



LEGAL LIABILITY:

- 1) **Legal liability:** Legal liability based on the authority to enforce ICE holds, including constitutional violations and faulty administration, falls on local law enforcement.
 - a. Holding someone based on an ICE hold alone violates the Fourth Amendment and may result in legal liability for that locality.¹
 - b. As of August 2014, over 230 jurisdictions nationally have limited or altogether eliminated compliance with ICE holds.²
 - c. ICE often makes mistakes and places ICE hold requests on U.S. Citizens³ and those with legal status who are not deportable.
 - d. In a letter to Santa Clara County Counsel, ICE stated that “ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.”⁴

- 2) **ICE holds are not warrants:** An ICE hold is voluntary and not equivalent to a criminal arrest warrant.
 - a. Unlike criminal arrest warrants, ICE holds are issued by the prosecuting agency itself — not by a neutral, third-party adjudicator.
 - b. ICE holds can be issued without any formal proceeding having been initiated.
 - c. ICE holds have been mistakenly issued to U.S. Citizens

DUE PROCESS AND EQUAL PROTECTION:

- 3) **Equal Treatment:** Everyone in our system should receive due process and equal treatment.
 - a. To create people differently based on *immigration status alone* creates a two-tiered system of justice system.
 - b. Immigrants are not inherently more dangerous than U.S. Citizens.
 - c. There is no justifiable reason to treat people’s *criminal* cases differently just because they are suspected of having *civil* immigration issues.

- 4) **Double punishment for immigrants alone:** Deportation is not the answer for people accused or convicted of crimes.
 - a. A person who is transferred to ICE has often already served their debt to society through their criminal sentence.
 - b. To transfer someone to ICE is to subject them to a second sentence, and one which is often worse; banishment from this country and possible permanent separation from friends and family.
 - c. We claim to be a country that values justice and second chances.

¹ *Miranda-Olivares v. Clackamas County*, 3:12-CV-02317-ST (D. Or. Apr. 11, 2014). For a legal discussion on *Miranda-Olivares* and its implications locally, see *Letter to County Counsel and Sheriff’s regarding Miranda-Olivares v. Clackamas County*, available at www.ilrc.org/enforcement. For a summary of *Miranda-Olivares* and related decisions, including how to use them in organizing, see *Immigration Detainers Update*, available at www.ilrc.org/enforcement

² For an interactive map of ICE hold policies that have limited ICE hold policies, see www.ilrc.org/enforcement.

³ A study conducted by the Warren Institute of the University of California, Berkeley found that based on federal data 3,600 U.S. citizens were affected by S-Comm. Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School, “Secure Communities by the Numbers: An Analysis of Demographics and Due Process,” October 2011 (finding based upon federal data that approximately 3,600 United States citizens have been arrested by ICE through the Secure communities program), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁴ Letter to Miguel Marquez, County Counsel, County of Santa Clara, from David Venturrella, Immigration and Customs Enforcement Assistant Director, dated 2010, copy of letter available upon request.



5) Cooperation with ICE holds encourages racial profiling:

- a. In certain jurisdictions, arrests have been a pretext to turn people over to ICE.
- b. Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States.

PUBLIC SAFETY:

6) Safeguards already exist in the criminal justice system to safeguard public safety: The criminal justice system has safeguards to protect public safety and those safeguards have remained in place.

- a. The criminal justice center is composed of a system of checks and balances divided up between the district attorney, the public defender, and the judge.
- b. The district attorney and judge have ample opportunity to take public safety into account through charging practices, charging practices, bail decisions, and sentencing.

7) Community Trust: Doing ICE's job erodes the County's trust and credibility in the community.

- a. If the County is seen as an extension of ICE, people are less likely to report crime or to serve as witnesses.
- b. This applies not only to people with immigration issues but also to U.S. citizens who may have undocumented family members or other reasons to fear becoming an ICE target.
- c. This distrust harms public safety for *all* of us.

ICE HOLDS UNDERMINE RIGHTS IN THE CRIMINAL JUSTICE SYSTEM:

8) Access to Bail/Rehabilitation programs:

- a. ICE holds often block access to release on bail, resulting in more incarceration costs and prolonging family separation.
- b. ICE holds often result in the denial of valuable rehabilitative programs such as Proposition 36, a post-conviction rehabilitative program, which are cheaper, more effective alternatives to incarceration.
- c. For those people who return to their communities because they have won their immigration cases, they return to their communities without the benefit of much needed treatment that treats underlying problems leading to arrest and incarceration.

9) Realignment:⁵

- a. At a time when counties faces pressures due to realignment (overcrowding of prisons and jails in CA), it does not make sense to use limited jail space to hold persons for ICE.
- b. Persons with ICE holds remain in custody longer than those without ICE holds, taking up valuable bed space and adding to jail overcrowding.

⁵ Realignment arguments may be used in any locality where jail overcrowding is a problem. For more information on realignment specifically, see <http://www.safeandjust.org/CalRealignment>



ICE HOLDS HURT OUR COMMUNITIES:

10) Human Cost: ICE holds carry real human costs.

- a. Increased federal immigration enforcement nationally and locally has resulted in record numbers of deportations and in the separation of families locally and nationwide.
- b. In Fiscal Year 2013, we saw nearly 370,000 deportations.⁶
- c. Since the inception of Secure Communities (S-Comm) through May 2014, California has had 115,489⁷ deportations. This is more than any other state.
- d. S-Comm is just one of many programs that ICE uses to locate and deport people, the actual number of deportations in your county may be even higher.⁸
- e. **Look up S-Comm deportation statistics in your county:** To do this, go to the following link: <http://www.ice.gov/foia/library/index.htm> Scroll to the bottom of the page and click on “Secure Communities Statistics.” Click on the most recent statistics and find your county. The total number of deportations as a result of S-Comm will be to the far right.⁹ This is only a part of the total number of deportations from your County.

11) Impact on children:

- a. In 2013, 72,410 parents of U.S. born children were deported.¹⁰
- b. Federal data indicates that more than 5,000 children whose parents have been either detained or deported are in the child welfare system.¹¹
- c. When parents are detained/deported, families are likely to go on public assistance and kids are at risk of being placed in child protective services – thereby more likely to enter the criminal justice system themselves.¹²

COOPERATE WITH THE COMMUNITY, NOT WITH ICE:

12) ICE is an untrustworthy partner:

- a. ICE is an unaccountable agency that engages in deceptive and coercive practices, both in its dealings with immigrants and with the greater public.
- b. There are frequent accounts of people being coerced into signing away their rights to see an immigration judge and fight their immigration case, without even realizing that these rights exist.

⁶ Immigration and Customs Enforcement, *FY 2013: ICE announces year-end removal numbers* (Dec. 19, 2013), available at <http://www.ice.gov/news/releases/1312/131219washingtondc.htm>

⁷ Immigration and Customs Enforcement, *Secure Communities Monthly Statistics through May 31, 2014 IDENT/IAFIS Interoperability* (May 2014), available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2014-to-date.pdf.

⁸ For a discussion of the Criminal Alien Program (CAP), a program which results in even more deportations in certain counties than S-Comm, see the *CAP Advocacy Guide*, available at <http://www.ilrc.org/resources/cap-advocacy-guide>

⁹ Seek technical support if need assistance on what the different categories listed in the columns mean. For example, L1, L2, and L3 “criminals” can also include more minor offenses.

¹⁰ See *Deportation of Aliens Claiming U.S.-Born Children*, Department of Homeland Security, First Semi-Annual, Calendar Year 2013, Fiscal Year 2013 Report to Congress (April 28, 2014) (“In the first half of calendar year 2013, ICE removed 39,410 aliens who claimed at least one U.S. –born child”) available at <http://big.assets.huffingtonpost.com/2013report1.pdf>; *Deportation of Aliens Claiming U.S.-Born Children*, Department of Homeland Security, Second Half, Calendar Year 2013, Report to Congress (April 28, 2014) (“ICE removed 33,000 aliens who claimed at least one U.S.-born child” referring to reporting period July 1, 2013 to December 31, 2013) available at <http://big.assets.huffingtonpost.com/2013report2.pdf>

¹¹ Seth Freed Wessler, *Shattered Families, The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Research Center, November 2011; U.S. Dep’t of Homeland Sec., Immigration and Customs Enforcement, *Deportation of Parents of U.S.-Born Citizens: Fiscal Year 2011 Report to Congress* Second Semi-Annual Report 3-4 (2012).

¹² Heidi Altman, *Prosecuting Post-Padilla: State Interests and the Pursuit of Justice for Noncitizen Defendants*, Georgetown Law Journal (2012).



- c. Even without these coercive practices, immigrants are set up to fail. Unlike in criminal proceedings, immigrants do not have certain safeguards such as *Miranda* warnings to protect their rights.

13) Our immigration system is broken: immigration proceedings lack due process and basic protections:

To enforce ICE holds is to cooperate with an unjust system that lacks due process.

- a. In deportation proceedings, many are unrepresented, isolated, and confined to remote jails, all because they are *civil* proceedings.
- b. In deportation proceedings people have a right to an attorney but not at the government's expense. What this means is that there is no public defender system. As a result, about 84% of detained people go *unrepresented*.
- c. A large portion of this population is detained, often isolated in remote areas states away from their friends and families.
- d. Unlike criminal proceedings, bail is freely denied either by law or by discretion in immigration proceedings.
- e. Immigration detention lines the pockets of the prison industry. These companies have an incentive to urge the government to build more jails, and regularly lobby in Washington, DC for more detention, even if it is not the most effective use of taxpayer dollars.
- f. There are alternatives to detention, which are cheaper and studies show still result in people appearing for their hearings,¹³ but these are not utilized as much as they could be.

14) Immigration enforcement is ICE's job: The County should not be complicit in enforcing civil *federal* immigration laws.

ICE HOLDS DON'T MAKE FINANCIAL SENSE:

15) Fiscal Impact: Sparse County resources should not go toward heavily funded federal immigration enforcement.

- a. In 2012, the U.S. spent 18 billion on immigration enforcement, more than on the FBI, DEA, Secret Service, and all other federal criminal law enforcement agencies combined.¹⁴
- b. The county shoulders the costs for any extra detention time due to an ICE hold.
- c. Various studies show that an individual with an ICE hold is incarcerated an average of over 20 days more than an individual without an ICE hold.¹⁵
- d. ICE has stated in a letter to Santa Clara County Counsel that “[p]ursuant to 8 C.F.R. section 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodge until ‘actual assumption of custody.’”¹⁶

16) SCAAP doesn't cover the costs: State Criminal Alien Assistance Program (SCAAP)¹⁷ funding does not reimburse for the cost of ICE holds.

¹³ The average cost of detaining an immigrant is approximately \$164 per person/ per day. Community-based alternative programs, are effective and significantly cheaper, with some programs costing as little as \$12 per day. These alternatives still yield an estimated 93% appearance rate before the immigration courts.

¹⁴ Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute (January 2013), <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>

¹⁵ See e.g., Judith A. Greene, *The Cost of Responding to Immigration Detainers in California, Preliminary Findings*, Justice Strategies, August 22, 2012; Kathy A. White & Lucy Dwight, *Misplaced Priorities: SB90 & The Costs to Local Communities*, The Colorado Fiscal Institute (December 1, 2012).

¹⁶ Letter to Miguel Marquez, County Counsel, County of Santa Clara, from David Venturella, Immigration and Customs Enforcement Assistant Director, dated 2010, copy of letter available upon request.



ICE HOLD POLICY TALKING POINTS

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- a. SCAAP does not fully defray county costs related to ICE hold enforcement.¹⁸
- b. SCAAP funding is limited to covering incarceration costs incurred for *undocumented* people who have received at least one felony or two misdemeanor *convictions* and have been incarcerated for at least four consecutive days.¹⁹
- c. ICE holds, by contrast, are also placed on people with lawful status and people without any convictions, and would result in less than four days' detention in many cases. Comparing detainees covered by SCAAP funding and detainees subject to ICE holds, is comparing apples to oranges.
- d. Since Santa Clara County has stopped enforcing ICE holds, Santa Clara has continued to receive SCAAP funding.
- e. **To see if your jurisdiction is receiving SCAAP funding and how much**, see *BJA Awards \$213 Million in SCAAP Awards*, at <https://www.bja.gov/Funding/13SCAAPawards.pdf>

ICE HOLD POLICIES ARE MORE IMPORTANT NOW GIVEN THE STATE OF COMPREHENSIVE IMMIGRATION REFORM:

17) Influence over equal protection at the federal level: Legislation is an expression of a city/state's intolerance for ICE and its programs. It is very important for cities and states to take a stand against ICE's programs now, while immigration reform is being debated, to influence federal policy as well.

18) ICE is deporting aspiring citizens: With the potential for Comprehensive Immigration Reform moving through Congress, ICE is deporting individuals who have lawful family in the United States and who may one day get lawful status themselves.

WHAT NOT TO SAY:

- 1) Immigration should focus on deporting dangerous, violent criminals.
- 2) Most immigrants are hardworking, honest individuals, not criminals.
- 3) "Illegals." Instead, say undocumented.

For more information see:

- www.ilrc.org (for info on immigration enforcement generally and immigration law)
- <http://immigrantjusticenetwork.org/> (for info on comprehensive immigration reform)
- <http://www.detentionwatchnetwork.org/> (for info on immigration detention)

¹⁷ SCAAP is funding provided to counties to defray the cost of incarcerating certain undocumented people. Specifically, it is limited to covering incarceration costs incurred for *undocumented* people who have received at least one felony or two misdemeanor *convictions* and have been incarcerated for at least four consecutive days. A jurisdiction must apply for this funding and it is not tied to whether a jurisdiction enforces ICE holds.

¹⁸ Moreover, according to the Department of Justice, in 2013 the average per diem cost reimbursed by SCAAP was \$31.97, far below the average cost of detaining people at many jails. See Bureau of Justice Assistance State Criminal Alien Assistance Program (SCAAP), *FY 2014 SCAAP Guidelines* (2014), available at https://www.bja.gov/Funding/14SCAAP_Guidelines.pdf

¹⁹ Bureau of Justice Assistance State Criminal Alien Assistance Program (SCAAP), *FY 2014 SCAAP Guidelines* (2014), available at https://www.bja.gov/Funding/14SCAAP_Guidelines.pdf