THE UNIVERSITY OF WASHINGTON

IMMIGRATION DETAINER REQUESTS IN KING COUNTY, WASHINGTON

Costs and Consequences

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EXECUTIVE SUMMARY

In recent years, the federal government has expanded local involvement in the enforcement of immigration laws. As a result, an increasing number of suspected immigration law violators are detained in local jails at the request of the Immigration and Customs Enforcement (ICE) agency. This report analyzes data provided by King County to assess how ICE detainer requests impact jail stays, and what this costs local governments. The data include all inmates released from a King County jail in 2011 who were either charged with a crime or released from jail after prosecutors did not file charges. The findings indicate that ICE detainer requests significantly extend jail stays, do not primarily target serious criminals, have a pronounced impact on the county's Latino population, and consume significant government resources.

On average, people subject to ICE detainers stay in jail 29.2 days longer than others. The results of a statistical regression analysis indicate that ICE detainer requests increase people's jail stay by 161% after case characteristics are taken into account. For example, a person who would otherwise be expected to stay in jail for 30 days would, as a result of an ICE detainer request, stay in jail for a total of 78.3 days instead.

The findings also cast doubt on the contention that ICE mainly targets people with serious criminal charges and histories. Nearly two-thirds of the people flagged by ICE were not charged with a felony offense associated with their booking, and approximately one in eight were not charged with any crime at all. Moreover, only one in five people subject to ICE detainer requests and who were charged with a crime had been previously convicted of a felony in Washington State; only 18% had been convicted of a crime against a person in the state. These findings suggest that most people flagged by ICE have not been convicted of a serious crime.

The results also indicate that honoring ICE detainer requests has a pronounced impact on the county's Latino population. More than one-fourth (28.7%) of all people booked into a King County jail and identified as Hispanic were transferred upon their release, presumably to ICE. This includes people who were transferred to ICE without having been charged with a crime. The fact that more than one in four Latino people who enter jail in King County are transferred to ICE suggests that the practice of honoring ICE detainers may undermine police efforts to secure the trust and cooperation of people living in immigrant and/or Latino neighborhoods.

The county and municipalities within it are responsible for the fiscal costs associated with the extended jail stays that result from ICE detainers. We estimate that the extra jail days associated with ICE detainers cost nearly $3 million per year in jail costs alone. The results also suggest that not honoring detainer requests would save King County and local municipalities approximately $1.8 million each year in jail costs.

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INTRODUCTION

Over the past decade, Immigration and Customs Enforcement (ICE) – a division of the U.S. Department of Homeland Security (DHS) – has dramatically increased its efforts to apprehend and deport noncitizens who come into contact with state and local criminal justice systems.[1] In practice, this involves the direct transfer of people into ICE custody immediately upon their release from jail. This transfer occurs after ICE files with the jail, and the jail then honors, an ICE immigration detainer request (commonly referred to as an ICE hold or ICE detainer).[2] A detainer is a request from ICE to hold otherwise releasable detainees for up to 48 hours – excluding weekends and holidays – so that ICE has the opportunity to interview and/or transfer the individual to federal immigration custody.

According to ICE, this arrangement is an efficient way of identifying criminal immigration law violators and others who pose security risks to the public.[3] Yet these ICE enforcement practices have engendered significant controversy, and critics have raised a number of concerns about them. First, although ICE contends that it seeks primarily to identify arrestees who have committed serious crimes,[4] there is evidence that many of those subject to ICE detainer requests were arrested for minor offenses, including traffic violations. Moreover, a recent national study found that only one in five people detained by ICE had ever been convicted of a crime.[5] Critics are also concerned that the intermingling of immigration enforcement and the criminal justice system undermines police efforts to gain trust in communities with significant immigrant populations, and may encourage the racial profiling of Latinos.[6] Finally, honoring ICE detainers may significantly extend jail stays beyond 48 hours, and the costs associated with any such extended stays are borne by localities. In light of these concerns, numerous local

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[1] Since 2001, ICE has expanded or initiated a series of programs to carry out these efforts, including the Criminal Alien Program (CAP), Secure Communities, the National Fugitive Operations Program (NFOP) and the 287(g) program. From 2004-2011, funding for these programs increased from $23 million to $690 million. See Mark R. Rosenblum and William A. Kandel, "Immigration Enforcement: Programs Targeting Criminal Aliens" *Congressional Research Service* 2011, available at http://www.fas.org/sgp/crs/homesec/R42057.pdf

[2] In the criminal context, detainers are based on warrants approved by a judge and are issued after charges have been filed. In the immigration context, however, detainers are issued by administrative ICE officers, and these requests are not reviewed by judges. See Judith A. Greene, *The Cost of Responding to Immigration Detainers in California: Preliminary Findings*, August 2012. Available at http://www.justicestrategies.org/publications/2012/cost-responding-immigration-detainers-california

[3] See Immigration and Customs Enforcement (ICE), "Secure Communities." Available at http://www.ice.gov/secure_communities/

[4] ICE recently reiterated this broad principle in a December 21, 2012 memo from Director John Morton. See http://www.ice.gov/news/releases/1212/121221washingtondc2.htm.

[5] Transactional Records Access Clearinghouse (TRAC) Report, "Who Are the Targets of ICE Detainers?", Feb 20, 2013. Syracuse University. Available online http://trac.syr.edu/immigration/reports/310/

[6] See Trevor Gardner II and Aarti Kholi, "The CAP Effect: Racial Profiling in the ICE Criminal Alien Program", The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, University of California Berkeley Law School (2009).

governments have elected not to honor ICE detainers or to limit the circumstances under which they do so.[7]

This report focuses on the impact of honoring ICE detainer requests on jail stays in King County, Washington.[8] Previous studies indicate that ICE detainers extend jail stays by significantly more than one or two days in other jurisdictions. For example, a 2011 study found that Los Angeles jail inmates subject to ICE detainer requests spent an average of 20.6 more days in jail than other inmates.[9] In Travis County, Texas, there is evidence that arrestees subject to ICE detainer requests spend, on average, three times longer (65-76 days) than others (22-26 days).[10] Similarly, a 2010 study found that New York City jail non-citizen inmates flagged by ICE spent 73 more days in jail, on average, than others (after controlling for race and offense level).[11]

ICE detainers may significantly increase the amount of time people spend in jail because defendants and court actors alike understand that people subject to ICE detainer requests will likely be transferred to ICE upon their release, and hence that pre-trial release from jail would halt the criminal process. Studies suggest that this knowledge affects defendant and court actors' decision-making processes in a number of ways. For example, people who are subject to an ICE detainer request may be less likely to post bail or obtain a bond because they understand that they would not be able to return to court, and would therefore forfeit these funds.[12] People subject to detainer requests may also be more likely to plead not guilty so that they can make arrangements regarding their expected deportation.

Court actors' decision-making processes may also be impacted by ICE detainer requests. For example, prosecutors may see ICE detainer requests as indicators that a defendant is a flight risk, and therefore ask that judges set comparatively high bail amounts or deny pre-trial release altogether. Similarly, it is conceivable that ICE detainers effect judicial decision-making with

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[7] The following counties have limited the circumstances under which they will honor ICE detainers: Cook County, IL, Santa Clara County, CA, Washington, D.C., New York City, San Francisco, CA. See "Santa Clara County To Stop Honoring Immigration Detainers For Low-Level Offenders" at http://latimesblogs.latimes.com/lanow/2011/10/santa-clara-county-to-stop-honoring-immigration-detainers-for-low-level-offenders-.html; "D.C. Passes Act Limiting District's Response To ICE's Immigration Detainers" at http://immigrationimpact.com/2012/06/05/dc-passes-act-limiting-districts-response-to-ices-immigration-detainers/; NYC Council Oks Bucking Some Immigration Detainers", http://online.wsj.com/article/APe62317ccb60e414eb4905a019af37d01.html. See also, Kamala Harris, Attorney General, California Department of Justice, "Responsibilities of Local Law Enforcement Agencies Under Secure Communities", available at: http://online.wsj.com/article/APe62317ccb60e414eb4905a019af37d01.html

[8] The data analyzed in this report pertain to the two adult jail facilities operated by King County.

[9] Greene, *op.cit.*

[10] National Immigration Forum, *Immigrants Behind Bars: How, Why, and How Much* (March 2011).

[11] Aarti Shahani, *New York City Enforcement of Immigration Detainers: Preliminary Findings*, October 2010. Available ahttp://www.justicestrategies.org/publications/2010/new-york-city-enforcement-immigration-detainers

[12] Greene, *op.cit.*

respect to pre-trial release.[13] Finally, there is evidence that some jail inmates with ICE detainer requests have been held for more than 48 additional hours while awaiting transfer to ICE in some jurisdictions.[14] To the extent that one or more of these factors are operative, the practice of honoring ICE detainer requests will extend jail stays by significantly more than 48 hours.

The aforementioned studies provide preliminary evidence that ICE detainers have a notable impact on jail stays, and hence impose significant costs on local governments. However, only one of these reports took into account some of the legal factors that, along with ICE detainers, may influence the amount of time arrestees spend in jail. For example, if inmates with ICE detainers also have more charges or more serious charges than other inmates, these differences may account for some or all of their extended jail stays. It is important to control for these legal factors in order to isolate the impact of ICE detainer requests on the amount of time arrestees spend in jail.

This report analyzes jail booking and release data provided by King County jail administrators to assess how ICE detainer requests impact the amount of time people spend in jail. The dataset includes all people who were released from an adult King County jail facility in 2011 and were either charged with a crime or released after prosecutors did not file charges. Our analysis compares the average jail stay for people with and without ICE detainers, and uses statistical regression techniques to isolate the unique impact of ICE detainer requests (over and above other legal factors) on the length of jail stays. We also estimate the cost to local governments of honoring ICE detainer requests, and the potential cost-savings that would accrue if they ceased to do so.

KEY FINDINGS

- **Honoring ICE detainer requests significantly extends jail stays.**

  - The average jail stay for people subject to ICE detainer requests was 29.2 days longer than for people not subject to ICE detainer requests.

  - Among those charged with a felony offense, ICE detainer requests added 60.8 days to the average jail stay.

  - For those whose most serious charge was a misdemeanor, ICE detainer requests added more than seven days to the typical jail stay.

[13] See, for example, Greene *op.cit.*
[14] National Immigration Forum, *op. cit.*

- Regression analyses indicate that ICE detainers significantly extend jail stays – by 161% – even after taking the number of charges, and the nature and seriousness of the most serious charge, into account.

➢ **ICE detainers mainly target people <u>without</u> serious criminal charges and histories.**

- The most serious criminal charge against approximately half (50.7%) of the inmates with ICE detainer requests was a misdemeanor offense.

- Approximately one-eighth (13%) of the people subject to ICE detainer requests were not charged with a crime prior to their transfer to ICE.[15]

- Four out of five people flagged by ICE had never been convicted of a crime against a person in Washington State; a similar ratio had never been convicted of a felony in the state.

➢ **Honoring ICE detainer requests has a pronounced impact on the county's Latino population.**

- More than one in four (28.7%) of the people who entered jail and were identified as Hispanic were transferred to the custody of ICE upon their release.

- Nearly all (96.2%) of the individuals flagged by ICE were transferred to its custody upon their release from jail.

➢ **Honoring ICE detainer requests consumes significant local resources.**

- Honoring ICE detainer requests cost local governments nearly $3 million in jail costs alone in 2011.

- Not honoring ICE detainer requests would save local governments approximately $1.8 million in jail costs each year.[16]

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[15] The jail data indicate whether released individuals were subject to an ICE detainer request and whether they were released via a transfer of custody, but do not identify not the agency to which the released person was transferred. In the remainder of this report we assume that people subject to ICE detainer requests and transferred upon release were transferred to the custody of ICE.

[16] In 2011 dollars.

DATA AND METHODOLOGY

Data

The original dataset provided by King County jail administrators included information about 37,670 persons booked (at least once) into a King County jail in 2011. Because we are interested in the impact of ICE detainers on the length of jail stays, we limited the sample to cases in which the booked individual was released in 2011 (and excluded one individual who died in custody). We also excluded 2,619 bookings associated with people who had pending administrative matters but no criminal charges.[17] Bookings with missing data (133 cases) were also dropped from the sample.

After these exclusions, our sample included 33,609 separate jail bookings associated with a 2011 jail release date. It is important to note that people may have been booked into and released from jail more than once in 2011; the data therefore do not necessarily refer to distinct individuals. The dataset includes information about a number of variables, including: reason for release, type of charge (i.e., felony/misdemeanor/no charge), number of charges, seriousness ranking of each charge, and the race, ethnicity, and gender of the booked person.

In several cases, these variables were recoded to facilitate analysis. For example, in approximately 26% of bookings, the most serious charge was not listed as the first charge. We therefore used the seriousness ranking to identify the most serious charge associated with each booking. This task was complicated by the fact that ICE detainer requests are entered into the booking system as a felony charge with a correspondingly high seriousness ranking. As a result, the ICE detainer request was initially identified as the most serious charge for some cases. However, ICE detainer requests are civil immigration issues, not felony charges. We therefore used the charge narrative to identify ICE detainer requests and recoded their seriousness ranking in order to prevent them from being identified as the most serious charge.

Some of our analyses distinguish between bookings according to the most serious charge. For approximately 8.9% of all bookings (2,979 cases), the most serious charge was an "investigation," meaning that a formal charge had not been filed by the prosecutor's office at the time of release. We refer to these cases as "not charged" in our analyses. This category includes people who were released from jail without having been charged with felony or a misdemeanor, and who did not have pending administrative matters such as extradition

[17] These cases mainly involved persons who were alleged to have violated the terms of their community placement, and hence whose jail stay was mainly determined by state or other extra-county agencies. Because some of these cases involve detainees with ICE detainer requests, our results likely underestimate the cost of honoring ICE detainer requests.

requests or community supervision violations. As a result, our analyses compare the number of days spent in jail by three distinct groups of people: those whose most serious charge was a felony; those whose most serious charge was a misdemeanor; and those who were not charged with a crime while in jail and who were not identified as having other violations, warrants or extradition requests.

In the original dataset, the variable "number of charges" included investigations that did not result in formal charges and ICE detainers. We recoded the number of charges to include the number of *charges to which a court cause number had been assigned*. In our analyses, then, the number of charges refers to the number of criminal charges filed. The number of charges ranges from 0 to 10. The original "number of charges" variable indicated that 46 cases had more than 10 charges. Because the data provided identify only the first 10 booking allegations for each case, we use 10 charges as the maximum for these cases in the regression analysis.

Methodology

Testing for Differences between Groups. We begin by providing descriptive statistics to illuminate the prevalence and distribution of ICE detainer requests, and to compare the average (mean) and typical (median) number of days people with and without ICE detainer requests spend in jail. We also present the results of statistical tests measuring these differences. These tests allow us to assess whether the difference between the average jail stay for inmates with and without ICE detainer requests could be due to chance. Conventionally, social scientists consider the difference between two proportions to be statistically significant if there is a 5 percent or smaller probability that the observed difference is the result of chance.

Regression Analysis. We also employ Ordinary Least Squares (OLS) statistical regression techniques to measure the nature and strength of the relationship between each of several explanatory factors that could influence the number of days people spend in jail (the dependent variable). These explanatory variables include: the nature of the most serious charge (e.g., felony, misdemeanor, or no charge); the seriousness ranking of the most serious charge; and the number of charges filed. We refer to these as "legal factors" or "case characteristics." We also analyzed the impact of extra-legal factors – namely, the race, ethnicity and gender of the person who was booked – on the number of days spent in jail.

Whereas descriptive statistics provide an empirical summary of the data, regression analysis is a statistical technique for estimating the relationships (i.e., correlations) among variables included in a given model. The model includes an outcome or dependent variable – in this case, jail days – as well as a number of factors that may affect the dependent variable. Regression

analysis clarifies how the average value of the dependent variable changes when any one of the independent variables is varied and while the other independent variables are held constant. Diagnostic tools are used to help identify the most appropriate model.

In this case, diagnostic tests indicated that the variable "number of jail days" was heavily skewed and that the residuals were not normally distributed. Heavily skewed distributions are common in social science models and indicate that there is not a strictly linear relationship between an explanatory and dependent variable. In this case, for example, being charged with a felony does not increase the number of jail days by an absolute number. Rather, its impact depends upon the levels of other variables included in the model. In order to accurately model this type of relationship, we use the natural log of "number of jail days" as the dependent variable, normalizing its distribution and facilitating interpretation of individual regression coefficients. As a result, the regression coefficients are interpreted as a percent change in the number of jail days attributable to each of the independent variables.

Diagnostic tests also identified four cases as statistical outliers with both influence and leverage. This means that their values were so extreme that including them in the regression model would artificially "pull" the data in one direction. Because the objective of OLS regression analysis is to model the typical relationship among a set of variables rather than to explain the outcomes of extreme or atypical cases, we excluded these five cases from the regression analysis.

FINDINGS

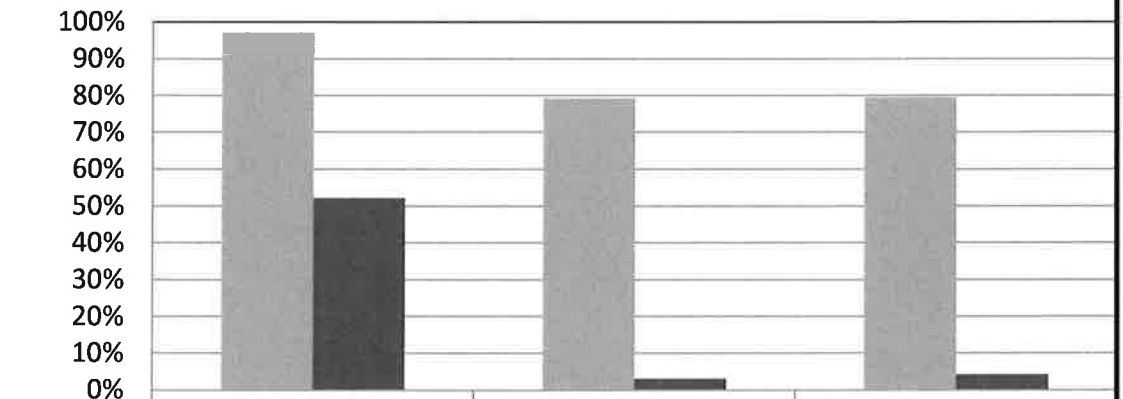
ICE Detainers by Gender and Ethnicity

Over half – 52.2% – of inmates subject to ICE detainer requests, but only 3% of other inmates, were classified as Hispanic (see Figure 1). Because inmates are not asked about their ethnic identity until later in their jail stay – usually after 72 hours – some are released before providing this information. As a result, the percentage of inmates who self-identify as Hispanic or Latino may be notably larger than is reported here.[18] Men were also over-represented among people

[18] For example, in our study of Legal Financial Obligations in Washington State, we used Hispanic Surname Analysis to identify all persons with last names that are strongly associated with persons who identify themselves as Hispanic or Latino/a. We found that only 5.3% of defendants were classified in court records as Hispanic, but 10.8% had surnames that were highly likely to be associated with persons who self-identified as Hispanic/Latino in the U.S. Census survey. See Katherine Beckett, Alexes Harris and Heather Evans. 2008. *The Assessment and Consequences of Legal Financial Obligations in Washington State*, available at: http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf

subject to detainer requests relative the rest of the jail population: 97% of those flagged by ICE, but 79.2% of other inmates, were male.

Figure 1. Jail Inmates by Gender and Ethnicity, ICE Detainer vs. No ICE Detainer



	ICE Detainer	No ICE Detainer	Total Jail Population
■ Male	97.0%	79.2%	79.6%
■ Hispanic	52.2%	3.0%	4.2%

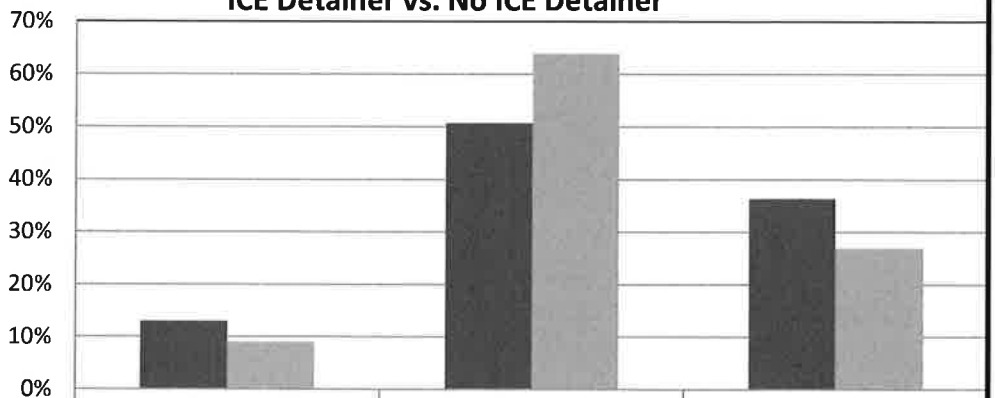
Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

Notably, over one-fourth – 29.5% – of all inmates classified by jail administrators as Hispanic and released in 2011 were flagged by ICE. Nearly all of these individuals were transferred upon release. This means that over one-fourth (28.7%) of all people booked into a King County jail who were classified by jail administrators as Hispanic were transferred, presumably to ICE, upon their release.

ICE Detainer Requests by Most Serious Charge and Criminal History

Each booking is associated with one of three charge types: felony, misdemeanor, or "not charged." The most serious charge for over half (50.7%) of the individuals subject to ICE detainer requests was a misdemeanor, and just over one-third (36.3%) were charged with a felony. The remaining 13% were not charged with any criminal offense (see Figure 2).

Figure 2. Inmates by Most Serious Charge, ICE Detainer vs. No ICE Detainer



	No Charge Filed	Misdemeanor	Felony
■ ICE Detainer	13.0%	50.7%	36.3%
■ No ICE Detainer	9.1%	64.0%	26.9%

Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

Although a comparatively large percentage of people with ICE detainers were charged with a felony offense, a relatively large proportion of those with ICE detainers were not charged with any crime at all. Overall, nearly two-thirds of the people subject to ICE detainer requests were not charged with a felony offense prior to their release from jail in 2011. These findings cast doubt on the contention that ICE detainers mainly identify people who have committed serious crimes and who pose serious safety risks to the community.

However, the jail data summarized in Figure 2 do not include information about prior criminal convictions. Although the results show that the majority of people flagged by ICE are not charged with a felony, it is nonetheless conceivable that people subject to ICE detainer requests have extensive criminal histories that include felony convictions or other serious crimes. In order to analyze the criminal histories of people subject to ICE detainers, and to compare them against people not flagged by ICE, we drew a random sub-sample from the larger sample. The sub-sample included 100 individuals who were released from a King County jail in 2011 and charged with a crime. We then compiled criminal history information for these individuals.[19]

The results of this comparison are shown in Table 1, and indicate that only 20% of the people subject to an ICE detainer request had one or more prior Washington State felony convictions (compared to 60% of people released from jail in 2011 without ICE detainer requests). Put

[19] Criminal history information was obtained through the Washington State Administrative Office of the Courts Judicial Information Services (JIS) website. This information was compiled by Lucie Bernheim of the Northwest Defenders Association. Detailed information for the six most recent Washington State felony and misdemeanor convictions was recorded; a count of other prior Washington felonies and misdemeanors was also recorded.

differently, 4 of 5 people flagged by ICE had no prior Washington State felony convictions. Similarly, a comparatively small proportion of people with ICE holds had one or more prior Washington State convictions for a crime against persons (18% vs. 30% of people not subject to ICE detainer requests).[20] On average, people subject to ICE detainer requests also had fewer prior felonies and prior convictions for crimes against persons in Washington than those not subject to ICE detainer requests.

Table 1. Comparison of Criminal Records of People With and Without ICE Detainer Requests

Measure of Criminal Record	ICE Detainer Request (n=50)	No ICE Detainer Request (n=50)
Percent of Individuals in Sub-Sample with one or more Prior Washington Convictions for a Felony Offense	20%	60%
Percent of Individuals in Sub-Sample with one or more Prior Washington Convictions for a Crime Against Persons	18%	30%
Average Number of Prior Washington Felonies per Individual in Sub-sample	.94	2.56
Average Number of Prior Washington Crimes Against Persons per Individual in Sub-Sample	.26	.56

Source: Authors' analysis of subsample of data provided by the King County Department of Adult and Juvenile Detention, n= 100

These findings suggest that four of five people flagged by ICE have not been convicted of a serious crime in Washington State, and thus that ICE is not mainly targeting people with serious criminal histories. And although our analysis does not include information about convictions from other states or the federal system, our findings are nonetheless consistent with the results of a recent analysis of national ICE detainer data by the Transactional Records Access Clearinghouse (TRAC), a data gathering and research organization at Syracuse University.

TRAC researchers analyzed information about nearly a million detainers issued between Fiscal Year 2008 and the start of 2012. Their results indicate that more than three-fourths (77.4%) of the individuals subject to ICE detainers had no criminal record either at the time the detainer was issued or afterward. For the remaining 22.6 percent who had a criminal record, only 8.6

[20] These are defined in RCW 9.94A.411. The figures regarding number of prior crimes against persons refer to the six most recent felonies and misdemeanors. The full list of these offenses is available at https://fortress.wa.gov/wsp/watch/help/CrimesAgainstPersonsListing.pdf

percent of the charges were classified as a Level 1 offense.[21] Taken together, the findings described above provide compelling evidence that ICE detainers do not mainly target people who pose serious security risks to the broader community.[22]

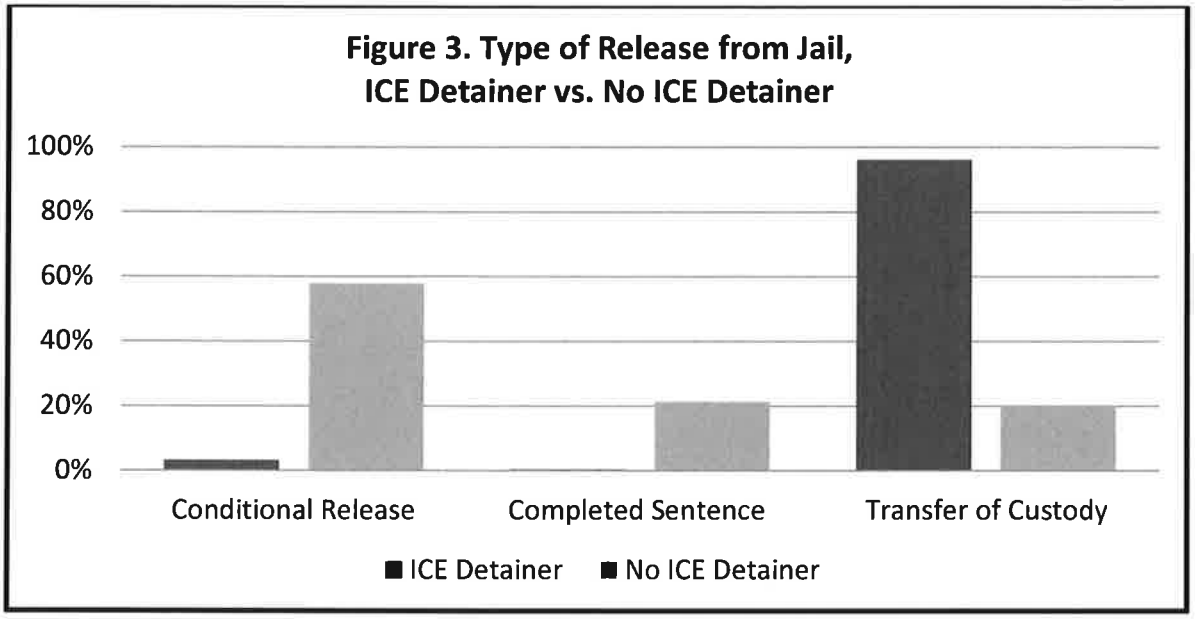
ICE Detainer Requests and Type of Release

People subject and not subject to ICE detainer requests were released in different ways. ICE issued a total of 821 ICE detainer requests for people released from a King County jail in 2011. Thirty of these were issued for people who had no criminal charges but did have other pending administrative matters, such as extradition requests or alleged Department of Corrections violations. These 30 individuals were not included in our sample. As a result, our sample included 791 people subject to ICE detainer requests. Persons subject to an ICE detainer request constituted 2.4% of our sample.

Whereas the majority of people not subject to ICE detainer requests were conditionally released from jail – and not transferred to the custody of another agency – nearly all (96.2%) of the individuals sought by ICE were transferred to ICE upon their release from jail. This indicates that the County in fact transfers people to ICE custody in nearly all instances in which detainers are issued. Put differently, pre-trial, conditional release is essentially not an option for people subject to ICE detainer requests in King County (see Figure 3). This means that alternatives to incarceration – such as electronic home monitoring, drug court and CCAP (Community Corrections Alternative Program) – are not available to people flagged by ICE.

[21]?" Transactional Records Access Clearinghouse (TRAC) Report, "Who Are the Targets of ICE Detainers," Feb 20, 2013. Syracuse University. Available online http://trac.syr.edu/immigration/reports/310/

[22] TRAC also found that ICE issued detainer requests for 834 U.S. Citizens and 28,489 legal permanent residents. In King County, Washington, one U.S. citizen and thirty legal permanent residents were subject to ICE detainer requests. Neither the U.S. citizen nor 24 of the 30 legal permanent residents flagged by ICE had a criminal record.



Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

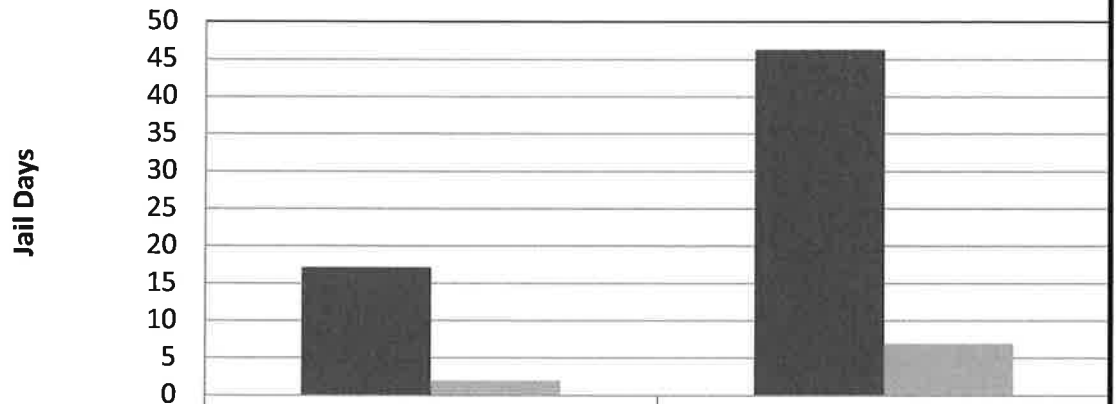
This pattern also existed for people who left jail without having been charged with a crime. That is, the vast majority of people who were not charged and did not have ICE detainer requests were conditionally released from custody. However, nearly all of those who were not charged with a crime but had an ICE detainer request were nonetheless released to the custody of ICE. Thus, being booked into jail has uniquely serious consequences for people sought by ICE even if they are not charged with a crime.

ICE Detainers and Length of Jail Stay

The average jail stay for people subject to ICE detainer requests was significantly greater than for those who are not. Specifically, detainees without an ICE detainer request spent an average of 17.1 days in jail, while those with an ICE detainer request spent an average of 46.3 days in jail. The difference between these two averages is 29.2 days. A standard t-test (a statistical test comparing the means of two groups) indicates that this difference is statistically significant at the alpha level 0.000. This means that there is a 0.0% chance that the difference between these two groups' average jail stays is due to chance. The typical (median) jail stay for inmates with ICE detainer requests is also more than three times as long as the typical stay for inmates without an ICE detainer request (see Figure 4).[23]

[23] Throughout this report, we provide both the observed median (typical) value and the observed mean (average) value when reporting descriptive statistics. The median is the value that divides the sample distribution in half, and is less sensitive to extreme values than is the average (mean). In this case, the mean (average) number of jail days is significantly greater than the median, which indicates that a number of cases with very long jail stays are influencing the mean.

Figure 4. Average and Typical Jail Stays in Days, ICE Detainer vs. No ICE Detainer

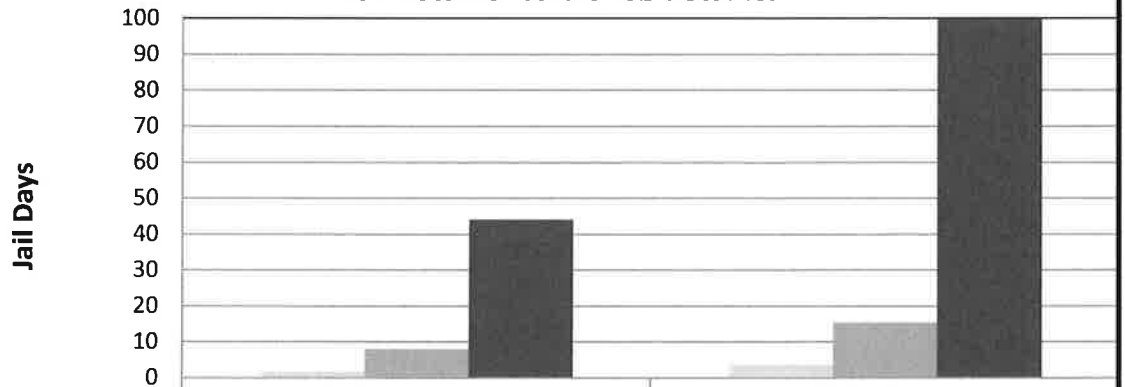


	No ICE Detainer	ICE Detainer
■ Average (Mean)	17.1	46.3
■ Typical (Median)	2.0	7.0

Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

Analyzing cases with ICE detainer requests by charge type suggests an even starker relationship between the number of days people spend in jail and ICE detainer requests. Below, Figure 5 shows that people with ICE detainer requests spend more days in jail *across all charge types*. Indeed, for inmates with ICE detainer requests whose most serious charge is a felony, the mean (average) number of days spent in jail is more than two times greater than the average number of days spent by people with felony charges but not subject to ICE detainer requests (105 vs. 44 days). For those charged with misdemeanors, the average number of jail days is nearly twice that of those without ICE detainer requests (15 vs. 8 days.) People who are <u>not</u> charged with a crime and have an ICE detainer request also spend twice as much time in jail as those who are not charged and do not have an ICE detainer request (4 vs. 2 days).

Figure 5. Average Jail Stay by Charge Type, ICE Detainer vs. No ICE Detainer

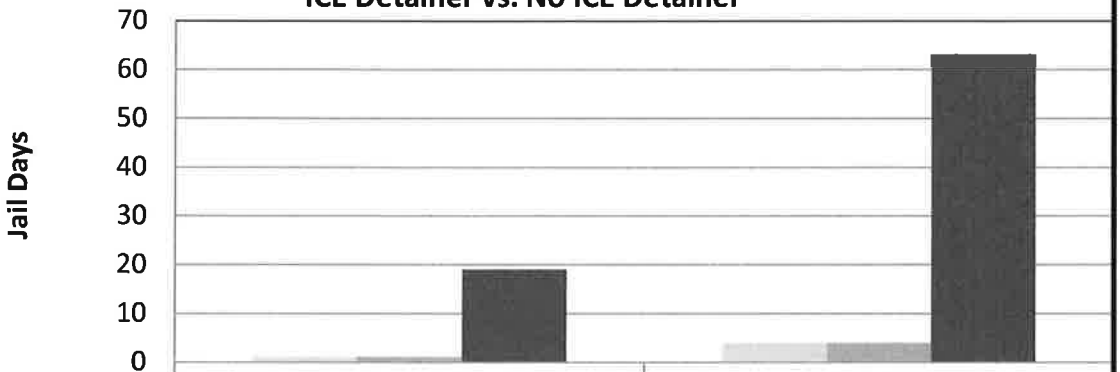


	No ICE Detainer	ICE Detainer
No Charge	1.7	3.7
Misdemeanor	8.0	15.4
Felony	44.0	104.7

Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

Statistical tests of these differences indicate that they are significant at the alpha level 0.000. Again, this means that there is a 0.0% chance that the differences in length of jail stay are due to chance. Moreover, the differences persist if we compare the median number of days spent in jail for those with and without ICE detainer requests across charge type (see Figure 6).

Figure 6. Typical (Median) Jail Stay by Charge Type, ICE Detainer vs. No ICE Detainer



	No ICE Detainer	ICE Detainer
No Charge	1.0	4.0
Misdemeanor	1.0	4.0
Felony	19.0	63.0

Source: Authors' analysis of data provided by the King County Department of Adult and Juvenile Detention, n= 33,609

Regression Results

The descriptive statistics presented above provide compelling evidence that ICE detainer requests significantly impact the amount of time inmates spend in jail. However, it is possible that some of these differences stem from case characteristics rather than from ICE detainer requests. For example, a comparatively large percentage of people with ICE detainer requests are charged with a felony, and persons charged with a felony spend, on average, more time in jail than others. It is therefore important to control for these and other case characteristics that may impact jail stays to isolate the unique impact of ICE detainer requests on jail stays.

The results of the regression analysis presented below capture the effect of a number of legal factors on the number of days arrestees spent in jail in King County. These factors include: ICE detainer requests; the number of charges associated with each booking; the seriousness ranking of the booked person's most serious charge; and whether the most serious charge listed is a felony, misdemeanor, or an "investigation" (i.e., no charges had been filed at the time of release). A detailed description of each variable and its measurement is included in Table A in the Appendix. Descriptive statistics (including the mean, minimum and maximum values, and standard deviations) of each variable are listed in Table B in the Appendix.

As noted previously, multivariate regression analysis differs from description in that it provides an estimated model and tests for significant relationships (i.e., correlation) among the variables included in the model. Regression results provide a measure of the direction and strength of

the relationship between each potential explanatory variable and the dependent variable (in this case, the number of days spent in jail). The direction of the association (i.e., whether the coefficient has a negative or positive value) indicates whether the variable causes a decrease or increase in jail days; the strength (statistical significance) indicates how likely the correlation is due to chance.

It is important to note that the results of this analysis identify which of the explanatory variables included in the model are significantly associated with the dependent variable *holding all other variables included the model constant*. That is, regression analysis allows us to simultaneously take into consideration a number of factors and identify the unique impact of each variable on the outcome. If the regression results indicate that being booked on a felony charge is positively and significantly associated with number of jail days, this would mean that those booked on a felony charge spend more time in jail than those booked on a misdemeanor *after taking all other variables in the model, including seriousness ranking of the most serious felony and number of other charges, into account*.

Table 2 lists the legal factors that may be related to the number of days spent in jail, as well as the coefficient (or unique impact), statistical significance, and interpretation of each variable.[24] The regression results indicate that all the legal factors included – ICE detainer requests, the number of charges, the seriousness rank of the most serious charge, and type of most serious charge – have a statistically significant impact on the number of days spent in jail. In this case, the likelihood that these correlations are the product of chance is less than 0.1%. The results further indicate that after taking into consideration the number of charges, seriousness level and type of most serious charge, ICE detainer requests increase the length of stay in jail, on average, by 161 percent. Only the seriousness ranking of the most serious charge has a negative correlation with number of days in jail.[25]

[24] It is important to note that regression results provide a mathematical description of a complex set of relationships between variables and thus require nuanced interpretation. In this model, the coefficients should be interpreted as having a "semi-elastic" rather than linear relationship with number of days in jail.

[25] This means that people booked and charged with more serious crimes spend slightly less time in jail, on average, than those involving less serious charges. This negative relationship may reflect the fact that people booked on more serious charges are more likely to be transferred to prison to carry out their sentence. In fact, 65% of people booked with the most serious crimes (levels IX and above) were released from jail into another agency's custody; just 14% leave jail on conditional release granted by the court.

Table 2. Impact of ICE Detainer, Controlling for Legal Factors				
N= 3,3605	Jail Days (Logged)			Adj. R^2 = 0.384
Variable	Coefficient	Statistical Significance	Interpretation of Coefficient	Referent (Compared to)
ICE Detainer	0.959	***	160.8%	No ICE Detainer
Number of Charges	0.559	***	74.8%	No Charges
Seriousness Rank	-0.036	***	-3.6%	0
Investigation	0.146	***	15.7%	Misdemeanor
Felony	1.944	***	598.5%	Misdemeanor

* significant at α = .05 ** significant at α = .01 *** significant at α = .001

The examples provided in Table 3 below illustrate the meaning of these results. Compared to a person without an ICE detainer request who was booked and spent 1, 5, 10 or 30 days in jail, an ICE detainer request would increase a similarly situated person's length of stay by 1.6, 8, 16 or 48 days, respectively, even if all other case characteristics were identical. It is important to note that these results describe the *aggregate* relationship between ICE detainer requests and jail days; this simple calculation cannot be applied to each individual case.

Table 3. Interpretation of Regression Results Regarding Impact of ICE Detainers		
Number of Days in Jail without ICE Detainer	Number of Additional Days Resulting From ICE Detainer	Number of Days in Jail with ICE Detainer
1	1.6	2.6
5	8.1	13.1
10	16.1	26.1
30	48.3	78.3

Table 4 below summarizes the regression results, listing the degree of statistical significance and an interpretation of the association. For detailed regression results, see Table C in the Appendix.

Table 4. OLS Regression Results: Significant Predictors of Number of Days in Jail		
Legal Factor	Statistical Significance	Meaning of Correlation
Detainer Request	Very strong	Having an ICE detainer request significantly increases the number of days spent in jail (on average, an increase of 161%)
Number of Charges	Very strong	Cases with greater numbers of charges stay significantly longer in jail (on average, an increase of 75% for each additional charge)
Seriousness Rank	Very strong	Charges with higher seriousness ranking scores are correlated with significantly shorter jail stays (on average, a -3.6% decrease)
Investigation	Very strong	Having no charges filed significantly increases the time spent in jail (on average, 15.7% more time than if charged with a misdemeanor)
Felony	Very strong	Being booked on a felony charge significantly increases the time spent in jail (on average, 600% more time than if charged with a misdemeanor)

We also tested a regression model that assessed the impact of the booked person's gender, ethnicity, and race on length of jail stays (see regression results in Table C in the Appendix). Including these controls did not dramatically change the results: both the direction and strength of all the legal factors remained consistent. Interestingly, though, this model suggests that being Latino increases the length of stay in jail above and beyond other considerations, including having an ICE detainer request. Being racially non-white and male also positively and significantly impacted the length of one's jail stay (see Table D in the Appendix).

Although these findings raise important questions about the role of race, ethnicity and gender in the criminal process, we do not rely on the results from this model here, for two reasons. First, Latinos are likely undercounted in these data. Second, race and ethnicity were not recorded as mutually exclusive categories, meaning that some individuals are "double counted" in the analysis. For this reason, the results may disproportionately reflect the experience of some defendants. A more accurate model would require restructuring race and ethnicity as mutually exclusive categories and employing a technique such as Hispanic Surname Analysis to identify Latino defendants. Further study is needed to assess the impact of race, ethnicity and gender on length of jail stay.

The Cost of Honoring ICE Detainer Requests to Local Governments

Several studies have estimated the cost of honoring ICE detainer requests to local governments. Some of the results have been dramatic. For example, one study concluded that Los Angeles County spent $26 million in 2010 to detain inmates on behalf of ICE.[26] Another study estimated that the annual cost of honoring ICE detainer requests ranged from $8 million in Travis County, Texas to $49.6 million in New York City in 2008.[27]

While these results are striking, the methodology used in these studies may lead to an over or under-estimate of the cost of honoring ICE detainer requests, for two reasons. First, these estimates measure the number of "extra" jail days attributable to honoring ICE detainer requests by subtracting the average number of days spent in jail by people without ICE detainer requests from the average number of days spent in jail by people with ICE detainer requests. Thus, if people without ICE detainer requests spend an average of 20 days in jail, and people with ICE detainer requests spend an average of 40 days in jail, the difference between these figures – 20 days – is conceptualized and treated as the sole consequence of the ICE detainer request.

However, this assumption may be erroneous, as the difference in jail stays for people with and without ICE detainer requests may also be a function of legal factors such as the seriousness or number of charges. For this reason, it is important to also utilize a measure of the number of jail days added as a result of ICE detainer requests *net of other legal factors that may influence the length of jail stays for people with ICE detainers*. Below, we use regression results – which isolate the unique impact of ICE detainer requests on jail stays net of other legal factors – to identify the cost to local jurisdictions of honoring ICE detainer requests.[28]

In addition, prior studies have not distinguished between average cost – the cost of honoring ICE detainer requests – and the marginal cost *savings* that would accrue if a county were not to honor these requests. Average cost refers to the total cost of an activity (such as operating a jail) divided by the number of persons who are subject to that activity over a given period of time. Prior estimates of the cost of honoring ICE detainers have employed this measure of cost.

Although this measure is useful for estimating how much is currently spent on a given activity, average cost estimates do not illuminate how much will be saved by not engaging in that activity. For example, although it may cost a jail an average of $100 per night to house an inmate, this does not mean that removing that inmate for one night will save the county $100.

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[26] See Greene, *op. cit.*

[27] National Immigration Forum, *op. cit.*

[28] The majority of the cost associated with extended jail stays is borne by King County. However, because municipalities reimburse the county for the cost of jailing misdemeanants, the cost of extended days for those charged with misdemeanors is borne by municipalities that rent bed space in a King County jail.

This is because some costs – such as the cost of electricity – are not affected by small reductions in the number of persons who are jailed. By contrast, marginal costs reflect the amount by which the cost of an activity would change given a one unit change in that activity.

Below, we use the regression results to estimate (a) how much it cost local governments to honor ICE detainer requests in 2011, and (b) how much they might have saved by not honoring the requests during that year (the marginal cost savings). These estimates refer only to operating costs, and do not include construction costs.

To generate these estimates, we first obtained estimates of statewide average and marginal jail costs generated by the Washington State Institute for Public Policy (WSIPP).[29] We then used WSIPP's marginal cost figures to calculate the ratio of estimated marginal costs to estimated average costs. The results indicate that marginal jail costs are, on average, 63% of average jail costs in Washington State. This ratio was then applied to the average cost of a King County jail bed in 2011 to estimate the marginal cost savings associated with reducing the number of days people spent in King County jails.[30]

Next we used the regression coefficient associated with the variable "ICE detainer request" to calculate the number of "extra" jail days generated by honoring ICE detainers. Because the relationship between number of jail days and ICE detainer is not linear, the coefficient is interpreted as a percent change in the number of jail days attributed to ICE detainers – net of the impact of other legal factors. In this case, the coefficient (.937) is interpreted as 161% of the average jail stay for people without ICE holds (17.1 days). For comparison, we also provide the results obtained if we treat the raw difference between the observed average jail stay for people with and without ICE detainer requests as number of "extra" jail days attributable to honoring ICE detainer requests. In this case, taking case characteristics into account actually increases our estimate of the cost of honoring ICE detainer requests to King County, though this may not be true in other jurisdictions.

The results of these calculations are presented in Table 5 below. We have italicized the results obtained by using the regression coefficient to estimate the number of "extra" jail days generated by honoring ICE detainer requests because we believe this to be a superior measure, and foreground these figures in our discussion. The results suggest that honoring ICE detainer

[29] These can be found in Washington State Institute for Public Policy, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes,* April 2012 (and accompanying technical manual). The figures provided were for 2008 and 2009. We used the annual escalation rate generated by WSIPP (.022) and the U.S. inflation adjuster to convert these figures to 2011 dollars.

[30] The average cost bed cost for a single night in a King County jail in 2011 was $133. (Mike West, Department of Adult and Juvenile Detention, personal communication). Applying the ratio .63% ratio suggested by WSIPP, we estimate the marginal cost savings associated with a one-person reduction of the King County jail population for one day to be $83.24.

requests cost King County nearly $3 million in 2011. The results also indicate that not honoring the requests would have saved the county approximately $1.8 million.

Table 5. Estimated Cost of Honoring ICE Detainers, 2011

Extra Days Attributable to ICE Detainers as Measured by...	Estimated Cost of Honoring ICE Detainers (Average Cost)	Estimated Savings Associated with Not Honoring ICE Detainers (Marginal Cost)
Regression coefficient	*$2,894,971*	*$1,811.860*
Difference between average jail stay within charge category	$2,742,759	$1,713,369

These results are an estimate of the potential cost savings associated with not honoring any ICE detainer requests. However, the extent of future cost savings will depend on the degree to which any change in policy or practice reduces the Average Daily Population (ADP) in King County jails. Because people charged with felonies typically spend longer in jail than others, the effect of any policy change on the response to ICE detainer requests for people charged with a felony will be especially impactful.[31]

[31] Our marginal cost savings estimate does not take into account federal reimbursements for some of the expenses associated with the detention of some undocumented immigrants. Under the State Criminal Alien Assistance Program (SCAAP), localities can apply for Bureau of Justice Administration (BJA) funds to partially off-set the cost of detaining undocumented persons who spend four or more consecutive days in jail and who are convicted of a felony or a second misdemeanor. In FY 2012, King County received $724,538 in SCAAP monies from BJA (https://www.bja.gov/Funding/12SCAAPAwards.pdf). Nevertheless, we do not include future SCAAP reimbursements in our estimate of the marginal cost savings associated with not honoring ICE detainer requests, mainly because the availability of future SCAAP funds is uncertain. The pool of SCAAP funds has diminished notably, from a high of $565 million in FY 2002 to $240 million in FY 2012. The President's FY 2013 budget allocates only $70 million for SCAAP, and the final SCAAP budget allocation for FY 2013 is, particularly in light of sequestration, unknown (https://www.bja.gov/ProgramDetails.aspx?Program_ID=86). For these reasons, future SCAAP reimbursements are unknowable, and it is therefore not possible to anticipate how any reduction in jail stays by undocumented persons would impact future SCAAP reimbursements. It is also worth noting that only some of the people subject to ICE detainer requests meet the SCAAP reimbursement requirements, and that the average per diem reimbursement rate for FY 2012 – $28.16 per inmate – was far less than the marginal cost figure suggested by WSIPP and used in our analysis.

CONCLUSIONS

Localities across the country are assessing how honoring ICE detainer requests affects their residents and their budgets. This report analyzes data provided by King County and uses statistical regression methods that take legal factors into account to assess how ICE detainer requests impact jail stays, and what this costs the county.

The results indicate that people with ICE detainers stay in jail significantly longer than similarly situated people who are not flagged by ICE. In fact, the regression results indicate that ICE holds increase people's jail stay by 161% – net of any differences in case characteristics.

The findings of this study also cast doubt on the contention that ICE detainer requests mainly target people with serious criminal charges and histories. Overall, nearly two-thirds of the people flagged by ICE were not charged with a felony offense, and roughly one in eight were not charged with any crime at all. Moreover, only one in five people who had been charged with a crime and were subject to an ICE detainer had been convicted of a felony crime or crime against a person in Washington State. These findings challenge the idea that ICE detainers mainly identify people who have committed serious crimes.

The results further indicate that the practice of honoring ICE detainer requests has a pronounced impact on King County's Latino population. More than one-fourth (28.7%) of all people booked into a King County jail and identified as Hispanic have ICE detainer requests and are transferred upon their release, presumably to ICE. This includes people who are released to ICE without having been charged with a crime. The fact that many of the Latino people who enter jail are ultimately transferred to ICE suggests that this practice may well undermine police efforts to secure the trust and cooperation of people living in immigrant and/or Latino neighborhoods.

Finally, it is clear that the practice of honoring detainer requests consumes significant local resources. We estimate that the "extra" jail days associated with ICE detainers cost local governments nearly $3 million per year. Our results further suggest that not honoring ICE detainer requests would save approximately $1.8 million each year in jail costs alone. These figures do not include court costs associated with jail stays.

Overall, then, the findings presented here suggest that ICE detainer requests significantly extend jail stays, do not primarily target serious criminals, have a pronounced impact on the county's Latino population, and consume significant local resources.

APPENDIX

Table A. Variable Transformations and Adjustments	
Variable	Measurement
Number of days spent in Jail	Skewed to the right, logged; inputted 0.5 days for those booked and released on same day
ICE detainer	Converted to 1 for ICE detainer, 0 for no ICE detainer
Number of Charges	Reduced by 1 for ICE detainer; received data on only first 10 charges associated with each booking; maximum number of charges is 10
Maximum Seriousness Rank	Most serious charge listed: converted to scale 1-13; no charges listed as 0
Investigation	Most serious charge listed: no charge filed (i.e., no court cause number listed); primarily violations; converted to 1 for investigation, 0 for not investigation
Misdemeanor	Most serious charge listed: converted to 1 for misdemeanor, 0 for not misdemeanor
Felony	Most serious charge listed: converted to 1 for felony, 0 for not felony
Male	Converted to 1 for males, 0 for females
Latino	Converted to 1 for those identified as Latino, 0 for those not identified as Latino
White	Converted to 1 for those identified as White, 0 for those not identified as White
Black	Converted to 1 for those identified as Black, 0 for those not identified as Black
Asian	Converted to 1 for those identified as Asian, 0 for those not identified as Asian
Native American	Converted to 1 for those identified as Native American, 0 for those not identified as Native American
Unknown or Other Race	Converted to 1 for those whose race was listed as "Unknown" or "Other", 0 for those whose race was identified

Table B. Descriptive Statistics Regarding People Released from a King County Jail in 2011					
	N	Minimum	Maximum	Mean	Std. Deviation
Number of days spent in jail	33,605	.5	993	17.66	47.49
ICE Detainer	33,605	0	1	0.02	0.15
Number of Charges	33,605	0	10	1.40	1.05
Maximum Seriousness Rank	33,605	0	13	4.74	3.24
Investigation	33,605	0	1	0.09	0.29
Misdemeanor	33,605	0	1	0.64	0.48
Felony	33,605	0	1	0.27	0.44
Male	33,605	0	1	0.80	0.40
Latino	33,605	0	1	0.04	0.20
White	33,605	0	1	0.60	0.49
Black	33,605	0	1	0.31	0.46
Asian	33,605	0	1	0.06	0.24
Native American	33,605	0	1	0.03	0.17
Unknown or Other Race	33,605	0	1	0.01	0.08

Table C. OLS Regression Results, Impact of ICE Detainer Controlling for Legal Factors				
N= 3,3605	Jail Days (Logged)			Adj. R^2 = 0.384
	Coef.	Std. Error	P-value	Reference Category (compared to)
Legal Variables				
ICE Detainer	0.959	0.047	0.000	No ICE Detainer
Number of Charges	0.559	0.008	0.000	No Charges
Seriousness Rank	-0.036	0.003	0.000	0
Investigation	0.146	0.029	0.000	Misdemeanor
Felony	1.944	0.018	0.000	Misdemeanor
Intercept	0.141	0.017	0.000	

Table D. OLS Regression Results, Impact of ICE Detainer Controlling for Legal Factors and Defendant Attributes				
N= 3,3605	Jail Days (Logged)			Adj. R^2 = 0.401
	Coef.	Std. Error	P-value	Reference Category (compared to)
Legal Variables				
ICE Detainer	0.747	0.0 50	0.000	No ICE Detainer
Number of Charges	0.547	0.008	0.000	No Charges
Seriousness Rank	-0.033	0.003	0.000	0
Investigation	0.131	0.029	0.000	Misdemeanor
Felony	1.889	0.018	0.000	Misdemeanor
Intercept	-0.199	0.023	0.000	
Defendant Attributes				
Male	0.269	0.018	0.000	Female
Latino	0.516	0.038	0.000	Not Latino
African American	0.363	0.016	0.000	White
Asian	0.060	0.030	0.047	White
Native American	0.439	0.041	0.000	White
Unknown/Other Race	-0.151	0.095	0.110	White