

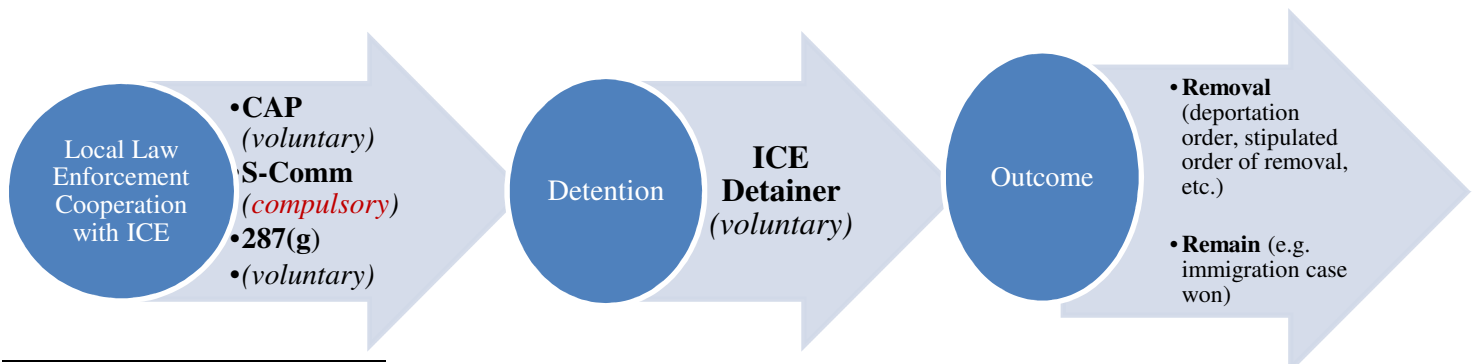
Pushing Back on ICE Enforcement Inside Local Jails: An Advocacy Guide to the Criminal Alien Program (“CAP”) – the DHS Enforcement Program Responsible for More Deportations Than Secure Communities

WHAT is “CAP”? The Criminal Alien Program (“CAP”) is a program administered by Immigration and Customs Enforcement (“ICE”) agents. Through CAP, ICE officials identify allegedly deportable noncitizens in jails and prisons in the United States for the purpose of potentially initiating deportation proceedings against them.¹ ICE officers identify these noncitizens by screening the biographical information of inmates in the jail, such as place of birth, and also by entering jails and conducting interviews. CAP may include ICE agents’ direct access to jail records, which they check against immigration databases to see if they already have records of the detainees.

What is the relationship between CAP, Secure Communities (S-Comm), 287(g), and ICE Detainers? CAP, along with S-Comm and 287(g), is part of larger efforts by ICE to collaborate with local law enforcement to enforce federal immigration laws. CAP and S-Comm are information sharing efforts through which ICE is able to identify deportable noncitizens. 287(g) involves training local officers to screen and identify individuals for deportation. Once a person is identified, the next step is issuance of the ICE detainer, the non-obligatory request from ICE to local law enforcement to hold an individual for ICE. Once ICE takes custody of the individual, this often results in deportation.

CAP is distinct from Secure Communities (S-Comm), a program launched in 2008, where fingerprints taken at booking in local jails are sent to ICE, and ICE cross-checks those fingerprints with their data to identify any allegedly deportable individuals. The CAP program pre-existed fingerprint sharing with ICE, and is a more generalized program for ICE to interact with local and state jails to identify, screen, and interview inmates to find possibly deportable individuals. The ways in which S-Comm and CAP interact, or how ICE attributes deportations to one program versus the other, is not entirely clear. However, both the S-Comm and CAP programs may result in an ICE detainer.

While CAP has existed in various forms and under different names since 1986, much is still unknown about the program. Through a recent lawsuit filed by the American Immigration Council and the Worker and Immigrant Rights Advocacy Clinic at Yale Law School, however, we have received more information about this key ICE enforcement program.



¹See <http://www.ice.gov/news/library/factsheets/cap.htm>.

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WHY is CAP important in efforts to combat local immigration enforcement? When it comes to combating local immigration enforcement, advocates often focus on Secure Communities because it is the newest immigration enforcement program and has received extensive media attention. However, advocates should focus equally on combating the effects of CAP.

CAP, not S-Comm, is the primary program under which individuals in the criminal justice system are identified for removal. CAP was in place long before S-Comm and presently operates out of all ICE field offices, in all state and federal prisons, and many local jails. From 2007 to approximately mid-2012, there were approximately 2.5 million CAP encounters.²

CAP presents an additional opportunity for advocates – while S-Comm is obligatory, state prisons and local jails’ compliance with ICE’s CAP operations is entirely voluntary. Advocates can use CAP to push for changes in local jail practices and policies that limit the identification and removal of immigrants even beyond local detainer restrictions.

HOW to use CAP in advocacy: Specific ways that advocates can and should fight CAP.

- 1. Ask how is CAP operating locally.** Since CAP functions differently in different jails, advocates should find out what relationship local law enforcement and in particular local jailers, have with ICE. To assess this relationship, advocates may ask the following questions:
 - a. Do officers question individuals about their citizenship, immigration status, national origin, and/or place of birth at booking? If so, is this information shared with ICE?
 - b. Does the jail provide ICE with an office or desk at the jail? Or are there regularly scheduled jail visits for ICE?
 - c. Does the jail provide ICE access to a detainee’s information? Does the jail provide ICE agents access to question or investigate inmates who are in custody that have admitted foreign birth?

- 2. If CAP is operating in your local jails, (which it usually is, in one form or another), **advocates should push for policies that deny ICE access to records and inmates.**** Remember that cooperation with ICE via CAP is entirely discretionary. Without this free access to records and inmates, ICE will not be able to use CAP to generate additional ICE detainers. Be prepared for ICE to fight back against these efforts.

One example of a successful campaign which fought against CAP is Santa Fe, New Mexico. There, ICE was routinely asking for jail population lists and targeting individuals for interviews based on Latino surnames. However, because the jail director viewed these practices as a form of racial profiling and learned that compliance with ICE’s requests was voluntary, the jail decided that ICE would no longer be given access to inmates or their data. Thus, ICE was limited in its ability to issue ICE detainers through this facility.

² *American Immigration Council v. Dept of Homeland Security*, No. 12-00355, Dkt. 27-2, 22 (D. Conn. July 12, 2012) available at http://www.legalactioncenter.org/sites/default/files/docs/lac/27-2_Matuszewski_Declaration_%282%29.pdf

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Campaign Example: Washington, DC enacted a policy that stops the jail from holding most inmates subject to ICE detainees. It also explicitly states that the jail will not send any lists of foreign born inmates to ICE, that ICE will not have access to any booth or facilities for individualized searches about inmates, and that ICE will be prevented from interviewing inmates unless there is a court order or the right to have an attorney present. A related administrative order ensures that all inmates are informed in writing that any information they provide to federal agents can be used against them in criminal, immigration, and other proceedings.

Campaign Example: On Rikers Island, in New York City, ICE agents have a long-term office within the jail complex, and plainclothes ICE agents would interview inmates under the guise of a "legal visit" without identifying themselves as ICE agents. Due to public pressure concerning immigrants' rights from inside the jail, as well as the cost of immigration detainees and related litigation, the jail now requires that ICE officers wear uniforms; that people are informed that a requested visit is from an ICE officer; and that immigrants are given Form 144, a form advocates created to explain why ICE wants to interview them and what their rights are, and to give them the choice of whether they want to meet with ICE.

The fight against CAP strengthens campaigns against ICE hold requests. By fighting CAP, we are able to stop ICE from finding or identifying so many individuals, thereby reducing the issuance of ICE holds. Thus, fewer people will be ultimately turned over to ICE. Advocates can link the following messaging to campaigns fighting ICE holds, arguing that all cooperation with ICE, either through compliance with ICE detainees or with CAP efforts, should be limited or altogether eliminated. Below are talking points to use when combating CAP:

- **Compliance with CAP is voluntary:** State prisons and jails are not required to cooperate with ICE’s CAP program nor are they required to share biographical information about their inmates with ICE through CAP.³
- **CAP is indiscriminate:** Like S-Comm, CAP ties immigration consequences with being brought into jail, regardless of the outcome of a criminal case, if any. CAP funnels people directly from local police to deportation.⁴
- **CAP Furthers Racial Profiling:** Under CAP, ICE officers access lists of inmates and may select those who are foreign-born or who have Latino-sounding last names to determine whom to interview. Police are not immune to this, and they play a significant role in determining who is brought into the jails. In Texas, a study showed that low level traffic arrests of Latinos by local police officers rose significantly when CAP programs were instituted in the area.⁵
- **CAP violates due process:** ICE officers have been known to use coercive tactics such as refusing to identify themselves or misrepresenting that they are legal counsel. There have been frequent reports of ICE agents threatening detained noncitizens that they will languish in immigration detention if they don’t sign stipulated orders of removal. ICE officers may also pressure noncitizens to sign stipulated orders of removal based on faulty assumptions that noncitizens prefer to be deported.⁶ Whereas a noncitizen typically has a right to see an immigration judge before being ordered deported, a stipulated order of removal effectively functions as a deportation order, waives the right to see a judge, and carries additional immigration consequences.
- **Cooperating with ICE through CAP harms community trust:** 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 and should not be trusted.

³ *American Immigration Council v. Dept of Homeland Security*, No. 12-00355, Deposition of Jameson Matuszewski, 224:20-225:3 (D. Conn. Feb. 1, 2012) available at http://legalactioncenter.org/sites/default/files/2-1-13-Matuszewski_Deposition-Compressed.pdf

⁴ *Id.* at 216:5-18.

⁵ Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, U.C. Berkeley Law School (September 2009) available at: http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

⁶ Immigration and Customs Enforcement, *Recommendations to Improve Removal Processes* (Feb. 22, 2007) available at <http://www.legalactioncenter.org/sites/default/files/docs/lac/CAP%20FOIA%20240-244.pdf>