

# **UN**alienable

## **ENCOUNTERS WITH LAW ENFORCEMENT**

MARCH 2021

## Background/Executive Summary

Mississippi is a state of locals—one in which undocumented immigrants are an undeniable part. Almost **80 percent** of undocumented Mississippians have lived in the United States for over five years. These individuals and their families, many of whom are Hispanic, are our friends and neighbors. They make up the fabric of our communities. As **Mayor William Truly Jr.** of Canton articulated at a field hearing on the 2019 immigration raids, Mississippi immigrants “are not gang members, rapists, or murderers, but folks who work, pay taxes, purchase goods, [and] take care of each other and their families.”

Despite immigrants’ indispensable position at the local level, Mississippi counties are currently rated as amongst the **highest** in the country in terms of their involvement with Immigration and Customs

Enforcement (ICE). We share places of worship, our children attend the same schools, yet undocumented immigrants and their families are increasingly driven into hiding by the threat of federal immigration authorities whose presence in our communities is made possible through arrangements with local law enforcement.

This policy brief outlines several ways in which this interagency entanglement takes place. The brief is divided into three sections. First, it addresses ICE detainers, which extend local detention to facilitate the transfer of an individual to ICE custody. Second, it assesses state and local practices and policies that lead up to that initial detention. And finally, it provides recommendations for local, state, and federal entities.

## ICE Detainers

A recent **report** by the Migration Policy Institute found that “most ICE arrests and removals originate with local jails and state prisons.” Through ICE detainer requests, federal immigration authorities ask local jails to hold individuals for up to an additional 48 hours after their initial detention period. These requests are purely voluntary—local law enforcement has no obligation to hold anyone for ICE. Nevertheless, data from Syracuse University’s **TRAC Immigration** program shows that over **40 counties** in Mississippi have received at least one ICE detainer as of June 2020, totaling over 19,000 of these requests across the state, with only one recorded refusal by the receiving agency. These detention requests, while commonplace, invite a host of harms to public safety that warrant heightened scrutiny.

### Obstruction of Local Policing

Collaboration with ICE detainers ultimately obstructs local policing. Scott County Sheriff Mike Lee recalls one instance in which a pregnant woman was being held on misdemeanor charges when she started to experience complications with her pregnancy: “I’m

not going to continue to hold her here for a small shoplifting charge...and put her baby at risk. We’re not a hospital. So we let her go. And the next thing you know, I’ve got someone from ICE telling me how bad I did things”; “it’s a shame that you can get in trouble by not asking that question, by helping someone that’s just here to make a living, that came out of a drastic situation,” he says. “They [undocumented immigrants] are just as good as citizens in Scott County as they would be in their own home country.”

A **majority** of prosecutors, judges, and police officers report that ramped-up immigration enforcement also makes it more difficult to protect local communities from crime. One **study** from UNC Chapel Hill shows that collaboration between ICE and local jurisdictions produces a perception amongst Hispanic immigrants that law enforcement is not a source of protection. The result is mass underreporting of crime and emergencies, due to the risk of ICE involvement. The chilling effect on immigrant victims and witnesses of crimes results in the increased victimization of the Hispanic community as a whole, because perpetrators assume they will not

go to the police.

The Canton, Mississippi Police Chief Otha Brown **acknowledged** that this is an “ongoing problem” as recently as December 2020 after the home of a local Guatemalan family was broken into and two young people, one of them pregnant, were killed. On his own office’s relationship with the community, Sheriff Lee states, “If you’re a victim, we want to make sure we take care of you. You’re a part of this community...But we have that stigma that we work with ICE, so it does hinder...doing our job here.”

## The COVID-19 Pandemic

In the current moment, ICE detainers also enflame the COVID-19 pandemic. Because posting bail may not actually result in release for a person subject to an ICE detainer, immigrant detainees often remain in pretrial custody longer than they otherwise would. Detainers thus increase the number of people in detention, which public health experts **caution** can “amplify epidemics.” The former chief medical officer of Rikers Island, Dr. Homer Venters, similarly **acknowledged** that “[jail] is basically a system designed to spread communicable disease.” And after a person is held on the detainer, they are then typically placed in ICE detention, further exposing them to COVID-19 as a result of local law enforcement’s voluntary decision.

These threats are more than theoretical: At least **20 people** died in ICE custody in FY 2020. That is more than double the number of people who died in ICE detention the previous fiscal year. Over one year into this pandemic, we also know that these illnesses ripple outwards, as the continued incarceration of many who pose no threat to public safety has hit not only detainees but also local communities and detention facility staff, **overwhelming** Mississippi’s medical resources.

## Impact on Local Economies

Exacerbating the grave human cost of ICE detainers,

these agreements also drain local economies. For years, these programs have been criticized by a variety of policing institutions, including the **Major Cities Chiefs Association** and the **Presidential Task Force** on 21st Century Policing, for diverting local tax dollars from community priorities. The Center for American Progress released a **report** that analyzed 40 localities with current 287(g) agreements<sup>1</sup> and found that immigrant households in those communities generated almost \$66 billion in spending power and contributed \$24 billion in tax revenue. The poultry factories in Mississippi make up a **multi-billion-dollar industry**, the wealth of which is largely generated by both documented and undocumented immigrant labor. With one of the country’s **weakest economies**, our state cannot afford this ongoing attack on some of its most productive members.

## Legal Liability

ICE detainers also present legal liabilities for local law enforcement. A **report** by the Immigrant Legal Resource Center found that “ICE regularly violates the constitution and federal laws by issuing unlawful detainers”; however, the responsibility to account for those violations often falls on local law enforcement. Federal courts have consistently held that local agencies and officials **can be sued** for effectuating ICE detainers. Police and sheriffs across the country have paid millions of dollars in damages, settlements, and attorney’s fees for detainer arrests. The financial cost of ICE detainers on local policing became most apparent in October of last year, when Los Angeles County paid **a \$14 million settlement** after a class action against the unlawful effectuation of ICE detainers by its sheriff’s department.

The likelihood of litigation in Mississippi is only escalated by a lack of education across law enforcement offices. Some local police, for example, have even admitted to not knowing that individuals held on a detainer must be released after 48 hours if not taken into ICE custody.

<sup>1</sup> 287(g) agreements **delegate** federal authority to carry out certain immigration enforcement activities to police officers and sheriffs’ deputies. While ICE detainers are effectuated on a case-by-case basis and apply only to individuals’ detention, 287(g) agreements purportedly give local law enforcement broad authority to interrogate suspected undocumented detainees, prepare charging documents to initiate immigration proceedings, and/or engage in other operations specific to immigration enforcement. There are currently no 287(g) agreements in Mississippi.

## Practices and Policies

The harms that arise from the entanglement of local, state, and federal law enforcement activities are not restricted to the ICE detainer process. **Research** shows that the existence of a pipeline from local to federal agencies promotes Fourteenth Amendment violations at the local level through racial profiling and other abusive policing policies and practices.

### Routine Harassment

Studies confirm that collaborative agreements between local law enforcement and ICE correlate with over-policing and discriminatory law enforcement practices. One **study** on the 287(g) program in North Carolina found that these interagency arrangements are used “primarily to deport individuals who have committed minor crimes and driving violations”—not serious or violent crimes, as ICE claims. Accordingly, there was no empirical evidence of a reduction in crime after 287(g) adoption. There was, however, an increased rate of racial profiling evidenced, for example, by a higher concentration of traffic checkpoints around locations frequented by Hispanics such as Catholic churches and certain trailer parks.

The findings in North Carolina mirror commonplace experiences in Mississippi. Public records collected by *The Clarion-Ledger* in 2017 showed that many of the **roadblocks** set up by the Madison County Sheriff’s Department in 2007 were in areas with higher concentrations of African-American or Hispanic residents. A lawsuit by the ACLU of Mississippi prompted the creation of a Community Advisory Board in Madison County to address these and related abuses; however, meetings have markedly low turnout amongst the county’s Hispanic population, likely due to the persistent community fear of encounters with law enforcement.

What is plain is that mistreatment is a constant of law enforcement operations not only in Madison County but also across the state. After the recent murders in Canton, for example, conversations with the community highlighted how a history of police misconduct left many **feeling unsafe** and mistrustful throughout the ongoing investigation.

The fear that many Mississippi immigrants experience in the presence of law enforcement is not only a product of past traumas but also a justified reaction to ongoing harassment. Vanessa, an immigrant from Mexico who has lived in Mississippi for almost two decades, reports experiences as recent as February of this year in which she felt that she was stopped by the police because of her presumed nationality. Community testimony also includes mention of abusive rhetoric and unwarranted escalations by law enforcement. In one case, for example, a then-pregnant woman recalls being pulled over by an officer who, without warning or introduction, immediately drew his firearm and yelled, “Open the damn fucking window or I’ll shoot you!”

Without exception, every community member interviewed for this project expressed a sentiment that Hispanic Mississippians—no matter their conduct or immigration status—are treated “like criminals” by local law enforcement and ICE. This language perfectly mirrors that used by Lorena Quiroz, now-Executive Director of the Immigrant Alliance for Justice and Equity, in her 2019 **testimony** citing one victim of the poultry factory raids who witnessed ICE treat immigrants “like animals, like criminals taunted” in the face of tremendous hardship. Two and a half years is too long to wait for progress on an issue that so severely subverts basic principles of dignity and equality.

### Policies in Focus

#### Sanctuary cities

While a number of **jurisdictions** have started to enact statewide policies restricting the use of their agencies’ time, money, or other resources from being spent on immigration enforcement, Mississippi is amongst the few that have passed “**state preemption**” laws to limit local jurisdictions’ authorities to regulate their law enforcement officers’ cooperation with ICE. Mississippi’s **2017 law** (SB 2710) was likely a response to an **anti-profiling ordinance** in Jackson that had been in place since 2010 without issue. Although state law now prohibits sanctuary cities in Mississippi, it is worth noting that sanctuary policies have countless benefits, which have been obscured by several recurring myths:

**Myth:** Sanctuary policies “breed crime.”

**Fact:** Sanctuary policies **do not result** in a rise in crime. To the contrary, the **Immigrant Legal Resource Center** reports that “[c]ommunities with sanctuary policies have higher median incomes, lower poverty, lower crime rates, and lower unemployment than communities that do not.” One reason for the reduced crime rate may be that undocumented immigrants in sanctuary cities feel safer reporting crimes or emergencies than do those who live under the threat of immigration enforcement.

**Myth:** Sanctuary policies obstruct compliance with federal law.

**Fact:** Courts across the country have **held** that states and localities are constitutionally entitled to opt out of immigration enforcement, and nothing in federal law commands their participation. In fact, preventing inquiry into individuals’ immigration status **ensures equal treatment** under the law and prevents the Fourth Amendment violations that arise through ICE detainers. Sanctuary policies also align with the spirit of our criminal legal system, which rejects double punishment, by ensuring that criminal enforcement does not also lead to immigration enforcement.

Sanctuary policies allow immigrants and their families to be full participants in their communities. A **survey** conducted in San Diego found that the majority of respondents were more likely to do business, participate in public events, place their children in after-school or day-care programs, and seek employment—all behavior that Mississippi communities encourage—if assured that local law enforcement would not cooperate with ICE.

## Government-issued identification

IDs are an essential tool for daily life that most undocumented Mississippians are denied to great consequence. For example, a lack of ID is one source of the chronic obstacles that undocumented immigrants face when attempting to open a checking account, which forces many to keep cash in their homes. The expectation of loose cash is the **suspected** motive behind many of the home invasions, including the recent murders in Canton, that Hispanic immigrants are disproportionately victims of. Some financial

institutions allow individuals to open accounts without the need to submit information about their immigration status; but while **local organizations** like the Mississippi Immigrants Rights Alliance are actively engaged in outreach to highlight those institutions and processes, there remains a continued lack of access and uncertainty across the community.

Another major challenge for many undocumented Americans is access to driver’s licenses, which those in Mississippi are currently denied. Driving is **essential** for many of us to commute to work, and this is especially true for the undocumented immigrants whose labor in Mississippi has been **deemed** “vital to the American people during this emergency.” Their lack of access to driving privileges does not stop them from going to work, it simply makes our roads less safe by denying a sizable portion of the driving population a proper education in our traffic rules.

A growing number of **states** (including DC and Puerto Rico) are passing laws to give undocumented immigrants driver’s privileges, recognizing that these laws reduce traffic and alcohol-related accidents. Instead of following this trend, however, some law enforcement offices in Mississippi have weaponized driver’s licenses as a tool to further antagonize the immigrant community. According to Vanessa, the absence of a driver’s license often triggers an immediate phone call by local law enforcement to ICE. Community testimony highlights how the penalties that follow have worsened in recent years: Minor traffic fines that once capped at several hundred dollars now regularly match or exceed \$1,000 for Hispanics (with one individual reporting a fine as high as \$10,000), and arrested individuals are often held until ICE’s arrival regardless of whether or not their bail is paid.

Mississippi’s identification scheme actively disadvantages even documented immigrants. Authorized non-citizens in Mississippi receive a **distinct ID** that highlights their immigration status. Identification that draws attention to an individual’s immigration status raises suspicion against that individual, including by police who might **confuse** lack of citizenship with lack of documentation. Many documented immigrants in Mississippi now intentionally carry visas with them in order to prove their immigration status when pulled over at roadblocks.

## Conclusion

Donald Trump's [Executive Order 13768](#), which sought to coerce further local-federal immigration collaboration, was [revoked](#) earlier this year, but the harmful practices that it facilitated are ongoing. In the 2019 hearing on Mississippi's immigration raids, Rep. Bennie Thompson [remarked](#), "...our communities are living in fear, people are afraid to leave their homes, children are terrified to go to school because they may return home to find their remaining parent gone, and

local businesses are suffering." One and a half years later, and that trauma remains palpably [relevant](#). It is urgent that local, state, and federal bodies act in their respective capacities to, in the [words](#) of Secretary of Homeland Security Alejandro Mayorkas, "bring an immediate end to the inhumane and unjust treatment of immigrants." Our health, safety, economy, and constitution depend on it.

## Recommendations

### For state and local bodies

#### Prioritize public safety and equitable policing.

- Issue detailed policies and procedures to ensure unbiased policing.
- Expand access to government-issued forms of identification.
- Make drivers' education and privileges available to Mississippi residents irrespective of their immigration status.
- Issue an immigration-neutral form of government identification that is uniform and accessible to all Mississippi residents.

#### Enhance transparency and accountability mechanisms to address the policing of immigrant communities.

- Collect and publish local arrest and crime data related to any collaboration with ICE.
- Design complaint mechanisms that are safe, accessible, and trustworthy.

#### Improve law enforcement relations with immigrant communities.

- Engage in community outreach, education, and open lines of communication with immigrant communities.

- Conduct regular trainings for officers and investigators on cultural consciousness and best practices to protect and service immigrant populations
- Hire bilingual, bicultural, and/or culturally sensitive law enforcement officers.

### For the Biden administration and federal agencies

#### Reduce the use of ICE detainers and other interagency agreements.

- End the ICE detainer regime and restrict ICE to requests for notice of an individual's release.
- End any agreements that allow local law enforcement to directly participate in immigration enforcement.

#### Prioritize civil rights.

- Direct the Department of Justice (DOJ) Office of Civil Rights and Civil Liberties to produce a publicly available report that:
- Assesses the scope and civil rights impact of the entanglement between local law enforcement and federal civil immigration enforcement and
- Recommends ways to address and mitigate such risks.
- Direct ICE field offices to conduct civil liberties trainings and monitor local law enforcement practices where relevant.