



Explainer

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IMMIGRANT
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Prejudicial and Unreliable

THE ROLE OF POLICE REPORTS IN U.S. IMMIGRATION DETENTION & DEPORTATION DECISIONS

The U.S. immigration system routinely detains and deports immigrants on the basis of an arrest or criminal conviction — tearing them away from livelihood, family and community. The weighty decision of who to detain and deport often turns on the contents of a single document: a police report.

NIJC analyzed the use of police reports in immigration decision-making, surveying our own legal teams and other legal service providers throughout the country. This analysis confirmed that, despite the criminal legal system’s recognition that police reports are prejudicial and unreliable, immigration decision-makers routinely operate on the assumption that they are accurate — with life altering consequences.

Police reports are utilized widely in immigration decision-making. They are inherently unreliable and prejudicial documents because:

- ☞ Police officers usually lack first-hand knowledge of an incident when writing a report, basing their notes on statements from bystanders and alleged witnesses. That is why police reports are considered “hearsay” evidence in the criminal legal system.
- ☞ Police officers do not fact check or identify corroborating evidence for the information alleged in a police report.
- ☞ Police reports are written in an adversarial system where police and prosecutors work together against the accused.
- ☞ Congress and nearly every federal circuit court of appeals have recognized that police reports are inherently unreliable.

Despite this inherent unreliability, immigration judges and Department of Homeland Security (DHS) officers regularly rely on police reports when making discretionary adjudications and decisions, including whether to engage in an enforcement action, whether or how long to detain someone, and whether to grant asylum or other relief from removal.

The reliance on police reports in the immigration system disproportionately harms Black and Brown immigrants. Black and Brown people are disproportionately stopped, arrested, and racially profiled in the criminal legal system. They are, therefore, more likely to have prior police reports – including those connected with baseless arrests. Implicit racial biases also affect police’s interpretation of events during interactions. These racial biases infect police reports, which are then used in the immigration system to make detention and deportation decisions.

The use of police reports in the immigration system prejudices and harms immigrants in four primary ways:

1. Immigration decision-makers overwhelmingly believe the contents of police reports are true, even though police reports are widely acknowledged to be unreliable within the criminal legal system. This belief persists even in cases where no charges are ever filed or the case was dismissed, or where the police report is obviously unreliable because of language barriers or other insufficiencies.
2. Immigration decision-makers give extraordinary, nearly irrefutable, weight to police reports. Even when advocates provide evidence refuting allegations in a police report, immigration decision-makers take the information in a police report to be the truth. This dynamic is particularly prejudicial in bond hearings, where immigrants seeking freedom bear the burden of proving that they are not dangers to their communities.
3. Immigration decision-makers regularly use police reports from unresolved, ongoing criminal cases or from cases where the arrest did not result in a conviction. Immigration officers and judges often rely on police reports for unresolved charges when making custody determinations, frequently putting immigrants in the position of being unable to refute those same allegations in their criminal proceedings because they are stuck in immigration detention. Additionally, immigration decision-makers often rely on police reports even when the criminal system does not have sufficient evidence to bring or finish a case.
4. Immigration decision-makers make adverse inferences against immigrants who do not submit police reports in their case filings. This practice is particularly harmful for unrepresented individuals for whom the process of obtaining a police report may be cumbersome, if not impossible.

When NIJC client Samuel was arrested, the police officer who drafted the police report could not speak Spanish to communicate with the alleged victim and witnesses. Instead, he used Google Translate and a bilingual minor who lived nearby to translate. Despite knowing this, the immigration judge provided great weight to this unreliable police report. This unjust reliance on police reports significantly impacted Samuel's request for asylum.

Luis spent months in immigration detention because the immigration judge at his bond hearing refused to believe that the allegations in the police report from a recent arrest were false. The police report falsely alleged Luis to be driving under the influence, when in fact he was a passenger. Luis's unnecessary detention separated him from his wife and daughter.



NIJC urges the Department of Justice (DOJ) and DHS to take immediate steps to mitigate the harms caused by reliance on police reports in immigration decision making.

DOJ & DHS should:

- Mandate immediate training for immigration judges and all DHS officials regarding the prejudicial and unreliable nature of police reports.
- Establish a presumption of unreliability for police reports that can only be overcome with additional, corroborating evidence.
- Establish a right to refute any police report through submission of a written affidavit and/or live testimony, and require immigration decision-makers to engage with this refutation in their decision.
- End or strongly discourage use of police reports from ongoing, pending criminal cases.
- End or strongly discourage use of police reports from criminal cases where there was no conviction.
- End or strongly discourage use of police reports as impeachment evidence by immigration judges.
- End or strongly discourage adverse inferences against a person facing detention or deportation based on their inability or failure to produce a police report

The overuse of inherently unreliable and prejudicial police reports throughout the immigration system violates fundamental notions of due process, egregiously prejudices immigrants, and exacerbates racial bias. NIJC urges the Biden administration to take immediate steps to mitigate these harms.

Read NIJC's full policy brief: immigrantjustice.org/PrejudicialandUnreliable

