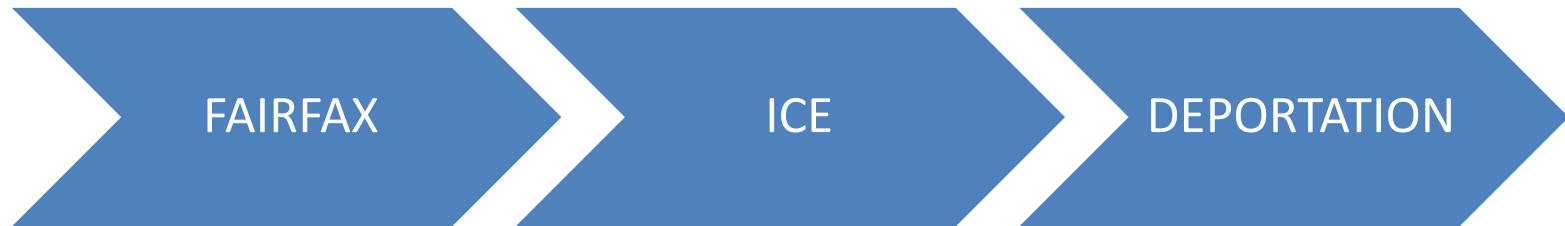


BY THE NUMBERS



## THE FAIRFAX—ICE ENFORCEMENT PIPELINE



Presentation to the Fairfax County Board of Supervisors

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on behalf of

Fairfax for All & ACLU People Power Fairfax

October 24, 2017

# THE FAIRFAX CIVIL IMMIGRATION PIPELINE

1. What we seek:

EQUAL JUSTICE FOR ALL PEOPLE

2. What the Board's stated vision is:

RESPECT, ACCEPTANCE AND TRUST

3. What the reality is:

IMMIGRANTS JAILED WHEN OTHERS SET FREE

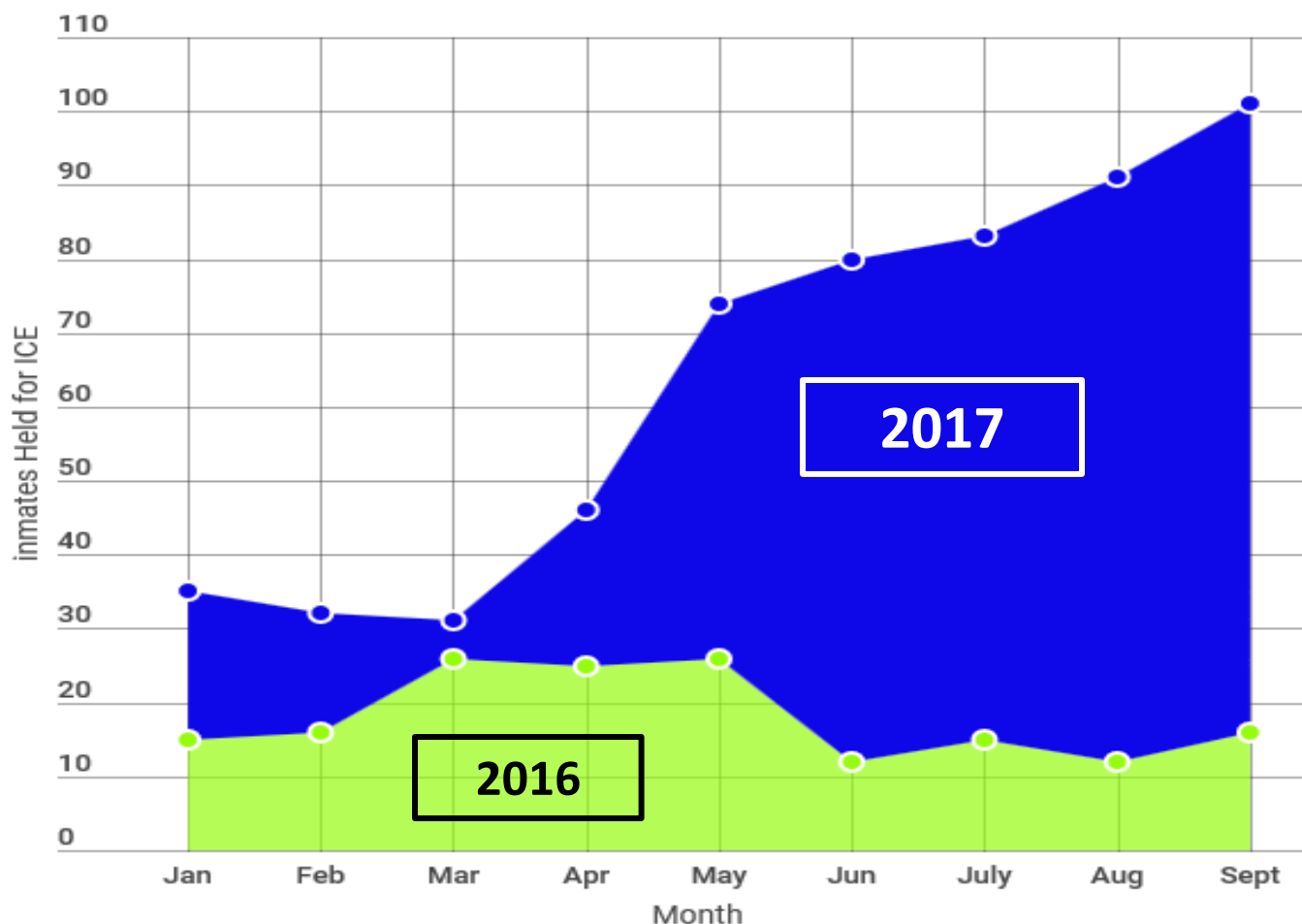
4. Why it is wrong:

BEING UNDOCUMENTED ***IS NOT A CRIME***

# The Dramatic Rise in Fairfax's Civil Immigration Enforcement

Fairfax Immigrants Turned over to ICE

2016 v. 2017 (Jan.—Sept.)<sup>1</sup>



1. Sources and citations listed as Endnotes.

Alejandro, "By the Numbers, the Fairfax—ICE Enforcement Pipeline," Fairfax for All & ACLU People Power Fairfax (October 24, 2017).

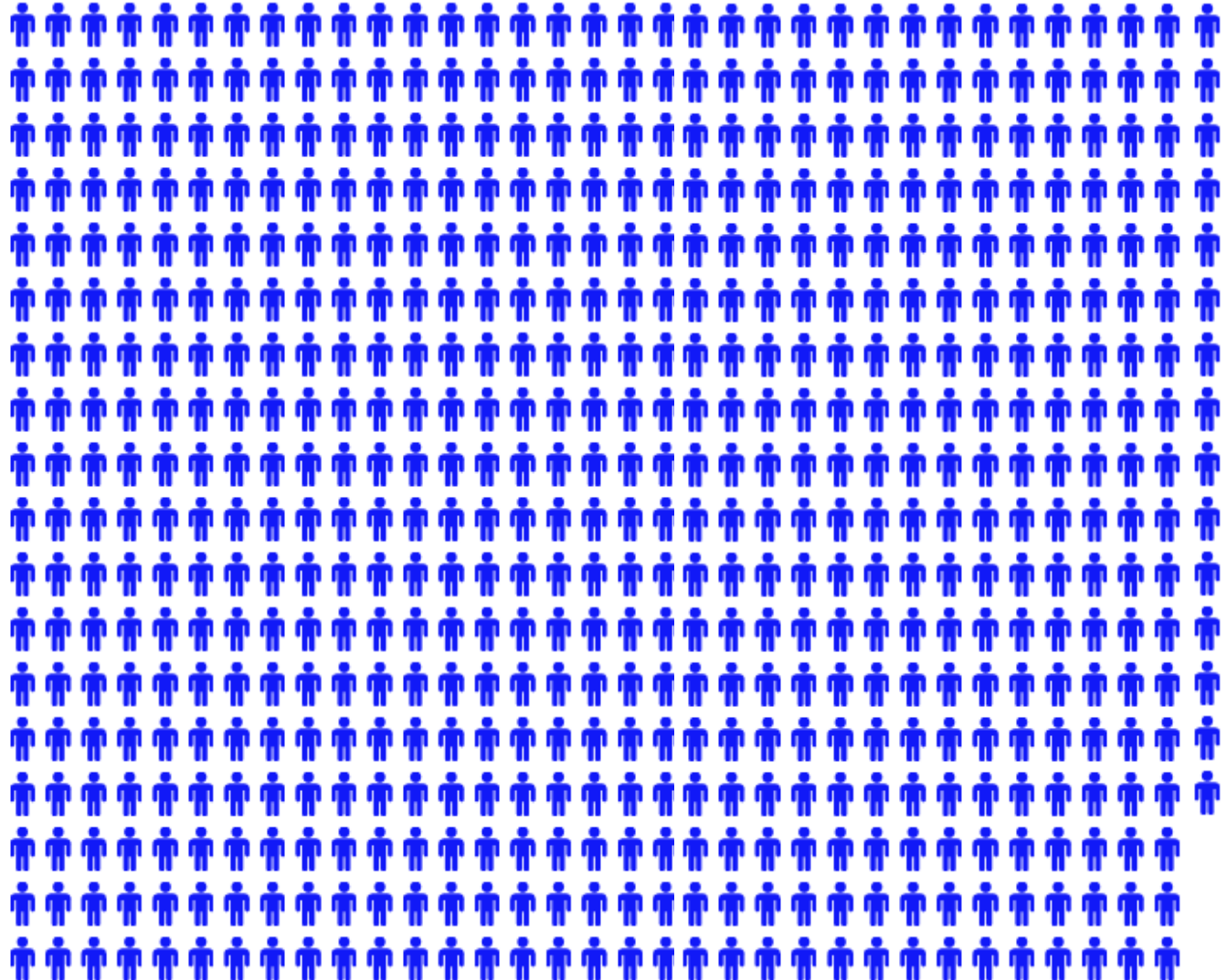
# 4 Times As Many Immigrants Held For ICE This Year

(Jan.—Sept.)<sup>1</sup>

**2016: 147**

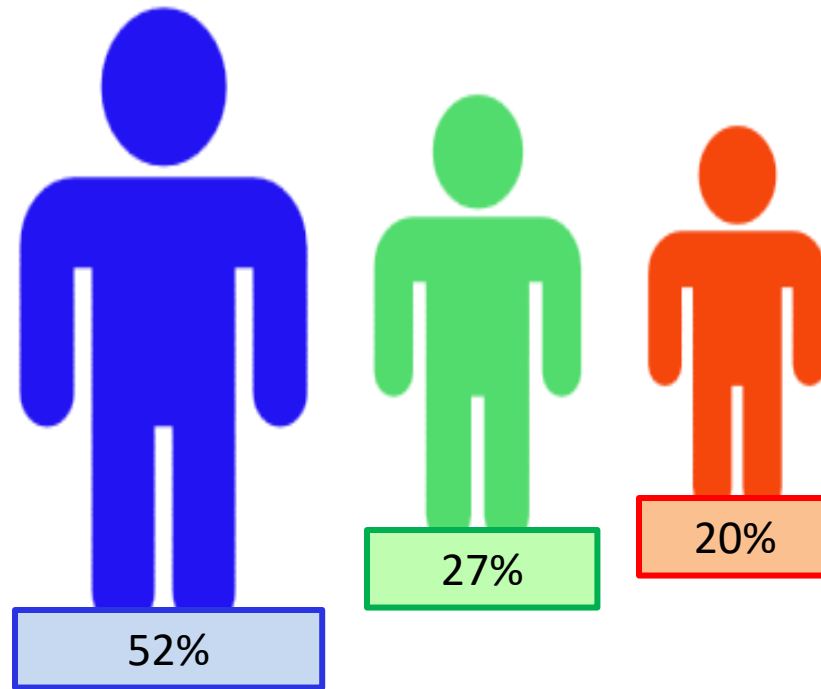


**2017: 573**



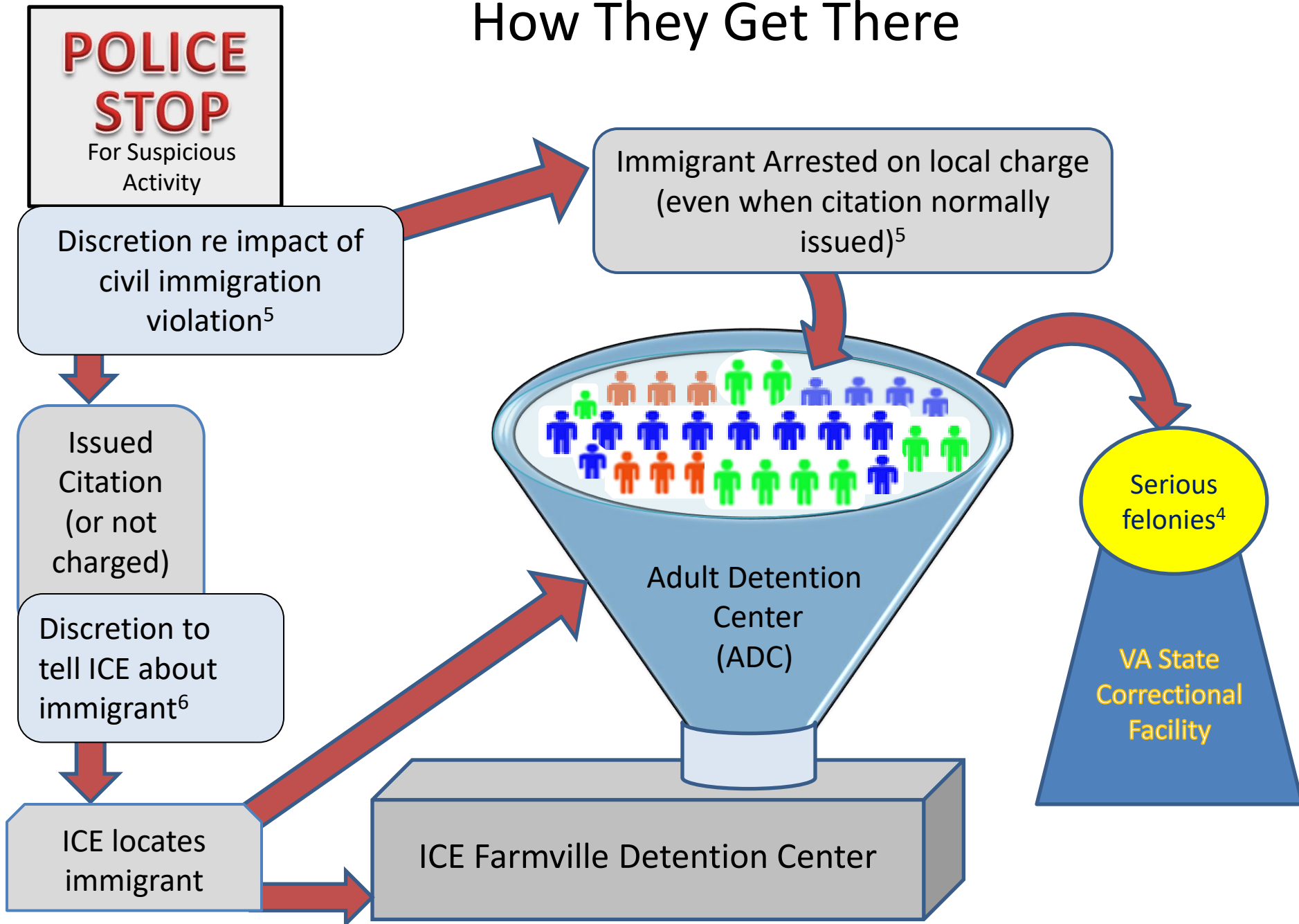
# Who Are They?

## Immigrants Held in Jail for ICE Pick up & Deportation<sup>2</sup>



- **PEOPLE ICE BRINGS TO ADC:** Fairfax provides temporary housing for immigrants ICE picks up (1) in raids or (2) from other jails.
- **PEOPLE FOUND INNOCENT OR NO DAY IN COURT:** Fairfax turns over people to ICE (1) before they've had a trial (presumed innocent), (2) when found not guilty or (3) when their case dismissed.<sup>3</sup>
- **PEOPLE WHO SERVED THEIR TIME:** Fairfax turns over individuals who have served their time for misdemeanors or felonies with less than a 12 month sentence. (Those with more serious convictions are sent to Virginia State Prison to serve time).<sup>4</sup>

# How They Get There



# The Fairfax—ICE Deportation Pipeline: How it Works

## Board's Role

- Has authority to set Fairfax wide policy. Sheriff has agreed to follow Board policies in Standard Operating Procedure 006.

## Fairfax's Part in ICE Enforcement

- Police officer stops, not ICE raids, main “provider” of immigrants to ICE.<sup>7</sup>
- ICE's new target: All undocumented immigrants, not just those convicted of serious crimes.<sup>8</sup> Of current detainees:
  - 50 % have no criminal convictions.
  - Less than 15% convicted of serious crimes.
- Fairfax implements new goal by (1) Honoring ICE civil detention requests and (2) Serving as informants.<sup>5</sup>

## Police Involvement (Discretion)

- Immigrant *not charged*, or issued a summons during stop?
  - Officer allowed to relay an immigrant's whereabouts to ICE.<sup>5</sup>
- Immigrant *charged* with a misdemeanor for which a summons or citation is normally issued?
  - Officer can arrest and jail the immigrant because of their civil immigration status.<sup>5</sup>

## Sheriff's Involvement

- Once in jail, the immigrant is ALWAYS turned over to ICE (if ICE asks, which they do)
  - Even if found innocent or case dismissed.<sup>9</sup>
- Sheriff even ignores a judge's pre-trial order granting bail because person is not a flight risk; turns them over to ICE instead.<sup>9</sup>

## Disparate, and Unjust, Treatment of Immigrants

- *Other people* ARE given their day in court on local charges.
- *Other people* ARE NOT detained in jail based in federal civil law charges (e.g. tax violation).
- *Only immigrants* are forced into lengthy incarceration based on outdated federal database that is wrong with disturbing frequency (even including U.S. citizens), with no judicial oversight.<sup>10</sup>

# Endnotes

1. Data based on Fairfax invoices to ICE and other data provided by the Sheriff's Office to ACLU People Power. "Held on ICE detainers" represents (1) inmates held initially on Fairfax charges, who otherwise would be released but for the ICE detainer; and (2) courtesy holds of detainees brought to ADC by ICE. There is no distinction between "detainers issued" by ICE and "detainers honored" by Fairfax; so long as Fairfax receives both a civil administrative warrant and detainer, an inmate will be detained and turned over to ICE. Because an inmate is only held 48 hours after the normal release date, it is theoretically possible not all inmates held by the ADC will be picked up by ICE. We are advised that this is rare, because ICE is at the ADC every day. If for some reason ICE fails to pick someone up, Sheriff staff are directed to provide ICE with all available information to be able to locate the immigrants. See Sheriff's SOP 526 § III.M.3.a.
2. Analysis is based on Sheriff's Office breakout of "release reason" (the reason person would have been released but for the ICE detainer) for May 2017 through September 2017. This time period was used to account for the Sheriff's Office revisions in categorization to reflect a May 2017 modification to the detention policy, and because it more accurately reflects current activity.
3. The **PEOPLE FOUND INNOCENT OR NO DAY IN COURT** category includes those (1) found Not Guilty after trial; (2) whose case was Dismissed by the court; (3) granted Bond and ordered released pending trial, on the basis of a finding that the individual did not pose a flight risk and therefore could await trial outside of jail; and (4) diverted to the Supervised Release Program, which allows charged individuals to remain at home awaiting trial on a supervised basis. Each of these individuals, instead of being released, is sent to ICE instead.
4. Convicted individuals whose sentence is completed at the Adult Detention Center ("local responsible inmates") have been convicted of a misdemeanor or received a sentence of 12 months or less on a felony charge. See Virginia guidance p. 3: <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/research/virginias-peculiar-system-local-and-regional-jails.pdf>. Offenders who have been sentenced to incarceration for one year or more are considered "state-responsible inmates" and are to be confined to a Virginia state correctional facility. Fairfax may hold some state-responsible inmates as a contractor for a limited time, but the prisoners remain the state's responsibility. See *id.* The **PEOPLE WHO SERVED THEIR TIME** category includes those (1) granted Parole; (2) granted Probation; (3) Court Ordered Release of persons who have not being sentenced to a particular length of incarceration, i.e., the judge deems the time spent in the ADC pre-trial is sufficient punishment; (4) Time Served, that is, given a specific sentence by the judge, but ordered released because the sentence is less than or equal to the time the inmate has been in jail; and (5) Sentence Served, those sentenced to a definite time with a release date in the future, but presumably less than a year.
5. Police General Order 601 VIII C.5.f provides that if an officer has detained an individual into custody for a Class 1 or 2 misdemeanor, and the FBI database check indicates an alleged civil violation of immigration order (order of removal, which is frequently issued ex parte, and often in error), the officer may take that information "into consideration in determining whether the person is eligible for release on a summons in accordance with the provisions of Virginia Code §19.2-74." The rationale is that "the arresting officer may determine that the person is 'likely to disregard a summons' " and should be considered a flight risk. General Order.601 C.5.g.



## Endnotes continued

6. While Police General Orders do not expressly require officers to share information with ICE that could be used by ICE to locate an undocumented immigrant, it does not prohibit such information sharing either. Based on information relayed by immigrants, officers do exercise their discretion to advise ICE about the person's whereabouts when they release an undocumented immigrant. The law enforcement culture of "comity" with other agencies is often used to justify this practice. The Sheriff, moreover, expressly mandates the sharing of personal information if an allegedly undocumented immigrant is being released from the jail. See SOP 526 § III.M.3.a.
7. [https://www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98\\_story.html?utm\\_term=.e5e4259cd3fb](https://www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98_story.html?utm_term=.e5e4259cd3fb); <http://cis.org/Immigration-Enforcement-Deportations-Delay-2016>; <https://www.dhs.gov/sites/default/files/publications/DHS%20Immigration%20Enforcement%202016.pdf>.
8. Executive Order 13768 of January 25, 2017, Section 4; February 20, 2017 Memorandum from DHS Secretary John Kelly, "Enforcement of the Immigration Laws to Serve the National Interest," pp. 2-4; Sacchetti, "Half of 675 immigrants targeted in ICE raids had traffic convictions or no criminal record," *Washington Post* (April 28, 2017); <http://www.chicagotribune.com/news/nationworld/ct-trump-immigration-ice-raids-20170428-story.html>. According to a recent report by several States Attorneys General,  
  
Available data establishes that many individuals subject to ICE detainer requests have no criminal record at all, or no record of any significant criminal activity. ICE's own data for available periods shows that nearly 50% of the detainer requests issued were for individuals with no criminal convictions at all, while another approximately 30% of detainer requests were issued for individuals with "Level 2" or "Level 3" offenses, as defined by ICE, which generally include property crimes and misdemeanors. ICE's data further demonstrates that detainer requests predominantly target those with no criminal convictions or those with convictions for minor offenses such as traffic offenses and marijuana possession. In the end, fewer than 15% of detainees targeted immigrants who were convicted of serious crimes.  
  
[https://oag.ca.gov/system/files/attachments/press\\_releases/setting\\_the\\_record\\_straight.pdf](https://oag.ca.gov/system/files/attachments/press_releases/setting_the_record_straight.pdf), p. 23 (footnotes omitted).
9. <https://www.fairfaxcounty.gov/news/2017/immigrants.htm>; see discussion of data in endnotes 2-3.
10. "Privacy Impact Assessment for LeadTrac System," Homeland Security Investigations, ICE (July 22, 2016); <http://www.latimes.com/politics/la-na-pol-ice-detainers-20170411-story.html>.); <https://aclu.org/wp-content/uploads/2017/03/170309-ltr-immig-enf-policeshiefssheriffs-FINAL.pdf>. [https://www.aclu.org/files/assets/issue\\_brief\\_-\\_what\\_ice\\_isnt\\_telling\\_you\\_about\\_detainers.pdf](https://www.aclu.org/files/assets/issue_brief_-_what_ice_isnt_telling_you_about_detainers.pdf); Makowski v. U.S., 27 F. Supp. 3d 901 (N.D. Ill. 2014). The number of errors may be much higher. In 2009, 827 detainees were issued for inmates in California alone who alleged they were born in U.S. See "Issue Brief: Immigration Detainers & Local Discretion" (April 2011), [https://www.aclunc.org/sites/default/files/detainers\\_issue\\_brief.pdf](https://www.aclunc.org/sites/default/files/detainers_issue_brief.pdf). See also [https://www.aclu.org/files/assets/issue\\_brief\\_-\\_what\\_ice\\_isnt\\_telling\\_you\\_about\\_detainers.pdf](https://www.aclu.org/files/assets/issue_brief_-_what_ice_isnt_telling_you_about_detainers.pdf); [https://www.aclusocal.org/sites/default/files/wp-content/uploads/2013/08/TAC.DCT\\_Third-Amended-Complaint-081814.44.pdf](https://www.aclusocal.org/sites/default/files/wp-content/uploads/2013/08/TAC.DCT_Third-Amended-Complaint-081814.44.pdf).