

# **As federal presence at county jail grows, so do numbers of immigrant detainees**

## **But some clash over public safety merits, exposing another layer of the illegal immigration debate and how best to deal with it**

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For the past 30 years, federal immigration agents have regularly popped in the Travis County Jail and other correctional institutions, combing records and quizzing inmates to identify deportable immigrants and those with criminal records.

But sometime in the future — apparently for the first time ever, and with the blessing of Travis County Sheriff Greg Hamilton — the periodic visits will grow into a permanent presence, as federal agents work around-the-clock in a roughly 8-foot by 10-foot office in the downtown jail.

There, they can question people brought in on any charges — from traffic offenses to murder — about their immigration status. If agents believe someone is in the United States illegally, they can place a "hold" to detain the inmate for possible deportation after the original charges are adjudicated.

U.S. Immigration and Customs Enforcement (ICE) agents are already spending more time at the downtown jail and the county jail complex in Del Valle, with striking results: From Jan. 1 through March 31, agents placed 763 immigration holds on county inmates, an almost 400 percent increase over the same period last year.

Depending on whom you ask, those statistics are either commendable or troubling. Hamilton and his supporters say that giving ICE full-time use of the jail office will increase the agency's efficiency and help keep the community safe from what the sheriff terms "individuals who could possibly be a menace to our society."

But others see a slippery slope of dangerous consequences: immigrants discouraged from reporting crimes or cooperating with police because they fear deportation; crowded jails imposing financial burdens on taxpayers; families separated; and the possibility of racial profiling taking hold, to name just a few.

By driving undocumented immigrants further underground, "this change in policy has undermined public safety for all residents in Travis County. That's really the basic issue

here," said Rebecca Bernhardt, with the American Civil Liberties Union Foundation of Texas.

Since announcing in January that he would give ICE agents greater access to the jail, Hamilton has been criticized by immigrant and civil rights advocates.

"I was floored, to be frank," Hamilton said of the criticism. He said ICE, the FBI and other law enforcement routinely use the jail to interview inmates for their investigations.

Hamilton disputes claims that the Travis County sheriff's department is enforcing immigration law, which is a federal responsibility. The department has a policy that prohibits deputies from asking about immigration status unless it is relevant to a nonimmigration criminal investigation, and it does not participate in a federal program that trains local officers to enforce immigration law.

But critics question the fairness of an enforcement strategy that can lead to the deportation of family members arrested on misdemeanor charges such as traffic offenses — hardly the kinds of crimes that are threats to society, they say. Nearly 62 percent of the immigration detainers issued at the county jail through March 31 were for people whose worst offense was a misdemeanor.

That leaves more than 260 people accused of felony crimes who were detained on immigration violations. (In addition, 26 people issued detainers had no other charge against them. The sheriff's office says they were either picked up on ICE warrants or were held temporarily at the jail en route to a federal detention facility.)

"That's not my call" who gets deported, Hamilton said.

### **'No magic ball'**

Beyond local concerns about law and order and constitutional rights, the controversy highlights the national debate over illegal immigration and the tightening of enforcement after congressional attempts to overhaul immigration laws collapsed last year. Federal officials are arresting, detaining and deporting more people accused of being here illegally than in previous decades.

One of their enforcement tools is the Criminal Alien Program, which seeks to ensure that unauthorized immigrants are not released into communities after their sentences. In a vast area of Texas that includes Austin, the program is well on pace to detain considerably more immigrants than in 2007.

Immigrant and civil rights advocates fear ICE's greater presence in the county jail will lead to profiling and overzealous enforcement, such as the recently reported case of a Latina pulled over by police in Houston. The officer thought it suspicious that the woman, a naturalized U.S. citizen, was driving a new car, the Associated Press reported.

Critics also worry about an erosion of due process rights. Immigration bails are often high. Rather than face long stays in jail, some immigrants — too poor to hire a lawyer and unaware that they may have a legal right to stay in the U.S. — will choose not to fight their case, critics say. In civil immigration law, there is no right to a court-appointed attorney.

Officials stress that inmates accused of immigration violations have access to attorneys' phone numbers. Booking officers also advise foreign-born inmates of their right to have their government notified of their arrest and/or detention.

In recent weeks, a number of criminal defense and civil immigration attorneys accused ICE of wrongly holding U.S. citizens and legal permanent residents, commonly known as green-card holders.

A high-ranking ICE official in San Antonio said attorneys had not provided names of those being wrongly detained, though he said he has asked for them. Immigration law allows for the detention of green-card holders who are accused of certain crimes for which they can be deported, even though they are in the country legally, said Adrian Ramirez, assistant field office director for the San Antonio Office of Detentions and Removal.

At the Travis County Jail, Ramirez said he instructs his agents to talk to all inmates who are foreign-born "and then some," adding: "There's no magic ball that says this person is not here legally."

### **Should everyone be targeted?**

Federal immigration officials say the Criminal Alien Program's mission is to identify the "worst of the worst" criminals who are also violating immigration laws but that their investigations also turn up immigrants charged with lesser crimes.

While significant, arrests through the Criminal Alien Program and ICE's enforcement efforts pale against the millions of people thought to be living in the country illegally — including an estimated 1.6 million in Texas.

Dan Kowalski, an immigration attorney who is not involved in the local protests, said he would rather see ICE focus on catching the worst criminals that it and other federal agencies are already tracking. "By that I mean gangbangers, (human) smugglers, drug-runners. There are probably enough out there that it's a rich pool of target for ICE to go after instead of trying to pick up" someone whose visa expired, he said.

Immigrant advocates say that Hamilton's decision will lead to more separation of families as ICE deports parents booked into the jail for misdemeanors. More than 3 million children born in this country have parents who are undocumented immigrants. It is not uncommon for illegal immigrants, legal permanent residents and U.S. citizens to belong to the same family.

"Well, we didn't separate the families," Ramirez said. "The individuals who are here in the U.S. illegally and go and commit a so-called minor crime are responsible for their bad decisions."

"People may think I'm looking through rose-colored glasses, but if individuals are not arrested for a crime, they will not be seen at the Travis County Jail," Hamilton said.

He said he doesn't intend to change his mind on the arrangement with ICE: "I would be derelict if I did."

Opponents, who count among their ranks more than 30 grass-roots organizations and institutions, have beat a steady drum of protest, including news conferences, meetings with the sheriff, and a community forum where emotions ran high and critics expressed their outrage in blunt terms, with Hamilton sitting a few feet away. They played a prominent role in last week's immigrant rights march in Austin.

"We can't stop what we're doing just because he says 'I'm not going to change,'" said Nicole True, an Austin criminal defense attorney who compared opponents' efforts with fights to abolish slavery and to give women the right to vote. "People said then, 'Well, that's just the way it is. We're just enforcing the law.' But you know what? Sometimes the law isn't just."

A cornerstone of immigrant advocacy is that enforcement crackdowns unfairly punish families who have been allowed to establish roots over many years under an immigration system that people on both sides of the debate agree is dysfunctional. Advocates want laws that secure the border while expanding the numbers of visas — so that more people can come here legally — and create opportunities for undocumented immigrants already here to legalize their status.

Kowalski, the immigration attorney, agrees that protests can push reforms forward. But immigrant advocates may harm their cause when they criticize enforcement, Kowalski said.

"It makes us look like we don't care about the law — and really, we should be focused on changing the law so that we don't need all these enforcement efforts or need fewer of them or more targeted ones," he said.

Meanwhile, Ramirez said the immigration agency's goal of staffing the county jail full-time "is still pretty far away." And Hamilton said that even if ICE did not have office space in the jail, "they will come and do what they have done in the past, which is stand in the corner and do their business."

The Criminal Alien Program

People arrested in Travis County are asked their place of birth when they are booked into custody at the county jail. Immigration agents can review those records, interview inmates and detain people they determine are in the country illegally.

Unless they are able to pay bail for their release, these inmates generally remain in local jails until their original charges are resolved. Then they are moved to federal detention facilities until their immigration case is heard, which can take months or longer.

Nationally, agents issued holds on more than 164,000 unauthorized immigrants jailed on criminal charges in 2007, more than twice the 2006 total. The San Antonio ICE field office has already issued 4,138 holds or detainers this year. In all of 2007, they issued 5,349.

The Criminal Alien Program screens all inmates at all federal and state prisons. Officials say they screen all inmates at 10 percent of the approximately 3,100 local jails throughout the United States. Their goal is to attain full screening at the Travis County Jail.

5,000

Estimated number of visas for low-skilled workers in 2005.

500,000

Estimated number of low-skilled Mexican workers who entered the U.S. illegally in 2005.

278,000

Approximate number of illegal immigrants removed in 2007.

95,000

Approximate number removed with criminal histories.

Source: U.S. State Department, Travis County Sheriff's Department, U.S. Immigration and Customs Enforcement