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The Cost of State & Local Involvement in Immigration Enforcement

INTRODUCTION

In recent years, the federal government has increasingly sought to involve state and local governments in immigration enforcement. There are a number of ways that Immigration and Customs Enforcement (ICE) recruits state and local law enforcement officials to assist in enforcing federal immigration laws. But it is important to remember that—with the notable exception of Secure Communities—all of these programs are completely voluntary. State and local governments are under no obligation to partner or collaborate with ICE. Often, participating in these programs may not be in law enforcement's best interest. Under many of these programs, the federal government does *not* reimburse localities for the time and money spent enforcing immigration laws. Even under federal grant programs, the payment amount is less—often considerably less—than the full cost of collaboration. In an age of increasingly tight budgets, many state and local governments find that they cannot afford to spend extra resources on tasks that are the federal government's responsibility.

Furthermore, there are additional collateral costs and side effects that can have adverse consequences for the community. Aggressive enforcement of federal immigration law can lead to racial profiling and a loss of trust between local immigrant communities and the police force, making it harder for officers to do their jobs and compromising public safety. Additionally, the detention and deportation of non-criminal non-citizens takes workers out of their jobs and communities and can have devastating effects for the local economy. Furthermore, even the temporary detention of individuals can tear families apart, putting a strain on social and child welfare programs. Our Catholic faith calls for respecting every human being, regardless of immigration status, and acknowledging the dignity of people's efforts to live their lives without the constant fear that interaction with local police will result in immigration enforcement. Put simply, the fiscal, economic, and human costs of police collaboration with ICE far exceed the benefits.

The methods of cooperation listed below are just some of the many ways that state and local governments may be involved in federal immigration enforcement. The ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) Initiative, for example, is a collection of thirteen different programs—many of which are listed here—in which state and local law enforcement agencies collaborate with ICE in immigration enforcement.

Immigration Detainers

- **What are they?**
 - An ICE immigration detainer (often called an “ICE hold”) is a notice that the Department of Homeland Security issues to state and local law enforcement agencies to inform them that ICE is interested in an individual that they have in custody. By issuing a detainer, ICE requests that the law enforcement agency notify ICE before releasing the individual and maintain custody for up to an additional 48 hours (excluding weekends and holidays) in order to allow ICE to assume custody. The fact that ICE issues a detainer does not mean that the individual is actually a non-citizen subject to deportation, or even that ICE has probable cause to think so.
- **What is the cost to state and local law enforcement agencies?**
 - The total cost of immigration detainers in the United States is unknown because they vary considerably across jurisdiction. However, the cost of compliance can be quite high. The state of California, for example, spends approximately \$65 million tax dollars each year detaining individuals for ICE.
- **Does the federal government reimburse state and local governments for the cost of holding someone under an ICE detainer?**
 - No, ICE does *not* reimburse the cost of holding individuals under a detainer. (Renting jail space to ICE is not the same as detaining someone on an ICE detainer.) Additionally, ICE is not liable and will not indemnify localities for any liability incurred while housing these detainees. Several counties have faced legal action as a result of rights violations that occurred while detaining individuals for ICE. The Sheriff’s Office in Jefferson County, Colorado recently paid a \$40,000 settlement to a man who was wrongfully imprisoned due to an ICE detainer.
- **Are state and local law enforcement agencies required to participate?**
 - No, ICE detainers are *not* criminal warrants; they are merely *voluntary requests*. Law enforcement agencies can choose whether to comply.
- **Where can I find more information?**
 - <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm>

Secure Communities (S-Comm)

- **What is it?**
 - Secure Communities is an information sharing program that first started in 2008 and became fully implemented nationwide in 2013. For decades, local jurisdictions have shared the fingerprints of individuals who are arrested or booked into custody with the FBI in order to check for a criminal history. Under S-Comm, this information is also shared with ICE. ICE then checks this information against a federal immigration database to determine if the individual is unlawfully present in the United States or otherwise removable. If so, ICE may ask the local jail to hold the individual to allow ICE to pick him/her up.
- **What is the cost to state and local law enforcement agencies?**
 - The participation costs imposed on law enforcement are negligible, though many localities were required to purchase digital electronic scanners and other new equipment at their own expense when the program was first implemented. There are also social costs, like stifling community cooperation with law enforcement due to fear of ICE involvement. For these reasons, many jurisdictions have unsuccessfully tried to opt out of the program.
- **Does the federal government reimburse state/local governments for the cost of participating?**
 - No.
- **Are state /local law enforcement agencies required to participate?**
 - Yes, participation is mandatory. However, S-Comm is only an *information sharing* program, and does not require state and local agencies to honor the resulting ICE detainees or otherwise enforce immigration laws.
- **Where can I find more information?**
 - http://www.ice.gov/secure_communities/

Criminal Alien Program (CAP)

- **What is it?**
 - The Criminal Alien Program is an information sharing program that allows ICE officials to identify noncitizens who are being held in jails and prisons in the United States in order to place detainers on them and, ultimately, initiate deportation proceedings. ICE identifies these individuals by screening lists the jails provide of the biographical information of inmates (place of birth, nationality, etc.) and conducting interviews in the jails. In some cases, ICE agents may directly access jail records to compare them against immigration databases. Some prisons and jails even allow ICE agents a permanent presence inside their facilities. CAP is currently active in every state and federal prison and more than 300 local jails throughout the country. Approximately half of all removal proceedings initiated by ICE are a result of the CAP program.
- **What is the cost to state and local law enforcement agencies?**
 - Because very little information about CAP is available to the public and the exact nature of CAP cooperation varies considerably by jurisdiction, the costs of the program are difficult to estimate. However, it is important to remember that ICE *does not in any way* compensate law enforcement for the time and effort state and local officials spend assisting ICE under CAP.
- **Does the federal government reimburse state and local governments for the cost of participating?**
 - No.
- **Are state and local law enforcement agencies required to participate?**
 - No, the program is *completely voluntary*. ICE agents administering CAP are allowed access to jail facilities and records solely with the consent and cooperation of state and local officials.
- **Where can I find more information?**
 - <http://www.ice.gov/criminal-alien-program/>

287(g) Program

- **What is it?**
 - Technically called the Delegation of Immigration Authority Program, this program stems from Section 287(g) of the Immigration and Nationality Act. It essentially allows local law enforcement officers to be “deputized” by ICE to enforce federal immigration law. Following a signed agreement between a state or local agency and ICE, local law enforcement officers attend a four-week training and certification program under the supervision of ICE officers. Afterward, those local officers are authorized to identify, process, charge, and detain immigration offenders they encounter during the course of their normal law enforcement activity within the jail or detention facility. To date, more than 1,300 state and local officers have been certified under 287(g).
- **What is the cost to state and local law enforcement agencies?**
 - The costs vary by jurisdiction, but they can be prohibitive. The Brookings Institute found that 287(g) participation cost Prince William County, Virginia \$6.4 million in the first year and would cost \$26 million over five years. The county had to raise property taxes and draw from its “rainy day” fund in order to make up the costs.
- **Does the federal government reimburse state and local governments for the cost of participating?**
 - No, ICE does *not* reimburse the agency for personnel expenses such as salaries, benefits, training, or time certified officers spend enforcing federal immigration laws. Nor does ICE cover related administrative supplies or security equipment.
- **Are state and local law enforcement agencies required to participate?**
 - No, the program is *completely voluntary*. State and local law enforcement entities *may* choose to enter into a 287(g) partnership agreement with ICE, but they are not obligated to do so. A list of the 37 jurisdictions in 18 states that currently participate in the 287(g) program is available [here](#).
- **Where can I find more information?**
 - <http://www.ice.gov/287g/>

State and Local Detention Contracts with ICE

- **What are they?**
 - State and local governments can enter into contracts, formally called Inter-governmental Service Agreements (IGSAs), with ICE to house ICE detainees in state and local detention facilities. Essentially, ICE “rents” space in a state or locally-operated detention facility for immigration detainees. Officially, these individuals remain in ICE custody, but are physically held by the state or local government, often in the same facilities that house criminal inmates.
- **What is the cost to state and local law enforcement agencies?**
 - In some cases, detention contracts can be a source of revenue for state and local governments. However, detention facilities often end up losing money when the actual cost of housing immigration detainees ends up exceeding the contract price. It is also an insecure source of revenue, as ICE may choose not to renew the contract in the future. For example, the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island has struggled to remain fiscally solvent since ICE removed 153 immigrant detainees and severed its contract in 2008. The jail has lost millions of dollars in recent years.
- **Does the federal government reimburse state and local governments for the cost of participating?**
 - Yes, although the exact reimbursement rate per detainee per day depends upon the terms of the individual contract between the local government and ICE. Often, the actual costs exceed the reimbursement amount and can end up putting a fiscal strain on the local government.
- **Are state and local law enforcement agencies required to participate?**
 - No, Entering into any IGSA with ICE is *completely voluntary*.

State Criminal Alien Assistance Program (SCAAP)

- **What is it?**
 - SCAAP is a federal grant program run by the Bureau of Justice Assistance (BJA) under the U.S. Department of Justice (DOJ). It is not administered by the Department of Homeland Security or ICE, the government entities responsible for immigration enforcement. SCAAP provides federal payments to states and localities that house certain undocumented immigrant prisoners serving time for state or local criminal convictions. The program pays for *a portion of* correctional officer salary costs for incarcerating unauthorized immigrants who have at least one felony or two misdemeanor convictions for violations of state or local law and who were incarcerated for at least four consecutive days during the reporting period.
- **What is the cost to state and local law enforcement agencies?**
 - SCAAP does not fully compensate law enforcement agencies for the costs. It covers only a percentage of law enforcement personnel costs for certain immigrant prisoners and does not reimburse for other incarceration expenses such as room, board, or medical care. Contrary to popular belief, *the costs associated with Secure Communities, CAP, and immigration detainers are not covered by SCAAP.*
- **Do the grant payments cover the full costs of incarceration?**
 - No, SCAAP funding has never fully covered the costs submitted by states or localities. In FY2011, the SCAAP reimbursement rate was approximately 23 percent of the total amount submitted by state and local governments. In FY2012, that rate dropped to approximately 18 percent. The reimbursement rate has consistently declined over the past several years, and the Department of Justice has proposed eliminating SCAAP funding altogether. The program faces an uncertain future.
- **Are state and local law enforcement agencies required to participate?**
 - No, the decision to apply for a SCAAP award is voluntary.
- **Where can I find more information?**
 - General information: https://www.bja.gov/ProgramDetails.aspx?Program_ID=86
 - Click [here](#) to see if your state or local government received SCAAP funding in 2013.

Federal Funding to Border States and Localities

Northern Border Prosecution Initiative (NBPI) & Southwest Border Prosecution Initiative (SWBPI)

- **What are they?**
 - The Northern Border Prosecution Initiative and Southwest Border Prosecution Initiative are federal grant programs under the DOJ's Bureau of Justice Assistance. They provide funds to eligible border-state governments that take over prosecuting immigration-related criminal cases (such as drug and human smuggling cases) under state criminal statutes after the federal government has initiated but declined to move forward with federal prosecution.

- **Which states are eligible and participate in the program?**
 - SWBPI covers Arizona, California, New Mexico, and Texas. Either the state or local governments from each of these states participated in the program in 2013.
 - NBPI covers 14 states (Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin). However, only the state government of Alaska, one county in Michigan, and three counties in New York participated and received grants in 2013.

- **Do the payments cover the full cost of prosecution and detention?**
 - No. Both programs grant funds on a uniform payment-per-case basis, but the amount granted does not cover the full cost associated with a given case.

- **Are state and local law enforcement agencies required to participate?**
 - No, the programs are *completely voluntary*.

- **Where can I find more information?**
 - SWBPI: https://www.bja.gov/ProgramDetails.aspx?Program_ID=81
 - NBPI: https://www.bja.gov/ProgramDetails.aspx?Program_ID=71

Operation Stonegarden

- **What is it?**
 - Operation Stonegarden is a federal grant program run by the Federal Emergency Management Agency (FEMA). It provides funds to eligible border-state law enforcement agencies that support Customs and Border Protection in patrolling the border. The funds can be used to pay for the hiring of additional law enforcement officials, overtime pay, travel and lodging, and the equipment necessary for the deployment of state and local personnel along the border.
- **Which states are eligible and participate in the program?**
 - The states bordering Canada (including Alaska), states bordering Mexico, and states and territories with international water borders.
- **Do the payments cover the full cost of participation?**
 - Not necessarily. The total amount of funding available is determined by the Department of Homeland Security (\$55 million in 2013). Funds are then allocated according to a risk-based prioritization formula that takes into account the threat level, vulnerability, miles of border, and other factors.
- **Are state and local law enforcement agencies required to participate?**
 - No, the program is voluntary.
- **Where can I find more information?**
 - <http://www.fema.gov/media-library/assets/documents/34384>

Conclusion

The enforcement of immigration laws should be left to the federal government and not transferred to local law enforcement authorities. The costs associated with the programs above can be a drain on state or local resources and divert scarce law enforcement funding from more effective safety and crime prevention methods that promote the common good. By eroding trust and cooperation between local law enforcement and immigrant communities, public safety is undermined. Furthermore, these programs can have devastating effects for the local economy and impose a heavy burden on social and child welfare programs.

Overall, the costs to the community for participating in federal immigration enforcement often far outweigh the benefits. CLINIC is here to support communities in approaching their state and local governments and law enforcement and advocating for positive reforms that welcome and integrate -- rather than punish -- immigrant families.

For more information and advocacy tips, please see CLINIC's [Tool Kit for Communities to Advocate Against ICE Partnerships with Local Law Enforcement Agencies](#).

This document was prepared in June 2014 by CLINIC Advocacy Intern Matthew Seamon. It is for informational purposes only and is not intended as legal advice. For questions, please contact State & Local Advocacy Attorney Jen Riddle at jriddle@cliniclegal.org or (301) 565-4807.