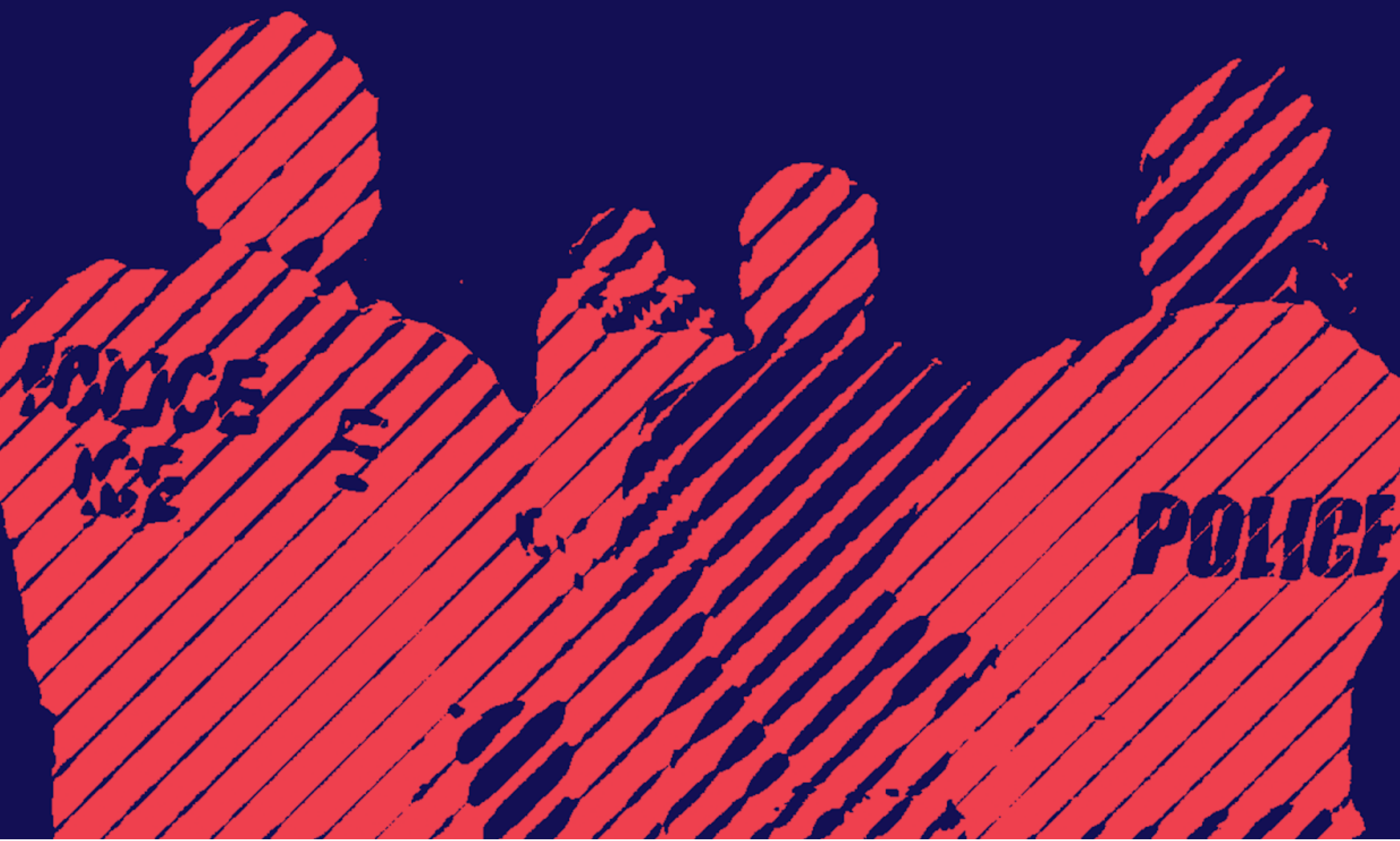
ACLU
Wisconsin

The Jail-to-Deportation Pipeline in Wisconsin

How Sheriff's Offices are Incentivized to Cooperate with the ICE Deportation Machine

August 2022 Report



The Jail-to-Deportation Pipeline in Wisconsin

Introduction

There are roughly 159,000 immigrants living in Wisconsin who are not yet U.S. citizens—many have been living here for years or even decades.[1] Their immigration status runs from permanent resident, DREAMER, refugee, to holders of work and student visas, as well as those who are undocumented. They work in a wide variety of jobs, including being the backbone of the state's dairy industry. They live in communities throughout Wisconsin and are our neighbors, friends and family members. And all of them run the risk of being deported through some contact with the criminal justice system.

Being booked into a county jail in Wisconsin very often starts a process which can end in deportation, even for minor violations, and even before conviction of a crime. In the period 2006-2020, U.S. Immigration and Customs Enforcement (ICE) sought to deport more than 12,000 immigrants living in Wisconsin after picking them up from jails and prisons across the state.[2] For this reason, the ACLU of Wisconsin has paid close attention to cooperation between local law enforcement and ICE.

The current report is an update to our 2018 report, *Fixing Wisconsin Sheriff Policies on Immigration Enforcement*.[3] That report described a system in which many sheriffs had no real policies in place regarding immigration enforcement. The years following that survey, during the Trump administration, saw a significant federal emphasis on immigration enforcement and removal operations without regard to the reasons persons had come to the attention of ICE. Although enforcement priorities have shifted under the Biden administration,[4] this larger pipeline to deportations remains intact in Wisconsin for ICE to utilize local law enforcement as a partner for removing immigrants from local communities.

---

[1] Migration Policy Institute, Immigration Data Profile for State of Wisconsin, https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI
[2] Syracuse Univ. TRAC Immigration Database, Detainers Issued dataset, https://trac.syr.edu/phptools/immigration/detain/
[3] *Fixing Wisconsin Sheriff Policies on Immigration Enforcement*, ACLU of Wisconsin, July 2018, https://www.aclu-wi.org/sites/default/files/field_documents/aclu_sheriff_policies_immigration_july2018.pdf
[4] Despite SCOTUS Ruling, the Biden Administration Can Prevent a Reversion to Trump's Deportation Machine, ACLU, Aug. 4, 2022

In April 2022, the ACLU of Wisconsin sent open records requests to sheriffs in each county of the state. The requests sought a variety of information related to immigration enforcement policies and the sheriff's interactions with ICE. 65 of the 72 county sheriffs responded in time for this report. We also drew on our other work in the past five years researching individual sheriff's policies, especially with regard to the 287(g) program, which creates partnerships between sheriffs and ICE.

Executive Summary

Our research shows how over more than a decade the federal government, in cooperation with many local sheriffs in Wisconsin, has built a deportation pipeline for immigrants who come into contact with the criminal justice system. The pipeline includes formal elements like the 287(g) cooperation agreements signed by eight Wisconsin sheriffs and the millions of dollars in funding provided to law enforcement agencies under the State Criminal Alien Assistance Program (SCAAP)—as well as informal elements such as phone calls and emails from local jails to let ICE know of "foreign born" individuals in custody.

Under the Biden administration, enforcement priorities have changed, with a reduced emphasis on removal activity away from the border. So the jail-to-deportation pipeline is less active today, but it remains ready to be reactivated with a change in the political winds.

We call on sheriffs across the state of Wisconsin to take steps to dismantle the pipeline, by terminating agreements to collaborate with ICE and by ceasing to share with ICE information about the immigrant members of Wisconsin communities except where it is legally required. Only in this way will we build communities across the state which are welcoming and respectful of all people, regardless of where they were born.

The Growth of 287(g) Programs in Wisconsin

Since our report in 2018, there has been dramatic growth in the number of sheriffs in Wisconsin who have signed formal agreements with ICE to collaborate in immigration enforcement. These agreements—known as 287(g) agreements due to their creation by section 287(g) of the federal Immigration and Naturalization

Act—delegate certain immigration enforcement responsibilities to state and local law enforcement.[5] Although no neighboring states have any of these arrangements, in Wisconsin, eight local sheriffs have signed 287(g) agreements.[6] Their use was dramatically expanded during the Trump administration, with seven Wisconsin sheriffs signing them for the first time in 2020.[7]

ICE currently utilizes two forms of these agreements—jail model agreements and warrant service officer (WSO) agreements. The jail model of 287(g) agreements delegates certain immigration law enforcement responsibilities to local sheriff personnel within jails, such as interrogating people about their immigration status following their arrest on state or local charges, checking their information in the Department of Homeland Security (DHS) databases, issuing detainers to hold people on civil immigration charges, and issuing the charging document called a Notice to Appear that initiates a deportation.[8]

The Waukesha County Sheriff's Department was the first department in Wisconsin to enter a 287(g) agreement with ICE and is the only one to sign a jail model agreement. Particularly troubling was this statement by the sheriff in the cover letter to his 2017 application:

> *The Waukesha County Sheriff's Office is willing, prepared and committed to assist in [ICE's] effort to investigate, apprehend and detain aliens pursuant to the statutes…My office and staff will make this program a priority in our jail and welcome additional ICE partnerships.*[9]

Although large swaths of the local community objected, Waukesha Sheriff Eric Severson signed a 287(g) agreement with ICE on February 16, 2018, and renewed it on July 1, 2020.[10] According to ICE, there were 93 detainers issued to the Waukesha

---

[5] License To Abuse: How ICE's 287(G) Program Empowers Racist Sheriffs, ACLU, April 2022
[6] https://www.ice.gov/identify-and-arrest/287g
[7] A 2021 report from the U.S. Government Accountability Office reviews arrangements that ICE has made with local law enforcement agencies.
[8] The federal government does not compensate local authorities for participating in these agreements other than travel expenses for training, and instead precious local resources are used for what is a federal enforcement task.
[9] Letter from Waukesha Sheriff to ICE, May 15, 2017.
[10] https://www.ice.gov/doclib/287gMOA/287gJEM_WaukeshaCoWI_06-10-2020.pdf

County Jail to take persons into immigration custody during a two-year period between 2019 and 2021 "attributed to our partnership with the Waukesha County Sheriff's office."[11] With a detainer, ICE asks local law enforcement to keep custody of a person for up to 48 hours after any state law basis to detain them ends.

During the Trump administration, ICE devised the warrant service officer (WSO) program, a new form of 287(g) agreement, to authorize local law enforcement agents to serve immigration detainers and retain custody of immigrants under those detainers. DHS described the WSO program as an attempt to shield local officers from liability when they violate people's rights, and as a way to subvert state and local decisions not to participate in immigration enforcement.[12] It requires only a single day of training for law enforcement partners.[13]

WSO agreements have proved popular among Wisconsin sheriffs. The first sheriff in Wisconsin to sign a WSO agreement was in Sheboygan County, where the sheriff signed a new WSO agreement referring to it as a "partnership" with ICE.[14] Documents disclosed to the ACLU of Wisconsin in response to open records requests showed that the Sheboygan sheriff then encouraged other sheriffs to sign such agreements.[15]

Other WSO contracts have come out of ICE participation in statewide conferences of Wisconsin sheriffs. During the course of 2020, sheriffs in Brown, Fond du Lac, Lafayette, Manitowoc, Marquette, and Waushara counties also signed WSO agreements.[16] In many counties, the agreements were entered into without any input from the local community. In fact, none of these agreements were approved by county boards or publicly acknowledged by these sheriff's departments until the ACLU of Wisconsin disclosed their existence.

---

[11] Nov. 29, 2021 email from ICE to Waukesha Jail Administrator, produced in response to open records requests.

[12] Debra Cassens Weiss, "ICE Offers Workaround to Allow Police in Sanctuary Cities to Temporarily Detain Immigrants," American Bar Association Journal, May 10, 2019, https://www.abajournal.com/news/article/ice-offers-workaround-to-allow-police-in-sanctuary-cities-to-temporarily-detain-immigrants.

[13] Immigration and Customs Enforcement, 287(g) Warrant Service Officer Model (November 1, 2020), https://www.ice.gov/doclib/about/offices/ero/pdf/WSOPromo.pdf.

[14] Oct. 14, 2019 letter from Cory Roessler, Sheboygan County Sheriff, to ICE Field Officer.

[15] Nov. 25, 2019 email from Cory Roessler, Sheboygan County Sheriff, to sheriffs of Manitowoc and Fond du Lac counties.

[16] All active 287(g) agreements listed here: https://www.ice.gov/identify-and-arrest/287g.

The 287(g) agreements and other ICE collaboration programs can embolden police to engage in racial profiling. Local police in 287(g) jurisdictions may make stops and arrests as a pretext for engaging in immigration enforcement. For example, they might arrest a driver and take the driver to jail instead of simply issuing a ticket, based on the driver's perceived race or immigration status. The cooperation agreements with ICE embolden racist and xenophobic law enforcement officers across the country to use immigration enforcement as a means of threatening and harassing people in immigrant communities.[17]

In none of Wisconsin's neighboring states have sheriffs found 287(g) agreements with ICE to be justified. The ACLU of Wisconsin has urged local sheriffs not to enter into more 287(g) agreements and to pull out of existing agreements, which allow termination at any time.[18] In January 2021, a coalition of 25 organizations in Wisconsin wrote to Secretary of DHS Alejandro Mayorkas, urging that he terminate 287(g) and WSO agreements in the state and nationwide.[19] In February 2021, 60 members of Congress sent a letter to the Biden administration urging it to end the use of 287(g) agreements and immigration detainers.[20]

Sheriffs Statewide Receive Money to Share Information With ICE: SCAAP

The State Criminal Alien Assistance Program (SCAAP) is a federal grant program that partially reimburses state and local governments for the costs of incarcerating certain non-citizens who have committed crimes.[21] In FY 2020, the last year for

---

[17] For more, *see* License To Abuse: How Ice's 287(G) Program Empowers Racist Sheriffs, ACLU, April 2022

[18] ACLU of Wisconsin Denounces Sheboygan Sheriff's Department Decision To Focus On Immigration Enforcement During Pandemic, ACLU of Wisconsin, April 1, 2020, https://www.aclu-wi.org/en/press-releases/aclu-wisconsin-denounces-sheboygan-sheriffs-department-decision-focus-immigration

[19] Wisconsin Civil Rights And Immigrant And Social Justice Groups Urge Mayorkas To End ICE Collaboration Programs, ACLU of Wisconsin, Jan. 22, 2021, https://www.aclu-wi.org/en/press-releases/wisconsin-civil-rights-and-immigrant-and-social-justice-groups-urge-mayorkas-end-ice

[20] Over 60 Members Of Congress Push President Biden And DHS To End Programs That Conscript Local Police To Work As Federal Immigration Enforcement, Natl. Immig. Justice Ctr., Feb. 11, 2021, https://immigrantjustice.org/press-releases/over-60-members-congress-push-president-biden-and-dhs-end-programs-conscript-local

[21] https://bja.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview

Sheriffs across Wisconsin and the Department of Corrections received over $2 million through SCAAP for FY 2020.

which data is available, county sheriffs across Wisconsin and the Wisconsin Department of Corrections received over $2 million through this program.

SCAAP funding works retroactively: states and local governments apply annually to be reimbursed for a portion of certain incarceration costs they incurred during a particular 12-month window. As part of this application process, states and localities submit information regarding people they have incarcerated for at least four consecutive days who are, or are believed to be, undocumented and who have been convicted of at least one felony or two misdemeanors. States and local governments also submit information regarding their incarceration-related expenditures. The Office of Justice Programs (OJP), the U.S. Department of Justice agency that administers SCAAP, then shares the records of each person incarcerated with ICE. After ICE reviews these records and assesses the immigration status of each "criminal alien," OJP reimburses each state or locality for a portion of the costs of incarcerating those people.

By providing local governments with a financial incentive to record and investigate immigration status and share that information with ICE, SCAAP contributes to the entanglement of local law enforcement with federal immigration and feeds the deportation machine. SCAAP also plays a key part in promoting collaboration between county governments and ICE.

In FY 2020, the most recent year for which data is available, 30 counties statewide received SCAAP funds, along with the State of Wisconsin, which recovered funds for persons housed in the state prison system. Dane County received the most SCAAP money of any Wisconsin county—more than $150,000. Milwaukee County, in contrast, has opted out of the program since FY 2017.

The table below shows the 10 Wisconsin counties that have received the most SCAAP funding in the past five grant periods.

Top 10 Wisconsin Recipients of SCAAP Funding

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	SUM: FY16-20
WI Dept of Corrections	$1,055,031	$1,291,070	$1,259,845	$1,349,021	$1,452,207	$6,407,174
Dane	$69,760	$116,797	$139,430	$155,160	$153,703	$634,850
Walworth	$49,455	$32,624	$70,273	$48,311	$53,282	$253,945
Brown	$50,179	$38,812	$44,251	$54,423	$50,235	$237,900
Rock	$33,818	$34,319	$25,046	$27,852	$29,595	$150,630
Kenosha	$37,099	$34,284	$29,237	$26,483	$20,298	$147,401
Racine	$19,551	$20,788	$23,810	$21,146	$44,311	$129,606
Outagamie	$22,019	$13,161	$23,347	$33,778	$35,133	$127,438
Waukesha	$26,147	$21,373	$23,026	$21,723	$26,422	$118,691
Sheboygan	$15,705	$26,760	$20,890	$21,442	$26,874	$111,671

Most recent data available. Covers requests for undocumented persons held in jail through Sept. 2020.
Source: USDOJ Bureau of Justice Assistance, Funding & Awards database:
https://bja.ojp.gov/funding/awards/list

The total sum awarded statewide through SCAAP increased each year between FY 2016 to FY 2020. It grew by more than a third, from approximately $1.59 million to approximately $2.13 million. This growth rate outpaces the national growth rate in the size of SCAAP, which only grew from about $189M to about $210M (11%) during this interval.

Most Sheriffs Are Still Holding Immigrants on ICE Detainers

An immigration detainer is a request by ICE that a local jail hold an immigrant suspected of being in the country without authorization for up to 48 hours after that immigrant would otherwise be entitled to be released, so that ICE can take custody of the immigrant. Our survey of Wisconsin sheriffs revealed that the majority of law enforcement agencies across the state of Wisconsin continue to hold immigrants on ICE detainers, although several do not. In the period from October 1, 2016, through June 30, 2020, ICE sent more than 3,600 detainers to Wisconsin jails and prisons asking to take custody of persons detained in Wisconsin.[22]

Federal deportation proceedings are civil—not criminal—matters. Rarely, if ever, are ICE detainers accompanied by a warrant signed by a neutral judicial official. Most often, detainers are simply signed by an ICE officer and thus lack the approval of a judicial authority reviewing the basis for a detention. ICE also admits that its detainers are only "requests" to local law enforcement, not mandatory.

Wisconsin law does not provide legal authority for law enforcement to act on civil immigration detainers.

We believe that county jails which hold persons for 48 hours after they should have been released pursuant to immigration detainers are in violation of Wisconsin law because Wisconsin statutes do not provide legal authority for law enforcement to act on civil immigration detainers. A detainer becomes a new "arrest" when a person is not released after the state law basis for detention no longer exists, and in Wisconsin, "the power to arrest must be authorized by statute." *City of Madison v. Two Crow*, 88 Wis. 2d 156, 159, 276 N.W.2d 359, 361 (Ct. App. 1979) (*quoting Wagner v. Lathers*, 26 Wis. 436 (1870)). In other words, if the authority for a law enforcement agency to hold someone under an immigration detainer is not found in Wisconsin statutes, then it does not exist. The general arrest authority for Wisconsin law enforcement, set out

[22] Syracuse Univ. TRAC Immigration Database, Detainers Issued dataset, https://trac.syr.edu/phptools/immigration/detain/

in Wisconsin Statutes section 968.07(1)(a)-(d), contains no authorization to make arrests for civil immigration detainers.

Despite these provisions of Wisconsin law, only five local sheriffs in Wisconsin—in Milwaukee, Dane, Door, Oconto and Shawano counties—have express policies prohibiting holding a person on the basis of an immigration detainer.

Almost half of the departments in the state use problematic boilerplate policies acquired from the private company Lexipol.[23] The Lexipol policy on encounters with immigrants has the following language:

> *IMMIGRATION DETAINERS*
>
> *No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 unless the person has been charged with a federal crime or the detainer is accompanied by a warrant, affidavit of probable cause, or removal order. Notification to the federal authority issuing the detainer should be made prior to the release.*

The language in this section is deceptive. While the first sentence states that persons should not be held based on detainers, it goes on to indicate that holding is permissible when the detainer is accompanied by a "warrant, affidavit of probable cause, or removal order." The problem with this language is that ICE always accompanies its detainers with forms labeled "warrant" or "affidavit of probable cause," but those boilerplate form documents are normally only signed by immigration officers and rarely, if ever, signed by a judicial officer. The title of the form does not turn it into a "warrant"—the signature of a judicial officer does.

[23] Lexipol LLC is a private company which develops and markets policy manuals to law enforcement agencies across the country. *See* I. Eagly and J. Schwartz, *Lexipol: The Privatization of Police Policymaking*, Texas L. Rev., Vol 96:891 (2018). More Wisconsin sheriffs have adopted written policies related to immigration enforcement than in our prior report, but the policies they have adopted in general are not appropriate to Wisconsin. Since our 2018 report, there has been a marked increase in the number of sheriffs' departments which have adopted the immigration policy written by Lexipol. We discussed our concerns with the Lexipol immigration policy in our 2018 report at pages 6-9 and all of those concerns remain in place. In addition to the problematic language in that policy concerning detainers, the Lexipol policy gives wide latitude to law enforcement officers who want to involve themselves in immigration enforcement.

Lexipol drafted these policies for its national customer base of law enforcement agencies, allowing them to detain people using unauthorized ICE detainers. The policy fails to take into account the absence of authority to hold someone on this basis under state law, as in Wisconsin.

Other than the five counties with express prohibitions on honoring detainers, our investigation revealed that the remaining sheriffs who have not adopted the LexiPol policy are simply honoring detainers when they arrive at the jail without having a formal policy in place.

With half of Wisconsin's sheriff's departments using this policy and the majority detaining immigrants based on bogus "warrants" provided by ICE, Wisconsin law enforcement is aiding and abetting the jail-to-deportation pipeline.

A Tale of Three Sheriff's Departments

The policies and practices adopted by local county sheriffs have demonstrable impacts on immigrant communities around the state of Wisconsin. A look at three county sheriff departments, in Milwaukee, Dane and Walworth counties, illustrates the wide disparity of practices currently being followed. The Walworth Sheriff, in particular, appears to contact federal immigration authorities regarding every foreign-born person who is detained, regardless of whether they are now U.S. citizens or have legal permanent residence in the country.

Milwaukee County

Because it is the most populous county in the state with the highest immigrant population, the policies of the Milwaukee County Sheriff's Office are particularly important. In connection with the advocacy of the ACLU of Wisconsin and others opposing detainers in 2017 and 2018, the Milwaukee Sheriff announced that the county jail would no longer hold persons on ICE detainers:

> *Effective immediately, the Milwaukee County Jail shall not hold any inmate in custody solely based upon an ICE detainer.*[24]

[24] Milw. Cty Sher. Off., Directive J2018-2, August 21, 2018

Although this policy stopped the practice of acting on detainers, it originally required that the jail notify ICE that someone was being freed, in case ICE chose to arrange a pickup prior to the actual moment of release. That important caveat led immigrant justice advocates to push to remove that provision. The effort, led by Voces de la Frontera, produced a change in policy. A February 26, 2019, press release from the MCSO stated:

> *Sheriff Lucas has established a policy ensuring that, absent a valid judicial warrant, the Milwaukee County Sheriff's Office is not sharing information with ICE regarding persons detained in the Milwaukee County Jail.*[25]

However, a few months later, that statement was softened to eliminate the prohibition. This third version of the directive, issued in April 2019, neither requires nor prohibits notification to ICE and reserves the right to contact other "law enforcement agencies":

> *The Milwaukee County Jail shall not hold any inmate in custody based upon an ICE detainer request, absent a valid judicial warrant. Once an inmate is scheduled for release, if there is no legally valid basis under state law to hold the inmate in custody, the inmate will be released from our facility in the usual course of business. The Milwaukee County Sheriff's Office may communicate with law enforcement agencies in response to requests for information regarding inmates. Nothing in this directive restricts the Milwaukee County Sheriff's Office from complying with the requirements of federal law or valid court orders. This directive supersedes and overrides any previously issued written or oral policies, practices or statements to the contrary.*[26]

In keeping with its policy of reducing information sharing with ICE, the Milwaukee County Sheriff's Office has not received SCAAP funding since 2017.

---

[25] https://county.milwaukee.gov/files/county/sherriffs-department/News/2019/Honoring_Our_Pledge.pdf
[26] Milw. Cty Sher. Off., Directive J2019-03, April 8, 2019

Dane County

Like Milwaukee County, the Dane County Sheriff's Office does not hold persons on immigration detainers. This policy led to criticism of the Dane County Sheriff from ICE officials and former President Donald Trump.[27] But unlike Milwaukee County, the Dane County Sheriff actively shares information with ICE about the foreign-born persons within the jail:

> *If, during the process described above, the Booking Deputy determines that a potential violation of federal law exists regarding the legality of the arrestee's residency status within the USA, the Booking Deputy should contact the Immigration and Naturalization Service (INS). The INS will then be responsible for determining whether a suspected violation of Federal law has occurred, and will then place an INS detainer on the arrestee.*[28]

The consequence of this policy is that ICE sent Dane County 451 detainers between October 2015 and June 2020 for persons housed in its jail, only two fewer detainers than Milwaukee despite a much smaller foreign-born population. While Dane County does not extend to ICE the extra 48 hours it requests to pick people up from the jail on detainers, the jail has been affirmatively sharing with ICE the identities of hundreds of immigrants being booked into the jail.

The Dane County Jail's information-sharing approach is reflected in its receipt of SCAAP funds from the federal government. In recent periods Dane County received more money than any other county in Wisconsin for reporting its incarceration of undocumented persons.

Walworth County

Though Walworth County is not one of the ten most populous counties in the state, the Walworth County Sheriff's Department receives more SCAAP funding than any other county in Wisconsin except Dane County. The Walworth County Sheriff's treatment of immigrants who come into contact with the criminal justice system

---

[27] Trump claim that Madison, Milwaukee are sanctuary cities has some merit but goes too far, PolitiFact, April 16, 2020.
[28] Dane County Sheriff's Office, Security Services Manual, section 601.01 (emphasis supplied—INS was a predecessor agency to ICE)

demonstrates the perils of close relationships between local law enforcement and ICE.

In hundreds of pages of records obtained by the ACLU of Wisconsin, Walworth County Jail employees frequently and proactively reached out to ICE. In dozens of emails, most with the subject line "foreign born," these employees notified a deportation officer working within ICE's Criminal Alien Program that an immigrant had come into contact with the criminal justice system. The Walworth jail staff contacted ICE regarding people with a range of immigration statuses, including naturalized *U.S. citizens*, persons protected under the Deferred Action for Childhood Arrivals or "DACA" program, Lawful Permanent Residents, and individuals who were undocumented. The county employees proactively supplied ICE information regarding these individuals, facilitated the issuance of detainers for immigrants incarcerated in other counties, coordinated the pick-up of immigrants by ICE at jails and prisons, and helped ICE fill out its databases with people who legally could not be deported, including citizens.

Emails received by the ACLU reflect a casual familiarity between Walworth's local jail employees and this ICE officer. In one email, the ICE officer wrote "Hey…thought I'd beat you on this guy lol" before requesting information about someone—whom ICE thought was probably a U.S. citizen—who had committed a second OWI offense. In other emails, a local employee arranged multiple pickups of immigrants by ICE from jail at "the usual time."

Money Speaks

Our investigation of local sheriff records and SCAAP funding shows that federal money has a demonstrable impact. In general, counties which seek and receive greater levels of SCAAP funding are those counties which have deportation proceedings commenced at a higher rate against members of the local immigrant community, than those counties which do not. Thus Dane County has a higher rate than Milwaukee County, and Walworth County has the highest rate of all. Similarly, counties which have 287(g) agreements (with the exception of Waukesha County) tend to have higher rates than those which do not.

Counties which seek and receive greater levels of SCAAP funding are those counties which have deportation proceedings commenced at a higher rate against the local immigrant community.

The number of detainers sent by ICE to Wisconsin county jails is a useful proxy for the amount of information sharing between a given jail and ICE. ICE needs to know that an immigrant is housed within a jail before it can have a detainer served at the jail. That knowledge can come from electronic databases shared by local, state and federal law enforcement agencies,[29] but it also can come from direct telephone and email contact by persons working in the jails. The chart below illustrates how Walworth County, the second highest recipient of SCAAP funding, receives detainers at the highest rate per capita of county immigrant population. And Milwaukee County, which currently receives no SCAAP funding and limits contacts with ICE, has the lowest per capita rate of detainers among large counties.

The chart on the next page includes data on nine selected Wisconsin sheriff's departments looking at the level of SCAAP funding and the level of detainers received, normalized on a per capita basis.

[29] *See* From Data Criminalization to Prison Abolition, Community Justice Exchange, 2022 (detailing the gathering and use of data to surveil immigrant communities).

Rate of Receipt of Immigration Detainers for Selected Wisconsin Sheriffs					
County	**Est. Foreign-Born Pop.**[30]	**SCAAP Funding FY 2016-20**	**Explicit Policy to Inform ICE?**	**Detainers Received 10/2015-6/2020**[31]	**Detainers per 1,000 Foreign-Born Pop.**
Milwaukee	86,000	$51,093	No	453	5.2
Dane	48,000	$634,850	Yes	451	9.4
Waukesha*	21,700	$118,691	Yes	122	5.6
Brown*	15,600	$237,900	Yes	242	15.5
Kenosha	12,300	$147,401	**	144	11.7
Racine	9,600	$129,606	**	144	14.9
Rock	7,400	$150,630	**	93	12.6
Sheboygan*	6,900	$111,671	**	109	15.6
Walworth	6,100	$253,945	Yes	144	23.6
*Has 287(g) agreement with ICE ** Unable to determine from open records responses					

[30] Population estimates: U.S. Census Bureau: https://www.census.gov/quickfacts/fact/table/US/PST045221

[31] Detainer Data (most recent available): Syracuse University TRAC Immigration database: https://trac.syr.edu/phptools/immigration/detain/

Informal Cooperation Between County Sheriffs and ICE Also Results in Removals and Tracking of Immigrants

Whether a local sheriff's department honors detainers or not determines whether ICE has an additional 48-hour window in which to arrange to pick up an immigrant who would otherwise be free to leave the jail. But ICE still manages to pick up immigrants at the time of release if there is sufficient communication between local ICE enforcement and removal officers and the jail. ICE also uses information from local law enforcement to build its databases on foreign-born individuals.

Our open records requests revealed many instances of informal cooperation between ICE and local sheriffs outside of the structures of detainers and 287(g) agreements. For example, we received copies of emails from an ICE enforcement officer based in Milwaukee contacting jails around the state and asking if they would send him daily rosters of the persons currently held in the jail. For example, in the following email to Clark County, the officer said this would help ICE "identify foreign born individuals (removable or not)."

From: Nimtz, Anthony M <[redacted]@ice.dhs.gov>
Sent: Tuesday, March 02, 2021 9:39 AM
To: A[redacted], H[redacted] <[redacted]@co.clark.wi.us>
Subject: Clark County Jail Intake Roster

Good morning,

I wanted to reach out and to inquire about the possibility of receiving a daily intake report from Clark County Jail of individuals arrested and booked into the jail. If it could be sent every morning I would screen these individuals for immigration violators and if possible lodge detainers or at least create informational reports so that we can track them for future convictions/arrests. We are in the process of receiving new systems to effectively screen our jails and this would assist in our ability to identify foreign born individuals (removable or not) until those systems go online. If you have any questions please let me know I'm available via cell phone or email. Thank you for your time.

Respectfully,

ANTHONY M. NIMTZ
DEPORTATION OFFICER, CRIMINAL ALIEN PROGRAM
CHICAGO FIELD OFFICE, MILWAUKEE, WI SUB-OFFICE
ENFORCEMENT AND REMOVAL OPERATIONS

The Clark County Jail agreed to send the jail population report daily. Then the ICE Deportation Officer began to ask to be sent information on immigrants in the jail, even ones he stated were not priorities for removal from the country.

Date: 7/19/2021 3:22 PM
From: "Nimtz, Anthony M" <[redacted]@ice.dhs.gov>
To: "M[redacted] L[redacted]" <[redacted]@co.clark.wi.us>
Cc: "sheriffcorrections@co.clark.wi.us" <sheriffcorrections@co.clark.wi.us>

Good afternoon,

Thanks for your help earlier today with [redacted]. We were able to issue an ICE Detainer for him. I'm also looking at another individual in the jail, [redacted] He is not an enforcement priority but I want to make sure I do a report on him and track his last known status. Could I get a booking photo of him and any other documents that he may have had in his possession at the time of his arrest?

Thank you,

ANTHONY M. NIMTZ
DEPORTATION OFFICER, CRIMINAL ALIEN PROGRAM
CHICAGO FIELD OFFICE, MILWAUKEE, WI SUB-OFFICE
ENFORCEMENT AND REMOVAL OPERATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

The same deportation officer told his friendly contact in Walworth County that he will monitor "every foreign born case" coming into Walworth County and "write up reports identifying them as criminal aliens."

From: Nimtz, Anthony M [redacted]
Sent: Tuesday, February 9, 2021 11:14 AM
To: Powers, Tracy [redacted]
Subject: RE: foreign born

Hey Tracey…yeah I saw him. So we keep flip-flopping on who we can and can't arrest now. OWI's are now not within our enforcement priorities. Unfortunately I can't take enforcement action. I have written up his case as he has no legal status in the US but unfortunately I can't lodge a detainer. I will still monitor every foreign born case that comes in to Walworth County and write up reports identifying them as criminal aliens. Hopefully our enforcement priorities will relax and we'll be able to arrest some of these guys. If you have any further cases to refer please keep sending them I'll look into all cases. Thanks again!

Sincerely,

Anthony M. Nimtz
Deportation Officer, Criminal Alien Program
Milwaukee, WI Sub-Office
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

Comments and Conclusions

The business of immigration enforcement is a federal, not a local law enforcement, priority. Local sheriffs who prioritize collaborating with ICE place a wedge between themselves and the immigrant members of their community. Victims and witnesses become fearful to report crimes or talk to law enforcement agents who view themselves as partners to immigration authorities.

Every decision to reach out to ICE about immigrants who interact with the criminal justice system, to honor a detainer, or to continue with the 287(g) program increases the number of families which are broken up and separated through the deportation and removal process.

As such, the ACLU of Wisconsin calls on all county sheriffs in the state to work to dismantle the jail-to-deportation pipeline by doing the following:

ACLU Wisconsin

1. End the illegal honoring of 48-hour holds of immigrants under ICE detainers.
2. Terminate all existing 287(g) agreements.
3. Enact policies which prohibit the automatic reporting of all foreign-born individuals to ICE.
4. End participation in SCAAP.
5. End informal programs of information sharing with ICE.
6. Enact immigrant-friendly policies like the model policy developed by the ACLU of Wisconsin in the Appendix to this report.

ACLU
Wisconsin

APPENDIX

1. **Model Policy for Law Enforcement Agencies**

2. **Questions you can ask your local sheriff regarding their policies affecting foreign-born persons.**

APPENDIX 1

MODEL Guidance Regarding Due Process and Immigration Enforcement

I. DUE PROCESS AND IMMIGRATION ENFORCEMENT

A. Building trust between police and all residents is vital to the public safety mission of [Agency]. Policing in a fair and impartial manner is essential to building such trust. Therefore, [Agency members] shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. [Agency members] may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense.

B. Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Federal law does not grant local and state agencies authority to enforce civil immigration law. Similarly, state law does not grant local and state agencies authority to enforce civil immigration laws. [Agency members] shall not dedicate [agency] time or resources to the enforcement of federal immigration law where the only violation of law is presence in the United States without authorization or documentation.

C. The Constitution's Fourth Amendment protection against unreasonable search and seizure applies equally to all individuals residing in the United States. Therefore, [agency members] shall not initiate or prolong stops based on civil immigration matters, such as suspicion of undocumented status. Similarly, [agency members] shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations.

D. "Administrative warrants" and "immigration detainers" issued by Immigration and Customs Enforcement (ICE) have not been reviewed by a neutral magistrate and do not have the authority of a judicial warrant. Therefore, [agency members] shall not comply with such requests.

II. VICTIM AND WITNESS INTERACTION

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and community.

a. Federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses. It is essential to the mission of the [agency] that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.

b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, [agency members] will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation. [Agency members] will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. [Agency members] should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses and that [agency members] do not ask victims/witnesses about their immigration status.

c. Therefore, [Agency members] will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the agency/department for help or to make reports, giving full priority to public safety and justice concerns.

d. This policy is to be interpreted to comply with 8 U.S.C. § 1373 which provides:

> Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official

from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

III. IMMIGRATION STATUS:

a. [Agency member's] suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person.

b. [Agency members] may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that [Agency] should not use a person's characteristics as a reason to ask about civil immigration status.

c. [Agency members] shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection. Arrest for "unlawful entry" after a person is already within the United States is outside the arrest authority of Wisconsin officers.

IV. ESTABLISHING IDENTITY:

a. [Agency members] may make attempts to identify any person they detain, arrest, or who come into the custody of the [Agency].

b. [Agency members] shall not request passports, visas, "green cards," or other documents relating to one's immigration status in lieu of, or in addition to, standard forms of identification such as a driver's license, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable.

V. CIVIL IMMIGRATION WARRANTS AND DETAINERS:

a. [Agency members] shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants are not valid warrants for Fourth Amendment purposes because they are not reviewed by a judge or any neutral magistrate. Moreover, federal regulations direct that only federal immigration officers can execute said warrants. Finally, Wisconsin law enforcement agencies do not have any authority to enforce civil immigration law.

VI. INTERACTIONS WITH FEDERAL IMMIGRATION OFFICERS:

a. [Agency members] shall not contact Customs and Border Patrol (CBP) or ICE for assistance on the basis of a suspect's or arrestee's race, ethnicity, national origin, or actual or suspected immigration status.

b. [Agency members] shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.

c. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted unless acting in partnership with a Federal agency as part of a formal partnership. [Agency members] are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for immigration enforcement.

VII. USE OF RESOURCES:

a. [Agency members] shall not hold for or transfer people to federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge, and therefore not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.

b. Unless ICE or CBP agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency's] custody.

c. Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in [Agency's] custody. Immigration status or perceived immigration status, including the existence of an immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes. Furthermore, immigration status or perceived immigration status shall not be used as a criteria for citation, arrest, or continued custody.

APPENDIX 2

Questions to Ask Your Local Sheriff or Police Chief

We have a real opportunity to demand change from local sheriffs and police departments.

When meeting with a sheriff or police chief, it is important to know how each directs their departments to interact with immigrants in our community. Ask of them:

1) When questioned, stopped, pulled over, or arrested, are people questioned about their immigration status? They should not be unless directly relevant to an investigation of a state or local charge.

2) Are stops conducted or prolonged for purposes of contacting federal immigration authorities?

3) Does the Sheriff's Department honor detainer requests issued by ICE? They should not unless the detainer is accompanied by a warrant signed by a judge or magistrate - not just signed by an ICE officer.

4) Do you agree that every person, regardless of country of origin, is entitled to equal respect by personnel of the Department?

5) Does the Sheriff's Department have a written policy with regard to its interactions with immigrant members of the community?

6) Does the Sheriff's Department contact ICE when it books foreign born persons into the jail?

7) Has the Sheriff's Department had a chance to review the ACLU of Wisconsin's 2018 and 2022 reports surveying the policies of sheriffs across the state for interacting with the immigrant community?

8) Does the Sheriff's Department have any current agreements to collaborate with ICE?