Congressional Research Service
Informing the legislative debate since 1914

Sanctuary Jurisdictions and Criminal Aliens: In Brief

William A. Kandel
Analyst in Immigration Policy

Updated January 10, 2017

Congressional Research Service
7-....
www.crs.gov
R44118

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The prominence of immigration enforcement issues during the 2016 presidential election as well as publicity surrounding crimes committed by some unauthorized aliens have reignited debates over immigration enforcement in the interior of the country. One homicide case, the July 2, 2015, slaying of a woman in San Francisco by a reported unauthorized alien with a criminal and deportation history, is noteworthy, because the law enforcement agency in question reportedly did not honor an immigration detainer issued by the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) for the individual who committed the crime. ICE has made the removal of certain criminal aliens its top priority. Funding for all criminal alien programs has increased substantially since their inception in FY2004. In FY2016, funding amounted to $341 million, compared to $6 million in FY2004.

In 2014, noncitizens represented 7.0% of the U.S. population. At the end of 2014, noncitizens accounted for 11.2% of the 209,561 individuals incarcerated in federal prisons, 3.5% of the 1,268,740 individuals incarcerated in state prisons, and 4.6% of the entire incarcerated population. These figures are understated because they do not include figures for California which did not report its non-citizen incarcerated population.

Drug and immigration offenses represented almost 90% of all federal offenses committed by noncitizens in FY2013. Incarceration data from FY2013 indicate that drug offenders accounted for 50% of all offenders in federal prison, with incarcerated noncitizens having a comparable if slightly lower proportion in this offense category (46%) compared with incarcerated citizens (52%). Although immigration offenders represented almost 12% of all incarcerated federal offenders, they represented 43% of all federal noncitizen offenders. Published data on the state and local prisoners by offense type and citizenship status are not available.

Immigration enforcement is a federal responsibility, but efforts have been made continually to use the potential "force multipliers" offered by local law enforcement. Legislation enacted in 1996 allows the federal government to enter into "287(g)" agreements with state and local law enforcement jurisdictions that permit it to delegate certain immigration enforcement functions to state and local law enforcement agents. After the September 11, 2001 terrorist attacks, this program and others involving federal and state and local cooperation expanded.

ICE also operates the Criminal Alien Program (CAP), which is guided by the *Priority Enforcement Program (PEP)*, a set of immigration enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also employs "interoperability," a data sharing infrastructure between DHS and the Department of Justice (DOJ) that screens individuals for immigration-related violations when they are booked by law enforcement jurisdictions. PEP replaced the former *Secure Communities*, which many jurisdictions with large foreign-born populations had opposed.

In recent years, some jurisdictions have expressly defined or limited their roles and the activities of their employees regarding immigration enforcement. These have been referred to as "sanctuary" jurisdictions. Critics of sanctuary jurisdictions contend that they impede law enforcement's primary mission in ways that could lead to calamitous outcomes (such as the homicide in San Francisco) or could encourage illegal immigration. Supporters maintain that they are needed because of resource and legal constraints, the need to avoid the disruption of critical municipal services by diverting local law enforcement personnel to handle immigration enforcement, and community policing concerns.

Congress may choose to consider several issues, including whether the potentially positive impacts on public safety of state and local involvement in immigration enforcement outweigh the

potentially negative impacts on both law enforcement resource utilization and community relations within such jurisdictions; and whether increasing law enforcement funding or tying the provision of certain federal grants to greater cooperation with federal immigration enforcement agencies—or a mix of both approaches—would yield the greater cooperation proponents seek.

The 114th Congress introduced several legislative proposals related to sanctuary jurisdictions. Some would have prohibited jurisdictions from receiving certain federal grants if they limited in specified ways their cooperation with ICE regarding immigration enforcement. The House passed H.R. 3009 on July 23, 2015. That bill would have penalized states and localities that restrict information gathering or communication with federal immigration enforcement agencies regarding an individual's citizenship or immigration status by withholding funding for three DOJ grant programs: the State Criminal Alien Assistance Program (SCAAP), the Community-Oriented Policing Services Program (COPS), and the Edward Byrne Memorial Justice Assistance Grant (JAG) program.

Contents

Tables

Contacts

Introduction

The Department of Homeland Security's (DHS's) U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) has primary responsibility for locating removable aliens[1] and ensuring that aliens directed to depart from the United States do so. In carrying out its mission, ICE relies, in part, on state and local law enforcement agencies throughout the country to assist it by identifying removable aliens.

The prominence of immigration enforcement issues during the 2016 presidential election as well as publicity surrounding crimes committed by some unauthorized aliens have reignited debates over immigration enforcement in the interior of the country. More specifically, concerns have intensified over the level of cooperation shown by some state and local law enforcement agencies in notifying ICE when they have an alien in their custody. One homicide case, the July 2, 2015, slaying of a woman on a San Francisco pier by a reported unauthorized alien with a criminal and deportation history,[2] is particularly noteworthy because the law enforcement agency in question reportedly had not honored an ICE request to detain the criminal alien who, upon his release, subsequently committed the crime.[3]

Some jurisdictions, through resolutions, executive orders, or local ordinances, have expressly defined or limited their roles and the activities of their employees regarding immigration enforcement.[4] These have been referred to as "sanctuary" jurisdictions, and their policies range from limiting law enforcement agents (LEAs) from cooperating with ICE in enforcing immigration law to restricting some types of information that can be shared about an alien with federal law enforcement. Given the range of such enforcement policies, there remains no generally agreed upon definition for "sanctuary" jurisdiction.

Critics of sanctuary jurisdictions contend that they impede law enforcement's primary mission in ways that could lead to calamitous outcomes (such as the homicide described above) or could encourage illegal immigration. Supporters of sanctuary jurisdictions maintain that they are needed because of resource and legal constraints, the need to avoid the disruption of critical municipal services by diverting local law enforcement personnel to handle immigration enforcement, and community policing concerns.

This report examines the interplay between the federal government (i.e., ICE) and state and local jurisdictions in enforcing immigration law, with a specific focus on noncitizens who have been convicted of a crime. It explores federal resources available to state and local law enforcement agencies that cooperate with ICE to enforce immigration law. The report begins by briefly discussing the evolution of cooperation between the federal government and local law enforcement in carrying out federal immigration policy. It then discusses current administrative efforts to involve state and local law enforcement in enforcing immigration law. A brief discussion of resources dedicated to these efforts follows. The report concludes with a discussion of select issues and an analysis of possible policy approaches for Congress.

---

[1] An alien is anyone who is not a citizen or national of the United States—this term is synonymous with the terms noncitizen and foreign national. A noncitizen may be in the United States temporarily or permanently and may be either lawfully present or present without authorization.

[2] See Steve Almasy, Pamela Brown, and Augie Martin, "Suspect in killing of San Francisco woman had been deported five times," CNN.com, July 4, 2015.

[3] See CRS Legal Sidebar WSLG1330, *Recent Shooting in San Francisco Raises Questions about "Sanctuary Cities" and Compliance with Immigration Detainers*.

[4] See CRS Report R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*.

Background

The enforcement of immigration laws in the interior of the United States has long been a controversial topic. Traditionally, the debate emphasized economic and labor market issues, with those concerned about whether unauthorized aliens were depressing wages and taking jobs from native workers pitted against those who argued that foreign labor was critical for certain industries and benefitted the broader economy. After the attacks of September 11, 2001 (9/11), attention refocused on the adequacy of interior immigration enforcement, especially the perceived lack of federal resources.[5] Although ICE has seen an increase in resources to carry out its immigration enforcement responsibilities, the number of ICE agents pales in comparison to the resources available to local law enforcement agencies (LEAs) throughout the country.[6] While immigration enforcement is a federal responsibility, interior enforcement programs that involve cooperation between ICE and state and local law enforcement agencies can allow a relatively small number of ICE agents to leverage much larger numbers of state and local law enforcement agents.

Criminal Alien Programs[7]

ICE operates four major programs that target criminal aliens. The *Criminal Alien Program (CAP)* serves as an umbrella program for marshaling the agency's resources to identify and remove criminal and other removable aliens.[8] CAP is guided by the *Priority Enforcement Program (PEP*),[9] which represents a set of enforcement priorities that describe which foreign nationals should be removed and in what priority order. PEP also comprises a data sharing infrastructure or "interoperability" between DHS and the Department of Justice (DOJ) that screens for

[5] Prior to the September 11, 2001, terrorist attacks, the former Immigration and Naturalization Service (INS) had fewer than 2,000 immigration agents to enforce immigration laws within the United States. Since the merger of the interior enforcement function of the former INS with the investigative arm of the U.S. Customs Service into ICE, the number of interior agents has increased to over 7,000.

[6] There were 605,000 LEAs in 2013, see U.S. Department of Justice Office of Justice Programs, *Local Police Department, 2013: Personnel, Policies, and Practices*, May 2015.

[7] For a detailed discussion of criminal aliens and related programs, see CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*.

[8] The term criminal alien is not specifically defined in immigration law or regulation. At the broadest level, *a "criminal alien" is any noncitizen who has ever been convicted of a crime in the United States*.

[9] PEP is not a formal program per se. It consists of a data sharing infrastructure and a set of enforcement priority and policy guidelines. Throughout this report, the term "program" is necessarily embedded within "PEP" for linguistic ease.

immigration violations when individuals are booked into jails.[10] ICE's *§287(g) program*[11] allows DHS to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision. The *National Fugitive Operations Program* (NFOP) pursues known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings).

Criminal Alien Program

The Criminal Alien Program (CAP) is an umbrella program that includes several systems for identifying, detaining, and initiating removal proceedings against incarcerated criminal aliens. According to ICE, "CAP provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens that have circumvented identification."[12] CAP is intended to prevent the release of criminal aliens from jails and prisons by securing final orders of removal prior to the termination of aliens' criminal sentences and by taking custody of and removing aliens who complete their criminal sentences.

CAP jail enforcement officers screen people to identify and prioritize potentially removable aliens as they are being booked into jails and prisons and while they are serving their sentences. Such screening covers almost all persons booked into federal and state prisons and local jails.[13] CAP officers search biometric and biographic databases to identify matches in DHS databases and interview arrestees and prisoners to identify potentially removable aliens without DHS records.[14]

In addition to onsite deployment of ICE officers, CAP uses video teleconference equipment that connects jails and prisons to ICE's Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago, IL. CAP also works with state and local correctional departments that provide inmate roster data that ICE then compares to its immigration databases. CAP also manages the Law Enforcement Support Center (LESC), a 24/7 call-center that conducts

[10] PEP replaced the former Secure Communities program, which some jurisdictions—particularly those with sizable foreign-born populations—had opposed. Begun in 2008, Secure Communities had the same database interoperability as PEP but used a broader set of enforcement priorities. Immigrant advocacy groups criticized Secure Communities from its inception for removing relatively large numbers of unauthorized aliens who had committed minor or nonviolent crimes and who often had family ties in the United States. Some law enforcement officials argued that the program hampered community policing within immigrant communities, because it helped to conflate immigration enforcement with general law enforcement. Supporters of Secure Communities saw it as an efficient and impartial way of identifying criminal aliens. Following its replacement with PEP in November 2014 (FY2015), criticism shifted toward concerns about insufficient enforcement, with some observers criticizing ICE's use of prosecutorial discretion that emphasizes enforcement for only the most serious criminal aliens. They argue that such priorities come at the expense of removing other criminal aliens and unauthorized aliens more generally, and that all unauthorized aliens have violated U.S. immigration law and should be subject to removal. For more discussion on Secure Communities, see archived CRS Report R42057, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*. For more discussion on alien removals and returns, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[11] The formal program name is *Agreements entered into pursuant to Immigration and Nationality Act (INA) §287(g).*

[12] ICE, *Criminal Alien Program*, http://www.ice.gov/criminal-alien-program, accessed by CRS on July 1, 2016.

[13] Criminal aliens who have no previous record may elude detection through interoperability because they may not appear in DHS databases. This shortcoming is overcome by having ICE agents visit or stationed in prisons and selected jails who can interview individuals in these custodial settings.

[14] Aliens who overstay a nonimmigrant visa or who have previously been removed typically have records in one or more DHS databases and may be identified through a biographic or biometric search. A person who enters without inspection and has had no previous contact with DHS often can only be identified as an unauthorized alien based on an interview with an experienced immigration officer.

database checks on the identity and immigration status of arrestees for ICE officers and law enforcement agencies.

Priority Enforcement Program (PEP)[15]

The Priority Enforcement Program (PEP) has two components. First, PEP includes enforcement priorities that guide immigration enforcement. Second, PEP uses interoperability, a biometric information sharing program between DOJ and DHS that screens for potentially removable aliens when individuals are arrested by state and local law enforcement agents.

ICE takes enforcement action against individuals unlawfully present or removable due to a criminal conviction in accordance with its immigration enforcement priorities. Individuals prioritized for removal must either be threats to national security, border security, and public safety (Priority 1); misdemeanants and new immigration violators (Priority 2); or aliens issued final orders of removal on or after January 1, 2014 (Priority 3).[16]

Under CAP, when law enforcement agencies book (i.e., take custody of) an arrestee and submit the person's fingerprints to the FBI for a criminal background check,[17] the fingerprints also are automatically checked against DHS's Automated Biometric Identification System (IDENT) database.[18] Potential matches are forwarded to the Law Enforcement Support Center (LESC, see "Criminal Alien Program (CAP)").[19] ICE agents at the LESC confirm the identity of matched fingerprints and screen their records for immigration violations and criminal histories. If the LESC determines that the arrestee may be a removable alien, it notifies one of ICE's Enforcement and Removal Operations (ERO) field offices for the arresting jurisdiction about the match.

After being notified that a removable alien has been arrested, the local ERO supervisor reviews the record and decides how to proceed based on the individual's criminal conviction record, DHS enforcement priorities, and the office's available resources. If the office decides to initiate

---

[15] Portions of this section were excerpted from CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

[16] U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodriquez, Director, U.S. Citizenship and Immigration Services, and Alan D. Bersin, Acting Assistant Secretary for Policy, from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, November 20, 2014. For more background on the evolution of DHS interior enforcement priorities, see CRS Report R44627, *Interior Immigration Enforcement: Criminal Alien Programs*.

[17] The Integrated Automated Fingerprint Identification System (IAFIS) conducts criminal and terrorist background checks in response to requests from federal, state, and local law enforcement agencies by checking fingerprints against the IAFIS database of fingerprints, criminal histories, photographs, and biographic information. The IAFIS database includes the records of more than 66 million subjects in its criminal master file, along with more than 25 million civil fingerprints. See Federal Bureau of Investigation, "Integrated Automated Fingerprint Identification System," http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis.

[18] The Automated Biometric Identification System (IDENT) database is DHS's primary department-wide biometric database, and includes photographs, fingerprints, biographic name and personal identifier data, citizenship and nationality information, and derogatory information, if applicable. See U.S. Department of Homeland Security, *Privacy Impact Assessment Update for the Biometric Interoperability between the U.S. Department of Homeland Security and the U.S. Department of Justice, DHS/NPPD/USVISIT/PIA-007(b)*, October 13, 2011. According to ICE, IDENT included over 186 million unique records as of June 10, 2015.

[19] The Law Enforcement Support Center (LESC) is ICE's national point of contact for local, state, and federal law enforcement agencies, corrections systems, and court systems seeking information about aliens suspected, arrested, or convicted of criminal activity. The LESC staffs a 24-hour phone line to respond to queries, and provides customs, immigration, and identity information based on ICE records. See ICE, "Law Enforcement Support Center," http://www.ice.gov/lesc/.

removal proceedings against an alien, it will typically request to be notified within 48 hours of the individual's scheduled release from law enforcement custody. Under some circumstances, ICE may request that state and local law enforcement agencies detain, for 48 hours, individuals flagged for removal.

Since August 2015, ICE also has been using a *Request for Voluntary Transfer* for certain cases falling outside of the PEP priority categorization.[20] Priority noncriminal subcategories that are not covered under PEP, but for which ICE may seek transfer from cooperative jurisdictions, are

- aliens apprehended while attempting to illegally enter the country;
- unlawfully present aliens who have not resided continuously in the United States since January 1, 2014;
- aliens who have significantly abused the visa or visa waiver programs; and
- aliens issued final removal orders on or after January 1, 2014.

Section 287(g) Program

Section 287(g) of the Immigration and Nationality Act (INA) permits the Secretary of Homeland Security[21] to delegate certain immigration enforcement functions to state and local law enforcement agencies. This authority was enacted into law in 1996[22] but was given new urgency following the terrorist attacks in September 2001. In 2002, the Attorney General proposed an initiative to enter into Section 287(g) agreements with a number of jurisdictions in an effort to carry out the country's anti-terrorism mission. Under these agreements, commonly referred to as Section 287(g) programs, state and local law enforcement officers could be trained to assist ICE with enforcing certain aspects of immigration law.

Prior to 2013, the Section 287(g) program encompassed both *task force* and *jail enforcement agreements*. However, ICE currently only has jail enforcement agreements with state and local jurisdictions. Under these agreements, specially trained officers within state and local corrections facilities are authorized to identify criminal aliens by interviewing them and screening their biographic information against the same DHS databases used by CAP agents and officers. The LEAs also use ICE's database and the Enforcement Case Tracking System (known as ENFORCE) to enter information about aliens in their custody. LEAs are supervised by CAP officers.

As of July 1, 2016, ICE had Section 287(g) agreements with 32 law enforcement agencies in 16 states.[23] At least 1,675 state and local law enforcement officers had completed ICE's four-week Section 287(g) training and were certified to conduct certain immigration enforcement duties.[24]

[20] See U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, accessed by CRS on March 25, 2016, at https://www.ice.gov/pep.

[21] Prior to the creation of DHS, this authority was given to the Attorney General.

[22] See §439 of the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and §133 and §372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208).

[23] ICE, "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," http://www.ice.gov/factsheets/287g, accessed on July 1, 2016.

[24] *Ibid*.

Resources Dedicated to Select Immigration Interior Enforcement Programs

Table 1 presents funding for CAP, Interoperability (formerly Secure Communities and currently Priority Enforcement Program), and the 287(g) program since they were first funded. Funding dedicated specifically to identifying and removing criminal aliens (i.e., CAP and Secure Communities/Interoperability) rose from just $6 million in FY2004 to $392.5 million in FY2010, a 58-fold increase, before dropping to $317.2 million in FY2016. The Obama Administration's FY2017 budget request for these programs totaled $371.5 million. DHS folded Secure Communities funding into CAP in FY2015 and the program was replaced with the Priority Enforcement Program. The Section 287(g) program received an appropriation of $68 million at its peak (FY2010-FY2013); its funding has declined to $24 million in the four most recent years.

Table 1. Appropriations for Three Criminal Alien Programs, FY2004-FY2017

(millions of dollars)

Fiscal Year	CAP[a]	Interoperability[b]	§287(g)[c]	Total:
2004	$6.0	NA[d]	NA[e]	**$6.0**
2005	$33.7	NA	NA	**$33.7**
2006	$93.0	NA	$5.0	**$98.0**
2007	$137.5	NA	$15.0	**$152.5**
2008	$180.0	$200.0	$42.1	**$422.1**
2009	$189.1	$150.0	$54.0	**$393.1**
2010	$192.5	$200.0	$68.0	**$460.5**
2011	$192.5	$200.0	$68.0	**$460.5**
2012	$196.7	$189.1	$68.0	**$453.8**
2013	$216.5	$138.1	$68.0	**$422.6**
2014	$294.2	$25.3	$24.3	**$343.8**
2015	$327.2	$0.0[f]	$24.0	**$351.2**
2016	$317.2	$0.0	$24.0	**$341.2**
2017*	$347.5	$0.0	$24.0	**$371.5**

Sources: U.S. Immigration and Customs Enforcement "Fact Sheet: Updated Facts on ICE's 287(g) Program," S.Rept. 108-280, S.Rept. 109-83, S.Rept. 109-273, H.Rept. 109-699, S.Rept. 110-396, S.Rept. 111-31, S.Rept. 111-222, S.Rept. 112-169, P.L. 113-6, and Senate Explanatory Statement accompanying P.L. 113-6; *Congressional Record*, House of Representatives, January 15, 2014; House Explanatory Statement accompanying P.L. 114-4; FY2015 DHS Budget in Brief; FY2015 DHS Budget Justification; FY2016 DHS Budget Justification; and FY2017 DHS Budget Justification.

Notes: FY2017* represents only the Administration's request. FY2013 data reflect across-the-board rescissions included in P.L. 113-6 to comply with discretionary budget caps, but do not include the effects of sequestration as required by P.L. 112-25 because post-sequester data were not available for all programs. **CAP** refers to the Criminal Alien Program; **§287(g)** refers to agreements entered pursuant to INA §287(g).

a. The Criminal Alien Program was known as the Institutional Review Program prior to FY2007.

b. Interoperability/Secure Communities was also known as the Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program until it was replaced by the Priority Enforcement Program in FY2015.

c. Includes §287(g) jail enforcement and §287(g) task force programs. §287(g) task force programs were discontinued during FY2012.
d. The Secure Communities/CIRCA program received its first appropriation in FY2008.
e. The §287(g) program received its first appropriation in FY2006.
f. The Secure Communities funding was folded into the Criminal Alien Program in FY2015.

Criminal Alien Numbers and Crimes

As mentioned, ICE has made the removal of certain criminal aliens its top priority. This section examines incarceration data at federal, state, and local levels, which represents one measure of criminality. Data are available for the total number of prisoners at these levels and are broken out by citizenship status.[25] Federal data are compiled by the U.S. Marshals Service (USMS) Prisoner Tracking System and published by DOJ's Bureau of Justice Statistics (BJS) through its online Federal Justice Statistics Resource Center (FJSRC).[26] State and local facilities report their data to DOJ.[27]

Table 2. Prison Population by Citizenship Status and Jurisdiction, CY2014

	Total Prisoners		U.S. Citizen Prisoners		Noncitizen Prisoners	
Jurisdiction	Number	Percentage	Number	Percentage	Number	Percentage
Federal	209,561	100.0%	186,029	88.8%	23,532	11.2%
State	1,268,740	100.0%	1,224,435	96.5%	44,305	3.5%
Total	1,478,301	100.0%	1,410,464	95.4%	67,837	4.6%

Source: Total and Noncitizen Federal and State Prisoners: DOJ, Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT)-Prisoners, accessed by CRS at http://www.bjs.gov/index.cfm?ty=nps on July 1, 2016; **U.S. Citizen Federal and State Prisoners**: computed by CRS as the difference between total prisoners and noncitizen prisoners.

Notes: Figures presented are the most recent publically available statistics. They represent the calendar year-end prison population that includes prisoners in the federal Bureau of Prisons (BOP) prisons and private prisons that hold federal prisoners, and state *and* local correctional facilities. Figures also include pre-sentenced/pre-trial prisoners. California had not reported its 2014 noncitizen prisoner population to BJS. However, between 2008 and 2012 an average of 16,871 noncitizen prisoners were incarcerated in California state prisons. If this average figure were added to the state total of 47,861 shown in the table, the noncitizen percentage of state prisoners for 2014 would increase from 3.5% to 4.8% and the noncitizen percentage of all state and federal prisoners would increase from 4.6% to 5.7%. BJS warns that because federal and state departments of corrections and county jails have varying definitions of noncitizens, one should exercise caution when interpreting these results.

Federal statistics on incarcerations are broken out by citizenship and further delineated by federal versus state and local jurisdiction. **Table 2** indicates that at the end of CY2014, the most recent year for which these data are available, 23,532 noncitizens accounted for 11.2% of the 209,561

[25] Note that citizenship status refers to citizens and noncitizens. Data are not available on immigration status. Hence, noncitizens include both persons lawfully present in the United States (either permanently or temporarily) and unauthorized aliens.

[26] The prisoner tracking system (PTS) contains data on suspects arrested for violations of federal law, by federal enforcement agencies and data about warrants initiated or cleared. The data include information on characteristics of federal arrestees. See p. 107 of http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs0407.pdf.

[27] Other data on arrests and convictions are available at the state and local levels, but those data do not delineate crime type and citizenship status.

individuals incarcerated in federal prisons. In state prisons, 44,305 noncitizens accounted for 3.5% of the 1,268,740 individuals incarcerated at the end of CY2014. In total, noncitizens represented 4.6% of the year-end incarcerated population in CY2014. As a basis for comparison, noncitizens represented 7.0% of the total U.S. population in 2014,[28] which suggests that the noncitizen proportion of federal and state prisoners, as reported in the figures above, was less than that of the U.S. population as a whole in 2014.

Table 3, which presents the federal prison population by offense category for the end of FY2013,[29] shows that drug offenders accounted for 50% of all federal offenders in federal prison, with incarcerated noncitizens having a comparable if slightly lower proportion in this category (46%) compared with incarcerated citizens (52%). Although immigration offenders represented almost 12% of all incarcerated federal offenders at the end of FY2013, they represented 43% of all federal noncitizen offenders. Together, drug and immigration offenses represented almost 90% of all noncitizen federal offenses at the end of FY2013.

Table 3. Federal Prison Population by Citizenship Status and Offense Type, FY2013

	Number of Offenses				Percentage of Citizenship Status Total			
Offense Type	**Total**	**Citizen**	**Non-citizen**	**Un-known**	**Total**	**Citizen**	**Non-citizen**	**Un-known**
Violent	11,459	10,830	619	10	5.8%	7.3%	1.2%	15.4%
Property	12,219	10,721	1,494	4	6.1%	7.2%	2.9%	6.2%
Drug	100,287	77,201	23,065	21	50.3%	52.0%	45.5%	32.3%
Public-Order	20,332	18,545	1,775	12	10.2%	12.5%	3.5%	18.5%
Weapon	30,575	28,891	1,669	15	15.3%	19.5%	3.3%	23.1%
Immigration	22,964	992	21,969	3	11.5%	0.7%	43.3%	4.6%
Unknown	1,408	1,269	139	0	0.7%	0.9%	0.3%	0.0%
Total	199,244	148,449	50,730	65	100.0%	100.0%	100.0%	100.0%

Source: U.S. Department of Justice, Bureau of Justice Statistics (BJS), Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/index.cfm.

Notes: FY2013 represents the most recent data available online from BJS's Federal Criminal Case Processing Statistics. The prison population is measured as of September 30, 2012. According to BJS, the universe of cases reported excludes both pre-sentenced/pre-trial prisoners and suspects who were charged in the District of Columbia's Superior Court. BJS warns that because federal and state departments of corrections and county jails have varying definitions of noncitizens, one should exercise caution when interpreting these results. For a more detailed offense list, see BJS, Federal Criminal Case Processing Statistics, http://www.bjs.gov/fjsrc/index.cfm.

Sanctuary Jurisdictions

Starting in 2011, a number of jurisdictions—often referred to as "sanctuary cities," and referred to herein as "sanctuary jurisdictions"—began to expressly define or limit their roles regarding immigration enforcement.[30] The jurisdictions have policies that range from limiting cooperation

[28] Figure computed by CRS using data from the American Community Survey, 2014 one-year estimates, accessed on the Census Bureau's American Factfinder website, July 1, 2016.

[29] FY2013 is the most recent year for which these data were publically available from BJS.

[30] Although no official list exists of sanctuary jurisdictions—and the term itself has no formal definition—one unofficial count included four states (California, Connecticut, Rhode Island, and Vermont) plus the District of

of local law enforcement agents with ICE, typically regarding compliance with detainers; restricting what types of information local law enforcement can inquire about or share with ICE regarding a foreign national;[31] or restricting the use of local funds for immigration enforcement, among other measures. In implementing such policies, some jurisdictions were responding to increased numbers of removals from the U.S. interior of unauthorized aliens who were identified through Secure Communities. Many such unauthorized aliens, apart from their illegal status, reportedly had relatively minor or no criminal records.[32] Other jurisdictions were reportedly responding to federal court decisions finding that holding an alien solely on the basis of an ICE detainer could violate the Fourth Amendment, potentially subjecting law enforcement to liability for doing so.[33]

The number of sanctuary jurisdictions, many of which imposed restrictions on compliance with ICE detainers, contributed to the Obama Administration's decision to replace Secure Communities with the Priority Enforcement Program in November 2014. With the introduction of PEP, jurisdictions that previously resisted ICE enforcement measures and detainer requests have increasingly cooperated with the agency, allowing it to effectively custom tailor immigration enforcement mechanisms that comply with local ordinances and preferences.[34] For example, some jurisdictions had concerns about detainers issued for aliens whom ICE did not have probable cause to believe were subject to removal. In response, ICE amended its detainer forms to note the basis for determining that an individual alien is subject to removal.[35] Since establishing PEP, ICE reports that over 275 jurisdictions that previously had not honored ICE detainers have agreed to honor requests for notification and/or detention.[36]

Implementing PEP, however, has altered immigration enforcement. According to ICE, state and local law enforcement agencies declined 16,495 immigration detainers between January 2014 and June 2015, "resulting in convicted criminals being released back into U.S. communities with the potential to re-offend, notwithstanding ICE's request for those individuals."[37] In addition to potential public safety concerns, ICE contends that under PEP, more agents are required to locate and arrest convicted at-large criminals compared to the fewer number of agents needed to obtain custody of criminal aliens in controlled settings. ICE agents who previously might have been working in such custodial settings under Secure Communities protocols now work in multi-

Columbia; dozens of cities, including Chicago, New York, Los Angeles, and New Orleans; and hundreds of counties. Jasmine C. Lee, Rudy Omri, and Julia Preston, "What Are Sanctuary Cities?," *New York Times*, September 3, 2016. The exact number of sanctuary jurisdictions remains imprecise because jurisdictions regularly change their policies regarding detainers. Jessica Vaughan, "Update on Sanctuary Jurisdiction," Center for Immigration Studies.

[31] Under 8 USC §1373, federal, state, and local government entities cannot restrict the flow of information to or from DHS regarding an individual's legal status or citizenship status. However, some jurisdictions that have not directly restricted the sharing of information about individual's citizenship or legal status have sought to restrict the sharing of other information, such as the date when an individual will be released from state or local custody.

[32] See for example, Elina Treyger, Aaron Chalfin, and Charles Loeffler. "Immigration enforcement, policing, and crime: Evidence from the Secure Communities Program," *Criminology & Public Policy*, vol. 13 (2014), pp. 285-322.

[33] U.S. Immigration and Customs Enforcement, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015*, December 22, 2015, p. 5. See also CRS Report R42690, *Immigration Detainers: Legal Issues*.

[34] ICE briefing to CRS on the Criminal Alien Program, April 7, 2016.

[35] Department of Homeland Security, Form I-247D, Immigration Detainer, Request for Voluntary Action, https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF.

[36] U.S. Department of Homeland Security, *FY2017 Congressional Budget Justification*, vol. 2, p. 68.

[37] See DHS, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015*, December 22, 2015, p. 5.

person teams to locate criminal aliens once they have been released, typically under more hazardous conditions.[38]

Select Issues

The following sections discuss issues in debates over sanctuary jurisdictions and immigration enforcement as well as possible policy options that Congress may consider should it legislate or conduct oversight in this area.

Impact on Communities

As mentioned, since the 9/11 terrorist attacks, greater emphasis has been placed on enforcing the nation's immigration laws. The role of state and local law enforcement in enforcing these laws continues to be debated, including the issue of whether LEAs should be required to notify ICE when an alien is in their custody.

Critics of this idea argue that imposing such a requirement undermines the relationship between local law enforcement agencies and the immigrant communities they serve.[39] For example, victims and potential witnesses may be reluctant to come forward to report crimes in fear of actions that might be taken against them by immigration officials. Critics assert that the trust between noncitizens and local authorities is tenuous in many jurisdictions and that such a policy could threaten the fragile cooperation that exists between immigrant communities and local law enforcement.

Proponents contend that state and local law enforcement agents may have strong connections to local communities, further enhancing their ability to contribute to ICE's enforcement efforts. Such partnership, they contend, could help ICE facilitate the removal of potential criminals who are illegally present in the country, thus providing an elevated level of security for the nation.

Resources

The issue of resources is a perennial concern for federal, state, and local LEAs. At the federal level, ICE has approximately 7,300 personnel in its Enforcement and Removal Operations program to identify; apprehend; detain, if appropriate; and remove aliens that fall under their priority scheme.[40]

Under PEP, ICE must now issue requests for notification to state and local jails and prisons to be notified of specific release dates so that ICE can take custody of criminal aliens at the time of release. However, the number of jurisdictions that are restricting or preventing their LEAs from notifying ICE may hamper ICE's ability to carry out its duties. For example, if an alien is released from state or local custody without ICE being notified, ICE must then deploy enforcement agents to re-apprehend the individual. ICE indicates that this not only increases the

[38] Ibid, and ICE briefings to CRS on the Criminal Alien Program, June 25, 2015 and April 7, 2016.

[39] See, for example, the testimony Richard David Wiles, El Paso, TX, County Sheriff's office. House Homeland Security Committee Subcommittee on Border and Maritime Security, *Border Security and Enforcement: Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders*, May 3, 2011 (Hereinafter referred to as "Wiles testimony").

[40] Testimony of Sarah Saldana, Director of U.S. Immigration and Customs Enforcement, House Committee on Oversight and Government Reform, *A Review of the Department of Homeland Security Policies and Procedures for the Apprehension, Detention, and Release of Non-Citizens Unlawfully Present in the United States*, March 19, 2015.

need for personnel for each released criminal alien but also increases the level of personal risk for ICE agents who must apprehend the criminal alien in the community rather than in a controlled setting such as a jail or prison.[41]

State and local law enforcement agencies throughout the country collectively employ over 605,000 LEAs.[42] Proponents of having state and local LEAs assist ICE in carrying out immigration enforcement view the vast number of LEAs as a "force multiplier" for ICE. Critics, however, contend that state and local law enforcement resources should not be used to fund a federal responsibility.[43] They argue that such action could result in the reduction of local law enforcement resources available for other purposes. At a time when local jurisdictions are witnessing a depletion of traditional funding to fight crime, they argue such action could be detrimental to many communities.

Funding for State and Local Cooperation

Congress could appropriate additional funding to state and local law enforcement agencies for their cooperation with enforcing immigration law. A common argument made by local law enforcement officials against enforcing immigration law is the lack of resources.[44] Many states face budget shortfalls and police departments have seen decreases in federal funding for some law enforcement programs. On the other hand, Congress could limit such funding from going to states and localities that refuse to cooperate with ICE or limit such cooperation.[45]

There are several potential grant programs Congress could target to both facilitate and serve as a trigger for state and local law enforcement cooperation. Both DOJ and DHS have several grant programs that provide funding to state and local law enforcement for related activities.

Congressional Action in the 114th Congress

The 114th Congress introduced several legislative proposals related to sanctuary jurisdictions. Some would have prohibited jurisdictions from receiving certain federal grants if they limited in specified ways their cooperation with ICE regarding immigration enforcement. The House passed H.R. 3009 on July 23, 2015. That bill would have penalized states and localities that restrict information gathering or communication with federal immigration enforcement agencies regarding an individual's citizenship or immigration status[46] by withholding funding for three Department of Justice grant programs: the State Criminal Alien Assistance Program (SCAAP), the Community

[41] Ibid.

[42] This figure is as of January 1, 2013. U.S. Department of Justice Office of Justice Programs, *Local Police Department, 2013: Personnel, Policies, and Practices*, May 2015.

[43] See Wiles testimony.

[44] See for example the testimony of Todd Entrekin, Etowah County, AL, Sherriff's office. House Homeland Security Committee Subcommittee on Border and Maritime Security, *Border Security and Enforcement: Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders*, May 3, 2011.

[45] See for example, the Mobilizing Against Sanctuary Cities Act (H.R. 3002) and H.Amdt. 352 to H.R. 2578, S. 80 and S. 1764.

[46] Section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208), as codified in 8 U.S.C. §1373, prevents impeding the flow of information regarding any individual's legal status or citizenship status by a federal, state, or local entity to the federal government.

-Oriented Policing Services Program (COPS), and the Edward Byrne Memorial Justice Assistance Grant (JAG) program.[47]

Similarly, amendments adopted during the House Committee on Appropriations markup of the FY2016 Department of Homeland Security appropriations bill and the House consideration of Commerce, Justice, Science and Related Agencies Appropriations Act, 2016 (H.R. 2578)[48] would have prohibited federal funds from going to jurisdictions that restrict their law enforcement agents from notifying ICE on the immigration status of aliens. The former would have prohibited Federal Emergency Management Agency funds, while the latter would have done so for State and Local Law Enforcement Assistance grant funds.

S.Rept. 114-66 to accompany H.R. 2578 contained no language supporting such restrictions. On October 20, 2015, the Senate failed to pass a cloture motion to consider S. 2146, which would have made sanctuary jurisdictions ineligible for certain federal grants. This bill also sought to ensure that states and localities had the "authority to carry out detainers" and to limit their liability for actions taken pursuant to immigration detainers.

The Senate also considered two measures, S. 3100 and S. 2193, that would have restricted federal funding to cities that decline to honor detainers; and increase penalties (i.e., prison sentence) for migrants who illegally renter the country. S. 3100 would have withheld a range of federal grants for public works, economic development, planning, administrative expenses, training, research, and technical assistance from such sanctuary jurisdictions. S. 2193 would have increased maximum prison terms for unauthorized aliens by setting a five-year maximum sentence for unauthorized aliens with felony convictions caught two or more times, and a 10-year maximum sentence on unauthorized aliens caught reentering three times. The Senate failed to pass a cloture motion to consider either bill.[49]

Author Contact Information

William A. Kandel
Analyst in Immigration Policy
/redacted/@crs.loc.gov, 7-....

Acknowledgments

Lisa Seghetti, Section Research Manager, was one of the original authors of this report.

[47] Court decisions have held that conditions attached to the receipt of federal funds that regulate state and local governments must be unambiguous; relate to the federal interest in particular programs; not be barred by another constitutional provision; and not be so coercive as to compel states into participation. For more information, see CRS Report R44104, *Federal Power over Local Law Enforcement Reform: Legal Issues*. Legislation that would withhold funding to sanctuary jurisdictions has often centered on the SCAAP, COPS, and JAG grant programs, which are related to law enforcement. See CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program: In Brief*; and CRS Report RL33308, *Community Oriented Policing Services (COPS): In Brief.*

[48] See H.Amdt. 352 to H.R. 2578.

[49] Other proposals related to sanctuary jurisdictions that were introduced in the 114th Congress included H.R. 191, H.R. 1148, H.R. 3002, H.R. 5485 (as amended), S. 129, S. 1640, S. 80, and S. 1764.