

# Immigration

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## U.S. Citizens Targeted by ICE

U.S. Citizens Targeted by Immigration and Customs Enforcement in Texas

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**T**exas law SB 4 imposes jail time on local police who fail to detain anyone whom federal Immigration and Customs Enforcement (ICE) requests. Data from Travis County, Texas, show that ICE targets large numbers of U.S. citizens. From October 2005 to August 2017, 814 targets of ICE detainers in Travis County—3.3 percent of all requests—claimed U.S. citizenship and presented officers with a Social Security number (SSN). ICE subsequently canceled or declined to execute about a quarter of those detainer requests. Based on statements from ICE officials, the best explanation for not executing these detainers is that ICE targeted *at least* 228 U.S. citizens in the county before canceling or declining to execute those detainers. SB 4 will likely increase the detention of U.S. citizens for supposed violations of immigration law by preventing local police from releasing them.

Applying the rate of wrongful detainers in Travis County to all detainers in the state of Texas from 2006 to 2017 implies that ICE wrongfully placed detainers on at least 3,506 U.S. citizens statewide. Other evidence shows that ICE regularly releases U.S. citizens after it executes a detainer, meaning that the true number of U.S. citizens initially targeted is likely even higher than that estimate. The fact that ICE often discovers its own mistakes only mitigates the harm inflicted on U.S. citizens wrongfully detained under the suspicion that they are illegal immigrants—and does not protect these jurisdictions from lawsuits under SB 4. Local law enforcement in

Texas needs the flexibility to sort through these citizenship claims without the threat of jail time imposed by SB 4.

### BACKGROUND

Every state and local law enforcement agency submits the names and fingerprints of arrested persons to the Federal Bureau of Investigation (FBI) to check for outstanding warrants. In recent years, the FBI has shared this information with ICE. If ICE wants to arrest someone in state or local custody, it sends the jurisdiction an I-247 Notice of Action Immigration Detainer Form (ICE detainer). The ICE detainer requests that the locality detain the arrested person for up to 48 hours after his or her expected release date to allow ICE to make an arrest.<sup>1</sup> Unlike with criminal warrants, an ICE agent can issue a detainer without first presenting evidence of probable cause to a federal judge.<sup>2</sup>

In January 2017, Travis County Sheriff Sally Hernandez announced that the county would not hold people—excepting those charged with certain violent crimes—pursuant to a detainer unless ICE obtained a judicial warrant or court order.<sup>3</sup> In response, the Texas legislature passed SB 4.<sup>4</sup> It requires all state and local law enforcement agencies in Texas to comply with any ICE request.<sup>5</sup> SB 4 creates a Class A misdemeanor that imposes a term of up to a year in prison for any state official who does not honor an ICE detainer.<sup>6</sup> Travis County has again complied with detainers since September 2017.<sup>7</sup>

SB 4 provides a very limited exception for people who can provide proof of their citizenship at the time of the detainer, but it can sometimes be difficult or impossible for detained U.S. citizens to obtain such proof while in custody.<sup>8</sup> In 2015, for example, ICE issued a detainer for U.S.-born Ricardo Garza; Texas jails in Grand Prairie and Dallas ultimately detained him for more than a month as he understandably had trouble obtaining a copy of his birth certificate from behind bars.<sup>9</sup>

Local police officers often cannot tell whether naturalized immigrants or those born abroad to American citizens are themselves U.S. citizens because the citizenship laws are complex.<sup>10</sup> Some people's citizenship claims rest on evidence that they may not even possess, such as their parents' naturalization certificates. ICE detained Lorenzo Palma in Texas for almost two years while he attempted to prove his derivative citizenship claim.<sup>11</sup> These cases can be so difficult that even the Board of Immigration Appeals admitted in 2015 that it had misinterpreted citizenship law and wrongfully denied some people's U.S. citizenship claims for seven years.<sup>12</sup>

The state of Texas has argued that if it is reasonable for ICE to detain an arrestee on the basis of a detainer, then it is also reasonable for local officials to do so.<sup>13</sup> Even if ICE always issued detainers on a reasonable basis, this assumption is unwarranted because local officials often have additional information that could make it unreasonable for them to detain that arrestee on suspicion that he or she is an illegal immigrant. For instance, local officials may have access to the person's personal history and may have had an opportunity to interview him or her. Texas officials regularly encounter the targets of ICE detainers who allege birth on U.S. soil as well as citizenship and so have an obligation to evaluate those claims on an individual basis.

## DATA FROM TRAVIS COUNTY, TEXAS

This brief uses data on ICE detainers from the Travis County Sheriff's Office in Texas, covering the period from October 1, 2005, through August 25, 2017.<sup>14</sup> The Cato Institute obtained the data through the Texas Public Information Act. Travis County collects citizenship information as a routine element of the booking process before ICE issues a detainer, which means that the citizenship claims are not made as a defense against a detainer.<sup>15</sup> If ICE investigates the detained person's citizenship claim and determines that an ICE detainee subject is a U.S. citizen, it may issue a cancellation form, but that form does not record the reason for the cancellation.<sup>16</sup> At that time, Travis County records the cancellation as a "warrant withdrawn." In other cases, ICE may simply decline to

execute the detainer without a formal cancellation.<sup>17</sup>

Travis County received 24,269 ICE detainer requests for fiscal years 2006 through 2017 (up to August 25). In about 3.3 percent of all ICE detainer requests, amounting to 814 ICE detainer subjects, individuals told the sheriff's office that they were born in the United States or were a U.S. citizen and presented an SSN (Figure 1).<sup>18</sup> Of those 814 cases, ICE did not cancel or decline arrest in 586 cases, equal to 2.4 percent of all ICE detainers. However, ICE did formally cancel its detainer requests in 156 cases and declined to arrest in another 72 cases, equal to about 0.6 percent and 0.3 percent of all ICE detainers, respectively. Thus, ICE chose not to execute its detainers in 228 cases where a person asserted U.S. citizenship, which amounted to 0.9 percent of all detainer subjects.<sup>19</sup>

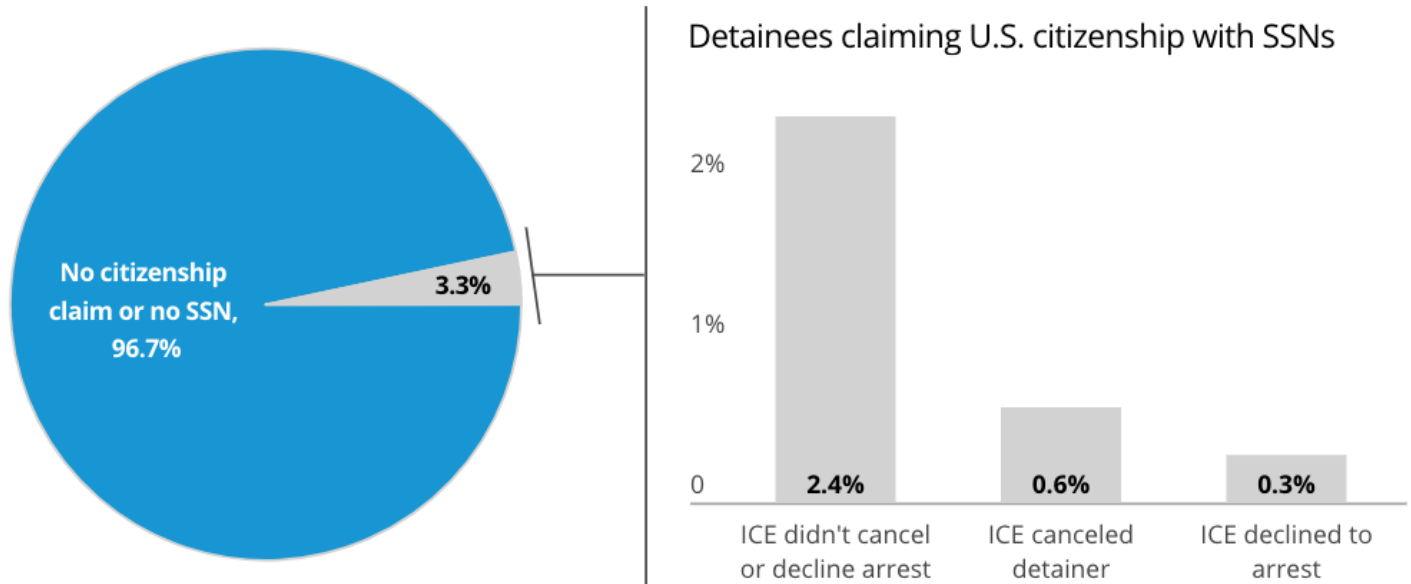
The best explanation for these unexecuted detainers is that ICE believed the detainees' citizenship claims. ICE requires agents to investigate claims of U.S. citizenship before an arrest and to issue detainers based on the agent's assessment of probable cause of deportability. Thus, it likely canceled or declined to execute these detainers because the detained individuals showed that they were, in fact, U.S. citizens.<sup>20</sup> As a result, ICE detainer subjects in Travis County who claimed citizenship and presented an SSN were nearly four times more likely to have detainers unexecuted against them than other detainer subjects were.<sup>21</sup> In court, ICE Supervisory Detention and Deportation Officer John Drane testified that he could think of only two reasons for a canceled detainer: the person was a legal permanent resident who did not have a conviction for a crime that would make him or her removable—inapplicable to people claiming U.S. citizenship—or the person was a U.S. citizen.<sup>22</sup>

ICE issued 373,227 detainers in the entire state of Texas from FY06 through November 2017.<sup>23</sup> Applying the rate of 0.9 percent to the entire state implies that ICE wrongfully targeted 3,506 U.S. citizens in Texas. Nationwide, ICE issued 2,115,333 detainers during the same period, implying that it may have wrongfully targeted roughly 19,873 U.S. citizens nationwide with immigration detainers. This number includes only those who had their detainers canceled or unexecuted. ICE also arrested hundreds of people and then released them after discovering evidence of U.S. citizenship, meaning that these numbers likely underestimate the total number of U.S. citizens who were targeted by ICE.<sup>24</sup>

## INDIVIDUAL CASES FROM TRAVIS COUNTY, TEXAS

Travis County has not released a list of individuals subject to detainers who claimed citizenship, but two cases are

**Figure 1**  
ICE detainer subjects claiming U.S. citizenship in Travis County, FY06 to FY17



Source: Travis County Sheriff's Office.  
Note: Data through August 25, 2017.

known. In 2017, Travis County arrested Arcane Tossou for spitting at an officer.<sup>25</sup> During booking, Tossou told the sheriff's office that he had been born in Texas, but ICE issued a detainer for him anyway.<sup>26</sup> Legal documents from the county's pretrial services list his place of birth as Texas.<sup>27</sup> A judge ruled Tossou incompetent to stand trial because of mental illness, and because the county declined to honor the detainer, he was able to obtain treatment at a local hospital. Had the detainer remained in effect, the county would have turned him over to ICE, which could have placed him in an immigration detention facility—an outcome more likely under SB 4.

Tossou is only one of at least a half dozen mentally disabled U.S. citizens targeted, detained, or deported by ICE in recent years. In 2008, for example, the agency issued a detainer for Mark Lyttle, who was born and raised in North Carolina and who suffers from a mental disability.<sup>28</sup> ICE detained him for two months before deporting him to Mexico. When he attempted to reenter, he was deported again. He lived homeless for months, eating from garbage and even being deported by Mexico to Guatemala. He later proved his U.S. citizenship and won a \$175,000 court settlement.<sup>29</sup>

The sheriff's office also reported that after an ICE

detainer error, it released Richard Renteria, a 20-year-old Austin resident arrested for public intoxication in August 2016.<sup>30</sup> Renteria, who speaks fluent English, told the arresting officers that he was born in Texas, but ICE issued a detainer for him anyway.<sup>31</sup> Travis County's pretrial services also list Renteria's place of birth as Texas and confirm that he provided an SSN to the sheriff.<sup>32</sup>

## CONCLUSION

Because of database errors, inadequate investigations, and other mistakes, ICE likely targeted at least 228 U.S. citizens in Travis County from FY06 to FY17. The rate of wrongful detainer issuances in Travis County implies that ICE targeted at least 3,506 U.S. citizens in Texas and 19,873 nationwide with detainers that were subsequently canceled. SB 4 requires Texas localities to hold U.S. citizens even if they assert a facially valid U.S. citizenship claim. The result will be more American citizens wrongfully detained for longer periods of time. At a minimum, supporters of expanded enforcement laws like SB 4 need to create better safeguards to protect the rights of American citizens from ICE detainers.

## NOTES

1. Immigration and Customs Enforcement, “Immigration Detainer—Notice of Action Form 247A” (Washington: Department of Homeland Security, March 2017), <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>; and Immigration and Customs Enforcement, “Immigration Detainer—Request for Voluntary Action Form I-247D” (Washington: Department of Homeland Security, May 2015), <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF>.
2. Kate Manuel, “Immigration Detainers: Legal Issues,” Congressional Research Service Report no. R42690, May 7, 2015, <https://fas.org/sgp/crs/homsec/R42690.pdf>; and Immigrant Legal Resource Center, “Immigration Detainers Legal Update” (San Francisco, October 2016), <https://www.ilrc.org/immigration-detainers-legal-update-july-2018>.
3. Travis County Sheriff’s Office, “ICE Detainers,” Policy Manual, Chapter 1, Section 8, Policy no. 1.8.17, January 31, 2017, <https://object.cato.org/sites/cato.org/files/wp-content/uploads/traviscountydetaiainerpolicy.pdf>.
4. Andrew Eicher, “Texas Gov. Abbott on Levin: ‘I’m Putting the Hammer Down’ on Sanctuary Cities,” *CNS News*, February 6, 2017, <https://www.cnsnews.com/blog/andrew-eicher/texas-gov-abbot-levin-im-putting-hammer-down-sanctuary-cities>.
5. Chapter 2, Code of Criminal Procedure, Article 2.251(a), <https://legiscan.com/TX/text/SB4/id/1608435>.
6. Chapter 39, Penal Code Sec. 39.07(b), <https://legiscan.com/TX/text/SB4/id/1608435>.
7. Ashley Paredez, “Exclusive: Local Law Enforcement on SB4,” *Fox 7*, October 9, 2017, <http://www.fox7austin.com/news/local-news/exclusive-local-law-enforcement-on-sb4>.
8. Bureau of Consular Affairs, “Citizenship Evidence” (Washington: U.S. Department of State), <https://travel.state.gov/content/passports/en/passports/information/citizenship-evidence.html>.
9. Eyder Peralta, “You Say You’re an American, but What If You Had to Prove It or Be Deported?” *NPR*, December 22, 2016, <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.
10. U.S. Citizenship and Immigration Services, “Citizenship through Parents” (Washington: Department of Homeland Security, November 10, 2015), <https://www.uscis.gov/us-citizenship/citizenship-through-parents>.
11. Peralta, “You Say You’re an American.”
12. *Matter of Oshane Shaneil Cross*, Respondent, 26 I&N Dec. 485 (BIA 2015), U.S. Department of Justice, Board of Immigration Appeals, <https://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/02/18/3826.pdf>; and Laura Murray-Tjan, “Whoops! The Department of Justice Admits That It Misunderstood U.S. Citizenship Law,” *Huffington Post*, April 28, 2015, [www.huffingtonpost.com/laura-murraytjan/whoops-the-department-of\\_b\\_6763514.html](http://www.huffingtonpost.com/laura-murraytjan/whoops-the-department-of_b_6763514.html).
13. *City of El Cenizo et al. v. State of Texas et al.*, (W.D.TX), “Emergency Motion to Stay Preliminary Injunction Pending Appeal,” September 5, 2017, [https://www.texasattorneygeneral.gov/files/epress/Emergency\\_Mtn\\_to\\_Stay\\_Preliminary\\_Injunction\\_Pending\\_Appeal\\_corr.pdf?cachebuster=63](https://www.texasattorneygeneral.gov/files/epress/Emergency_Mtn_to_Stay_Preliminary_Injunction_Pending_Appeal_corr.pdf?cachebuster=63).
14. ICE’s own records on U.S. citizens targeted by detainers are inaccurate and incomplete. ICE’s records obtained by a Freedom of Information Act request show that 44 percent of the detainers have no resolution listed, and another 10 percent say “lifted” without explanation. Older ICE data is similarly incomplete. TRAC immigration with ICE data lists 834 U.S. citizens from FY 2008 to 2012 (0.08 percent of all detainers), but it is also incomplete. TRAC Immigration, “Who Are the Targets of ICE Detainers?” Syracuse University, February 20, 2013, <http://trac.syr.edu/immigration/reports/310/>; and Eyder Peralta, “You Say You’re An American, But What If You Had To Prove It Or Be Deported?” *NPR*, December 22, 2016, <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.
15. Travis County Sheriff’s Office, “TCSO Booking Sheet,” <https://object.cato.org/sites/cato.org/files/wp-content/uploads/traviscountybooking.pdf>.
16. ICE cancels detainers for U.S. citizens but fails to correct their nationality: Department of Homeland Security, “Immigration Detainer—Notice of Action—Gerardo Gonzalez,” June 19, 2013, <https://object.cato.org/sites/cato.org/files/wp-content/uploads/gerardogonzalezdetainercancellationform.pdf>.
17. Only since March 2017 has ICE required a cancellation: Immigration and Customs Enforcement, “Issuance of Immigration

Detainers by ICE Immigration Officers,” Interim Policy no. 10074.2, March 24, 2017, <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

18. Rhode Island Department of Corrections—one of the few jurisdictions to have made data public—reported an 8.9 percent rate of citizenship claims from 2003 to 2015 (with no mention of Social Security numbers). This is similar to the rate of 7.2 percent (1,739 people) for Travis County with and without SSNs. *Morales v. Chadbourne* (D-RI), “Exhibit 52,” November 13, 2015, <https://object.cato.org/sites/cato.org/files/wp-content/uploads/rhodeislandcitizendetainers.pdf>.

19. The numbers: 392 total USC releases plus 17 cancellations without a release minus 54 declined detainers resulting in a release.

20. John Morton, “Memorandum—Superseding Guidance on Reporting and Investigating Claims to United States Citizenship” (Washington: Immigration Customs Enforcement, November 19, 2009), [https://www.ice.gov/doclib/detention-reform/pdf/usc\\_guidance\\_nov\\_2009.pdf](https://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf).

21. The numbers: 156 cancellations of 814 U.S. citizen claims with Social Security numbers (19.2 percent) compared with 1,226 cancellations of 23,455 detainers in other situations (5.3 percent).

22. *Morales v. Chadbourne* (D-RI), “Deposition of John Drane,” April 21, 2015, <https://object.cato.org/sites/cato.org/files/wp-content/uploads/johndranedepositionmorales.pdf>.

23. Trac Immigration, “Latest Data: Immigration and Customs Enforcement Detainers” (Syracuse, NY: Syracuse University, November 2017), <http://trac.syr.edu/phptools/immigration/detain/>.

24. ICE data obtained by Berkeley Law School researchers show that from 2008 to 2011, ICE issued detainers for and then arrested roughly 3,600 U.S. citizens (1.6 percent of all cases) through the Secure Communities deportation program, which runs local

submissions to the FBI past ICE records: Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, “Secure Communities by the Numbers,” Warren Institute Research Report, October 2011, [https://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

25. Travis County Sheriff’s Office, “In Custody Inmates with an INS Detainer Added on 06/20/2017,” Report Generated June 21, 2017, [https://www.tcsheriff.org/pages/ice/files/ICE\\_DETAINER\\_2017-06-21-07-10-04.pdf](https://www.tcsheriff.org/pages/ice/files/ICE_DETAINER_2017-06-21-07-10-04.pdf).

26. Travis County Sheriff’s Office, “In Custody Inmates with an INS Detainer.”

27. Conversation with his attorney Drew Phipps, September 21, 2017.

28. *Mark Daniel Lyttle v. United States*, “Complaint,” (N.D.GA, October 13, 2010), [https://www.acluga.org/sites/default/files/field\\_documents/georgia\\_initial\\_complaint.pdf](https://www.acluga.org/sites/default/files/field_documents/georgia_initial_complaint.pdf).

29. Esha Bhandari, “U.S. Citizen Wrongfully Deported to Mexico, Settles His Case against the Federal Government,” ACLU, October 5, 2012, <https://www.aclu.org/blog/speakeasy/us-citizen-wrongfully-deported-mexico-settles-his-case-against-federal-government>.

30. Travis County Sheriff’s Office, “In Custody Inmates with an INS Detainer Added on 08/22/2016,” Report Generated August 23, 2016, [https://www.tcsheriff.org/pages/ice/files/ICE\\_DETAINER\\_2016-08-23-07-10-07.pdf](https://www.tcsheriff.org/pages/ice/files/ICE_DETAINER_2016-08-23-07-10-07.pdf).

31. Attorney Jackson F. Gorski, “Re: Richard Renteria,” Email to David Bier, September 26, 2017. “Also, he spoke English—otherwise I never would have been assigned his case.”

32. Conversation with Jordan Wise, September 22, 2017. Wise said, “According to our records, he is a citizen. The detainer was withdrawn.”