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I. OVERVIEW

States across the U.S. are facing large budget deficits leading to significant reductions in local programs and services, including cuts to police and Sheriff's departments.¹ But in spite of shrinking resources, many local law enforcement agencies assist in enforcement of federal immigration law, including helping with the identification and detention of immigrants believed—sometimes wrongly—to be subject to deportation.

The following backgrounder provides explanations of the ways that immigrants end up in local custody and are held there on the basis of their immigration status. It also explores the associated fiscal costs of increased detention to states and counties. In recent years police have increasingly been drawn into immigration enforcement operations, and as a result, local jails are holding increased numbers of immigrants, even those not facing criminal charges. Detaining immigrants in state or local custody creates additional costs and burdens on local law enforcement agencies, and the unnecessary and prolonged detention of immigrants costs local budgets millions of taxpayer dollars per year.

The enforcement of our nation's immigration laws has historically been a federal duty. However, throughout the last decade, the distinction between federal immigration enforcement and state and local criminal law enforcement has been eroding. Since its creation in 2003, the Department of Homeland Security has pursued broad expansions of local involvement with federal authorities in enforcement of federal immigration laws.² Immigration and Customs Enforcement (ICE) is the Department of Homeland Security's primary interior immigration enforcement bureau and the manager of the largest detention system in the country.³ ICE has aggressively sought both formal and informal relationships with state and local law enforcement agencies. This collaboration broadens ICE's ability to identify, apprehend, and detain immigrants around the country. Notably, ICE's efforts are not limited to undocumented immigrants. All non-citizens who may possibly be subject to deportation are under ICE's jurisdiction, even if they have been permanent residents of the United States for decades.

In 2007, ICE grouped its major programs for apprehending non-citizens identified or arrested by local law enforcement under an umbrella called "Agreements of Cooperation in Communities to Enhance Safety and Security" (ICE ACCESS).⁴ ICE ACCESS encompasses 14 different programs that connect ICE agents to state and local law enforcement agencies and operations.⁵ Three ICE ACCESS programs engender particularly broad-ranging consequences for immigrants

¹ For example, the Camden, NJ police force was nearly halved in January of 2011. See Joseph Goldstein, "Police Force Nearly Halved, Camden Feels Impact," *New York Times* (Mar. 6, 2011). Kirkland County, WA, estimates that their jail costs in the next year will exceed the budget by 19%. See Mike Ursino, Memorandum to City Manager, Kirkland Police Department, Sept. 17, 2010. The city of Pittsburgh, PA, faces such a dire budget crisis that city departments may be cut 10%, including police, fire, and EMS. See WXPI.com, "Budget Crisis Could Mean Less Pittsburgh Police," (Sept. 10, 2010).

² Among these provisions were: building up the 287(g) program; allowing some immigration information to be incorporated into NCIC database; the Anti-Terrorism and Effective Death Penalty Act allowing arrest of those unlawfully present with previous deportation and felony conviction; IIRIRA provisions on "mass influx," and preventing bars on public employees reporting immigration information to INS.

³ Dora Schriro, "Immigration Detention Overview and Recommendations" Immigration and Customs Enforcement, Oct. 6, 2009, available at www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

⁴ Immigration and Customs Enforcement, "ICE ACCESS: A Partnership Approach to Fighting Crime," Dec. 2007, http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1461&issue_id=42008

⁵ Immigration and Customs Enforcement, "ICE ACCESS" available at <http://www.ice.gov/access/>.

who interact with the criminal justice system: the Criminal Alien Program (CAP),⁶ Secure Communities,⁷ and the 287(g) program.⁸ All of these programs are designed to help ICE identify immigrants who come into contact with the criminal justice system.

The increased collaboration between DHS and local law enforcement agencies has resulted in greater numbers of non-citizens being held in local jails for prolonged periods of time, at great expense. When jails go beyond handling regular local criminal matters to holding civil detainees for federal agencies, many additional bodies of law and logistical requirements come into play. Questions of custody and responsibility now involve both federal and state agencies, and inmates may be juggling both criminal and civil proceedings involving different legal rights. The result has been widespread confusion and frequent civil rights violations. Immigrants who come into contact with police may end up in the local jail, being held for ICE, without even being suspected of or charged with a crime. Non-citizens involved in the criminal justice process spend more time behind bars than citizens facing similar charges. And non-citizen inmates due to be released from local custody are unlawfully detained on a regular basis.

Imprisoning people is a very expensive endeavor, and the impact of this unnecessary and excessive detention amounts to millions of dollars per year for local budgets. This paper seeks to identify the ways, legal and illegal, that immigrants end up in local custody, and the associated costs to states and counties.

Who Goes Into a Jail

At the outset, we must note that not everyone behind bars has been convicted of a crime. In the criminal law enforcement context, police may apprehend someone for lack of sufficient identification or for safety reasons, without intent to pursue any criminal charges against them. Even if there is initial suspicion of a crime, prosecutors may decide not to file charges, or the charges may be dropped and the suspect released after spending time in jail.⁹ Witnesses or crime victims may be taken to the police station or jail as suspects. In some jurisdictions, police will often arrest both parties in a fight or a domestic violence incident rather than attempt to assess fault on the spot. Many police departments around the country make arrests for minor infractions or disruptive behavior that do not lead to actual charges being filed.

With the advent of ICE ACCESS programs, any encounter with police, whether as suspect, witness, or victim, may have serious consequences for immigrants. Whether or not they are charged with a crime, any immigrant taken to the police station is likely to be flagged for ICE agents and may be taken into ICE custody. Because under ICE ACCESS, a non-citizen is usually

⁶ CAP involves deploying ICE agents directly into local jails to interview suspected non-citizens about their immigration status.

⁷ Secure Communities is a database-linking program that sends fingerprints from local jurisdictions to DHS immigration databases and receives a nearly immediate response as to whether the person has an immigration record of any kind.

⁸ The 287(g) program trains and deputizes local police to enforce some aspects of immigration law in tandem with their regular duties.

⁹ Charges get dropped for many reasons, including lack of sufficient evidence or discovery of exonerating evidence, the defendant being a first time offender or the charges being minor, prosecutorial prioritizing or lack of resources to prosecute, bargains with witnesses, or referral to diversion programs. In a national study of 100 urban felony cases, 45 defendants' cases were dismissed prior to prosecution or plea bargains. See George Cole and Christopher Smith, *Criminal Justice in America*, 5th Ed. (Thomson Wadsworth, CA, 2008) p. 232. In New York City in 2009, criminal charges were eventually dropped in 34% of the cases arraigned. See Robert Morgenthau, "Police and Immigration: New York's Experience," *Wall Street Journal*, May 19, 2010.

kept at the local jail for ICE to come investigate, these programs cause more immigrants to spend more time in jails, regardless of actual criminal liability.

Excessive and Illegal Detention

Extended detention for non-citizens is primarily triggered by an immigration detainer. An immigration detainer, also known as an “ICE hold,” is a request from ICE to a local jail to hold an individual for up to an additional 48 hours beyond their scheduled release, to give ICE the opportunity to investigate or take custody of the person. The widespread use of detainers has led to increased incarceration time for non-citizens, before and during trial, after conviction, or in interim stages of the arrest, adjudication, or transfer of custody.

Although detainers expire after 48 hours of release from criminal custody,¹⁰ there are multiple accounts of immigrants being held for days or weeks under the purported authority of detainers, as jurisdictions often refuse to release them until ICE comes to take custody, in spite of the 48 hour limit.¹¹ Detainers may also be viewed by a judge or magistrate as evidence of alienage and flight risk, thus making bail or bond unavailable or unattainable.¹² As a result, immigrants with detainers may be held in pre-trial criminal detention for weeks or months on a nonviolent, misdemeanor charge while a citizen with the same charge would have been released pending the outcome of the case.

ICE ACCESS programs also raise serious concerns about racial profiling and questions about how law enforcement responds to closer involvement with immigration enforcement programs. Studies have demonstrated that when ICE has broad and immediate access to local jails, such as through the Criminal Alien Program, not only does the number of detainers filed rise dramatically, but petty arrests of Latino residents in the area also increase, resulting in high incarceration rates for low-level offenders and victims of racial profiling.¹³

The Costs

Detaining immigrants in state or local law enforcement custody is an enormously expensive endeavor. Firstly, incarcerating anyone is expensive, with costs around the country averaging \$79 per person per day.¹⁴ Jail maintenance and operations can be a significant portion of county budgets; in Broward County, FL, the jail represents 25¢ out of every tax dollar.¹⁵

Secondly, as DHS has encouraged local law enforcement to assist with immigration enforcement and ICE ACCESS programs have grown, more non-citizens are identified, and ICE has used local jails to hold more people so that ICE can take custody. Thus immigrants are spending more time in municipal and county jails, and the costs fall on local residents. ICE does not generally

¹⁰ Not counting weekends and holidays, as directed in the federal regulations 8 C.F.R. § 287.7

¹¹ See National Immigration Forum, “Quick Information on Immigration Detainers,” (Jan. 2011) available at <http://www.immigrationforum.org/images/uploads/2010/DetainersBackgrounder.pdf>.

¹² See e.g. *U.S. v. Garcia-Gallardo*, 20090220_0000189.DKS, 2009 WL 113412 at *2, (D. Kan. Feb. 20, 2009).

¹³ Trevor Gardner II and Aarti Kohli, “The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program,” *Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, U.C. Berkeley Law School*, Sept. 2009.

¹⁴ Jennifer Warren, “One in 31, The Long Reach of American Corrections,” *The Pew Center on the States*, (Mar. 2009) p.13.

¹⁵ Alex Piquero, “Cost-Benefit Analysis for Jail Alternatives and Jail,” *Florida State Univ. Col. Of Criminology and Criminal Justice*, (Oct. 2010).

reimburse localities for holding someone on a detainer, because they are not officially in ICE custody. While this additional jail time waiting for ICE may be only a matter of days or weeks in an individual case, it amounts to millions of dollars annually in county correctional budgets. These millions of dollars are primarily spent holding non-dangerous arrestees whose citizenship or immigration status is in question, but many of whom may never be convicted of a crime and pose no danger to public safety. They may even be legal residents or U.S. citizens.

II. FORMS OF DETENTION

Jails and prisons across the United States hold increasing numbers of immigrants, many or most of whom have never been convicted of a crime. The labyrinth of detention encompasses local and state jails, federal immigration detention facilities, prisons, contracted jail spaces, and holding cells. The type of detention may depend on geographic location, immigration status, the detainee's interaction with the criminal justice system, and their stage in the process of criminal or immigration adjudication.

Immigration Detention

In the United States, close to 400,000 immigrants per year are held by the Department of Homeland Security (DHS) in formal immigration detention. Unlike criminal incarceration, immigration detention is administrative or civil detention, narrowly limited to the purpose of ensuring compliance with future immigration proceedings or orders of deportation.¹⁶ The majority of immigrants who end up in ICE detention have no criminal record.¹⁷ Only 11% have committed what ICE considers to be violent crimes.¹⁸ Immigrants may also wait in detention before proceedings are even initiated against them.¹⁹ However, the current conditions of administrative detention are nearly indistinguishable from criminal incarceration; in fact most immigration detainees are held in jails intended for criminal incarceration. ICE holds immigrants in about 270 detention centers around the country, the majority of which are penal facilities.²⁰

Criminal Detention

DHS custody, however, is only one segment of the population of immigrants behind bars. At the other end of the spectrum are those immigrants who have been convicted of a crime and are serving a criminal sentence, whether in a state or regional jail or even federal prison. Their immigration status is irrelevant to their incarceration. After they have complied with criminal

¹⁶ Dora Schriro, "Immigration Detention Overview and Recommendations" Immigration and Customs Enforcement, (Oct. 6, 2009) p 2, available at www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

¹⁷ Dora Schriro, "Immigration Detention Overview and Recommendations" Immigration and Customs Enforcement, (Oct. 6, 2009) p. 12-13.

¹⁸ Dora Schriro, "Immigration Detention Overview and Recommendations" Immigration and Customs Enforcement, (Oct. 6, 2009) p.2.

¹⁹ Immigration attorneys and advocates report that frequently detainees do not receive a charging document initiating removal proceedings until they have already been detained for some time. See Bridget Kessler, In Jail, No Notice, No Hearing . . . No Problem? A Closer Look at Immigration Detention and the Due Process Standards of the International Covenant on Civil and Political Rights, 24 American University International Law Review 571 (2009).

²⁰ Dora Schriro, "Immigration Detention Overview and Recommendations" Immigration and Customs Enforcement, (Oct. 6, 2009).

justice requirements, however, non-citizens will in many cases be transferred to ICE custody to face removal proceedings.

Further complicating and conflating the immigration and criminal systems, some immigration violations are simultaneously crimes under state or federal law, such as using a false social security number to work or driving without a license. For undocumented immigrants, these statutes criminalize behavior engaged in only because their immigration status prevents them from working or driving lawfully. Law enforcement agencies increasingly use these statutes to target immigrants, arresting and prosecuting them for offenses that derive primarily from their immigration status, rather than from criminal intent.²¹ Meanwhile, in the southwest, Operation Streamline now directs thousands of immigrants apprehended by federal immigration agents while crossing the border into federal criminal custody for prosecution for illegal entry or re-entry charges.²² Prosecutions under the illegal entry statutes are most common in the southwest for recently apprehended border crossers, but are not exclusive to that population or region.²³

Criminal defendants spend significant amounts of time in jail before they even go to trial, whether they ultimately are convicted, acquitted, or charges are otherwise dismissed.²⁴ During this period, they may be able to post bail, and thus can pay the jail to be released, with a promise to appear for their court hearings and trial dates.²⁵ However, immigration status is frequently found to be evidence of a flight risk, rendering immigrants ineligible for bail.²⁶ Thus, immigrants often spend weeks or months incarcerated while their criminal case is pending whereas citizens would be released on bail.

Finally, in a less formal context, non-citizens who interact with any law enforcement agency, whether as witnesses, crime victims, suspects, or during a routine traffic stop, may find themselves detained by that law enforcement agency en route to formal immigration detention. While this detention may be a matter of hours, in other cases, it can be quite prolonged. Generally, people who are arrested for a criminal offense spend a night or even several days in jail before charges are dropped, bail is posted, or they are cleared of charges. However, if the arrestee is not a citizen, release is much less likely, regardless of whether criminal charges are pursued to completion.²⁷ More often, the person is held for ICE.

²¹ See Brantley Hargrove, "Will an Arcane Legal Challenge Bring Down Nashville's Controversial 287(g) program?" *Nashville Scene*, (Jan. 14, 2011) available at <http://www.nashvillescene.com/nashville/will-an-arcane-legal-challenge-bring-down-nashvilles-controversial-287g-program/Content?oid=2156751>.

²² National Immigration Forum, "Operation Streamline and Its Effects on the Courts and Law Enforcement on the Border," (May 11, 2010) available at <http://www.immigrationforum.org/images/uploads/2010/OperationStreamlineBackgrounder.pdf>.

²³ Transactional Records Access Clearinghouse, "Bush Administration's Immigration Prosecutions Soar, Total of All Federal Filings Reaches New High," Syracuse Univ. (Jan. 12, 2009) available at <http://trac.syr.edu/tracreports/crim/201/>.

²⁴ In 1984 Congress revised the Bail Reform Act of 1966 to allow pre-trial detention of defendants based on their "danger to the community," in contrast to previous bail laws, which were based solely on risk of flight, and under which people were much more frequently released before trial.

²⁵ Under the Bail Reform Act of 1966, the judge may impose other limitations or reporting requirements on the individual to ensure their appearance.

²⁶ Arizona state law lists immigration status as one factor in determining flight risk.

²⁷ ACLU, "Lake County Mother of Three to be Reunited With Family After Nearly Three Weeks of Unlawful Detainment" (Mar. 5, 2010) available at http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=3710.

Detainers

Immigration detainers initiate perhaps the weediest form of detention for immigrants. Detainers are an official request from ICE to a jail to temporarily hold someone who otherwise would be released, and to notify ICE when that person is going to be transferred or released. Detainers permit a local law enforcement agency to continue to hold a non-citizen for up to 48 hours beyond their scheduled release from criminal custody, so that ICE has the opportunity to apprehend the person directly from the local jail and transfer them to immigration detention. A detainer is not evidence that an individual is removable, but rather a notice that ICE is investigating the person's immigration status. The improper use and abuse of detainers have resulted in the unlawful and sometimes prolonged detention of thousands of immigrants.

Public defenders and immigration attorneys report that local jails routinely fail to release immigrants held on detainers after a detainer has expired, despite there being no legal authority for the continued detention.²⁸ In 2009, New York City paid an immigrant inmate \$145,000 in damages after unlawfully holding him at Rikers Island under the auspices of an expired detainer for more than a month.²⁹ More recently, Washington State settled a similar case for damages of \$35,000.³⁰ Other similar lawsuits have been sparked across the country.³¹ The exact extent of this problem is unknown, but reports indicate it is ubiquitous.

In addition, police in some jurisdictions make arrests without any underlying charge and then hold the arrestee with the expectation that a detainer will be lodged.³² The ACLU of Florida reports that more than 200 individuals in the last two years have been arrested without criminal charges and held—often for multiple days—until an immigration detainer was filed.³³ Sonoma County, California, has been sued for similar practices, where joint patrols between ICE and local police led to arrests without a criminal charge and detention in local jail on an ICE detainer.³⁴

ICE has also placed detainers on victims of domestic violence who call the police for help. It is a relatively common practice for police to arrest both parties in a domestic violence dispute, rather than ascertain fault at the scene. The result is that victims of violence end up in jail on an

²⁸ Communications with: Phil Fornaci, Washington Lawyers' Committee for Civil Rights and Urban Affairs; Ann Benson, Washington Defender Association's Immigration Project; Glenn Katon, ACLU of Florida; Rob Robertson, Robertson Law Office; Paromita Shah, National Immigration Project of the National Lawyers' Guild.

²⁹ NYU Immigrant Rights Clinic, "City Settles Rikers Lawsuit Alleging Violations of Immigrant's Rights" (Sept. 1, 2009) available at <http://www.lawso.ucsb.edu/faculty/jstevens/113/harveypressrelease.pdf>.

³⁰ Northwest Immigrants Rights Project, "Northwest Immigrant Rights Project & Center for Justice Achieve Settlement in Case of Immigrant Detained Unlawfully," (Sept. 17, 2010).

³¹ National Immigration Forum, "Quick Information on Immigration Detainers," (Jan. 2011) available at <http://www.immigrationforum.org/images/uploads/2010/DetainersBackgrounder.pdf>.

³² For example, Rita Cote was held in Lake County Florida with no underlying charges against her for two days before an immigration detainer was issued. See ACLU, "Lake County Mother of Three to be Reunited With Family After Nearly Three Weeks of Unlawful Detainment" (Mar. 5, 2010) available at http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=3710.

³³ Anthony Colarossi, "Is it profiling? Lake County detains more than 200 suspected of being illegal immigrants," *Orlando Sentinel*, (Jul 10, 2009).

³⁴ ACLU of Northern California, "ACLU Lawsuit Spotlights Sonoma County Sheriff and ICE for Unlawful Detentions and Racial Profiling of Latinos," (Jun. 14, 2010).

immigration detainer, rather than being protected by public safety officers.³⁵ In rural Whatcom County, Washington, the Border Patrol answers 9-11 calls after hours.³⁶ The attendant risks of calling the police have had devastating effects on immigrant women and victims of crime.

Additionally, detainers have contributed to the denial of bail or excessive bail amounts.³⁷ Prosecutors have used detainers to argue that a defendant is an increased flight risk and that their bail should be set higher or disallowed.³⁸ Some jails have unlawfully refused to permit posting of bail if the person is under an immigration detainer.³⁹ Even when the criminal courts and jails properly handle bail, many immigrants with detainers decide not to post bail because paying will likely lead to transfer to immigration custody and, in many cases, deportation.⁴⁰ In all cases, the result is prolonged detention.

Similarly, detainers may render an immigrant ineligible for alternative-to-incarceration programs, such as drug treatment or other jail diversion options. Thus instead of receiving treatment, the immigrant will stay in a penal facility, despite the benefits of a treatment program and the cost-savings to the state or county.⁴¹

Sometimes, local jails that have contracts to house immigration detainees on behalf of ICE will continue to detain an immigrant who was formerly in their criminal custody for immigration purposes, but without ICE officially assuming custody. In this scenario, the detainee is essentially lost because neither the facility nor ICE accepts responsibility for the individual's detention.⁴²

Thus, detainers frequently lead to excessive or even unlawful detention of immigrants, not because they pose a danger to the community, but because of ICE's increasing entanglement with the criminal justice system.

III. A LOCAL BUDGET ISSUE

Holding people in jail is not cheap. Costs per inmate per night in local jails range widely depending on the state or region, but the average per day, not counting juvenile facilities or other special populations, is about \$70-\$80.⁴³ City jails, which tend to house arrestees and pre-

³⁵ Shankar Vedantam, "Call for Help Leads to Possible Deportation for Hyattsville Mother," *Washington Post*, Nov. 1, 2010; ACLU, "ACLU of Florida Demands the Release of Illegally Detained Woman in Lake County" (Feb. 23, 2010) available at http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=3702.

³⁶ Anthony Robinson, "Border Police Presence is Changing Communities," *CrossCut.com* (Feb. 7, 2011).

³⁷ Paromita Shah, Emily Creighton, et al, "Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy," (Oct. 2010), available at <http://cliniclegal.org/sites/default/files/NGO%20Detainer%20Comments%20Final%2010%2001%202010.pdf>.

³⁸ *Id.*

³⁹ Immigration Policy Center, "Immigration Detainers: A Comprehensive Look," (Feb. 17, 2010) available at <http://www.immigrationpolicy.org/just-facts/immigration-detainers-comprehensive-look>.

⁴⁰ Robert Morgenthau, "The Police and Immigration: New York's Experience" *Wall Street Journal*, (May 19, 2010).

⁴¹ New Sanctuary Coalition of New York City, "Fiscal Impact of Civil Immigration Detainers on New York City," (Oct. 2010).

⁴² *Habeas Corpus Pet. Cristobal Mendez Jaramillo v. Darnley Hodge and Riverside Regional Jail*, (6th Jud. Cir. Va.) Apr. 2008, on file with author.

⁴³ There are no national databases on such costs, which are borne by the town, county, state, or some combination thereof. This estimation is based on local jail costs reported in news media in PA, NC, FL, VA, TX, NE, MI, CO, WA, and SC between 2004 and 2009. Some of the numbers are based on what the county charges a city or state or another county for housing its inmates,

trial defendants, are often more expensive than regional or state facilities, with detention costing more than \$100 per inmate per night. State and local law enforcement agencies that jail immigrants may be partially reimbursed with federal money for that detention, but many times are not. Having identified the many forms of detention that apply to immigrants, this section will take a closer look at how that incarceration is paid for, and by whom.

The costs of formal immigration detention do not fall on local budgets because they are federally funded. ICE pays directly or by contract for all federal immigration detention facilities and the costs of housing detainees, although the costs and contract details vary considerably among facilities.

In contrast, states and localities pay to incarcerate non-citizens serving criminal sentences, as with any other criminal incarcerated in their jurisdiction. The federal State Criminal Alien Assistance Program (SCAAP) reimburses states for some of those costs. SCAAP is a DOJ grant program that has doled out over \$300 million annually to states for costs of incarcerating undocumented immigrants.⁴⁴ SCAAP Guidelines limit reimbursement to costs incurred on account of non-juvenile immigrant prisoners, convicted of felonies or a second misdemeanor, who were incarcerated for more than four days, who had no reported claim to citizenship, and who were identified as undocumented or out of status.⁴⁵ If an inmate falls under SCAAP guidelines, their pre-trial incarceration costs can be included in a request for SCAAP funds, as can the costs of post-sentence extended detention on a detainer or other warrant.⁴⁶ SCAAP is one reason that jails collect information regarding an arrestee's place of birth,⁴⁷ which is supplied to justify the application for funds. This booking information is also usually provided daily or weekly to ICE in case they wish to investigate those booked into jail. SCAAP funds rarely, if ever, cover the full costs that states or counties spend incarcerating immigrants.

Except for the SCAAP program, states and localities usually bear all costs for detaining non-citizens until they are formally in ICE custody. This includes transport, bed space, and all other housing and custody costs. Although immigrants held on detainers are detained at ICE's request, they are not in ICE custody, and the local jail pays for all the costs associated with their continued detention. The County Counsel of Santa Clara County, California recently wrote a letter to ICE asking specifically if ICE would reimburse the county for holding immigrants on detainers.⁴⁸ In response, ICE stated that "ICE does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual."⁴⁹

which is a proxy for what the actual operating costs are. Every state and county has unique contracts with other entities for holding inmates. The Pew Center on the States reports that the low end of state prison costs average \$36 per person per day, while the high cost jails average \$130. (See fn. 14).

⁴⁴ Bureau of Justice Assistance, State Criminal Alien Assistance Program, FY 2010 Guidelines and Application, *available at* http://www.ojp.usdoj.gov/BJA/grant/2010_SCAAP_Guidelines.pdf.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ National Immigration Law Center, "Overview of the Key ICE ACCESS Programs," (Nov. 2009) *available at* <http://www.nilc.org/immlawpolicy/LocalLaw/ice-access-2009-11-05.pdf>, fn. 25.

⁴⁸ Letter from Miguel Marquez, County Counsel, Santa Clara County to David Venturella, Secure Communities Executive Director, DHS (August 16, 2010).

⁴⁹ Letter from David Venturella, Secure Communities Assistant Director, ICE to Miguel Marquez, County Counsel, Santa Clara County (Sept. 27, 2010).

As will be shown below, the more that local law enforcement agencies collaborate with ICE, the more their community pays to hold immigrants, whether in holding rooms, awaiting trial, or some other cause for detention. There are two aspects to these increased costs: (1) ICE ACCESS programs keep greater numbers of immigrants in jails than otherwise; (2) the costs of extra detention add up quickly.

More jail because of ICE involvement

ICE collaboration with state and local law enforcement agencies contribute to the over-incarceration of immigrants in four possible ways: 1) increased pressure to hold immigrants for ICE; 2) increased numbers of immigrants taken to jails rather than released; 3) increased time in jail because of immigration detainers; and 4) increased numbers of low-level arrests of immigrants that would not have occurred but for ICE's presence in jails. All of these patterns result in more immigrants targeted by local law enforcement and more time in jail for an immigrant than for a citizen charged with the same or similar offense.

First, states and counties have absorbed increased custody of immigrants as a direct result of ICE ACCESS programs, particularly Secure Communities, 287(g), and the Criminal Alien Program. This is not a natural derivative of the presence of non-citizens in the population, but rather is the result of increased ICE pressure on localities to identify and hold non-citizens. As these ICE programs expand, states and counties receive increased numbers of requests by ICE to hold non-citizens. In Ventura County, California in 2007, ICE increased its staff at the county jail from two to five, and the number of detainers doubled that year, to 725.⁵⁰ Ventura County paid for the additional time in custody that resulted from these detainers.

Second, individuals who are arrested are commonly released for a number of reasons. If a citizen is arrested and charged with a minor crime, they might spend a night in jail, but then be released with or without charges. In some cases, they are not arrested but rather are given a citation to appear. In contrast, non-citizens are often kept in detention rather than released, because ICE lodges a detainer against them. The County Counsel of Santa Clara County, California reports that between two and five people in Santa Clara are arrested every week on charges for which they would ordinarily receive a citation and be released almost immediately, but instead are kept in custody on ICE detainers.⁵¹ As detailed above, the community eats the cost of holding a suspected non-citizen upon request from immigration authorities.

Thirdly, local or state jails around the country that agree to continue to hold an individual for ICE on a detainer frequently fail to release the person when the authorized period of extended detention expires.⁵² As mentioned above, courts have awarded civil damages to immigrants held on an expired detainer. Thus in some cases, the county is forced to pay not only the cost of the prolonged detention but also, if they violate the rules, the cost of a lawsuit. Although violations of detainer limitations are widespread, relatively few such cases are pursued in court.

⁵⁰ Tony Biasotti, "More Illegal Immigrants Pegged in Jail," *Venture County Star* (Nov. 2, 2007).

⁵¹ Report memo from County Counsel Miquel Marquez to County Supervisors on U.S. Immigration and Customs Enforcement's Secure Communities Program (Sept. 1, 2010).

⁵² See National Immigration Forum, "Quick Information on Immigration Detainers," (Jan. 2011) available at <http://www.immigrationforum.org/images/uploads/2010/DetainersBackgrounder.pdf>.

Moreover, detainers frequently result in a denial of bail, or render an immigrant ineligible for alternative-to-incarceration programs. Consequently, immigrants often remain in jail during the entire pre-trial period, while citizens facing similar charges would likely be released. For example, in Travis County, TX, the average length of stay for U.S. citizen inmates on the lowest level misdemeanor charges was seven days; for this same group of non-citizen defendants, the average length of stay was fifty days.⁵³ Citizens spend less average time in jail before trial because they are not kept on detainers or prevented from posting bail because of immigration status. Similarly, immigrants convicted of drug charges might spend their entire sentence in jail whereas a citizen would enroll in a less expensive and more beneficial treatment program.⁵⁴ These decisions cost counties millions of dollars in additional days that non-dangerous immigrants spend incarcerated.

Finally, ICE ACCESS programs have been severely criticized for enabling racial profiling, as local law enforcement officers are granted an easy mechanism to funnel suspected immigrants to ICE. Although ostensibly designed to apprehend dangerous “criminal aliens,” ICE’s programs have in fact have led to local police arresting increased numbers of immigrants, particularly for low-level infractions.⁵⁵ Studies have shown that increased police power to participate in immigration enforcement increases the arrests of Latinos who would otherwise not be taken into custody. Arrest data from Irving, Texas showed that when ICE had increased access to local law enforcement agencies, the arrest rate of Latinos for minor offenses increased more than twofold.⁵⁶ While an unknown but potentially large number of those arrested were U.S. citizens, the overall increase in arrests did correlate to increased arrests of immigrants and many more people held on ICE detainers.⁵⁷ Thus localities that grant ICE increased access to their criminal justice system see greatly increased numbers of immigrants in the local jail.

Adding up some of these costs

State budgets bear inflated costs because of immigration enforcement. The local costs of increased jailing of immigrants are extremely hard to trace or aggregate, not only because they vary widely among jurisdictions, but because the length of time in custody depends on each individual case. The impact is clearly significant, however. The length of pre-trial detention, where immigrants subject to detainers are often denied bail or bond, can be weeks or months. In addition, there are arrest and booking costs, which are more difficult to aggregate, but increase unnecessarily when police are encouraged to arrest immigrants who would otherwise not be detained.⁵⁸

⁵³ "Criminal, Immigrants, or Victims: Rethinking the Criminal Alien Program," Guttin, Andrea. Thesis Presented to the Faculty of the Graduate School of The University of Texas at Austin Partial Fulfillment of the Requirements for the Degree of Master of Arts and Doctor of Jurisprudence (May 2009), on file with author.

⁵⁴ New York City Bar Association, "Immigration Detainers Need Not Bar Access to Jail Diversion Programs," (Jun. 2009) available at http://www.nycbar.org/pdf/report/NYCBA_Immigration%20Detainers_Report_Final.pdf. Studies of New York drug courts estimate that specialized drug courts and alternative-to-incarceration programs saved \$254 million by diverting 18,000 individuals into drug treatment. These programs also reduce recidivism and other crime-related indicators such as homelessness and psychiatric hospitalization.

⁵⁵ Trevor Gardner II and Aarti Kohli, "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program," *Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, U.C. Berkeley Law School* (Sept. 2009).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Amalia Greenberg Delgado and Julia Harumi Mass, "Costs and Consequences: The High Price of Policing Immigrant Communities," *ACLU Foundation of Northern California* (Feb. 2011).

In Sacramento County, California, booking a single individual costs \$250, and about \$190 in officer salary for the work of stopping and arresting one person.⁵⁹ An in-depth study of arrest, booking, and detention costs in Sacramento found that the costs of driving-without-a-license arrests averaged \$271,104 per year between 2002 and 2009. In 2010, when law enforcement arrested far fewer individuals for driving without a license, the costs dropped to approximately \$108,300 that year.⁶⁰ While there may be legitimate reasons for making an arrest in those cases, there are widespread concerns that DWLs are primarily pretextual arrests, resulting from biased policing and the influence of immigration enforcement programs.

The most cost-intensive element of local involvement in immigration enforcement is pre-trial detention. The following two case studies illustrate how much money is at stake when local jurisdictions pick up the tab for the federal government's immigration enforcement agenda.

A. *CASE STUDY: Travis County, Texas*

In Travis County, Texas, defendants with detainers spent an average of three times as long in jail as citizens without detainers facing equivalent charges. From 2004-2007, the average stay in jail for citizens for all levels of offense was 22-26 days, while the average stay for individuals with an immigration detainer was three times as long, or 65-76 days. While exact numbers are scarce, we can estimate what those extended stays from immigration detainers cost Travis County. In 2008, the ICE San Antonio Field Office lodged 2,062 detainers,⁶¹ and inmates with ICE detainers spent an average of 43 days longer in detention than other inmates. Time in detention differed by charges: misdemeanor defendants averaged 23 days of additional detention as a result of ICE detainers, while felony defendants averaged 84.4 days of additional detention.⁶² Of the total 2062 detainers lodged that year, 58% (1196 detainers) were for misdemeanants. Assuming the remaining 42% (866 detainers) were lodged on felony arrestees, the result of combined pre-trial detainers is about 100,000 total extra days in jail.

*1196 detainers * 23 extra days + 866 detainers * 84 extra days = **100,252 extra pre-trial days in jail** because of detainers in 2008*

Daily beds in state prisons in Texas cost \$42.54,⁶³ although costs at local jails—such as in Travis County—are higher. The approved budget for incarceration costs in Travis County in FY2008 included figures amounting to \$60.59 per day per inmate.⁶⁴

*\$60.59 per inmate/day * 100,252 inmate-days = **\$6.07 million** in extra detention costs in Travis County in 2008*

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Andrea Guttin, "The Criminal Alien Program: Immigration Enforcement in Travis County, Texas," *Immigration Policy Center* (Feb. 2010).

⁶² Id.

⁶³ Joshua Philipp, "Privatizing State Prisons a Controversial Step," *The Epoch Times* (Apr. 6, 2010) available at <http://www.theepochtimes.com/n2/content/view/32890/>

⁶⁴ Andrea Guttin, "The Criminal Alien Program: Immigration Enforcement in Travis County, Texas," *Immigration Policy Center*, (Feb 2010).

This \$6 million of extra detention costs created by detainers and borne by Travis County, Texas in 2008 is a rough estimate. It may overcount where someone held on a detainer would still not have been released for other reasons. But it does not include post-trial and post-sentence time in continued detention that may have resulted from detainers. Assuming that ICE picked up every single inmate held on a detainer before the detainer lapsed, it would cost Travis County a further \$250,000 to hold these individuals as a courtesy for ICE after their criminal proceedings or sentence are concluded.⁶⁵ The \$6 million also does not count time immigrants spend in jails as a result of arrest based on local police speculation about immigration status, but before a detainer is lodged at all, which is a completely unknown number. Finally, there are unknown costs of holding people after the end of their criminal proceedings. To the extent that the county, like many others, failed to release individuals not apprehended by ICE within 48 hours, this amount may be significantly higher.

Moreover, these detainers were counted in 2008, before the Secure Communities program was launched. The program has now been deployed in Travis County. As mentioned previously, Secure Communities enables faster and broader tracking of non-citizens in local jails, expediting an increase in the number of detainers lodged at participating jails.

B. CASE STUDY: New York City

ICE issues approximately 4,000 detainers per year in New York City, where a single day in custody of the Department of Corrections costs \$170.⁶⁶ The additional 48 hours in jail for each immigrant held for ICE for extra days after their charges are concluded amounts to more than \$1.3 million in additional detention costs per year.⁶⁷

Furthermore, detainers result in substantially prolonged pre-trial detention. Research by Justice Strategies found that in New York City in 2008, only 2% of individuals with an ICE detainer were released before their trial, and it is unknown if those individuals went directly into ICE custody.⁶⁸ Detainers placed on individuals with a drug-related charge resulted in an average 73 additional days in pre-trial custody.⁶⁹ For 4000 individuals, the cost of 73 additional days of detention at \$170 per day is coming out of New York City's coffers.

*4000 detainers * 73 extra days in detention per inmate = 292,000 inmate-days*

*\$170 per inmate/day * 290,000 inmate-days = **\$49.64 million** in detention costs in New York City⁷⁰*

Additionally, when detainers make non-citizens ineligible for alternatives to incarceration programs, such as drug treatment centers, similar increased costs accrue. In New York City,

⁶⁵ 2062 detainers * \$60.59 * two days each = \$249,873. Detainers are valid for 48 hours, but this does not include weekends and holidays, while the county is still paying to house the detainee.

⁶⁶ New Sanctuary Coalition of New York City, "Fiscal Impact of Civil Immigration Detainers on New York City," (Oct. 2010).

⁶⁷ Id.

⁶⁸ Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" *Justice Strategies* (Oct. 2010), available at http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_o.pdf.

⁶⁹ Id.

⁷⁰ This estimate is approximate because the number of detainers filed fluctuates each year. Furthermore, the additional pre-trial time spent in custody by non-citizens held on detainers was only counted for those facing drug charges. The average extension of jail time for non-citizens on detainers facing all levels of crime is unknown.

inmates with immigration detainers are generally considered ineligible for alternative treatment programs.⁷¹ In 2007, 18% of foreign-born inmates in New York City jails were charged with drug offenses, and thus might have been eligible for alternative treatment programs if not for the presence of immigration detainers.⁷² Of an estimated 4,000 detainers filed against non-citizens in New York City in 2009, 18% would mean that approximately 700 individuals may have been arrested for drug crimes. If those individuals were convicted, they would have served sentences in jail rather than being referred to an alternative program. Alternative programs cost between \$135-160 less per inmate per day than jail.⁷³ If each of those 700 individuals was incarcerated for just one year, (which is less than the minimum sentence for most drug crimes) rather than put in an alternative program for that period, it would cost New York City more than \$38 million in a single year.⁷⁴

Although exact data on the local costs of immigration detainers and expanded immigration enforcement by local officials is difficult to obtain, it is clear that the spillover of immigration enforcement into the criminal justice system costs communities millions of dollars per year, with questionable public safety value.⁷⁵ The calculations above reflect only the additional days in jail *because of detainers*, not the total days. And as higher proportions of the arrested population are held without bail or beyond the duration of their sentence, jails suffer from overcrowding and communities must pay to build new facilities, which triggers an entirely different set of costs.

IV. HOW SECURE COMMUNITIES RAISES THE STAKES

The Secure Communities Program, which began operations in October 2008, effectively gives ICE immediate access to every individual booked into jail in a participating facility by sending fingerprints to FBI and DHS databases for matching against immigration records. Although the stated purpose of Secure Communities is to track and identify all “criminal aliens” in the United States, its reach is much broader. Jails take fingerprints when a person is first booked, before trial, and in some cases while they are brought in as a witness or a victim.⁷⁶ As of March 22, 2011, 1,123 jurisdictions in 40 states share fingerprints with DHS via Secure Communities.⁷⁷ With the automated data sharing, ICE is able to identify non-citizens and issue detainers significantly faster than before.

⁷¹ New Sanctuary Coalition of New York City, “Fiscal Impact of Civil Immigration Detainers on New York City,” (Oct. 2010).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ This calculation is approximate because it is unknown exactly what percentage of inmates with immigration detainers would have otherwise been eligible for jail diversion programs. In addition, an unknown number of individuals facing drug charges may have been acquitted or had their charges dropped. However, a likely substantial number of non-citizens in New York City were denied participation in jail diversion programs because of their immigration detainer, at an enormous cost to the city.

⁷⁵ Scott Henson, “ICE Ignoring Crooks to Target Immigrant Workers,” *Grits for Breakfast* (Nov. 18, 2008) available at <http://gritsforbreakfast.blogspot.com/2008/11/ice-ignoring-crooks-to-target-immigrant.html>

⁷⁶ Andrea Guttin, “The Criminal Alien Program: Immigration Enforcement in Travis County, Texas,” Immigration Policy Center (Feb 2010).

⁷⁷ Immigration and Customs Enforcement, “Activated Jurisdictions,” (March 22, 2011) available at <http://www.ice.gov/doclib/about/offices/secure-communities/pdf/sc-activated.pdf>, accessed March 25, 2011.

Prior to Secure Communities, the Law Enforcement Support Center (LESC) in Vermont operated as the national source for state and local law enforcement on federal data.⁷⁸ With the expansion and public attention on Secure Communities, requests from local police are increasing.⁷⁹ In the first year of operations, with only about 50 participating jurisdictions, Secure Communities resulted in ICE apprehending 36,481 individuals from state and local jails.⁸⁰ Nearly 90% of those individuals were in custody because of low-level charges.⁸¹ By the end of FY2010, in just under two years of operations, Secure Communities has screened more than four million people, resulting in 343,829 matches. It is unknown exactly how many matches resulted in detainers, but at least 121,718 people were subsequently taken in to ICE custody.⁸² ICE more than doubled the number of apprehensions resulting from the Secure Communities between FY2009 and FY2010, the second year of the program.⁸³ As of September 2010, 1/3 of all ICE apprehensions via Secure Communities (33,188 individuals) had no criminal conviction.⁸⁴ More than 17,000 individuals identified and ultimately removed through the Secure Communities program were identified in jails, but had no criminal record (about 27% of all Secure Communities deportations).⁸⁵

On June 30, 2010, ICE issued civil enforcement priorities that target dangerous persons, but it is unclear whether or how those priorities translate to state and local activities.⁸⁶ Furthermore, ICE's stated priorities have not been subject to adequate oversight, nor have appropriate performance measures been set for their state and local operations.⁸⁷ Recent analysis by Justice Strategies found that in New York City, the majority of detainers were filed within a single day of booking and fingerprinting, indicating a lack of any investigative effort to support filing the detainer. Furthermore, data showed no correlation between the severity of the charges and the proportion of detainers filed.⁸⁸

⁷⁸ Immigration and Customs Enforcement, "ICE Law Enforcement Support Center (LESC)," updated (Apr. 7, 2006) *available at* <http://www.ice.gov/pi/news/factsheets/o81204lesc.htm>.

⁷⁹ "It is important to note that LESL's responses to IAQs (Immigration Alien Query) do not always provide a definitive answer as to an alien's immigration status. Indeed, almost 10,000 of the 80,000 IAQs the LESL processed from Arizona in FY 2009 resulted in an indeterminate answer (for comparison, just over 15,000 of the IAQs from Arizona in FY 2009 resulted in a response of lawful presence). Moreover, a U.S. citizen, when queried through the LESL, would likely be returned with a "no match" response. Many—if not most—U.S. citizens have no records contained in the databases available to the LESL. Experience has demonstrated that some police officers are confused in these types of situations and sometimes want to detain the suspected illegal alien (actually a U.S. citizen) until they can call the LESL or their local ICE field office to confirm the subject's immigration status." See David Palmatier, "Declaration to the U.S. District Court for the District of Arizona" *available at* <http://www.justice.gov/opa/documents/declaration-of-david-palmatier.pdf>.

⁸⁰ Immigration and Customs Enforcement, "Secure Communities IDENT/IAFIS Interoperability Monthly Statistics," (Oct. 4, 2010) *available at* http://www.ice.gov/doclib/foia/secure_communities/nationwideinteroperabilitystatisticsseptember2010.pdf.

⁸¹ Daniel Denver, "The ICE Man: Obama's Backdoor Arizona-style Program," *Salon* (Jul. 16, 2010) *available at* http://www.salon.com/news/feature/2010/07/16/immigration_safe_communities_obama.

⁸² Immigration and Customs Enforcement, "Secure Communities IDENT/IAFIS Interoperability Monthly Statistics," (Oct. 4, 2010) *available at* http://www.ice.gov/doclib/foia/secure_communities/nationwideinteroperabilitystatisticsseptember2010.pdf.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ John Morton, Memorandum: "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," (Jun. 30, 2010) *available at* http://www.ice.gov/doclib/civil_enforcement_priorities.pdf.

⁸⁷ DHS Office of Inspector General, "The Performance of 287(g) Agreements," (Mar. 4, 2010).

⁸⁸ Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" *Justice Strategies* (Oct. 2010) *available at* http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_o.pdf.

In jurisdictions with a strong Criminal Alien Program, such as Travis County, Texas, where ICE has extensive access to daily information on bookings, the implementation of Secure Communities may not significantly change the total number of detainees or the bottom line. If the Criminal Alien Program already alerts ICE to most non-citizen arrestees by collecting name and place of birth information at booking, sending fingerprints to DHS databases will add data to the process, but may not amount to a surge of newly identified non-citizens.

However, nationwide, officials anticipate that Secure Communities will substantially increase the number of detainees lodged on individuals in law enforcement custody around the country. In fact, ICE promises participants in Secure Communities that they will issue detainees “around the clock.”⁸⁹ Furthermore, data on the ICE collaboration in Texas clearly showed that broader access to local jails by ICE causes a rise in the numbers of detainees issued.

The immigration system is also bracing for the impact of Secure Communities. The DOJ’s FY2012 budget articulated specifically that increased funds for the immigration courts were required to keep up with anticipated growth in removal proceedings because of Secure Communities.⁹⁰

V. CONCLUSION

As more and more jurisdictions are granting ICE unfettered access to information about their local jail populations, they will be asked by ICE to house individuals with detainees until ICE takes custody of them. Larger jurisdictions may be spending tens of millions of dollars per year to hold immigrants as a courtesy to ICE. Because a majority of those immigrants are locally arrested for misdemeanors and traffic violations, as data showed in Travis County and Irving, Texas, this amounts to massive expenditures on incarceration with little public safety value.

ICE’s state and local coordination programs extend the time immigrants spend in jails in multiple ways. First, an increased ICE presence in jails results in additional detention of non-citizens as more of them are identified and sought by ICE. Second, non-citizens are often held in custody on account of their immigration status when they would otherwise be released, and detainees may be relied upon as evidence of flight risk to deny or raise bail. Third, when law enforcement agencies collaborate with ICE, there is a perceived opportunity for racially biased policing that funnels suspected non-citizens to immigration enforcement. Collaboration between local law enforcement agencies and ICE has caused documented racial profiling and led to increased arrests of Latinos for low-level offenses that would otherwise not result in a trip to jail. Fourth, ICE’s joint operations or responses to police calls on the streets have led to immigrants being booked into county jails without any underlying criminal charges at all, but merely on the basis of immigration detainees. Finally, ICE’s requests for local law enforcement agencies to hold immigrants beyond their scheduled time of release extends average stays in detention for non-citizens, sometimes by weeks or months.

⁸⁹ Immigration and Customs Enforcement “Secure Communities helps law enforcement by identifying and removing the most high-risk criminal aliens from communities,” (May, 2010) available at http://www.ice.gov/doclib/pi/news/factsheets/lea_benefits.pdf.

⁹⁰ Department of Justice, FY2012 Budget for Administrative Review and Appeals, Executive Office of Immigration Review, available at <http://www.justice.gov/jmd/2012summary/pdf/fy12-eoir-bud-summary.pdf> at page 2.

ICE has released enforcement priorities delineating what categories of persons are targets for immigration enforcement.⁹¹ However, there is little evidence that these stated priorities have had a significant impact on ICE's own enforcement activities. As a result, county budgets carry enormous and unnecessary costs for detaining immigrants who pose little or no threat to society, and who would likely be released if they were not subject to an immigration detainer.

Incarceration is a cost-intensive element of law enforcement. While there is limited data about exactly how much this increased detention costs, there is no question that the costs amount to millions of dollars per year in large counties. Even in a jurisdiction where there are no incidents of biased policing, and where ICE timely apprehends individuals held on immigration detainers so that no one is kept on an expired detainer, a county may easily end up paying hundreds of thousands of dollars for each 48 hours of extra detention as a courtesy to ICE. Data suggests, however, that detainers are rarely, if ever, observed so carefully, and it is county budgets that suffer.

⁹¹ John Morton, Memorandum: "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," (Jun. 30, 2010) available at http://www.ice.gov/doclib/civil_enforcement_priorities.pdf.