

Immigration Enforcement Policies and Detainer Trends in SJC Sites

May 2023



Supported by the John D. and Catherine T. MacArthur Foundation

This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

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Introduction

The Safety and Justice Challenge (SJC) was launched by the MacArthur Foundation in 2015 to assist local criminal justice systems in reducing their jail populations and advancing racial equity. To date, MacArthur has supported a total of 57 cities and counties¹, which comprise a national network of local criminal justice systems committed to reducing the footprint of the justice system. While ameliorating disparities and social inequalities permeate recent justice policies, these efforts coincide with a rise in anti-Latino/a rhetoric and the evolution of anti-immigration measures. Anti-Latino/a rhetoric associated with anti-immigrant sentiment is not new; in fact, scholars have noted that historically, *racial scripts* of Mexicans and Mexican Americans living in the United States have included depictions of noncitizens and individuals undeserving of resources (Molina, 2014). Historically, immigration policy has fluctuated in response to labor demand and anti-immigrant sentiment (e.g., Molina, 2014; Massey, 2009). Most recently, there has been a devolution of federal immigration enforcement to localities, which has led to anti-immigration campaigns and the introduction of approximately 1,500 local anti-immigration ordinances in state and local legislatures (Koulish, 2010, p.138-139). Secure Communities, an example of immigration devolution, was a 2008-to-2021² Department of Homeland Security (DHS) initiative requiring the Federal Bureau of Investigation (FBI) to share fingerprints with DHS to allow Immigration and Customs Enforcement (ICE) to identify undocumented immigrants. The 287 (g) agreements establish a partnership with federal, state, and local law enforcement agencies to cooperate with federal agencies

to remove undocumented individuals.³ Additionally, traffic violations can also be counted as crimes for the purpose of removal (Abrego, Coleman, Martinez, Menjivar, & Slack, 2017). Advocates and academics have recently documented how 287(g) agreements have increased policing in Latino/a neighborhoods and how traffic enforcement is used to investigate legal status (Coleman & Kocher, 2019). Equally concerning is the fact that the devolution of immigration enforcement to interior enforcement has spillover effects on all Latino/as (Aranda, Menjivar, & Donato, 2014).

Robust immigration enforcement by local, state, and federal authorities is currently the backdrop of criminal justice reform efforts. Immigration policies can influence how local law enforcement engages with undocumented populations, which may include Latino/a communities. Immigration enforcement and local-federal cooperation can result in an increase in arrests and detainers. A detainer is an immigration hold request that allows ICE to remove undocumented individuals from federal, state, or local custody. During the Trump Administration, the number of immigration arrests increased from a total of 30,028 in 2016 to 41,328 in 2017⁴ and detainers increased from 85,720 in 2016 to 142,474 in 2017 (Transactional Records Access Clearinghouse). Moreover, anti-immigrant policies persist despite overwhelming evidence that immigrants are less likely to commit crimes than native-born Americans and that communities with a higher proportion of immigrants have lower crime rates (National Academy of Sciences, 2015; Ousey & Kubrin, 2018; Zatz & Rodriguez, 2015).

In this policy brief, we first outline the landscape of immigration policies across SJC sites. Next, we illustrate, across four SJC sites, the detainer trends as well as the immigration policies of the respective jurisdictions. In conclusion, we discuss the implications for criminal justice policy and reform, focusing on undocumented immigrants and Latino/as.

¹ Two of the states, Delaware and Connecticut have consolidated jail/prison systems.

² There was a pause in the program towards the end of 2014 by the Obama Administration but it was reenacted by the Trump Administration.

³ <https://www.ice.gov/identify-and-arrest/287g>

⁴ <https://www.ice.gov/features/100-days>

Methodology

To assess the breadth of local engagement with federal immigration enforcement across SJC jurisdictions, researchers consulted a variety of publicly accessible sources for data on local law enforcement cooperation with federal immigration enforcement in all SJC sites. First, the National Conference of State Legislatures' Immigration Law and Current State Immigration Legislation Database⁵ was used to identify state laws on immigration enforcement in states with SJC sites. Information on local sanctuary⁶ jurisdiction policies in SJC sites was gathered from Ballotpedia's Sanctuary Jurisdictions by State⁷ and the Immigrant Legal Resource Center's (ILRC) National Map of Local Entanglement with ICE.⁸ Data on ICE and U.S. Marshals Service (USMS) detention contracts and local 287(g) agreements were gathered from DHS.⁹ Researchers also conducted a Google keyword search for "law enforcement" or "sheriff", "immigration", "detainer", and "sanctuary" to generate online or print newspaper articles on relevant local policies for each SJC jurisdiction. The focal timeframe used for collecting local immigration enforcement policies was 2008 – 2020, although a small number of sites enacted policies governing immigration enforcement prior to 2008.

Each identified policy was then entered into a dataset and categorized according to the *type* of immigration policy and *direction* of the policy intervention. Eight different types, or substantive domains, of federal immigration enforcement

participation were used to categorize the policies (see Table 1). These domains were selected to capture the breadth and possible complexity of local cooperation with immigration enforcement. Once categorized into a substantive policy domain, each policy was coded for the direction of cooperation: either *limiting* or prohibiting local agency or its employees from cooperating with federal immigration enforcement or *permitting* or mandating cooperation with immigration enforcement. In SJC jurisdictions where we did not find any laws or policies governing local immigration enforcement, we indicated that no policies were in effect. All the information gathered was sent to SJC site project directors for review and feedback in order to ensure the information about immigration enforcement laws and policies in SJC sites was accurate.

Lastly, we use Transactional Records Access Clearinghouse (TRAC) data, a repository of federal data housed at Syracuse University, to illustrate the number of immigration detainers issued over time, alongside respective immigration policies, for four large SJC sites: Harris County, Texas; Los Angeles County, California; Cook County, Illinois; and New York City, New York. To contextualize the demographics of the SJC sites, we use the 2019 American Community Survey data from the U.S. Census Bureau regarding the median income, size of the Latino/a population, and size of the foreign-born population.

⁵ Available at: <https://www.ncsl.org/research/immigration/immigration-laws-database.aspx#terms>

⁶ There is no universally accepted definition of what constitutes a "sanctuary" policy or jurisdiction. A sanctuary jurisdiction is defined by the Ballotpedia as a location that self-identifies as a sanctuary, refuses to comply with ICE hold requests, or provides services regardless of immigration status. A sanctuary state or policy may not encompass all immigration enforcement measures. https://ballotpedia.org/Sanctuary_jurisdictions

⁷ Available at: https://ballotpedia.org/Sanctuary_jurisdiction_policies_by_state

⁸ Available at: <https://www.ilrc.org/local-enforcement-map>

⁹ For ICE/USMS contracted detention facilities, see: <https://www.ice.gov/detention-management>. For local 287(g) Agreements with ICE, see: <https://www.ice.gov/287g>

Analysis of Immigration Enforcement Engagement

We begin by describing the landscape of local cooperation with federal immigration enforcement across SJC sites. The eight policy domains are: (1) arrest for civil immigration, (2) legal status or birth information, (3) data sharing with ICE, (4) ICE detainers, (5) ICE access to jails, (6) ICE detention contract, (7) 287(g) agreement, and (8) agency resources for immigration enforcement. Our findings indicate that pursuing jail decarceration and racial equity—efforts that all SJC sites are actively engaged in—does not necessarily include a focus on the treatment of undocumented people in local systems or the cooperation with federal immigration priorities. Just under half (45%) of SJC sites permit cooperation with immigration enforcement across at least one policy domain. However, the majority of SJC sites (70%) enacted limitations of some type of immigration enforcement cooperation. Findings also show some jurisdictional variation with federal immigration enforcement. For example, sites in California, New York, and Connecticut are more likely to limit cooperation across the multiple domains of federal immigration enforcement, while sites in South Carolina and Florida allowed for local cooperation across the multiple domains.

Figure 1 summarizes the policy landscape across the eight substantive domains and by direction of the policy intervention. The most active policy domain across SJC sites concerns the use of ICE detainers or immigration holds: 65% of sites enacted limitations to ICE holds, while 18% permitted holds in their jurisdictions. Policies governing the sharing non-public information with ICE were evenly distributed across SJC sites, with 29% of SJC sites restricting data sharing with ICE and 29% of SJC sites permitting data sharing with ICE. Notably, one quarter of sites either permit or mandate the collection of legal status or place of birth information, and a further 39% have no formal policy in place governing the collection or use of such personal information. Similarly, we find a split across sites in their use of local jails for immigration detention: California, Connecticut, and Washington have enacted legislation at the state level that prohibits engaging in a USMS/ICE detention contract, whereas Allegheny, Charleston, Minnehaha, and Pennington counties lease portions of their

facilities to immigration detainees. About 78% of the SJC sites lack a formal policy on ICE detention contracts and the absence of policy on ICE detention cooperation may permit discretionary cooperation.

Enforcement can have effects outside of immigration policy. For instance, when local agencies devote scarce public resources to support federal immigration enforcement, this can impact the amount of state and local funding that are allocated to non-immigration-related resources. The majority of SJC sites have no formal policy governing the allocation of state or local resources to support federal immigration enforcement. However, 18% of sites restrict the use of funds for immigration enforcement, while 6% of sites expressly permit the use of local resources.

SJC sites are not monolithic in their orientations to immigration enforcement, although we find that certain types of policies tend to cluster together. We examine the overlapping nature of immigration enforcement policies across the SJC sites and highlight a few patterns. Of the 32 SJC jurisdictions that restrict the use of ICE holds, over half also limit their law enforcement personnel from engaging in investigation, interrogation, or arrests for civil immigration matters (see Figure 2). Forty-six percent of SJC jurisdictions that limit ICE holds also restrict data sharing with ICE. The enforcement of data sharing policies appears to have mixed results. In fact, policies restricting immigration enforcement activities in one domain do not preclude cooperation in another: of sites that decline ICE detainer requests, 19% permit data sharing of non-public information about individuals who come into contact with the justice system. The variation of types of cooperation in policies among those that limit ICE detainers suggests that cooperation is inconsistent for all sorts of policies. Thus, it suggests that sites can have similarities in one immigration policy but differ in other immigration policies. Figure 3 illustrates that of the 13 SJC jurisdictions that permit data sharing, approximately 62% also permit the collection of legal status and birthplace information. In contrast, 38% of SJC sites that allow data sharing permit ICE holds, while 46% limit ICE holds.

Immigration and Customs Enforcement Detainers

In the section that follows, we examine immigration cooperation policies and detainer trends from 2012 to 2020 in Harris County, Texas, Los Angeles County, California, New York City, New York, and Cook County, Illinois to investigate the relationship between detainer trends and cooperation policies.

The four selected SJC jurisdictions¹⁰ contain sizeable Latino/a and foreign-born populations. According to the 2019 Census, 48% of Los Angeles County, California's population identifies as Latino/a; 43% of the population in Harris County, Texas is Latino/a; New York City has a Latino/a population of about 30%; and Cook County, Illinois has a Latino/a population of about 25%. In 2019, the percentage of foreign-born population from North, Central, and South America in Los Angeles County was 57%, in New York City it was 51%, in Harris County it was 68%, and in Cook County it was 45%.

Immigration enforcement may play differently across sites with varying Latino/a and foreign-born populations. The socialization of legality influences the perception of Latinos/as as foreign-born and undocumented, which could lead to an increase in overall policing. Even though immigrants come from all over the world (e.g., Mexico and Asia) (Passel & Cohn, 2019), Latino/as remain at the forefront of anti-immigrant rhetoric (Aranda & Vaquera, 2015; Golash-Boza & Hondagneu-Sotelo, 2013).

Undocumented people are removed from federal, state, or local custody via ICE detainers, which is detailed in the infographic in Figure 4.¹¹ Administrative arrests occur within jails and prisons, whereas at-large arrests occur within the community. The distinction between arrests in facilities and arrests in the community is significant because detainers serve as a tool for deportation and increase the policing of all Latinos/as regardless of citizenship status (Arande, Hughes, & Sabogal, 2014; Pham & Van, 2022). Across

SJC sites, on average, 164 ICE arrests and 199 detainers were issued each month between July 2012 and January 2020. However, this varied substantially across sites: in Harris County, Texas, there were 364 detainers issued each month from October 2014 and July 2019, while the average monthly number of ICE arrests was 787. From January 2014 to July 2019, the monthly average number of detainers issued in Los Angeles County's SJC facility was 603, while the average number of ICE arrests each month was 244. From July 2011 to January 2020, the average number of detainers issued in New York City's SJC site was 302, while the average monthly number of ICE arrests was 117. From July 2012 to January 2020, the average monthly number of detainers issued in Cook County was 84, while the average monthly number of ICE arrests in Cook County was 150, with a maximum of 278.

Harris County, TX

The Harris County Sheriff's Office had a 287(g) agreement in place until 2017. Even though the agreement was terminated in 2017 due to \$675,000 in expenditure costs, Harris County continued to comply with ICE detainer requests (Pinkerton & Barded-Smith, 2017). Texas enacted Senate Bill 4 in late October 2017 to prohibit sanctuary policies and require local governments, educational institutions, and law enforcement to cooperate with federal immigration officers regarding detentions, data sharing, jail access, and use of legal status or place of birth information. The disparity between state and local policies demonstrates the existence of tension among local agencies and state-level politics regarding immigration enforcement. Figure 5 depicts a decline in ICE detainers in January 2015, followed by a steady increase in 2016, a brief spike, and then a steady trajectory after 2017. The rules of Harris County permit and encourage local immigration enforcement. The number of ICE detainers increased since 2017, with minor up-and-down trends, but significantly more than in 2015. The detainer trend reflects the DHS policies on immigration enforcement.

¹⁰ The four SJC jurisdictions were selected based on comprehensive TRAC data over time.

¹¹ Secure Communities expedited the detainer process by utilizing an automated system that informed DHS directly. Even though Secure Communities was discontinued on January 20, 2021, the infrastructure still exists. Secure Communities was also phased out in 2014, which may account for the decrease in all detainees in January 2015 but was reinstated under the Trump administration.

Immigration and Customs Enforcement Detainers

Los Angeles County, CA

Los Angeles County's history of restricting the ability of local agencies to participate in federal immigration enforcement activities dates back to 1979. To illustrate the dynamics between policy implementation and changes in detainer trends, we examine the period from 2014 to 2019. In response to Secure Communities, AB 4 California Trust Act, a state-level policy, was passed in 2014, restricting ICE detainers to violent and sex offenses. Los Angeles County terminated its 287(g) agreements in April 2015 after acknowledging the rise in racial profiling.¹² Senate Bill 54 was enacted in October 2017, limiting arrests and interrogations for immigration purposes by preventing the State of California from allocating funds or designating employees solely for immigration investigations. It also places restrictions on the utilization of funds and resources for civil immigration enforcement. Figure 6 shows that ICE detainers in Los Angeles County fell from 2014 to 2015. However, federal immigration enforcement under the Trump administration possibly led to a sharp increase in detainers between 2017 and 2018, followed by a steady decline through 2019. The fluctuating trend of detainers illustrates the tension between federal, state and local diverge efforts on immigration enforcement.

New York City, NY

In July 2013, Executive Order 34 of the City of New York prohibited the collection of immigrant status data locally, and Executive Order 170 of the State of New York made this prohibition statewide in 2017. In November 2014, municipal legislation 486A and 487 imposed restrictions on ICE holds. Figure 7 depicts a rise in ICE detainers in July 2012, followed by a decline in January 2015. The detainer rates remained low until January 2017 and then increased steadily until July 2019. Although the city prohibited the use of local resources for immigration enforcement, there was an increase in detainers during 2018, which might suggest that federal enforcement and anti-immigrant rhetoric remained high in law enforcement agencies.

Cook County, IL

Prior to state action, the Cook County Commissioners and Cook County Sheriff's Department enacted policies in 2011 to limit ICE holds, jail access, and data sharing in Cook County. Illinois restricted ICE holds and civil arrests through a January 2015 executive order. In response to anti-immigrant rhetoric, the passage of Senate Bill 31 Illinois Trust Act prohibited state-level arrest or detention based on citizenship status absent a judicial warrant. In 2019, the State of Illinois prohibited 287 (g) agreements through House Bill 1637, thereby limiting local law enforcement collaboration with ICE. Figure 8 illustrates detainer trends and policies from 2012 to 2020. Figure 8 shows that ICE detainers reached an all-time high in early 2013, followed by a significant decline that lasted until July 2016. Despite a previous decline, ICE detainers gradually increased in January 2017, which correlated with a rise in anti-Latino/a and anti-immigrant rhetoric. Despite efforts to reduce ICE holds, detainers fluctuated between 2017 to 2019 but have remained significantly lower than the number of detainers in 2013.

¹² <https://hildalsolis.org/los-angeles-county-supervisors-vote-to-end-10-year-old-287g-program-and-to-remove-immigration-agents-from-jails/>

Policy Recommendations

Identify immigration policy landscape - Localities committed to reducing jail populations, and racial disparities may inadvertently fail to consider how immigration policies impact the system involvement of Latinos/as and undocumented persons. Localities advancing reform efforts ought to consider the heterogeneity of immigration policies and how the level of local cooperation with federal immigration enforcement impacts the arrests and subsequent justice outcomes of these populations.

Limit outsourcing of jail beds - Our results indicate that 14% of SJC sites restrict ICE/USMS detention contracts, while 8% authorize such contracts. If one objective of the SJC is to lower the jail population, detention contracts may undermine this objective by replacing one population (i.e., U.S. citizens) with another (i.e., unauthorized citizens). State-level and local policies can restrict the outsourcing of local jail beds for immigration detention purposes as one method of reducing the jail population.

Restricting state and local funds - In light of the increasing criminalization of Latinos/as, it is crucial to evaluate the outcomes of immigration enforcement and its ripple effects on the criminal justice system. Legislation like California's Senate Bill 54 can prevent local law enforcement agencies from using state and local funds for immigration enforcement. By restricting the use of funds for immigration enforcement, the federal system assumes responsibility of immigration enforcement, and possibly reducing the over-policing of Latino communities.

Limit data-sharing - Three of the four SJC sites responded, at least in part, to anti-immigrant rhetoric by protecting undocumented people by limiting ICE holds, the use of legal status, and data sharing with ICE. The findings indicate that data-sharing restrictions and agreements could limit future collaboration with ICE. Cooperation between local law enforcement and ICE is possible with or without resources, and may result in an increase in the jail population. By limiting engagement with ICE, jurisdictions will not only combat anti-immigrant policies but also, reduce the number of justice-involved individuals.

Future Directions

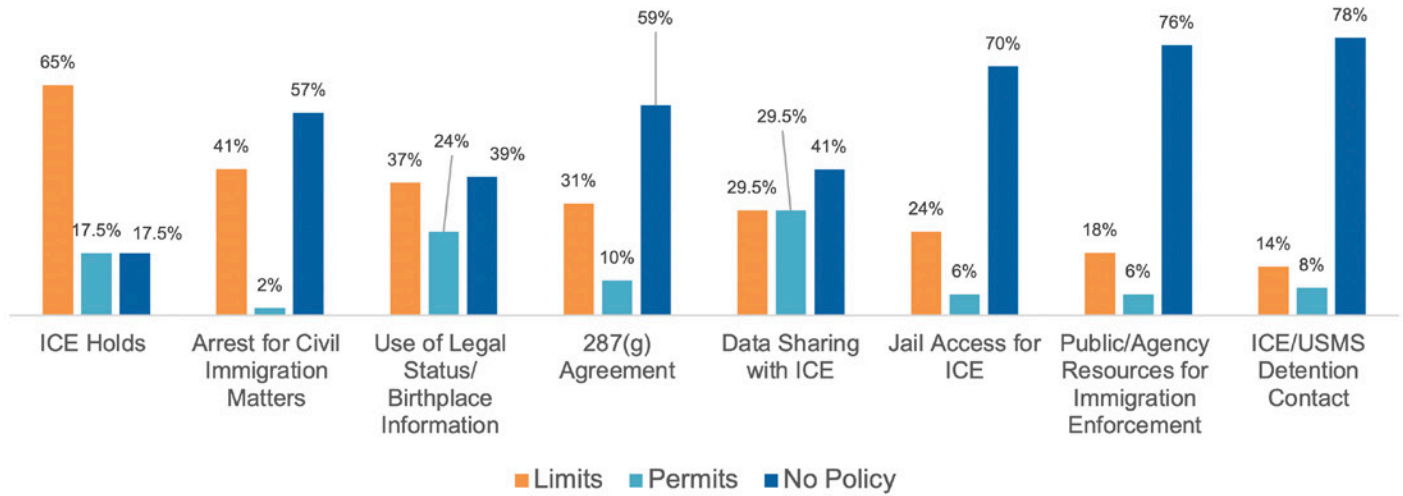
This study provides valuable insight into the landscape of immigration policies across SJC sites dedicated to reducing the criminal justice footprint. Future research should examine the nuances of criminal justice reform in jurisdictions with immigration policies that limit *and/or* permit immigration enforcement. In particular, a deeper investigation into the intersection of immigration policies, such as 287(g) agreements and the policing of Latino/a communities can offer insight into the treatment and justice system outcomes of Latinos/as and undocumented immigrants.

Table 1. Local Immigration Enforcement Policy Domains

Policy Type		Definition
1	Arrest for civil immigration	State/local agencies may authorize or prohibit arrest, investigation, or interrogation authority for civil immigration matters
2	Legal status or birth information	Agencies may limit or prohibit law enforcement collection or use of legal status or place of birth information
3	Data sharing with ICE	Cooperation or prohibits data-sharing with ICE or release notification requests, beyond federally mandated information sharing
4	ICE detainers	Immigration detainer requests (or “ICE holds”) are administrative notices issued by DHS to local law enforcement agencies requesting that the agency hold an individual suspected to be undocumented for an additional 48 hours beyond their release date in order to allow DHS to take them into its custody release. These are voluntary requests, not judicial warrants which means that local agencies do not need to comply
5	ICE access to jails	ICE may be granted or limited access to secured areas of jail facilities to interrogate or make immigration arrests
6	ICE detention contract	Agencies may limit or permit ICE or U.S. Marshal Service contract used for bed space in facilities to hold immigrants in removal or deportation proceedings
7	287(g) agreement	The 287(g) program establishes state, and local police officers collaborate with the federal government to enforce federal immigration laws. Several model types: task force model, jail enforcement model, and warrant service officer model. The agencies may limit, prohibit, or had a previous 287(g) agreement
8	Agency resources for immigration enforcement	Jurisdictions may prohibit or allow the use of state/local monies or resources for primarily or exclusively immigration enforcement tasks

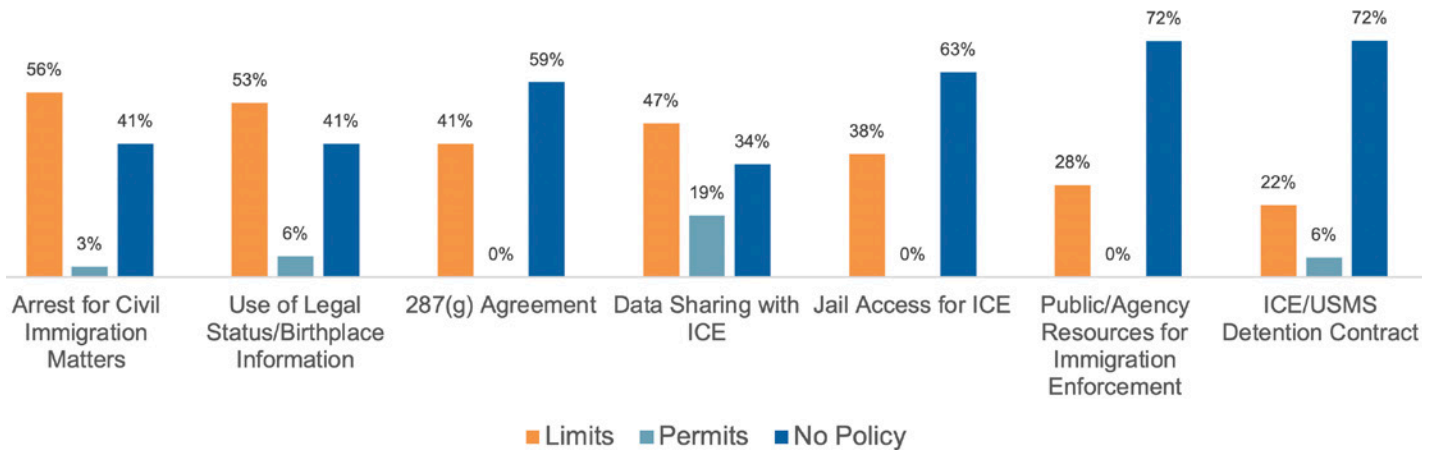
Appendix

Figure 1: Summary of Policies on Local Immigration Enforcement



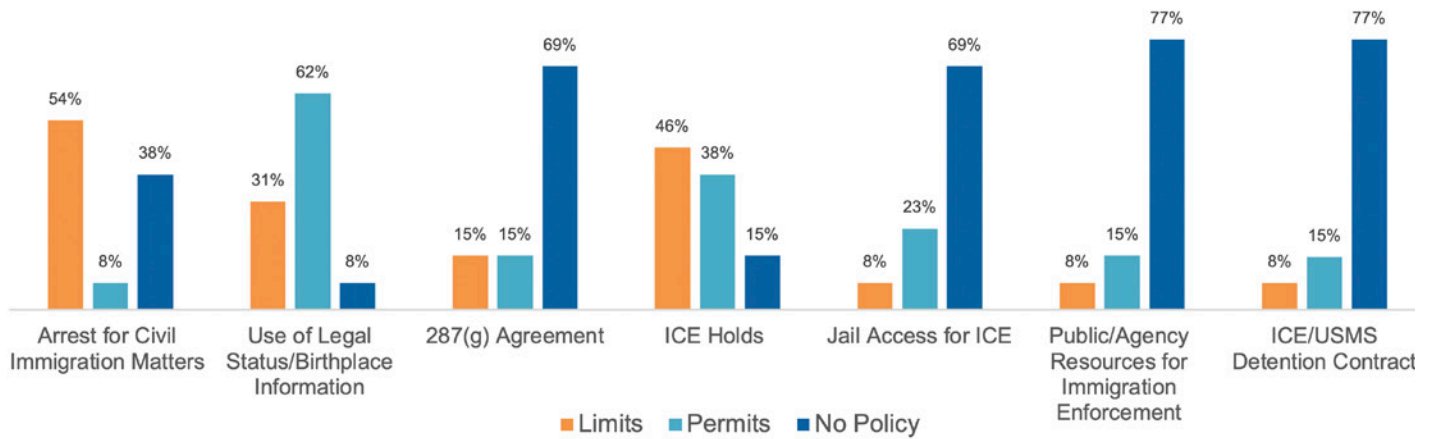
Sources: Author calculations using SJC Sites data on Policies on Local Immigration Enforcement, Among SJC Sites (n=51).
 Notes: Some jurisdictions had no information on limiting or permitting cooperation and were counted as No Policy.

Figure 2: Policies on Local Immigration Enforcement for Those that Limit the Use ICE Holds



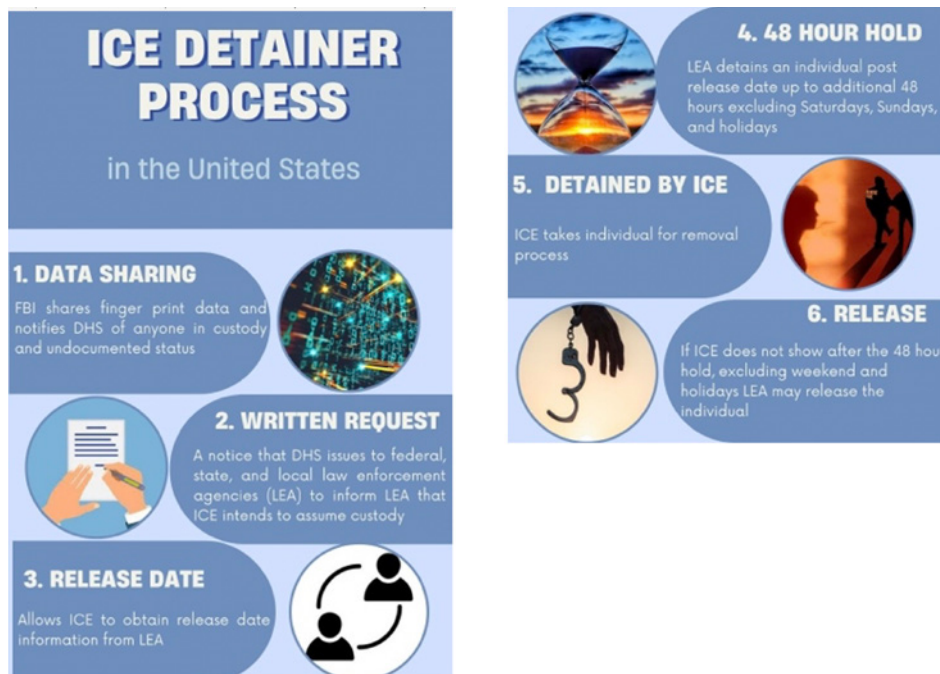
Sources: Author calculations using SJC Sites data on Policies on Local Immigration Enforcement, Among SJC Sites that **Limit** the use of ICE holds (n=32).
 Notes: Some jurisdictions had no information on whether they restrict or permit cooperation across policy domains; these were counted as No Policy.

Figure 3: Policies on Local Immigration Enforcement for Those that Permit Data Sharing



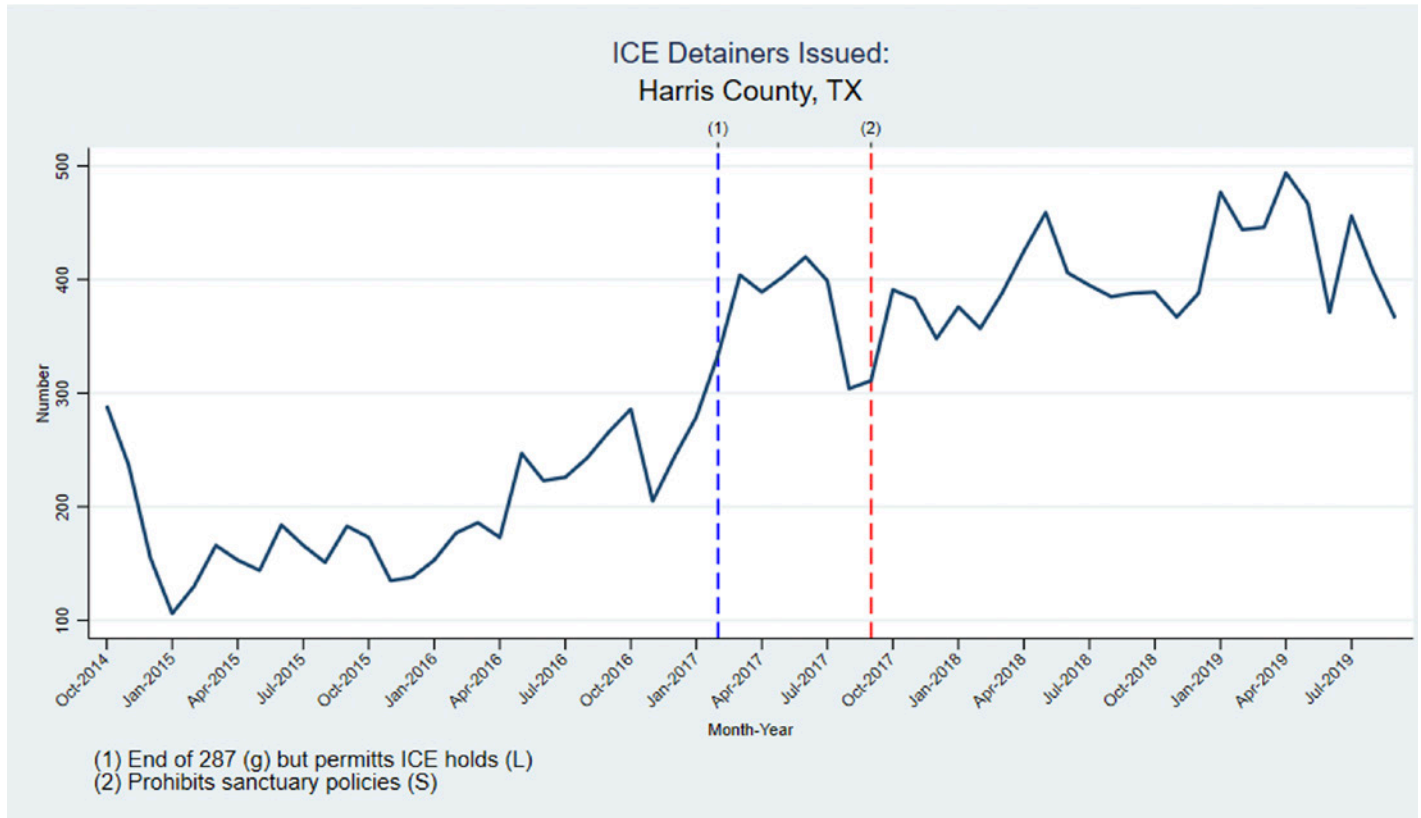
Sources: Author calculations using SJC Sites data on Policies on Local Immigration Enforcement, Among SJC Sites that **Permit** data sharing (n=13).
 Notes: Some jurisdictions had no information on whether they restrict or permit cooperation across policy domains; these were counted as No Policy.

Figure 4: ICE Detainer Process



Appendix

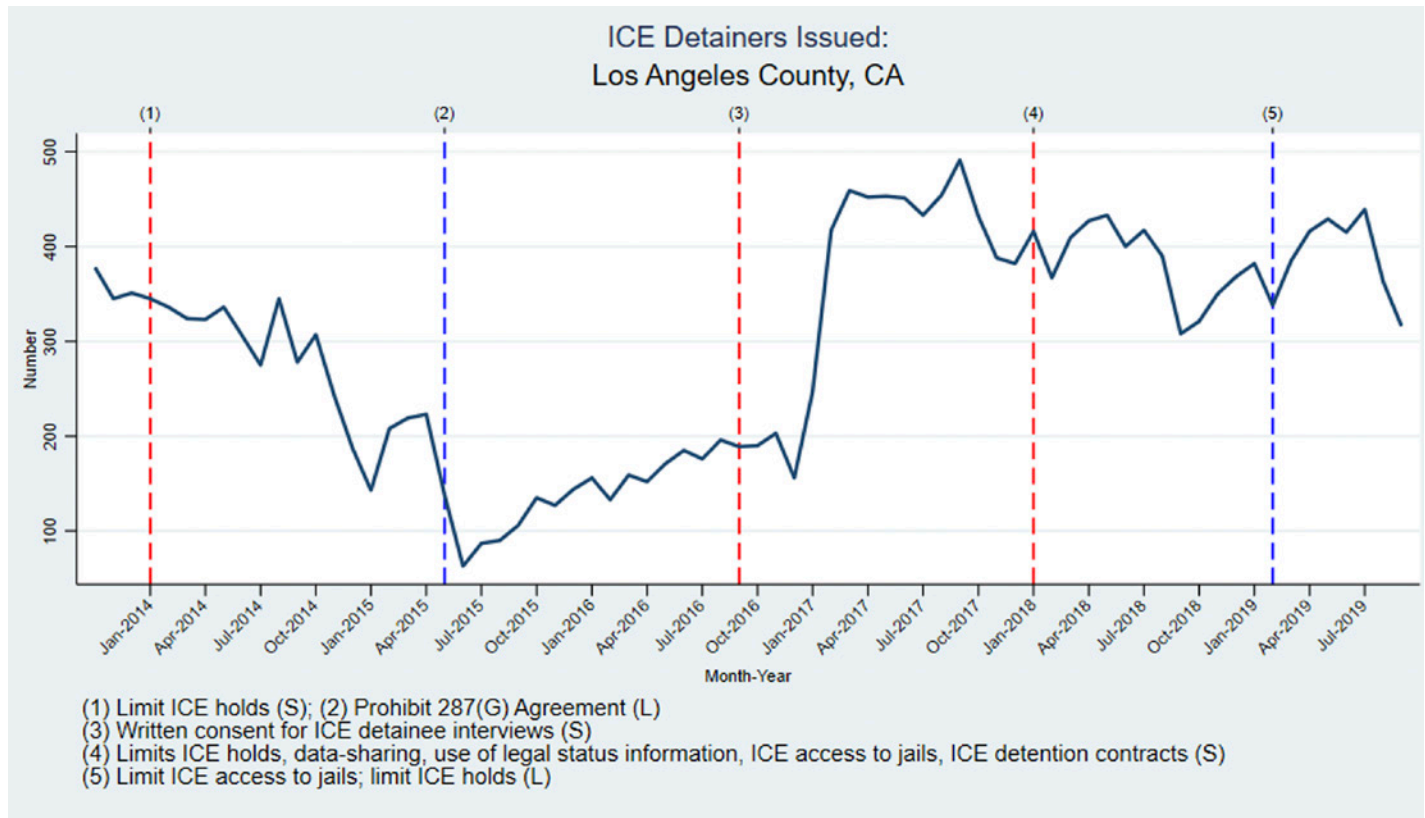
Figure 5: Harris County, TX ICE Detainer Trends



Sources: Author calculations using TRAC data and laws and policies governing local immigration enforcement.

Notes: The policies in Figure 5 are the following: (1) Harris County Sheriff's Office end 287(g) Agreement; (2) Senate Bill 4. (S) is a state level policy. (L) is a local level policy.

Figure 6: Los Angeles County, CA ICE Detainer Trend

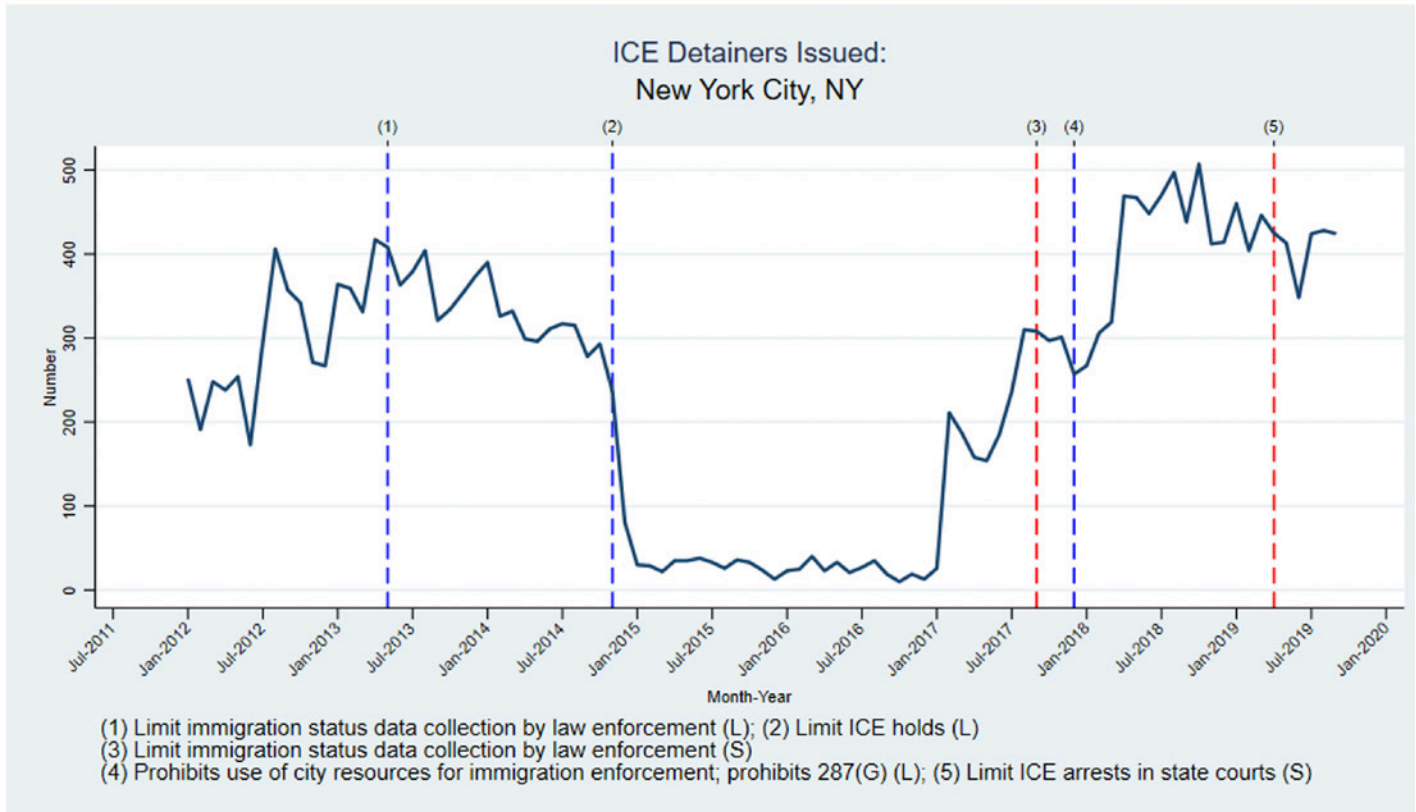


Sources: Author calculations using TRAC data and laws and policies governing local immigration enforcement.

Notes: The policies in Figure 6 are the following: (1) AB 4 California Trust Act; (2) LA County Ends 287(g) Program; (3) AB 2792 TRUTH Act; (4) Senate Bill 54 and Senate Bill 29; (5) LASD Custody Directive 19-001. Not included in this graph are SB 112 and SB 785. (S) is a state level policy. (L) is a local level policy.

Appendix

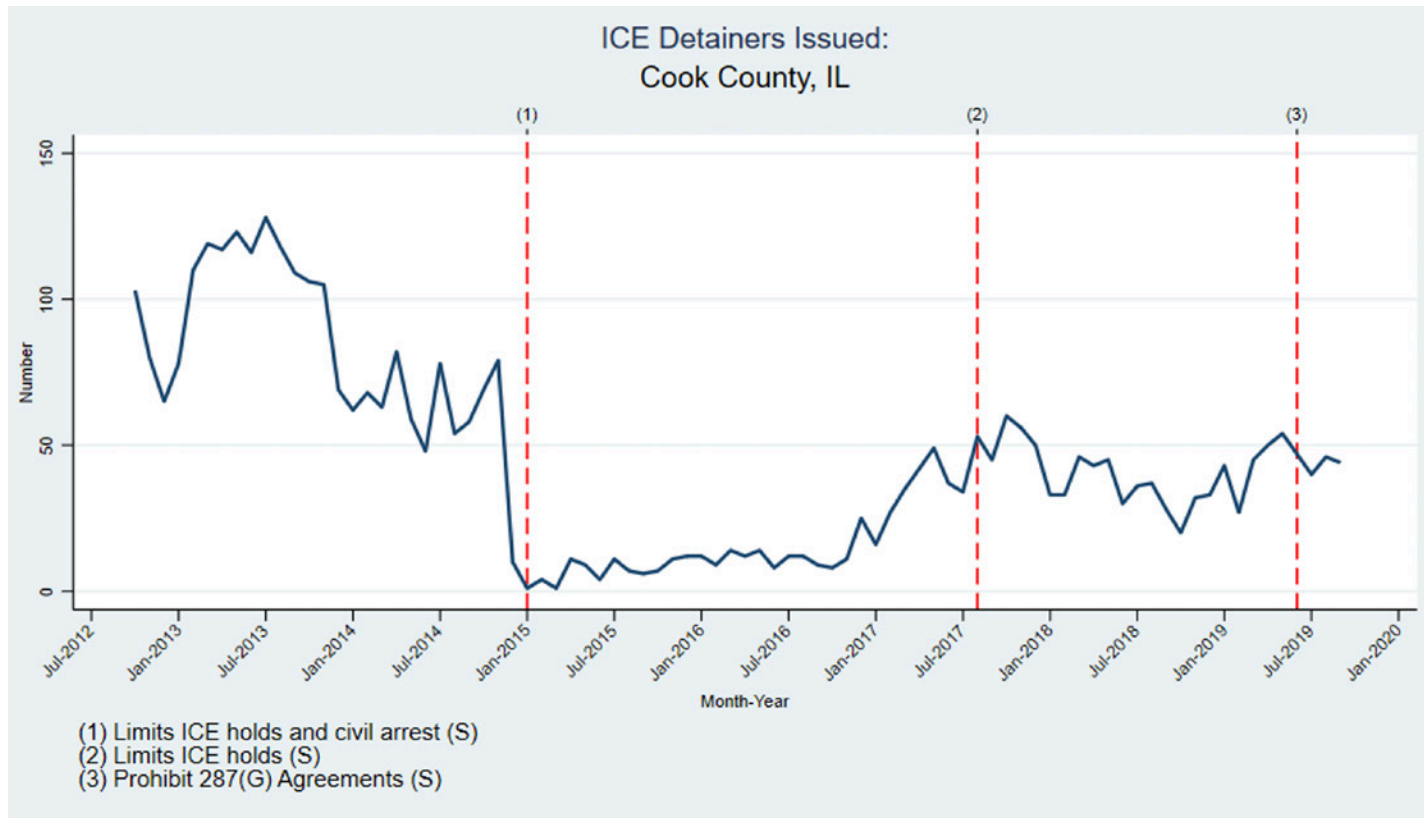
Figure 7: New York City, NY ICE Detainer Trend



Sources: Author calculations using TRAC data and laws and policies governing local immigration enforcement.

Notes: The policies in Figure 7 are the following: (1) NYC Executive Order No. 34; (2) Local Laws 486A: NYPD; Local Laws 487A: DOCCS; (3) NY State Executive Order 170; (4) Local Law 1568-2017; (5) State of New York Unified Court System Directive 1-2019. (S) is a state level policy. (L) is a local level policy.

Figure 8: Cook County, IL ICE Detainer Trend



Sources: Author calculations using TRAC data and laws and policies governing local immigration enforcement.

Notes: The policies in figure 8 are the following: (1) Governor, Executive Order; (2) SB 31 Illinois Trust Act; (3) HB 1637 Keep Illinois Families Together Act. (S) is a state level policy. (L) is a local level policy.

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