



## The Cost of Responding to Immigration Detainers in California

### PRELIMINARY FINDINGS

August 22, 2012

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### Introduction

Los Angeles County began its participation in the Secure Communities deportation program on August 27, 2009, making it one of the first jurisdictions in America where the program, also known as S-Comm, was activated. Like the program itself, LA County's participation started with little fanfare but has since been riddled with controversy. As S-Comm deployment has been expanded throughout California, it has come under fire for its failure to achieve stated priorities, its damaging effect on community policing, and its role in multiple civil rights violations including racial profiling of Latinos, the criminalization of immigrants, and the illegal detention of U.S. Citizens by U.S. Immigration and Customs Enforcement (ICE).

While S-Comm has become a proxy flashpoint for the broader debate about immigration reform, all sides agree that the Department of Homeland Security (DHS) has been overly secretive about every aspect of the program. Indeed, DHS's own internal reviews have acknowledged the agency's fault in creating confusion about the program.

As more data and details about S-Comm have become available, many local jurisdictions have sought to mitigate its harms. Some states like New York, Illinois, and Massachusetts tried to leave the program entirely, but they were forced to participate by DHS. Recently, multiple local jurisdictions, including Cook County, Illinois and Washington, DC, have passed legislation to limit local compliance with immigration detainers. Immigration detainers are the mechanism through which S-Comm seeks to detain immigrants in local jails in order to facilitate transfer ICE for deportation proceedings. California is considering legislation known as the TRUST Act (AB 1081) to ensure that immigrants who pose no threat to public safety are not incarcerated at local taxpayer expense.

This report attempts to shed light on one issue: the fiscal cost borne on local jurisdictions by S-Comm. Data released by the Los Angeles County Sheriff Office – only after it was compelled to provide it through litigation<sup>1</sup> – show an enormous potential cost savings to the county and to the

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<sup>1</sup> Editorial, "Baca Should Release Jail Records," *Los Angeles Times*, August 21, 2012.

state if detention of immigrants would be limited. More data is required to ascertain the full fiscal impact of S-Comm. But, as this report makes clear, S-Comm is an expensive burden that Los Angeles, and California, can ill afford:

- **Los Angeles County taxpayers spend over \$26 million per year to detain immigrants for ICE.**
- **Individuals in Los Angeles County custody who are subject to immigration detainers spend, on average, 20.6 extra days in county custody.**
- **California taxpayers spend an estimated \$65 million annually to detain immigrants for ICE.**

### **The Number of People Released to ICE**

According to data records compiled by the Los Angeles County Sheriff's Department, 5,184 people who were booked into the jail system during the first three months of 2011 were handed over to ICE, the deportation enforcement arm of the Department of Homeland Security.<sup>2</sup> Using these figures, it is possible to estimate that over a year's time, 20,736 County Jail prisoners will be released into ICE custody.

### **Additional Days in Detention**

The average length of stay for people who were released from the Los Angeles County Jail to ICE custody was 32.3 days, while the average length of stay for all other individuals released was just 11.7 days. This prolonged detention of 20.6 days should not be surprising, since other studies have found similar patterns.<sup>3</sup>

The primary cause of the additional time in custody is the immigration detainer, also known as an "ICE hold." Immigration detainers are issued by ICE for suspected noncitizens. The term "detainer" may be misleading. In the criminal justice context, a detainer is generally issued by a law enforcement agency after pending charges have been approved by a judge.

In the immigration context, a detainer is not a warrant issued or approved by a judge. It is simply a non-binding request, issued by an administrative ICE officer, which requests that jail personnel hold an individual for an additional 48 hours, excluding weekends and holidays, after

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<sup>2</sup> The data used in this analysis were obtained from the Los Angeles Sheriffs Department by the National Day Labor Organizing Network, the National Immigration Law Center, and the Coalition for Humane Immigrant Rights of Los Angeles through a public records request. Of 115,330 individuals booked into the jail system during the first quarter of 2011, release dates were not provided for a relative handful (440). Those cases with missing release dates were excluded from the analysis.

<sup>3</sup> Andrea Guttin, "The Criminal Alien Program: Immigration Enforcement in Travis County, Texas," *Immigration Policy Center* (Feb. 2010); Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" *Justice Strategies* (Oct. 2010), available at [http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings\\_0.pdf](http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_0.pdf).

they would otherwise be released, in order to give ICE extra time to take them into federal custody.<sup>4</sup>

An ICE detainer can affect length of stay in two ways. First, once a detainer is lodged, both court and jail officials may consider the person to be ineligible for pretrial release, even if they are charged with a low-level non-violent charge and have well-established ties to their home communities. For example, it appears to be the practice of the Los Angeles County Sheriffs' Department to refuse to release on bail any individual who is subject to an ICE detainer.<sup>5</sup> Second, while ICE detainers expire after 48 hours, many jailers will hold detainees for days or weeks longer until an ICE agent arrives to take custody.<sup>6</sup>

### **Estimating the Cost of Additional Detention for Los Angeles County Taxpayers**

The additional 20.6 days spent in custody by people before they are released to ICE places a huge and largely unnecessary burden on taxpayers. The current cost per prisoner in the Los Angeles County Jail is reported to be \$113 per day. Using that figure, the added cost of holding people for ICE would be more than \$48 million annually.

But that figure could be larger than the actual cost, because such figures are typically derived by simply dividing the total jail budget by the number of people held in custody. Without detailed information about the marginal costs incurred (or saved) when more (or fewer) people are confined, it is not possible to accurately estimate a true per diem cost. Yet a more conservative – and likely more realistic – per diem cost is available when jails are filled to capacity and jailers are considering “out-sourcing” custody of their prisoners to other jurisdictions.

Under California's “realignment” policy, designed to reduce prison overcrowding, thousands of people who would previously have been incarcerated in California state prisons have been shifted to county-level correctional systems. California's county jails are sorely stretched for space to house the volume of people who are now committed to local confinement in their jurisdictions. During the first quarter 2012, almost 13,000 people were released from the jails every month due to lack of space.<sup>7</sup>

In July, senior staff at the Los Angeles Sheriff's Department were engaged in discussions with

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<sup>4</sup> See, e.g., *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905, 911 (S.D. Ind. 2011) (“A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency ‘advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.’”) (quoting 8 C.F.R. § 287.7(a)); Letter from David Venturella, Assistant Director, Secure Communities to Miguel Marquez, Santa Clara County Counsel, available at <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf> (“ICE views an immigration detainer as a request . . .”).

<sup>5</sup> See, e.g., Richard Rushfield, “Duncan Roy: Director Trapped in Men's Central Jail,” *LA Weekly*, Apr 5 2012 (“[W]hen ICE requests that a person granted bail be held briefly until ICE can pick them up, the [Los Angeles] Sheriff's Department interprets this as allowing deputies to ignore court orders granting bail.”)

<sup>6</sup> “Immigrants Behind Bars: How, Why, and How Much.” *National Immigration Forum*, (March 2011), available at [www.immigrationforum.org/.../Immigrants\\_in\\_Local\\_Jails.pdf](http://www.immigrationforum.org/.../Immigrants_in_Local_Jails.pdf)

<sup>7</sup> Facility Standards and Operations Division. “Jail Profile Survey” for 1<sup>st</sup> Quarter, 2011. Corrections Standards Authority, available at <http://www.bscc.ca.gov/programs-and-services/cpp/resources/jail-profile-survey>

officials in several Central Valley communities about housing people classified as “low-level” in their jails. It is estimated that contracting with detention facilities in Kern County for custody of Los Angeles County prisoners will cost \$61 per day for each person transferred.<sup>8</sup> Using that figure, it can be conservatively estimated that the additional days that people with ICE detainees are held in the Los Angeles County Jail system before release could incur more than \$26,041,000 in added costs over a year’s time.

### **A State-wide Estimate**

Statistical records compiled by California’s Corrections Standards Authority indicate that 1,096,899 people were booked into the state’s county jails in 2011.<sup>9</sup> Assuming that the data patterns we see in Los Angeles are roughly applicable state wide, 51,833 of them would have been held for more than 20 additional days before being released to ICE custody, at an added cost to taxpayers of more than \$65 million.

### **Conclusion**

Los Angeles County and the State of California are spending tremendous amounts of tax-payer dollars to detain immigrants for civil immigration violations. A conservative estimate places this cost at \$26 million annually for Los Angeles County alone. The cost to California taxpayers of holding people for ICE is estimated to be more than \$65 million.

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<sup>8</sup> Andrew Blankstein and Jason Song, “Sheriff looks to Central Valley to hold L.A. County jail overflow.” *Los Angeles Times*, July 10, 2012

<sup>9</sup> Facility Standards and Operations Division. “Jail Profile Surveys” for 1<sup>st</sup> through 4<sup>th</sup> Quarters, 2011. Corrections Standards Authority, available at <http://www.bscc.ca.gov/programs-and-services/cpp/resources/jail-profile-survey>