

ICE at ACRJ: Fact or Fiction?

For more information

Deena Sharuk
deena@justice4all.org
1000 Preston Avenue, Suite A
Charlottesville, VA 22903

- On January 25, 2018, the Albemarle Charlottesville Regional Jail (ACRJ) Authority Board held a special meeting to review the jail's voluntary policy of additional notification of Immigration and Customs Enforcement (ICE) in advance of the impending release of undocumented immigrants incarcerated at the jail. At that meeting, ICE Field Office Director Russell Hott testified in support of the voluntary additional ICE notification policy. Based in part on Mr. Hott's representations, the ACRJ voted 6 to 4 to maintain the additional ICE notification policy.

The Legal Aid Justice Center has identified five false or misleading statements made by Mr. Hott in his testimony to the Board.

1. ICE manipulated the data to make Charlottesville's immigrant population seem dangerous.

FICTION: "Of the folks we removed this last year from this jail—the amount of charges—we had ... 52 DUIs, 3 hit-and-runs, we had over 10 drug-related offenses, 4 abductions, 2 malicious woundings, 33 sex offenses ... 26 assault and batteries, 4 homicides, 3 protective order violations, breaking and entering, 3 larceny charges, and 3 weapons offenses, so you can see that the individuals that we are removing from the ACRJ or that are in custody *have violated* more than just the immigration of the United States."

FACT: LAJC's analysis of the non-U.S. citizen foreign-born population incarcerated at ACRJ in 2017 indicates that ICE's testimony significantly over-counted the number of individuals whose most serious offense was a DUI, an abduction, a sex offense, or an assault.ⁱ ICE also failed to mention that ACRJ housed 24 immigrants whose most serious charges were 'Profane Swearing/Drunk in Public,' as well as 29 immigrants whose most serious charge was related to driving without a license. Moreover, ICE often removes people before they have been convicted of anything. Data provided to the Board by ACRJ in July indicates that, between July 1, 2016 and June 27, 2018, at least six people were removed by ICE pre-trial, and after a local judge or magistrate had given them bond.ⁱⁱ Mr. Hott's statistics—and the perception of dangerousness they conveyed—are not supported by the data.ⁱⁱⁱ

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2. ICE implied that individuals benefit from being detained.

FICTION: “The other thing I want to say is that ICE has partnered with several non-governmental organizations and faith groups who do work with these populations...they offer pro-bono services to those who can’t afford their own representation.”

FACT: This statement implies that all people in detention have access to pro bono legal representation—this is not the reality. Because most immigration violations are tried in civil court, immigrants are denied access to a court-appointed attorney. And while individuals in detention are provided with a list of referrals for pro-bono legal services, there are not enough pro-bono attorneys to meet the demand. Access to legal representation is scarce. In a study of deportation cases between 2007 and 2012, researchers found that only 37% of all immigrants were able to secure legal representation in their removal cases. That number dropped to 14% for immigrants in detention. Having that representation makes a big difference—represented immigrants in detention were four times more likely to be released from detention and twice as likely to get relief from deportation.^{iv}

3. ICE denied conducting raids, while practicing sweeping and indiscriminate enforcement.

FICTION: “[ICE] does not conduct raids.”

FACT: Not only does ICE frequently conduct raids throughout the country,^v it very recently conducted a raid throughout the state of Virginia and in the greater Charlottesville area. From July 9-20, 2018, ICE arrested 132 individuals around Virginia and the DC area in what they dubbed Operation ‘Eagle’s Shield.’ While ICE claims that this operation aimed to target ‘dangerous criminal aliens,’ during that same period, ICE indiscriminately arrested at least **four** individuals in Charlottesville and Albemarle with either no criminal charges or low-level misdemeanors.^{vi}

4. ICE cannot satisfactorily explain why it cannot pursue a warrant, just like other law enforcement agencies.

FICTION: “There are laws of the United States—such as involving applying for a U-Visa—I cannot disclose that information to anybody.” AND “Oftentimes there are many instances where there are things on the other side of the global community that can’t be seen by local law enforcement.”

FACT: When Mr. Hott was asked why ICE was not pursuing warrants before taking custody of members of our community, he indicated that ICE had sensitive information or intelligence that could not be disclosed to local law enforcement. The truth is that ICE can pursue criminal warrants for arrest, and that sensitive information (including information collected in the U-Visa Process) can be disclosed to a judicial officer, such as a judge or magistrate in pursuit of a warrant.^{vii} ICE often refers cases to federal courts where sensitive evidence is regularly used in securing a criminal warrant.^{viii}

5. ICE falsely stated that being undocumented is a crime.

FICTION: “It is a crime to be present in the United States without documentation.”

FACT: As the US Supreme Court stated in 2012 in the seminal case *Arizona v. Texas*, 567 U.S. 387 (2012), being in the United States without status is a civil matter, *not* a criminal matter. While crossing the border without permission can be prosecuted criminally (usually as a misdemeanor), many immigrants who are in the United States without status have legal entries into the U.S., including people who have overstayed a visa, been waved through a border crossing, or entered on a border crossing card.^{ix} Furthermore, the vast majority of immigrants in removal proceedings are charged civilly, not criminally.^x By charging immigrants civilly, ICE ensures that the charged immigrant is not entitled to a court-appointed attorney during the course of their hearings.^{xi}

CONCLUSION

In light of these misrepresentations, the ACRJ Board should be highly skeptical of ICE’s data and arguments in support of voluntary collaboration.^{xii} February 2018 was not the first time ICE has tried to deceive this community to serve its own ends. For example, when the ACRJ adopted a policy not to honor ICE detainers to hold inmates beyond their release dates, ICE began presenting the ACRJ documents with the word ‘Warrant’ at the top of each sheet, even though they had not been issued by a judicial officer.^{xiii} These faux-warrants were presented to the ACRJ in order to mislead jail officials to believe that they had a legal duty to comply with the terms of these ICE-concocted forms.

The ACRJ Board should require ICE to abide by the basic constitutional norms that all law enforcement are required to observe, including requiring probable cause for an arrest—demonstrated by a warrant *signed by a judicial officer*.

The stakes are high. ICE notification is the first step in family separation. Once an immigrant is in detention, he or she could be transferred to detention centers out of state and across the country, separating immigrants from their families and children and making it significantly harder for them to access legal representation—If they can afford it. Moreover, forced separation for any length of time causes both children and adults extreme emotional distress from which they may be unable to fully recover.^{xiv}

Members of our community have attended the ACRJ Board Meetings pertaining to additional ICE notification, and have overwhelmingly spoken out against this practice. In the eyes of the community, this practice entangles local law enforcement with ICE—posing a threat to our collective public safety; is discriminatory by its very nature; and is offensive to constitutional principles and the ethos of our local civic values.

ⁱ In response to a request for information, ACRJ provided detailed data directly from its database on every individual incarcerated at ACRJ for 2016, 2017, and part of 2018. Spreadsheet on file with LAJC.

ⁱⁱ “List of Individuals from July 1, 2017-June 27, 2018 whom ICE filed Detainers, requested voluntary notification of their release from custody AND took physical custody of the Individual from this facility,” Attachment D to ACRJ Board Packet for July 12, 2018.

ⁱⁱⁱ We do not know exactly how Mr. Hott arrived at these numbers, but it is likely that a single individual charged with multiple offenses was counted multiple times. In our analysis, we counted each individual once, using the most serious offense charged. Using an unduplicated count (*i.e.*, counting only the most serious offense for any one individual, not charges) for all persons whose citizenship was listed as unknown or other than U.S., LAJC identified 37 DUIs, 1 abduction, 8 sex offenses, and 18 assaults. Of note, the 4 homicide charges listed by Mr. Hott stem from an incident in which one death occurred, and the individuals involved are currently being prosecuted in Albemarle Circuit Court.

^{iv} Ingrid Eagly and Steven Shafer. “Access to Counsel in Immigration Court.” American Immigration Council Special Report, September 2016.

^v See: “ICE Raids Meatpacking Plant in Rural Tennessee, More Than 95 Immigrants Arrested.” Washington Post, April 6, 2018; “Utter Chaos, ICE arrests 114 Workers in Immigration Raid at Ohio Gardening Company.” Washington Post, June 6, 2018; “ICE Arrests Nearly 150 Meat Plant Workers In Latest Immigration Raid in Ohio.” Washington Post, June 20, 2018.

^{vi} “ICE operation targeting public safety threats nets 132 arrests in DC, VA.” <https://www.ice.gov/news/releases/ice-operation-targeting-public-safety-threats-nets-132-arrests-dc-va#wcm-survey-target-id> on August 17, 2018.

^{vii} 8 USC 1367(b)(2); 8 USC 1367(b)(8).

^{viii} E.g. *Yanez-Marquez v. Lynch*, 789 F.3d 434 (4th Cir. 2014). (Where ICE sought a criminal warrant signed by a judicial officer); “Prosecuting Migrants for Coming to the United States.” American Immigration Council. May 1, 2018. Available at: <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>; US Immigration and Customs Enforcement “Homeland Security Investigations” <https://www.ice.gov/hsi> August 21, 2018 (detailing its *criminal* investigations in sensitive matters including human trafficking and “In HIS’s first full year in existence...Criminal arrests rose by almost 30 percent; indictments by nearly 18 percent; search warrants by almost 60 percent... This standard of excellence has continued ever since...”)

^{ix} 8 USC 1325, 1326.

^x In 2017 there were 59,910 criminal prosecutions of immigrants for immigration law violations. “Criminal Immigration Prosecutions Down 14% in FY 2017.” TRAC Report. <http://trac.syr.edu/tracreports/crim/494/> August 20, 2018. However, ICE arrested 143,470 individuals in 2017 – charging them civilly (*i.e.* not criminally). “Fiscal Year 2017 ICE Enforcement and Removal Operations Report.” US Immigration and Customs Enforcement. <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf>. August 20, 2018.

^{xi} *United States v. Gasca-Kraft*, 522 F.2d 149, 152.; *C.J.L.G v. Sessions*, 800 F.3d 1122 (9th Cir. 2018).

^{xii} ICE’s history of deceiving public officials is well-documented. See: *Ramirez Medina v. Department of Homeland Security*, Case 2018 WL 2214085 (W.D. Wash. 2018), See Also: “This Case is About a Lie,’ An ICE Attorney Forged a Document to Deport an Immigrant. ICE didn’t Care Until the Immigrant Sued.” Slate. <https://slate.com/news-and-politics/2018/08/ignacio-lanuza-got-deported-because-an-ice-agent-forged-a-document-ice-didnt-care-until-lanuza-sued.html> August 21, 2018; “ICE Lies: Public Deception, Private Profit,” Detention Watch Network and the National Immigrant Justice Center. https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf August 21, 2018; “Federal Judge Calls ICE, Homeland Security FOIA Response ‘Inadequate’” Daily Report. <https://www.law.com/dailyreportonline/2018/07/30/federal-judge-calls-ice-homeland-security-foia-response-inadequate/?sreturn=20180721133901> August 21, 2018; “CBS News interview with ICE whistleblower interrupted by surprise visit from government agents.” CBS News <https://www.cbsnews.com/news/former-ice-spokesman-james-schwab-opens-up-about-resignation-trump-administration/> August 21, 2018.

^{xiii} These documents were not warrants under the law. Both Federal and Virginia Law require that a warrant for arrest only be issued by a judicial officer, such as a judge or a magistrate, upon a finding of probable cause. See: Fed. R. Crim. P. 4(b)(1)(C), 4(b)(1)(D); Va. Code Ann. § 19.2-71. ICE produced documents signed by ICE Officials that were titled “Warrant” and presented them to the ACRJ. These are not warrants for arrest under both Federal and Virginia law because there was no signature by a judicial officer, nor an impartial assessment of evidence that there is probable cause to believe that the targeted individuals committed any crimes.

^{xiv} See: Coan, James, “The Trump administration is committing violence against children.” Washington Post https://www.washingtonpost.com/opinions/the-trump-administration-is-committing-violence-against-children/2018/06/15/9be06440-70c0-11e8-bd50-b80389a4e569_story.html?noredirect=on&utm_term=.c5c7ecec4df1 August 20, 2018.