

THE EFFECT OF IMMIGRATION DETAINERS IN A POST-REALIGNMENT CALIFORNIA



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AUGUST 2013

Research Report

Introduction

On October 1, 2011, California implemented AB 109 Public Safety Realignment, which transferred state responsibility for individuals who commit non-violent, non-serious, and non-sexual offenses to the 58 counties and their local jurisdictions. Since then, each county has responded differently to Realignment, with some seizing on this unique opportunity to adopt innovative community corrections programming and rehabilitative services. Other counties continue to depend on the state system to manage individuals who have committed low-level offenses (CJCJ, 2013). Some counties struggle with jail capacity issues while failing to adopt necessary alternative sentencing practices (PPIC, 2013). On August 2, 2013, the United States Supreme Court denied Governor Jerry Brown's attempt to delay reducing the state prison system by approximately 10,000 individuals, as required by federal litigation that resulted in AB 109. The state must now work diligently to deemphasize the unnecessary use of incarceration in order to preserve resources for more crucial priorities.

Amid varying county responses to Realignment, fiscal constraints, and capacity issues, county jail facilities also hold significant numbers of undocumented immigrants who do not have serious criminal histories, other than potentially violating federal civil immigration laws.¹ For ease of reference, these individuals are here termed “non-criminal ICE holds” given that they have no recorded criminal history. These non-criminal ICE holds are held under ICE² Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS), an umbrella encompassing enforcement programs that specifically target immigrants who make contact with the criminal justice system including the Secure Communities and Criminal Alien Program (ICE, 2008). After identifying individuals under ACCESS, ICE can issue an immigration detainer to law enforcement agencies, which is a non-binding request that an immigrant of interest be detained for up to 48 hours, excluding weekends and federal holidays, so that ICE can assume federal custody to initiate deportation proceedings.

¹ The Department of Homeland Security estimates that in 2010, 2.57 million undocumented immigrants were living in California (DHS, 2011).

² Immigration and Customs Enforcement (ICE) is an investigative federal agency within the Department of Homeland Security, which is in charge of interior immigration enforcement. ICE partners with law enforcement agencies to enforce federal immigration law.

This publication studies the impact of non-criminal ICE holds on California’s criminal justice system, specifically the effect on county jail capacity, including the significant fiscal cost. It concludes that 89 percent of said detentions in California are held in local jails and facilities. These detentions cost taxpayers approximately \$16.3 million for local jail holds during the 30-month period studied.³

Methodology

Details on 234,363 suspected undocumented immigrants held in jails and other facilities on ICE holds during October 1, 2009 through February 13, 2013, were obtained courtesy of the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law as a result of litigation filed in 2010 by them, the National Day Laborer Organizing Network (NDLON), and the Center for Constitutional Rights (CCR) (ERO LESA Statistical Tracking Unit, 2012). The average cost to house individuals in county jail facilities was obtained from the Board of State and Community Corrections (2012).

The data used in this analysis are subject to limitations. For example, the data set may contain duplicate records, with an individual facing multiple detainers during the time studied. Additionally, ICE reporting systems use non-mandatory reporting fields, which include the “most serious criminal charge” fields.⁴ Individuals may have a criminal charge and/or history that were not properly recorded by the ICE officer. A past criminal conviction is highly relevant information for the disposition of ICE detainees and even low-level offenses such as minor traffic violations, shoplifting, and low-level marijuana convictions are reported in large numbers in the “most serious charge” fields. Therefore, this analysis assumes that a blank entry in the “most serious criminal charge” field indicates no record of a criminal offense beyond the immigration violation.

ICE enforcement claims their Secure Communities Program “prioritizes the removal of criminal aliens, those who pose a threat to public safety, and repeat immigration violators” (ICE, 2013). This report examines only suspected undocumented immigrants held in California facilities who have no prior record of any other criminal activity. The report excludes all individuals with recorded convictions for any other crimes such as drunken driving, violent crimes, or even minor offenses including traffic violations, lesser marijuana crimes, or shoplifting that occurred anytime in their past. Further, the analysis assumes these individuals are held in jails for an average of the two days allowed under ACCESS programs. It should be noted that statistics from some jurisdictions indicate the average extra time ICE hold-eligible people spend in detention is substantially longer than their non-ICE hold-eligible counterparts, due in part to longer periods of pretrial detention.⁵

This report first examines larger trends in non-criminal ICE holds that were apprehended and detained in California jurisdictions for the three year, 2010-2012 period, and then focuses on the 71,781 non-criminal ICE holds for the 30-month period from July 1, 2010, through December 31, 2012. The

³ These figures do not account for additional costs associated with all ICE holds, which may include longer rates of pretrial detention.

⁴ “The Most Serious Criminal Conviction is based upon all convictions prior to an alien's departure and determines which conviction has the highest criminal charge severity code” (ERO LESA Statistical Tracking Unit, 2012).

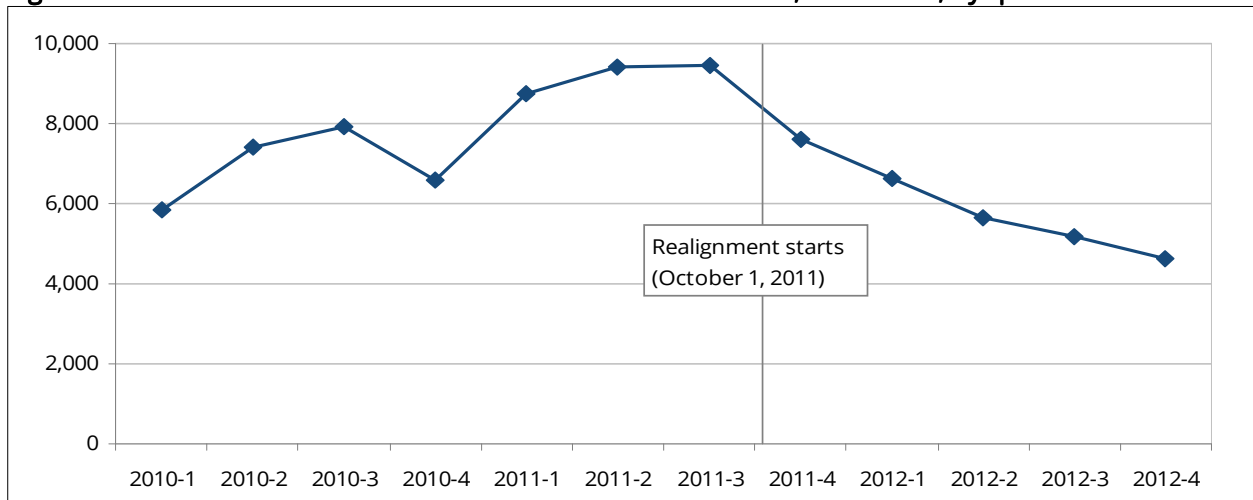
⁵ For example, one study of Denver County, Colorado found individuals suspected of civil immigration violations were detained, “an average of 22 days longer than people without an ICE hold” (Colorado Fiscal Institute, 2012, 1).

purpose of the latter analysis is to examine how non-criminal ICE holds impact the occupation of beds in local jails, and other detention facilities in the 15 months before and the 15 months after Realignment initiated on October 1, 2011. The period after Realignment began is a particularly critical time in terms of reducing state prison populations under court orders and budgetary constraints and the consequent need for local jail and detention beds to house realigned offenders who can no longer be sentenced to state prison.

Analysis

Figure 1 shows the trend in non-criminal ICE holds in California local facilities by quarter for the full 2010-2012 period. After rising to a peak of 9,434 in the 3rd quarter of 2011, ICE holds in local jails and detention facilities declined rapidly after Realignment initiated, reaching a low of 4,611 in the 4th quarter of 2012. The latest statistics indicate this decline has persisted into the first two months of 2013. These patterns may be influenced by a marked decline in undocumented immigrant populations residing in California due to the slowing economy (Pew Research Center, 2012).

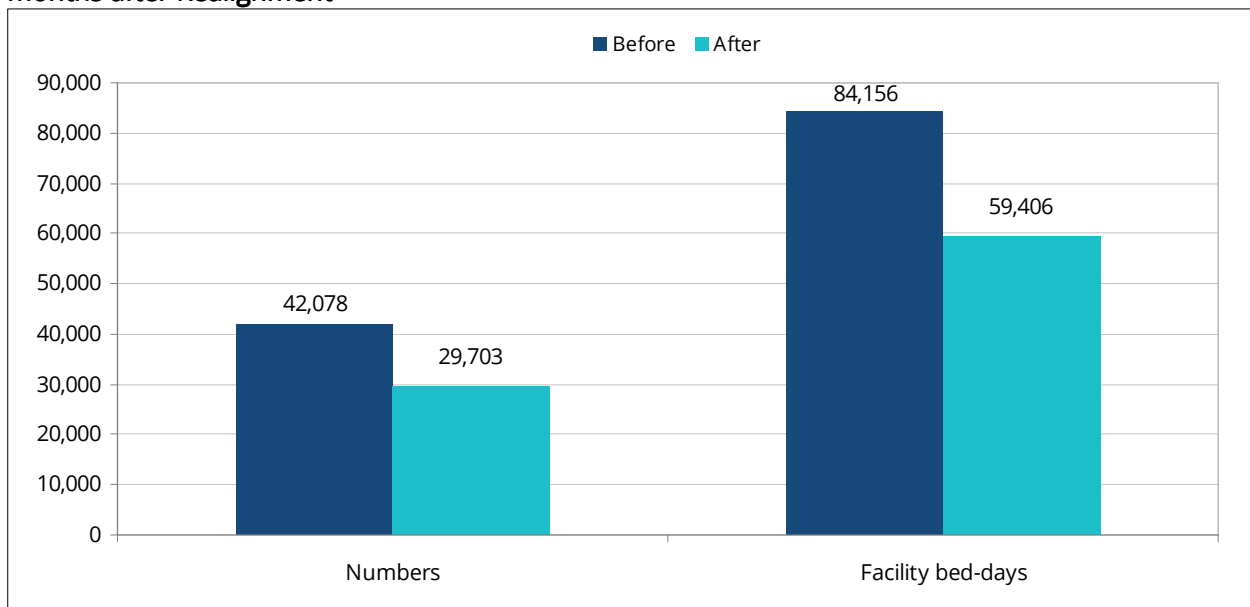
Figure 1. Non-criminal ICE holds sent to California local facilities, 2010-2012, by quarter



Sources: ERO LESA Statistical Tracking Unit (2012); BSCC (2013).

Figure 2 focuses on the 15 months before and after Realignment. Both the numbers and percentage held in California local detention declined considerably after Realignment was implemented in October 2011. The number of ICE holds dropped from 42,078 before Realignment to 29,703 after Realignment began. The number of facility bed-days decreased from 84,156, prior to Realignment, to 59,406 in the subsequent 15-month period.

Figure 2. Number of non-criminal ICE holds and facility bed-days occupied 15 months before and 15 months after Realignment



Sources: ERO LESA Statistical Tracking Unit (2012); BSCC (2013).

Under the assumption that non-criminal ICE holds are enforced for the two days specified in ACCESS programs, these ICE holds occupied 0.15 percent of local jail space purely for federal immigration purposes. Even this small proportion means that non-criminal ICE holds occupied 59,406 bed-days in jails and local detention at a time when state prisons are under court-ordered mandates to reduce populations and local law enforcement indicate the need for jail beds to accommodate the increased number of realigned individuals.

Additionally, there was significant variation in enforcement of ICE holds by county. Post-Realignment, five counties increased their numbers of non-criminal ICE holds by a cumulative total of 17: Humboldt, Mariposa, Placer, Santa Clara, and Shasta counties. Additionally, seven counties showed no change and 46 counties (including nearly all of the major ones) decreased ICE holds.⁶ In the post-Realignment period, for counties with populations of more than 250,000, the percentage of county jail and detention space occupied by non-criminal ICE holds ranged from 0.07 percent in Solano County to 0.45 percent in Marin County (ERO LESA Statistical Tracking Unit, 2012); BSCC, 2013). Some evidence suggests that the counties in which non-criminal ICE holds occupied higher percentages of local jail space averaged larger increases in jail populations after Realignment, but the effect is small and inconsistent.

Local jurisdictions may not be eligible for the federal grant funding to cover the costs for enforcing non-criminal ICE holds. The State Criminal Alien Assistance Program (SCAAP) only funds a part of the total costs for incarcerating an undocumented immigrants, “convicted of a felony or second misdemeanor for violations of state or local law, and housed in the applicant’s state or local correctional facility for 4 or more consecutive days during the reporting period” (Bureau of Justice Assistance, 2013). Jurisdictions

⁶ The seven counties with unchanged levels of ICE hold enforcement post-Realignment are Alpine, Calaveras, Inyo, Lassen, Marin, Sierra, and Tuolumne counties.

frequently receive less SCAAP funding than they request.⁷ The data indicate these individuals lack prior criminal histories, which would make the costs associated with their cases ineligible for SCAAP funds. California incurs an average cost of approximately \$114 per day to hold an individual in jail (BSCC, 2012). The enforcement of non-criminal ICE holds managed by California jurisdictions potentially cost state and local taxpayers at least \$16.3 million over the 30-month period for holds in local jails. These findings are admittedly conservative given ICE holds likely assume a much higher proportion of bed-days in California's jails, prisons, and other detention facilities. Incarcerating individuals with non-criminal ICE holds is not congruent with California's economic and public safety goals, particularly as the state progresses to successfully implement Realignment.

Conclusion

Non-criminal ICE holds represent a significant portion of the ICE holds enforced in California. Data provided by ICE indicate that 71,781 ICE holds made between July 1, 2010 and December 31, 2012 were for individuals with no documented criminal histories.

Arresting and detaining tens of thousands of potentially undocumented immigrants, who do not have a prior criminal record should represent, a low law enforcement priority for two major reasons. First, non-criminal ICE detentions burden already strained police, courts, and criminal justice resources at a time when all of these are at a premium. Second, many are employed—which is by far the largest reason for their immigration to California—and contributing to their families, local economies, and tax revenues. These economic benefits cease and reverse when undocumented immigrants are placed in detention. For example, one analysis of ICE detentions in Colorado estimates the annual loss of tax revenue at \$855,000 and of total economic spending at \$9.5 million (Colorado Fiscal Institute, 2013).

Given the Supreme Court's August 2, 2013 decision, California must work swiftly to reduce its prison population by approximately 10,000 individuals. California and its 58 counties must preserve their limited resources and capacity to best address this new development. The cost of holding suspected undocumented immigrants in correctional facilities remains a dubious use of strained law enforcement, incarceration, and fiscal resources. In particular, non-criminal undocumented persons, aside from being a remarkably law-abiding population with no record of criminal convictions over decades, generate economic and tax revenues that benefits the state (DHS, 2011; ERO LESA Statistical Tracking Unit, 2012). Just as law enforcement agencies and courts deemphasize certain low-level offenses, such as marijuana and other petty violations, to preserve resources for more serious offenders, California agencies should deemphasize the incarceration of non-criminal ICE holds to concentrate on more crucial priorities as Realignment progresses.

⁷ A 2007 Audit Report by the Office of the Inspector concluded: "The FY 2003 SCAAP payments amounted to 12 percent of the estimated incarceration costs for California, 24 percent for New York, 17 percent for Florida, and 14 percent for Arizona" (Office of the Inspector General, 2007).

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