

Policy Brief

Disentangling Local Law Enforcement from Federal Immigration Enforcement

In the wake of the widely-publicized deaths of Black men and women at the hands of local law enforcement agencies and the protests in response, the United States is coming to acknowledge what has been true for decades: the criminal legal system disproportionately targets and incarcerates people of color and is infected with racism and racial bias.¹ This rising public consciousness has critical implications for the immigration system, which transfers the discriminatory practices of the criminal legal system into the enforcement of immigration laws.

Today in the United States, immigrants who come in contact with the criminal legal system are often punished twice or denied due process altogether. Instead of being released to their families and communities at the end of their criminal sentence — and sometimes before their criminal proceedings are even complete — people often are transferred to Immigration and Customs Enforcement (ICE) detention and put on a fast-track to deportation. To facilitate this process, local law enforcement agencies frequently coordinate with federal immigration authorities, through a complex web of cooperation programs and databases to flag immigrants who come into contact with the criminal legal system and shuttle those people into the immigrant detention and deportation system.

It is time to end this criminal-system-to-deportation pipeline. Just as the criminal justice reform movement seeks to redress the harsh policies of the “War on Drugs” era, the movement for immigrant justice calls for dramatic changes to the immigration system that ensure a focus on fair adjudications and protection without reliance on the criminal legal system.

Fully separating the U.S. criminal legal system from civil immigration enforcement requires reform of several components of the immigration system, including ending criminal prosecutions for unauthorized

Local ICE Cooperation Separates Families

Fernando and his wife moved from Mexico more than 20 years ago. After surviving a violent home invasion, waiting more than three years for a visa application to be processed, and suffering a series of family tragedies, Fernando fell into depression and became addicted to drugs. He was caught with a small amount and served three months in jail. When he was let out, an ICE officer was waiting. Fernando spent the next year of his life — four times longer than his criminal sentence — in immigration detention.

“The hardest thing was the separation, something I wouldn’t wish on anyone,” Fernando said after he was released. “My son has autism, and when I would talk to him on the phone, he’d ask where I was and I’d say, ‘I’m working, son,’ and he’d ask ‘when will you be back?’ I told him, ‘Almost, almost, but you’re the man of the house now, you have to take care of the family.’”

entry and repealing the list of criminal offenses that trigger detention and deportation. This policy brief focuses on a third component of entanglement between the two systems: coordination and cooperation between local criminal law enforcement agencies and federal immigration authorities. The brief: I) Describes the urgent racial justice and public safety imperatives requiring disentanglement; II) Provides a historic overview of the expansion of the criminal-to-deportation pipeline and local-level immigrant control programs; III) Describes the programs and mechanisms of cooperation that fuel the criminal legal-to-deportation pipeline; and, IV) Provides policy recommendations to the Executive Branch and Congress toward disentanglement.

I. Racial Justice and Public Safety Imperatives Require Disentangling Federal Immigration Enforcement from the Criminal Legal System

Racial justice

Decades of over-policing and surveillance of Black and Brown communities and institutionalized racial biases have meant that Black and Brown people are disproportionately represented in the criminal legal system. The immigration system's historic reliance on criminal arrests and convictions to inform discretionary decisions about whom to detain and deport incorporates these disparities directly into the immigration system.

Although Black and Latino people comprise 29% of the U.S. population, they make up 57% of the U.S. prison population; imprisonment rates for Black and Hispanic adults are 5.0 and 3.1 times higher than white adults, respectively.² As of 2001, one in every three Black boys and one in every six Latino boys could expect to go to prison, as compared to one of every 17 white boys.³

The marriage of the criminal legal and immigration systems transfers the entrenched racial biases of local law enforcement agencies into the enforcement of civil immigration laws. Surveys show that police are more likely to stop Black and Hispanic drivers and that once pulled over, Black and Hispanic drivers are three times as likely to be searched and Black drivers twice as likely as white drivers to be arrested.⁴ A Black person is also almost 10 times as likely as a white person to be arrested for non-violent, low level criminal offenses like loitering, disorderly conduct, trespassing, or marijuana possession.⁵ Once Black and Brown people become involved in the criminal legal system through this discriminatory pipeline, they are subject to further racial and economic prejudices that permeate every step of the process, from charging and pre-trial detention decisions to adjudication of cases to sentencing and probation.⁶ These disparities in turn infect the immigration system with racial bias and discriminatory decision-making. For example, Black immigrants make up 20% of people facing deportation on criminal grounds even though only 7% of non-citizens in the United States are Black.⁷

Conditioning immigration actions on the criminal legal system also means that Black and Brown immigrants are subject to a double-punishment not imposed on their citizen counterparts: first, serving a full criminal sentence and then the second punishment of immigration detention and

potential deportation.⁸ Rather than returning to their families and communities, they face a second, severe and life-altering punishment of deportation—simply because they were not born in the United States. People who have already served their time, including many who have lived in the U.S. for decades, are permanently separated from their families, robbing entire communities of a chance to heal and rehabilitate in a positive manner.

Ultimately, relying on a deeply flawed criminal legal system undermines the legitimacy of the federal immigration system and unjustifiably harms immigrant communities.

Public safety

Public and community safety is best supported by policies that nurture immigrant inclusion and community revitalization, rather than those that aim to deport and detain immigrants. A growing body of social science literature shows that sanctuary policies that welcome immigrants by decreasing cooperation between local law enforcement and ICE enhance community safety. The social capital that immigrants invest in their communities correlates with lower crime rates, even when all other factors are controlled. This protective benefit of increased immigration is sometimes referred to as the “immigrant revitalization perspective.”⁹

For example, one study examined data over a 24-year period (1990-2014) and found that increases in both lawful and/or undocumented immigration were accompanied by a significant and simultaneous decrease in measures of violent crime including murder, robbery, assault, and rape.¹⁰ Other similar studies found increasing rates of immigration to be linked to decreases in violent crime and neighborhoods with large immigrant communities to often have lower levels of violence and drug-related crime.¹¹

Furthermore, immigrant control policies that lead to detentions and deportations destabilize communities by permanently separating children from parents and creating economic hardship, housing instability, and food insecurity.¹² At the community level, these policies breed fear and mistrust not only of law enforcement agencies, but all public institutions, including those providing basic necessities like health care and social services.¹³

State and local officials should end their cooperation with ICE and stop transferring immigrants deemed eligible for release from state or local custody to immigration detention. Like any other individual, immigrants who have contact with the criminal legal system— including those who have completed their sentence, been granted parole, had charges dropped, or been granted release by a judge— should be allowed to return to their communities.

II. It Hasn't Always Been This Way: The History of Entanglement

In the first 100 years of U.S. independence, Congress left immigration almost entirely unregulated; people arriving on their own volition were free to work. Today's entanglement of the immigration and criminal legal systems has its roots in racist anxieties of the Reconstruction era, but the web of policies, laws, and collaboration between local governments and federal immigration enforcement was only put in place relatively recently.

- **In the 1860s**, Congress began passing early versions of immigration control measures to exclude some immigrants, particularly Chinese workers who they feared would replace the labor of people formerly enslaved in the South. Congress members cited racist justifications against Chinese workers to support such measures.¹⁴
- Immigration control measures expanded **between the 1880s and 1920s** as Congress used racist grounds to assert its right to exclude large numbers of immigrants. The U.S. Supreme Court deemed immigration an area of nearly unrestrained federal authority.¹⁵
- The transformation of the system as one of “immigration control” to one of “crime control” started around **the late 1950s**. Drug control legislation tasked border patrol officers with targeting and finding “drug runners.”¹⁶ Over time, the border patrol’s responsibility to control drug trafficking would come to dominate and influence its entire mission — conflating the crime of drug trafficking with the broader migration of humans. Federal immigration authorities began treating migration as a criminal and security problem.
- **By the late 1970s**, immigration and drug control were well entangled in the U.S.-Mexico border region, setting the stage for the full criminalization of the immigration system.
- **In the late 1980s and early 1990s**, federal legislation further criminalized the immigration system. Both Republicans and Democrats fueled a “War on Drugs” with racial stereotypes and dehumanizing rhetoric about poor communities of color in order to mobilize public support for harsh sentencing laws.¹⁷ Congress simultaneously passed several laws formalizing deportation as a punishment for criminal offenses¹⁸ and initiated the Criminal Alien Program (CAP), placing immigration officers in federal and state prisons around the country to expedite the deportation of individuals involved in the criminal legal system.¹⁹
- The final iteration in the shift to an enmeshed criminal and immigration enforcement system occurred in **the post-September 11, 2001 era** as new federal-local cooperation programs flourished in the name of national security. In 2005, the Bush administration implemented Operation Streamline — a program in which nearly all undocumented immigrants crossing the southern border in designated areas were prosecuted for federal crimes in mass hearings, a departure from the usual handling of such cases.²⁰ Three years later, the Bush administration piloted the Secure Communities program, a universal biometric data-sharing program, marking the federal government’s first effort to mass-market its desire for local law enforcement agencies to undertake arrests and detention for ICE.²¹ Coordination between ICE and local law enforcement has since expanded into the complex web that exists today.

III. The Mechanisms of Cooperation Between Federal Immigration Agencies and State and Local Agencies

The federal government's complex web of cooperation and coordination with local law enforcement agencies increases ICE's ability to locate, arrest, and deport greater numbers of immigrants, at grave cost to communities and families.

ICE relies on four primary mechanisms of cooperation:

1. "Detainers" and cooperation programs

Cooperation programs between ICE and local law enforcement agencies can be categorized into three tiers: 1) contracts or programs through which local law enforcement agencies directly carry out federal immigration actions for ICE; 2) programs through which local law enforcement agencies offer substantial support to ICE; and, 3) programs that assist ICE's deportation operations through notifications and information sharing.

Across these three tiers, ICE relies heavily on the use of "immigration detainers," also known as "ICE holds." When local police arrest someone, they take the person's fingerprints and transmit them to the FBI, which automatically forwards the transmission to Department of Homeland Security (DHS) databases. Based on information in these databases, ICE determines whether an individual is deportable. If ICE believes the person can be deported, it issues a "detainer," which is a request to the local law enforcement agency to notify ICE of when the individual will be released from criminal custody and to continue to detain them beyond that point so that ICE can come take the person into immigration detention. This act of holding someone longer than they would otherwise be held constitutes a new arrest by the local law enforcement agency.²² In fiscal year 2019, ICE lodged more than 160,000 detainers with local law enforcement agencies.²³ A vast portion of ICE's detention and deportation infrastructure relies on detainers.

Tier 1: Direct enforcement of immigration laws by local law enforcement agencies

- The **287(g) program**—named for Section 287(g) of the Immigration and Nationality Act—establishes a formal Memoranda of Agreement deputizing local law enforcement officers to act as federal immigration officers. Deputized 287(g) law enforcement officers may issue immigration detainers, interview individuals to ascertain immigration status, check DHS databases for information about individuals they believe are not citizens, transfer immigrants directly to ICE custody, and even issue a Notice to Appear (NTA), the charging document that begins the federal deportation process.
- The **Warrant Service Officer (WSO)** program is a mini version of the 287(g) program. Under the WSO program, delegated local officers get less training and are only authorized to execute ICE warrants of arrest within a local jail.²⁴ The WSO program enables local officers to more easily hold people up to 48 hours in a local jail—technically in ICE custody under the WSO authority—before being transferred to longer-term ICE detention.

- **Inter-Governmental Service Agreements (IGSAs)** are contracts between the federal government and state or local governments in which local agencies agree to provide bed space in their county jails or state prisons to detain people during their immigration removal proceedings. Local jails or state prisons are typically paid by the federal government for each person they detain for ICE and therefore have a financial incentive to participate in the program.²⁵ IGSAs greatly increase ICE's detention capacity. Some jurisdictions have both a 287(g) program and an IGSA, creating perverse financial incentives for local police officers to execute detainers under their 287(g) authority in order to fill up their jails, increasing the likelihood of racial profiling in local arrest practices.²⁶

Tier 2: Substantial support by local law enforcement agencies to ICE

- **Secure Communities (“S-Comm”)** is the information sharing component of ICE's detainer practice—it is the program through which local law enforcement are forced to share with ICE the fingerprints of individuals charged with a criminal offense. An ICE officer then determines whether to issue a detainer. The S-Comm program began in 2008 but was terminated in 2014 in response to accumulating evidence that the program encouraged racial profiling by state and local law enforcement officers, undermined community policing efforts, and resulted in countless cases of unlawful detention of American citizens.²⁷ In its place, the Obama administration initiated a program called the **Priority Enforcement Program (PEP)**, a focused version of S-Comm that utilized detainers but prioritized enforcement against individuals charged or convicted of only certain crimes. Although the Obama administration's stated goal for PEP was to rectify problems with the S-Comm program, ICE officers admitted in litigation that in practice there was no significant difference between the two programs.²⁸ As a result, PEP was discontinued prior to the Trump administration, but the Trump administration reinstated the Secure Communities program as mandatory for local governments, making minor changes in an attempt to overcome legal challenges against the program.²⁹ However, Trump's revised S-Comm policy in practice failed to minimize the liability local law enforcement agencies face when complying with detainers through S-Comm.³⁰
- **Basic Ordering Agreements (BOAs)** are a mechanism devised during the Trump administration to further incentivize local law enforcement agencies to honor detainer requests. A BOA is an agreement in which a local jurisdiction agrees to hold individuals pursuant to detainers issued by ICE for up to 48 hours in exchange for a \$50 reimbursement from ICE.³¹ BOAs were developed to supposedly protect localities from liability or potential litigation in enforcing detainers and cooperating with federal authorities.³² However, similar to other iterations of cooperation programs, BOAs fail to mitigate the liability local agencies face in honoring detainers.³³

Tier 3: Local law enforcement agency notifications and information sharing

In order to overcome court rulings which have found detainers to be unlawful, ICE has replaced formal detainer requests with “**requests for notification.**” These requests are used widely, particularly in jurisdictions where local agencies refuse to honor formal detainers. With these requests, ICE asks that a local law enforcement agency notify ICE as early as possible of the date when a person in criminal custody is scheduled for release so that ICE can be present to arrest them. Even though local law enforcement agents who respond to these requests do not detain people beyond their release period, their information sharing directly facilitates immigrant detentions.

Detainers and local agreements violate civil rights, federal and state law

Constitutional violations: Courts have found that both ICE and local law enforcement agencies violate the Fourth Amendment when they administer and enforce detainers because they usually lack adequate “probable cause” to justify the new arrest.³⁴ ICE detainers are not judicial warrants, and there is no legal requirement that local agencies respond to them. Instead, a detainer is a document signed by a low-level ICE officer based on ICE’s interest in deporting that person. ICE officers do not show facts to establish probable cause or obtain a prompt probable cause determination from a judge, as police do prior to making criminal arrests.

In 2020, Los Angeles County paid out \$14 million to settle a class-action lawsuit against the L.A. Sheriff’s Department for routinely holding people in jail beyond their release dates because of detainer requests from ICE — underscoring the significant liability local law enforcement agencies face in cooperating with federal immigration agencies.³⁵

In 2019, a federal district court judge issued a permanent injunction in a case known as *Gonzalez v. ICE*, blocking ICE from issuing detainers that are based only on information from database searches and finding that such searches are too unreliable.³⁶ The decision blocked all detainers generated by one ICE station in Laguna Niguel, California, from which ICE issues detainers 24 hours per day within California and after-hours for 47 other states.³⁷ Recently, the Ninth Circuit Court of Appeals reviewed and upheld in part the district court’s decision finding that ICE’s current use of detainers fails to meet Fourth Amendment requirements of the law.

State law violations: Courts have also found that detainers violate state laws. Federal immigration law does not give local law enforcement officers authority to make civil immigration arrests — they derive their power to arrest from state law.³⁸ However, most states do not have laws that authorize local law enforcement agencies to make civil immigration arrests.

Civil rights violations: The 287(g) program has a history of systemic and widespread racial profiling. For example, Department of Justice investigations into 287(g) programs in Maricopa County, Arizona, and Alamance County, North Carolina, found rampant racial profiling and unlawful police practices.³⁹ Relying on local law enforcement officers to interpret complex federal immigration laws to make decisions such as whether to issue an immigration detainer exposes local law enforcement officers to significant liability.⁴⁰

2. Databases and surveillance technologies

Another key mechanism of entanglement between federal immigration enforcement and the criminal legal system is the complex and opaque set of databases and technology that enable information-sharing and cooperation between authorities in the programs described above.

These systems include: 1) FBI's Next Generation Identification (NGI) database and DHS's Automated Biometric Identification System (IDENT), which contain personal identifying information and fingerprints that are central to the information sharing component of Secure Communities⁴¹; 2) Homeland Advanced Recognition Technology (HART), which is currently being built into potentially the largest database of biometric and biographic information on citizens and foreigners in the United States, shareable with federal agencies and state and local law enforcement agencies⁴²; and 3) the National Crime Information Center (NCIC), described by the FBI as "an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, 365 days a year," which currently contains civil immigration records including prior removal orders.⁴³

Federal immigration authorities also have access to state, regional, and local criminal databases even in jurisdictions that have limited cooperation with ICE.⁴⁴ These databases help federal immigration officers identify non-citizens involved in the criminal justice system—even arrests that do not lead to charges or convictions. Certain databases label, stigmatize, and punish many citizens and non-citizens as "gang members." Information in these databases is notoriously inaccurate, but is nevertheless shared at all levels of government.⁴⁵ For example, the Office of Inspector General for the City of Chicago recently issued a scathing report on the Chicago Police Department's use of gang databases, finding that they "lack procedural fairness protections," "raise significant data quality concerns," and "strain police-community relations."⁴⁶ Gang databases used around the country include GangNET, ICEGangs, and the NCIC Gang File.

In addition to these databases, federal immigration authorities in some locations also have access to facial recognition technologies used by local law enforcement agencies.⁴⁷

3. Informal communications

State and local law enforcement officers also communicate in an unregulated fashion with ICE agents. For example, police may contact ICE regarding a driver stopped for a traffic violation if they suspect the driver is not authorized to be in the U.S. Law enforcement officers can also report activity they believe to be suspicious to DHS's Homeland Security Investigations (HSI) through a system called the FALCON Tipline (FALCON-TL). Since informal communication and information-sharing are based on a local officer's perception of an individual, this mechanism of cooperation can be especially rife with racial profiling.

4. Conditions on funding streams

In an attempt to secure cooperation from local governments, the federal government, especially under the Trump administration, has made federal grants to local entities contingent on compliance with immigration enforcement priorities and cooperation with ICE.

For example, Edward Byrne Memorial Justice Assistance Grants are formula-based grants awarded annually to state and local law enforcement agencies. They are the primary source of federal criminal justice enforcement funding given to for state and local governments. In recent years, the Attorney General imposed onerous and broad anti-immigrant requirements to these formula grants. These conditions included: (1) requiring state and local authorities to give advanced notice to ICE of scheduled releases of immigrants in criminal custody; (2) requiring state and local authorities to give ICE access to immigrants in criminal custody; and (3) prohibiting state and local restrictions on communications with ICE and the enactment of rules that would impede federal immigration enforcement.

The Byrne-JAG conditions tightly restrict states' authority to make decisions about how and when local law enforcement cooperates with DHS on immigration enforcement. These conditions have been successfully challenged by cities in federal court. Four U.S. Circuit Courts of Appeals agree that the majority of the immigration-relation conditions imposed on Byrne-JAG grants in recent years are unlawful. Most recently, the Seventh Circuit Court of Appeals issued a program-wide injunction ending such requirements across the entire Byrne JAG program.⁴⁸

Additionally, members of Congress have spoken out publicly and directly to the courts opposing immigration-related conditions on these grants.⁴⁹

IV. NIJC Executive and Legislative Policy Recommendations To End Cooperation and Coordination Between Federal Immigration Authorities and Local Law Enforcement Agencies

A responsible civil immigration system should never rely on local law enforcement agencies to carry out federal civil laws and policies. State and local resources should never be co-opted by the federal government for the enforcement of civil immigration laws; immigrants should never have to worry that an interaction with a local government institution will expose them to immigration detention or deportation.

Eight recommendations to the Biden administration

The following eight recommendations represent first steps the Biden administration can take toward ending federal government reliance on the criminal legal system and state and local agencies for the enforcement of federal immigration laws:

1. End ICE's use of immigration detainers and retract any outstanding detainers

There must not be any exceptions to this change in policy. Courts have made clear this practice violates constitutional, statutory, and state law — subjecting both ICE and state and local agencies to liability. The use of detainers undermines public safety by connecting federal immigration enforcement with local government and erodes public trust. The use of detainers must end, and any outstanding detainers nationwide should be retracted within the first 100 days of a new administration. These actions should be followed by steps to rescind the regulations that provide authority for detainers including 8 C.F.R. §§ 287.7 and 236.1(a).

2. Terminate the use of “requests for notification”

The erosion of public trust in local government is too grave to ever justify the use of such requests. Should the administration choose to go forward with the use of some notification requests, their use should be extremely limited. Specifically, a notification request should only be issued in a state or federal system and not at the local, county level. Furthermore, a notification request issued in the state or federal system should only be issued after the completion of a criminal sentence and not at any time earlier in the criminal legal process. If notification requests are issued, they must always be considered voluntary, not mandatory, by the locality.

3. Terminate the 287(g) program (including Warrant Service Officer (WSO) agreements)

No wind down period is necessary. Termination should include all aspects of the program including where it deputizes local police to act as ICE agents and where it deputizes police to serve ICE warrants (WSO agreements).⁵⁰ As of October 2020, there were 77 active 287(g) agreements nationwide across 21 states, and 75 active 287(g) WSO agreements in 11 states.⁵¹ In 2018, the federal government appropriated \$24.3 million to support these programs and the program led to more than 7,000 deportations.⁵²

4. Terminate all Intergovernmental Service Agreements (IGSAs) and contracts with private prison companies

The administration should terminate all existing contracts with county jails within six months and place a moratorium on new IGSAs and other similar categories of agreements including Dedicated IGSAs (DIGSAs) and U.S. Marshals Service Intergovernmental Agreements (IGAs) with ICE riders. Currently, nearly a quarter of individuals in ICE custody are housed in facilities with such contracts.⁵³ The administration should also take steps to terminate all contracts with private prison facilities nationwide within one year. Private prison companies are inextricably linked with cooperation between local law enforcement agencies and federal immigration. For example, in practice, DIGSAs are run by private companies. These recommendations

should be read in the larger context of NIJC and many other organizations' recommendation that the new administration embark on a full phase-out of the immigration detention system.⁵⁴

5. Terminate Secure Communities (S-Comm)

The administration should ensure that no similar information-sharing programs replace S-Comm, including the previously terminated Priority Enforcement Program (PEP) or other programs like it. The administrations should ensure that the termination of S-Comm does not result in some other iteration or form of an information-sharing program.

6. Terminate Basic Ordering Agreements (BOAs)

The Biden administration should immediately terminate all BOAs.

7. Eliminate funding conditions that require state and local cooperation with federal immigration priorities

The new DHS secretary and attorney general should issue an internal memorandum specifying that federal grants must never be conditioned on immigration-related enforcement actions or support.

8. Appoint a commission to study and analyze the extent of information sharing through databases and technology and take steps to significantly reduce such information sharing

The commission should be fully independent and be largely comprised of non-governmental actors including representatives of impacted-communities. The commission should make recommendations to the new administration and be responsible for advising in the implementation of the following actions:

- Rescind collection of social media, location-tracking, and entry-exit biometric data.
- Rescind DHS' recently proposed biometrics rule, which would drastically expand the authorities and methods by which DHS agencies can collect personal and private data for the purposes of implementing immigration law and policies.⁵⁵
- Rescind rules and programs requiring DNA collection of individuals in immigration custody including the recently adopted rule, which requires the collection of DNA from thousands of individuals in immigration detention.⁵⁶
- End development and implementation of HART.
- Implement the Task Force on 21st Century Policing Recommendation to Remove Civil Immigration Information from the FBI's NCIC Database.

Three recommendations to Congress

1. **Amend the Immigration Nationality Act, 8 U.S.C. §§ 1357(a) and 1226** to end the practice of warrantless immigration arrests in the interior of the U.S. and to ensure that any individuals subjected to warrantless arrests subsequent to arrival are provided a probable cause hearing within 48 hours.⁵⁷
 - End the 287(g) program and prohibit any state or local agency from performing the functions of immigration officers including investigation, apprehension, transportation, or detention of non-citizens.
2. **Amend other areas of federal law to end cooperation between state and local law enforcement agencies and federal immigration enforcement**, including repeal of section 439 of the Antiterrorism and Effective Death Penalty Act of 1996 (8 U.S.C. § 1252(c))⁵⁸, repeal of section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. § 1644)⁵⁹, and repeal of section 642 of the Illegal Reform and Immigrant Responsibility Act of 1996⁶⁰ (8 U.S.C. § 1373).⁶¹
 - Ensure that civil immigration warrants are not available through the National Crime Information Center (NCIC) database or any other criminal history databases.
 - Prohibit any federal, state, or local law enforcement official from entering into NCIC or related databases information relating to a person's immigration status or history of removal proceedings or allegations of civil violations of immigration laws.
3. **Repeal 8 U.S.C. § 1103(a)(11)**, which authorizes the Attorney General to enter into cooperative agreements with states and localities for support through facilities or bed space for the detention of immigrants in removal proceedings.

Conclusion

In recent decades, the federal government has built an immigration enforcement regime that depends on the time and resources of local law enforcement agencies. This turns local law enforcement agencies into a gateway to deportation, co-opts local resources into questionable, racially discriminatory purposes, transfers the racial biases of local criminal legal systems into federal immigration enforcement, strips communities of safety, and undermines the rule of law. Moral, public safety, historical, and legal reasons compel a clean severing of the ties between local criminal law enforcement and federal immigration enforcement.

Endnotes

¹ See, e.g., Emma Pierson *et al.*, *Nature Human Behavior*, “A large-scale analysis of racial disparities in police stops across the United States,” Mar. 2020, <https://5harad.com/papers/100M-stops.pdf>.; “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform,” American Civil Liberties Union, April 20, 2020, <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>; “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” The Sentencing Project, April 19, 2018; <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>; “Black Lives Matter: Elimination Racial Inequity in the Criminal Justice System,” The Sentencing Project, February 2, 2015, <https://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/>; “Visualizing the racial disparities in mass incarceration,” Prison Policy Institute, July 27, 2020, <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>.

² “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” The Sentencing Project, April 19, 2018; <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

³ *Ibid.*

⁴ “Black and Latino drivers are searched based on less evidence and are more likely to be arrested, Stanford researches find,” *Los Angeles Times*, June 19, 2017, <https://www.latimes.com/local/lanow/la-me-ln-stanford-minority-drive-disparities-20170619-story.html>. See also The Stanford Open Policing Project, <https://openpolicing.stanford.edu/>.

⁵ “The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests,” American Civil Liberties Union (June 2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>. See also, “Selective Policing: Racially Disparate Enforcement of Low-Level Offenses in New Jersey,” American Civil Liberties Union-New Jersey (2015), https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf.

⁶ Federal prosecutors are twice as likely to charge Black defendants with offenses that carry mandatory minimum sentences than otherwise-similar white defendants. After charges are filed, many Black and Brown defendants choose to plead guilty, even if they are innocent, to avoid the risk of trial or because they do not have the money to pay for bail. Black and Latinos are also more likely than whites to be denied bail, to have a higher money bond set, and to be detained because they cannot afford their bond payment while awaiting a criminal trial in jail. “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” The Sentencing Project, April 19, 2018, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>. Prosecutors, judges, and juries often also treat Black and Brown defendants more harshly in sentencing decisions. In federal court, Black men receive prison sentences on average 19.1% longer than similarly situated white men. United States Sentencing Commission, “Demographic Differences in Sentencing: An Update to the 2012 Booker Report,” November 14, 2017, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

⁷ Jeremy Raff, “The ‘Double Punishment’ for Black Undocumented Immigrants,” *The Atlantic*, December 30, 2017. <https://www.theatlantic.com/politics/archive/2017/12/the-double-punishment-for-black-immigrants/549425/>.

⁸ *Ibid.*

⁹ See Christopher Lyons, Maria Velez, Wayne Santoro, “Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities,” *American Sociological Review* 78, issue 4 (2013): 1.

¹⁰ Michael T. Light & Ty Miller, “Does Undocumented Immigration Increase Violent Crime?” *Criminology* 56, issue 2 (March 2018): 370, <https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9125.12175>.

¹¹ A study of metropolitan areas over a forty-year period found that increasing rates of immigration were “consistently linked to decreases in violent (e.g., murder) and property (e.g., burglary) crime throughout the time period.” Robert Adelman, Lesley Williams Reid, Gail Markle, Saskia Weiss & Charles Jaret, “Urban Crime Rates and the Changing

Face of Immigration,” *Journal of Ethnicity in Criminal Justice* 15, no. 2 (2017): 52-77. Another study found neighborhoods with large shares of immigration often have lower levels of violence and drug-related crime than similarly situated areas with fewer immigrants. Alex Nowrasteh, “Criminal Immigrants in Texas,” *The Cato Institute* (February 2018).

¹² Society for Community Research and Action Division of the American Psychological Association, “Statement on the Effects of Deportation and Forced Separation on Immigrants, Their Families and Communities,” *American Journal of Community Psychology* 62 (2018): 3-12, <https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajcp.12256>.

¹³ Joanna Dreby, “How Today’s Immigration Enforcement Policies Impact Children, Families and Communities,” Center for American Progress (August 2012), <https://www.americanprogress.org/wp-content/uploads/2012/09/DrebyImmigrationFamiliesFINAL.pdf>.

¹⁴ Moon Ho-Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (Johns Hopkins University Press, 2006), 38.

¹⁵ Kelly Lytle Hernandez, “Amnesty or Abolition? Felons, illegals, and the case for a new abolition movement” *Boom: A Journal of California*, Vol. I, Number 4, 57-59. See also, *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

¹⁶ Kelly Lytle Hernandez, “Amnesty or Abolition? Felons, illegals, and the case for a new abolition movement” *Boom: A Journal of California*, Vol. I, Number 4, 58-62.

¹⁷ Michele Alexander, “The Injustice of This Moment Is Not an ‘Aberration,’” *The New York Times*, January 17, 2020, <https://www.nytimes.com/2020/01/17/opinion/sunday/michelle-alexander-new-jim-crow.html>.

¹⁸ The Anti-Drug Abuse Act of 1988 created a list of retroactively applied “aggravated” felonies that trigger deportation for immigrants including lawful permanent residents, including many non-violent crimes such as drug possession, fraud, and shoplifting. Pub. L. 100–690, 102 Stat. 4181, enacted November 18, 1988, H.R. 5210. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) making one criminal conviction of “moral turpitude” a deportable offense. Pub. L. No. 104–132, 110 Stat. 1214. That same year, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) legislated that any “aggravated felony” conviction carrying a minimum sentence of one year would also be a deportable offense. Pub. L. 104–208 (text), 110 Stat. 3009–546, enacted September 30, 1996.

¹⁹ “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” American Immigration Council, August 1, 2013, <https://www.americanimmigrationcouncil.org/research/criminal-alien-program-cap-immigration-enforcement-prisons-and-jails>.

²⁰ Amanda Sakuma, “Operation Streamline Nightmare: an immigration nightmare for Arizona courts,” MSNBC News, June 20, 2014, <https://www.msnbc.com/msnbc/operation-streamline-immigration-nightmare-arizona-courts-msna354111>.

²¹ “Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws,” National Immigrant Justice Center, March 2018: 6, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf

²² *Morales v. Chadbourne*, 235 F. Supp. 3d 388 (D.R.I. 2017); *Roy v. Cty. of Los Angeles*, 114 F. Supp. 3d 1030 (C.D. Cal. 2018); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237 (E.D. Wash. 2017).

²³ Brittny Mejia, Joel Rubin, “A bad day for Trump administration on immigrant front as it suffers three legal defeats in one day,” *Los Angeles Times*, September 28, 2019, <https://www.latimes.com/california/story/2019-09-27/federal-judge-issues-ruling-upending-how-ice-targets-people-for-being-in-the-country-illegally#>.

²⁴ “Warrant Service Officer Program: A Deceptive New Model for 287(g),” Immigrant Legal Resource Center (ILRC): May 2019, https://www.ilrc.org/sites/default/files/resources/2019.05_ilrc_wso_programs-final2.pdf.

²⁵ Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws, National Immigrant Justice Center, March 2018, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf.

²⁶ Kathryn Johnson, “These Federal Programs Incentivize Racial Profiling,” *The Hill*, March 28, 2018, <https://thehill.com/blogs/congress-blog/homeland-security/380680-these-federal-programs-incentivize-racial-profiling-why>.

²⁷ The Secure Communities program was first piloted in 2008 under the Bush administration. The Obama administration greatly expanded the Secure Communities program. Many local governments withdrew their participation in the program or limited it over time through state and local legislation. In 2014, the program was discontinued based on the significant criticism it had received. See Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws, National Immigrant Justice Center, March 2018, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf.

²⁸ *Ibid.*

²⁹ Specifically, the new iteration of the program required that ICE issue a detainer along with an “administrative warrant” signed by an ICE officer (known as Form I-200 or Form I-205) that would affirm probable cause for removal of the individual. Although referred to as warrants, these documents are not reviewed by any judge or neutral adjudicator to lawfully make a determination of whether probable cause exists for an arrest. *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ For example, after a state court in Rhode Island ordered a woman released from a local jail on personal recognizance in her criminal case, the jail continued to hold her for immigration purposes on an ICE detainer. The ICE detainer did not provide any justification for her immigration detention. She sued ICE and the court held that ICE lacked probable cause because it failed to sufficiently investigate her immigration status before issuing the detainer. It turned out that she was in fact a naturalized U.S. citizen. *Morales v. Chadbourne*, 235 F. Supp. 3d at 215-16 (D.R.I. 2017) (finding that it is clearly established law that an ICE agent must have probable cause to issue an immigration detainer).

³⁵ Alene Tchekmedyan, “LA county to payout \$14 million over unlawful immigration holds,” *Los Angeles Times*, October 13, 2020, <https://www.latimes.com/california/story/2020-10-13/sheriffs-department-immigration-holds-settlement>.

³⁶ *Gonzalez v. ICE*, 416 F. Supp. 3d 995 (C.D. Cal. 2019) (finding that ICE detainees issued based only on federal database checks violate the Fourth Amendment because they lack sufficient probable cause for arrest).

³⁷ “*Gonzalez v. ICE*,” National Immigrant Justice Center, https://immigrantjustice.org/court_cases/gonzalez-v-ice.

³⁸ *United States v. Di Re*, 332 U.S. 581, 589-90 (1948) (finding that in absence of an applicable federal statute the law of the state where an arrest takes place determines its validity).

³⁹ U.S. Dep’t of Homeland Security, Statement by Secretary Napolitano on DOJ’s Findings on Discriminatory Policing in Maricopa County (Dec. 15, 2011), <https://www.dhs.gov/news/2011/12/15/secretary-napolitano-doj-findings-discriminatory-policing-maricopa-county>; U.S. Dep’t of Justice, Letter to Bill Montgomery, County Attorney, Maricopa County from Thomas E. Perez, Assistant Attorney General (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf; U.S. Dep’t of Justice, Letter to Clyde B. Albright, County Attorney, Alamance County from Thomas Perez, Assistant Attorney General

(Sept. 18, 2012), <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>; Compl., *United States v. Johnson*, No. 1:12cv-1329 (M.D.N.C. Dec. 20, 2012), <https://www.justice.gov/iso/opa/resources/55620121220953110360.pdf>.

⁴⁰ “Assumption of Risk: Legal Liabilities for Local Governments That Choose to Enforce Federal Immigration Laws,” National Immigrant Justice Center, March 2018, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf

⁴¹ In the S-Comm program, fingerprints of an arrested person at the local level will be automatically and simultaneously checked against both the FBI and DHS databases for immigration information. If there is a “hit,” ICE is notified and the detainer process begins. See National Immigration Law Center (NILC), “Untangling the Immigration Enforcement Web: Basic Information for Advocates About Databases and Information-Sharing Among Federal, State, and Local Agencies,” September 2017, <https://www.nilc.org/issues/immigration-enforcement/imm-enforcement-info-sharing-and-privacy-protection/>.

⁴² HART could include a broad range of biometric data including facial recognition, DNA, and other highly personal data on people. A recent proposed rule also would allow United States Citizenship and Immigration Services (USCIS) to greatly expand its collection of biometric information through increased surveillance of individuals living in this country and feed that information into the new HART database, <https://www.federalregister.gov/documents/2020/09/11/2020-19145/collection-and-use-of-biometrics-by-us-citizenship-and-immigration-services>

⁴³ In practice, access to NCIC means that a local law enforcement officer pulling over a non-citizen for a speeding ticket can quickly access immigration information that could lead to the immediate immigration detention and initiation of removal proceedings for the individual. See Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC), <https://www.fbi.gov/services/cjis/ncic>;

⁴⁴ National Immigration Law Center (NILC), “Untangling the Immigration Enforcement Web: Basic Information for Advocates About Databases and Information-Sharing Among Federal, State, and Local Agencies,” September 2017, <https://www.nilc.org/issues/immigration-enforcement/imm-enforcement-info-sharing-and-privacy-protection/>.

⁴⁵ *Ibid.*

⁴⁶ City of Chicago, Office of Inspector General, “Review of the Chicago Police Department’s ‘Gang Database,’” <https://igchicago.org/2019/04/11/review-of-the-chicago-police-departments-gang-database/>

⁴⁷ National Immigration Law Center (NILC), “Untangling the Immigration Enforcement Web: Basic Information for Advocates About Databases and Information-Sharing Among Federal, State, and Local Agencies,” September 2017, <https://www.nilc.org/issues/immigration-enforcement/imm-enforcement-info-sharing-and-privacy-protection/>.

⁴⁸ *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020). Specifically, the Court of Appeals found that attaching such broad anti-immigrant requirements to a formula grant, violates Congress’ grant of authority to the Attorney General and the constitutional principle of separation of powers. The Court wrote that the “Byrne JAG grant was enacted by Congress to support the needs of local law enforcement to help fight crime, yet it now is being used as a hammer to further a completely different policy of the executive branch— presenting a city such as Chicago with the stark choice of forfeiting the funds or undermining its own law enforcement effectiveness by damaging that cooperative relationship with its residents.” *Id.* at 887.

⁴⁹ Brief of Members of Congress as Amici Curiae in Support of Plaintiffs-Appellees, *City of Evanston v. Barr*, No. 19-3358 (7th Cir., April 20, 2020), <https://www.theconstitution.org/wp-content/uploads/2020/04/7th-Cir.-Amici-Br..pdf>; “Murphy, Blumenthal, Lawmakers Call Out Sessions for Holding City Violence Prevention Funds Hostage to His Extreme Immigration Agenda,” Senator Chris Murphy (August 28, 2017), <https://www.murphy.senate.gov/newsroom/press-releases/murphy-blumenthal-lawmakers-call-out-sessions-for-holding-city-violence-prevention-funds-hostage-to-his-extreme-immigration-agenda>.

⁵⁰ “Ending 287(g) Nationwide,” Immigrant Legal Resource Center, April 15, 2019, <https://www.ilrc.org/ending-287g-nationwide>.

⁵¹ U.S. Dep't of Homeland Security, Immigration and Customs Enforcement, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," <https://www.ice.gov/287g>.

⁵² "NACO Legislative Brief: Highlights of the FY 2018 Omnibus Federal Spending Package for Counties," March 23, 2018, <https://www.naco.org/featured-resources/highlights-fy-2018-omnibus-federal-spending-package-counties>.

⁵³ "Policy Brief: 5 Reasons to End Immigration Detention," National Immigrant Justice Center (September 14, 2020), <https://immigrantjustice.org/research-items/policy-brief-5-reasons-end-immigrant-detention>.

⁵⁴ Ibid.

⁵⁵ "Collection and Use of Biometrics by U.S. Citizenship and Immigration Services," Federal Register: The Daily Journal of the United States Government, a proposed rule by the U.S. Dep't of Homeland Security, [https://www.federalregister.gov/documents/2020/09/11/2020-19145/collection-and-use-of-biometrics-by-us-citizenship-and-immigration-services?ct=t\(Press+Release+9-3-20+COPY+01\)](https://www.federalregister.gov/documents/2020/09/11/2020-19145/collection-and-use-of-biometrics-by-us-citizenship-and-immigration-services?ct=t(Press+Release+9-3-20+COPY+01)).

⁵⁶ "DNA-Sample Collection from Immigration Detainees," Federal Register: The Daily Journal of the United States Government, a final rule by the U.S. Dep't of Justice (March 3, 2020), <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-22877.pdf>.

⁵⁷ See sections 102(a) and (b) of U.S. Congress, House of Representatives, New Way Forward Act, H.R.5383, 116th Cong., 1st sess., introduced December 10, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/5383/text>.

⁵⁸ 8 U.S.C. § 1252(c) authorizes state local law enforcement agencies to arrest undocumented individuals who were previously deported due to felony convictions.

⁵⁹ 8 U.S.C. § 1644 prevents any limits on communications from state and local agencies to the federal government regarding the immigration status of non-citizens

⁶⁰ Section 642 of the Illegal Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1373, also prevents limitations on communications between state and local agencies to the federal government regarding the immigration status of non-citizens.

⁶¹ See U.S. Congress, House of Representatives, New Way Forward Act, H.R.5383, 116th Cong., 1st sess., introduced December 10, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/5383/text>.