

Another Duct in the Pipeline:

How the Deportation Machine is Fueled by Local Law Enforcement Agencies

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In the midst of calls for police reform, it is important to call out troubling practices that state, county, and local law enforcement agencies (LEAs) have adopted in our communities. In many states, Utah included, LEAs play an active role in the federal government's inhumane and unjust immigration detention and deportation system. Despite the [allocation of billions of dollars](#) by Congress every year to federal immigration agencies tasked with enforcing federal law, LEAs spend local tax dollars to assist U.S. Immigration and Customs Enforcement (ICE) in carrying out federal immigration enforcement throughout Utah on a daily basis. Through and because of these partnerships, deep rooted and well-founded distrust exists between Utah's communities of immigrants and refugees and law enforcement agencies.

According to recent numbers [published](#) by the American Immigration Council, "Roughly 1 in 11 [Utahns] was born in another country, and a similar proportion of residents are native born Americans with at least one immigrant parent." For Utahns who are not U.S. citizens (and some who are), contact with law enforcement can put them at significant risk of detention and/or deportation. The entanglements between Utah's LEAs and ICE are deeply entwined in every aspect of the criminal legal system. Below are just a few of the few ways by which local LEAs spend local tax dollars to further the federal government's immigration detention and deportation system. Of note, federal immigration law is civil, not criminal, in nature. Absent a few exceptions, violating provisions of the Immigration and Nationality Act does not mean that a crime has been committed. As such, individuals in immigration custody are detained for violating civil provisions of federal law. Examples of other federal agencies that administer federal civil law include the Consumer Protection Division, the Department of Agriculture, and the Social Security Administration.

Sharing of Booking Information with DHS: Under ICE's nationwide Secure Communities program, anyone arrested and booked at a jail in Utah has contact with the federal government's deportation-system beginning the moment they are booked into police custody. Importantly, being booked does not mean that an individual has committed a crime, or even that they will be charged with one. When a person is booked at a jail, Utah's LEAs input biographical information into databases shared with the Department of Homeland Security. Some Utah LEAs also ask individuals to indicate if they are citizens of another country. Without having to ever step away from the comfort of their offices, federal officers are able to instantly learn who is in the custody of local LEAs through these databases and may begin the immigration detention and deportation process against booked individuals.

Detainers: After receiving information from LEAs through national databases, ICE routinely requests LEAs to continue to detain individuals in local custody by issuing what are commonly known as ICE detainers. (Detainers are sometimes referred to as "ICE holds"). An ICE detainer is a "courtesy request" that a County or State¹ continue to hold an individual in its custody for up to 48 hours *after*

¹ In Utah, minors in Juvenile Justice Services' custody have also been reported to be held pursuant to detainers.

the individual would otherwise be released so that ICE can decide if it wishes to detain this individual for immigration purposes. ICE bases detainers on the agency's belief that an individual *may* be in violation of immigration law. Critically, throughout this entire process, the individual is physically and legally in the LEA's custody.

Detainers often take effect after an individual who is the subject of a detainer posts bail, is ordered released by a judge because they are not a danger to the community or a flight risk, or law enforcement decides to not pursue criminal charges. Instead of being released, an individual subject to a detainer stays in state or county custody for up to 48 hours while ICE decides whether to assume custody. By their own terms, and legally speaking, detainers are not mandatory but are merely requests. Counties may decline to honor these detainers and release an individual when local custody ends. In fact, for multiple reasons, an increasing number of LEAs across the nation are declining to honor detainers. One significant reason for concern is that databases ICE relies upon have notoriously flawed information. Due to these flaws, ICE continually flags many US citizens, permanent residents, refugees, asylees, TPS holders, DACA recipients, and individuals with valid work or student visas for detainers.

If ICE detainers sound unconstitutional, it's because courts are increasingly finding they are. Numerous courts throughout the country are ruling that detainers represent an unconstitutional illegal arrest and detention. Bottom line: states that do not have the legal authority to do so under state law cannot arrest individuals on behalf of ICE so that the federal government can enforce civil immigration law. Indeed, the Fourth Amendment (the right against unreasonable searches and seizures) and the Tenth Amendment (the federal government cannot compel states to enforce federal statutes) protect against these types of situations. As a result of honoring detainers, several counties throughout the country have been ordered to pay [tens of thousands of dollars](#) to settle claims for illegal arrests and detention on behalf of ICE. In 2018, for example, Maricopa County, Arizona settled one detainer case against one individual for over \$80,000 in attorneys' fees and damages to the individual. In November 2019, the City of Grand Rapids, Michigan settled a claim for unlawful detention for \$190,000.

Continuing to hold people on detainers also raises Fifth Amendment (Due Process) and Sixth Amendment (the right to speedy trial and right to counsel) concerns. Individuals who are transferred into ICE custody are often unable to resolve any pending criminal cases. They are not able to exercise their right to trial nor consult with criminal defense attorneys regarding the merits of any charges they face—vital protections in the criminal legal system that are hallmarks of the Constitution.

Yet, despite the billions allocated to ICE by Congress, local LEAs continue to lend and risk their resources and assume all the liability to help ICE perform its duties. LEAs continue to hold individuals in criminal custody, typically justifying doing so as a "courtesy" to ICE. LEAs are never reimbursed for resources spent in housing individuals subject to detainers, defending lawsuits against detainers, or to settle with individuals illegally arrested. The risk falls fully on counties and states while ICE and the federal government walk away unscathed.

SCAAP Funding: The Bureau of Justice Assistance (BJA) within the U.S. Department of Justice administers the State Criminal Alien Assistance Program (SCAAP). Through this program, the Federal government may reimburse states for a portion of costs incurred in incarcerating individuals in the criminal justice system who are undocumented and meet a specific criterion. Notably, this program is separate from any practice of honoring ICE detainers as it reimburses only some local resources spent on criminal custody. Because this funding is limited to the amount appropriated by Congress, local jurisdictions only receive a portion of the funding they would otherwise be eligible for as

amounts distributed are prorated based on availability of funding and other factors. Recently, BJA has required that to be eligible for reimbursement under SCAAP, LEAs must collect and report to the federal government individuals' home and work addresses and anticipated release date if known within four days of the individual being taken into custody by submitting what is known as an IAQ (Immigration Alien Query). If an agency fails to submit the IAQ, they will not be eligible to later seek SCAAP reimbursement. Although it publicly requires such information be collected, the BJA itself in documents provided to the public has indicated that failure to provide this information may not bar LEAs from receiving SCAAP funding.

Byrne Justice Assistance Grant (JAG): The BJA also administers another program, Byrne Justice Assistance Grant (commonly known as JAG grant) which provides state and local jurisdictions with funding for law enforcement officials, programs, and equipment. In FY 2017, as conditions for applying for these grants, LEAs agreed to abide by a series of requirements that were aimed to permit ICE to rely on local LEAs to identify, target, and detain individuals that may have violated immigration conditions. To date, the Third, First, Seventh, and Ninth Circuit Court of Appeals and the District Court of Colorado have held that these conditions are unconstitutional because the DOJ exceeded its power to administer a *criminal* law enforcement program by attaching conditions intended to carry out federal *civil* law. For FY 2020, the DOJ changed its conditions and now requires localities to provide information regarding ways LEAs collaborate with ICE in order to apply for funding.

The BJA's request for personal information about undocumented individuals can have serious negative impacts on immigrant communities. For example, consider the case of a victim of domestic violence who is undocumented. She can report her partner to the police. But, if he is arrested and the police file for SCAAP reimbursement, she runs a risk that ICE, in looking for him, will arrive at her home and take her and other family members into custody—despite being eligible for forms of protection against deportation. These requirements not only devote LEA resources to enforcing federal immigration law, they also disincentivize victims from contacting police. It is important to remember that the federal government must follow the constitution and cannot abuse its various criminal justice programs to coerce LEAs to carry out federal civil policy.

By participating in immigration enforcement activities and collaborating with ICE and other federal agencies, states, counties, and cities spend tens of thousands of local tax dollars every year on federal immigration enforcement. Their participation in the inhumane and unconstitutional detention and deportation process comes at a heavy cost. These partnerships between local LEAs and ICE continue to fuel distrust between police and the residents they serve and protect. Trust cannot be earned until law enforcement takes step to address the roots of distrust.

Next Steps

Later this year the ACLU of Utah will release a detailed report describing how the State of Utah and specific counties and law enforcement agencies are actively supporting our nation's inhumane immigration detention and deportation system. We are obtaining information for this report through public information requests to law enforcement and government agencies. This report will also include a series of policy recommendations and stories of community members impacted by these policies.