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# Sanctuary Jurisdictions and Criminal Aliens: In Brief

(name redacted)

Analyst in Immigration Policy

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## Summary

The prominence of immigration enforcement issues during the 2016 Presidential elections and publicity surrounding crimes committed by some unauthorized aliens, have reignited the debate over immigration enforcement in the interior of the country. 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 – was particularly 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.

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. In 2014, noncitizens represented 7.0% of the U.S. population. All of these proportions are slightly understated because they do not include figures for California which did not report its non-citizen incarcerated population.

Incarceration data indicate that drug offenders accounted for 50% of all federal offenders in federal prison at the end of FY2013. Forty-six percent of noncitizen federal prisoners were incarcerated for drug offenses at the end of FY2013. Although immigration offenders represented almost 12% of all federal offenders incarcerated at the end of 2012, they represented 43% of all federal noncitizen offenders. Combined, drug and immigration offenses represented almost 90% of all noncitizen federal offenses at the end of FY2013. Published data on the state and local prisoners by offense type and citizenship status are not available.

While immigration enforcement is a federal responsibility, efforts have continually been made to use the potential “force multipliers” offered by local law enforcement. In 1996 legislation was enacted allowing the federal government to enter into agreements with state and local law enforcement jurisdictions that would permit it to delegate certain immigration enforcement functions to state and local law enforcement agents. After the September 11, 2001 terrorist attacks, this program, commonly referred to as the Section 287(g) program, and others involving federal and state and local cooperation, took on new urgency.

ICE’s Section 287(g) program permits the agency to delegate certain immigration enforcement functions to trained state and local law enforcement officers, under federal supervision, to identify criminal aliens. ICE also operates the Criminal Alien Program, along with Secure Communities/Interoperability to identify, detain and remove criminal and other removable aliens. While funding for these programs increased over the years since their inception, it has declined in recent years.

In recent years, some jurisdictions have expressly defined or limited their roles and the activities of their employees regarding immigration enforcement. Critics contend that such policies within so-called “sanctuary” jurisdictions can lead to tragic outcomes (such as the one described above) and can ultimately encourage illegal immigration. Supporters maintain that they are necessary because of resource and legal constraints, the need to avoid the disruption of critical municipal services, and human rights considerations.

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 components are seeking.

The 114<sup>th</sup> Congress is considering proposals that would prohibit jurisdictions that prohibit or restrict its law enforcement agencies from notifying ICE on the immigration status of aliens or collecting information on the immigration or citizenship status of individuals from receiving certain federal grants. These proposals include H.R. 3009, H.R. 3002, S. 80, S. 1764, S. 2193 and S. 3100. The House passed H.R. 3009 on July 23, 2015.

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) would prohibit federal funds from going to jurisdictions that restrict their law enforcement agents from notifying ICE on the immigration status of aliens. The former would prohibit Federal Emergency Management Agency funds, while the latter would do so for State and Local Law Enforcement Assistance grant funds.

S.Rept. 114-66 to accompany H.R. 2578 contains no language supporting such restrictions. On October 20, 2015, the Senate also failed to pass a cloture motion to consider S. 2146, which would make sanctuary jurisdictions ineligible for certain federal grants; grant jurisdictions that honor immigration detainees the authority to carry them out and limit their liability in doing so; and increase penalties for previously removed aliens who attempt to reenter the United States without authorization.

The Senate reportedly plans to consider two measures, S. 3100 and S. 2193, that would restrict federal funding to cities that decline to honor detainees; and increase penalties (i.e., prison sentence) for migrants who illegally reenter the country. S. 3100 would withhold 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 increase 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.

## Contents

Introduction .....	1
Background .....	2
Criminal Alien Programs .....	2
Criminal Alien Program .....	3
Secure Communities/Interoperability .....	3
Section 287(g) Program .....	5
Resources Dedicated to Select Immigration Interior Enforcement Programs .....	5
Criminal Alien Numbers and Crimes .....	7
Select Issues .....	8
Impact on Communities .....	8
Resources .....	9
Funding for State and Local Cooperation .....	10
Congressional Action .....	10

## Tables

Table 1. Appropriations for Three Criminal Alien Programs, FY2004-FY2017 .....	6
Table 2. Prison Population by Citizenship Status and Jurisdiction, CY2014 .....	7
Table 3. Federal Prison Population by Citizenship Status and Offense Type, FY2013 .....	8

## Contacts

Author Contact Information .....	11
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## Introduction

The Department of Homeland Security's (DHS's) U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) is chiefly responsible for locating removable aliens<sup>1</sup> and ensuring that aliens directed to depart from the United States do so, among other things. In carrying out its mission, ICE relies, in part, on state and local law enforcement agencies throughout the country to assist it with identifying removable aliens.

The prominence of immigration enforcement issues during the 2016 Presidential elections and publicity surrounding crimes committed by some unauthorized aliens, have reignited the debate 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<sup>2</sup> - was particularly 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.<sup>3</sup>

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.<sup>4</sup> Such policies range from limiting law enforcement agents (LEAs) from cooperating with ICE in enforcing immigration law to restricting what types of information can be shared about an alien to federal law enforcement.

Critics contend that such policies within so-called "sanctuary" jurisdictions can lead to tragic outcomes (such as the one described above) and can ultimately encourage illegal immigration. Supporters, however, 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 human rights considerations. Although there is no generally accepted definition of what policies constitute "sanctuary," the issue has become increasingly contentious.

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

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<sup>1</sup> 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.

<sup>2</sup> See <http://www.cnn.com/2015/07/03/us/san-francisco-killing-suspect-immigrant-deported/>.

<sup>3</sup> ICE must now submit a request for notification to jurisdictions when it wants to take custody of an alien (see "Secure Communities/Interoperability"). It is not clear if ICE submitted a request for notification or issued a detainer in this case. See U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, Megan Mack, Officer, Officer of Civil Rights and Civil Liberties, and Philip A. McNamara, Assistant Secretary, Intergovernmental Affairs, from Jeh Charles Johnson, Secretary of Homeland Security, Secure Communities, November 20, 2014. For a legal discussion on immigration detainers, see CRS Report R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*, by (name redacted) and (name redacted). For a policy discussion of immigrant detention, see CRS Report RL32369, *Immigration-Related Detention*, by (name redacted).

<sup>4</sup> Ibid.

discussing the evolution of the 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.

## 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. Nevertheless, 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.<sup>5</sup> 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.<sup>6</sup> While immigration enforcement is a federal responsibility, some view state and local LEAs as potential “force multipliers” that can assist ICE agents.

## Criminal Alien Programs<sup>7</sup>

Interior enforcement programs that involve cooperation between ICE and state and local law enforcement agencies allow a relatively small number of ICE agents to leverage a much larger number of state and local law enforcement agents. Thus, even though most state and local arrests are of U.S. citizens, policies that forge connections between ICE and state and local law enforcement agents may be force multipliers for ICE.

ICE operates the *Criminal Alien Program (CAP)*, an umbrella program for marshaling agency resources to identify and remove criminal and other removable aliens.<sup>8</sup> *Secure Communities/Interoperability* is an information-sharing program between DHS, the Department of Justice, and state and local law enforcement agencies that screens for removable aliens as people are being booked into jails. The *287(g) program* allows DHS to enter into agreements with state and local jurisdictions pursuant to the Immigration and Nationality Act (INA) Section 287(g). These agreements allow 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, typically with multiperson teams. Of these four programs, the Criminal Alien Program, Secure

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<sup>5</sup> 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.

<sup>6</sup> 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.

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

<sup>8</sup> 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.

Communities/Interoperability program, and 287(g) program work with state and local law enforcement agencies to enforce immigration law.

## 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.”<sup>9</sup> 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. CAP officers conduct biometric and biographic database searches to identify matches in DHS databases, and they interview arrestees and prisoners to identify potentially removable aliens without previous DHS records.<sup>10</sup>

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

## Secure Communities/Interoperability<sup>11</sup>

Secure Communities was the original name given to an information-sharing program between the Departments of Justice and Homeland Security and state and local law enforcement that uses biometric data to screen for removable aliens as arrestees are booked into jails. The program began in late 2008 in about a dozen jurisdictions. Since FY2013, it has been operational in all 3,181 state and local law enforcement jurisdictions within the 50 states, the District of Columbia, and five U.S. Territories. As early as 2011, DHS began referring to this program as *interoperability*.<sup>12</sup>

Under Secure Communities/Interoperability, when law enforcement agencies book (i.e., take custody of) an arrestee and submit his fingerprints to the Federal Bureau of Investigation (FBI)

<sup>9</sup> ICE, *Criminal Alien Program*, <http://www.ice.gov/criminal-alien-program>, accessed by CRS on July 1, 2016.

<sup>10</sup> Aliens who overstay a nonimmigrant visa or who have been previously removed typically have records in one or more DHS database, 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.

<sup>11</sup> Portions of this section were excerpted from CRS Report R43852, *The President’s Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

<sup>12</sup> Chuck Wexler et al., *Taskforce on Secure Communities Findings and Recommendations*, Homeland Security Advisory Council, September 2011, p. 11; and DHS, *Congressional Budget Justification FY2014*, p. 57.



for criminal background checks,<sup>13</sup> the fingerprints are automatically checked against DHS's Automated Biometric Identification System (IDENT) database.<sup>14</sup> Potential matches are forwarded to ICE's Law Enforcement Support Center, where agents confirm the identity of matched prints, screen the arrestee's records for immigration violations and criminal history, and if the arrestee may be removable, evaluate the alien's criminal history and notify the appropriate local ICE field office about the match. The local ICE field office may then seek to effectuate removal on the alien by issuing a *detainer* to the jurisdiction where the alien is incarcerated. By issuing the detainer, ICE is requesting that the jail or prison hold the alien for up to 48 hours to give ICE agents an opportunity to obtain custody.

As part of the President's Immigration Accountability Executive Action of November 20, 2014, DHS Secretary Jeh Johnson directed ICE to discontinue Secure Communities.<sup>15</sup> However, the data interoperability component is not being discontinued. Consistent with the new Priority Enforcement Program (PEP), ICE can only seek a transfer from state and local custody of aliens that fall under the Priority 1<sup>16</sup> scheme or who are convicted of multiple or significant misdemeanors. In seeking custody of aliens in state and local jails and prisons, ICE must issue a *request for notification* so that it is notified when the alien will be released. Under the revised priorities,<sup>17</sup> unless aliens pose a demonstrable risk to national security, enforcement actions will only be taken against those convicted of specifically enumerated crimes.

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<sup>13</sup> 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](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis).

<sup>14</sup> 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 DHS, *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 US-VISIT Office of Congressional Affairs, IDENT included over 186 million unique records as of June 10, 2015.

<sup>15</sup> U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, Megan Mack, Officer, Office of Civil Rights and Civil Liberties, and Philip A. McNamara, Assistant Secretary for Intergovernmental Affairs, from Jeh Charles Johnson, Secretary of Homeland Security, *Secure Communities*, November 20, 2014.

<sup>16</sup> Priority 1 are threats to national security, border security, and public safety, and include

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a threat to national security;
- aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;
- aliens convicted of an offense that involves participating in a criminal street gang, or aliens who are 16 years or older who intentionally participated in an organized criminal gang to further illegal activity of the gang; and
- aliens convicted of felonies. (Felonies include any offense classified as a felony in the convicting jurisdiction, and any aggravated felony as defined in INA §101(a)(43).)

<sup>17</sup> The President's executive action issued on November 20, 2014, revised enforcement priorities and rescinded and superseded related policies issued in 2011 and 2012 by then-ICE Director John Morton. The previous priority levels were (1) aliens who pose a danger to national security or a risk to public safety; (2) recent entrants; and (3) aliens with final orders of removal (i.e., fugitives or absconders) or who otherwise obstruct immigration controls.



## Section 287(g) Program

Section 287(g) of the Immigration and Nationality Act (INA) permits the Secretary of Homeland Security<sup>18</sup> to delegate certain immigration enforcement functions to state and local law enforcement agencies. This authority was enacted into law in 1996<sup>19</sup> 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.<sup>20</sup> At least 1,675 state and local law enforcement officers had completed ICE's four-week Section 287(g) training program and been certified to conduct certain immigration enforcement duties.<sup>21</sup>

## Resources Dedicated to Select Immigration Interior Enforcement Programs

**Table 1** presents funding for CAP, Secure Communities/interoperability 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. DHS folded Secure Communities funding into CAP in FY2015 and the program was replaced with the Priority Enforcement Program that contains similar enforcement facets. 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 most four recent years.

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<sup>18</sup> Prior to the creation of DHS, this authority was given to the Attorney General.

<sup>19</sup> 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).

<sup>20</sup> 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.

<sup>21</sup> Ibid.

**Table I. Appropriations for Three Criminal Alien Programs, FY2004-FY2017**  
(millions of dollars)

Fiscal Year	CAP <sup>a</sup>	Secure Communities <sup>b</sup>	§287(g) <sup>c</sup>	Total:
2004	\$6.0	NA <sup>d</sup>	NA <sup>e</sup>	\$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 <sup>f</sup>	\$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).

- The Criminal Alien Program was known as the Institutional Review Program prior to FY2007.
- Secure Communities/Interoperability is also known as the Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program. This program was replaced by the Priority Enforcement Program in FY2015.
- Includes §287(g) jail enforcement and §287(g) task force programs. §287(g) task force programs were discontinued during FY2012.
- The Secure Communities/CIRCA program received its first appropriation in FY2008.
- The §287(g) program received its first appropriation in FY2006.
- The Secure Communities funding was folded into the Criminal Alien Program in FY2015.

## Criminal Alien Numbers and Crimes

As mentioned, ICE made the removal of certain criminal aliens its top priority. This section examines sentencing data at federal, state, and local levels. Data are available for the total number of prisoners at these levels and are broken out by citizenship status.<sup>22</sup> 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).<sup>23</sup> State and local facilities report their data to DOJ.<sup>24</sup>

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

Jurisdiction	Total Prisoners		U.S. Citizen Prisoners		Noncitizen Prisoners	
	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%
<b>Total</b>	<b>1,478,301</b>	<b>100.0%</b>	<b>1,410,464</b>	<b>95.4%</b>	<b>67,837</b>	<b>4.6%</b>

**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 are for 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 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,<sup>25</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> 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>.

<sup>24</sup> 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.

<sup>25</sup> 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.

**Table 3**, which presents the federal prison population by offense category for the end of FY2013,<sup>26</sup> shows that drug offenders accounted for 50% of all federal offenders in federal prison. Forty-six percent of noncitizen federal prisoners were incarcerated for drug offenses at the end of FY2013. Although immigration offenders represented almost 12% of all federal offenders incarcerated at the end of FY2013, they represented 43% of all federal noncitizen offenders. Combined, 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**

Offense Type	Number of Offenses				Percentage of Citizenship Status Total			
	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%
<b>Total</b>	<b>199,244</b>	<b>148,449</b>	<b>50,730</b>	<b>65</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

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

**Notes:** The prison population is measured as of September 30, 2012. According to BJS, the universe of cases reported above 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 list of offenses, see BJS, Federal Criminal Case Processing Statistics, <http://www.bjs.gov/fjsrc/index.cfm>.

## Select Issues

A number of jurisdictions throughout the country have policies, laws, or ordinances that limit their involvement with ICE in enforcing immigration law. This lack of participation has been a long-standing issue for DHS. The prominence of immigration enforcement issues discussed during the 2016 Presidential elections and the San Francisco case cited earlier in this report have again brought the issue to the forefront. The following sections discuss issues in this debate and possible policy options that Congress may consider should it decide to legislate in this area.

## Impact on Communities

As mentioned previously, 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.

<sup>26</sup> FY2013 is the most recent year for which these data were publically available from BJS.

Critics argue that imposing such a requirement undermines the relationship between local law enforcement agencies and the communities they serve.<sup>27</sup> 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.<sup>28</sup>

Under the new Priority Enforcement Program (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 growing 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 reapprehend the individual. This not only increases the need for personnel for each released criminal alien but it also increases the level of personal risk for ICE agents who must apprehend the criminal alien in the community rather than at a jail or prison.<sup>29</sup>

State and local law enforcement agencies throughout the country collectively employ over 605,000 law enforcement agents (LEAs).<sup>30</sup> 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.<sup>31</sup> 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.

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<sup>27</sup> 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. Hereafter referred to as Wiles testimony.

<sup>28</sup> 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.

<sup>29</sup> Ibid.

<sup>30</sup> 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.

<sup>31</sup> See Wiles testimony.

## 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.<sup>32</sup> Many states are facing budget crises 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.<sup>33</sup>

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.<sup>34</sup>

## Congressional Action

Several proposals have been introduced in the 114<sup>th</sup> Congress that would prohibit sanctuary jurisdictions from receiving selected federal grants.<sup>35</sup> One such proposal passed the House on July 23, 2015 (Enforce the Law for Sanctuary Cities Act (H.R. 3009).

Likewise, amendments adopted during the House Committee on Appropriations markup of the FY2016 Department of Homeland Security appropriations bill and the House consideration of the Commerce, Justice, Science and Related Agencies Appropriations Act, 2016 (H.R. 2578)<sup>36</sup> would prohibit federal funds from going to jurisdictions that restrict their law enforcement agents from notifying ICE on the immigration status of aliens. The former would prohibit Federal Emergency Management Agency funds, while the latter would do so for State and Local Law Enforcement Assistance grant funds.

S.Rept. 114-66 to accompany H.R. 2578 contains no language supporting such restrictions. On October 20, 2015, the Senate also failed to pass a cloture motion to consider S. 2146, the Stop Sanctuary Policies and Protect Americans Act. S. 2146 would make sanctuary jurisdictions ineligible for certain federal law enforcement grants and funding from the Community Development Block Grant Program; grant jurisdictions that honor immigration detainers the authority to carry them out and limit their liability in doing so;<sup>37</sup> and increase penalties for previously removed aliens who attempt to reenter the United States without authorization.

The Senate reportedly plans to consider two related measures: S. 3100, which would withhold federal funding for sanctuary jurisdictions that do not fully cooperate with ICE, and S. 2193,

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<sup>32</sup> See for example the testimony of Todd Entrekin, Etowah County, AL, 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.

<sup>33</sup> 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.

<sup>34</sup> Examples of such programs that could potentially be seen as leverage include the Department of Justice's State Criminal Alien Program (SCAAP), Justice Assistance Grant (JAG) and Community Oriented Policing Services (COPS) programs, and various DHS' grant programs. 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*.

<sup>35</sup> See for example, H.R. 3002, S. 80, and S. 1764.

<sup>36</sup> See H.Amdt. 352 to H.R. 2578.

<sup>37</sup> For more information, see CRS Legal Sidebar WSLG1330, *Recent Shooting in San Francisco Raises Questions about "Sanctuary Cities" and Compliance with Immigration Detainers*.

which would increase penalties for repeat unauthorized border crossers.<sup>38</sup> S. 3100 would withhold 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 increase 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.

## **Author Contact Information**

(name redacted)  
Analyst in Immigration Policy  
fedactedj@crs.loc.gov, 7-....

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(name redacted), Section Research Manager, was one of the original authors of this report.

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<sup>38</sup> CQ News, “Immigration Bills Lined Up for Senate Test Votes,” June 30, 2016, <http://www.cq.com/alertmatch/308606996?1>.



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