

## Undocumented immigrants in jail: Who gets deported?

### While federal policy focuses on serious offenders, data show hundreds flagged for deportation for minor infractions

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Despite repeated statements from U.S. Immigration and Customs Enforcement that its main deportation targets are undocumented immigrants considered threats to the public or national security, more than 1,000 people have been flagged for deportation in Travis County in the past three years after arrests for minor infractions such as traffic tickets or public intoxication, an American-Statesman analysis has found.

Meanwhile, ICE data show that the Travis County Jail has become one of the busiest — and most efficient — deportation hubs in the country since federal immigration agents boosted their presence in the jail about four years ago and later began using a controversial program known as Secure Communities to check the immigration status of everyone booked into the jail.

Since its 2008 launch in Harris County, Secure Communities — which helps agents identify potential deportation targets by comparing fingerprints against immigration databases — has been promoted as a tool to help target "the most dangerous and violent offenders" in the nation's jails and prisons.

The program, expanded rapidly under the Obama administration, has become the focal point of a debate over the nation's policy on undocumented immigrants, with opponents arguing that deporting people who have committed minor offenses breaks up families, turns local police into de facto immigration agents and makes immigrants afraid to work with police when they are crime witnesses or victims.

The program's defenders say there shouldn't be a question of which illegal immigrants should get deported because the law is clear: Anyone caught in the country without permission needs to go.

Regardless of any debate over the immigration law or its merits, the Obama administration argues that ICE simply doesn't have the resources to deport every undocumented immigrant who is arrested — at a cost upwards of \$23,000 for every deportation.

ICE says it has the money and manpower to deport about 400,000 people a year, so it has put the emphasis on serious felons, repeat offenders, gang members and other public threats, and instructed its employees last year to use more discretion in deciding who to flag for deportation.

And yet in Travis County, twice as many people have been deported after a misdemeanor arrest in recent years than have been deported after a felony arrest, according to an American-Statesman analysis of ICE and Travis County Jail data.

ICE data don't reveal how many people flagged for a minor offense in Travis County also fell under one of the agency's other priorities: recent border crossers and repeat immigration law violators, people who failed to appear at an immigration hearing and those who ignored a court order to leave the country. ICE records show that more than 500 people deported from Travis County since Secure Communities was launched here fell under one of those categories. It's unclear why they were jailed in the first place.

It's also unclear how many of those arrested for low-level misdemeanors might have had previous criminal records because jail booking records don't reveal that information.

"We've had people arrested for traffic violations here and found out they're wanted for murder in Laredo," said Travis County sheriff's spokesman Roger Wade.

How ICE chooses its targets for deportation can have life-changing consequences for people like Raul Zamora, a 22-year-old urban studies major at the University Texas who was stopped by UT police on campus in November 2009 for a broken taillight.

When officers realized that he had an arrest warrant for failing to pay a previous ticket for running a stop sign, they handcuffed him and took him to the Travis County Jail.

There, an ICE agent asked where he was born, Zamora recalled. "I just knew that it was going to be bad," said Zamora, whose parents brought him to Texas from Mexico as a child. "I thought, 'Oh my God, my life is about to change.'"

The Statesman's investigation sought to test whether the administration is following its own stated priorities by determining how many low-level offenders were among those flagged for deportation — meaning ICE issued a "detainer" requiring that they be held for up to 48 hours after their criminal case was resolved — and whether ICE agents working in the Travis County Jail have followed the recent directives from Washington to focus on high-priority cases rather than minor offenders.

The newspaper analyzed ICE's data, then obtained three years' worth of records from the jail — totaling more than 250,000 bookings between 2009 and 2011 — and found that:

- For every undocumented immigrant deported from Travis County after being arrested for a serious felony, two people were deported after being arrested for some type of misdemeanor, from traffic violations to more serious offenses, such as assault or drunk driving.
- The more than 10,000 people who received ICE detainers — the first step toward possible deportation — over the three-year period included 1,054 people charged only with Class C misdemeanors, which are punishable by fines only.

- Nearly 90 percent of those Class C charges were for public intoxication and traffic violations. It's not clear how many of those people were ultimately deported.

- The number of detainers filed on people charged with Class C misdemeanors has been dropping over the past two years, from an average of 46 a month in the first half of 2010 to an average of 23 a month in the last half of 2011. Since ICE Director John Morton's memo last June instructing employees to use greater discretion, ICE agents have filed about 150 detainers on Class C offenders.

An ICE spokeswoman in Washington, D.C., said the drop in detainers shows that ICE employees in the field are indeed using more discretion.

The policy shift has rankled critics such as U.S. Rep. Lamar Smith, R-San Antonio, who calls it a "back-door amnesty."

"This program simply makes sense," Smith, the chairman of the House Judiciary Committee, said at a November hearing on Secure Communities. "Who wouldn't want to deport a criminal immigrant? ... The administration should enforce all the laws on the books, not just the ones it likes."

### **High deportation rate**

By the time Secure Communities was launched in Travis County in June 2009, ICE agents had already increased their presence in the county jail.

In January 2008, Sheriff Greg Hamilton announced that ICE agents would probably be stationed at the jail 24 hours a day, seven days a week and would be allowed to use an office at the jail.

The announcement rankled immigrant advocates, who accused the sheriff of helping federal agents to target the local immigrant population. Hamilton said last week that the offer of an office was withdrawn soon after — space at the jail was tight, and the office was instead given to Austin police for drawing blood for drunken driving tests.

He said two more immigration agents began working at the jail, in addition to the two or three already there, but that they don't have a constant presence.

"ICE does not have an office in the jail and never has," Hamilton said.

Still, Wade said that ICE agents, who have worked in the jail for decades, legally have access to the jail like any other federal law enforcement agency and can use interview rooms at the jail when they're available.

After ICE agents' presence in the jails increased, so did the number of immigration detainers, which jumped nearly 400 percent in the first three months of 2008 compared with the same period a year earlier.

Secure Communities helped those agents become more efficient by running the fingerprints of everyone booked into the jail through immigration databases. As of Jan. 31, Travis County ranked 11th nationally in the number of people deported from its jails — 2,614, or roughly 19 per week — through Secure Communities, according to ICE data.

And once they are flagged through automated computer checks, undocumented immigrants are more likely to be deported from Travis County than almost any other major population center. Of the 56 U.S. counties with at least 500 deportations through Secure Communities, Travis County ranks third with a 41 percent deportation rate, behind only Charleston County, S.C., and Imperial County, Calif. The reason for Travis County's high rate of deportations is unclear.

Secure Communities has created an odd contrast in Austin, which many consider a "sanctuary city" for undocumented immigrants in part because police are instructed not to ask people's immigration status.

"What people don't realize is that Travis County doesn't have any control of that," Wade said. "It's not Travis County or the Austin Police Department who's deporting anybody; it's the federal government. We don't have any dog in that hunt."

Democratic governors in several states, including Illinois and New York, tried to opt out of the program, citing concerns that people who had committed no crime or minor crimes were being deported. ICE replied that the program is mandatory.

Dallas County Sheriff Lupe Valdez, whose county ranks sixth nationally in deportations with more than 30 per week, said ICE has an office in the Dallas County Jail and that agents can come and go as they please. She said she isn't sure how many people are deported for Class C misdemeanors but that she doesn't think it's many.

With 300 to 400 people booked into the jail each day, "I can't afford to bring someone in on a broken taillight," said Valdez, a former investigator for the U.S. Customs Service, later part of ICE.

### **Caught in the system**

In Travis County, the program has indeed led ICE agents to flag people charged with murder and other violent crimes for deportation. Over the past three years, ICE issued detainers for people charged with 3,614 felonies, including Areli Carbajal Escobar, who isn't likely to be deported because he was sentenced to death last year for the 2009 sexual assault and murder of 17-year-old Bianca Maldonado in East Austin.

ICE says on its website that 90 percent of the undocumented immigrants it removed from the country last year had been charged with a crime or fell under one of its other high-priority categories, such as re-entering the country after being removed.

But for every violent criminal like Escobar, there are more like Zamora, the UT student who said he and his mother and three brothers entered on a tourist visa when he was 6 or 7 and never left.

Because he was brought into the country as a child and graduated from a Texas high school, he pays in-state tuition through the Texas Dream Act, the state law that Gov. Rick Perry signed in 2001 that treats undocumented students the same as state residents for tuition purposes.

After being identified as undocumented by an ICE agent in the jail, Zamora spent more than two years tangled in the federal immigration system, which involved a weekend in jail, a stint at a federal detention center, long visits with lawyers, appearances in federal court and rafts of legal paperwork as he tried to avoid being sent back to a country that he last saw as a 10-year-old during a family trip.

"In a way it was my fault because I didn't pay the ticket," he said.

In the end, he avoided deportation when an immigration judge closed his case in January. But his request for deferred action — a type of disposition that opens the door for immigrants to apply for work permits — was denied, said Denise Gilman, co-director of UT's immigration clinic. The ruling leaves Zamora where he began: undocumented and unable to legally work when he graduates from college.

Bastrop County resident Teresa Ugarte de Paz was targeted for deportation in 2009 not because she was arrested, but because her son was.

Her son, Lazaro Soto Ugarte, was a 17-year-old high school student when he and a friend were arrested and taken to jail. Lazaro Ugarte said he and his friend tried to break up a domestic dispute at the friend's house. Gilman, who represented the mother and son, said the assault charge against him was ultimately dismissed.

When officials discovered he was undocumented — Lazaro, now 19, said he was 2 when his parents brought him and two siblings from Mexico to the U.S. — he was transferred to ICE custody.

Teresa Ugarte, a 49-year-old mother of six, said that when she went to pick up her son at ICE's Austin office, agents photographed and fingerprinted her, too, then filed a deportation case against her.

Ugarte said she spent about \$4,000, which she raised by borrowing from family members and selling tamales door-to-door, on lawyers to fight deportation for herself and her son. Her son recently received deferred action and qualifies for a work permit, Gilman said. He now commutes to Austin to work for his uncle's landscaping business.

Last year, Ugarte filed a legal request to avoid deportation and to obtain permanent residence, and she received work authorization while the application was pending, Gilman said. Ugarte used the permit to get a job at a fast food restaurant and later received deferred action as well.

Lazaro Ugarte said the positive outcome doesn't erase the fear that comes from being undocumented and knowing he can still get deported for another minor misstep.

"It's hard, every day driving out (to Austin) and hoping I don't get pulled over," he said. "What if my brake light doesn't come on? I don't even have an ID."

In February, Lazaro received a ticket for driving without a license, spent a weekend in jail and had an ICE detainer placed on him, Gilman said. When she told ICE officials that he had received deferred action, Gilman said, he was released.

<http://www.statesman.com/news/statesman-investigates/undocumented-immigrants-in-jail-who-gets-deported-2244677.html>