

THE ALL-IN-ONE GUIDE TO

DEFEATING ICE HOLD REQUESTS

(a.k.a. Immigration Detainers)



Credits & Acknowledgements

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HOW TO USE THIS GUIDE

This toolkit is designed to help communities prevent deportations by keeping local police separate from immigration enforcement. The essential link between police and ICE is the ICE hold request, also known as an immigration detainer. On the basis of ICE hold requests, state and local police hold people in jail longer in order to hand them over to ICE. Without police departments willing to submit to ICE hold requests, ICE would not be able to apprehend and deport so many people. Even if Secure Communities, 287(g) and the Criminal Alien Program continue to operate, they are only as effective as ICE hold requests allow them to be. The hold request is what actually allows ICE to apprehend and deport people. Several communities have succeeded in enacting policies to stop submitting to ICE hold requests, and this toolkit is designed to help other communities establish similar policies.

The Guide has 3 parts and an appendix

- ✦ **01 Staging Your Campaign Against ICE Hold Requests** is an orientation to organizing on this issue, focusing on how to identify your targets, define your goals, and build coalitions to establish a better ICE hold policy in your community. This section provides a basic framework for understanding and organizing around immigration enforcement in your community, without going into excessive detail.
- ✦ **02 The Basics on Police-ICE Collusion** provides essential information about what ICE hold requests are and how they work, an outline of the criminal justice process and how information is shared with ICE throughout, and general analysis of the effects of ICE hold requests on the criminal system. This section is important to helping you understand how ICE works with your police, so that you can develop effective strategies for countering immigration enforcement at the local level.
- ✦ **03 Into the Weeds: More Strategic Information For a Campaign to Stop Turning People over to ICE** delves into the details of issues, arguments, messages, and resources that may be important in a local campaign to stop police from holding people for ICE, including stories and case studies from ongoing campaigns. Particularly important is the complex analysis of how much ICE hold requests cost, what other laws you need to look out for, and advice about the difficult messaging of campaigns that involve criminal justice issues.
- ✦ **The Appendix** compiles a variety of sample materials, fact sheets, talking points, flyers, ICE records, and different ordinances related to ICE hold requests. Look here for templates to work from on your own campaign materials. The Appendix is available as a separate document from the National Immigration Project.

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IMMIGRATION ENFORCEMENT DEPENDS ON ICE HOLD REQUESTS



ICE Hold request = Immigration Detainer = Immigration Hold

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PART 01

STAGING YOUR CAMPAIGN

AN ORIENTATION ON HOW TO DEFEAT ICE HOLD REQUESTS



- + Why are ICE hold requests important?
- + What are your goals?
- + Who are your targets?
- + Who are your allies?
- + What are your demands?
- + Key things to think about in your campaign

WHY ARE ICE HOLD REQUESTS IMPORTANT?

We are in an era of mass deportation. The Department of Homeland Security has deported more than a million people in the last three years. With an ever-burgeoning budget and expanded information-sharing technology, Immigration and Customs Enforcement (ICE) seems to be everywhere. In particular, ICE has increasingly co-opted the criminal justice system to achieve its immigration enforcement goals. As a result, state and local police are very often the entry point into detention and deportation. That is where ICE hold requests come in.

A handful of ICE programs operate specifically to get information from state and local police about noncitizens in their custody. These programs increase ICE's ability to locate, arrest, and deport ever greater numbers of immigrants. The Criminal Alien Program (CAP), 287(g), and most recently Secure Communities (S-Comm) all operate on the same basic premise: notifying ICE when the police have taken custody of an immigrant. From there, it's much easier for ICE to detain and deport someone: ICE simply asks the local jail to hold that person for them. This request that ICE makes to the local jail is known as an "immigration detainer" or "ICE hold." Rather than releasing the person on bail or at the end of serving their sentence, the police will often continue to hold them so that ICE agents can come pick them up and take them to immigration detention.

No matter which program is involved in identifying the person (whether CAP, 287(g), S-Comm, or others), the result of that notification to ICE is usually a hold request from ICE back to the jail. ICE hold requests, therefore, are the common link from local police to the deportation pipeline. ICE places hundreds of thousands of hold requests on immigrants across the country every year.



An ICE hold is a request to a jail regarding someone in custody. The request asks the jail to notify ICE when the person will be released, and to hold the person for an extra 48 hours so that ICE has an opportunity to come get them.



This first section focuses on organizing and the basic structure of a campaign to limit ICE's power in your community: making strategic decisions about goals, targets, demands, allies, and tactics.

A campaign against ICE hold requests seeks to prevent detention and deportation by stopping local police from sending people into the immigration system. More and more people have been swept into deportation by way of local police and ICE hold requests: local police stop an immigrant and place them under arrest, and ICE then places a hold so that the police will not release the person, but instead turn them over to ICE.



But the police don't have to comply with ICE hold requests; they are free to ignore them.

To protect immigrant communities and fight deportations, we must stop police from handing people over to ICE. And that can be achieved by a local policy against submitting to ICE hold requests.

WHAT ARE YOUR GOALS?

POSSIBLE GOALS OF A CAMPAIGN TO STOP TURNING PEOPLE OVER TO ICE

Many immigrant rights proponents have been involved in campaigns to stop the deportation of someone in our community, or in favor of immigration reform in Congress. A campaign against ICE hold requests is particularly local in focus: it is a local or state decision, rather than a choice of the federal government. In most states, each police department, sheriff's department, or state police force sets its own policies, in accordance with local, state, and federal laws. In more rural areas, there may not be a municipal police force, and the primary law enforcement agency may be a county sheriff or the state police force. Each different law enforcement agency may follow different rules for how they interact with and share information with ICE. Your campaign is trying to change those relationships by building a wedge between local law enforcement and ICE.

A policy against submitting to ICE hold requests can also be progress toward many larger goals: preventing deportations, protecting immigrant communities, keeping people out of detention, keeping families together, and promoting civil and human rights of immigrants.

Here are some other more detailed objectives that might be a compelling motive of your campaign:

- + Provide a clear line between police and immigration enforcement
- + Take a stand against unjust immigration laws
- + Improve immigrant community trust and in turn better ensure public safety
- + End expenditures of local resources on federal deportation initiatives
- + Protect vulnerable populations, such as juveniles, and witnesses to and victims of crime
- + End discriminatory practices and protect the rights of immigrants in the criminal justice system



WHO ARE YOUR TARGETS?

ICE hold requests operate in police stations, local jails, and state and federal prisons. Although ICE is responsible for issuing hold requests, it is your local law enforcement who choose to submit to them or not. This is the crux of a campaign to reject ICE hold requests: local communities have power over whether they will cooperate with an ICE hold, regardless of S-Comm or other federal laws or programs.

A jail is usually the term for a city or county detention facility where people are held after arrest, while awaiting proceedings in court, or while serving shorter sentences. Jails are often, but certainly not always, managed by a Sheriff's department, and so in many cases the Sheriff will be a primary target, because he or she has power to accommodate ICE hold requests or to release individuals. A state prison is a facility where people with convictions serve longer sentences, usually those of more than one or two years. A federal prison is run by the federal government, for people who have been convicted of federal crimes, in federal courts.



Many towns have multiple jails:

- + Police station hold rooms
- + City jail
- + County jail
- + State Dept. of Corrections facility



ICE may issue a hold request on someone held in any of these facilities or seek to interview or get other information about immigrants in any of these facilities

WHO HAS POWER TO MAKE POLICY ABOUT ICE HOLD REQUESTS?

Law enforcement reports to local government.

Sheriffs are likely to be primary targets in a campaign against ICE hold requests, because they usually manage county jails. Meanwhile, most towns have a municipal police department that may also be responding to ICE hold requests.

But local government, such as the city council or county commission, can create the rules that law enforcement must follow. Also, power over the law enforcement budgets can be an important avenue for establishing new rules about ICE hold requests.

In many states, sheriffs or county law enforcement report to county-level government, such as a county executive, county commission, or board of supervisors. City police are usually accountable to town-level authorities, such as a mayor or city council.

But remember, these agencies, officers, and authorities are very different from state to state!

For detailed information about the power and authority of law enforcement and local government bodies, see the charts on page 19-20.



For possible allies, think about why you want – or need – their help, and what they bring to the table.

What is their position on the issues? Their capacity and availability? Their expertise? What influence do they have?

WHO ARE YOUR ALLIES?

Every successful ICE hold campaign is the result of a coalition effort. The broader your coalition, the more pressure you can generate to get a policy against submitting to ICE hold requests. The goal of a campaign against ICE hold requests is to get your local law enforcement to stop or limit turning people over to ICE. But different allies may frame the issues differently. Many immigrant rights groups may be focused on the goal of preventing detention and deportations. Human rights groups might call it defending human rights. Domestic violence advocates might be concerned about undermining police protection for immigrant victims.

Especially in small towns without many civic organizations, you will need grassroots power as well as support from local leaders. Below is a list of many types of organizations, professionals, and individuals who may be important figures in your campaign. Some of these groups could be valuable allies, or could be outspoken opponents.

Groups likely to be stakeholders in your campaign:

- + Immigrant Rights Organizations
- + Labor Groups
- + Human Rights Groups
- + Local Leaders or City Officials
- + Judges
- + Law Enforcement Leaders
- + Civil Rights Organizations
- + Immigration Lawyers
- + Reporters, Journalists, or Bloggers
- + Criminal Justice Advocates
- + Congregations and Faith-Based Organizations
- + District Attorney and Prosecutors

These Local Players May Be Strong Support or Strong Opposition

- + **Public Defenders** - Criminal defense attorneys are likely to have crucial access to jails, and detailed knowledge of local criminal processes and how immigrants are treated. But they may have limited capacity to engage in the campaign.
- + **City/County Attorneys** - It helps to have a local official who knows the law to influence targets. The sheriff may put more stock in legal information from a city or county attorney rather than from residents.
- + **District Attorney and Prosecutors** - Prosecutors can occasionally be allies, but can also be outspoken opponents who will use individual stories about immigrants against your campaign.
- + **Law Enforcement Unions** - Prison guard unions will staunchly oppose measures that would bring less people into jails and potentially jeopardize their jobs.
- + **Local Commissions or Boards** - Many cities have a Human Rights Commission who may take complaints and do a public investigation. Or a public safety commission may be a group of civilians who make recommendations on law enforcement policy.
- + **Directly Impacted Community Members** - Who will these policies really affect? What are their concerns? Are they prepared to share their stories? How will you make sure you are accountable to them? What will you do to encourage their leadership?
- + **Family Service Providers** - Social workers and family and child services may also have a stake in immigration enforcement and provide a unique and helpful voice.
- + **Domestic Violence Advocates** - Domestic violence advocates are also key allies with a powerful voice for victims and survivors and the need for public safety for immigrants.



WHAT ARE YOUR DEMANDS?

Your demands will depend on community concerns and political realities. Below is advice for starting to think about your specific policy asks, and more detailed suggestions and analyses are included on page 31.

We can think of fighting against ICE hold requests either in terms of limiting ICE's ability to get information that might trigger a hold request and help deport people, or in terms of limiting the effects of an ICE hold request. Both of these categories of demands are valuable, and they can work best when combined as a comprehensive rejection of ICE co-opting local police for immigration enforcement.

! WARNING !

Federal law (8 U.S.C. & 1373) prohibits local or state bodies from preventing local or state officers from communicating with ICE about an individual's immigration status. You must craft your demands carefully so as not to run afoul of this law.

Preventing ICE Access	Rejecting ICE Hold Requests
<ul style="list-style-type: none"> > Don't ask about immigration status > Don't ask about place of birth* > Don't let ICE into your jail without a warrant > Don't send criminal case information to ICE 	<ul style="list-style-type: none"> > Don't submit to ICE hold requests > Don't call ICE about release dates > Don't allow ICE hold requests to affect bail > Inform detainees if ICE has placed a hold request

* Place of birth information is a major hook for ICE to identify suspected immigrants. The fewer instances in which your county collects this information, the less likely that ICE will use it to detain and deport people.

Think about what your targets can do:

- + A Resolution (not binding, but can build momentum and community support):
 - + Santa Clara passed a resolution against participation in immigration enforcement. Advocates then pointed to this as support for their ICE holds ordinance.
- + A Local Ordinance (may be harder to enact, but also harder to change):
 - + The county legislative bodies of Santa Clara and Cook Counties passed laws that state their counties would not hold people for ICE once their criminal case was over and they were due to be released.
- + Administrative policy (may be easily amended if there is new leadership or change of opinion):
 - + The Mayor of Washington, D.C. and the Governor of Vermont passed executive orders that directed law enforcement not to ask individuals about immigration status.
 - + San Francisco Sheriff's Office and San Miguel, NM, Sheriff's Office adopted internal jail policies to limit enforcement of ICE hold requests.



Experts: Allies with technical or policy expertise in criminal justice and immigration law can be really helpful to developing your demands. If you do not have people who understand the law and enforcement systems on your team, you may end up supporting policies that don't really match your goals or don't make any real changes. Don't let your demands be compromised by technicalities of immigration law or criminal justice. If you seek more information or want help analyzing your situation, contact one of the organizations listed on page iii.

KEY THINGS TO THINK ABOUT IN YOUR CAMPAIGN

- ✦ **Collect Stories:** Sharing stories makes the problem of ICE hold requests real for policymakers. It not only helps you prove there is an ongoing problem, it helps your allies and targets envision how the proposed policy can make a difference in the lives of people in your community. We all are familiar with innumerable tragedies of the deportation system mistreating people and destroying families. And yet it can be hard to find an example of exactly the issue you are trying to capture, or perhaps more frequently, people are too afraid to come forward with their stories. The risks they may face can be substantial. And sometimes we look for the “perfect story” even if it might not reflect the realities that our communities deal with. Keep in mind the variety of sources for people who might share their stories. Ask congregations, immigration attorneys, or foreign consulates. A list of stories collected from King County, WA, is on page 30.
- ✦ **Get Good Legal Advice:** Lawyers can help you understand relevant state or federal laws that apply to ICE hold requests and police practices in your community, as well as ensure that you push for a policy that will truly meet your goals. Many lawyers think in terms of individual legal remedies for their clients, not people power, communities, or values. Nonetheless, their analytical skills and familiarity with the immigration and criminal justice systems may be indispensable in your strategizing and negotiations. If you need help with the legal issues, contact one of the organizations on page iii.
- ✦ **Tackle Criminal Justice Issues:** One of the hardest obstacles can be the tough-on-crime mindset that holds sway in America today. A campaign to reject ICE hold requests is going to involve defending people with criminal records. How are you going to talk about those people? Endemic discrimination and unfairness in the criminal justice system should be an important part of your analysis and public education. Almost certainly you will have to grapple with assumptions and accusations that letting people out of jail means letting dangerous people out on the street. How will you respond to that, and where does your coalition stand on it? There are no easy answers, but if you want help or consultation, contact one of the organizations on page iii.
- ✦ **Frame Your Goals Clearly:** Who are you trying to protect? Who will be covered under your policy? If not everyone, why not? This discussion will help you identify the values involved, the scope of your technical language, and your strategy about reaching your goal. The results of your policy will depend on how you craft it. When you are struggling against immigration enforcement in your community, there are a lot of issues, causes, and dynamics at play, which can pull your coalition in different directions. You will need unity and mutual understanding of your goals to succeed.
- ✦ **Understand the Money Trail:** In many jurisdictions, the argument that localities pay for detaining people on ICE hold requests has a lot of power. Budgets are tight, and most people agree that immigration enforcement is the federal government’s responsibility, regardless of how they want it carried out. But money is fungible and the way that detention is counted can be tricky. Local costs specifically for holding people for ICE could range from millions of dollars to just a few hundred. It is likely that collaboration with ICE enforcement is costing your local government a lot. However, coming up with documentation to prove this may be difficult and you will likely have to ask local officials to determine the costs. More in-depth information about costs, budgets, and reimbursements is on page 23.

- + **Engage with Law Enforcement:** One of the biggest challenges we face as advocates is that police see federal law enforcement, and ICE, as allies and a source for mutual assistance. Even police who do not want to be involved in immigration enforcement still routinely hold inmates for ICE. But that is a decision that you can demand they change. Local law enforcement are accountable to their own communities, not ICE, and they rely on local support to do their job. Sheriffs are often elected officials; hold them accountable. Be ready to work with law enforcement who often have very different perspectives and motives. Be careful that what you ask from them is broad enough to achieve your goals, and don't let them make meaningless changes. But your local law enforcement leaders are an important place to begin your information gathering.
- + **Prepare for Media and Public Discourse:** Develop a media strategy. This might be a determination that you want to keep the process as quiet as possible. Or it might be a plan to expose bad policies and the harmful effects that working with ICE has had. Don't forget that ICE itself has a powerful megaphone, so be ready with your responses. It can be very hard to know the specific messages or media tactics that will work in advance, but suggestions, analyses, and sample messaging advice is collected on pages 25-30.
- + **Seek Help From Those Who Have Done it Before:** We see that recurring issues come up in campaigns across the country. It is helpful to share experiences of others to show local jurisdictions that they are not alone in addressing these issues. This toolkit includes an extensive appendix with sample materials, versions of legislation, and media and messaging advice that can be a reference. For more insights or advice, contact one of the organizations found on page iii.
- + **Build a Broad Based Coalition around Unified Principles:** The more diverse and numerous your allies, the more sway you will have, and the more you can build momentum. Successful campaigns have found it particularly effective to agree upon a set of principles at the outset to rally allies around while keeping a clear focus on the objectives of your campaign.



PART 02

THE BASICS ON POLICE ICE COLLUSION

ESSENTIAL INFORMATION ABOUT IMMIGRATION AND CRIMINAL
LAW ENFORCEMENT IN YOUR COMMUNITY



- + All about ICE hold requests
- + ICE involvement in the criminal justice process
- + What are all these immigrant enforcement programs?

ALL ABOUT ICE HOLD REQUESTS

ICE increasingly relies on local law enforcement to find immigrants to deport. This is not limited to regular street patrols, but includes jail operators, probation departments, and similar municipal agencies. This makes it dangerous for immigrants, documented and undocumented, to seek police assistance or protection and frequently impedes access other basic public services. To make our communities safer, we need to sever ICE's connections to local and state agencies. Regardless of 287(g) or S-Comm, the broadest impact can come if local law enforcement stop submitting to ICE hold requests.



What is an ICE hold request?

An ICE hold is a request from ICE to the police to hold someone in jail so that ICE can come get them.



ICE hold requests are also often called immigration detainers. We call them requests to remind law enforcement that they are optional.



The police will just keep me in jail until ICE comes for me?

Holding the person is not mandatory, and it cannot last indefinitely: if ICE does not come within 48 hours of when the person otherwise would have been released, they must be let go anyway.



A few clarifications on ICE hold requests from the start

- ✦ ICE hold requests are not a public safety mechanism. They are not issued to keep people charged with or convicted of certain crimes off the street. Bail determinations by criminal court judges are the criminal justice system's mechanism for keeping people who may be a flight risk or pose a danger to public safety in jail while their case proceeds. ICE hold requests are purely a tool for ICE to more easily apprehend immigrants.
- ✦ ICE hold requests are optional for local law enforcement. Submitting to an ICE hold request is at the discretion of local law enforcement: the federal government cannot force police to detain someone for them. An ICE hold is also called a detainer, but it should not be confused with a criminal detainer. Criminal detainers, which are governed by the Interstate Agreement on Detainers, are different; they are supported by a warrant and subject to the language of the interstate agreement. ICE holds are requests, not supported by a warrant, and do not fall under the Interstate Agreement on Detainers.
- ✦ ICE hold requests are not evidence that someone is deportable. In fact, they are not even evidence that someone is not a citizen. There is no established standard of proof or probable cause requirement for issuing an ICE hold request, and they have erroneously been placed on US citizens as well as immigrants who are not deportable.

ICE regularly issues hold requests for any person booked into jail who may be potentially deportable, regardless of the booking charge. This means that, for an undocumented person who is booked for a minor offense that would normally result in just a few hours in jail, their arrest may instead lead to months of detention followed by deportation.

DETAILS ON ICE HOLD REQUESTS

In slightly more detail, a hold from ICE is a written request – NOT an order – to the criminal justice agency to notify ICE before releasing the person named on the hold. When the criminal system no longer has authority to detain that person – for example, because they were granted bail, acquitted, or finished their sentence – the hold also requests that the local jail or prison keep them in custody for an extra 48 hours (not counting weekends and federal holidays) to give ICE an opportunity to pick them up.

Hold requests are the lynchpin of ICE's programs that partner with state and local criminal law enforcement agencies: Secure Communities, 287(g), and the Criminal Alien Program (CAP). These information-sharing programs allow ICE to locate and identify noncitizens in criminal custody. The hold requests are the practical tool that enables ICE to take individuals directly from criminal custody to immigration detention.



Who can be detained on an ICE hold request?

Any immigration officer (including ICE, Border Patrol, or a 287(g) designated police officer) can lodge a hold request against a noncitizen in police custody who is potentially deportable. A U.S. citizen should not get a hold request, but ICE sometimes makes mistakes. In addition, a lawful permanent resident who lacks a conviction that would make them deportable should not be detained on an ICE hold request.

What kind of proof does ICE rely on to place a hold

Not much. ICE often uses place of birth information given by jails or in booking sheets as the basis for placing a hold request on someone. The information ICE relies on can often be inaccurate. Foreign birth, for example, does not necessarily mean someone is not a citizen. ICE has mistakenly placed hold requests on US citizens or legal permanent residents who have the right to stay. Increasingly, ICE uses fingerprint and other database information received through S-Comm to place hold requests.

Can someone get an ICE hold request if they are not in Department of Homeland Security databases?

Yes. ICE comes to many jails to question people who they suspect are immigrants. Under the Criminal Alien Program, ICE forms all kinds of agreements with jails to get access to information on the jails' inmates and privileges to interview possible noncitizens. Even someone who has no immigration record can be identified this way. Someone who has a foreign place of birth but does not appear in DHS databases will likely be interviewed by a Criminal Alien Program officer to see if they should place an ICE hold request. Someone who is not a citizen but does not have an ICE hold request, and who is able to post bail or be released quickly, may get out of jail before being identified by ICE.

Foreign place of birth is one of the primary pieces of information ICE seeks from localities in order to place hold requests. This means that all of the instances in which your local law enforcement collect place of birth information may be very important to know for your campaign.



Who has authority to issue ICE hold requests?

Under the federal regulations governing immigration detainees, all immigration officers have authority to issue detainer requests. This includes ICE agents, Border Patrol agents, or 287(g) designated officers. If Border Patrol issues a hold request, they will likely notify the ICE office, and ICE will respond when the time comes.

When does the hold request take effect?

An immigration officer may place a hold request on you at any point during your time in jail. But the hold request is only activated once the state or local law enforcement agency's custody is ended. So if you are in criminal custody after a lawful arrest, the ICE hold request doesn't mean anything until the state has no reason to hold you, such as: once you post bail, or are ordered released on your own recognizance (free until your court date); when the charges against you are dismissed; if you win your case and get ordered released; or when you complete your sentence, including if you plead to a minor offense and are sentenced to "time served." At that point, the hold request operates as further authority to detain you for an extra 48 hours, not counting weekends and federal holidays.

HOW ICE HOLD REQUESTS MIGHT APPLY TO YOU, AND WHAT YOU CAN DO IF YOU HAVE ONE

What's so bad about getting an ICE hold request if I'm already in jail?

Aside from prolonging your time in jail, ICE hold requests impact many other aspects of the criminal justice process, such as:

- ✦ The hold request keeps you in jail so that ICE may come and deport you
- ✦ If you are released while your criminal case is pending, you may end up in ICE custody and be unable to attend your next hearing in criminal court, which can result in various penalties, sometimes a felony failure to appear charge
- ✦ ICE hold requests lead some judges to set a high bail or no bail at all, possibly resulting in detention by the criminal justice system all the way through trial
- ✦ Sometimes jails refuse to accept bail payment for someone with a hold request
- ✦ Hold requests often limit access to treatment programs which could help you, and might also allow you to demonstrate rehabilitation that could give you better chances in immigration court
- ✦ An ICE hold request can prevent you from participating in work release or alternative-to-incarceration programs if you are convicted

How can I avoid getting an ICE hold?

You can refuse to answer any questions while you're in jail. You have the right to remain silent. You do not have to give your immigration status or place of birth to anyone, or sign any documents. ICE officers do not always identify themselves to you before questioning you about your immigration status, so it can be important to ask for identification from someone who questions you.

During booking, most jails will ask you your place of birth. If you can avoid answering this, it may help prevent an ICE hold. However, refusing to answer booking questions may result in a judge raising your bail amount or denying bail because you have not cooperated.

What can I do if I have an ICE hold request against me?

If you are no longer held based on criminal charges or serving a sentence, then the ICE hold request may kick in to detain you for an additional 48 hours, not counting weekends and federal holidays. Note that this section describes how criminal bail works in state systems; bail procedures and ICE hold requests are quite different in federal criminal court.

- ✦ Have your criminal lawyer check to see if you are deportable. If you are not, a lawyer can contact ICE and ask them to remove the hold request. ICE says it will pay special attention to cases where people allege that they are a lawful permanent resident or a US citizen. ICE encourages US citizens or victims of a crime who are subject to a detainer to call their hotline: (855) 448-6903.

- ✦ If you have a bail hearing and the judge or prosecutor uses an ICE hold request as evidence against you, tell the judge that the hold does not mean that you are deportable, and does not mean that you will fail to appear for trial if you are released. Give evidence of your ties to the community, such as work, family, property, or other connections.
- ✦ If you have been granted bail and have paid it, then the jail can only hold you for the 48-hour period after you have paid, not including weekends and federal holidays. Even if ICE has not come to pick you up, the jail must release you.
- ✦ In some areas, people who are transferred to ICE detention before trial have significant difficulty getting ICE to bring them back to criminal court for their hearing. Failure to appear at your criminal trial can result in a warrant for your arrest and substantial penalties. For some individuals, it may be preferable not to pay bail, and to remain in criminal custody than be transferred to ICE detention.

When can I get out of jail if ICE doesn't come?

After the 48 hour period, the hold expires. At that point:

- ✦ You have the right to be released and you can demand that the jail let you go.
- ✦ You can contact your criminal defense lawyer to let him/her know that you should be released and help you out.
- ✦ If you are not released, you can file a letter with the jail advising them that they must follow the 48-hour rule. (A sample letter is in the appendix). You can also file a grievance with the jail.
- ✦ You can petition for a state or federal writ of habeas corpus against the facility holding you to get released. Be aware that sometimes, this may just result in ICE finally coming to take you into custody. (Sometimes it is actually to your advantage to stay in criminal custody rather than immigration detention, to have more time to find an attorney or collect important evidence before you face deportation proceedings.)
- ✦ If you are held illegally after the 48 hours expire (see 8 C.F.R. § 287.7), you can sue the jail for damages for the harm resulting from your illegal imprisonment.
- ✦ If you believe your jail routinely violates the 48-hour rule, contact the National Immigration Project of the National Lawyers Guild or the local American Civil Liberties Union, or other advocates in your area who might work on this issue. For contact information, see page iii.



ICE INVOLVEMENT IN THE CRIMINAL JUSTICE PROCESS

The criminal justice process varies from state to state, and the federal criminal justice system has its own rules, procedures, and terms to describe the stages of the proceedings. Generally speaking, however, a number of common procedures apply to someone arrested for a crime.

CRIMINAL JUSTICE PROCESS

Arrest
What constitutes an arrest can be a complicated question, but you are considered to be under arrest if a reasonable person in your situation would not feel free to leave. An arrest can be made because of a warrant, or if law enforcement has probable cause to suspect you of committing a crime. Law enforcement generally has power to arrest and bring you into jail based on a warrant or probable cause. A temporary "stop" is not the same thing as an arrest, and only requires "reasonable suspicion" of a crime. A traffic stop is not, by itself, an arrest.
Booking and Charges
Once you have been arrested, the state has 24-48 hours to charge you with a specific crime, depending on the state. Law enforcement officers may decide to file criminal charges either before or after arresting you. Filing charges allows law enforcement officers to keep you in custody until further proceedings, such as preliminary hearings, arraignment, and the setting of bail.
Arraignment, Preliminary Hearings, and Bail
An arraignment is the formal presentation of charges in open criminal court, and may include an assessment of whether there is evidence to proceed with the case at all. In many jurisdictions, bail setting or other pretrial release conditions are decided at a preliminary hearing, particularly for misdemeanors. In addition, the defendant may be asked to plead guilty or not guilty at this stage, and if a guilty plea is taken, sentencing may take place as well. At arraignment or a preliminary hearing, you may be ordered released from criminal custody for any of several reasons: the charges may be dismissed, you may plead guilty but receive a suspended sentence or time served, or you may be ordered Released on Recognizance and thus free until your trial date.

ICE INVOLVEMENT

An arrest by law enforcement is the most common way for ICE to find you. The arrest brings you into the criminal justice process, where ICE gets information from police through several means. Most local police do not have authority to arrest purely for immigration purposes, but in many areas, police have merely stopped motorists and then called ICE to the roadside to interrogate and arrest the person. If the law enforcement agency has a 287(g) task force agreement, certain officers may have the power to arrest purely for civil immigration violations.
You can be booked into jail and have biographical and fingerprint information collected from you, before you are ever formally charged with a crime. This information may go to ICE, who can lodge a hold request in as little as a few hours. You may also be interviewed by ICE officers who come to the jail, and who may issue a hold request based on that interview. ICE agents may or may not identify themselves as immigration enforcement.
If you have an ICE hold against you, then even if you are ordered released by the judge, the jail will likely choose to continue to hold you for an additional 48 hours. This does not include weekends and federal holidays, and ICE may come to pick you up. Some courts set higher bail for those with ICE hold requests, or they may deny bail altogether. If you are given bail, you will be returned to jail and the ICE hold will not take effect until you pay the bail price.



CRIMINAL JUSTICE PROCESS

Pre-Trial Detention
If you are not granted bail, or are unable or unwilling to pay it, then you will remain in the jail until your trial, or until you have negotiated a plea bargain, or other resolution of your case. This may be a short time, but can last for weeks or months.
Plea or Trial
if you agree to plead guilty to the charges against you, you give up the right to a trial of the facts. A sentence, fine, or other penalty is generally part of the agreement in a plea deal. At trial, a judge or jury may determine your sentence if you are convicted.
If You Serve a Jail Sentence
Even if you plead guilty or are convicted of a crime, you may get your sentence reduced once you begin serving it. You may also qualify for work release or other alternative programs. Toward the end of your sentence, you may be released on parole, which requires regular check-ins with a parole officer, or other requirements.



ICE INVOLVEMENT

While waiting in jail to see a judge or awaiting trial, ICE agents may come to the jail to interview you about your immigration status, which may lead to a hold request. They may seek you out because of information they received via S-Comm, the Criminal Alien Program, 287(g), shared booking sheets, or other tips from agents in the jail. ICE officers or 287(g) officers may come to question you about your status.

If ICE puts a hold on you while you are still awaiting trial or serving a criminal sentence, the hold is not activated until your criminal matter is entirely completed.

Pleading guilty to, or being convicted of, a crime may make you deportable even if you have lawful immigration status. It may also prevent undocumented immigrants from getting lawful status in the future. ICE often tries to place holds early on in order to track you through the criminal justice process in case a conviction makes you subject to possible deportation.

If ICE has not already placed a hold on you by the time you are sentenced, an ICE officer in state or federal prison may identify you during your sentence.

In some states, an ICE hold makes you ineligible for work release programs, drug treatment programs, early release, or other similar programs that help individuals prepare to re-enter society. In many other regions, court practice is to deny these, even if no law specifies ineligibility.

WHAT ARE ALL THESE IMMIGRATION ENFORCEMENT PROGRAMS?

Secure Communities (S-Comm)

S-Comm involves sharing fingerprints from local jails with ICE databases. Almost all jails take the fingerprints of those they arrest and check them against national FBI databases. In the S-Comm program, the prints also get sent to ICE's civil immigration enforcement databases. If there is a match in the fingerprints, that information will be sent both to the local jail and to the ICE field office. This allows ICE to be notified every time any local police officers book into jail someone who has an immigration history of any kind. ICE can place a hold request on anyone they wish to apprehend who has been identified by the S-Comm data-sharing program. If someone does not have a fingerprint match, ICE officers may go to the jail to see if the person is undocumented or otherwise deportable. To determine if S-Comm is operating in your locality, go to:

- ✦ <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated1.pdf>.

The Criminal Alien Program (CAP)

The Criminal Alien Program operates in jails and prisons around the country. Under CAP, ICE officers regularly call or come to the jail to interview inmates who they suspect may be deportable immigrants. The jail usually forms some kind of agreement – often informal – with ICE to share all booking information with them, which may include agreements to let ICE use jail computers and access local databases. Jail officers frequently call the ICE field office if they believe they have a noncitizen suspect in the jail, and wish to do an individual check on that person's status. Additionally, CAP officers use S-Comm data and other information to identify any possible noncitizens in the jail, so they can place an ICE hold request on them. In communities with large immigrant populations, CAP officers may visit the jail every day to interview inmates, take people to immigration detention, or review jail information to find out if there are any noncitizens they have missed.

The 287(g) program

The 287(g) program involves ICE training local police to enforce immigration law and carry out certain immigration enforcement functions. In a few 287(g) programs, local police are deputized to make arrests for immigration violations while on patrol in the streets. In the majority of agreements, however, only officers inside the jail have any immigration authority. These local police officers have power to conduct immigration interviews, enter information into ICE's ENFORCE database, file ICE hold requests, and issue Notices to Appear, which summon an individual to immigration court for deportation hearings. See if your local jail or police force operates a 287(g) program:

- ✦ <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>.

What is the difference between these programs and an Immigration hold?

S-Comm is primarily an information sharing program. 287(g) and CAP also give ICE regular information about immigrants in the custody of local law enforcement.

An ICE hold request is the result of identifying someone through that information sharing. An ICE hold request is ICE's mechanism to apprehend the people identified through S-Comm and the other immigration programs. This means even if S-Comm is not yet operating in your jurisdiction, you still could be detained on an ICE hold request. Thus, rejecting ICE hold requests has the broadest impact against deportations because it targets all of these programs.

PART 03

INTO THE WEEDS

MORE STRATEGIC INFORMATION AND MATERIALS FOR A
CAMPAIGN TO REJECT A ICE HOLD REQUESTS



- + Research and data collection
- + Getting the financial aspects straight
- + Messaging and media
- + Analyzing a policy proposal
- + Selected campaigns: New York, King County, New Orleans, Santa Clara County

RESEARCH AND DATA COLLECTION

Gathering information is an essential preliminary step.

Some questions to consider include:

- + What ICE ACCESS program, if any, is operating in your community?
- + How quickly and where do ICE hold requests get lodged?
- + What authorities control the different facilities?
- + Which jail is the most common final point of custody for the local system?
- + What does detention cost your town or county?
- + What local or state laws may already constrain or require police involvement with immigration enforcement?
- + Does ICE come to take custody quickly or are people held beyond the lawful 48 hours?
- + Which possible targets may be more sympathetic to your concerns?
- + What agreements have your law enforcement made with ICE?

Selecting the right targets

Where do most people in your community get detained on an ICE hold? This can be a tricky question that is an important part of your initial analysis. In many places, the answer is the county jail, run by the Sheriff. Although ICE hold requests can be lodged against people held in police stations or city lock-ups, in many jurisdictions the majority of arrestees who face trial or serve a sentence will end up at the county facility before any transfer to ICE.

This question is critical because it means that the city council, or city government, may not control policy over the jail, and the targets must be county-level officials. In contrast, some cities do run their own jail, independent of county facilities. Whether county authorities control city-level facilities, or whether city policies can affect county operations, may vary considerably from place to place. This authority is an essential question for initial research, because it will define your targets and direct your overall strategy.

Two Step Analysis:

- + Where do most arrestees end up before they are released?
- + Who controls that facility?

- + Example: in Seattle, which is the seat of King County, WA, there is no city jail, and people arrested by city police in Seattle are held at King County Jail. The King County Sheriff will have power over releasing people from Seattle to ICE. However, the city of Auburn, which is also in King County, has its own city jail, and individuals arrested by city police will be held subject to the policies of the city council, not the county council. So residents of Auburn could pass a city ordinance refusing to comply with ICE hold requests, and this ordinance would govern their own jail, but not the King County jail in neighboring Seattle. Residents of Seattle, to have much impact on ICE hold requests, must seek policy that governs the Sheriff, at the county level.
- + Example: The city of Boston is somewhat like Seattle, in that individuals arrested by the Boston Police will be detained at the Nashua Street Jail, which is a Suffolk County facility located in Boston. If they are convicted and serve a sentence of less than two and half years, they will (in most cases) be held in South Bay House of Corrections, also a Suffolk County facility. Boston City Council, therefore, does not manage the jails that will make the majority of decisions about ICE hold requests for Boston residents. And although Suffolk County has a Sheriff who runs the county detention facilities, there are no county government or county-level legislative bodies in Massachusetts. Residents of Boston should therefore seek an administrative rule from the Sheriff about ICE hold requests, or pursue state-level legislation, if they want to affect the majority of decisions on compliance with ICE hold requests.

Who has the power to make policy about ICE hold requests at the city level?

Law enforcement reports to local government. Most towns have a municipal police department that is accountable to a governing body or authority, a mayor or city council, for example. It is often these governing bodies that create the rules that law enforcement must follow. In addition, the city government will also control the police budget, which can be an important wedge. But remember, every jurisdiction's structure is different: the chart below examines common authorities and powers of city government and law enforcement.



WARNING

REMEMBER these structures can be different in different places!

INFORMATION ABOUT CITY AUTHORITIES

	Police Chief	Mayor	City Council
TYPE OF POWER	<ul style="list-style-type: none"> Police can make arrests, search, and detain people Chief is the head of city police Authority over police practices, training, and protocol Police usually manage the city jail or hold rooms, where people would be held during temporary detention after arrest 	<ul style="list-style-type: none"> Mayor is generally in charge of running a town or city Usually manages local budgets and oversees city agencies May have managerial authority to tell police or jails what to do Some towns have a City Manager, which is similar to a Mayor 	<ul style="list-style-type: none"> City Council is a group of officials with power to pass local laws, often called ordinances May also conduct oversight hearings of the jail or police Likely has a subcommittee with specific focus on police, public safety, or immigration issues In some cities has power to appoint the mayor or city manager
JURISDICTION	<ul style="list-style-type: none"> Highest authority for the local (city) police department No jurisdiction over neighboring towns May detain people after arrest or before trial 	<ul style="list-style-type: none"> Mayor is the chief executive of a town or city, like the President, but on a local level Usually has power to pass executive orders Does not have authority over other towns 	<ul style="list-style-type: none"> City Council is usually the legislative branch of city government and can pass ordinances governing the city and city agencies Generally does not have power to override county or state laws
ELECTED OR APPOINTED	<ul style="list-style-type: none"> Police Chiefs are usually an appointed position or reached by promotion 	<ul style="list-style-type: none"> Usually elected by residents of the city, but may be appointed by a city council 	<ul style="list-style-type: none"> Council Members may be elected at large or based on wards or districts

These agencies, officers, and authorities vary significantly from state to state

Who has the power to make policy about ICE hold requests at the county level?

Sheriffs are likely to be primary targets in a campaign against ICE hold requests, because they usually manage county jails. Sheriffs or county law enforcement often report to county-level government, such as a county executive, or a county commission or board of supervisors. Power over the sheriff's budget can be an important avenue for establishing new rules about ICE hold requests, if an independent rule is hard to obtain. This chart examines common figures in county-level governance and law enforcement.



WARNING

REMEMBER these structures can be different in different places!

INFORMATION ABOUT COUNTY AUTHORITIES

	Sheriff	County Executive	County Council
TYPE OF POWER	<ul style="list-style-type: none"> › Sheriff often manages county or regional jails › May have custody of both pre-trial inmates and those serving fairly short sentences › Most Sheriffs and Sheriff Deputies have arrest and enforcement powers, but some only run jails and don't have patrols 	<ul style="list-style-type: none"> › Could have many different names › Likely controls county budget or oversees county-wide agencies › May have power to make a county-wide executive order › Doesn't exist in many states 	<ul style="list-style-type: none"> › A legislative body with power to write county-wide laws and pass budgets › Can call meetings and oversight hearings or demand information from law enforcement › Some states have County Boards, which are a similar law-making body of elected officials
JURISDICTION	<ul style="list-style-type: none"> › Sheriffs are usually the county-wide law enforcement and jail authority › Usually have power to make arrests and detain people throughout the county 	<ul style="list-style-type: none"> › Governs the whole county › May be the primary local executive authority for small towns without their own council or mayor 	<ul style="list-style-type: none"> › A County Commission/Board/Council passes county agency budgets and other county laws and regulations › Generally a county law cannot be overruled by a city-level law
ELECTED OR APPOINTED	<ul style="list-style-type: none"> › Sheriffs are often elected by the people of the county, but not always 	<ul style="list-style-type: none"> › May be elected or appointed 	<ul style="list-style-type: none"> › Usually elected by all the residents of the county

Remember your secondary targets - those who may have indirect control over your targets. They can weigh in with other decision makers, investigate the issue or request information, call for public hearings, be important media resources, or otherwise help call attention to problems.

Knowing how your police actually work:

In addition to knowing the city and county jail structures and procedures, another important aspect in organizing against deportations is to understand how and where local law enforcement and ICE share information, and how and when both police and ICE respond to that information. Detailed understanding of the criminal process and local practices with regard to ICE will help you identify proper goals and explain the issues to local leaders.

For example, in Massachusetts and Connecticut, probation departments interview people about their case, sometimes even prior to arraignment or a bail hearing, and if the person is not a citizen, the probation department reports them to ICE. (Concentrated advocacy in CT achieved a change in this practice.) Like S-Comm and other information sharing programs, the result of that communication from the probation department would in most cases be an ICE hold, which if your campaign is successful, could be disregarded by the local Sheriff. But it is good to be aware of all of the junctures where ICE finds out about people in your community. Moreover, the better your understanding of policing and immigration enforcement in your community, the more prepared you will be to educate and inform policy makers, and the more they will take you seriously.

Conflicting State and Federal Laws

Under the Tenth Amendment to the Constitution, the federal government cannot compel state or local law enforcement to enforce federal immigration laws or do the federal government's work. Of course, states and localities can choose to help, and the federal government can create incentives for it. But this means that under the Tenth Amendment, the federal government cannot require local and state law enforcement to hold people for ICE. Choosing to detain people on ICE hold requests is a local decision. Nonetheless, some state and federal laws do constrain the possible policies that local communities might want.

Federal law: 8 U.S.C. § 1373

This federal statute prohibits a state or local government entity from enacting a policy that prohibits or restricts sharing information with ICE about a person's immigration status. That is, a city or state cannot pass a law prohibiting police from talking to ICE about someone's immigration status.

8 U.S.C. § 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In General

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional Authority of Government Entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- ✦ Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- ✦ Maintaining such information.
- ✦ Exchanging such information with any other Federal, State, or local government entity.

If you look carefully, you can see that ordinances passed against ICE holds in Chicago and Santa Clara County do not conflict with this rule. To reject ICE hold requests is not to restrict sharing of information. Not notifying ICE of someone's release date or conviction limits sharing of criminal history information, not immigration status.

In addition, many jurisdictions have passed policies forbidding law enforcement from asking anyone about their immigration status. That way police, in theory, have no information to report anyway, and the community does not run afoul of this statute. However, these policies often overlook the implications of collecting place-of-birth information, which ICE uses to target its enforcement efforts.

State Laws

States cannot be compelled by the federal government to help enforce immigration laws, but they may try to pass laws requiring the sharing of information or other cooperation with ICE.

In 2010 and 2011, several states followed Arizona's lead and passed sweeping immigration enforcement laws, which have been challenged in the federal courts. While these laws have received substantial public attention and caused intense battles over immigration policy, they do not all necessarily prevent an individual community within the state from adopting a policy to refuse ICE hold requests. Every community should look carefully at the language of governing state law and determine what options for protecting immigrants and public safety are available. For example, versions of the same "don't-ask" policies that were passed to get around the federal law 8 U.S.C. § 1373 may be a possible approach for communities in states with anti-immigrant legislation.

Aside from Arizona-type laws, many other states and localities have mandatory reporting regimes or other specifications as to police collaboration with federal officials that must be carefully assessed.

- ✦ Example: Colorado SB 90, enacted in 2006. The first section of this Colorado statute mirrors the federal law 8 U.S.C. § 1373, prohibiting Colorado communities from enacting any laws to stop local police from communicating or cooperating with federal agents about someone's immigration status. The second section goes further, and actually requires, under Colorado state authority, that law enforcement officers who have probable cause to believe someone is unlawfully present must report that person to ICE.

Colorado SB 90. 29-29-103. Cooperation with federal officials regarding immigration status.

(1) No local government, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a peace officer, local official, or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.

(2) (a) (i) A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States Immigration and Customs Enforcement office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal Immigration and Customs Enforcement office.

Does this statute mean that all law enforcement in Colorado must comply with ICE hold requests? That may depend on what the phrase in the first section 'cooperating with federal officials' about a person's immigration status means. Arguably it means answering ICE's questions and giving them any information regarding immigration status that the officer received. Whether cooperation with regard to immigration status means that Colorado must hold someone for ICE is not entirely clear. Nonetheless, such sweeping language could make changing local ICE hold policies a very uphill battle.

These analyses can be very complicated. Once again, it can be important to consult legal experts on criminal and immigration issues in order to help you assess your options. You can call the organizations listed on page iii for help.

GETTING THE FINANCIAL ASPECTS STRAIGHT

ICE does not generally reimburse local jails for the costs of hold requests. Any additional costs for holding people for ICE after they have finished their sentence, or time in jail before trial because they could not post bail due to an ICE hold request, come out of your local budget.

How do finances affect the campaign?

Incarcerating people is expensive, and your city or county leadership may be very affected by information that they are paying to do ICE's job for them, especially when localities are facing tough budgeting issues.

How much do ICE hold requests cost?

The "daily bed cost" is an important term for calculating detention costs. This is generally the cost of operating the jail, divided by the number of inmates each day, and is the common metric used for jail costs of a single inmate.

- ✦ For example, the daily bed cost - the cost of a single inmate for a single day - at Rikers Island jail in New York City is estimated to be \$170. This means that each day a single person is held at Rikers on an ICE hold costs New York City \$170.
- ✦ You might find this information in your county budget, in news articles, or from officials at the jail itself.

If you can, find out how many people are detained on ICE hold requests in your jail per year, or per month. That is - what kind of money are you really talking about? A thousand dollars? A million?

- ✦ Sometimes the jail will give you this information, however, you may have to ask them to gather it. Or this might require a Freedom of Information Act or Public Requests request.
- ✦ If you have good relations with a city or county council member, see if they will request it
- ✦ Keep in mind that if local judges regularly deny bail to people with ICE hold requests, who would otherwise have been released before trial, those pre-trial days in jail are a very large proportion of the costs of ICE hold requests to your local budget. Comparing days in detention of immigrants with ICE hold requests to days in detention of citizens facing similar charges will help you estimate these costs. For example, in Travis County, TX, immigrants charged with the smallest misdemeanors spent an average of 50 days in jail, where citizens charged with the same offense spent seven days.
- ✦ For good detailed information on how ICE hold requests have been applied, and how that affected time and costs in local jails, see the following links:
 - <http://www.justicestrategies.org/sites/default/files/publications/JusticeStrategies-DrugDeportations-PrelimFindings.pdf>
 - http://immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf

Find out what other financial interests may be at stake.

Does your jail have a contract to hold immigration detainees (also called an IGSA)?

If your jail has an Intergovernmental Service Agreement (IGSA) with ICE to hold immigration detainees, then they may think that ICE will pay for people with ICE hold requests. This is not technically correct. An ICE hold request does not mean that the person is in ICE custody, and ICE has stated officially that they do not reimburse localities for the costs of hold requests. However, IGSA's likely affect the jail's incentives regarding immigrant detainees, because it is easier to transfer custody, and jails usually make money by renting detention space to ICE.

Renting space to ICE is not the same as detaining someone on an ICE hold request. The jail pays for detention until ICE formally takes custody of the detainee and then detains them at the jail pursuant to the IGSA contract. You can find out which jails have contracts with ICE at the following links:

- <http://www.ice.gov/detention-facilities/>
- <http://www.ice.gov/foia/library/index.htm#35>

Does your community receive SCAAP funds?

The State Criminal Alien Assistance Program (SCAAP) is a federal grant program that reimburses states for money spent incarcerating undocumented immigrants. SCAAP funds do not cover all detention of noncitizens. Eligibility is limited to costs incurred for detaining undocumented immigrants who have been convicted of a felony or two misdemeanors and served at least four days sentence in jail. The funds are allocated to state and county departments of corrections, according to how many undocumented immigrants were detained who fit the statutory criteria. Most states get at least some SCAAP money, and want more of it.

Many corrections officials fear that reducing their cooperation with ICE could affect the amount of money that the county would get under the SCAAP program. This is not unfounded, because ICE has alluded to this possibility over the years. But there is no instance so far of a community receiving less SCAAP funds because of a particular immigration-related policy they enacted. In fact, the SCAAP program is administered by the Department of Justice, so it is unclear how much influence ICE has over the grant decisions.

Counties often overestimate the extent of SCAAP funds.

- ✦ Jails only occasionally receive SCAAP money related ICE hold requests. The primary detention cost being refunded is the time spent serving criminal sentences.
- ✦ Every county and state always applies for far more SCAAP reimbursements than they end up receiving. Thus, most money spent on detention because of an ICE hold request will never be reimbursed.
- ✦ Not submitting to ICE hold requests is still a cost-saving choice for the community.

Still other possible financial impacts:

What social services and child welfare costs result from coordination with ICE?

Many children whose parents or caretakers are detained or deported end up in the child welfare system, at the expense of states and counties. The Applied Research Center conservatively estimated that more than 5000 children are in foster care because their parents have been detained or deported. Assistance to ICE from law enforcement increases the local impact on family services and child welfare programs.

Do you have examples of recent lawsuits related to detaining immigrants that have cost your community?

Your town or county is liable for what happens to individuals detained on ICE hold requests. Particularly where law enforcement have detained individuals beyond the expiration of an ICE hold request, lawsuits for unlawful detention have cost hundreds of thousands of dollars. A particular settlement in New York City had an impact on policy makers and was very helpful to the local campaign to get ICE out of Rikers Island jail.

- › For further details about lawsuits against localities arising from ICE hold request violations, see: <http://www.legalactioncenter.org/clearinghouse/litigation-issue-pages/enforcement-detainers>

What resources will it take to administer the policy you wish to propose?

For example, King County in Washington state is concerned about not increasing work for jail or county staff. This is based on practical details of jail operations: if the county is going to change its decisions about ICE hold requests, they don't want it to require new training or additional work or data entry for their staff.

Watch out for detention bed contracts with the U.S. Marshals!

Sometimes Marshals contracts are also used to hold immigration detainees. This frequently leads to confusion about detention costs and federal reimbursement. If your Sheriff tells you that the jail is reimbursed for ICE holds, check whether the Sheriff is mistakenly confusing ICE hold requests with temporary U.S. Marshals custody. There is currently no existing mechanism or funding to reimburse counties for ICE hold requests.

MESSAGING AND MEDIA

Remember:

Messaging doesn't happen in a vacuum. Assess your short- and long-term goals and think about messaging from the outset of your campaign to ensure that the messaging of one of your campaigns doesn't undermine other current or potential future campaigns on immigration enforcement.

What is framing and messaging and why should my campaign care about it?

Spending the time to agree with partners on your framing and messaging in the early stages of your campaign can pay off in the end – with the media, other advocates, and the general public. A common assessment of how immigration enforcement affects your community and why you are engaged in this campaign will help steer you toward your goal and keep your coalition focused. This preparation will also help you deal with harsh media attention before, during, or after your goal – whether it is a policy or law – is reached.

Messaging is most effective when you create your own framing and don't just go along with the premises of people who do not share your values and goals. Don't accept the assumptions of your opponents or of the status quo, but try to articulate your own vision. You can then develop messaging that fits within your broader framing and is carefully targeted to your audience, goals, and the constituents in your coalition.

We are really talking about developing the lens through which people will process the information that your campaign presents and the messages that will support your demands. The main idea behind framing is that people aren't blank slates. They perceive the facts and stories of our campaigns through their perceptions and expectations about how the world works.

- + What questions are currently being asked about your issue?
- + What new questions do you want to ask about your issue?

A first step to developing your framing is to identify the other framing that is already around you. What underlying assumptions and values are already a major part of the immigration enforcement discussion? Are they helpful or hurtful? What is your opponents' frame? What aspects of it do you need to counter? Given what your audience already hears or believes are the problems, what goals or values can you share with them? How can your vision respond to that without caving to their framing?

Examples of framing

- + Immigration enforcement destroys communities.

This is about family ties, human dignity, local economies, and liberty rights. Holistic local law enforcement that shares these values should protect immigrant communities.

- + Deportation is a cruel punishment that should be abolished.

This is about standing against injustice, bringing attention to the pain of deportation, and the unfairness of the law.

- + We are defending immigrants' Right to Remain.

This approach (originally from New Orleans) spotlights the individuality and leadership of immigrants and their stake in the whole community.

These frames aren't single messages or demands; they are visions of how things should be understood. Your messages will then support this framing. Your strongest messages will invoke shared values and focus on the solution or goal you have in mind.

Sample message ideas

There is no unified messaging across the board in campaigns against submitting to ICE hold requests. The local politics of campaigns vary; we have all developed different frames and different approaches. Nevertheless, some messages that have been frequently used in different campaigns have focused on different combinations of the following values and ideas:

- ✦ Public Safety: Police-ICE collaboration creates mistrust within the community
- ✦ Negative Community Impacts: Police helping ICE find people to deport separates families and destroys communities
- ✦ Fiscal Impact: Helping ICE deport people drains resources with little reimbursement
- ✦ Faith Perspective: It's essential to respect the dignity and humanity of all residents regardless of immigration status
- ✦ Racial Profiling: Using the criminal justice system as a gateway to immigration enforcement is piling on to an unjust system
- ✦ Equal Rights and Due Process: ICE hold requests undermine the right to due process and result in unfair treatment for immigrants in the criminal justice system
- ✦ Local Autonomy: ICE is not accountable to communities; communities should make their own choices
- ✦ Value of Immigrants to Society: Immigrants contribute to local economies and provide needed services

General talking points:

Police Depend on Community Trust and Involvement: When local law enforcement are functionally agents of immigration enforcement, immigrants are deterred from reporting crimes, which reduces public safety in the entire community. Citizens who have immigrant or undocumented family members are also more hesitant to contact the police or other authorities.

Immigration Enforcement is Separate from Criminal Justice: For every individual booked into custody on criminal charges, the courts impose and oversee appropriate punishment. The criminal justice system has adequate safeguards to protect public safety and those safeguards will remain in place. A policy against ICE hold requests does not release anyone into the community who is not otherwise eligible to be released. Inmates are only released from custody once they have served their time and have earned their freedom.

ICE Hold Requests Do Not Relate to National Security: The FBI, CIA, the Department of Homeland Security, and our local police have many ways to guard our national security - all of which has nothing to do with ICE hold requests. Our immigration enforcement technology programs haven't caught terrorists; traditional law enforcement has. Hold requests are simply a convenience for ICE.

We Shouldn't Do ICE's Job for Them: Whether you generally oppose deportations or not, it is not the job of local governments to achieve the federal government's immigration enforcement ends.

Deportations Harm the Entire Community: When someone is deported, children are left without a parent, an employer is left without work done, a landlord is left without a rent check, and the community is left to pick up the pieces.

For more sample materials, see the Appendix

What are the advantages and trade-offs with different messaging?

Most messaging has pros and cons, including how it resonates with different audiences and how it impacts your future work. Here are just a few examples of the pros and cons we have seen in some of the messaging that has been used in ICE hold request campaigns. This is far from an exhaustive list, but we thought it might help you get started in determining what you may be gaining and giving up with different messaging.

Message	Pros	Cons
<p>Focus on innocence or those with minor convictions:</p> <ul style="list-style-type: none"> › “Low-level offenders and people who are innocent get caught up in these enforcement programs” › “ICE is not focusing on “Level 1” criminals or the ‘worst of the worst’” 	<ul style="list-style-type: none"> › Highlights critical problem that seems fundamentally unfair › Resonates with public 	<ul style="list-style-type: none"> › Creates a distinction between “deserving” and “undeserving” immigrants › Undermines campaigns focused on those with more serious convictions
<p>Deportation as second punishment:</p> <ul style="list-style-type: none"> › “People who have been through the criminal justice system don’t deserve deportation as a second punishment” 	<ul style="list-style-type: none"> › Highlights unfairness of singling out immigrants for additional punishment › Links criminal justice system to deportation system and may increase allies working on criminal justice issues 	<ul style="list-style-type: none"> › Calls attention to immigrants who do have criminal convictions › Might not resonate with some politicians
<p>Potential for error:</p> <ul style="list-style-type: none"> › “US Citizens and green card holders without deportable offenses get caught up” 	<ul style="list-style-type: none"> › Brings attention to groups that are typically thought of as having/deserving more rights › Fact that programs aren’t working as advertised 	<ul style="list-style-type: none"> › Privileges certain groups of immigrants › Suggests that programs wouldn’t be as problematic if they did work as advertised
<p>Diversion of resources from criminal justice system:</p> <ul style="list-style-type: none"> › “ICE intervention in local policing diverts law enforcement resources from focusing on serious criminals” 	<ul style="list-style-type: none"> › Highlights significant costs and public safety concerns › Can resonate with law enforcement 	<ul style="list-style-type: none"> › Many communities are already over-surveilled and policed › Likely lose allies who fight against the criminal justice system › Can undermine campaigns that include people with convictions
<p>Costs:</p> <ul style="list-style-type: none"> › “Local police involvement in immigration enforcement is costly to communities and drains local resources” 	<ul style="list-style-type: none"> › Especially in current economic climate, money matters › Resonates with local politicians 	<ul style="list-style-type: none"> › What if submitting to ICE hold requests didn’t cost communities money? › Focuses away from moral issues
<p>Unequal treatment in the criminal justice system:</p> <ul style="list-style-type: none"> › “Immigrants in jail don’t get the same rights or opportunities - such as bail and treatment programs” 	<ul style="list-style-type: none"> › Highlights problem that seems fundamentally unfair › Links to criminal justice issues that might gain allies 	<ul style="list-style-type: none"> › Might be too technical for many people › Some people believe noncitizens should be treated differently in the criminal justice system

Helpful statements from supporters and community leaders

"In America, we don't detain people without probable cause that would violate constitutional guarantees like due process and equal protection. But these detainers are not based on probable cause and they have been imposed on US citizens including veterans by mistake."

- Commissioner Jesús García, Cook County Illinois, Sep. 7, 2011

"What this policy does is ensure that everyone in our system is treated equally. United States citizens charged with crimes are released on bail every day. There is no justifiable reason to treat people's criminal cases differently just because they are suspected of having civil immigration issues. The county has no authority to enforce civil immigration laws. Immigration enforcement is ICE's job."

- Supervisor Shirakawa, Santa Clara County, CA , Mercury News Op-Ed, Nov. 4, 2011

"What we are saying in this legislation is we want to maintain the bright line between what federal immigration officials do and what our local department does. We have worked for years to ensure that there is such a bright line."

Washington DC City Council Member Jim Graham, Washington Times, Nov. 15, 2011

"The policy has no impact on how the county deals with crime. For every individual booked into county custody on criminal charges, the courts impose and oversee appropriate punishment. The criminal justice system has adequate safeguards to protect public safety, and those safeguards will remain in place."

- Supervisor Shirakawa, Santa Clara County, CA, Mercury News Op-Ed, Nov. 4, 2011

"What isn't fair, or effective, is to use immigration status as a red herring, when this is an issue about public safety for all Cook County residents."

- Cook County Council President Toni Preckwinkle, NBC Chicago, Jan. 12, 2012

"What the board is saying is that whether you are held in jail or not should only be a function of whether you committed a crime or not. It shouldn't be a function of whether you have legal or illegal status in the community."

- Santa Clara County Executive Jeff Smith, Mercury News, Oct. 25, 2011

Oppositional messages from adversaries

“My office is prosecuting several recent cases concerning undocumented individuals from countries as diverse as India, Mexico and the Czech Republic. One defendant was charged with rape, another threatened a female prosecutor and her family, and another molested a child. Once criminals have committed these types of violent offenses, studies demonstrate they are more likely to victimize again. We cannot justify allowing any undocumented violent felon to be freed if we have the ability to detain them longer so that the federal government can determine whether to begin deportation proceedings.”

- Santa Clara District Attorney Jeff Rosen, Mercury News, Oct. 29, 2011

“The Ordinance disrupts the federal government’s efforts to remove deportable criminal offenders from the country and instead allows for their release back into the community. In light of criminal recidivism rates, the release of so many of these individuals to the streets of Cook County is deeply troubling and directly undermines public safety.”

- John Morton, ICE in a letter to Cook County, IL, Jan. 4, 2012

“This is our Willie Horton moment in Cook County,” warned Commissioner Timothy Schneider, a Republican who voted against it. He was referring to a convicted killer who was released as part of a Massachusetts prison furlough program and then raped a woman.

- Huffington Post, Cook County Defies Government on Immigration Detainers, Oct. 5, 2011

“Chicago politics didn’t kill William “Dennis” McCann. What killed the 66-year-old man was that black Dodge Neon driven by an alleged drunken driver as McCann walked across Kedzie Avenue last summer. But the politicians allowed the man charged in the fatal crash to skip out of jail despite pleas by federal authorities to hold him. Thanks to Chicago politicians, the alleged drunken driver is most likely hiding in Mexico.”

- John Kass, Chicago Tribune, Jan. 12, 2012

“The action taken by the Board of Supervisors does not allow us the latitude to make a decision in the best interest of public safety. If a person has been convicted of a serious or violent felony, they should remain in jail.”

- Santa Clara County Sheriff Laurie Smith, Mercury News, Oct. 23, 2011

“If this policy goes into effect and stays on the books, someone will have blood on their hands,”

- Bob Dane, Federation for American Immigration Reform

If you seek more guidance on messaging and how to think about the framework of your campaign, check out the Center for Media Justice, which provides an excellent library of storytelling and messaging guides, worksheets, and examples. www.centerformediajustice.org

Community Case Stories from King County, Washington

The below are sample case stories that illustrate the ramifications that detainer policy has on our community members every day. They contain aspects of cases lawyers in King County see on a regular basis. However, the case of Maria is the all-too-real experience of a domestic violence survivor who had her life was dramatically altered due to an ICE hold request, and GC is a case of a man that is currently in the Tacoma Detention Center—as you can see, detainer reform is urgent.

- ✦ Maria entered the U.S. in 2005 to join her boyfriend, Dario, a resident of Seattle whom she had met in her native Colombia. He turned out to be an abusive alcoholic, and for the next five years, Maria suffered his abuse while working full time without pay for his construction company. In January 2011, Maria told Dario she wanted to leave him, and enraged, he choked her to the point of unconsciousness. Two weeks later, on February 17, 2011, she came home to find Dario and his family members throwing out her belongings and demanding that she leave. She refused, and Dario called the police. She was unable to communicate effectively with the responding officer due to a language barrier. The police handcuffed and arrested her. Maria was taken to the King County jail. ICE's records show that they were alerted to her arrest on that same day. She was arraigned the next day, and the judge granted the defense's motion for her release. Presumably due to an ICE hold, she was held over the weekend, and on February 22, 2011, she was interviewed by an ICE officer pursuant to the Criminal Alien Program, and released to ICE custody. She bonded out of ICE custody a week later after borrowing money from friends. She was left homeless and penniless, and remains so. With the help of a domestic violence advocate from Consejo Counseling and Referral Services, she reported Dario's assaults against her in August of 2011. The Seattle Police Department signed a U visa certification for her on November 10, 2011. Removal proceedings are still pending against her.
- ✦ GC is a father of two U.S. citizen children who has lived in the U.S. for over ten years. GC was arrested late in October by the Seattle Police Department on suspicion of a misdemeanor assault and was booked into the King County Jail. The Seattle City Attorney reviewed the case and within a day decided that no charges would be brought. Because the criminal case had ended, GC should have been released but, because ICE had placed a detainer on him, he stayed in custody for an additional 24 hours and was taken to the Northwest Detention Center in Tacoma. He is now facing deportation proceedings, as his family tries to cope with the loss of the income he provided to the family.
- ✦ Mirabela was an undocumented domestic violence survivor from Peru with two small US citizen children. She was booked into jail charged with misdemeanor assault-DV. Despite the fact that she was the victim in the case, she was arrested. She was interviewed by ICE telephonically at or near time of booking and ICE placed an immigration detainer on her. Following her arraignment, her partner (the abuser) posted her \$250 bail amount. Her release on bail triggered the ICE detainer and she was transferred to ICE custody and deported.
- ✦ David is a 35-year-old man from Mexico who was arrested and charged with reckless driving. He has been in the U.S. for 13 years and is the father and primary economic support for his wife and three U.S. citizen children ages 12, 10 and 9. An ICE hold request was issued against him and, in addition to immediate transfer to ICE to face deportation, he risks losing his job as a construction worker because he cannot get out of jail during his criminal proceedings.
- ✦ Ibrahim is a 19-year-old Somali man who was arrested and booked into jail on felony charges of taking a motor vehicle without permission (Class C felony). He came to the U.S. as a refugee with his mother. His father and older siblings were killed in the political violence that had caused them to flee to Kenya. Convicted of petty theft the previous year, he now has an ICE detainer placed on him. Thus, he cannot get released on bail and is forced to remain in jail for the duration of his criminal proceedings (several months). This makes it much more difficult to defend against his criminal charges and costs the county significantly more money. Family members had been prepared to post his bail money, but did not do so when informed that this would result in his immediate transfer to ICE custody.

ANALYZING A POLICY PROPOSAL

Elements of an ICE hold policy

The goal is to stop submitting to ICE hold requests, so that local police do not function as arms of ICE. For that, you need a local law or policy restricting the way your jail works with ICE. There are a lot of details in the relationship between ICE and local law enforcement, so this chart tries to help identify different pieces that you may want to put in your policy demands. You don't have to win every single one, but the more you include, the more you are protecting the community.

There are two general categories to think about in stopping the police from turning people over to ICE:

- ✦ Prevent or limit ICE's access to information from the jail, so that ICE will issue fewer hold requests and apprehend fewer immigrants
- ✦ Limit or forbid the police's submission to ICE hold requests or other ICE demands

Stop complying with ICE hold requests and limit their impact	Prevent or limit ICE hold requests from being lodged
<ul style="list-style-type: none"> › Don't submit to ICE hold requests › Don't use local resources to hold people for ICE › Require notice of an ICE hold request, or ICE interview request, to detainees and their attorneys --including when and by whom it was filed so that it can potentially be contested › Don't give ICE notice of when immigrants are to be released › Don't comply with ICE hold requests for juveniles › Make an explicit rule that ICE hold requests should not affect bail determinations › Make an explicit rule that inmates with ICE hold requests are still eligible for early release, work release, treatment programs, and other alternative-to-incarceration programs › Require training on ICE hold requests and their legal limitations for police and jail personnel › At booking, inform all detainees of the right to contact their consulate (under the Vienna Convention) › Provide know-your-rights materials in jails and require law enforcement to provide information to inmates about ICE hold requests so that detainees can advocate for themselves › Establish a written complaint and review process for violations › Do not submit to ICE hold requests without lawful underlying criminal charges 	<ul style="list-style-type: none"> › Don't send booking information to ICE › Establish a policy to prevent all local agents from asking about immigration status ("don't ask policy") › Don't collect information about immigration status or place of birth › Stop ICE agents from interviewing inmates. [Alternative: Constrain interviews by requiring agents to identify themselves as ICE agents, obtain written consent, and ensure access to counsel; inform inmates that they have the right to decline the interview, etc.] › Limit ICE agents' access to local databases › Stop probation and parole departments from inquiring into immigration status › Prevent sharing of fingerprints beyond designated recipients. Alternative: don't take fingerprints for minor offenses if state law allows › Change booking procedures to eliminate place-of-birth information › Accept alternative ID other than drivers' licenses, so that traffic stops are less likely to lead to ICE hold requests and deportations › End local 287(g) program › Improve racial profiling trainings › Make an explicit rule against law enforcement calling ICE or Border Patrol from the roadside › Forbid ICE from waiting at the courthouse

Evaluating outcomes of different types of policies

Submitting to ICE hold requests is not necessarily an all-or-nothing decision. The city or county could decide to hold some categories of people, but not others, or decide to impose conditions on ICE before agreeing to hold people. But different rules will lead to different outcomes – which means that some policies will not protect all noncitizens. It can help to compare different versions to see how the maximum number of people can be protected.

MORE PROTECTIVE

Washington, DC	Cook County, IL	Santa Clara County, CA
<p>Washington, DC (proposed)</p> <p>If there's a hold and the federal government will pay for detention, then the District may comply for some of those with convictions.</p> <p>Pros: Requires federal reimbursement before any compliance. Limits pre-conviction compliance with ICE hold requests. Should reduce immigration consequences of traffic stops.</p> <p>Cons: Many people arrested in DC may be transferred to Bureau of Prisons custody where this will not apply.</p>	<p>Cook County, IL (passed)</p> <p>If there's a hold request and the federal government will cover the cost, then the Sheriff will comply.</p> <p>Pros: Simple solution. Bright line rule. No discretion. Puts burden on federal government. Doesn't draw lines between criminal and non-criminal.</p> <p>Cons: May compel sheriff to comply with all detainees, if the federal government agrees to reimburse, which would yield very similar result to the status quo. This policy did actually result in an offer from ICE to pay for some hold requests.</p>	<p>Santa Clara County, CA (passed)</p> <p>If there's a hold request and the federal government will cover the cost, then the Sheriff might comply for some of those with convictions.</p> <p>Pros: Simple no hold rule unless federal reimbursement. May save thousands of dollars year. Special protection of juveniles.</p> <p>Cons: Potential political implications based on public misconception that noncompliance with detainer requests means "soft on crime."</p>

LESS PROTECTIVE

Taos, NM	New York, NY	San Francisco, CA
<p>Taos, NM (jail policy)</p> <p>No asking about place of birth or country of origin. No phone interviews from ICE without a court order. Police will only comply with ICE holds for an inmate with a conviction for a felony or two misdemeanors.</p> <p>Pros: Includes a ban on collectiong place-of-birth information which often leads ICE to place holds.</p> <p>Cons: Is jail policy, but not law. Limits holds to detainees eligible for SCAAP funds, but no guarantee of getting that money. Still allows police to hand people over to ICE.</p>	<p>New York, NY (passed)</p> <p>If there's a hold request on someone with a conviction for a misdemeanor or felony, NYPD and Dept. of Correction will comply, with some misdemeanor exceptions, such as unlicensed driving and prostitution.</p> <p>Pros: Limits some holds on those who have no conviction. May protect immigrants who end up with convictions for minor offenses.</p> <p>Cons: Jail will specifically look up the person's criminal and immigration record and will comply with many ICE holds for those who have a record or face pending charges.</p>	<p>San Francisco, CA (passed)</p> <p>If there's a hold request on someone charged with certain misdemeanors or any felonies, then the Sheriff will comply.</p> <p>Pros: Should reduce immigration consequences of traffic stops and other infractions or low level misdemeanors.</p> <p>Cons: Has broad categories for complying with ICE holds, including individuals who have only been charged, but not convicted, of a crime.</p>

CAMPAIGN STORY: NEW YORK, NY

Contributed by the Immigrant Defense Project

In 2009, ICE officers, through CAP, were engaging in coercive and deceptive tactics at the City of New York Department of Correction (DOC) facilities, commonly known as Rikers. That year, different groups working to change ICE practices at Rikers came together to form the ICE Out of Rikers Coalition. It included law school clinics, immigration advocates, criminal defender offices, and faith-based organizations.

There was momentum for policy changes — in June 2009, the New York University School of Law's Immigrant Rights Clinic secured a settlement against DOC for holding its client 35 days beyond the 48-hour rule. This settlement, in which the Clinic won \$145,000 for its client, had a significant impact on DOC. Additionally, the Immigrant Defense Project (IDP) and Families for Freedom advocated with DOC to hold regular Know-Your-Rights presentations to immigrant inmates. NYU and IDP were also able to convince DOC to institute a new policy when ICE requested an inmate interview. This policy mandated that DOC provide inmates a form to choose whether or not to speak with ICE before having contact with ICE.

In July 2009, the Coalition, led by Make the Road New York and the New Sanctuary Movement of NYC, launched a campaign for a New York City Council detainer discretion policy. As a result, NYC passed its first detainer law in December 2011. This law protected immigrants in DOC custody who: had their pending charges dropped, had no prior criminal convictions, had no prior orders of removal, and were not on a gang or terrorist watch list.

Some Coalition members were also waging a campaign to end S-Comm in New York, which led to Governor Cuomo's suspension of the program in June 2011. When ICE mandatorily activated S-Comm throughout New York in May 2012, the Coalition called for a termination of the program and started working on a new City Council bill that would expand the categories of crimes covered and also cover people in New York Police Department (NYPD) custody.

In March 2013, NYC passed a new detainer law. Under this bill, NYPD and DOC will not comply with ICE hold requests for immigrants charged with most misdemeanors as long as they do not have a prior order of removal or prior convictions (with the exception of certain misdemeanors such as prostitution and unlicensed driving).

What key lessons would you pass onto others?

Law enforcement politics play a major role in the possibilities for any detainer campaign, and while NYC is perceived as an "immigrant friendly" city, the power of policing and "politics of fear" is a key limitation we face. The NYPD holds a powerful role in the city, and increasingly so post-9/11. Also, political power in the city government is tightly controlled by the Mayor and the Speaker of the City Council, so policy changes must be palatable to these political leaders, along with the NYPD.

Even though we could not at this moment end the collaboration between NYC and ICE, it was critical for the long-term fight to frame it as a fight for the rights of all immigrants — in other words, to not draw a line between the rights of "good immigrants" and those that are "the serious criminals." We brought these concerns to the Coalition and clarified in all our messaging documents and testimony that our City would not be safe until all ICE programs were gone. Calling for an end to S-Comm allowed for a unifying message among a diverse range of organizations.

An additional challenge was the high level of knowledge of the criminal justice and immigration systems required to navigate the implications of different policy suggestions. Therefore, the Coalition asked public defenders to educate members on key aspects of the criminal legal system — including D.A. practices of overcharging and arraignment scenarios. Those with immigration knowledge trained others on ICE operations, points of intervention, and consequences of convictions. The Immigrant Justice Clinic at Cardozo Law School played a key role in gathering and disseminating this information.

The Coalition's first demand was always for NYC to not comply with any detainer requests. However, those in power set the parameters for who would be protected based on their determination of political feasibility. We did not have the political power to win something broader. Nevertheless, we made it clear to the decision makers that while we supported this bill as another step in limiting the City's collaboration with ICE, it did not go far enough and we expected that they would expand the bill when the political moment changed.

A key reason these detainer policies were possible was because of the organizing and political work that immigrant rights organizations have done over the years. Given ICE's power, it is clear that we need to build power and broader alliances in order to protect the rights of all immigrants. We have been building a coalition of Anti-Violence Advocates — which includes domestic violence, anti-trafficking, and LGBT organizations — to bring together constituencies who have frequent interaction with the police to work together to end deportation. This group has brought a different voice into the political conversation and have been challenging the dominant narrative that there are only "innocent victims" and that "deportation is the solution" to violence in our communities.

What were your strategies and tactics? What resources and tools were the most helpful?

Our goal was to limit ICE's presence and impact in NYC. The targets included both DOC and the City government. Our strategies included advocating for DOC to make institutional changes that protect immigrants' rights, and getting the City to pass legislation to limit the City's compliance with ICE hold requests.

Our work with DOC was helpful both practically for immigrants at Rikers and to push the City to take legislative action. Tactics included litigation, public records requests, negotiations with DOC officials, advocacy with elected officials, community outreach and education, and media work. The information the Coalition was able to gather — through public records requests and directly from immigrants through Know-Your-Rights workshops — was useful in helping the Coalition understand what the landscape looked like, how policies and practices were being carried out on the ground, and what possibilities existed for changing these policies and practices.

Overall, what's your assessment of your efforts?

ICE has identified NYC as a central site in their nationwide efforts to identify "criminal aliens." It is critical that we now have a foot in the door for detainer discretion in both the police department and the jails. Although the bills did not go as far as the Coalition hoped, the campaigns provided a platform and momentum for educating communities and political leaders about the devastating impacts of police-ICE collaboration. Our political and education work to get ICE out of NY continues. Some of the elected officials we worked with in the campaign have said they would like to expand the law in the next administration.

We were successful in getting DOC to change procedures. We were able to get DOC to institute Form 144 (where immigrants can indicate whether or not they choose to be interviewed by ICE), to abide to the 48-hour rule, and to agree to let inmates watch a video in 6 different languages about ICE's purpose at Rikers. ICE officers at Rikers are now required to wear ICE uniforms. We have further solidified our Know-Your-Rights workshops at Rikers so we are now able to bring in other organizations, allowing us to expand our education so others can learn about how ICE interacts with immigrants at Rikers. Yet, there are limits to these positive changes — for example, these changes have not been memorialized as written policy and ICE can still lodge a hold request even if someone refuses to speak with ICE.

CAMPAIGN STORY: KING COUNTY, WA

Contributed by Ann Benson, Washington Defenders' Association

In early 2011, the Washington Immigrant Rights Coalition (WIRC), a statewide coalition of immigrant advocacy, faith, labor and social justice organizations, began educating its members to understand the issues related to ICE hold requests and how they worked in the criminal justice system. The goal was to begin expanding and transitioning the organizing efforts that had grown out of opposition to Secure Communities. In the spring, WIRC determined that King County (Seattle) was the most favorable place to push for a policy limiting compliance with ICE hold requests by the King County Jail. (NOTE: King County jail is not controlled by the sheriff, but rather is under the authority of the King County Executive.) WIRC coalition members felt that a victory in King County could be leveraged in other counties and, given this is where it seemed most politically viable, it afforded the best opportunity for the coalition to begin its efforts.

The King County campaign is still underway. The King County Executive has expressed some support for a policy at the King County jail that would limit the jail's compliance with ICE hold requests. The WIRC advocacy team has been working with the county's senior policy staff to educate them on the issues and coordinate possible strategies. The WIRC advocacy team is presently exploring other county council members who may be willing to support this effort and meeting with other key local elected officials. Assuming there is sufficient support (and opposition can be overcome), it is unclear at this point whether the effort will result in a full ordinance (that could be passed by the county council) or an executive order.

What were/are your strategies and tactics and the factors that influenced decisions about them?

- ✦ Our primary goal is to get a policy in place that would restrict King County jail's compliance with ICE hold requests in as many types of cases as is realistically possible. (See Section I.a of the draft ordinance).
 - We specifically opted for a policy that had a "carve out" for serious and violent felons, whom the county would still detain for ICE. We did not believe it would be politically feasible here to push for the more expansive ban included in the Cook County policy. The county executive's staff indicated as much (without prompting) in initial meetings.
 - Although the draft policy has the carve out, the burden is on ICE to provide proof of the prior convictions, in order for the jail to comply with a hold request.
 - We successfully engaged the jail administrator directly as we were crafting language, because it was clear that nothing would move forward if the jail itself did not sign off on the policy.
- ✦ Our second goal is to limit ICE's access to detainees in the jail. (See Section II, which is not in the current draft under negotiations).
 - We focused on the more limited language contained in our ordinance (vs. Santa Clara or Cook County's language restricting communications, use of resources, etc.) because we felt that this was the best, cleanest shot we had at preventing ICE from getting new information regarding an individual in custody. Additionally, it does not raise issues relating to 8 U.S.C. § 1373.

What resources and tools have been the most helpful?

- ✦ The established relationships with elected officials by members of the advocacy team;
- ✦ The combined immigration and criminal justice expertise of the advocacy team;
- ✦ The organizing capacity and base of OneAmerica.

What key lessons would you pass onto others?

- ✦ This takes time and significant, sustained effort.
- ✦ This kind of effort reflects a perfect blend of political advocacy & organizing and legal advocacy. It is key to have trust in a cohesive leadership team that has expertise in both arenas.
- ✦ If possible, maintain control over the drafting of the ordinance/policy language to the extent possible. Give careful attention to determining the language of a proposed ordinance that will work in light of a realistic assessment of factors influencing your effort.

CAMPAIGN STORY: NEW ORLEANS, LA

Contributed by J.J. Rosenbaum and Jacinta Gonzales, New Orleans Worker Center for Racial Justice

The Congress of Day Laborers in New Orleans is leading a campaign to win the right to remain - the right of women, youth, workers, and families to be permanent community members in the city they helped rebuild.

The Congress of Day Laborers is a membership organization of reconstruction workers, women, and their families fighting for dignity and the Right to Remain. The Congress was formed by the community to defend itself against brutal exploitation and abuse at the hands of employers, the police, and Immigration authorities, and to ensure that all of New Orleans is united for a just reconstruction.

Through this campaign, immigrant reconstruction workers in New Orleans are doing more than asking Sheriff Gusman for policy not to submit to hold requests from ICE, they are asking fundamental questions about community. Can a local community decide who is woven into its fabric? Can the people of New Orleans, in attempting to determine their own local destiny, decide that immigrant workers are permanent members of the city they helped to rebuild? Or should immigrants live in constant terror of being removed? Should fathers and mothers, brothers and sisters, neighbors and fellow parishioners, live each day as if it was their last in the community they love? More than five years after they arrived in New Orleans as reconstruction workers, members of the Congress of Day Laborers see the Right to Remain campaign as a way to defend their own place in the city they now call home.

Led by affected immigrant community members, the Right to Remain campaign has also focused on building strong and collaborative relationships with other organizations fighting abuse of power by the New Orleans Police Department and the Sheriff's Office. The Congress of Day Laborers is part of the Orleans Parish Prison Reform Coalition, which includes over 40 local organizations and individuals that support the reallocation of funds from incarceration and detention to building the infrastructure of a caring community. In this context, the fight to ensure that the Sheriff no longer submit to hold requests from ICE is not only an effort to protect immigrant communities, but also an integral part of the movement to reduce incarceration rates in New Orleans.

The Women's Group of the Congress of Day Laborers coordinates another coalition that helps support the Right to Remain Campaign: Women United for Justice. In the civil rights, immigrant rights and criminal justice movements, women have played a crucial role in reminding us what oppression and incarceration does to our society, and that's why women in New Orleans are joining forces to push for changes in the criminal justice system that promote health, safety and dignity. As their first joint effort this coalition hosted a Women's Breakfast, where they shared their personal experiences with female councilmembers and demanded they take a stand against the Sheriff's submission to hold requests.

Members of the Congress of Day Laborers and their allies in the criminal justice reform, labor, and faith communities courageously expose the bad effects of the merger of the criminal and immigration systems on families, workers, and youth through direct action. They have held vigils in front of the ICE Southern Region Field Office to mark deportations of civil rights and labor leaders and deaths in detention. They held a 24-hour prayer vigil that culminated in moving testimonies before the City Council about how the Sheriff's policies and practices are leading to racial profiling and race-based deportations through Orleans Parish Prison (OPP). The 24 hour-long prayer vigil at the Sheriff's office brought immediate support from local and national allies. Pastors and neighbors came out to pray, sing, and show their support for reconstruction workers' right to remain in New Orleans.

Workers shared moving stories about how friends and loved ones had disappeared through Sheriff Gusman's jail, and the atmosphere of terror that they struggled with every day as a result.

Members also regularly participate directly in public fora on these issues speaking to local elected officials about their vision of the right policies for New Orleans. Members of Congress of Day Laborers supported organizing to win a historic vote limiting Sheriff's Gusman's power to expand his Orleans Parish Prison. The proceedings ended with moving testimonies and expert statements from reconstruction workers and their supporters about the Sheriff's illegal conduct, the workers' right to remain, and the consequences of the Sheriff's choice to submit to hold requests from ICE which funnel immigrant workers into deportation through his jail.

Members of the Congress of Day Laborers, organizers, allies, and allied attorneys have worked closely to defend immigrants who have faced retaliation for their actions, but they will not be made silent by these abuses of power. For example, during the prayer vigil, Sheriff Gusman's officers followed a leader of the Congress of Day Laborers and participant in the prayer vigil, as he drove from the prayer vigil site to the offices of the New Orleans Workers' Center. Just out of sight of the vigil, the Sheriff's officers ordered him out of his vehicle, interrogated him, and threatened him with arrest. The officers told him that they had surveilled the vigil and that they had identified him as a leader. They then asked for his documents, demanded to know his home address, and threatened to arrest him and send him to Orleans Parish Prison. He was released by the Sheriff when the Congress of Day Laborers intervened at the site of the arrest. Another member was re-arrested by ICE after winning her release from the Sheriff's custody on a hold request and spoke out publicly about the policy. She now faces imminent deportation and separation from her child, and a national coalition of women's, labor, and civil rights organizations are fighting for her protection. The Congress of Day Laborers has also won the release of every member held more than 48 hours on a hold request from the Sheriff's custody back into the community.

Members of the Congress of Day Laborers have also worked with the Legal Department at the New Orleans Workers' Center for Racial Justice, which provides general legal support to the campaign. Members and allies have obtained critical public information on government practices through state open records act requests. They have drafted a new proposed policy for the Sheriff and the New Orleans City Council which would limit the impact of ICE ACCESS programs, including Secure Communities and the Criminal Alien Program, in New Orleans. Two members are plaintiffs in a major federal civil rights lawsuit against Orleans Parish Sheriff Marlin Gusman, Cacho, et al. v. Gusman. This major civil rights lawsuit brought by members of the Congress of Day Laborers who are represented by the New Orleans Workers' Center for Racial Justice Legal Department (NOWCRJ) and the National Immigration Law Center (NILC) exposes fundamental violations of law brought on by Sheriff Gusman's decision to submit to hold requests from Immigration and Customs Enforcement (ICE). The lawsuit details how Sheriff Gusman's choices and abuse of power have led to indefinite detention in violation of the U.S. Constitution. Reconstruction worker Antonio Ocampo was held for 91 days after his misdemeanor charges were resolved, and Mario Cacho was held for 164 days after his municipal charge was resolved. Both had filed written grievances inside OPP and were only released after taking legal action. Their indefinite detention violated their Fourth, Fifth, and Fourteenth Amendment rights to liberty and due process under the U.S. Constitution, which protects the fundamental rights of all members of the New Orleans community.

CAMPAIGN STORY: SANTA CLARA COUNTY, CA

Contributed by Angie Junck, Immigrant Legal Resource Center, and the Santa Clara County Forum for Immigrant Rights and Empowerment

Santa Clara County is the only county in California where the Board of Supervisors has authority over the jail, rather than the Sheriff's office, which provides supervisory positions within the Jail as well as staffing the Transportation Unit and Perimeter Patrol. Santa Clara County has five elected County Board of Supervisors. Supervisor George Shirakawa, elected Board President in 2012 and Chair of the County's Public Safety and Justice Committee, led efforts to pass the ICE hold policy. The County Counsel's office led by Miguel Marquez, a child of immigrant parents from Mexico, also played a critical role in the County's efforts to pass an ICE hold policy. His office has an impact litigation and social justice section which is described as "part of a growing movement to use the power and unique perspective of local government to better serve the community and to drive long-lasting social change."

County Relationship with ICE

Despite a large immigrant presence and progressive County leadership, prior to 2010, Santa Clara County did not have an immigrant community policing policy and historically was a place where immigration enforcement in the criminal justice system was prevalent and the County readily cooperated with such efforts. Immigration lawyers report that immigrants who had been through the Santa Clara County criminal justice system represented a good portion of immigrants held in northern California and Arizona detention centers, compared with other California counties.

ICE has a large presence in the County with a sub-district office and local holding center in the County. ICE's enforcement efforts in Northern California also often target Santa Clara County. For example, in a national criminal immigration sweep in September 2011, ICE arrested more people in Santa Clara County than any other county in Northern California. The County for many years also had an Intergovernmental Service Agreement (IGSA) with ICE to hold immigrants in removal proceedings. The County reportedly lost the contract due to ICE's ability to contract with other counties in the region at a lower rate. Finally, Santa Clara County's 2011 SCAAP funding was \$1,319,030.00, one of the highest amounts received by California counties.

Santa Clara County Coalition Against S-Comm

In the fall of 2009, several local organizations convened to support the County's efforts to opt out of S-Comm. Many of the organizations that initially came together were part of a local immigration raids response network that had disbanded due to the decline in such raids. The coalition, named Santa Clara County Coalition Against S-Comm, ultimately grew to be a diverse, multi-ethnic network of approximately 15 immigrant rights, direct service, legal and civil rights, criminal justice, privacy, faith, and human rights organizations representing or working with Latino, Asian, South Asian, and Arab immigrant communities. Some of the agencies involved in the coalition included: Service, Immigrants Rights & Education Network (SIREN), Asian Law Alliance, Silicon Valley De-Bug, Community Legal Services of East Palo Alto, the ACLU, the Immigrant Legal Resource Center, PICO's local affiliate People Acting in Community Together (PACT), The Catholic Dioceses of San Jose through its Justice for Immigrants Campaign, and Sacred Heart Community Service. The various organizations brought widely varying, but valuable perspectives, expertise, and relationships to the coalition. Some critical assets that organizations brought included: longstanding relationships with key County officials, ongoing participation in community police efforts to improve public safety, experience working towards criminal justice system reforms, familiarity with the plight of immigrants caught up in the criminal justice and immigration systems, legal knowledge of immigration enforcement and immigration consequences of crimes, and large and powerful constituent bases (one faith group represented over 80,000 families and another represented over 40,000 families).

The coalition agreed not to promote a message of innocence that would divide the immigrant community by focusing on who is or who is not worthy of protection from immigration enforcement. This was due to the advocacy of a criminal justice organization working with immigrants caught up in the criminal justice system. Moreover, the coalition agreed that an innocence message was not necessary to take a strong stance against immigration enforcement. The coalition abided by this principle throughout their advocacy efforts.

Coalition Work

In its work together for over two years to fight S-Comm and pass an ICE hold policy, the coalition met almost weekly to map out strategies. A key strategy of the coalition was to engage local officials on an ongoing basis to track and influence their positions. At the beginning, the coalition conducted a series of research meetings with federal and county officials, including Congresswoman Zoe Lofgren, the Sheriff, the Undersheriff, the Chief Probation Officer, the District Attorney, county counsel, and County Board of Supervisors, to better understand existing County policies and practices to enforce immigration laws against community members. When the County announced the creation of a detainer taskforce, the coalition created a detainer report to share ideas on how the County could lessen its role in immigration enforcement and distributed it to every County official. Some suggestions in the report included: not to hold an inmate longer than necessary, inform local agency not to ask for county of origin upon arrest or booking, have information ready in different languages, and create an oversight committee to oversee data collection and protect individuals in custody. When the coalition was informed that it would not have a seat on the taskforce, the coalition met with each taskforce member before each taskforce meeting to educate him/her on various issues relating to immigration enforcement and to share the coalition's positions. The coalition attended every taskforce hearing and coordinated speakers from all of the member organizations to ensure that all of their points were made. Before the last taskforce meeting, the coalition issued a detainer taskforce position paper where the coalition took the stance that the County should not enforce any ICE holds. The coalition took similar strategies for all of the Board of Supervisors public hearings.

Notably, the County and coalition's efforts were not made very public. In general, media efforts and public organized actions were not primary strategies. The coalition, however, did focus on outreach to the community. For example, the coalition held a Community Forum on detainers in July 2011. The purpose of the forum was to provide know your rights information to the community and individual immigration consultations, empower individuals to fight their own cases by sharing testimonies, and engage the community in larger advocacy efforts.

Since the policy was passed, the Coalition continues to defend the policy in the public sphere and to share the lessons learned in the campaign. A significant next step for the Coalition is to create a Trust Index Project. The goal of such a project is to quantify how the immigrant communities' trust has improved with the County as a result of the policy's passage. County officials are also in the process of calculating how much money has been saved as a result of the policy.

One of the most important first steps that the coalition took was to develop a messaging framework that each member organization would follow in advocating against immigration enforcement in the county. They adopted the following framework:

Overall Framework

S-Comm does nothing to promote the security it promises. Instead this program increases the distrust between community and law enforcement; cultivates fear among the community; belittles the county's community values; fosters racial profiling and undermines the civil rights and liberties of all residents. As community members, advocates, grassroots and faith leaders, we stand in opposition to S-Comm, a voluntary program that is destructive and harmful to thousands of families in our county.

- + Community impact
 - › A mechanism that separate families (facilitates deportations)
 - › Impact beyond booking – parent volunteers at school; childcare providers
- + Public safety
 - › Creates mistrust within the community
 - › Criminalizes immigrant communities
 - › Endangers victims of crime, particularly survivors of domestic violence who can be arrested along with their abusers, and who already fear reporting crimes.
- + Fiscal impact
 - › S-Comm drains resources- the county does not get reimbursed for SComm operation costs.
- + Faith perspective
 - › Respecting dignity and humanity of all the residents of Santa Clara County
- + Racial profiling
 - › S-Comm assumes the criminal justice system is fair when we know there are many instances of racial biases.
- + Due process
 - › S-Comm undermines the constitutional guarantee of due process

Critical efforts to fight immigration enforcement in Santa Clara county

May 2010	The federal government activates S-Comm without approval from the Board of Supervisors or any other County official.
June 2010	The County of Board of Supervisors passes a sanctuary type resolution that states that County employees will not inquire into residents' immigration status unless required and the County does not enforce federal civil immigration laws. This policy was a step towards opting out of S-Comm as promised by ICE.
August 2010	<p>County Counsel writes a letter to David Venturella, ICE asking about the legal requirements to cooperate with ICE</p> <p>David Venturella, ICE responds to County Counsel stating that ICE detainers are requests and that ICE is not liable for any mistakes made until it assumes custody of an individual</p>
September 2010	<p>County Counsel issues a report to the Public Safety & Justice Committee (PSJC) of the Board of Supervisors regarding ways to opt out of S-Comm, laying out that one such option is not to enforce ICE holds. The report states, "we believe that immigration detainers are requests only and that they cannot impose requirements on the County. Thus, the Board could direct Administration to ensure that the County does not expend any resources in response to ICE's voluntary requests made in detainers..."</p> <p>The Board of Supervisors votes unanimously to direct the County Executive and County Counsel to opt out of S-Comm</p>
September 28, 2010	County requests an opt out of S-Comm and then meets with ICE to discuss such an opt out. ICE informs the County that there is no opt-out.
November 2010	The PSJC hears the report back on the ICE Nov meeting and considers the following recommendation by County Counsel: "Direct Administration to ensure that, except as required by law, no County funds are used to provide unreimbursed assistance to U.S. Immigration and Customs Enforcement, including assistance requested through immigration detainers." PSJC decides to set up a detainer taskforce facilitated by County Counsel with most County officials serving as members including the Presiding Judge, the District Attorney, the Public Defender, Chief Probation Officer, Sheriff, Undersheriff, Pretrial Services, Criminal Justice Information Control, and County Budget Office.
December 2010	The community coalition issues its detainer report and recommendations on how to reduce the County's participation in S-Comm
January 2011	The Detainer taskforce convenes three times and ultimately recommends an ICE hold policy to the PSJC that states that the County will enforce ICE holds only against those individuals convicted of a violent or serious felony under California law and will exempt all juveniles. The coalition issues a detainer position paper for the taskforce before their final meeting taking the position that no ICE hold should be enforced.
March - May 2011	The PSJC considers the detainer taskforce's recommendation. Notably, the Chair, Sup. Shirakawa announces that he wants to delay a vote to forward it on to the full Board because of the recent announcement of Cook County's ICE hold policy. Advocates later learn that he wants to adopt a policy that goes further than Cook County.
September 7, 2011	At the PSJC meeting, Sup. Shirakawa introduces his alternative ICE hold policy which states that the County will not enforce any ICE hold unless fully reimbursed by the federal government and if reimbursed, then it will use its discretion to only enforce ICE holds against those convicted of violent and serious felonies under California law. The policy also limits ICE access to individuals and county facilities. On a 1-1 vote, both policies are forwarded to the full Board of their consideration.
October 5, 2011	Santa Clara Board of Supervisors on a vote of 3-1 (one absent) adopt Sup. Shirakawa's version of the ICE hold policy and reject the detainer taskforce's version. This makes it the strongest ICE hold ordinance in the country.
October 18, 2011	

APPENDICES



- + Fact sheets for policy makers
- + Sample media materials
- + Legal analyses and templates
- + Communications from ICE about hold requests
- + Sample policies and ordinances
- + Background reports and information

The Appendices are available separately from the
National Immigration Project:

www.nationalimmigrationproject.org/community.htm