of society are increasing their resistance to the new immigration enforcement regime. This pushback ranges from tracking ICE operations, to workshops to train unauthorized immigrants not to open their doors to ICE officers, to expanding legal representation for those who are arrested and detained, and to changing local policing practices to prevent initial arrests that can lead to deportation.

As the pushback grows, ICE is finding new ways to conduct its operations, arresting people en route to work and school or increasing arrests in courthouses and other locations where it once did not operate as frequently. And the agency is seldom releasing people from detention before their hearings in immigration court. The changing enforcement tactics have generated significantly heightened fear and anxiety in immigrant communities, with serious corollary effects for public safety, as local law enforcement officials report that immigrants are less likely to come to the police for assistance or cooperate in investigations.

For some time, interior enforcement priorities have been dividing different levels of government—federal, state, and local. The dramatic shifts in policy and rhetoric introduced by the Trump administration have increased the divisions, mistrust, and tension. The great variation in how states and localities cooperate with ICE means that the fortunes of an unauthorized immigrant in Texas, Tennessee, and Georgia, where the mere act of driving can result in arrest and deportation, are entirely different than in California, Chicago, and New York, where immigrants can be arrested for a variety of crimes and still not be taken into ICE custody.

As the war of words, legislation, and litigation escalate, enforcement disparities and uneven treatment across levels of government threaten federal pre-eminence in immigration and undermine effective law enforcement relationships and the ability to ensure public safety and security.

273 Kate Mather, "L.A. Asked for \$3 Million for Community Policing. The DOJ Said No. Some Fear It's a Sign of What's Ahead," *Los Angeles Times*, December 5, 2017, [www.latimes.com/local/lanow/la-me-ln-lapd-funding-20171205-story.html](http://www.latimes.com/local/lanow/la-me-ln-lapd-funding-20171205-story.html).

274 In April 2017, in a lawsuit brought by San Francisco and Santa Clara counties, a federal judge enjoined the Justice Department from setting new conditions requiring cooperation with ICE on funding already approved by Congress. See Sudhin Thanawala, "Federal Judge Permanently Blocks Trump's Executive Order to Cut Funding to Sanctuary Cities," *Chicago Tribune*, November 20, 2017, [www.chicagotribune.com/news/immigration/ct-trump-sanctuary-cities-funding-ruling-20171120-story.html](http://www.chicagotribune.com/news/immigration/ct-trump-sanctuary-cities-funding-ruling-20171120-story.html). In September 2017, a federal judge in Illinois ruled in a lawsuit brought by Chicago that the federal government may not impose additional conditions beyond requiring compliance with the information-sharing law. See *City of Chicago v. Jefferson Beauregard Sessions III*, No. 17 C 5720 (U.S. District Court for the Northern District of Illinois, September 15, 2017), [www.clearinghouse.net/chDocs/public/IM-IL-0020-0005.pdf](http://www.clearinghouse.net/chDocs/public/IM-IL-0020-0005.pdf). A three-judge appeals court panel then affirmed that ruling. See *City of Chicago v. Jefferson Beauregard Sessions III*, No. 17-2991 (Seventh U.S. Circuit Court of Appeals, April 19, 2018), <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D04-19/C:17-2991-J:Manion:condis:T:fnOp:N:2142410:S:0>.

275 Christine Mai-Duc, "Orange County 'Sanctuary State' Vote Cheered by Republicans in Most Competitive Congressional Races," *Los Angeles Times*, March 29, 2018, [www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-immigration-schools-guide-lines-1522354331-htmlstory.html](http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-immigration-schools-guide-lines-1522354331-htmlstory.html); Kate Morrissey, "San Diego Supervisors Vote 3-1 to Support the Trump Lawsuit against California Sanctuary Laws," *San Diego Union Tribune*, April 17, 2018, [www.sandiegouniontribune.com/news/immigration/sd-me-sanctuary-vote-20180417-story.html](http://www.sandiegouniontribune.com/news/immigration/sd-me-sanctuary-vote-20180417-story.html).

276 The city of Los Alamitos in Orange County enacted an ordinance to exempt the city from the *California Values Act*, while Huntington Beach, also in Orange County, voted to separately sue the state over the law; a handful of other cities and counties across the state stated they were considering following the lead of these Orange County cities. See Roxana Kopetman, "Anti-Sanctuary Push Could Spread Far Beyond Los Alamitos," *Orange County Register*, March 20, 2018, [www.ocregister.com/2018/03/20/anti-sanctuary-push-could-spread-far-beyond-los-alamitos-2/](http://www.ocregister.com/2018/03/20/anti-sanctuary-push-could-spread-far-beyond-los-alamitos-2/); Bradley Zint, "Huntington Beach Is the Latest to Take on California's 'Sanctuary City' Laws," *Los Angeles Times*, March 28, 2018, [www.latimes.com/local/lanow/la-me-hb-sanctuary-20180328-story.html](http://www.latimes.com/local/lanow/la-me-hb-sanctuary-20180328-story.html).



## Appendices

### Appendix A. Detailed Description of ICE Enforcement Activities

This section describes the enforcement activities of U.S. Immigration and Customs Enforcement (ICE) in detail. It begins with a description of the process for identifying, arresting, and detaining removable noncitizens in prisons and jails—the pipeline through which most ICE arrests occur. Then variations in how this process works in jurisdictions with varying levels of cooperation with ICE are discussed. Finally, the way in which fugitive operations teams, at-large teams, and other groups of ICE officers conduct operations to arrest people in the community—outside the jail setting—is also described.

#### *The Process ICE Uses to Take Custody of Removable Noncitizens from Prisons and Jails*

State and local enforcement agencies play a central role in the immigration enforcement process, because ICE takes custody of most removable immigrants from state prisons or local jails (and in a small number of cases, when noncitizens have committed federal offenses, from federal prisons). During the first 135 days of the Trump administration, 69 percent of ICE arrests originated in the criminal justice system, as shown in the analysis of ICE arrest data earlier in the report. This was down from 77 percent in 2013. Most of the ICE activity happens after a person is booked into prison or jail—which means he or she has been charged with, though not necessarily convicted of, a crime. In most places, county authorities operate the jails, while cities have police departments that perform patrol functions and then refer individuals in custody to the county for booking. (An important exception is New York City, which operates jails in each of the city’s five boroughs as well as a citywide central booking facility.) Cities and counties often refer people with the most serious crimes to state prisons, and ICE takes custody of some removable noncitizens directly from these prisons. A relatively small number of noncitizens are in federal prisons, and they may be taken directly into ICE custody from those facilities as well. This process takes several steps (see Figure A-1).

#### 1. Arrest by a Local Law Enforcement Agency

As a first step, a local law enforcement agency arrests and books a person into jail based on probable cause that he or she committed a crime rather than an immigration offense. Most often, city or county police departments conduct the initial arrests, though in some cases county sheriffs’ departments also have arresting officers. And in most cases, the jail is operated by a county sheriff, though many major cities such as New York also have jails. As a result, the arresting agency is often different from the one operating the jail. Unauthorized and other deportable noncitizens must be arrested and booked into jail before they can be screened for immigration violations and removability. Local law enforcement officers have not had the authority to screen noncitizens for removability outside of jails since the Obama administration discontinued the 287(g) program’s task force model at the end of 2012.<sup>277</sup>

#### 2. Identification as an Unauthorized Immigrant or Removable Legal Immigrant

Once the noncitizen has been booked into jail, ICE has three ways of establishing removability: from information obtained from Department of Homeland Security (DHS) databases using fingerprint matches, from an interview with an ICE immigration officer, or, in a jurisdiction with a 287(g) agreement, from an interview with a designated state or local police officer.

As part of standard arrest procedures, all individuals, when they are booked into custody, are fingerprinted and asked for basic demographic information, including where they were born. Everyone

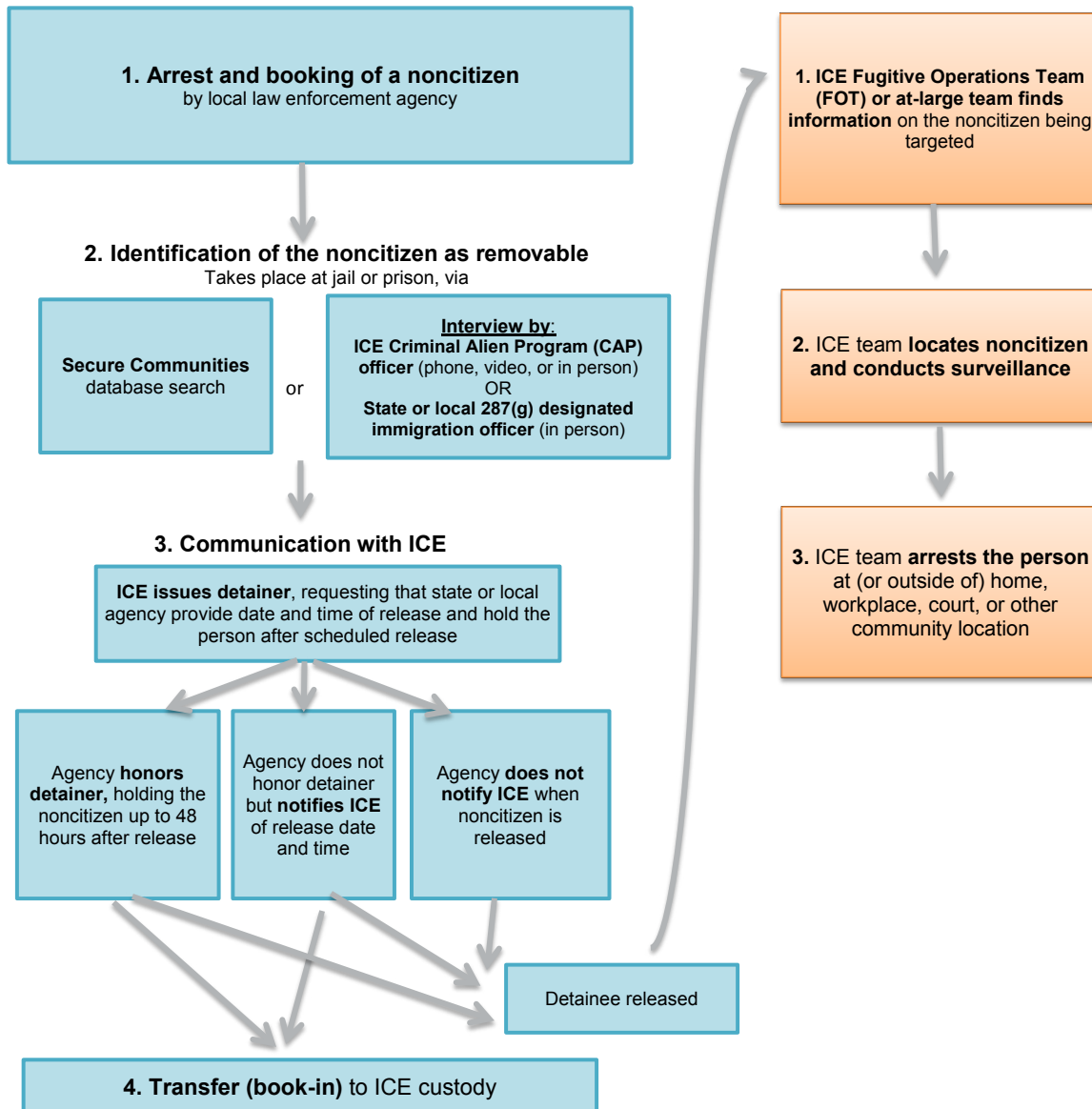
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<sup>277</sup> ICE, “FY 2012: ICE Announces Year-End Removal Numbers, Highlights Focus on Key Priorities and Issues New National Detainer Guidance to Further Focus Resources” (news release, December 20, 2012), [www.ice.gov/news/releases/fy-2012-ice-announces-year-end-removal-numbers-highlights-focus-key-priorities-and#statement](http://www.ice.gov/news/releases/fy-2012-ice-announces-year-end-removal-numbers-highlights-focus-key-priorities-and#statement).



has their fingerprints checked against the FBI's National Crime Information Center (NCIC) database to determine if they have a criminal background. The Secure Communities program in operation in all jails and prisons across the United States also links fingerprints sent to the FBI to DHS databases, which provide information about prior Border Patrol apprehensions, ICE arrests, deportations, and previous contacts with U.S. Citizenship and Immigration Services (USCIS), for example through an application for citizenship, permanent residency, or other immigration benefit. Immigrants who have had no contact with DHS—most often because they crossed the border without inspection and were never apprehended—are not in any DHS database and cannot be identified as removable using Secure Communities.<sup>278</sup>

**Figure A-1. Identifying, Arresting, and Detaining Removable Noncitizens in Prisons and Jails**



<sup>278</sup> Some individuals might have been arrested or apprehended before immigration records were digitized and linked to fingerprints, while others may have obtained legal status before such records were digitized. As a result, foreign-born individuals with very old immigration benefit grants, importantly including naturalization, may be erroneously identified as removable by Secure Communities fingerprint checks. For instance, ICE has recently wrongly arrested some U.S. citizens due to incomplete or inaccurate information. See Joel Rubin and Paige St. John, "How a U.S. Citizen Was Mistakenly Targeted for Deportation. He's Not Alone," *Los Angeles Times*, November 29, 2017, [www.latimes.com/local/lanow/la-me-ice-citizen-arrest-20171129-story.html](http://www.latimes.com/local/lanow/la-me-ice-citizen-arrest-20171129-story.html). Conversely, persons whose only enforcement encounters with immigration officers occurred many years ago, or whose removal orders are quite old, may not be identified by Secure Communities although they are removable.





ICE Criminal Alien Program (CAP) officers also interview immigrants in custody when possible, because such interviews are more reliable than simply accessing information from databases. CAP officers may conduct these interviews by videoconference, over the phone, or in person, if the officer is stationed at the jail. In states and counties with 287(g) agreements, designated state or local immigration officers usually conduct interviews under the supervision of an ICE program manager. An interview with an immigration officer is more reliable than information obtained through Secure Communities in establishing whether a noncitizen in custody is removable, because the databases linked by Secure Communities cannot identify people who have not come into contact with ICE or the Border Patrol before, and because these databases may have incomplete or outdated immigration status information that could lead to improperly identifying someone as unauthorized or otherwise removable.

### 3. Communication between ICE and the State or Local Agency Using Detainers and Notifications

In the third step, ICE asks the other law enforcement agency to communicate the timeline for releasing an immigrant into ICE custody. For those who have been convicted, this must happen after the individual's criminal sentence ends. For people who have been given long prison sentences, it may be months or even years before they complete their sentence, giving ICE plenty of time to arrange transfer of custody. But removable noncitizens convicted of minor offenses carrying short prison terms, those charged for crimes but who post bail, those who are acquitted or have their charges dropped, and those sentenced to time served while awaiting trial are often released quickly, sometimes in a matter of hours, giving ICE little time for custody-transfer planning.

To help plan orderly transfers, ICE issues detainers: requests to hold people up to 48 hours after their scheduled release from the other law enforcement agency. Detainers give ICE extra time to arrange transportation and complete paperwork; this extra time is more important for the cases in which the state or local detention facility is remote from ICE transportation resources. During the Trump administration, ICE began attaching to detainers administrative warrants stating that there is "probable cause" that the person is subject to removal or has already received a final order of removal. Detainers and administrative warrants are issued by ICE officers, not immigration judges or federal judges, and have been contested several times in court as insufficient to justify ongoing detention by state or local authorities after noncitizens have served their criminal sentence.

ICE does not require detainers to take people into custody. The state or local authorities may notify ICE of the scheduled date and time of release, and ICE can arrange custody at that time without a detainer. During the latter Obama years, ICE gave states and localities the option of providing an official notification rather than responding to a detainer, and many jurisdictions took this option. If ICE has CAP officers stationed at a jail or can get officers to a jail every day, they may be able to take custody without a detainer. This was the case in some jurisdictions visited for the Migration Policy Institute (MPI) study during the early months of the Trump administration. Some jurisdictions actively notify ICE of the release date and time of people for whom the agency has placed a detainer or requested notification, while other jurisdictions share databases through which ICE can look up release dates. Still others do not notify or communicate with ICE in any way when a noncitizen is released from custody.

If ICE is not notified in advance of someone's release or is unable to get to the facility in time to arrange transfer of custody, the agency may refer that person to a Fugitive Operations Team (FOT) or at-large team for later arrest. In such a case, the person will be added to target lists for the ICE team, which will attempt to obtain home or work address or other location information.

### 4. Transfer (Book-In) to ICE Custody

The third step is the transfer of custody from the federal, state, or local prison or jail to ICE, often called a "book-in." This step can only happen if ICE officers have already issued the necessary documents (such as a charging document—usually a Notice to Appear [NTA] before an immigration judge—and in some



cases, a detainer and administrative warrant), know when the immigrant is going to be released, and can arrange transportation to an ICE facility.

Cooperation with the federal, state, or local law enforcement agency when the immigrant is in custody is critical throughout this process. During the identification step, the Secure Communities link to the DHS database to identify known removable immigrants is automatic, but ICE's ability to interview inmates directly about their immigration histories depends on access to individuals in the other agency's custody.<sup>279</sup> Some states and localities such as Cook County, Illinois prohibit ICE officers from visiting their jails, limit ICE's ability to interview inmates remotely via phone or video, or, in the case of California, require the consent of detainees before ICE can interview them.<sup>280</sup>

The third step ("communication") is where the most cooperation is required, and where that cooperation is limited in many jurisdictions. Some states and localities honor detainers and hold inmates for extra time, while others only notify ICE when an individual is released. Still others may only honor detainers or notify ICE in a limited range of cases—usually those convicted of the most serious crimes. And a few rarely honor detainers or notify ICE when an individual is released. State laws, local ordinances, and legal interpretations of the application of detainers limit cooperation at this step in many places, including California, Connecticut, Colorado, Illinois, Oregon, Rhode Island, and New York City.

In the final step, ICE book-in or transfer of custody, most jurisdictions allow ICE or its transportation contractors—generally other local enforcement agencies—to come into the jail to pick up an individual and perform the transfer. Some counties have contracts with ICE to hold immigration detainees, and in those counties the custody transfer is seamless (and may not require a detainer). But some cities and counties prohibit ICE from coming to their facilities, complicating custody transfers.

## Appendix B. Variations in Enforcement Cooperation with ICE among the Study Sites

Some of the 15 jurisdictions in seven states visited for the MPI study in spring and summer 2017 fully cooperated with ICE in all steps: identification, honoring of detainers, and facilitating detainee transfers. These sites were Atlanta, Houston, Memphis, Nashville, and the Chicago suburbs. Additionally, two of the sites (Gwinnett County, Georgia, and Prince William County, Virginia) had 287(g) agreements through which some of their officers had been trained and designated to assist ICE in identifying removable immigrants, placing detainers, and transferring custody.

The other study sites limited cooperation with ICE due to state laws, local ordinances, or interpretations of court cases around the application of detainers. California laws and detainer policies limited interactions between ICE and Los Angeles and Orange counties, California (even though Orange County had a 287(g) program at the time of MPI's visit), while local ordinances limited ICE cooperation in Chicago/Cook County and New York City.<sup>281</sup> Policies limiting cooperation are most important at the county level, as counties are primarily responsible for initial detention of individuals charged with crimes, and therefore ICE picks up the most people from county jails. (California's laws apply to all counties in the state.)

<sup>279</sup> Cooperation among federal law enforcement agencies, i.e., between ICE and the federal Bureau of Prisons, is automatic, and ICE takes custody of some immigrants directly from federal facilities.

<sup>280</sup> State of California Chapter 768 (AB2790), *Transparent Review of Unjust Transfers and Holds (TRUTH) Act*.

<sup>281</sup> Illinois passed its *TRUST Act*, providing limits on ICE cooperation statewide, after MPI's visit.



## A. The Process in Counties Fully Cooperating with ICE

In several study sites, full cooperation with ICE was mandated by legislation. Among the states visited for the study, Georgia, Tennessee, and Texas all have legislation prohibiting counties from limiting their cooperation with ICE. The Georgia and Tennessee laws were passed during the George W. Bush administration, while the Texas law took effect in September 2017, after MPI's visit to Houston. Texas Senate Bill (SB) 4 prohibits any locality in the state from limiting police officers' ability to inquire about the immigration status of individuals in custody, requires jurisdictions to honor most ICE detainers and otherwise fully cooperate, and levies fines and criminal penalties on local officials not fully cooperating with ICE.<sup>282</sup> Several Texas cities sued in federal court to stop implementation of the new law, but most of its provisions were upheld on appeal in September 2017 and March 2018.<sup>283</sup> After the appeals court ruling in September upholding most of SB 4 and threats from Governor Greg Abbott to withhold state funding, Travis County (Austin)—the last Texas county that did not fully cooperate with ICE—announced that it would again honor all detainers.<sup>284</sup>

### I. Harris County (Houston), Texas

MPI's study sites included Harris County, Texas, the largest U.S. county that fully cooperates with ICE in all steps involved in the transfer of inmates from local to federal custody. Harris County includes Houston, the nation's fourth-largest city, and has the second-largest unauthorized immigrant population<sup>285</sup> (after Los Angeles County) and the third-largest county jail population (after Los Angeles County and New York City).<sup>286</sup> From 2008 until February 2017, Harris County had a 287(g) agreement, with nine local police officers and a county supervisor trained by ICE and dedicated to assisting ICE in interviewing foreign-born inmates, identifying those who are removable, and issuing detainers and charging documents such as NTAs.<sup>287</sup> The current Sheriff, elected in 2016, ran on a platform to terminate the 287(g) program. After the agreement ended in February 2017, ICE stationed nine of its own CAP officers in the jail to perform interviews and issue detainers and NTAs. At the time of MPI's visit in March 2017, CAP officers continued to screen and detain a high volume of Harris County detainees, taking up to 15 per day into federal custody on immigration charges. Transfers into ICE custody occurred late every night, so that no one would be held overnight on a detainer.

At the time of the site visit in March, all 253 other Texas counties fully cooperated with ICE—except for Travis County, which in January 2017 declared it would not honor most ICE detainers, just as President Trump took office; it rescinded this policy after SB 4 passed. The Houston ICE Enforcement and Removal Operations (ERO) office covers 54 counties in Southeast Texas and was generally able to take removable noncitizens into custody the same day they were booked into jail in any of these counties. ICE stationed one CAP officer at the Houston City Jail—which has since transferred all its inmates to the Harris County Jail—and another officer in the jail in suburban Montgomery County to conduct in-person interviews and determine removability. In all the other counties in the Houston region, local law enforcement officers prescreened inmates for their place of birth, and then CAP officers conducted interviews over the phone to confirm the removability of those who are immigrants. Under contract with ICE, one of the county sheriff's offices in the region took custody and provided transportation to transfer individuals into ICE custody—generally during the same day to avoid overnight custody based on detainers. After the MPI visits, 16 of the 54 counties in the region signed 287(g) agreements, including half a dozen suburban

<sup>282</sup> Texas SB 4, *An Act Relating to the Enforcement by Campus Police Departments and Certain Local Governmental Entities of State and Federal Laws Governing Immigration and to Related Duties and Liability of Certain Persons in the Criminal Justice System; Providing a Civil Penalty; Creating a Criminal Offense.*

<sup>283</sup> *City of El Cenizo, Texas et al. v. State of Texas.*

<sup>284</sup> Associated Press, "The Latest: Austin to Honor Federal Immigration Detainers," Associated Press, September 25, 2017, <https://apnews.com/9abf60133ca643beaa76216af89435a2/The-Latest-Austin-to-honor-federal-immigration-detainers>.

<sup>285</sup> MPI Data Hub, "Unauthorized Immigrant Population Profiles."

<sup>286</sup> In 2015, Harris County had a daily average of 8,912 inmates in jail; only Los Angeles County (17,151) and New York City (9,531) had more. See Vera Institute of Justice, "Incarceration Trends," accessed December 15, 2017, <http://trends.vera.org/incarceration-rates?data=pretrial>.

<sup>287</sup> Harris County Sheriff Ed Gonzalez, elected in 2016, campaigned on ending the 287(g) program due to its cost—the county paid salaries of all the dedicated officers—and its impact on community trust in the police.



Houston counties.<sup>288</sup> In these counties, 287(g) officers took on the functions that CAP officers had performed remotely, usually via telephone.

## 2. Davidson County (Nashville) and Shelby County (Memphis), Tennessee

Two other large urban counties included in the study—Davidson (Nashville) and Shelby (Memphis), Tennessee—also cooperated fully with ICE and honored detainers at the time of the MPI visit. Tennessee state law bars law enforcement agencies from prohibiting communication with ICE, though the law does not mandate compliance with detainers.<sup>289</sup> Like Harris County, Davidson County had a 287(g) program from 2007 through 2012, but the program was terminated by the Sheriff following community opposition stemming from cases that had generated strong public reaction. In one case a woman was handcuffed by sheriff’s deputies while giving birth; in another, an individual was transferred into ICE custody after being arrested for fishing without a license.<sup>290</sup>

At the time of MPI’s visit in 2017, ICE did not station its own officers in the Davidson County Jail to interview inmates for their immigration histories, due to staffing limitations. Instead, ICE relied on the Secure Communities system to identify removable immigrants and issue detainers. According to the Davidson County Sheriff’s Office, Secure Communities only identified about half as many inmates as potentially removable as the 287(g) officers did because Secure Communities only identified people who had previously interacted with immigration enforcement authorities. Davidson County had an intergovernmental service agreement (IGSA) with ICE to detain immigrants, and so, once a detainer was issued, ICE officers processed the immigrant at the local ICE office and returned him or her to the county jail.<sup>291</sup> In other jails across the state, delays in obtaining results from Secure Communities fingerprint checks meant that detainers were not always placed before those with short sentences were released, and so ICE became aware of their arrests too late to take custody.

In June 2017, the Nashville Metropolitan Council introduced a measure that would have prohibited local authorities from requesting information about a person’s immigration status, using local funds or resources to enforce immigration laws, honoring detainers absent a judicial warrant, or alerting ICE of a person’s custody status, release date, probation schedule, or court appearance dates, unless required by law or court order.<sup>292</sup> The ordinance was withdrawn from consideration after the Sheriff said he would not abide by it, the city’s Director of Law issued a legal opinion saying the ordinance would not apply to the sheriff’s department and would violate the Metro Charter, and a majority of the state House of Representatives threatened to withhold funding from Nashville if the measure passed.<sup>293</sup>

## 3. Suburban Chicago Counties

Three of the suburban “collar” counties that ring Chicago and were included in the study—DuPage, Lake, and McHenry—also fully cooperated with ICE at the time of the site visits, as did most other counties across Illinois except for Cook County (Chicago). In Lake County, the sheriff’s office honored detainers if they were accompanied by administrative warrants stating that ICE officers had probable cause to

<sup>288</sup> ICE, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.”

<sup>289</sup> State of Tennessee Public Chapter No. 447 (HB1354), *An Act to Amend Tennessee Code Annotated, Title 7, Relative to Local Government Cooperation with Federal Officials Regarding Immigration Status of Persons in this State*.

<sup>290</sup> Julia Preston, “Settlement for a Shackled Pregnant Woman,” *New York Times*, October 17, 2013, [www.nytimes.com/2013/10/18/us/settlement-for-a-shackled-pregnant-woman.html](http://www.nytimes.com/2013/10/18/us/settlement-for-a-shackled-pregnant-woman.html); Chris Echegary, “Immigrants Jailed After Fishing without a License,” *The Tennessean*, August 26, 2010.

<sup>291</sup> In April 2017, a class of immigrants held on detention charges at the Davidson County Jail filed a federal lawsuit, claiming that the Davidson County Intergovernmental Services Agreement (IGSA) expired in 2012 and the jail had been holding people on immigration violations and being reimbursed by ICE illegally since that time. See Kevin Lessmiller, “Immigrants Call Nashville ICE Detentions Illegal,” *Courthouse News*, April 20, 2017, [www.courthousenews.com/nashville-immigrants-call-ice-detentions-illegal/](http://www.courthousenews.com/nashville-immigrants-call-ice-detentions-illegal/).

<sup>292</sup> Metropolitan Government of Nashville and Davidson County, *An Ordinance to Amend Title 11 of the Metropolitan Code of Laws Regarding Federal Civil Immigration Laws*, Ordinance No. BL2017-739, withdrawn July 16, 2017, [www.nashville.gov/mc/ordinances/term\\_2015\\_2019/bl2017\\_739.htm](http://www.nashville.gov/mc/ordinances/term_2015_2019/bl2017_739.htm).

<sup>293</sup> Joey Garrison, “Nashville Immigration Proposals Dead as Council Members Plan Withdrawal,” *The Tennessean*, June 28, 2017, [www.tennessean.com/story/news/2017/06/28/controversial-nashville-immigration-measure-shelved/435051001/](http://www.tennessean.com/story/news/2017/06/28/controversial-nashville-immigration-measure-shelved/435051001/).



believe that an immigrant in custody was removable.<sup>294</sup> ICE began issuing these administrative warrants alongside detainers early in the Trump administration to assuage some counties' concerns that they were legally liable for holding individuals on immigration charges without a warrant, and to respond to a federal court case holding that detainer requests are not mandatory unless accompanied by a warrant.<sup>295</sup> In McHenry County, ICE interviewed inmates over the phone to determine if they were unauthorized or otherwise removable. McHenry County had contracts to house ICE inmates in its jail and to transport them to various ICE facilities in the Chicago region, and so if a noncitizen there is identified as removable, transfer to ICE custody is seamless. After MPI visited the state, Illinois passed the *Trust Act*, which prohibits local jurisdictions from honoring ICE detainers or transferring individuals into ICE custody unless they are convicted of specified serious crimes. As a result, the ICE cooperation policies of these jurisdictions have likely changed substantially since the MPI visit.<sup>296</sup>

#### 4. Fulton and DeKalb Counties (Atlanta), Georgia

Four large counties comprise most of the Atlanta metropolitan area. Two of these counties—Fulton and DeKalb—include portions of the city of Atlanta. Both fully cooperate with ICE and honor detainers. Atlanta and Clarkston, a small city in suburban DeKalb County, have resolutions to limit ICE cooperation by not complying with detainers or ICE administrative warrants.<sup>297</sup> But these resolutions are largely symbolic, as almost everyone arrested by the local police in Atlanta and Clarkston is taken to the Fulton or DeKalb County jails, both of which honor ICE detainers. The other two major North Georgia counties, Cobb and Gwinnett, operate 287(g) programs through which sheriff's deputies actively support ICE officers in identifying, arresting, and detaining removable noncitizens who have been booked into the county jails. Clarke was the only Georgia county that did not fully cooperate with ICE at the time of MPI's visit in April 2017. From July 2017 to April 2018, the county instituted a policy of full cooperation, but in April, after seeking legal consultation, the Sheriff announced that the county would no longer hold people solely on ICE detainers, absent a judicial warrant or court order.<sup>298</sup>

### B. The Process in Counties Enhancing ICE Cooperation with 287(g) Agreements

MPI researchers visited two of the counties with the largest operating 287(g) programs: Gwinnett County (in suburban Atlanta) and Prince William County (in the Virginia suburbs of Washington, DC). Orange County also had a 287(g) program, but it operated under the constraints of California's sanctuary

<sup>294</sup> In April 2017, the Mexican American Legal Defense and Education Fund (MALDEF) sued Lake County, Illinois, for holding a Honduran immigrant for more than ten days without a criminal charge before being transferred to ICE custody. The man, who had been arrested on domestic battery charges, paid bond and yet was not released. See Associated Press, "Fox Lake Immigrant in MALDEF Suit Released in ICE Custody," Associated Press, April 14, 2017, [www.apnews.com/e18ddd0e4d3844a4b9caa2d00ac22129/Fox-Lake-immigrant-in-MALDEF-suit-released-in-ICE-custody](http://www.apnews.com/e18ddd0e4d3844a4b9caa2d00ac22129/Fox-Lake-immigrant-in-MALDEF-suit-released-in-ICE-custody).

<sup>295</sup> ICE administrative warrants are not judicial warrants, i.e., they are not signed by a judge, and so it is not clear if they would hold up to scrutiny in the courts if counties were sued for honoring them. Many jurisdictions across the country, however, have honored detainers when accompanied by administrative warrants. In *Jimenez Moreno v. Napolitano*, a federal court found that issuing a detainer without an administrative warrant or a finding that a noncitizen is likely to escape before ICE can obtain a warrant oversteps the agency's authority to make warrantless arrests. See *Jimenez Moreno v. Napolitano*, 213 F.Supp.3d 999 (U.S. District Court for the Northern District of Illinois, 2016), <http://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2016-11/JimenezMoreno-NDIL-ruling.pdf>.

<sup>296</sup> In September, a few days after the *Illinois Trust Act* went into effect, an unauthorized immigrant sued McHenry County, alleging the county had refused to release him after he posted bond on a misdemeanor domestic battery charge, and was subsequently transferred into ICE custody pursuant to a detainer. See Robert McCoppin and Amanda Marrazzo, "McHenry Co. Sheriff Sued for Not Releasing Immigrant Detainee Under New Law," *Chicago Tribune*, September 9, 2017, [www.chicagotribune.com/suburbs/mchenry-county/news/ct-illinois-trust-act-immigration-mchenry-county-sued-met-20170908-story.html](http://www.chicagotribune.com/suburbs/mchenry-county/news/ct-illinois-trust-act-immigration-mchenry-county-sued-met-20170908-story.html).

<sup>297</sup> The Atlanta City Council passed its resolution that city police should not comply with detainers in September 2017, immediately after President Trump announced the rescission of DACA and about three months after MPI's visit. See Jeremy Redmon, "Atlanta Council Calls for Limiting Cooperation with ICE," *Atlanta Journal-Constitution*, September 6, 2017, [www.ajc.com/news/breaking-news/atlanta-council-calls-for-limiting-cooperation-with-ice/mOJLUqZAlDrBCzVnSMeUBO/](http://www.ajc.com/news/breaking-news/atlanta-council-calls-for-limiting-cooperation-with-ice/mOJLUqZAlDrBCzVnSMeUBO/); Jeremy Redmon, "Georgia City Votes to Limit Cooperation with Immigration Officers," *Atlanta Journal-Constitution*, May 2, 2017, [www.ajc.com/news/breaking-news/georgia-city-votes-limit-cooperation-with-immigration-officers/TfhsiktSgHkig2nfEXGff/](http://www.ajc.com/news/breaking-news/georgia-city-votes-limit-cooperation-with-immigration-officers/TfhsiktSgHkig2nfEXGff/).

<sup>298</sup> Charlotte Norsworthy, "Clarke County Sheriff's Office Reverses Policy on Undocumented Immigrants," *The Red and Black*, December 5, 2017, [www.redandblack.com/athensnews/clarke-county-sheriff-s-office-reverses-policy-on-undocumented-immigrants/article\\_678f4d70-d9d3-11e7-acd9-37117357dfec.html](http://www.redandblack.com/athensnews/clarke-county-sheriff-s-office-reverses-policy-on-undocumented-immigrants/article_678f4d70-d9d3-11e7-acd9-37117357dfec.html); Clarke County Sheriff's Office, "CCSO Ice Detainer Practice" (press release, April 13, 2018), [www.athensclarkecounty.com/ArchiveCenter/ViewFile/Item/4020](http://www.athensclarkecounty.com/ArchiveCenter/ViewFile/Item/4020).



legislation, as described below. Two of the other study sites—Los Angeles and Harris counties—once had much larger 287(g) programs, but both programs were discontinued before the MPI visits.<sup>299</sup>

ICE officers interviewed for this study described the 287(g) programs in Gwinnett and Prince William counties as two of the most “productive” and “professionally operated” in the country, and both programs operate similarly. Both programs have county sheriff’s deputies who are termed Designated Immigration Officers (DIOs) available on every shift to screen inmates for their immigration status, and both have dedicated ICE program managers supervising the county employees who conduct the screening. (In some smaller 287(g) programs with smaller numbers of DIOs, the county deputies only screen some inmates at certain times for immigration status and removability.) The DIO position is considered a prestigious job, and the recruitment process is competitive, drawing from a large pool of applicants in both counties. DIOs are trained at the same academy as ICE officers and are authorized to conduct most of the functions of CAP officers, albeit with close ICE supervision. The process for a 287(g) arrest includes the following steps:

- interviewing every foreign-born individual to determine his or her immigration status and whether he or she is removable;
- running his or her fingerprints through ICE’s IDENT fingerprint system via a direct link (rather than indirectly through Secure Communities), and checking records in other databases;
- lodging a detainer if the person is removable;
- taking the noncitizen into custody when release is imminent, for example: after a sentence is served, bond is posted, or the criminal case is dropped or adjudicated;
- serving a notice to appear (NTA) before an immigration judge;
- if needed, transporting the person to another facility; and
- If requested, contacting the immigrant’s consulate.

In both counties, the DIO performs most of these steps, but the program manager or another ICE officer reviews all cases and must sign off on all detainers, NTAs, or other charging documents before noncitizens can be taken into ICE custody. As reported at the time of the MPI visits in spring 2017, almost all individuals with detainers in Gwinnett County and Prince William County were eventually taken into ICE custody.

In Gwinnett County, 287(g) officers reported that the Secure Communities system duplicates the 287(g) process, and because Secure Communities runs through a state database and NCIC, it is slower than directly accessing IDENT databases and other systems to which only 287(g) officers and ICE officers have access. Additionally, in-person interviews yield more accurate information on legal status and removability than IDENT or the other databases. Thus, from ICE’s perspective, the 287(g) program has three primary advantages over the Secure Communities system:

- Probable cause that an individual in custody is unauthorized or a removable legal immigrant can be established more quickly, enabling ICE to take custody earlier in the local criminal justice process, e.g., after bond is posted or after someone is released following a charge or conviction that did not result in jail time.
- Removable noncitizens with no immigration history in the DHS databases linked to Secure Communities can be identified through the interviews conducted by the DIOs.
- Individuals are less likely to be incorrectly identified as removable during an interview with the DIO than by Secure Communities, which has incomplete and sometimes outdated information; thus, DIO interviews can avoid costly transfers of the wrong people.

<sup>299</sup> Capps, Rosenblum, Chishti, and Rodríguez, *Delegation and Divergence*, 22.



From ICE's perspective, CAP offers similar advantages. Counties such as Los Angeles, Harris (Houston), and Montgomery, Texas (a suburb of Houston), where CAP officers are stationed in the local jail, can also quickly screen inmates for legal status and removability in the same way that 287(g) counties such as Gwinnett, Prince William, and Orange do.

But facilities without 287(g) or CAP officers must rely on Secure Communities and/or remote interviews conducted over the phone or video by CAP officers—which can return information more slowly and less accurately. As a result, those counties without 287(g) programs or stationed CAP officers are less likely to identify, detain, and transfer into ICE custody individuals who have bonded out of criminal charges or been convicted for lesser criminal charges—since those individuals go through the jails much more quickly. And, they are less likely to identify removable immigrants who have never had prior contact with immigration officials or have very old immigration arrests or removal orders.

Counties with 287(g) programs and stationed CAP officers, then, are more likely to bring individuals with lesser convictions or without convictions into ICE custody. Such was the case in Gwinnett County's 287(g) program, which during the first 15 months of its operation (October 2009 through December 2010) placed 42 percent of detainers on individuals with only traffic violations, and 15 percent on immigrants with only driver's license violations.<sup>300</sup> During the latter part of the Obama administration, the narrower enforcement priorities excluded traffic and driver's license violations, and the numbers of people taken into ICE custody from Gwinnett County fell dramatically. But the earlier pattern repeated itself in 2017, when study respondents reported a large share of individuals taken into custody because of traffic violations. In one month in 2017, according to Gwinnett County jail records, 184 immigrants were held for ICE, and two-thirds had been charged with traffic infractions such as speeding, failing to stay within the lane, or driving without a license.<sup>301</sup>

## C. The Process in Counties Limiting ICE Cooperation

### I. California State Laws and Policies

The study sites of Los Angeles and Orange counties, like the rest of California, are governed by state laws and legal opinions that establish the parameters of their cooperation with ICE. The TRUST Act, which went into force in January 2014, prohibits local law enforcement agencies from honoring ICE detainer requests unless the detainee has been convicted of one of the specifically listed serious crimes in the statute. Then, in summer 2014, following the *Miranda-Olivares* ruling in Oregon, then State Attorney General Kamala Harris advised law enforcement agencies across the state that since ICE detainer requests are voluntary, “new federal law has created a legal risk” of violation of the Fourth Amendment if an agency detains an individual solely on the basis of an ICE detainer without further probable cause.<sup>302</sup> Given the Attorney General's opinion and threats of lawsuits by the American Civil Liberties Union (ACLU), counties in California generally stopped honoring all ICE detainers, according to attorneys, law enforcement

<sup>300</sup> *Ibid.*, 24.

<sup>301</sup> Yee, “Please, God, Don't Let Me Get Stopped.”

<sup>302</sup> California Department of Justice, California Justice Information Services Division, “Responsibilities of Local Law Enforcement Agencies under Secure Communities and the Trust Act,” Information Bulletin No. 14-01, June 25, 2014, [https://oag.ca.gov/sites/all/files/agweb/pdfs/law-enforcement/14-01\\_le\\_info\\_bulletin.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law-enforcement/14-01_le_info_bulletin.pdf). The U.S. district court in *Miranda-Olivares* found that the county sheriff's department did not have probable cause to detain a woman based on an ICE detainer that stated only that the agency was investigating whether she was removable, since she was “not charged with a federal crime and was not subject to a warrant for arrest or order of removal or deportation by ICE.” The court thus implied that if ICE had issued a warrant for her arrest along with the detainer, the county's compliance with the detainer might not have violated the Fourth Amendment. See *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST. However, federal courts have subsequently ruled that probable cause of removability is not enough for a state or local law enforcement agent to make an arrest; instead, there must be probable cause that the person has committed a criminal offense. See *Buquer et al. v. City of Indianapolis et al.*, No. 1:11-cv-00708 (U.S. District Court for the Southern District of Indiana, Order on Pending Summary Judgment Motions, 2013), [www.niic.org/wp-content/uploads/2015/12/IN-Buquer-order-on-pending-smry-jgmnt-motions-2013-03-28.pdf](http://www.niic.org/wp-content/uploads/2015/12/IN-Buquer-order-on-pending-smry-jgmnt-motions-2013-03-28.pdf); *Lopez Orellana v. Nobles County et al.*, No. 15-3852 (U.S. District Court for the District of Minnesota, 2017), [www.gpo.gov/fdsys/pkg/USCOURTS-mnd-0\\_15-cv-03852/pdf/USCOURTS-mnd-0\\_15-cv-03852-0.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-mnd-0_15-cv-03852/pdf/USCOURTS-mnd-0_15-cv-03852-0.pdf); *Mercado v. Dallas County*, No. 3:15-cv-3481 (U.S. District Court for the Northern District of Texas, 2017), <https://cases.justia.com/federal/district-courts/texas/txndce/3:2015cv03481/265932/53/0.pdf?ts=1484756544>; *Santoyo v. United States*, No. 5:16-CV-855-OLG (U.S. District Court for the Western District of Texas, Order, 2017), [www.law.umaryland.edu/programs/clinic/initiatives/immigration/documents/TrujilloSantoyo.pdf](http://www.law.umaryland.edu/programs/clinic/initiatives/immigration/documents/TrujilloSantoyo.pdf).



officials, and advocates interviewed by MPI researchers during their California fieldwork. Because they are not issued by a judge, the new ICE administrative warrants that accompany ICE detainees do not address the concerns raised in the case cited by the California Attorney General and other cases decided since. By not honoring detainees, California county jails have reduced the amount of time ICE has to respond when individuals are released from local custody; if ICE is not present at the moment of release, the person goes free. The TRUTH Act, implemented in 2017, requires that individuals give informed consent before being interviewed by a 287(g) or CAP officer, meaning that unauthorized immigrants for whom there is no Secure Communities match and who do not consent to an interview may not be identified as removable.<sup>303</sup>

California expanded protections for immigrants by enacting the *California Values Act*, which went into effect on January 1, 2018. The *Values Act* prohibits 287(g) agreements, holding individuals on ICE detainees, and sharing nonpublic information about noncitizens with ICE. Importantly, the law also prohibits notification of nonpublic release dates or transfers to ICE custody of individuals who have not been convicted of certain enumerated crimes—a list slightly narrower than that in the earlier TRUST Act.<sup>304</sup>

## 2. Los Angeles County

From 2005 through 2015, Los Angeles County had a 287(g) agreement, and before that agreement, ICE CAP officers were stationed at the jails dating back to at least the 1990s. The Los Angeles 287(g) program had been unique in that, unlike the more universal programs in places like Gwinnett and Prince William counties, individuals were only screened for immigration status and removability upon release (instead of booking) and after they had been convicted of a crime.<sup>305</sup>

At the time of MPI's visit in July 2017, ICE officers still maintained a constant presence in the Los Angeles County jail, but they lost their office in the jail after the Board of Supervisors voted to end the 287(g) agreement in 2015. Without the office in the jail, CAP officers reportedly became more reliant on using databases, rather than interviews, to identify potentially removable immigrants in county custody. In the Los Angeles County jail, CAP officers were only allowed to interview noncitizens who had been convicted of crimes listed in the California TRUST Act, and then only if the person consented to be interviewed under the terms of the TRUTH Act—and many declined their consent. Los Angeles County notifies ICE of detained individuals' release dates, through a publicly available database.<sup>306</sup> But Los Angeles County only allows direct transfers into ICE custody of individuals convicted of the crimes listed in the TRUST Act, and the transfer must occur at the moment that the person is released from jail. Starting January 2018, under the *California Values Act*, these limitations on transfers will be applied statewide. For other removable immigrants in the jail, ICE must wait until after they are released to locate and arrest them in the community; there is a “gentleman's agreement” between the Los Angeles County jail and ICE that the federal agency will not position its officers outside the jail to arrest someone immediately after his or her release.<sup>307</sup>

Due to these policies and procedures, minor offenders left the Los Angeles County Jail without being taken into ICE custody, and ICE launched operations using at-large teams of its own officers to apprehend them. Those with the more serious criminal charges listed in the TRUST Act were generally taken directly

<sup>303</sup> State of California, *Transparent Review of Unjust Transfers and Holds (TRUTH) Act*, AB2792.

<sup>304</sup> State of California, *An Act to Amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (commencing with Section 7284) to Division 7 of Title 1 of, the Government Code, and to Repeal Section 11369 of the Health and Safety Code, Relating to Law Enforcement*, SB54.

<sup>305</sup> Capps, Rosenblum, Chishti, and Rodríguez, *Delegation and Divergence*, 19.

<sup>306</sup> According to an October 2017 report by the Los Angeles County Inspector General, despite statements that the sheriff's office would provide ICE only with publicly available information, staff in the office several times gave internal, nonpublic information to ICE agents. Sharing of nonpublic information stopped in response to the report. See Max Huntsman, *Immigration: Public Safety and Public Trust* (Los Angeles: Office of Inspector General, County of Los Angeles, 2017), [https://oig.lacounty.gov/Portals/OIG/Reports/Immigration\\_Public%20Safety%20and%20Public%20Trust.pdf?ver=2017-10-08-085823-940](https://oig.lacounty.gov/Portals/OIG/Reports/Immigration_Public%20Safety%20and%20Public%20Trust.pdf?ver=2017-10-08-085823-940).

<sup>307</sup> Such an agreement does not exist in Orange County, and so ICE may be more likely to arrest individuals when they leave local facilities there. MPI researchers did not visit other California counties, and so could not determine whether such agreements exist elsewhere.





into ICE custody when they completed their sentences, whether they served their sentence in county jail or state prison. The list of crimes subjecting immigrants to ICE custody was further narrowed by the *Values Act*.

### 3. Orange County, California

At the time of MPI's visit in July 2017, Orange County operated a 287(g) program and had contracts to house ICE inmates at two large detention facilities. Despite this high level of cooperation with ICE, Orange County stopped honoring ICE detainers in June 2014, citing the *Miranda-Olivares* decision.<sup>308</sup> As in Gwinnett and Prince William counties, Orange County DIOs found that it was faster to interview noncitizens in custody than to wait for Secure Communities to identify them. In addition, Orange County DIOs, like those in the other counties, said they were able to identify removable immigrants through interviews who would not otherwise be identified through fingerprint matches. At the time of MPI's visit, however, officials estimated that about 60 percent of inmates typically refused to be interviewed by the 287(g) officers under the terms of the TRUTH Act. Moreover, Orange County did not honor ICE detainers and would only allow transfer into ICE custody for individuals convicted of crimes enumerated in the TRUST Act—like the policies in place in Los Angeles County at that time and those later codified throughout the state by the *Values Act*. Unlike Los Angeles County, Orange County had no clear policy about whether ICE officers could wait outside Orange County facilities to arrest individuals not covered by the TRUST Act upon their release, and ICE may have access to release dates for immigrants whose crimes were not listed in the TRUST Act through databases or through informal information sharing.

### 4. New York City

New York City has policies limiting ICE cooperation that date back several years. Starting in 2011, the City Council enacted a series of laws limiting compliance with detainers by the New York City Police Department and Department of Corrections.<sup>309</sup> The latest in the series, enacted in 2014, prohibits detainer compliance unless an inmate has been convicted of any of the enumerated 170 “violent or serious” crimes, illegally re-entered the United States, is identified as a possible match in a terrorist database, or if the ICE detainer is accompanied by a judicial warrant.<sup>310</sup> This law removed carveouts under prior city ordinances for suspected gang members and individuals with final removal orders. At the time of MPI's visit in August 2017, the city was considering narrowing the list of 170 crimes that could qualify for honoring a detainer, though appeared not to have taken action as of this writing.

In 2014, New York City prohibited ICE from maintaining an office on New York City jail premises, which effectively closed the ICE office in a trailer at the main jail complex on Rikers Island. Prior to 2014, CAP officers were stationed on Rikers Island and at another city facility on Varick Street in Manhattan. CAP officers had access to the city jails' computer system and were able to conduct interviews with all foreign-born inmates on Rikers Island—usually within a day after identifying potentially removable immigrants using the computer system. Until 2014, the city honored most detainers, and individuals were held until ICE could schedule pick-up.

After the laws and policies restricting detainer compliance and banning ICE officers from Rikers Island went into place in 2014, CAP officers could no longer screen inmates in person for removability or use the jails' computer system. At the time of the MPI visits in 2017, CAP officers relied primarily on Secure Communities, which, as in other locations, returned information slowly, sometimes inaccurately, and only on those individuals with prior DHS contact. ICE officers issued detainers on all removable immigrants identified via Secure Communities, but New York City jail officers did not honor them except under the narrow conditions of the 2014 city law. City officials told MPI researchers, however,

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308 Paloma Esquivel, “Orange County to Stop Honoring Immigration Detainer Requests,” *Los Angeles Times*, June 25, 2014, [www.latimes.com/local/orangecounty/la-me-0628-jail-immigration-20140626-story.html](http://www.latimes.com/local/orangecounty/la-me-0628-jail-immigration-20140626-story.html).

309 New York City Council Law Number 2011/062, *Persons Not to Be Detained*.

310 New York City Council Law Number 2014/058, *Persons Not to Be Detained by the Department of Correction*; New York City Council Law Number 2014/059, *Persons Not to be Detained by the Police Department*.



that they notify ICE when releasing any individual convicted of any of the 170 crimes enumerated in that law, usually within a few hours of the inmate being ordered released or posting bail. The release process is complex, though, and the jail officers cannot always provide a precise release date and time. ICE officers reported that at the time of MPI's visit they were notified in less than 1 percent of cases in which detainees were placed. Both ICE officers and city officials agreed that between the passage of the most recent city ordinance in 2014 and the MPI visit in July 2017, ICE took no more than ten people into custody directly from city jails—though some may have been taken into custody after being booked into city jail and then transferred to state prison.

## 5. Chicago and Cook County, Illinois

Chicago and Cook County have among the most restrictive ICE noncooperation policies in the country, and Chicago has embraced its status as a “sanctuary city.”<sup>311</sup> In September 2011, Cook County enacted an ordinance with the following restrictions on ICE cooperation:

- ICE detainer requests must be declined and county resources cannot be used to respond to detainees
- ICE officers are denied access to individuals in county custody and cannot use county facilities to interview inmates or for other purposes

County personnel are prohibited from responding to ICE inquires or communicating with ICE regarding individuals' incarceration status or release dates while on duty.<sup>312</sup>

In practice this means that Cook County does not honor detainees, allow ICE officers into the county jail, notify the agency when inmates are released, or otherwise communicate with ICE in any way. Individuals can only be taken directly from county custody into ICE custody if the agency produces a judicial warrant for their arrest, which rarely occurs; this is the only exception to Cook County's strict noncooperation policy. More commonly, noncitizens convicted of the most serious offenses in Cook County may wind up in ICE custody but only after they complete sentences in state prisons. Indeed, according to the Mexican Consulate in Chicago, 90 percent of nationals deported in the first four months of 2017 were previously in state prison for serious violations, including DUI, drug trafficking, and domestic violence, and the total number of deported Mexicans rose only 6 percent compared to the same period in 2016.<sup>313</sup>

The Chicago Police Department generally transfers individuals it arrests into county custody, but the city also has a longstanding noncooperation policy, which was updated most recently in 2013 and in 2016.<sup>314</sup> The city's current “Welcoming City Ordinance” prohibits city agencies from inquiring about the immigration status of people seeking services; prevents the police department from questioning crime victims, witnesses, and other law-abiding residents about their legal status; and prevents sharing with ICE any immigration-status information that city officials may obtain. It also prohibits detention of inmates based solely on ICE detainees, but unlike the Cook County ordinance, the city's policy has four exceptions: allowing detainer compliance for noncitizens with (1) alleged gang membership; (2) past felony convictions, (3) pending felony charges, or (4) warrants issued by courts or probation officers. Immigrant and criminal justice reform advocates have lobbied the city to align city policy with the stricter county policy. In practice, the county's policy applies in most cases because most individuals are taken to the county jail after they are arrested. Yet the gang membership exception has resulted in

<sup>311</sup> Bill Ruthhart and Hal Dardick, “As Trump Signs Immigration Order, Emanuel Vows Chicago Will Stay Sanctuary City,” *Chicago Tribune*, January 25, 2017, [www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-donald-trump-chicago-sanctuary-cities-met-0126-20170125-story.html](http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-donald-trump-chicago-sanctuary-cities-met-0126-20170125-story.html).

<sup>312</sup> Cook County Board Ordinance 11-0-73, *Policy for Responding to ICE Detainers*.

<sup>313</sup> The Mexican Consulate in Chicago covers 87 counties in Northern Illinois and Indiana. Mexican nationals are not required to notify the consulate when they are taken into ICE custody, and so not all deportation cases come to the consulate's attention. As a result, the total number of Mexicans deported from Northern Illinois and Indiana may be substantially higher than the number reported by the consulate.

<sup>314</sup> City of Chicago, Illinois, *Amendment of Municipal Code Chapter 2-173 regarding Welcoming City Ordinance*, Ordinance No. 02016-6517 (2016), <https://chicago.legistar.com/LegislationDetail.aspx?ID=2835208&GUID=848F1B40-CE09-488F-8EC9-E6F931CA3DF0>.



some immigrants being identified through Chicago’s nonpublic gang database and taken into custody in ICE operations, even without a criminal conviction, while others have been taken into custody after court dates and probation meetings.<sup>315</sup>

## 6. Illinois State Legislation

At the time of the MPI’s site visit, advocates had succeeded in persuading some of the smaller cities in suburban Cook County to join Chicago in enacting policies limiting ICE cooperation. However, all local policies—except Cook County’s—were superseded by the *Illinois Trust Act*, which went into effect in August 2017.<sup>316</sup> Unlike the Cook County ordinance, the *Trust Act* does not ban all information sharing with ICE, but it does prohibit state and local law enforcement officers from honoring detainees unless accompanied by a judicial warrant, and from stopping, arresting, searching, or detaining individuals solely based on immigration status. Under the *Trust Act*, Illinois counties can no longer hold people on ICE detainees accompanied by administrative warrants—as had been the practice in some suburban counties at the time of the MPI visits.

## Appendix C. ICE At-Large Operations Using Fugitive Operations Teams

ICE does not rely entirely on state and local law enforcement agencies to bring people into custody; ICE officers in fugitive operations and similar teams conduct substantial numbers of “at-large” arrests at people’s homes and in the community. From January 20 through September 30, 2017, ICE conducted 31,663 at-large arrests—29 percent of the 119,568 total arrests during that period.<sup>317</sup>

ICE’s fugitive operations teams are charged with locating and arresting removable immigrants who are outside of ICE custody. This includes two main groups: (1) noncitizens ordered removed but who either did not know about their removal order or failed to comply with it, and (2) removable immigrants released from local custody in places where the city or county jail does not fully cooperate with ICE. In June 2017, 542,000 noncitizens were considered fugitives because they did not appear for immigration court hearings and were ordered removed by an immigration judge or who were ordered removed and did not leave the country.<sup>318</sup> ICE may have difficulty finding these people, and lack of current location information limits the capacity of ICE teams to take people into custody.

### A. At-Large Arrests in Jurisdictions that Do Not Fully Cooperate with ICE

In places where local law enforcement agencies do not fully cooperate with ICE, fugitive operations often focus on individuals who have been released from local custody. During MPI’s visit to New York City, for instance, ICE officers estimated that 80 percent of their fugitive operations there focused on “at-large criminal aliens” who had been released from jails after detainees had been lodged; the remainder focused primarily on noncitizens with final removal orders. The Chicago ICE field office reported a similar 80:20 ratio of at-large criminal alien arrests to other arrests in its Chicago-area operations, and at one point had

<sup>315</sup> Denver, another city that otherwise limits ICE cooperation, has formal guidelines for cooperation between ICE and the probation department that have been in place since June 2015. These guidelines specify how to communicate the immigration status of probationers and how to facilitate arrests by ICE officers in the probation building. ICE had arrested 35 people at the probation building through November 2017 using these procedures. See Chris Walker, “State Probation Office in Denver Tipping Off ICE, Allowing Non-Citizen Arrests,” Westword, November 27, 2017, [www.westword.com/news/probation-office-in-denver-tipping-off-ice-allowing-noncitizen-arrests-9725041](http://www.westword.com/news/probation-office-in-denver-tipping-off-ice-allowing-noncitizen-arrests-9725041).

<sup>316</sup> Illinois General Assembly Public Act 100-0463, *Illinois TRUST Act*

<sup>317</sup> ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 2, 6. During the period for which MPI obtained data (January 20 through June 3, 2017), 69 percent of arrests were via the criminal justice system, 24 percent through arrests by fugitive operations or other at-large teams, and the remaining 7 percent could not be coded under either category.

<sup>318</sup> Statement of Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the House Appropriations Subcommittee on Homeland Security, Regarding the Fiscal Year 2018 President’s Budget Request, 115th. Cong., 1st sess., June 13, 2017, <http://docs.house.gov/meetings/AP/AP15/20170613/106057/HHRG-115-AP15-Wstate-HomanT-20170613.pdf>.



dedicated two of its three arrest teams entirely to arresting people with criminal convictions who had been released from the county jail. The Los Angeles field office had separate at-large teams that focused on apprehending individuals released from local jails, and the office sometimes assigned CAP officers, who could otherwise be assigned to screening people in local jails, to participate in at-large operations. These teams, however, have only rearrested a small fraction of removable immigrants released from local jails nationwide: ICE reported that nationwide between January 20 and September 30, 2017, just 5 percent of cases in which a local jail had declined to honor an ICE detainer resulted in a later ICE arrest by an at-large or fugitive operations team.<sup>319</sup>

## B. Tools for Identifying and Locating At-Large Arrest Targets

ICE at-large or fugitive operations teams have several tools to help them locate and arrest those on their docket. Among other mechanisms, they may query local or national databases such as the FBI's NCIC, an electronic clearinghouse of data accessible to criminal justice agencies nationwide that contains records on civil immigration violations as well as information on criminal violations; databases maintained by state Departments of Motor Vehicles; or law enforcement fusion centers (homeland security-related data-sharing mechanisms) operated by states and major urban areas. ICE fugitive operations teams receive fresh contact information from the ICE National Criminal Analysis and Targeting Center (NCATC) for nationally led ICE operations.<sup>320</sup> Starting under President Obama, ICE has been working to expand its access to databases and data systems to track immigration violators. In 2014, ICE signed a contract with Palantir, a company that builds data-fusion platforms, to develop an investigative case-management system that would allow ICE staff to access a wide array of data on targets from law enforcement agencies, and reportedly contains information including family relationships, employment, personal connections, biometric traits, and work and home addresses. The system was set to become operational in September 2017.<sup>321</sup> In January 2018, ICE signed a contract to access a commercial, nationwide license plate recognition database. This database, housed by Vigilant Solutions, collects license plate images and geocoded locations from local law enforcement agencies, repossession agencies, and contractors who drive around with license plate readers; it includes more than 2 billion license plate images, with 100 million more added each month. Under the contract, ICE may either query the database for all locations where a certain license plate has been observed in the past five years or may request to receive an alert when a certain license plate is newly spotted.<sup>322</sup> Even prior to ICE's direct contract with Vigilant for access to its commercial database, the agency has had access to license plate location information collected by law enforcement agencies. Many U.S. cities—including some in California and elsewhere that limit cooperation with ICE—have Vigilant contracts, and voluntarily share license plate data with a wide array of other law enforcement agencies, some of which, in turn, share information with ICE.<sup>323</sup>

ICE officers may also obtain targeting information through informal arrangements with local law enforcement authorities such as parole officers, probation officers, or court officials, or from applications for immigration benefits from USCIS. Indeed, MPI researchers heard about a small number of cases in which individuals were arrested during meetings with parole or probation officers, mostly in the sites where local jails did not fully cooperate with ICE; these cases have received little media attention. Arrests of unauthorized immigrants in courthouses, however, have received far more publicity.

319 ICE, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 9.

320 DHS, "DHS/ICE/PIA-048 Data Analysis System (DAS)."

321 Spencer Woodman, "Palantir Provides the Engine for Donald Trump's Deportation Machine," *The Intercept*, March 2, 2017, <https://theintercept.com/2017/03/02/palantir-provides-the-engine-for-donald-trumps-deportation-machine/>.

322 Brandom, "Exclusive: ICE Is About to Start Tracking License Plates Across the US."

323 April Glaser, "Sanctuary Cities Are Handing ICE a Map," *Slate*, March 14, 2018, <https://slate.com/technology/2018/03/how-ice-may-be-able-to-access-license-plate-data-from-sanctuary-cities-and-use-it-for-arrests.html>.



### **C. *How At-Large Operations Are Conducted***

Once an address is located, fugitive operations or at-large teams develop an operations plan to prepare for the arrests. Arrests may occur at a person’s home, at their place of work, at courthouses, or in other locations where they are known to spend time. During such arrests, ICE officials may question other people nearby about their immigration status and may collect fingerprints through mobile fingerprint units to check their immigration status through immigration databases. Depending on available resources, ICE officers may arrest other unauthorized immigrants encountered during the operation (e.g., other household members at home during the operation or other people in the car when ICE pulls it over)—which are frequently termed “collateral arrests”. In lieu of arrest, ICE may request that an individual come by the ICE office at a future date (known as a “check-in”) or may mail that person a notice to appear in immigration court (an NTA). According to ICE officers, using fugitive or at-large teams to arrest unauthorized immigrants is expensive, time-consuming, and may pose safety risks to officers or individuals in the community. Such apprehensions, they say, also result in fewer administrative arrests and deportations than transfers directly from local jails.



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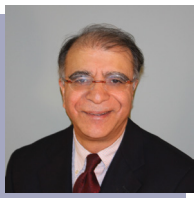


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The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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