

Disrupting the Arrest-to-Deportation Pipeline: Solutions to Protect Communities and Local Governments From The Trump Administration’s Mass Deportation Agenda

Cooperation of state and local law enforcement agencies will be an integral piece of Donald Trump’s mass deportation plan.¹ The federal government’s reliance on state and local law enforcement in this unprecedented assault on immigrants will inevitably increase police and carceral contacts with vulnerable communities and, consequently, expose the public to avoidable police violence and civil rights violations. State and municipal elected officials have an opportunity to shield their communities from this unnecessary harm—and protect themselves from the increased liability attendant to these harms. At a minimum, cities, counties, and states can implement “sanctuary” legislation and policies to stop police departments, sheriffs’ departments, jails, and prisons from cooperating with federal immigration enforcement agencies.

Although sanctuary policies can meaningfully limit the “arrest-to-deportation pipeline,”² such policies are an incomplete solution to the problem. First, even jurisdictions with robust sanctuary policies cannot completely prevent information-sharing with U.S. Immigration and Customs and Enforcement (“ICE”) on account of their participation in national law enforcement databases. Further, some states have preempted local governments from withholding support from ICE or even actively require them to assist ICE. There are also growing risks of federal government retaliation against local officials who are unwilling to cooperate with ICE.³ In light of these limitations, the most effective way for cities and states to defy the Trump

¹Alec Hernandez, *Tom Homan takes to conservative media to outline Trump’s plan for mass deportations*, NBC News, Dec. 11, 2024, <https://www.nbcnews.com/politics/trump-border-czar-mass-deportation-plan-politics-desk-rcna183858>.

² See CALIFORNIA IMMIGRANT POLICY CENTER, *ARREST TO DEPORTATION PIPELINE*, <https://caimmigrant.org/what-we-do/policy/arrest-to-deportation-pipeline/>, for an overview of this pipeline’s operation.

³ Glenn Thrush, *The Justice Dept. orders investigations of any city and state officials who obstruct immigration enforcement*, New York Times, Jan. 22, 2025, <https://www.nytimes.com/live/2025/01/22/us/trump-news#justice-dept-to-investigate-local-officials-who-obstruct-immigration-enforcement>.

Administration's deportation agenda is to arrest and incarcerate fewer people. This white paper provides an overview of the legal and policy problems that result from state and local law enforcement coordination with ICE as well as options to limit cooperation. The paper also provides policy recommendations to maximize protections for immigrant communities by limiting law enforcement contacts with all residents.

Federal Government Mechanisms to Engage State and Local Law Enforcement

Federal immigration enforcement agencies have used state and local law enforcement officers ("LLEO") to assist with detaining and deporting people for decades. The primary mechanism for cooperation is through "287(g) agreements," made pursuant to Section 287(g) of the Immigration and Nationality Act ("INA"). These agreements allow LLEOs to perform certain immigration enforcement functions on behalf of ICE, such as interrogating individuals detained in jail or prison about their immigration status, initiating immigration violation charges, and ordering the continued confinement of people believed to be noncitizens. There are currently over 120 local agencies with 287(g) agreements in place.⁴ This number is likely to increase as conservative legislators push legislation requiring sheriffs to enter into these agreements.⁵

Many more state and local law enforcement agencies cooperate with ICE in less proactive ways, including participating in information sharing databases like the National Crime Information Center ("NCIC") database.⁶ Some jails maintain policies of honoring ICE detainers, which authorize local jails to hold people in custody until ICE can serve an administrative warrant,⁷ allow

⁴ *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, <https://www.ice.gov/identify-and-arrest/287g>.

⁵ See, e.g., Texas, SB 658, 89th Leg. (2025-2026); Florida, SB 1808 (2022).

⁶ See Joan Friedland, *How ICE Uses Databases and Information-Sharing to Deport Immigrants*, National Immigration Law Center, Jan. 25, 2018, <https://www.nilc.org/articles/how-ice-uses-databases-and-information-sharing-to-deport-immigrants/>.

⁷ *Immigration Detainers: An Overview*, Mar. 21, 2017, <https://www.americanimmigrationcouncil.org/research/immigration-detainers-overview>.

ICE agents to enter jails to interrogate detainees, and/or share logistical information about detainees' arrivals to and departures from the jail with ICE.⁸

Although most local ICE cooperation happens through the jails, some states have enacted legislation that empowers officers to carry out immigration enforcement while engaged in on-the-street policing. For instance, Iowa, Louisiana, Oklahoma, and Texas have all recently made “unlawful presence in the United States” an arrestable offense under state law.⁹ This legislation empowers police officers to stop, question, and arrest people if the officer suspects that they are an undocumented immigrant. These laws often also create mechanisms for state and local law enforcement to funnel people into civil deportation proceedings.

Local jails and state prisons have also historically helped with immigration enforcement *after* a person is in ICE custody. Dozens of local jails and state prisons have entered into intergovernmental service agreements (“IGSAs”) with ICE to detain people while they go through removal proceedings.¹⁰ While the Trump administration is expected to send more detainees to facilities operated by private companies or build new federal facilities, IGSAs were heavily utilized during Trump’s first term and will continue to be a point of local government and ICE cooperation.¹¹

Legal Risks for State and Local Law Enforcement Participating in Immigration Enforcement

⁸ Julia Ainsley and Laura Strickler, *Some Democratic cities have quietly begun cooperating with ICE, director says*, NBC News, July 20, 2024, <https://www.nbcnews.com/investigations/democratic-cities-quietly-cooperating-ice-director-says-rcna162710>.

⁹ *State Map on Immigration*, Immigrant Legal Resource Center, Nov. 8, 2024, <https://www.ilrc.org/state-map-immigration-enforcement-2024#:~:text=In%202024%2C%20several%20states%20added,%2C%20Louisiana%2C%20Oklahoma%20and%20Texas>.

¹⁰ See Intergovernmental Service Agreements, <https://www.ice.gov/foia-category/intergovernmental-service-agreements>.

¹¹ Sean Collins Walsh, *How to ICE Programs Let Sheriffs Cash In on Immigration Crackdowns*, Governing, July 20, 2017, <https://www.governing.com/archive/tns-immigration-ice-sheriffs.html>.

Jails are inherently dangerous places where detainees are likely to encounter violence and significant health risks.¹² Similarly, investigatory stops often escalate to violence because police are “trained to presume danger” in virtually any encounter.”¹³ When state and local law enforcement agencies involve themselves in immigration enforcement, they are lengthening the time that people spend in jail and growing the number of police interactions that have a known propensity to turn violent. ICE cooperation expands state and local law enforcement’s carceral reach, and therefore, the potential for harm.

However, communities are not the only ones harmed by ICE cooperation. Agreements with ICE will put stress on already overburdened jails and create significant risks of legal liability for state and local law enforcement agencies. Many U.S. jails are chronically overcrowded. Holding detainees for longer periods than necessary for immigration purposes and diverting limited staff resources away from core detention tasks to conduct interrogations will negatively impact the jail staff’s primary duties. Understaffing and overcrowding are often the root cause of systemic constitutional violations. Adding immigration-related detainees and tasks will only worsen those problems.

Sheriffs’ departments have also been successfully sued for honoring ICE detainers where an individual was kept in jail for the sole purpose of facilitating immigration enforcement.¹⁴ Under the Fourth Amendment,

¹² Nazish Dholakia, *Prisons and Jails are Violent; They Don’t Have to Be*, VERA, Oct. 18, 2023, <https://www.vera.org/news/prisons-and-jails-are-violent-they-dont-have-to-be>.

¹³ David Kirkpatrick, Steve Eder, Kim Barker, and Julie Tate, *Why Many Police Traffic Stops Turn Deadly*, The N.Y. Times, Oct. 31, 2021.

¹⁴ *Cisneros v. El Paso County*, No. 18-cv-30549 (Colo. D. Ct. Mar. 19, 2018) (ruling that county sheriff had no authority under state law to honor civil immigration detainer); *Palacios-Valencia v. San Juan County*, No. 14-cv-1050 (D.N.M. Aug. 10, 2017) (San Juan County pays \$350,000 to settle detainer class action lawsuit, pays named plaintiffs \$25,000 and \$15,000 to settle their claims); *Roy v. County of Los Angeles*, No. 12-cv-9012, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018) (ruling in favor of a class of noncitizens held on detainers seeking damages against Los Angeles County, which had paid \$255,000 to settle one named plaintiff’s detainer claim); *Goodman v. Arpaio*, 2:16-cv-04388 (D. Ariz. settled 2018) (Maricopa County settles detainer lawsuit for \$30,750 in damages and \$50,000 in attorney’s fees); *Gomez-Maciel v. Coleman*, No. 17-cv-292 (E.D. Wash. settled 2017) (City of Spokane

detention without a warrant must be based on probable cause of a *crime*, but the immigration violations for which immigration detainers are typically issued are *civil* rather than criminal.¹⁵ Local law enforcement agents have also been successfully sued for investigating immigration status.¹⁶ The Equal Protection Clause of the Fourteenth Amendment prohibits arrests and detentions where the probable cause is based on a person's race or ethnicity.¹⁷ Because an officer's probable cause about a person's immigration status is highly prone to racial prejudices, state and local governments expose themselves to liability when they authorize their employees to investigate an individual's immigration status either through 287(g) agreements or other directives.¹⁸

Finally, local governments can be sued for the conditions of confinement of people detained pursuant to IGSA's. People incarcerated for civil immigration purposes are entitled to greater protections in carceral settings than individuals who have been convicted of crimes.¹⁹ Accordingly, prisons and jails may face greater liability for exposing people detained for civil

settles detainer lawsuit for \$49,000); *Lunn v. Massachusetts*, 477 Mass. 517 (2017) (holding that police had no authority under state law to hold people on ICE detainers); *Alfaro-Garcia v. Henrico County*, No. 15-cv-349 (E.D. Va. settled May 2017) (Virginia pays \$23,000 to settle detainer lawsuit against county); *Figueroa-Zarceno v. City and County of San Francisco*, No. 17-cv-229 (N.D. Cal. settled 2017) (San Francisco pays \$190,000 settlement to person unlawfully turned over to ICE); *Orellana v. Nobles County*, No. 15-cv-3852 (D. Minn. settled 2017) (Nobles County pays \$15,000 to settle detainer lawsuit); *Del Agua v. Jones*, No. 15-cv-185 (E.D. Cal. settled 2015) (Sacramento County settles detainer case for \$25,000); *Galarza v. Szalczyk*, 745 F.3d 634 (3d. Cir. 2014) (Plaintiff received \$145,000 from federal, city, and county governments to settle Fourth Amendment violation based on an ICE detainer); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014) (County government settled with plaintiff for \$30,100 for honoring an ICE detainer absent any probable cause for detention); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013) (Plaintiff settled his claims against Salt Lake County for \$75,000, along with policy changes, based on illegal detention).

¹⁵ *Arizona v. United States*, 567 U.S. 387, 413 (2012).

¹⁶ See, e.g., *Marquez, et. al. v. Commonwealth, et. al.*, No. 1:19-cv-00599-YK (M.D. Pa.).

¹⁷ *Farag v. United States*, 587 F. Supp. 2d 436 (E.D.N.Y. 2008) (explanatory parenthetical would be helpful here).

¹⁸ *Id.*

¹⁹ *Marsh v. Fla. Dep't of Corrections*, 330 F. App'x 179 (11th Cir. 2009) (civil detainees "are generally 'entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish'" (quoting *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982))); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000).

immigration purposes to the dangerous conditions in their carceral facilities.²⁰

When state and local law enforcement agencies carry out immigration-related tasks, they expose the communities that they serve to unnecessary violence and themselves to avoidable legal liability. Given the purported challenges so many police departments and jails are facing,²¹ taking on the additional work and legal risks associated with immigration enforcement makes little sense.

Options for Limiting ICE Cooperation

In most states, local governments are not required to support federal immigration enforcement efforts.²² Municipalities and counties can enact local measures that prohibit participation in immigration enforcement activities, including bans on honoring ICE detainers,²³ entering into 287(g) agreements,²⁴ and collecting and sharing information about immigration

²⁰ Some courts have held that individuals in immigration detention have greater protections than those in pretrial detention because immigration detention does not implicate penological interests associated with criminal confinement or suspicion. *See, e.g., In re Kumar*, 402 F. Supp. 3d 377, 384 (W.D. Tex. 2019) (applying civil commitment standard to immigration detention); *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004).

²¹ Keri Blakinger, *Why So Many Jails Are in a 'State of Complete Meltdown'*, Associated Press, Nov. 4 2022, <https://www.themarshallproject.org/2022/11/04/why-so-many-jails-are-in-a-state-of-complete-meltdown>.

²² *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding Leigh County was free to disregard ICE detainer because 8 C.F.R. §287.7 only authorizes DHS to issue permissive detainers and it would be unconstitutional under the Tenth Amendment as “the command to detain federal prisoners at state expense is exactly the type of command that has historically disrupted our system of federalism”); *Miranda-Olivares v. Clackamas Cnty*, 2014 U.S. Dist. LEXIS 50340 at 8 (D. Or. 2014) (“neither 8 CFR §287.7 nor the form of ICE detainer at issue here are mandatory”); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 510 (N.D. Cal. Apr. 25, 2017) (“ICE civil detainer requests are voluntary and local governments are not required to honor them”).

²³ *See, e.g.*, San Francisco, Ch. 12H Sec. 2, <https://www.sf.gov/information/sanctuary-city-ordinance>).

²⁴ *See, e.g.*, Richmond, VA, Scott Wise, *Mayor Stoney signs directives to protect Richmond's policies of inclusion*, WTVR, Feb. 6, 2017, <https://www.wtvr.com/2017/02/06/stoney-policies-of-inclusion>).

status with the federal government.²⁵ Some jurisdictions have also adopted legislative bans on IGSA's or generally prohibit ICE agents from entering jails and courthouses.²⁶ Additionally, the ACLU has developed resources and recommendations for states interested in protecting their residents from ICE.²⁷ Limitations on ICE cooperation are not exclusive to legislation. Police and sheriff's departments can adopt general orders directing their employees to not cooperate with ICE for civil immigration purposes.²⁸

As a growing number of states have preempted municipal sanctuary policies and the federal government contemplates banning such policies,²⁹ the strongest safeguard against local law enforcement cooperation with federal immigration agents is to avoid placing people in police custody in the first instance. Most people in ICE custody as a result of state and local law enforcement cooperation are arrested for non-violent offenses.³⁰ State and local elected officials can limit the number of immigrants in law enforcement custody by simply adopting laws that decriminalize or prevent arrests for low-level criminal offenses. For instance, state laws that prohibit officers from initiating stops for low-level traffic infractions like expired tags, broken taillights, or failure to signal would curb arrests that could place people at risk for deportation without jeopardizing public safety. In 2020, Virginia passed a law prohibiting police officers in the state from stopping drivers for minor infractions such as tinted windows, expired registration stickers, and broken taillights.³¹ California and Washington have both introduced similar

²⁵ See, e.g., Philadelphia, PA, Josh Kruger, *Ending the PARS agreement with ICE*, City of Philadelphia, Aug. 3, 2018, <https://www.phila.gov/2018-08-03-ending-the-pars-agreement-with-ice/>.

²⁶ See, e.g., California (SB 29 (2017)), https://www.detentionwatchnetwork.org/sites/default/files/State%20Legislation%20Bans%20on%20Immigration%20A0Detention_DWN_12.16.2021.pdf.

²⁷ *Firewall for Freedom: States Must Safeguard Our Rights*, ACLU, <https://www.aclu.org/firewall-for-freedom-states-must-safeguard-our-rights>

²⁸ See, e.g., Los Angeles Sheriff's Department, *Policy Regarding Immigration Inquiries and Notification*, <https://lasd.org/policy-regarding-immigration-inquiries-and-notification/>.

²⁹ Caroline Vakil, *Trump Calls on Congress to Ban Sanctuary Cities*, The Hill, Sept. 21, 2024, <https://thehill.com/homenews/campaign/4892401-trump-proposes-sanctuary-cities-legislation/>.

³⁰ Annie Laurie Hines and Giovanni Peri, *Immigrants' Deportations, Local Crime and Police Effectiveness*. June 2019, <http://ftp.iza.org/dp12413.pdf>.

³¹ Virginia HB 5058 (2020 Special Session).

legislation.³² While the primary objectives of this type of legislation are to reduce racial profiling and police violence, they would also provide powerful protections against local law enforcement-initiated deportations.

Cities can take similar steps to limit stops and arrests that lead to deportations. Philadelphia’s Driving Equality Law, which went into effect on March 3, 2022, prohibits police from initiating traffic stops for “secondary” traffic violations, including expired vehicle registration and single dysfunctional brake lights.³³ Austin similarly restricted officers under the penalty of discipline from enforcing minor drug, traffic, and pedestrian offenses.³⁴ Both local and state governments can stop the arrest-to-deportation pipeline with measures that will have the added benefit of reducing racial profiling and police violence.

Frequently Asked Questions

Q: Our city receives Byrne JAG funding from the Department of Justice and one of the conditions is that we cooperate with the Department of Homeland Security (“DHS”) and ICE. Will the city lose the grant if it enacts ICE non-compliance policies?

A: Probably Not. Courts in most jurisdictions have ruled that grant conditions requiring cooperation with ICE are unenforceable. In *City of Providence v. Barr*,³⁵ the city challenged federal grant conditions for police department funding which purportedly required the city to provide DHS information about and access to undocumented immigrants. The First Circuit sided with the city, finding, “[i]t follows inexorably, as night follows day, that the Department of Justice lacked statutory authority to impose the challenged conditions pursuant to the information-reporting and coordination provisions of the Byrne JAG statute.” In *City of Philadelphia vs. Sessions*,

³² California SB 50 (2023-2024); Washington HB 1513 (2023-2024)

³³ Philadelphia Penn. Bill No. 210636-A (2021).

³⁴ Greg Casar, “Freedom City” laws could protect Texans from unnecessary policing. Tribtalk, June 7, 2018, <https://www.tribtalk.org/2018/06/07/freedom-city-laws-could-protect-texans-from-unnecessary-policing/>.

³⁵ *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020).

Philadelphia challenged federal funding conditions requiring that the city: (1) provide DHS advance notice of a scheduled release of an immigrant; (2) provide DHS access to jails; and (3) certify compliance with requirements that it communicate with DHS. The court found that the conditions violated both the Administrative Procedure Act and the Tenth Amendment.³⁶ In three other cases in Chicago in 2018 and 2020, the courts again told the Department of Justice that reporting requirements and an order to work with ICE violated the Constitution. In light of this precedent, there are strong arguments that withholding or revoking funding for limiting cooperation with ICE would be subject to a successful legal challenge.

Q: Our county commissioners want to adopt an ICE non-compliance policy but they say it would not apply to the jail. Is that true?

A: Maybe. State law dictates which public officials are responsible for control and maintenance of the jail. In some states, sheriffs can set policies for the jail without needing approval or oversight from the county commission. Even in states where sheriffs have exclusive control over the jails, however, the county commission may be able to influence policies in other ways, including by placing restrictions on using county funds for immigration enforcement and creating personnel policies prohibiting county employees from working with ICE. A review of state law will be needed to determine whether and how a willing county commission can influence a county jail policy.

Q: Our state has a law banning “sanctuary cities.” Can we still pass ICE non-compliance measures?

A: Maybe. While at least 14 states have enacted legislation banning sanctuary cities,³⁷ the bans have varying levels of restrictions. For instance, some states prohibit a local government from preventing their employees from cooperating with ICE but do not prohibit bans on other ICE cooperation measures such as entering into 287(g) agreements.³⁸ Additionally, many

³⁶ *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 271 (E.D. Pa. 2018).

³⁷ Florida, Arizona, Arkansas, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, North Carolina, North Dakota, Oklahoma, and South Carolina.

³⁸ See, e.g., Kansas HB2717 (2022)

restrictions imposed by this legislation have been limited by litigation.³⁹ It is important to look at the specific provisions of state legislation and the cases challenging it to determine what options are available. In addition to explicitly limiting ICE cooperation, some cities in states with sanctuary policy bans—like Austin, Texas—have adopted creative ways to limit the likelihood that their residents will end up in ICE custody, including reducing unnecessary arrests and jail bookings.⁴⁰

Q: If local law enforcement cannot cooperate with ICE, does that mean “dangerous criminals” will be released back into our communities?

A: No. First, data shows that undocumented immigrants are not contributing to any increase in crime⁴¹ and sanctuary cities do not have higher crime rates than cities that cooperate with ICE.⁴² Second, very few people who are deported as a result of state/local law enforcement and ICE cooperation are arrested because of violent crimes.⁴³ Finally, a sanctuary city policy generally would not preclude the state from referring a person who has been convicted of a violent crime to ICE since sanctuary policies largely only concern pretrial detainees and people released on their own recognizance.

Recommendations

Cities, counties, and states that oppose the Trump Administration’s mass deportation agenda have the ability to limit the impact of these policies on their communities by:

³⁹ *State Map on Immigration Enforcement 2024*, Immigrant Legal Resource Center, <https://www.ilrc.org/state-map-immigration-enforcement-2024>

⁴⁰ Wesley Story, *Austin Becomes the First ‘Freedom City’ in Texas*, Progress Texas, Jun. 20, 2018, <https://progresstexas.org/blog/austin-becomes-first-freedom-city-texas>

⁴¹ Jasmine Garsd, *Immigrants are less likely to commit crimes than U.S. born Americans, studies find*, NPR, Mar. 8, 2024, <https://www.npr.org/2024/03/08/1237103158/immigrants-are-less-likely-to-commit-crimes-than-us-born-americans-studies-find>.

⁴² Brianna Seid, *Debunking the Myth of the ‘Migrant Crime Wave,’* Brennan Center, May 29, 2024, <https://www.brennancenter.org/our-work/analysis-opinion/debunking-myth-migrant-crime-wave#:~:text=Studies%20have%20also%20examined%20the,born%20in%20the%20United%20States.>

⁴³ *Supra* at 26.

- Passing sanctuary policies;
- Declining IGSA contracts;
- Prohibiting officers from enforcing codes for low-level, non-violent offenses; and
- Passing legislation that limits unnecessary law enforcement encounters with civilians, such as prohibitions on traffic stops for non-moving violations.

Many progressive elected officials declared that they would make their states and communities safe from Trump’s anti-immigrant policies following the 2024 presidential election. Given the central role that state and local law enforcement will play in deportations, elected officials in local and state government are uniquely positioned to significantly blunt the impacts of the mass deportation agenda.

NPAP’s legal team is available to assist in analyzing state statutes, reviewing proposed ordinances and policies, and supporting grassroots advocacy efforts to plug the arrest to deportation pipeline. Please contact us at legal.npap@nlg.org.