ICE'S CRIMINAL ALIEN PROGRAM (CAP)

Dismantling the Biggest Jail to Deportation Pipeline

When ICE is in the jail already, they don't need a detainer or notification of release.

What is the Criminal Alien Program?

The Criminal Alien Program ("CAP") is ICE's largest deportation program, causing between 2/3 and 3/4 of all deportations from within the United States.

Under CAP, ICE officials gain access to local and state jails to look for any immigrants who could be deported. CAP may involve ICE agents visiting a jail to interrogate suspected immigrants, or even being permanently stationed in a local jail. Frequently, CAP ICE agents gain access to a jail's local database to get access to immigrants' information, including their name, place of birth, and current criminal case status, sometimes even their home addresses. Based on this information, ICE uses detainers or other agreements to transfer people to immigration detention.

CAP ENFORCEMENT ACTIVITIES 2010-2013

2.6 million CAP Encounters

780,000 CAP Arrests

508,000 CAP Deportations

What is the difference between PEPComm and CAP?

PEPComm is one part of CAP. CAP involves gathering all kinds of information to find immigrants in local jails and transfer them to ICE custody. This information comes from fingerprints, booking data, and interrogations of immigrants who are detained in the jail.

Immigration enforcement is like a butterfly net trying to trap immigrants. PEPComm is a fingerprint sharing program that gives the first layer of information – that's just the rim of the net. Below that are many other threads of information-sharing and collusion between jails and ICE. All of these threads are CAP. The deeper into the CAP net, the harder it is to get out.

The CAP Trap

When it comes to combating deportations locally, the focus is often on PEPComm because it is the newest immigration enforcement program and has received extensive media attention.

But CAP, not PEP, is the biggest deportation program and entraps the most immigrants.

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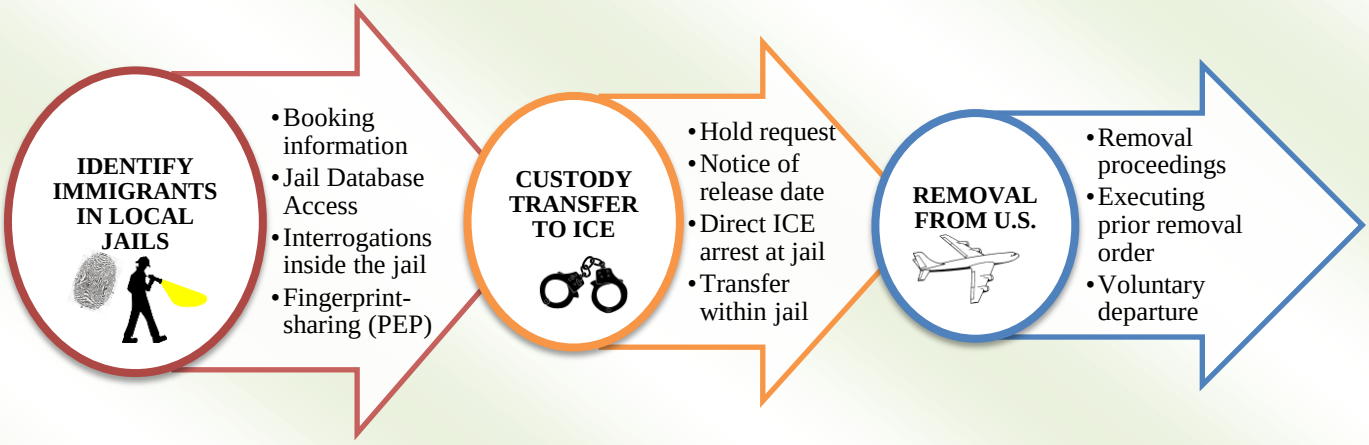
How does CAP Work?

There are three key phases of the pipeline from jail to deportation:

1. Identification
2. Custody transfer
3. Removal (deportation)



IN MORE DETAIL….

IDENTIFICATION:

ICE officers want to know who inside a jail is an immigrant, and whether they can be deported. Through PEPComm, ICE receives the fingerprints of every person who is arrested, and then can look for a match to those prints on anyone in their own immigration databases. In many jails, ICE agents log in to jail databases to get inmates' names, places of birth, and other background information. In other places, the jail provides ICE with a list of everyone who has been booked in each day, including their names and usually their place of birth. Frequently ICE agents have a desk in the jail itself, or visit regularly, in order to question inmates about their immigration status.

CUSTODY TRANSFER:

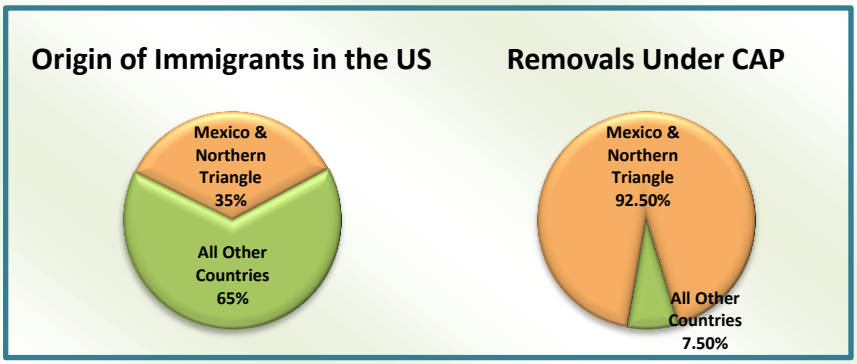
To make sure that the local jail hands immigrants over to ICE, rather than release them, ICE issues detainer requests to the jails. There are different kinds of detainers: some request the local jail to hold the person after they would otherwise have been released, so that ICE can get them (although federal courts have found this to be illegal). Other detainers ask for notice of when the person will be released, so that ICE can arrive at the right time to take them to immigration detention. None of these requests are mandatory; the jail can make its own decisions about whether to help ICE.

REMOVAL:

ICE will start removal proceedings even while the person is still in state custody, if possible. Many ICE agents in the jails persuade detainees to sign their own deportation orders or voluntary departure and give up their right to see a judge. If someone has been previously deported and unlawfully reentered the country after deportation, ICE may "reinstate" their previous removal order. This means that the person will be deported again with very limited rights to fight their removal.

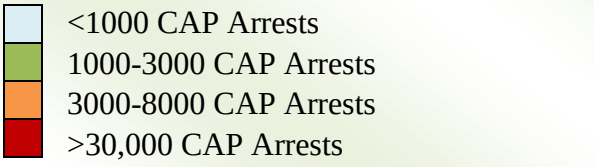
What impact does CAP have on immigrant communities?

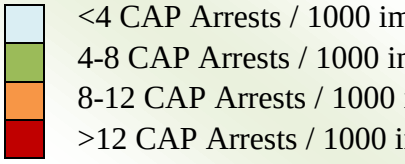
CAP led to the deportations of more than half a million people between FY2010 and FY2013. CAP disproportionately deports immigrants from Mexico, El Salvador, Guatemala, and Honduras. More than 93% of those removals were of Mexicans or Central Americans – far more than their share of the immigrant population. This shows that immigration enforcement based on jail check programs has racially biased results.



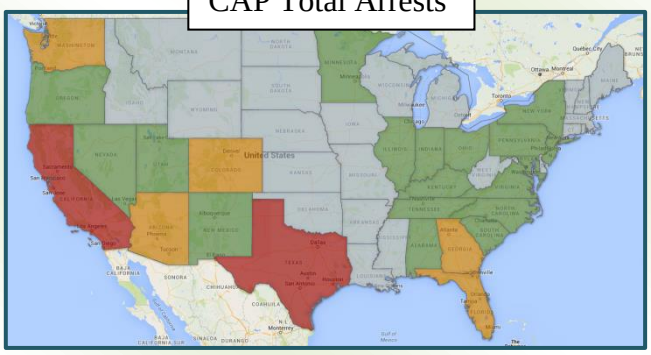
CAP operations vary significantly from state to state, and even county to county.

CAP ACTIVITY 2013





CAP Total Arrests



CAP Arrests per 1000 Immigrants

California and Texas have the largest immigrant populations and also the most ICE arrests in jails under CAP. Texas jails had the most CAP activity, with almost 40,000 people seized by ICE in local jails in FY2013.

New York had the lowest rate of CAP arrests relative to its total immigrant population – less than 1 person per 1000 immigrants living in the state. In contrast, West Virginia turned over more than 28 people to ICE for every 1000 immigrants residing in the state.

How can we fight CAP operations in local jails?

Unlike PEPComm, CAP operations are entirely up to local discretion – local and state collaboration with ICE is **entirely voluntary**. Here are some steps to fight ICE activities in your local jail.

Step 1: Find out what exactly is happening in your local jails.

- What information about citizenship or national origin does the jail ask inmates? What information does the jail share with ICE?
    - Does the jail provide ICE access to local databases or records?
    - Does the jail provide ICE with an office or desk at the jail? Does ICE visit on a regular basis? Are ICE agents permitted to question inmates about their immigration status or place of birth?
    - Does the jail notify ICE when immigrants are going to be released or hold them for ICE to pick up?
- Meet with the public defenders to find out what they know about ICE in the jails.
- Set up a meeting, and maybe a tour, with the jail to understand their operations.

Step 2: Stop the jail from complying with detainers.

- Detainers include requests for prolonged detention for ICE pickup, requests for notice of release dates, or both. For years, detainers have allowed ICE to shuttle people directly from jail to immigration detention.
- Holding people for ICE after they have been ordered released is a violation of their constitutional rights, and many jails have stopped complying with these requests.
- Immigration detainers are never mandatory. Local jails do not have to help ICE with any immigration enforcement.

Step 3: Kick ICE out of the jail.

- This can be hard, but is very important to consider in tandem with a no-detainer policy. ICE access to the jails is the other side of the detainer coin.
- If ICE is in the jail every day and can look up inmates' histories and question people, they don't need detainers. They have all the information they need and agents will grab people as they get released, without a detainer or a warrant.
- If ICE is not in the jail or accessing the databases, they only have PEPComm to rely on, and must hope that the jail will hold people on detainers, or at least notify ICE of release dates.
- Show the jail that ICE is violating people's rights inside, and explain how having ICE in the jail conflates local police and ICE. This further undermines community trust in local law enforcement.

Step 4: Enforce Immigrant Rights Inside the Jail

- If you can't get ICE out of the jail, demand that immigrants are advised of their rights before talking to ICE, and allow them to refuse to talk to ICE agents.
- Create a consent form and process so that immigrants are informed of their rights before talking to ICE agents, and may request a lawyer to be present.
- Contact the ILRC for assistance and sample consent forms.

Key messages about CAP

Compliance with CAP is Voluntary: State prisons and jails are not required to cooperate with ICE's CAP program. They do not have to provide information to ICE about inmates nor transfer anyone to ICE custody. Jails also do not have to allow ICE into the jail to question inmates.

CAP is Indiscriminate: Like PEPComm, CAP results in potentially drastic immigration consequences for anyone brought into jail, regardless of the outcome of a criminal case, if any. CAP funnels people directly from local police to deportation, resulting in double punishment for immigrants who might serve their sentence but never be released, and be transferred directly to deportation proceedings.

CAP Furthers Racial Profiling: The results of CAP are heavily biased toward arrests and deportations of Central American, Latino immigrants. More than 92% of all removals under CAP are of Mexican and Central American immigrants, which is much larger than general proportion of immigrants from these countries.

CAP Violates Due Process: ICE officers have been known to use coercive tactics to get information from inmates. Agents may refuse to identify themselves or misrepresent that they are legal counsel. Some agents threaten people that they will languish in immigration detention if they don't sign orders of removal or voluntary departure immediately.

Working with ICE Impedes Community Trust and Access to Justice: During a time deportations are at an all-time high, cooperation with ICE through CAP sends the community the message that local law enforcement is aligned with ICE. Immigrants will be less likely to contact local government or law enforcement as local officials are seen as an arm of immigration enforcement.