



# THE CRIMINAL ALIEN PROGRAM:

## IMMIGRATION ENFORCEMENT IN TRAVIS COUNTY, TEXAS

By **Andrea Guttin, Esq.**

**FEBRUARY 2010**

Photo from flickr.com. By winterofdiscontent.  
Copyright © February 2010

# **THE CRIMINAL ALIEN PROGRAM**

## **IMMIGRATION ENFORCEMENT IN TRAVIS COUNTY, TEXAS**

FEBRUARY 2010

ANDREA GUTTIN, ESQ.

### **ABOUT SPECIAL REPORTS ON IMMIGRATION**

The Immigration Policy Center's *Special Reports* are our most in-depth publication, providing detailed analyses of special topics in U.S. immigration policy.

### **ABOUT THE AUTHOR**

Andrea Guttin is an attorney currently residing in Austin, Texas. She is a graduate of the University of Texas at Austin and holds a J.D. and an M.A in Latin American Studies. She would like to thank Diego Garcia-Olano for creating the database and inputting arrestee data, without which any analysis would have been impossible.

### **ABOUT THE IMMIGRATION POLICY CENTER**

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational national conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com).

**Supported in part by a grant from the Foundation to Promote Open Society**

# TABLE OF CONTENTS

---

INTRODUCTION ..... 3

THE PAST AND PRESENT OF THE CRIMINAL ALIEN PROGRAM ..... 4

    A Brief History and Explanation of the Criminal Alien Program ..... 4

    The Criminal Alien Program: Step-by-Step..... 5

    Existence and Extent of the Criminal Alien Program ..... 6

THE IMPACT OF THE CRIMINAL ALIEN PROGRAM ..... 6

    The Case of Travis County, Texas ..... 6

    The Unintended Consequences of Detainers ..... 7

    Problems with Prioritization ..... 8

    The Rising Number of Detainers in Travis County ..... 11

    The High Cost of Incarcerating Non-Citizens..... 13

    Impact on the Immigrant Community..... 14

CONCLUSION ..... 16

RECOMMENDATIONS ..... 17

METHODOLOGY..... 18

# INTRODUCTION

---

In February 2008, Austin Police Department (APD) officers pulled over a car on a routine traffic stop. In the car were a Central American couple and their three-year-old U.S.-citizen son. The officers arrested Sylvia and Ernesto<sup>1</sup> due to outstanding traffic tickets, and later charged them with tampering with government records after finding the couple's false Social Security cards used to gain employment. Sylvia and Ernesto were booked into the Travis County Jail, while their son Luis<sup>1</sup> was temporarily placed into Child Protective Services (CPS), to be reunited with his parents once they were released from jail. However, this reunion was not to occur on American soil.<sup>2</sup>

Through an initiative called the Criminal Alien Program (CAP), local law enforcement agencies collaborate with Immigration and Customs Enforcement (ICE) to identify deportable<sup>3</sup> non-citizens in county jails across the county. In Austin, Texas, the seat of Travis County, the Sheriff's Office supplies ICE with a list of foreign-born arrestees and grants ICE unlimited access to the jail to interview inmates. For individuals like Sylvia and Ernesto, who are undocumented, or for legal immigrants who are still vulnerable to deportation for crimes as minor as shoplifting, an arrest can lead to deportation.<sup>4</sup>

Because ICE was able to take custody of them, Sylvia and Ernesto were not released into the community to be with their young son. Instead, they were held in ICE detention while deportation proceedings commenced against them. Meanwhile, CPS transferred Luis to foster care, as no relatives could be immediately found to claim him. Luis's parents were ultimately both deported to Central America, and Luis lingered in foster care for a week until a relative was found. Unfortunately, this is no isolated incident. In 2008, the University of Texas School of Law's Children's Rights Clinic saw another similar case,<sup>5</sup> and in April 2009, *The New York Times* reported that an undocumented woman's child was placed for adoption when the court deemed she "abandoned" her son after being jailed subsequent to an immigration workplace raid.<sup>6</sup>

ICE and local law enforcement officials claim that CAP targets the worst criminal offenders—those dangerous individuals who make our communities less safe. The Chief Deputy of the Travis County Sheriff's Office (TCSO) has said, "We know for a fact that we are only getting the bottom of the barrel, so to speak. These guys are really the undesirables. Most people wouldn't want them getting out of jail and being their neighbor. They'd like to see them deported out of the country."<sup>7</sup> However, stories like those of Sylvia and Ernesto, and those of many others whose families are torn

## GLOSSARY OF ACRONYMS

ACAP – Alien Criminal Apprehension Program

APD – Austin Police Department

CAP – Criminal Alien Program

CPS – Child Protective Services

DHS – Department of Homeland Security

DRO – Office of Detention and Removals

FY – Fiscal Year

ICE – Immigration and Customs Enforcement

INS – Immigration and Naturalization Service

IHP – Institutional Hearing Program

IRP – Institutional Removal Program

PDL – Proyecto Defensa Laboral  
(Worker's Defense Project)

SCAAP – State Criminal Alien Assistance  
Program

TCFV – Texas Council on Family Violence

TCSO – Travis County Sheriff's Office

VAWA – Violence Against Women Act

apart because of traffic arrests or misdemeanor<sup>8</sup> offenses, show that many of the people impacted are far from being at “the bottom of the barrel.”

Not only are these individuals facing deportation and separation from their families, but CAP has also negatively impacted entire communities. There have also been allegations of law-enforcement agencies engaging in racial profiling and pretextual arrests in order to get suspected deportable immigrants into the jail so they can be identified by ICE.<sup>9</sup> CAP can also affect a town’s reputation, economy, and school system.<sup>10</sup> Achieving the opposite of its mandate, CAP in fact decreases public safety when immigrant victims and witnesses fear contacting police due to law enforcement’s collaboration with immigration authorities, creating a sphere for criminals to operate with impunity.<sup>11</sup>

This paper provides a brief history and background on the CAP program. It also includes a case study of CAP implementation in Travis County, Texas, which finds that the program has a negative impact on communities because it increases the community’s fear of reporting crime to police, is costly, and may encourage racial profiling.

## THE PAST AND PRESENT OF THE CRIMINAL ALIEN PROGRAM

---

### **A Brief History and Explanation of the Criminal Alien Program**

CAP is not a new immigration-enforcement scheme, but rather one that has been expanded and amplified in recent years. Since the mid-1980s, the Immigration and Naturalization Service (INS) and now the Department of Homeland Security (DHS)<sup>12</sup> have been involved in screening for so-called “criminal aliens” in prisons and jails, with varying levels of success. There have been myriad name and program changes in the agency’s attempts to identify and ultimately remove “criminal aliens” from the United States.

The first incarnation of this program was the Alien Criminal Apprehension Program (ACAP) of 1986, which began as a pilot project in only four cities, and aimed at working with local agencies to begin deportation proceedings even before conviction.<sup>13</sup> This program represented INS’s first attempt to identify non-citizens before conviction and sentencing (prior to ACAP, INS only screened inmates once they were sentenced to prison).<sup>14</sup> The Institutional Hearing Program (IHP), created in 1988, was a similar program targeted at beginning deportation proceedings for inmates in federal and state prisons before completion of their sentences.<sup>15</sup> A decade later, IHP transitioned into the Institutional Removal Program (IRP).<sup>16</sup> Collaboration between local jurisdictions and the federal government continued as part of ICE’s National Criminal Alien Removal Plan, developed after a bill sponsored by Rep. Elton Gallegly (R-CA) passed and was signed into law in 1997.<sup>17</sup> This law required the Attorney General to “establish a program in local jails to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States.”<sup>18</sup> By 1998, IRP and ACAP had similar functions, with ACAP being responsible for “the identification, processing, prosecution, and removal of all criminal aliens in institutions not participating in the IRP.”<sup>19</sup>

While the names have changed, the goals of these programs remain the same. Ultimately, ACAP and IRP were absorbed into the program’s current manifestation, CAP.<sup>20</sup> The transition to CAP

began sometime in Fiscal Year (FY) 2005, but was not under the complete control and supervision of ICE's Office of Detention and Removals (DRO) until June 2007.<sup>21</sup> Data from Travis County, Texas, confirm that ICE increased its presence in local jails soon after the consolidation.<sup>22</sup>

Over the last several years, the federal government has turned to state and local law enforcement agencies to aid federal efforts to enforce immigration law. Today, CAP is one of fourteen federal/local law enforcement programs under the umbrella of ICE ACCESS (Agreements in Cooperation in Communities to Enhance Safety and Security).<sup>23</sup> CAP is one of three "jail status check" programs, the others being the 287(g) jail enforcement program and the Secure Communities initiative.<sup>24</sup> These three programs use different means—technology, agent interviews, or the cross-designation of local police to act as immigration agents—toward the same goal of screening inmates in jails and placing removable non-citizens into deportation proceedings.<sup>25</sup>

### **The Criminal Alien Program: Step-by-Step**

Participation in CAP means state and federal prisons, as well as local jails, share inmate information with ICE and allow ICE agents access to penal facilities in order to interview suspected deportable immigrants. This paper focuses on CAP in local jails rather than its impact on the prison system.<sup>26</sup> The collaborative process may vary from jurisdiction to jurisdiction, but is essentially the same: local law enforcement provides ICE a list of arrestees, whereupon ICE agents interview those arrestees and place an immigration hold (known as a "detainer") on those who are suspected of being deportable. A detainer lets the jail know that ICE requests custody of an individual once local jurisdiction ends.

The operation of CAP varies among participants, with local law enforcement using a variety of methods for collaborating with ICE. For instance, in Texas, some jurisdictions have ICE agents located in the jails, while others allow telephone or video-conference, rather than in-person interviews with ICE.<sup>27</sup> ICE telephone interviews are an emerging strategy. A survey of all 254 Texas counties shows that 62 percent of the 94 responding counties (both CAP and non-CAP participants) allow ICE to conduct phone interviews at the county jail.<sup>28</sup> Nearly 20 percent of responding counties stated that the use of telephone interviews has increased since 2006.<sup>29</sup> Counties using telephone interviews have been extremely amenable to accommodating ICE: only two Texas counties reported restrictions in the hours that ICE could call, and did so only because they were short-staffed.<sup>30</sup> The degree of access afforded ICE agents also varies by jurisdiction. In some counties, ICE may be given 24/7 access, while other localities limit ICE agents' access to the jail to certain hours or days of the week. Furthermore, the frequency with which local jurisdictions report to ICE may also vary.<sup>31</sup>

The one constant among jurisdictions, however, is the use of detainers. Used as the main tool of "jail status check" programs like CAP and Secure Communities, a detainer is a request from ICE that the arresting agency notify ICE before it releases the suspected non-citizen so that ICE has the opportunity to decide whether the individual should be transferred to ICE custody instead.<sup>32</sup> The detainer power lasts 48 hours, which means that once local charges are complete (either through an adjudication of guilt or the dropping of charges), ICE agents have two days to take custody of the individual. Notably, this time period excludes weekends and holidays, which means the time count runs only on business days.<sup>33</sup> However, ICE does not always assume custody within the allotted time. Inmates sometimes slip through the cracks. There have been incidents in which ICE has

neglected to pick up inmates held solely on detainer power, and they languished in jail for *three months* without recourse.<sup>34</sup> The placement of a detainer also means that an individual may not be released on bond into the community during the pre-trial period, thereby increasing lengths of incarceration and making it harder for arrestees to prepare their criminal defenses.<sup>35</sup>

### **Existence and Extent of the Criminal Alien Program**

Today, CAP is active in all state and federal prisons, as well as more than 300 local jails throughout the country.<sup>36</sup> ICE DRO has a presence in all federal and state prisons, where it screens foreign-born inmates.<sup>37</sup> Not all inmates are screened at every institution, however. ICE only has “100 percent screening” at a number of designated “Tier 1” and “Tier 2” prisons, which reflects the inmate populations that pose the highest risk to public safety and national security, according to an ICE assessment.<sup>38</sup> In contrast to prisons, ICE presence in local jails is weak—only ten percent of local jails have “full coverage” screening.<sup>39</sup> Yet ICE plans to expand its operations in order to have a presence in all U.S. jails and booking locations by 2013.<sup>40</sup>

ICE identifies an increasing number of immigrants in prisons and jails every year. CAP is the program responsible for the largest number of “alien apprehensions,” according to a recent DHS report.<sup>41</sup> In fact, 48 percent of all deportable immigrants identified by ICE in FY 2009 were apprehended through CAP—more than the 287(g) program, Fugitive Operations, and the Office of Field Operations combined.<sup>42</sup> In FY 2006, ICE charged 67,000 “aliens” through the CAP program, a figure that more than doubled the following fiscal year to 164,000.<sup>43</sup> In FY 2008, CAP agents charged 221,000 non-citizens.<sup>44</sup> CAP has been expanding annually, with ICE requesting nearly \$200 million for CAP in FY 2010<sup>45</sup>—nearly \$50 million more than it had a mere four years prior.<sup>46</sup>

Despite its long history and widespread reach, CAP is not a well-known program and confusion exists—even among counties themselves—as to what participation in CAP entails. For instance, ICE claims that a majority of Texas counties participate in CAP.<sup>47</sup> However, in a survey of all 254 Texas counties, only 16 percent of 94 responding counties claimed to participate in the program, while 84 percent of respondents said that they collaborated with ICE in some way.<sup>48</sup> This shows that counties themselves are unaware of whether or not they are participants in the program.

This lack of information may mean that counties are silently acquiescing to a program they know little about and may be ignorant of the program’s consequences. For instance, one major consequence of local collaboration with ICE is the increased number of detainees placed on inmates, which leads to substantially longer jail times for those inmates.<sup>49</sup> Participation in jail status check programs is voluntary, and localities are not required to actively collaborate with ICE and grant them unfettered access to all arrested persons.<sup>50</sup>

## **THE IMPACT OF THE CRIMINAL ALIEN PROGRAM**

---

### **The Case of Travis County, Texas**

The Travis County Sheriff’s Office (TCSO) first began a relationship with federal immigration authorities in 1993, when it entered into an intergovernmental service agreement with INS.<sup>51</sup> TCSO signed another agreement with INS in 1999, the purpose of which was to “identify and, where appropriate, deport aliens detained at the Travis County Jail.”<sup>52</sup> The agreement stipulated the use

of “enforcement tools,” such as video-conferencing, and use of the INS Law Enforcement Support Center to achieve its objectives.<sup>53</sup>

However, ICE agents began spending more time in the Travis County Jail in late 2007.<sup>54</sup> Travis County Sheriff Greg Hamilton supported this change, announcing in January 2008 that TCSO would be granting ICE permanent office space in the jail.<sup>55</sup> The Sheriff further announced that ICE would be present in the jail 24 hours a day, seven days a week.<sup>56</sup> This announcement resulted in an outcry from many members of the community. Attorneys, civic organizations, and immigrant community groups worried that “increased enforcement could divide families in instances where a parent has U.S.-born children and [would] affect the willingness of undocumented immigrants to work with local law enforcement officials to report and help solve crimes,” for fear of deportation.<sup>57</sup>

These concerns led community members to speak out at several town hall forums, a hearing before the Commissioners’ Court, and public demonstrations.<sup>58</sup> Meanwhile, Sheriff Hamilton claimed there was no new policy in effect, merely a continuation of existing practice.<sup>59</sup> However, the Sheriff neglected to address the issues that sparked the debate: the increasing costs of the program, the negative impact on public safety, and the specter of racial profiling. Faced with growing opposition, TCSO did not create a formal office space for ICE. However, TCSO continues to participate actively in CAP and allows ICE unrestricted access to Travis County Jail.

As part of TCSO participation in CAP, the Sheriff’s Office sends a list of foreign-born inmates to ICE daily.<sup>60</sup> These data are collected as part of the inmate booking process in which all arrestees are asked their place of birth—a question that is self-reported and not verified or vetted by staff.<sup>61</sup> According to the Sheriff, these data are gathered in order to comply with the Vienna Convention on Consular Relations which gives those incarcerated or detained the right to speak with or meet with their consular officials.<sup>62</sup> This appears to be a misinterpretation of the Convention, which was meant to protect foreign nationals facing prosecution in the United States by giving them a right to contact their consulate. Rather, the Sheriff is using the Convention to facilitate the deportation of non-citizens.<sup>63</sup>

ICE agents are granted unfettered access to the jail 24 hours a day, seven days a week, in order to interview inmates to determine legal status. Once the status determination is made, ICE places detainers on individuals it has identified as “removable.” In June 2009, ICE implemented the Secure Communities initiative in the Travis County Jail.<sup>64</sup> This program is a technologically intensive counterpart to the CAP program.<sup>65</sup>

### **The Unintended Consequences of Detainers**

The detainer is an instrument that flags an inmate as a deportable non-citizen, but it is more than a mere administrative tool. Detainers tend to have unforeseen repercussions that negatively impact detained immigrants as well as the community as a whole. One important, yet commonly overlooked, result of detainers is that once an individual is identified as potentially deportable, courts are less likely to release him or her on bail.<sup>66</sup> In Texas, arrested persons who are jailed can return to their communities before trial if they pay a bond to the court—or they may be released on their own recognizance, in which case they do not have to pay any money, but are released on a personal bond. In Travis County, Pre-Trial Services interviews inmates to determine whom it will recommend for a personal bond. However, they will not consider a person with an ICE detainer for this type of bond, which makes it much more difficult to secure release.<sup>67</sup> Similarly, judges rarely



grant surety bonds, whereby arrestees must pay money to the court to be released, to inmates with a detainer because it merely results in a transfer to ICE custody—not freedom. In those rare situations in which bail is granted, an individual may not have the resources to pay it.

This lack of pre-trial bail results in longer jail incarceration times and places suspected deportable immigrants at a radical disadvantage in trying to prepare their defense cases for trial.<sup>68</sup> They are held longer than their U.S.-citizen counterparts, making it more difficult to keep their jobs, make money to cover legal expenses, or meet with their attorneys. Despite these consequences, detainees are subject to widespread use. They are placed on anyone in jail who is deportable, regardless of the seriousness of the offense and without regard to innocence or guilt.

Immigrants placed under detainer are transferred to immigration custody once local jurisdiction ends: when charges have been disposed of through a finding of guilt or innocence; charges are dropped; bail is secured; or a convicted individual has served out his or her sentence. In any and all of these situations, once an individual is transferred to ICE custody, he or she is placed into immigration detention while the deportation case is pending. In cases where ICE has an agreement with the jail, the individual may remain in the same physical facility, but custody is transferred from the local authorities to ICE. Deportable immigrants who are placed under detainer—whether they are legal permanent residents or undocumented immigrants—are all immediately transferred to ICE detention from the local jail.

Once in ICE custody, an individual may be eligible for an immigration bond (distinct from a criminal bond) which grants the detainee<sup>69</sup> freedom while his or her immigration case is pending. Posting bond entails filing the appropriate forms and paying a sum of money to ICE, which varies greatly, but may be tens of thousands of dollars.<sup>70</sup> If the individual is ineligible for—or unable to pay—immigration bond, he or she is kept in ICE custody until deportation or the granting of authorized permission to stay in the United States. The detainer process means that rare individuals who are able to secure criminal bond must pay another bond—this time to ICE—before they can be returned to their communities and their lives. For detainees who remain in this second round of incarceration, it is even more difficult to secure legal counsel and prepare their immigration cases.

### **Problems with Prioritization**

DHS purports to focus its “jail status check” programs on immigrants with serious criminal backgrounds. According to DHS, “The [CAP] program ensures the safety of our citizens as well as the national security of the United States by removing *dangerous, often recidivist, criminal aliens* before they engage in additional criminal activity.”<sup>71</sup> However, data from Travis County show the opposite: CAP targets immigrants with a broad range of criminal histories. Any person arrested in Travis County is booked into jail with his or her personal information collected and shared with ICE. This process occurs regardless of the charge against the arrestee—whether it is a misdemeanor, a traffic offense, or even if the person is a victim of or witness to a crime. For instance, police may arrest victims or witnesses in situations in which the identity of the perpetrator is unclear, such as domestic violence cases in which a victim fights back in self-defense and is arrested.

Furthermore, jail status check programs may incentivize the pre-textual arrests of those who look like immigrants. For instance, in a traffic offense situation, a police officer may decide to arrest a person of Hispanic descent rather than merely issue a citation in order to check immigration status upon booking. A recent study of arrest data in Irving, Texas, confirms this suspicion, finding that

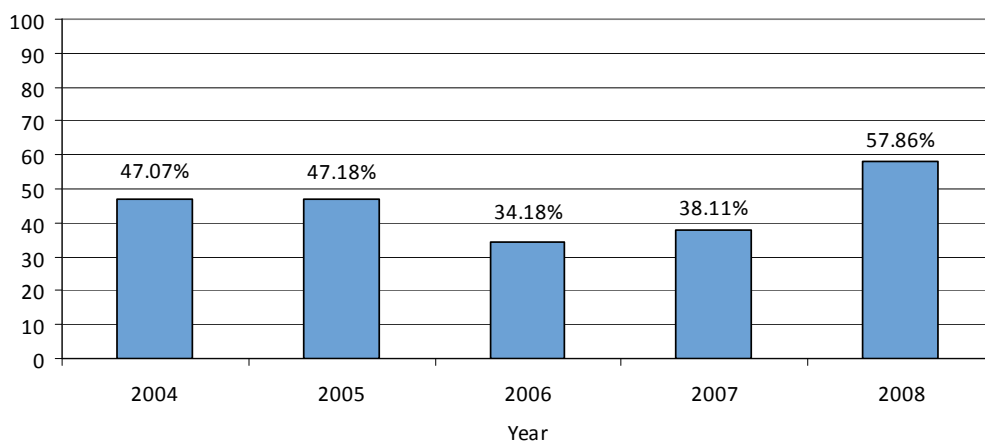
local police engaged in racial profiling by arresting Latinos in order to check their immigration status through CAP.<sup>72</sup>

Contrary to public perceptions, CAP does not only identify undocumented immigrants. Recent legislative changes have made legal permanent residents and other legal visa holders who have not yet gained U.S. citizenship deportable for minor violations and misdemeanors.<sup>73</sup> Furthermore, non-citizens may even be deported retroactively for past criminal convictions.<sup>74</sup> In other words, an individual arrested for a current traffic violation may be deported based on a prior crime, even when that act was not a deportable offense at the time committed, and regardless of the individual’s rehabilitation or time served. This means that a growing number of legal and undocumented immigrants are identified and deported annually.

Recent statistics from DHS show that a large percentage of immigrants apprehended under CAP are, in fact, not criminals at all. An October 2009 DHS report shows that 57 percent of immigrants identified through the CAP program in FY 2009 had no criminal convictions, up from 53 percent in FY 2008.<sup>75</sup> These data prove that the majority of people swept up under CAP are not serious threats to the safety of our communities. Data from Texas show that a large percentage of those “criminals” placed under detainer are, in fact, low-level offenders.

In Travis County, a majority of immigrants placed under detainer were arrested for a misdemeanor as their most serious charge. In 2008, 58 percent of the detainees were placed on those charged with misdemeanors—up from 38 percent in 2007 and 34 percent in 2006 {Figure 1}.<sup>76</sup>

**Figure 1: Percentage of Detainers Made Up of Misdemeanants in Travis County**

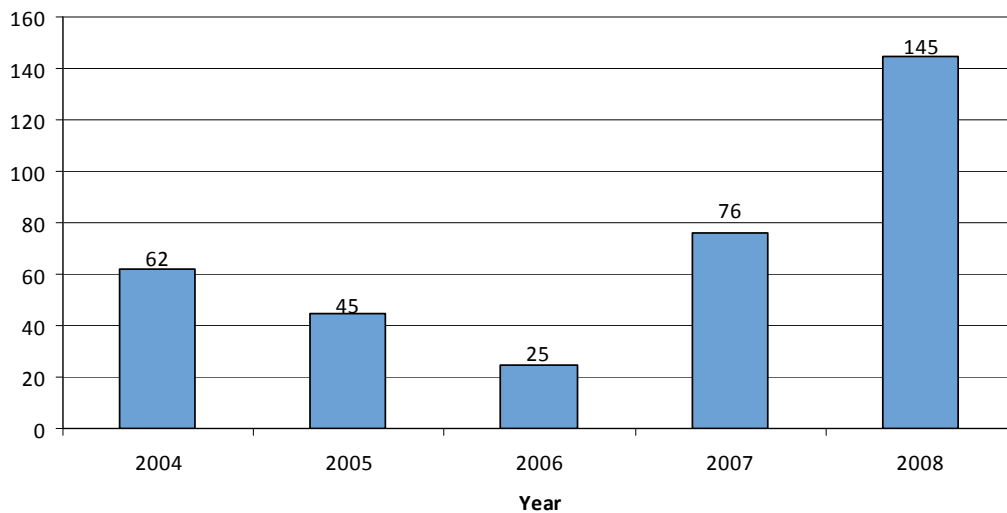


Data from Irving, Texas (a suburb of Dallas) corroborate the Travis County experience. In the first year of CAP implementation, in 2006-2007, 12.5 percent of all charges were for the traffic offenses of driving without a license or driving with an invalid or suspended license, according to a local newspaper.<sup>77</sup> A recent study by the Warren Institute assessing the arrest data from Irving finds that 98 percent of all arrestees placed under detainer in 2007 had been arrested for misdemeanor offenses.<sup>78</sup>

This paper finds that the absolute number of those arrested for misdemeanors and placed under detainer has increased in Travis County. In Texas, “Class C” misdemeanors are the lowest level

misdemeanor, punishable by a maximum \$500 fine.<sup>79</sup> In other words, these offenses are not punishable by jail time. While there seemed to be a decreasing trend from 2004 to 2006 in the number of detainees placed on Class C misdemeanants, this changed drastically when ICE began its permanent presence in the jail. By 2008, there were 145 people placed under detainer charged with a Class C misdemeanor as their highest level charge {Figure 2}. However, this analysis undercounts the number of people who are arrested for Class C misdemeanors because it does not take into account people like Sylvia and Ernesto, who are arrested and later charged with higher level “status crimes”—such as carrying false documents. This type of crime is inextricably linked to immigration status, and is a product of being undocumented in the United States.

**Figure 2: Number of Detainers Lodged on Class C Offenders in Travis County, By Year**



Community leaders are concerned that CAP sweeps up low-level offenders, as well as individuals with some type of legal status. The Texas Civil Rights Project, for example, has cited concerns for those arrested on minor charges and victims of domestic violence, fearing that “ICE presence will adversely affect abused immigrant women and people with petty charges, such as misdemeanor traffic violations (speeding, not producing a driver’s license, etc.).”<sup>80</sup> Denise Gilman, Clinical Professor at The University of Texas School of Law’s Immigration Clinic, brings the perspective of immigration practice to bear. She has found that a widely cast net means that people with legal status, or those eligible to adjust their status, now face greater hurdles:

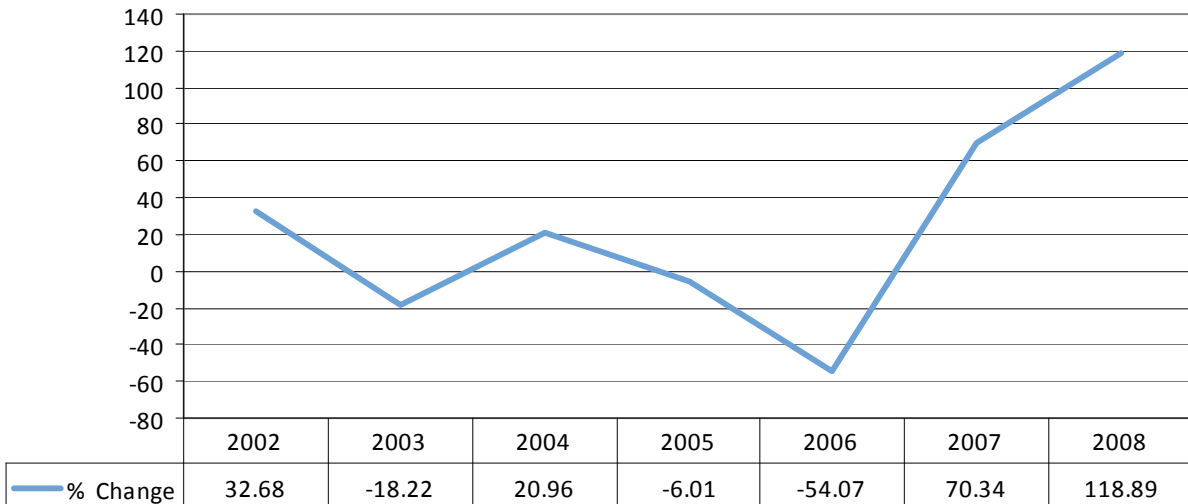
Clients have ended up in removal proceeding because they were picked up on very minor charges [by police] and then transferred to ICE custody. Fortunately, those clients have generally been eligible for relief from removal, but that just demonstrates the problem... these are individuals who are eligible and working for their green cards, but any minor brush with the law lands them in a much more adversarial process in immigration court and lands them in detention for some time.<sup>81</sup>

## The Rising Number of Detainers in Travis County

The point at which ICE presence in Travis County Jail increased is easily recognizable by the sudden rise in the number of detainers lodged. As of September 2007, there has been a sustained and dramatic rise in detainers, which has serious unintended consequences on the criminal justice system in Travis County. Immigration detainers lead to longer jail stays because inmates are not released on pre-trial bond, leading to increased costs and overcrowded jails.

From the time ICE increased its presence in September 2007 to the end of that year, there were more detainers placed than in the previous eight months of the year. The final four months of 2007 showed a 152 percent increase over the last third of 2006. Compared to the annual total for 2006, 2007 saw a 70 percent increase in the number of detainers. This pattern of growth continued in 2008, resulting in a 119 percent increase in detainers over 2007 {Figure 3}. This percentage translates to 2,062 individuals placed under detainer—the highest number in the eight years of data reviewed {Figure 4}.

**Figure 3: Percent Change in Number of Detainers Lodged in Travis County, By Year**

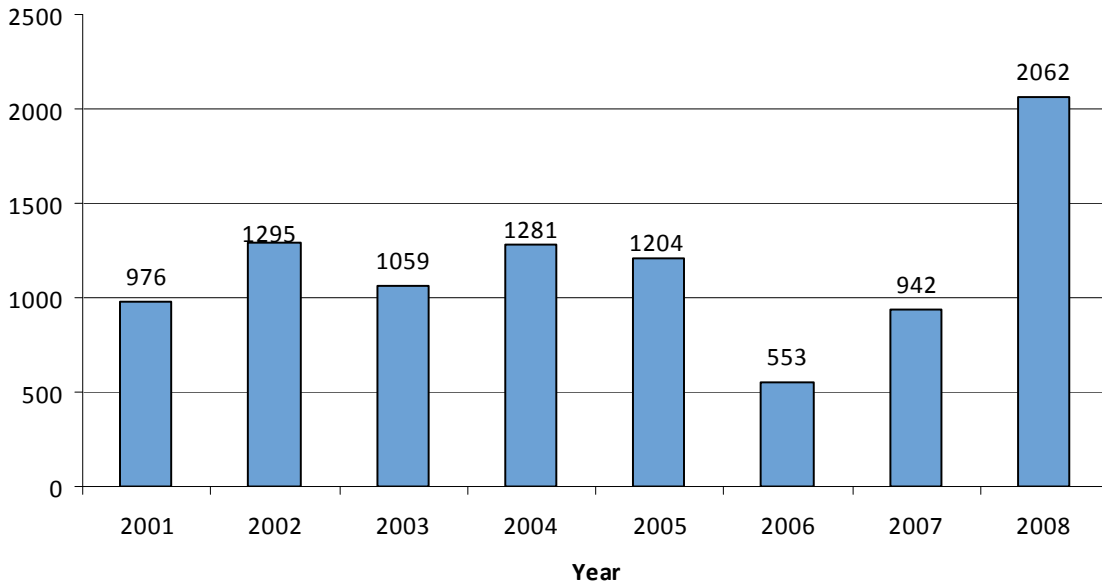


The total number of detainers in 2008 surpassed the second highest annual total from 2002 by 750 detainers; this difference represents more than the *total number* of detainers placed in *all of 2006*. This trend of increasing detainers is not unique to Travis County.<sup>82</sup> In El Paso County,<sup>83</sup> for example, the number of detainers sextupled in one year from 47 in 2007 to 286 in 2008. In Harris County (Houston),<sup>84</sup> detainers more than tripled from 2006 to 2007, and nearly doubled again in 2008 {Table 1}.<sup>85</sup>

**Table 1: Increase in Detainers Lodged in Texas Counties, 2006-2008**

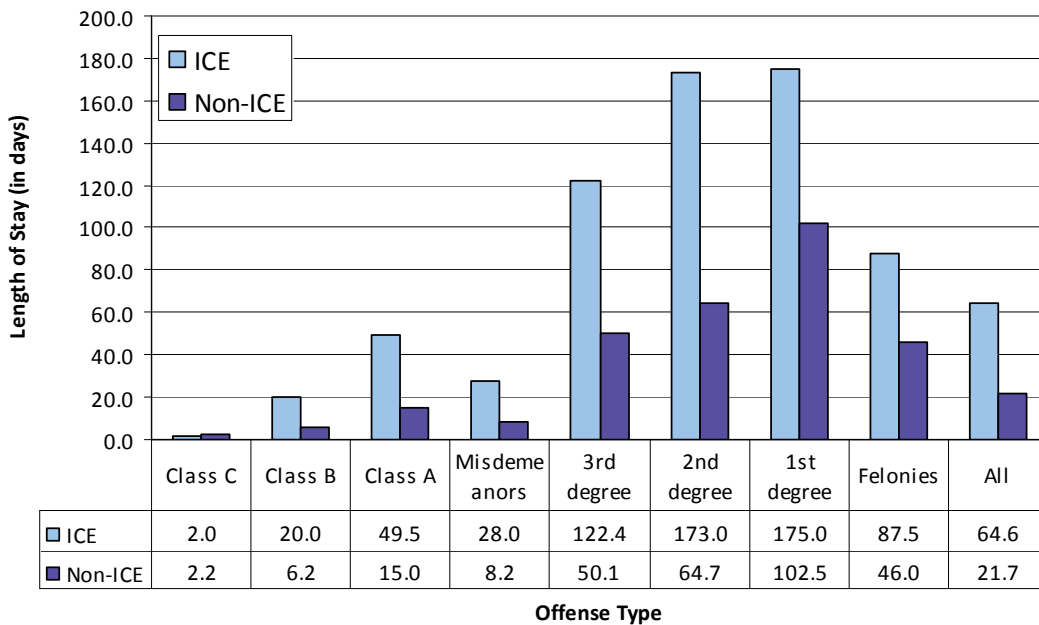
	2006	2007	2008	% Change '06-'08
Travis (Austin)	553	942	2,062	+272.88
Harris (Houston)	1,437	4,963	9,109	+533.89
El Paso	39	47	286	+633.33

**Figure 4: Number of ICE Detainers Lodged in Travis County, By Year**



The increased number of detainers means that a penal institution faces an increased number of total jail days. Arrestees placed under detainer have substantially longer jail stays than inmates without detainers—not only because they are held for up to 48 hours after local charges have been disposed of, but because ICE-detainer inmates are unlikely to receive bail while awaiting trial. This means that they stay in jail for the duration of the pre-trial period, while similarly situated U.S. citizens would be released on bond.<sup>86</sup> A four-year comparative analysis shows that inmates under detainer have consistently stayed for longer periods than the general population. This holds true across all crime classes in Travis County, with the exception of Class C offenses. From 2004 through 2007, the average lengths of stay for the general population have varied from 22 to 26 days, while the detainer population has consistently been held three times longer—from 65 to 76 days {Figure 5}.

**Figure 5: Average Length Stay for ICE and Non-ICE inmates in Travis County, 2007**



These data are especially worrisome since misdemeanants with detainers stayed, on average, three-and-a-half times longer than non-detainer inmates in 2007. The impact is greater for inmates charged with felonies since felons tend toward longer incarceration times. Even so, detainer inmates stayed nearly twice as long, on average, as non-detainer felons. Inmates charged with a first-degree felony stayed an average of 103 days, while ICE-detainer inmates on the same charge stayed an average of 175 days. As an increasing number of individuals are placed under detainer, an ever-growing number of inmate days are being logged. In 2008, the number of detainers more than doubled from the number of detainers at the beginning of the decade<sup>87</sup>—resulting in a growing number of inmate jail days, which is costly to the county.

### The High Cost of Incarcerating Non-Citizens

As more and more people are being detained for longer periods, taxpayers will see more of their crime-fighting resources spent on detaining immigrants. The extensive use of ICE detainers means that inmates are facing longer incarceration stays, each day of which costs the county money. While the federal government reimburses county jails for some of the costs of holding “criminal aliens”—through the Department of Justice’s State Criminal Alien Assistance Program (SCAAP) and through local contracts with DHS—these payments are insufficient to cover all costs.<sup>88</sup> SCAAP covers correctional officer salary costs only and places restrictions on the types of inmates it will credit.<sup>89</sup> Likewise, the reimbursements from DHS do not cover the full costs of detainers. DHS reimburses only for the amount of time inmates are incarcerated after local charges have been disposed of.<sup>90</sup>

A look at the payments received as compared to the costs of housing ICE detainers may shed some light on the costs. Travis County received a total of \$1,257,093 in reimbursements for housing immigrants in FY 2008 (July 1, 2006 to June 30, 2007).<sup>91</sup> In this same period, Travis County spent \$2,570,955 housing inmates with detainers. This is based on the total incarceration days for inmates with ICE detainers (42,432) at a per diem cost of \$60.59, calculated from incarceration personnel salaries.<sup>92</sup> After subtracting the total costs of incarcerating ICE inmates by the reimbursements received from the federal government, this study finds that the post-reimbursement cost of housing ICE detainer inmates in FY 2008 was \$1,313,862 {Table 2}. Travis County is spending more money incarcerating immigrants than it is receiving. This is not because immigrants commit more crime (several studies have shown that they do not), but because the lengths of stay resulting from detainers increase the cost of housing.<sup>93</sup>

**Table 2: FY2008 Cost of Housing ICE Detainers** <sup>94</sup>

Cost of housing	\$2,570,955
SCAAP Reimbursements	\$ (1,239,273)
Contract Payments	\$ (17,820)
<b>Total Cost</b>	<b>\$1,313,862</b>

Another problem resulting from the total lengths of stay for ICE detainers, which grows annually as the number of detainers lodged increases, is the problem of overcrowding. While this paper does not assert that ICE detainers are the primary cause of overcrowding, the increase in detention days is one factor that contributes to the pressures on jail housing. When more people are held within an institution than are being released, overcrowding is exacerbated. There are two main causes of

overcrowding: increased admissions and increased lengths of stay. The use of detainees dramatically increases the lengths of stay for arrestees. The Pew Center has found that “even the smallest modifications can yield a marked slowdown—or acceleration—in population growth.”<sup>95</sup> This is particularly troubling since the Texas county jail system already faces overcrowding problems.

Travis County suffered perennial crowding from 1993 through 2001 to the extent that the Texas Commission on Jail Standards cited the county for “consistent overcrowding.”<sup>96</sup> Overcrowding remained a problem in 2001, and was also a major concern in 2005.<sup>97</sup> Furthermore, Travis County is not alone in struggling with this problem. In 2005, the Harris County Jail was so overcrowded it had inmates sleeping on the floor,<sup>98</sup> and in 2008 the jail continued to have such extreme overcrowding that it had to contract out the care of nearly 2,000 inmates to Louisiana, yet was still 2,000 inmates over capacity.<sup>99</sup> Bexar County (San Antonio) faced overcrowding problems in 2007.<sup>100</sup> The length of stay of detainees is a significant factor increasing overall inmate days spent in jail. In this way, CAP puts pressure on Texas jails, which have seen systemic overcrowding over the last decade.

### **Impact on the Immigrant Community**

Although ICE and TCSO have reiterated their concern for the immigrant community, the very essence of CAP belies their statements. An ICE spokesperson has said that the agency’s goal is public safety, noting how “[m]any of the victims of criminal aliens are illegal aliens themselves... [o]ne of our highest priorities is to target aliens with criminal convictions who target those in their community.”<sup>101</sup> However, ICE has not addressed issues relating to relations between local police and immigrant communities or the under-reporting of crime by immigrants, and has neglected vulnerable populations such as victims of domestic violence. A major concern is that, by collaborating with ICE, there will be a breakdown of community trust in the police force.<sup>102</sup> When local police and immigration officials are perceived to be acting in tandem, immigrants hesitate to contact police due to fears of deportation. Because a large portion of the immigrant community lives in “mixed-status” families, legal immigrants and even U.S. citizens may be hesitant to collaborate with the police if they fear that an undocumented family member may be detected. This means crime goes unreported. Furthermore, this fear to report crime may lead criminals to specifically target immigrant populations since wrongdoers know they can act with impunity in a community that is too afraid to call for help.

Social service providers and community organizations in Austin have noted a climate change in the immigrant community, where police collaboration with ICE has chilled immigrant relations with police. For instance, *Proyecto Defensa Laboral* (PDL, Worker’s Defense Project), a non-profit worker center assisting low-wage workers who want to improve their working conditions, has received calls from its members afraid to contact police. After one female member’s thirteen-year-old daughter was sexually assaulted, she waited an entire weekend to report the incident due to fear of ICE’s collaboration with local law enforcement and the ICE presence in the Travis County Jail. Before calling police, the woman contacted PDL to make sure it was safe to do so.<sup>103</sup>

APD, like many other police departments across the country, has recognized the severe public safety consequences of local enforcement programs. Police Chief Art Acevedo puts forth this scenario when discussing the unintended consequences of such programs: “If your child was kidnapped...and the only witness is...an illegal immigrant, and they’re afraid to come forward, do

you want to create that environment where your child is not rescued by law enforcement because we're not getting full cooperation from the community?"<sup>104</sup>

Community advocates have been particularly concerned for immigrant victims of domestic violence. Domestic violence is of no small concern for Texas, where the Texas Council on Family Violence (TCFV) reports there were 189,401 documented incidents of family violence in 2007.<sup>105</sup> However, this does not account for abuse that goes unreported by immigrants. For undocumented immigrants, the incidence of domestic violence is acute. Immigrants tend to face cultural and language difficulties as well as inconsistent perceptions of how the criminal justice system operates.<sup>106</sup> Scholars have found that immigrant women face many hurdles in contacting police about their abusers—hurdles aggravated by police participation in local immigration-enforcement initiatives.<sup>107</sup> TCFV has held internal meetings on CAP, because they believe local enforcement is an issue that seriously affects the immigrant community, specifically victims of domestic violence.<sup>108</sup>

Neither TCSO nor APD has a policy of affirmatively asking individuals about their immigration status.<sup>109</sup> While this is an important step towards reducing fear in the immigrant community, it may not be sufficient to counter the fear created by working with ICE. Although APD has no agreement with ICE (unlike TCSO), all persons arrested in Austin pass through the Travis County Jail, where they may be identified and removed through the CAP program. This makes it difficult for APD to allay the community's fears.

Another concern is that victims and witnesses are sometimes arrested due to misunderstandings. For instance, if an officer cannot understand a Spanish speaker, he may not be able to tell the victim from the abuser—especially if the victim's self-defense wounds are visible on the perpetrator—and will arrest both parties.<sup>110</sup> The Austin Immigrant Rights Coalition has documented several such incidents. In one case, a divorced couple had an argument and the woman called the police. Upon seeing scratch marks on the man's neck, the authorities arrested her. As a result, she was placed under detainer and then transferred to ICE custody. Because she was in detention, she missed a family court date.<sup>111</sup>

Although TCSO has recognized the specific situation of immigrant victims of domestic violence, they have not sufficiently remedied the problem. One TCSO detective noted that "[w]hen a woman is afraid of deportation, usually that is something that the batterer has used to keep her in line or to try to keep her from calling law enforcement."<sup>112</sup> Despite this recognition of the difficulty in getting immigrant women to come forward, there is no specific policy within TCSO to ensure that these women are not turned over to ICE. As the Texas Civil Rights Project has noted, "across the state...ICE agents do not pay attention to [the Violence Against Women Act (VAWA)] and routinely hold for deportation abused undocumented women, who actually qualify for VAWA protection, rather than releasing and referring them to organizations that could help them regularize their status."<sup>113</sup> TCSO continues participation in CAP, which only worsens immigrants' fear of coming forward.



## CONCLUSION

---

The Criminal Alien Program has not fulfilled its mission of enhancing public safety. Instead, it corrodes the trust between immigrant communities and local law enforcement, allowing spheres of criminality to exist in immigrant neighborhoods where crime goes unreported because of individuals' fear of deportation. CAP does not limit its focus to violent criminals. Rather, the majority of "criminals" identified through the program are people who were arrested for mere misdemeanor violations. Despite the fact that undocumented immigration is a civil violation, immigrants are being treated (and branded) as criminals, with deportation as their punishment. CAP does not distinguish between the innocent and the guilty, between those who are traffic violators and those who are violent felons, or between victims and aggressors.

Data from Travis County Jail show that, increasingly, people are being placed under detainer, and that these inmates are held for longer periods than inmates in the general population. These longer stays affect the community in many ways, both fiscally and socially. The inability of detainer inmates to secure pre-trial bail means that these inmates are being held three times as long, on average, than non-detainer inmates. The costs of housing inmates under CAP have increased significantly, despite federal reimbursement. Furthermore, the increased number of detainer days is a contributing factor to overcrowding, which is a constant concern for Texas jails.

The number of people who are placed under detainer has skyrocketed in cities across Texas. This has adverse effects on the immigrant community, which begins to identify any interactions with police as culminating in deportation. As increasing numbers of immigrants come in contact with ICE after minor brushes with police, this perception hardens into reality. Both documented and undocumented immigrants stop contacting police to report crime because they are worried about the consequences of inviting police into their mixed-status homes and communities. This problem does not only affect immigrants, but the community at large. As the Austin Police Chief has stated, everyone is at risk when a portion of the community is too afraid to cooperate with law enforcement.

## RECOMMENDATIONS

---

- Jail status screenings should take place upon conviction, not during the pre-conviction stage.
- ICE must make every effort to prioritize those immigrants who have been convicted of egregious felony offenses, rather than low-level offenders who pose no threat to public safety.
- DHS should clarify that an immigration detainer is not the equivalent of a criminal arrest warrant or criminal detainer, but is simply a non-mandatory request that police maintain custody of an individual for a maximum of 48 hours to facilitate DHS's status investigation. DHS should clarify that the local jail is not authorized to detain the subject for a period exceeding 48 hours, excluding weekends and holidays.
- ICE should be required to issue reports to Congress on a regular basis, with statistics on the crimes for which identified non-citizens are arrested, the disposition of each underlying criminal case, and the nationality and ethnicity of identified non-citizens. Jurisdictions participating in CAP should be required to report their arrest and identification statistics to ICE supervisors for oversight and management purposes.
- The U.S. Government Accountability Office (GAO) or another neutral agency should conduct an audit of CAP. The report should contain an assessment of CAP's goals and objectives, performance measures, supervision and oversight, data tracking, and reporting mechanisms. It is important that officials overseeing CAP review the GAO report on 287(g) and make every reasonable effort to ensure that this national program be properly defined, documented, evaluated, and supervised.
- All jurisdictions participating in CAP should receive training on civil rights and illegal racial or ethnic profiling.
- DHS must create and implement a strong complaint and redress mechanism for individuals who believe they have been wrongly arrested, detained, or otherwise mistreated under CAP.
- Local jurisdictions participating in CAP should engage in community-oriented policing strategies in order to regain immigrant trust. Local law enforcement should hire Spanish-speaking staff, and conduct outreach to immigrant communities on issues such as domestic violence and labor law violations.

## METHODOLOGY

---

This study covers an eight-year period, from 2001 through 2008, and studies over 300,000 inmate booking arrest records.<sup>114</sup> The study compares data for those who were placed under detainer and those who were not. Inmates booked into the county jail may be charged with multiple offenses. This study analyzes the data based on the individuals arrested rather than the individual charges because it is concerned with the effect on individuals. For example, if individual charges were assessed, there would be many more charges than actual detainees placed, and it would not be possible to determine accurately the breakdown by offense type. This study's classification of criminal offense level is based on the highest charge each arrestee was charged with, according to the Texas Penal Code, which defines misdemeanors and felonies, and the sub-categories of each.<sup>115</sup> This study has not included the length of stay for inmates who were not released as of April 2009, which skews the data slightly, making it appear as though the average length of stay is lower than it is. Those who are still incarcerated (up to or over a year, in some cases) would increase the average length of stay.

### Endnotes

---

<sup>1</sup> Names have been changed to protect confidentiality.

<sup>2</sup> Leslie Strauch, Clinical Professor, University of Texas School of Law Children's Rights Clinic, interview April 30, 2009.

<sup>3</sup> I use the terms "deportable" and "removable" interchangeably, though they have distinct legal meanings.

<sup>4</sup> Stephen H. Legomsky, "The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms," *Washington & Lee Law Review* 64 (Spring 2007): 486, 485, citing *United States v. Christopher*, 239 F.3d 1191, 1193 (11th Cir. 2001) and *United States v. Graham*, 169 F.3d 787, 788 (3d Cir. 1999). For more, See Teresa A. Miller, "Citizenship & Severity: Recent Immigration Reforms and the New Penology," *17 Georgetown Immigration Law Journal* 17 (2002-2003): 619; and Peter Shuck and John Williams, "Removing Criminal Aliens: The Pitfalls and Promises of Federalism," *Harvard Journal of Law and Public Policy* 22 (Spring 1999): 387.

<sup>5</sup> Strauch, interview April 30, 2009.

<sup>6</sup> Ginger Thompson, "After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children," *The New York Times*, April 22, 2009, available at: <http://www.nytimes.com/2009/04/23/us/23children.html>

<sup>7</sup> Seth Wessler, "Collaborating with ICE has Consequences," *Colorlines: The National Newsmagazine on Race and Politics*, January-February 2008, quoting Jim Sylvester, available at: <http://www.colorlines.com/article.php?ID=274>

<sup>8</sup> The Texas Penal Code distinguishes between misdemeanor and felony offenses. Misdemeanors are punishable by up to two years in jail, except for Class C offenses, which are punishable only by a maximum \$500 fine. Felonies are punishable by incarceration in prison for a period of two years to life, or capital punishment. For more, see Texas Penal Code (TPC) § 1.07, 12.03, 12.04, 12.21-12.23, 12.31-12.35.

<sup>9</sup> Trevor Gardner II and Aarti Kohli, "The CAP Effect: Racial Profiling in the ICE Criminal Alien Program," The Chief Justice Earl Warren Institute on Race, Ethnicity, & Diversity, Berkeley Law Center for Research and Administration, September 2009, available at: [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf); and See *infra*, 9-10.

<sup>10</sup> Brandon Formby, "Criminal Alien Program Still Taking Illegals Arrested for Minor Offenses," *Dallas Morning News*, January 20, 2008, available at:

<http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/012008dnmetimmigholds.20740eb.html>; and Brandon Formby and Stephanie Sandoval, "Irving Cannot Detain Some Illegal immigrants," *Dallas Morning News*, November 21, 2007,

available at: <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/112107dnmetimmigration.213cfc62.html>. In Irving, CAP was blamed for the exodus of 770 students from the school district and the loss of revenue by local businesses after many Latinos fled the city in response to the new program.

<sup>11</sup> See *infra*, 14-15.

<sup>12</sup> Immigration enforcement was carried out by the Immigration and Naturalization Service (INS) before 2003. In 2003, the agency was abolished and reconfigured within the Department of Homeland Security (DHS). Immigration and Customs Enforcement (ICE) is the primary agency responsible for immigration enforcement in the interior United States.

<sup>13</sup> Christopher N. Lasch, "Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers," *William Mitchell Law Review* 35, No. 1 (2008): 166, 166-167, available at: [http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID1317326\\_code952337.pdf?abstractid=1317326&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1317326_code952337.pdf?abstractid=1317326&mirid=1). The Immigration

---

Reform and Control Act (IRCA) of 1988 required deportation proceedings for criminal aliens to begin “as expeditiously as possible after the date of the conviction.” In 1998, the Anti-Drug Abuse Act required “the initiation and, to the extent possible, the completion of deportation proceedings . . . before the alien’s release from incarceration” for aggravated felons.

<sup>14</sup> *Ibid.*

<sup>15</sup> U.S. Dept. of Justice, Office of the Inspector General, Audit Division, No. 02-41, *Audit Report: Immigration and Naturalization Service Institutional Removal Program*, 2002: 1; and House Subcommittee on Immigration and Claims, *Criminal Aliens: INS’ Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*, 106<sup>th</sup> Cong. 2 (1999), statement of Norman J. Rabkin, Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office.

<sup>16</sup> House Subcommittee on Immigration and Claims, *Criminal Aliens: INS’ Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*. For an account of the problems facing the IHP/IRP and ACAP, see *Lasch*, 166-167.

<sup>17</sup> PL 105-141. To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes. December 5, 1997 - [H.R. 1493]

<sup>18</sup> *Ibid.*

<sup>19</sup> ICE Fact Sheet, “Secure Communities,” March 28, 2008, 3; ICE has not released a CAP fact sheet, but has included much information pertinent to CAP in past Secure Communities fact sheets. The cited version of the fact sheet is no longer available on the ICE website, but is *available at*: <http://www.aila.org/content/default.aspx?docid=25045>. The current version of the Secure Communities fact sheet (which contains different information) is *available at*: [www.ice.gov/pi/news/factsheets/secure\\_communities.htm](http://www.ice.gov/pi/news/factsheets/secure_communities.htm).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*; and Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Citizenship, and Subcommittee on Terrorism, Technology and Homeland Security “Strengthening Interior Enforcement: Deportation and Related Issues,” Statement of Victor X. Cerda, Acting Director of ICE Office of Detention and Removal (DRO), April 14, 2005, 3.

<sup>22</sup> Data from Travis County show increased ICE presence in the county jail beginning September 2007. Travis County Sheriff’s Office (TCSO) Response to Open Records Request (ORR), “ICE Inmate Data, 2001-2008,” dated April 1, 2009; and See *infra*, 7, 9-13.

<sup>23</sup> ICE website, “ICE ACCESS,” *available at*: <http://www.ice.gov/partners/dro/iceaccess.htm>.

<sup>24</sup> ICE factsheet, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” January 8, 2010, *available at*: [http://www.ice.gov/pi/news/factsheets/section287\\_g.htm](http://www.ice.gov/pi/news/factsheets/section287_g.htm); and ICE factsheet, “Secure Communities,” August 13, 2009, *available at*: [http://www.ice.gov/pi/news/factsheets/secure\\_communities.htm](http://www.ice.gov/pi/news/factsheets/secure_communities.htm). To see a list of current participating counties in Secure Communities, see “Strategy to Accelerate and Expand Secure Communities,” *available at*: [www.ice.gov/secure\\_communities/deployment/#close](http://www.ice.gov/secure_communities/deployment/#close). For a critique of the 287(g) program, see Aarti Shahani and Judith Greene, “Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement,” Justice Strategies Report, February 2009, *available at*: <http://www.justicestrategies.net/files/JS-Democracy-On-Ice.pdf>.

<sup>25</sup> The 287(g) program is a partnership between DHS and local law enforcement agencies in which local law enforcement officers are deputized to enforce federal immigration laws. In the detention, or jail, model, deputized officers are located in jails/correctional facilities to perform immigration enforcement functions after individuals are detained by police. The Secure Communities program is another partnership between DHS and local jails. Upon booking, the fingerprints of everyone detained in a participating jail are checked against immigration databases, and DHS takes enforcement action against immigrants they identify as removable.

<sup>26</sup> In Texas, “jail” refers to a local penal institution where persons arrested and awaiting trial are held, as well as persons convicted of a misdemeanor with a maximum sentence of two years. “Prisons” house felons, who have been sentenced to incarceration for a period of two years to life, in addition to housing inmates sentenced to death. TPC § 12.21-35.

<sup>27</sup> Lisa Kalakanis, “County Collaboration with Immigration and Customs Enforcement,” memorandum from Texas Legislative Council to Texas State Representative Rafael Anchia, January 26, 2009.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> 8 CFR 287.7(a) and 8 CFR 287.7(d).

<sup>33</sup> TCSO Response to ORR, “Intake Process for Arrested Persons,” dated February 27, 2008.

<sup>34</sup> *Lasch*, 179-80, citing *Ochoa v. Bass*, 181 P.3d 727 (Okla. Crim. App. 2008). See also *Harvey v. City of New York*, No. 07-0343 (E.D.N.Y. June 12, 2009), where an inmate held over 48 hours successfully sued the city for civil damages.

<sup>35</sup> See *infra*, 8.

<sup>36</sup> Fact Sheet, “Secure Communities,” March 28, 2008, 1. ICE claims to have a presence in 10 percent of approximately 3,100 jails nationwide.

<sup>37</sup> *Ibid.*; and “ICE Fiscal Year 2008 Annual Report: Protecting National Security and Upholding Public Safety,” 3, *available at*: [http://www.ice.gov/doclib/pi/reports/ice\\_annual\\_report/pdf/ice08ar\\_final.pdf](http://www.ice.gov/doclib/pi/reports/ice_annual_report/pdf/ice08ar_final.pdf).

<sup>38</sup> Fact Sheet, “Secure Communities,” March 28, 2008.

- 
- <sup>39</sup> Fact Sheet, "Secure Communities," March 28, 2008, 1.
- <sup>40</sup> Fact Sheet, "Secure Communities," August 13, 2009, *available at*: [www.ice.gov/pi/news/factsheets/secure\\_communities.htm](http://www.ice.gov/pi/news/factsheets/secure_communities.htm).
- <sup>41</sup> Dr. Dora Schriro, "Immigration Detention Overview and Recommendations," Department of Homeland Security, Immigration and Customs Enforcement. October 6, 2009, 12, *available at*: [www.ice.gov/doclib/091005\\_ice\\_detention\\_report-final.pdf](http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf)
- <sup>42</sup> *Ibid.*
- <sup>43</sup> ICE Fiscal Year 2008 Annual Report," 3. In FY2006, ICE charged 67,580 non-citizens through CAP and 164,296 in FY2007.
- <sup>44</sup> *Ibid.* ICE charged 221,085 individuals through CAP in FY2008.
- <sup>45</sup> ICE Fact Sheet, "ICE Fiscal Year 2010 Enacted Budget," November 5, 2009, *available at*: [www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc](http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc). ICE requested \$192 million for CAP in FY2010.
- <sup>46</sup> DHS, "ICE Enforcement Salaries and Expenses FY2009," Congressional Justification, S&E 35.
- <sup>47</sup> ICE Response to Freedom of Information Act Request (FOIA), "Criminal Alien Program and Secure Communities," dated February 23, 2009.
- <sup>48</sup> Kalakanis.
- <sup>49</sup> See *infra*, 12-13.
- <sup>50</sup> U.S. Dept. of Justice, Office of the Inspector General, Audit Division, *Audit Report 07-07: Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, January 2007, iv.
- <sup>51</sup> ICE Response to FOIA Request, "Intergovernmental Service Agreement," dated April 17, 2008.
- <sup>52</sup> TCSO Response to ORR, "1999 Memorandum of Understanding" dated February 27, 2008, Part II, Objectives.
- <sup>53</sup> *Ibid.*
- <sup>54</sup> *Ibid.*; and TCSO Response to ORR, "ICE Inmate Data, 2001-2008."
- <sup>55</sup> Tony Plohetski, "Sheriff to Let Federal Immigration Agents Set Up Office in Jail," *Austin-American Statesman*, January 26, 2008.
- <sup>56</sup> *Ibid.*
- <sup>57</sup> *Ibid.*
- <sup>58</sup> Marty Toohey, "Sheriff Defends Allowing Immigration Office at Jail," *The Austin American-Statesman*, B01, February 13, 2008.
- <sup>59</sup> Audrey Campbell, "Workers' Rights Group Pickets Travis County Jail: Collaboration Between Sheriff's Office, Agency Worries Protesters," *The Daily Texan*, March 19, 2008, *available at*: <http://www.dailytexanonline.com/2.4489/workers-rights-group-pickets-travis-county-jail-1.949581>.
- <sup>60</sup> TCSO Response to ORR, "Intake Process for Arrested Persons," dated February 27, 2008.
- <sup>61</sup> *Ibid.*
- <sup>62</sup> Vienna Convention on Consular Relations, "Article 36: Communication and Contact with Nationals of the Sending State," entered into force on 19 March 1967. United Nations, Treaty Series 1, No. 596, 261.
- <sup>63</sup> There are many other avenues for compliance with the convention than asking for place of birth, for instance: everyone who is booked could be given a sheet of paper with the most commonly contacted consulates on it, or telephones could be programmed to automatically connect with different consulates.
- <sup>64</sup> Matt Flener, "Fingerprints Help Catch Illegal Aliens," KXAN. com, July 6, 2009, *available at*: [http://www.kxan.com/dpp/mobile/fingerprints\\_help\\_catch\\_illegal\\_alien](http://www.kxan.com/dpp/mobile/fingerprints_help_catch_illegal_alien).
- <sup>65</sup> For more information on Secure Communities, see Michele Waslin, "The Secure Communities Program: Unanswered Questions and Continuing Concerns," Immigration Policy Center, November 2009, *available at*: [http://www.immigrationpolicy.org/sites/default/files/docs/Secure\\_Communities\\_112309.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Secure_Communities_112309.pdf).
- <sup>66</sup> Bail is the assurance that the accused will return to court for their criminal case, while bond is the method of release from jail – either through a payment to the court or by the individuals' personal recognizance. TPC §17.01-17.03.
- <sup>67</sup> Ronald Morgan, Pre-Trial Services, e-mail to author, May 15, 2008 07:19:35 CST (on file with author).
- <sup>68</sup> See *infra*, 12-13 for an analysis of lengths of stay in jail for ICE detainees.
- <sup>69</sup> I use the term "detainee" to refer to an individual held in detention under ICE custody, and the term "inmate" or "arrestee" to refer to someone incarcerated in a local jail.
- <sup>70</sup> Denise Gilman, Clinical Professor at the University of Texas School of Law's Immigration Clinic, interview with author, April 21, 2009.
- <sup>71</sup> Department of Homeland Security, "U.S. Immigration and Customs Enforcement Salaries and Expenses Fiscal Year 2009," Congressional Justification, S&E 35 (emphasis added).
- <sup>72</sup> Gardner and Kohli.
- <sup>73</sup> For an explanation of the increasing criminalization of immigration law, See Legomsky; Miller, "Citizenship & Severity"; Juliet P. Stumpf, "The Crimmigration Crisis: Immigrants, Crime and Sovereign Power," *American University Law Review* 56 (2006); Teresa A. Miller, "A New Look at Neo-Liberal Economic Policies and the Criminalization of Undocumented Migration," *SMU Law Review* 61, (Winter 2008): 180; and Jennifer M. Chacon, "Blurred Boundaries in Immigration: Unsecured Borders: Immigration Restrictions, Crime Control and National Security." *Connecticut Law Review* 39 (July 2007): 1838-39.
- <sup>74</sup> In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) greatly expanded the list of crimes which make an immigrant (even a legal permanent resident) deportable to include some misdemeanor offenses. The law was also

---

made retroactive, so that a person is deportable even if the offense was not considered deportable at the time of the offense. For more, See *supra*, note 73.

<sup>75</sup> Schriro, 12-13.

<sup>76</sup> The data is based on pre-conviction arrests, and does not assess what percentage of arrestees were ultimately convicted.

<sup>77</sup> Sergio Chapa, "Irving Illegal Immigrants' Charges are Mostly Misdemeanors," *Dallas Morning News*, October 11, 2007, available at: <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/101107dnmetirvimmig.31ec7c4.html>.

<sup>78</sup> Gardner and Kohli.

<sup>79</sup> TPC § 12.03, 12.21-12.23.

<sup>80</sup> James C. Harrington, "Keep 'La Migra' Offices out of County Jails," *Texas Civil Rights Project Op-Ed*, February 22, 2008, available at: <http://www.texascivilrightsproject.org/?p=211>.

<sup>81</sup> Denise Gilman, interview, April 21, 2009.

<sup>82</sup> Travis County, Texas has an estimated population of 998,543 according to a 2008 estimate, available at: [http://en.wikipedia.org/wiki/El\\_Paso\\_County,\\_Texas](http://en.wikipedia.org/wiki/El_Paso_County,_Texas).

<sup>83</sup> El Paso County, Texas has a population of 755,085 according to U.S. Census 2007 estimate, available at: [http://en.wikipedia.org/wiki/El\\_Paso\\_County,\\_Texas](http://en.wikipedia.org/wiki/El_Paso_County,_Texas).

<sup>84</sup> Harris County, Texas has a population of 4,011,475 according to a 2007 estimate, available at: [http://en.wikipedia.org/wiki/Harris\\_County,\\_Texas](http://en.wikipedia.org/wiki/Harris_County,_Texas).

<sup>85</sup> Harris County Sheriff's Office Response to ORR, "Immigration Stats By Year," dated April 3, 2009; and El Paso County Sheriff's Office Response to ORR, "Documents Relating to the Criminal Alien Program," dated October 28, 2008.

<sup>86</sup> It should be noted that U.S. citizens may erroneously be placed under detainer and placed into deportation proceedings.

<sup>87</sup> See *supra*, Figure "Number of ICE Detainers Lodged in Travis County By Year," at page 12.

<sup>88</sup> ICE Response to FOIA Request, "Intergovernmental Service Agreement," and State Criminal Alien Assistance Program (SCAAP) website, Bureau of Justice Assistance, available at: <http://www.ojp.usdoj.gov/BJA/grant/scaap.html>.

<sup>89</sup> SCAAP website. In order to be eligible for SCAAP funding, the county or state must meet several requirements. The institution must have incarcerated a criminal alien for "at least 4 consecutive days during the reporting period." A "criminal alien" is defined, for the purposes of SCAAP, as a person in the country illegally, who has been convicted of a felony or two or more misdemeanors. The costs for inmates who do not meet these requirements are not reimbursed. SCAAP reimburses both the pre-trial and post-conviction incarceration costs for inmates that are eligible for payment. Inmates who can be corroborated as undocumented in an ICE database are covered at 100 percent, while those whose status is indeterminate are reimbursed at only 80 percent of the cost. For these reasons, SCAAP does not reimburse the full cost of incarceration.

<sup>90</sup> ICE Response to FOIA Request, "Intergovernmental Service Agreement." DHS' contract with TCSO pays \$45 a day, which is not the full cost of housing inmates, but reflects merely corrections officer salaries.

<sup>91</sup> TCSO Response to ORR, "ICE Inmate Data, 2001-2008"; and TCSO Response to ORR, "TCSO - Official Fees," dated February 27, 2008.

<sup>92</sup> This includes corrections officers salaries, central booking personnel salaries, corrections administration salaries and inmate services personnel. The total approved budget for these salaries in FY08 was \$61,187,009. Line item budget available at: [http://www.co.travis.tx.us/planning\\_budget/fy08/adopted/vol\\_2/fy08adoptedbudgetlineitem.txt](http://www.co.travis.tx.us/planning_budget/fy08/adopted/vol_2/fy08adoptedbudgetlineitem.txt).

<sup>93</sup> Rubén G. Rumbaut and Walter A. Ewing, "The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native And Foreign-born Men," Immigration Policy Center, Spring 2007, available at: [http://www.immigrationpolicy.org/images/File/specialreport/Imm%20Criminality%20\(IPC\).pdf](http://www.immigrationpolicy.org/images/File/specialreport/Imm%20Criminality%20(IPC).pdf).

<sup>94</sup> TCSO Response to ORR, "ICE Inmate Data, 2001-2008"; and TCSO Response to ORR, "TCSO - Official Fees"; and SCAAP website.

<sup>95</sup> The PEW Center on the States, "One in 100: Behind Bars in America 2008," 18, available at: [http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf).

<sup>96</sup> Alex Taylor, "Travis Cited for Crowded Jails," *The Austin American-Statesman*, August 26, 2001.

<sup>97</sup> *Ibid.*

<sup>98</sup> Polly Ross Hughes, "Revised Numbers Show Jail Crowding is Worse," *The Houston Chronicle*, August 5, 2005, available at: <http://www.chron.com/disp/story.mpl/front/3297286.html>.

<sup>99</sup> "Get Out of Jail: Too Many Americans, Especially Those Who Reside in Harris County, are Behind Bars," Editorial, *Houston Chronicle*, May 8, 2008, available at: <http://www.chron.com/disp/story.mpl/editorial/5766019.html>.

<sup>100</sup> Ron Wilson, "Plans OK'd to Get Jail on Par," *San Antonio Express-News*, June 21, 2007.

<sup>101</sup> Campbell, citing ICE spokesperson Carl Rusnok.

<sup>102</sup> Hearing before House Committee of Homeland Security, "Criminal Activity and Violence Along the Southern Border," Statement of Michael J. O'Brien, Major, Harris County Sheriff's Office, April 16, 2006.

<sup>103</sup> Cristina Tzintzún, Project Director, Workers' Defense Project, interview on April 29, 2009.

<sup>104</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out On Local Immigration Enforcement." April 2008, 15-16.

<sup>105</sup> Texas Council on Family Violence, "Abuse in Texas," available at: <http://www.tcfv.org/resources/abuse-in-texas/>.

---

<sup>106</sup> See Cecilia Menjivar and Olivia Salcido, "Immigrant Women and Domestic Violence: Common Experiences in Different Countries," *Gender and Society* 16, No. 6 (December 2002): 901; Nawal H. Ammar and others, "Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA," *International Journal of Police Science and Management* 7, No. 4 (2005): 230; Edna Erez, Madelaine Adelman, Carol Gregory, "Intersections of Immigration and Domestic Violence Voices of Battered Immigrant Women," *Feminist Criminology* 4, No. 1 (January 2009): 36; and Andrea L. Hazen and Fernando I. Soriano, "Experiences With Intimate Partner Violence Among Latina Women," *Violence Against Women* 13, No. 6 (June 2007): 578.

<sup>107</sup> *Ibid.*

<sup>108</sup> Krista Del Gallo, Policy Manager, Texas Council on Family Violence, interview on January 28, 2009.

<sup>109</sup> Austin News KXAN.com, "Deportation Fears Trouble Those Abused," February 15, 2008, available at: [http://www.nbcaustin.com/Global/story.asp?S=7881116&nav=menu73\\_2\\_3](http://www.nbcaustin.com/Global/story.asp?S=7881116&nav=menu73_2_3).

<sup>110</sup> Erin Goodison, SafePlace, interview on February 27, 2009.

<sup>111</sup> Caroline Keating-Guerra, Austin Immigrant Rights Coalition Coordinator, interview on April 26, 2009.

<sup>112</sup> *Ibid.*

<sup>113</sup> Harrington, "Keep 'La Migra' Offices out of County Jails."

<sup>114</sup> TCSO Response to ORR, "ICE Inmate Data, 2001-2008."

<sup>115</sup> TPC § 1.07, 12.03, 12.04, 12.21-12.23; 12.31-12.35.