



PROBATION AGENCIES AND THE DEPORTATION PIPELINE

On a given day, twice as many people are on probation as are incarcerated in the United States.¹ Approximately 4.5 million people are on probation or parole and are supervised by thousands of local probation agencies. Many of those probation agencies work directly with Immigration and Customs Enforcement (ICE) and refer people to deportation. In addition to sharing information, government records have revealed many probation officers work clandestinely with ICE to schedule probation appointments at a time that works for ICE to come arrest the person and put them in immigration detention. In many cases, ICE will summarily deport them without a hearing. Because ICE often relies on assistance from probation departments to initiate and coordinate arrests, probation departments can play a critical role in ending the deportation pipeline.

WHAT IS PROBATION AND HOW DOES IT WORK?



- Probation is a form of criminal penalty that operates outside of jails. People sentenced to probation are under the supervision of a probation department (sometimes also called community supervision or community corrections). Probation sentences may take the place of a jail sentence, or may be imposed in combination with a jail term. This means that even after a person is released from jail, they will still often be subject to probation for some period of time. Common periods of probation for misdemeanor offenses last one to five years.



- Probation often requires complying with certain terms, which can include electronic monitoring, mandatory classes, community service, maintaining employment, drug testing, and paying fees. It is also typical for probation to entail periodic check-ins with the probation officer. Probation officers can bring charges in criminal court if a person violates these conditions.



- Probation departments are involved in numerous activities within the criminal legal system, such as evaluating defendants to make recommendations for bail or sentencing, running treatment and rehabilitation programs, enforcing fines and fees or restitution to victims, and influencing many aspects of juvenile proceedings.



- Probation departments may also have power to do drug testing, search homes, or monitor individuals location and activities, because they enforce probation sentences. Even when a person's probation is informal, and they do not have specific requirements they must complete, they may be subject to more general conditions that, if violated, could result in arrest. For example, a condition of probation could be that a person maintains full-time employment. Not being employed full-time is not a crime, but for that person, it is a probation violation, which will put them at risk of being arrested and being placed back in criminal court.

¹ The Pew Charitable Trusts, Probation and Parole Systems Marked by High Stakes, Missed Opportunities, 1 (Sept. 2018), https://www.pewtrusts.org/-/media/assets/2018/09/probation_and_parole_systems-marked_by_high_stakes_missed_opportunities_ew.pdf (4.5 million people are on probation or parole nationwide, twice the incarceration population, including those in state and federal prisons and local jails).

“Incarceration is just one piece of the much larger system of correctional control. The U.S. justice system controls almost 7 million people, more than half of them are on probation.”

[Prison Policy Initiative](#)



WHO IS IN CHARGE OF PROBATION?

- The structure of probation departments varies from state to state. Some are run at the state level, while others are run by counties. Some are a branch of the judicial system, and others are run by the local executive branch, such as the mayor or county executive.
 - In **Illinois**, the Division of Probation was established by the state supreme court, and probation programs operate under the judicial system.
 - In **California**, probation is administered by the Chief Probation Officer who is appointed, depending on the county charter, either by the Board of Supervisors or by the Presiding Judge of the Superior Court.
 - In **Massachusetts**, probation is a state-level agency with regional offices and is directed by the state Commissioner of Probation.
 - In **Texas**, probation (called “community supervision”) is an independent county agency. However, not every county has its own community supervision department; and some agencies serve multiple counties.

IS JUVENILE PROBATION DIFFERENT?

- Juvenile probation is often a separate agency from adult probation and may be different in several ways. Juvenile probation often takes a more central role in a juvenile case. In addition to the more traditional role of supervising young people, their responsibilities may include initial intake of youth, making decisions about whether to file a petition in juvenile court (meaning whether to change a youth in juvenile court), making detention decisions, and preparing reports for juvenile court judges to use in disposition decisions. Perhaps most significantly, juvenile probation departments may also operate juvenile halls (juvenile jails).

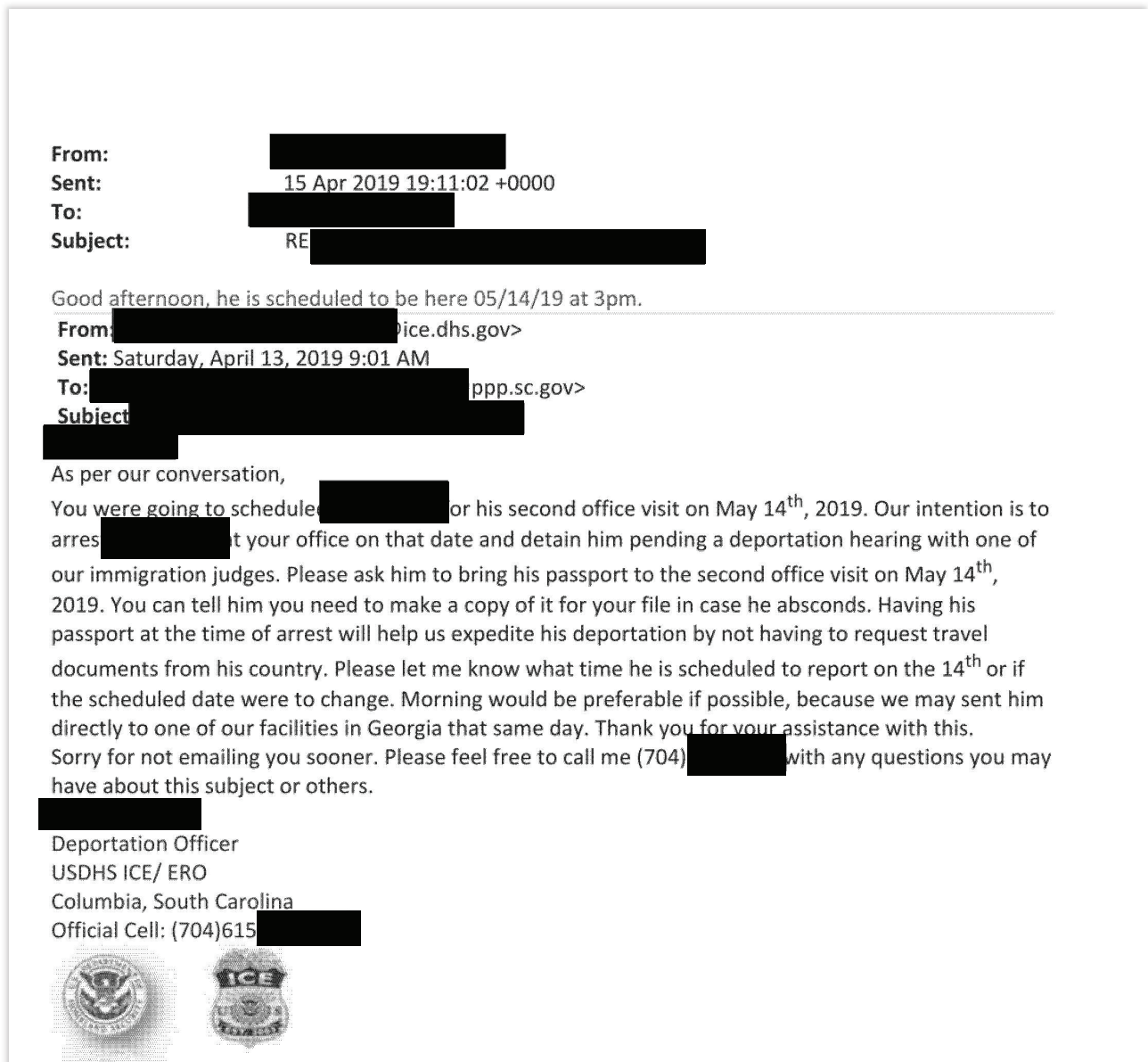
WHAT HAPPENS IF A PERSON VIOLATES PROBATION?

- If a person violates probation, they can be arrested and charged with a probation violation, which can result in a jail sentence or other penalties. In fact, 350,000 people a year end up in jail because of probation or parole violations.¹
- If violations are not handled properly by a defense lawyer, they can trigger immigration consequences and make someone subject to deportation. For this reason, it is critically important to get immigration advice on probation violation charges.
- The risk of arrests related to probation puts immigrants who have required probation check-ins in a terrible position: either they risk ICE arrest by attending their appointment, or they risk arrest and prosecution for violating probation.

¹ Prison Policy Initiative, Correctional Control 2018: Incarceration and supervision by state (Dec. 2018) <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>.

HOW DO PROBATION DEPARTMENTS INTERACT WITH ICE?

- Many probation officers share information about people under their supervision with ICE, including their contact information, criminal history, or other personal data. ICE also partners with some probation officers to schedule check-ins so that ICE can be present to arrest the person when they arrive at their probation appointment.³
- ¹ This connection between ICE and probation departments can be very dangerous for immigrant communities. This is because if a person does not attend their mandatory probation check-ins, they can be arrested, and sent to jail. But if they do attend, they may be at risk of ICE detention and deportation.



In this email received through a Freedom of Information Act (FOIA) request, an ICE agent arranges with a South Carolina probation officer to arrest a man at his next probation appointment. ICE asks the probation officer to tell the probationer to bring his passport to the appointment and to make up a reason for it. The real reason ICE wants to have the passport there is that it will make it easier for them to deport him. The probation officer agrees, and tells ICE what time the man will arrive.

³ See, for example: Darwin Bond Graham, *East Bay Express*, "Ambushed: Contra Costa County Law Enforcement Sets Up Surprise Stings to Help Federal Immigration Agents Arrest and Deport Immigrants" (Jan. 10, 2017), <https://eastbayexpress.com/ambushed-contra-county-law-enforcement-sets-up-surprise-stings-to-help-federal-immigration-agents-arrest-and-deport-immigrants-2-1/>; and Chris Walker, State Probation Office in Denver Tipping Off ICE, Allowing Non-Citizen Arrests, *Westword* (Nov. 27, 2017) <https://www.westword.com/news/probation-office-in-denver-tipping-off-ice-allowing-noncitizen-arrests-9725041>.

PROBATION DEPARTMENTS CAN PREVENT DEPORTATIONS BY ENDING COLLABORATION WITH ICE, SPECIFICALLY:

- Terminating any existing agreements with ICE.
- Refusing to facilitate transfers of individuals to ICE, such as refusing to schedule probation check-ins in coordination with federal agents.
- Prohibiting any information and record sharing with ICE.
- Refusing ICE access to probation offices.
- Refusing ICE access to internal databases.
- Refusing to assist ICE in any type of federal immigration enforcement activities.
- Advising noncitizens of their rights before ICE.
- Removing citizenship status and place of birth questions from internal forms.
- Prohibiting officer and probation staff inquiries about immigration/citizenship status and place of birth.

HOW MIGHT PROBATION BE REFORMED MORE BROADLY?

- Many criminal reform advocates are calling for the complete dissolution of probation as it only drives mass incarceration and targeting of Black and Indigenous communities, and communities of color.⁴

OTHER HELPFUL RESOURCES:

- Prison Policy Initiative's resources on probation and parole: www.prisonpolicy.org/probation_parole.html, including "Correctional Control 2018: Incarceration and supervision by state": www.prisonpolicy.org/reports/correctionalcontrol2018.html.
- Harvard Law School Criminal Justice Policy Program: [Paying On Probation: How Financial Sanctions Intersect with Probation Target, Trap, and Punish People Who Cannot Pay.](#)

⁴ Vincent Schiraldi, *The Crime Report*, "Do We Really Need Probation and Parole?" (Jan. 24, 2019). The former Commissioner of New York City Probation has recommended abolishing parole supervision, and providing vouchers to identify their own services and support. He has spoken out about how probation drives mass incarceration, while community programs improve lives and safety.

