

February 17, 2010

THE CRIMINAL ALIEN PROGRAM

Immigration Enforcement in Prisons and Jails

In *[The Criminal Alien Program: Immigration Enforcement in Travis County, Texas](#)*, author Andrea Guttin explores the Criminal Alien Program (CAP), which is one of the programs the Department of Homeland Security (DHS) uses to identify immigrants who may be deportable. The paper provides a history and analysis of the CAP program, as well as a case study of CAP implementation in Travis County, Texas.

What is the Criminal Alien Program (CAP)?

CAP is a program administered by Immigration and Customs Enforcement (ICE) that screens inmates in jails, identifies deportable non-citizens, and places them into deportation proceedings. 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).¹ CAP is active in all state and federal prisons, as well as more than 300 local jails throughout the country.

How does CAP work?

State and federal prisons, as well as local jails, that participate in the CAP program share information about their inmates with ICE and allow ICE agents access to penal facilities in order to interview suspected deportable immigrants. Local law enforcement agencies provide ICE with a list of people who have been arrested and booked into jail (not convicted), and ICE agents then interview the arrestees. The operation of CAP varies among participants, with local law enforcement using a variety of methods for collaborating with ICE. For instance, some jurisdictions have ICE agents located in the jails, while others allow telephone or video-conference, rather than in-person interviews with ICE. Some counties give ICE 24/7 access to the jail, while other localities limit ICE agents' access to the jail to certain hours or days of the week. Some local jurisdictions may report to ICE every day, while others report more infrequently.

After ICE interviews the arrested person, they may place an immigration hold (known as a "detainer") on those who are suspected of being deportable. A detainer lets the jail officials know that ICE requests custody of an individual once local jurisdiction ends. The detainer power lasts 48 hours (excluding weekends and holidays), which means that once local charges are complete (when charges have been disposed of through a finding of guilt or innocence, when charges have been dropped, when bail has been secured, or when a convicted individual has served out their sentence) ICE agents have two days to take custody of the individual.²

How many immigrants are identified through CAP?

According to DHS, CAP is the program responsible for the largest number of “alien apprehensions.” In fact, 48% 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.³ In FY 2006, ICE charged 67,000 “aliens” through the CAP program, a figure that more than doubled the following fiscal year to 164,000.⁴ In FY 2008, CAP agents charged 221,000 noncitizens.⁵

Are all immigrants identified by CAP “criminals?”

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.”⁶ However, data from Travis County, Texas show that CAP identifies immigrants with a broad range of criminal histories. When any noncitizen (or person suspected of being a noncitizen) arrested in Travis County is booked into jail, 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.

DHS statistics show that a large percentage of immigrants apprehended under CAP are not criminals at all. An October 2009 DHS report found that 57 percent of immigrants identified through the CAP program in FY 2009 had no criminal convictions, up from 53 percent in FY 2008.⁷ 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.

Does CAP only identify unauthorized immigrants?

Contrary to public perception, CAP does not only identify undocumented immigrants. Legal permanent residents and other legal visa holders may be deportable for serious crimes as well as for minor violations and misdemeanors, and non-citizens may even be deported retroactively for past criminal convictions. In other words, CAP identifies legal immigrants as well as unauthorized immigrants who are deportable based on the current crime or a prior crime.

What concerns does CAP raise?

Some fear that CAP 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, found that local police regularly arrested Latinos in order to check their immigration status through CAP.⁸

Another concern is that, by collaborating with ICE, there will be a breakdown of community trust in the police force. When local police or jails are perceived to be acting with immigration enforcement agents, immigrants hesitate to contact police due to fears of deportation. As increasing numbers of immigrants come in contact with ICE after minor brushes with police, this fear becomes more acute. When a significant portion of the population does not cooperate with the police, the entire community is less safe.

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.

Endnotes

¹ See ICE ACCESS website: <http://www.ice.gov/partners/dro/iceaccess.htm>.

² For more information on immigration detainees, see: [*Immigration Detainers: A Comprehensive Look*](#). Washington, DC: Immigration Policy Center, February 2010.

³ Dr. Dora Schiro, "[*Immigration Detention Overview and Recommendations*](#)," Department of Homeland Security, Immigration and Customs Enforcement. October 6, 2009, 12.

⁴ ICE Fiscal Year 2008 Annual Report," 3. In FY2006, ICE charged 67,580 non-citizens through CAP and 164,296 in FY2007.

⁵ *Ibid.* ICE charged 221,085 individuals through CAP in FY2008.

⁶ Department of Homeland Security, "U.S. Immigration and Customs Enforcement Salaries and Expenses Fiscal Year 2009," Congressional Justification, S&E 35.

⁷ Schiro, 12-13.

⁸ 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.